

The revisions and addition read as follows:

§ 21.7540 Eligibility for educational assistance.

(a) *Basic eligibility requirements.* A reservist must meet the requirements for a secondary school diploma (or an equivalency certificate) before applying for educational assistance. VA will decide whether a reservist met those requirements before applying for educational assistance. If the reservist applies before completing the requirements, VA will disallow the application. A reservist's premature application will not prevent the reservist from establishing eligibility at a later time by applying for educational assistance again after having completed the academic requirements. The Armed Forces will decide whether a reservist has met all the other eligibility criteria needed in order to receive educational assistance pursuant to 10 U.S.C. chapter 1606. To be eligible a reservist:

* * * * *

(5) Must have met the requirements for a secondary school diploma (or an equivalency certificate) before applying for educational assistance.

(Authority: 10 U.S.C. 16132; 38 U.S.C. 3033(c)).

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- 5. Section 21.7550 is amended by:
 - a. Redesignating paragraphs (b) through (d) as (c) through (e).
 - b. Adding a new paragraph (b).
 - c. Revising paragraph (a).
 - d. Revising redesignated paragraph (d) and its authority citation.
 - e. Revising redesignated paragraph (e).

The revisions read as follows:

§ 21.7550 Ending dates of eligibility.

(a) *Time limit on eligibility.* (1) *Reservists who become eligible before October 1, 1992.* Except as provided in § 21.7551 and paragraphs (b), (c), (d), and (e) of this section, if the reservist becomes eligible for educational assistance before October 1, 1992, the period of eligibility expires effective the earlier of the following dates:

(i) The last day of the 10-year period beginning on the date the reservist becomes eligible for educational assistance; or

(ii) The date the reservist is separated from the Selected Reserve.

(2) *Reservists who become eligible after September 30, 1992.* Except as provided in § 21.7551 and paragraphs (b), (c), (d), and (e) of this section, if a reservist becomes eligible for educational assistance after September 30, 1992, the period of eligibility expires effective the earlier of the following dates:

(i) The last day of the 14-year period beginning on the date the reservist becomes eligible for educational assistance; or

(ii) The date the reservist is separated from the Selected Reserve.

(Authority: 10 U.S.C. 16133)

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(b) *Extension due to active duty orders.* If the reservist serves on active duty pursuant to an order to active duty issued under section 12301(a), 12301(d), 12301(g), 12302, or 12304 of title 10, U.S. Code, the period of this active duty plus four months shall not be considered in determining the time limit on eligibility found in paragraph (a) of this section.

(Authority: 10 U.S.C. 16133)

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(d) *Discharge for disability.* In the case of a reservist separated from the Selected Reserve because of a disability which was not the result of the individual's own willful misconduct and which was incurred on or after the date on which the reservist became entitled to education assistance, the reservist's period of eligibility expires effective the last day of the—

(1) 10-year period beginning on the date the reservist becomes eligible for educational assistance if the reservist became eligible before October 1, 1992; or

(2) 14-year period beginning on the date the reservist becomes eligible for educational assistance if the reservist becomes eligible after September 30, 1992.

(Authority: 10 U.S.C. 16133)

(e) *Unit deactivated.* (1) Except as provided in paragraph (e)(3) or (e)(4) of this section, the period of eligibility of a reservist, eligible for educational assistance under this subpart, who ceases to become a member of the Selected Reserve during the period beginning October 1, 1991, and ending December 31, 2001, under either of the conditions described in paragraph (e)(2) of this section will expire on the date—

(i) 10 years after the date the reservist becomes eligible for educational assistance if the reservist became eligible before October 1, 1992; or

(ii) 14 years after the date the reservist becomes eligible for educational assistance if the reservist becomes eligible after September 30, 1992.

