

property will result in the release of land and surface rights at the Liberal Mid-America Regional Airport (LBL) from the conditions of the AIP Grant Agreement Grant Assurances, but retaining the mineral rights. In accordance with 49 U.S.C. 47107(c)(2)(B)(i) and (iii), the airport will receive fair market value and the property will be developed for a commercial business.

Any person may inspect, by appointment, the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**. In addition, any person may, request an appointment and inspect the application, notice and other documents determined by the FAA to be related to the application in person at the Liberal Mid-America Regional Airport.

Issued in Kansas City, MO, on December 14, 2022.

James A. Johnson,

Director, FAA Central Region, Airports Division.

[FR Doc. 2022-27711 Filed 12-22-22; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 2022-1273]

Agency Information Collection Activities: Requests for Comments; Approval of Clearance Renewal for Information Collection: For the Information Collection Entitled, Website for Frequency Coordination Request

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to allow renewal of the currently approved information collection via the FAA's deployed Web-based Frequency Coordination system (WebFCR), which collects certain broadcast and transmitter frequency information under OMB control number 2120-0786. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on September 28, 2022. The collection involves information needed to perform the aeronautical studies, technical evaluations and engineering required to meet the specified requirements for the

radio frequency engineering pursuant to the FAA Order. The Federal Aviation Administration (FAA) Order 6050.32.B, chapter 3, section 302, which outlines the US National Organizations, and the role of the National Telecommunications and Information Administration (NTIA) is assigning the Aviation Assignment Group (AAG) of the radio spectrum to FAA which support aeronautical services. Hence, FAA must "authorize" aeronautical frequencies of broadcast applications which impact the AAG bands.

DATES: Written comments should be submitted by January 23, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

FOR FURTHER INFORMATION CONTACT:

Christopher S. Jones by email at: Christopher S. Jones@faa.gov; phone: (202) 267-5926.

By mail: Christopher S. Jones, Spectrum Engineering and Assignment, AJW-191, Room 7E-325, 800 Independence Avenue, Washington DC 20591.

By fax: (202) 267-6056.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information.

OMB Control Number: 2120-0786.

Title: website for Frequency Coordination Request (WebFCR) webfcr.faa.gov.

Form Numbers: Historically related to FAA Form 7460-1.

Type of Review: Request for renewal of information collection.

Background: The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on September 28, 2022 (FR 2022-20969). The purpose of the information is to meet the reference 49 U.S.C. Section 44718(c) under Broadcast Applications and Tower Studies states, 'in carrying out laws related to a broadcast application'—the

Administrator of the Federal Aviation Administration and the Federal Communications Commission shall take action necessary to coordinate efficiently—(1) The receipt and consideration of, and action on, the application; and (2) The completion of any associated aeronautical study. Currently, transmitter broadcast radio frequency data is collected via OMB Control 2120-0786 to address non-Federal, military, U.S. Federal agency, State and municipalities broadcast applications which require consideration, analysis or aeronautical studies pursuant to 49 U.S.C. 44718(c).

Respondents: Approximately 2400 annually. The Respondents are engineers, analysts, consultants, stakeholders or federal agency managers, including military services, who have a need to transmit on a radio frequency which is within the National Telecommunications and Information Administration's (NTIA) Aviation Assignment Group (AAG) frequency band assigned to the FAA for civil aviation use. The response to this data collection is required for the proponent to obtain FAA concurrence to use a radio frequency that impacts civil aviation. The information collected through the WebFCR portal supports the engineering, modeling, validation and workflow management of the request to evaluate if the request interferes or impacts civil aviation operations pursuant to FAA Order 6050.32B.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 0.2 hours.

Estimated Total Annual Burden: 480 hours.

Issued in Washington, DC on December 20, 2022.

Christopher S. Jones,

Spectrum Engineering and Assignment Navigation Lead, Spectrum Engineering and Assignment Group, AJW-1910.

[FR Doc. 2022-27937 Filed 12-22-22; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2022-0127]

Controlled Substances and Alcohol Use and Testing: Application for Exemption; The Trucking Alliance

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition; denial of application for exemption.

SUMMARY: FMCSA announces its decision to deny the application from The Alliance for Driver Safety & Security, also known as the Trucking Alliance (as referred to herein), for an exemption from the Federal Motor Carrier Safety Regulations (FMCSRs) “to amend the definition of actual knowledge to include the employer’s knowledge of a driver’s positive hair test, which would require such results be reported to the FMCSA Drug and Alcohol Clearinghouse (“Clearinghouse”) and to inquiring carriers.” The Trucking Alliance, is comprised of the following motor carriers: Cargo Transporters; Dupre Logistics LLC; Frozen Food Express; J.B. Hunt Transport, Inc.; KLLM Transport Services; Knight Transportation; Maverick Transportation LLC; Schneider; Swift Transportation; USXpress; and May Trucking Company. The applicant believes that hair testing enhances public safety by providing a longer detection window for controlled substance use and by minimizing the opportunity for fraud in the specimen collection process. The applicant asserts that because hair testing is more reliable and accurate than urine testing, it is the “appropriate drug testing method for preemployment and random testing protocols.” The applicant asserts that there will be no reduction in safety benefits if the exemption is granted. FMCSA analyzed the application and public comments and determined that the Agency lacks the statutory authority to grant the exemption request to amend the definition of actual knowledge to include the employer’s knowledge of a driver’s positive hair test.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202–366–2722. Email: richard.clemente@dot.gov. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Viewing Comments and Documents

To view comments, go to www.regulations.gov, insert the docket number “FMCSA–2022–0127” in the keyword box, and click “Search.” Next, sort the results by “Posted (Newer-Older),” choose the first notice listed, and click “View Related Comments.”

To view documents mentioned in this notice as being available in the docket, go to www.regulations.gov, insert the docket number “FMCSA–2022–0127” in

the keyword box, click “Search,” and choose the document to review.

If you do not have access to the internet, you may view the docket by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b) to grant exemptions from certain Federal Motor Carrier Safety Regulations (FMCSRs). In accordance with 49 U.S.C. 31315(b)(6)(A) and 49 CFR 381.315(a), FMCSA must publish a notice of each exemption request in the **Federal Register** () and provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Background

Federal Regulatory Requirements

For purposes of 49 CFR part 382, subpart B, *actual knowledge*, as defined in 49 CFR 382.107, means an employer’s actual knowledge that the driver has engaged in the prohibited use of alcohol or controlled substances. Employers have actual knowledge of prohibited use based any of the following events: they directly observe a driver using alcohol or controlled substances, they receive information provided by the driver’s previous employer(s), they are aware that a driver was issued a traffic citation for driving a commercial motor vehicle (CMV) while under the influence of

alcohol or controlled substances, or the employee admits alcohol or controlled substance use, except as provided in 49 CFR 382.121. An employer’s direct observation of prohibited use does not include observation of employee behavior or physical characteristics sufficient to warrant reasonable suspicion testing under 49 CFR 382.207. As used in the definition of *actual knowledge*, the term *traffic citation* means a ticket, complaint, or other document charging driving a CMV while under the influence of alcohol or controlled substances.

Statutory Requirements for FMCSA’s Drug and Alcohol Testing Program

FMCSA drug and alcohol use and testing regulations are authorized by the Omnibus Transportation Employee Testing Act of 1991 (OTETA) (Pub. L. 102–143, Title V, 105 Stat. 917, at 952, codified at 49 U.S.C. 31306). Section 31306(c)(2) requires that DOT follow the Department of Health and Human Services’ (HHS) Mandatory Guidelines for technical and scientific issues related to testing for controlled substances. The Agency acknowledged in its Notice of exemption request (87 FR 52105 (Aug. 24, 2022)) (“the August 24, 2022 Notice”) that FMCSA currently lacks the statutory authority to grant the Trucking Alliance’s request for exemption because HHS has not yet issued final Mandatory Guidelines for hair testing. In addition, in section 5402(b) of the Fixing America’s Surface Transportation Act (FAST Act) (Pub. L. 114 94, 49 U.S.C. 31306 note) (Dec. 4, 2015)), Congress required HHS “not later than one year after . . . this Act, . . . issue scientific and technical guidelines for hair testing as a method of detecting the use of controlled substance for purposes of section 31306 of title 49, United State Code.” The FAST Act also amended OTETA by adding a requirement that FMCSA’s drug and alcohol testing regulations permit the use of hair testing as an acceptable alternative to urine testing for pre-employment drug testing, and for random drug testing when the driver was subject to pre-employment hair testing (49 U.S.C. 31306(b)(1)(B)) and that such regulations include an exemption for hair testing for CMV operators with established religious beliefs that prohibit the cutting or removal of hair.