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§ 21.7551 [Amended]

- 6. Section 21.7551 is amended by:
 - a. In paragraph (a) introductory text, removing “§ 21.7550(a)(1)”, and adding, in its place, “§ 21.7550(a)”;

■ b. In paragraph (a)(1), removing “§ 21.7532(e) of this part.”, and adding, in its place, “§ 21.1033(c) of subpart B.”

■ c. In paragraph (b)(1), removing “§ 21.7550(a)(1)”, and adding, in its place, “§ 21.7550(a)”; and

■ d. In paragraph (c)(1)(ii), removing “§ 21.7550(a)(1)”, and adding, in its place, “§ 21.7550(a)”.

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 219

[Docket No. 2001-11213, Notice No. 9]

RIN 2130-AA81

**Alcohol and Drug Testing:
Determination of Minimum Random
Testing Rates for 2006**

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of determination.

SUMMARY: Using data from Management Information System annual reports, FRA has determined that the 2004 rail industry random testing positive rate was 0.94 percent for drugs and 0.18 percent for alcohol. Since the industry-wide random drug testing positive rate has remained below 1.0 percent for the last two years, the Federal Railroad Administrator (Administrator) has determined that the minimum annual random drug testing rate for the period January 1, 2006, through December 31, 2006, will remain at 25 percent of covered railroad employees. Since the random alcohol testing violation rate has remained below 0.5 percent for the last two years, the Administrator has determined that the minimum random alcohol testing rate will remain at 10 percent of covered railroad employees for the period January 1, 2006, through December 31, 2006.

DATES: This document is effective upon publication.

FOR FURTHER INFORMATION CONTACT:

Lamar Allen, Alcohol and Drug Program Manager, Office of Safety Enforcement, Mail Stop 25, Federal Railroad Administration, 1120 Vermont Avenue, NW., Washington, DC 20005, (202) 493-6313; or Kathy Schnakenberg, FRA Alcohol/Drug Program Specialist, (816) 561-2714.

SUPPLEMENTARY INFORMATION:

Administrator's Determination of 2006 Minimum Random Drug and Alcohol Testing Rates

In a final rule published on December 2, 1994 (59 FR 62218), FRA announced that it will set future minimum random drug and alcohol testing rates according to the rail industry's overall positive rate, which is determined using annual railroad drug and alcohol program data taken from FRA's Management Information System. Based on this data, the Administrator publishes a **Federal Register** notice each year, announcing the minimum random drug and alcohol testing rates for the following year (see 49 CFR 219.602, 219.608).

Under this performance-based system, FRA may lower the minimum random drug testing rate to 25 percent whenever the industry-wide random drug positive rate is less than 1.0 percent for two calendar years while testing at a 50 percent minimum rate. (For both drugs

and alcohol, FRA reserves the right to consider other factors, such as the number of positives in its post-accident testing program, before deciding whether to lower annual minimum random testing rates). FRA will return the rate to 50 percent if the industry-wide random drug positive rate is 1.0 percent or higher in any subsequent calendar year.

For random alcohol testing, if the industry-wide violation rate is less than 1.0 percent but greater than 0.5 percent, the minimum random alcohol testing rate will be 25 percent. FRA will raise the rate to 50 percent if the industry-wide violation rate is 1.0 percent or higher in any subsequent calendar year. FRA may lower the rate to 10 percent whenever the industry-wide violation rate is less than 0.5 percent for two calendar years while testing at a higher rate.

In this notice, FRA announces that the minimum random drug testing rate will

remain at 25 percent of covered railroad employees for the period January 1, 2006, through December 31, 2006, because the industry random drug testing positive rate was below 1.0 percent for the last two years (.094 in 2004 and .093 in 2003). The minimum random alcohol testing rate will remain at 10 percent of covered railroad employees for the period January 1, 2006, through December 31, 2006, because the industry-wide violation rate for alcohol has remained below 0.5 percent for the last two years (.018 in 2003 and 2004). Railroads remain free, as always, to conduct random testing at higher rates.

Issued in Washington, DC on December 30, 2005.

Joseph H. Boardman,
Administrator.

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