The Conference Report accompanying the FAST Act noted that “[t]he FMCSA has informed the conferees, and the conferees agree that *nothing in section 5402 authorizes the use of hair testing as an alternative to urine tests until the U.S. Department of Health and Human*

Services establishes federal standards for hair testing” (emphasis added). [H.R. Rep. 114–357, at 506 (Dec. 1, 2015)] HHS issued proposed Mandatory Guidelines for Federal Workplace Drug Testing Using Hair (HMG) in 2020 (85 FR 56108 (September 10, 2020)). However, HHS has not yet issued a final version of the HMG.

Applicant’s Request

The Trucking Alliance applied for “an exemption from 49 CFR 382.107 to amend the definition of actual knowledge to include the employer’s knowledge of a driver’s positive hair test, which would require such results be reported to the FMCSA Drug and Alcohol Clearinghouse (“Clearinghouse”) and to inquiring carriers as required to comply with 49 CFR 391.23.”

IV. Method To Ensure an Equivalent or Greater Level of Safety

The applicant believes that public safety is improved using hair testing because drug use is more accurately detected with hair testing than with urine testing. According to the application, the Trucking Alliance motor carrier members that conduct non-DOT hair testing have found it is more effective in eliminating lifestyle drug users from the CMV driver pool, noting it provides “a better opportunity to learn of such drug usage through hair analysis because of the longer 90-day window for detection.” The applicant also notes that the collection of hair samples is less invasive than urine collection and minimizes the possibility the sample will be substituted or adulterated since hair collections are directly observed. The applicant, citing studies confirming the efficacy and accuracy of hair testing, asserts that previous concerns that hair testing results in false positive test results for African Americans, have been addressed by improvements in the testing methodology. The applicant also cited court cases upholding the use of hair testing to detect illicit drug use in the workplace and in connection with custody and parole compliance. The application sets forth detailed protocols for the collection and testing of hair samples, including laboratory standards and cut-off levels, which the Trucking Alliance members “propose” to follow if the exemption request is granted. The application states that Trucking Alliance members “are not seeking to be exempt from complying with the Federal controlled substance and alcohol use and testing regulations but merely to allow the compliance to take

place in an enhanced form—hair testing combined with urinalysis.”

V. Public Comments

On August 24, 2022, FMCSA published The Trucking Alliance’s application and requested public comment [87 FR 52106]. The Agency received 113 total comments; 31 filed in support, 70 filed in opposition, and 12 other filers had no position either for or against the exemption request.

A common point forwarded by comments in opposition, notably from the Owner-Operator Independent Driver’s Association (OOIDA), the International Brotherhood of Teamsters (IBT) and the National Association of Small Trucking Companies (NASTC) is that the FMCSA lacks the current statutory authority to grant the exemption request from the Federal Motor Carrier Safety Regulations (FMCSRs) to amend the definition of actual knowledge to include the employer’s knowledge of a driver’s positive hair test, which would require such results be reported to the DACH and to inquiring carriers. OOIDA specifically commented: “as stated in the notice of application for exemption, the Department of Health and Human Services (HHS) has not finalized the September 2020 proposed hair testing guidelines nor have they been adopted by the Department of Transportation. The Clearinghouse must employ proven testing protocols, equipment, and methodology that is scientifically controlled so that all testing follows specific procedures using labs that have been approved by the Substance Abuse and Mental Health Services Administration (SAMHSA). The Clearinghouse should not accept the results of any hair follicle testing considering the inconsistencies and inaccuracies involved.”

Similarly, the IBT commented: “the applicant makes no effort to explain the application of FMCSA’s action to its request, except to note that FMCSA’s determination also involved modification of the actual knowledge standard. FMCSA’s actions to amend the standard in its 2021 rulemaking have no bearing on OTETA authorities or the respective roles of DOT and HHS in permitting the testing of new specimens, and this argument must be disregarded.” The National Waste and Recycling Association commented that if approved that hair testing not be mandated for all regulated carriers, and The National School Transportation Association requested that hair testing be an option, not a required method of testing. The Sikh Coalition/North American Punjabi Trucking Association

raised the issue of false positives and faith-based accommodations.

Sixty-five other individuals/small motor carriers also opposed the request, many of whom raised the issue of adding to the current driver shortage and supply chain disruption issues indicating that it is extremely difficult to attract and retain drivers in this industry and granting this exemption request will only make it that much harder. Others in opposition claimed that hair testing is not a 100% accurate testing method.

Those filing comments in support of the exemption request include the American Trucking Associations, Inc., the Truckload Carriers Association, the Institute for Safer Truckers/Road Safe America, and the Independent Carrier Safety Association. Including the applicant, the following truckload carriers—most of whom are members of the Trucking Alliance, filed individual comments in support of the request: J.B. Hunt; Knight-Swift Transportation; Maverick Transportation; Werner Enterprises; Schneider; KLLM/Frozen Foods Express; Cargo Transporters; Roehl Transport and Dupre Logistics, LLC. The Trucking Alliance and several of its member companies commented that nothing in the Federal statute prohibits FMCSA from implementing what Congress specifically directed the Secretary of Transportation to do—recognize hair testing as an acceptable alternative to urine testing. Another predominant “theme” from supporting comments is that hair drug testing is a proven indicator of prior illegal drug use and, in fact, is a more reliable indicator of illegal drug use than a urinalysis test. Others in support commented that hair testing should be allowed, and positive test results from hair testing should be reported in the DACH.

VI. FMCSA Safety Analysis and Decision

The applicant requests an exemption that amend the definition of “actual knowledge” to include the employer’s knowledge of driver’s non-DOT positive hair test results, which would require such results be reported to the Clearinghouse. FMCSA evaluated the application and public comments. The Agency denies the exemption request because, as explained above in Section III. and in the August 24, 2022 Notice, FMCSA’s current statutory authorities do not allow FMCSA to grant the requested exemption. 49 U.S.C. 31306(c)(2) requires that FMCSA follow the HHS scientific and technical guidelines for hair testing, including mandatory guidelines establishing

comprehensive standards and procedures for every aspect of laboratory testing (and “requiring the use of the best available technology to ensure the complete reliability and accuracy of controlled substances tests”), the minimum list of controlled substances for which individuals may be tested, standards for review and certification of laboratories that conduct hair testing, and laboratory protocol and cut-off levels for hair testing to detect controlled substances use. The HHS issued proposed Hair Mandatory Guidelines for Federal Workplace Drug Testing Programs (HMG) in 2020 for public comment but has not issued a final version of the HMG.

The applicant asserts that FMCSA does have the statutory authority to grant its exemption request, citing 49 U.S.C. 31306a(b)(B)(ii), which requires that FMCSA adopt regulations permitting pre-employment hair testing for controlled substances as an alternative to urine testing for CMV operators and for random testing if the operator was subject to pre-employment hair testing. By ignoring the requirement that FMCSA follow the HHS mandatory guidelines for hair testing, set forth in 49 U.S.C. 31306(c)(2), the applicant effectively argues that this provision be read in isolation. This approach disregards an accepted standard of statutory construction, which provides that statutory text must be construed as a whole. The Committee Report accompanying the enactment of 49 U.S.C. 31306a(b)(B)(ii) confirms this is precisely what Congress intended: “[t]he FMCSA has informed the conferees, and the conferees agree that *nothing in [31306a(b)(B)(ii)] authorizes the use of hair testing as an alternative to urine tests until the U.S. Department of Health and Human Services establishes federal standards for hair testing*” (emphasis added). Accordingly, the Agency currently lacks the authority to permit an employer’s actual knowledge of a driver’s positive hair test results to be a basis for determining that a driver has violated 49 CFR part 382, subpart B, by engaging in the prohibited use of controlled substances and to permit such results be reported to the Clearinghouse.

For the above reasons, the Trucking Alliance’s exemption application is denied.

Robin Hutcherson,
Administrator.

[FR Doc. 2022–27849 Filed 12–22–22; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2022–0137]

Pipeline Safety: Random Drug Testing Rate; Management Information System Reporting; and Obtaining Drug and Alcohol Management Information System Sign-In Information

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice.

SUMMARY: PHMSA has determined that the minimum random drug testing rate for covered employees will be reduced to 25 percent during calendar year 2023. Operators are reminded that drug and alcohol (D&A) testing information must be submitted for contractors who are performing or are ready to perform covered functions. For calendar year 2022 reporting, the username and password for the Drug and Alcohol Management Information System (DAMIS) will be available in the PHMSA Portal.

DATES: Applicable January 1, 2023, through December 31, 2023.

FOR FURTHER INFORMATION CONTACT: Wayne Lemoie, Drug & Alcohol Program Manager, Office of Pipeline Safety, by phone at 909–937–7232 or by email at wayne.lemoi@dot.gov.

SUPPLEMENTARY INFORMATION:

Notice of Calendar Year 2023 Minimum Annual Percentage Rate for Random Drug Testing

Operators of gas, hazardous liquid and carbon dioxide pipeline facilities, liquefied natural gas (LNG) plants, and underground natural gas storage facilities must randomly select and test a percentage of all covered employees for prohibited drug use in accordance with 49 Code of Federal Regulations (CFR) part 199. The Administrator can adjust this random drug testing rate based on the reported positive rate in the industry’s random drug tests, which is submitted in operators’ annual MIS reports as required by § 199.119(a). In accordance with § 199.105(c)(3), if the reported positive drug test rate is below 1.0 percent for 2 consecutive calendar years, the Administrator can lower the random drug testing rate to 25 percent of all covered employees.

Pursuant to § 199.105(c)(3), the Administrator is lowering the PHMSA minimum annual random drug testing rate for all covered employees to 25 percent in calendar year 2023 because

the random drug test positive rate for the pipeline industry was reported at less than 1.0 percent in the consecutive calendar years of 2020 and 2021.

Reminder for Operators To Report Contractor MIS Data

In 2021, PHMSA released new PHMSA Supplemental Instructions for DOT Drug & Alcohol Management Information System Reporting online. These instructions provide operators with the appropriate process for collecting and reporting annual D&A testing data for contractors. The supplemental instructions help ensure that PHMSA can identify all the contractors who performed D&A covered functions for a specific pipeline operator; identify all the pipeline operators for whom a specific contractor performed D&A covered functions; and has received a complete and accurate MIS report for each contractor who performed D&A covered functions on any PHMSA-regulated pipeline or facility in the applicable calendar year.

Pursuant to §§ 199.119(a) and 199.229(a), an operator having more than 50 covered employees is a large operator and an operator having 50 or fewer covered employees is a small operator. While contractor employees are covered employees per the regulations in § 199.3 and must be treated as such with regards to part 199, contractor employees are not included in the calculation to determine if an operator is a large or small operator.

Large operators are always required to submit annual MIS reports whereas small operators are only required to submit MIS reports upon written request from PHMSA. If a small operator has submitted an MIS report for calendar year 2020 or 2021, the PHMSA Portal message may state that no MIS report is required for calendar year 2022. If a small operator has grown to more than 50 covered employees during calendar year 2022, the PHMSA Portal message will include instructions for how to obtain a DAMIS username and password for the 2022 calendar year reporting period.

If an operator is required to submit an MIS report in accordance with part 199, that report is not complete until PHMSA receives an MIS data report for each contractor that performed covered functions as defined in § 199.3. Operators must submit operator and contractor employee testing data in separate MIS reports to avoid duplicative reporting and inaccurate data that could affect the positive rate for the pipeline industry.