



**DEPARTMENT OF TRANSPORTATION**

**[4910-EX-P]**

**Federal Motor Carrier Safety Administration**

**Annual Random Controlled Substances Testing Percentage Rate for Calendar Year 2020**

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

**ACTION:** Notice of program change.

**SUMMARY:** The FMCSA announces that it is increasing the minimum annual percentage rate for random controlled substances testing for drivers of commercial motor vehicles (CMVs) requiring a commercial driver's license (CDL) from the current rate of 25 percent of the average number of driver positions to 50 percent of the average number of driver positions, effective in calendar year 2020. The FMCSA Administrator must increase the minimum annual random testing percentage rate when the data received under the reporting requirements for any calendar year indicate that the reported positive rate is equal to or greater than 1.0 percent. Based on the results of the 2018 FMCSA Drug and Alcohol Testing Survey, the positive rate for controlled substances random testing increased to 1.0 percent. Therefore, the Agency will increase the controlled substances minimum annual percentage rate for random controlled substances testing to 50 percent of the average number of driver positions.

**DATES:** Beginning January 1, 2020, the minimum annual percentage rate for random controlled substances testing, for drivers of commercial motor vehicles (CMVs) requiring a commercial driver's license (CDL), will be 50 percent.

**FOR FURTHER INFORMATION CONTACT:** Mr. Juan Moya, Drug and Alcohol Program Manager, Compliance Division, Federal Motor Carrier Safety Administration,

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## **SUPPLEMENTARY INFORMATION:**

### **Background**

The final rule titled, “Controlled Substances and Alcohol Use and Testing,” published August 17, 2001, (66 FR 43097), established the process by which the Agency determines whether the minimum annual percentage rate for random controlled substances testing should be increased or decreased. The final rule included a provision indicating that the decision on whether to increase or decrease the percentage rate would be based upon the motor carrier industry’s overall positive random controlled substance test rate, as reported by motor carrier employers to FMCSA, pursuant to 49 CFR 382.403. Under this performance-based system, when the minimum annual percentage rate for random controlled substances testing is 25 percent, and the data received under the reporting requirements for any calendar year indicate that the reported positive rate is equal to or greater than 1 percent, the FMCSA Administrator will increase the minimum annual percentage rate for random controlled substances to 50 percent for all driver positions (49 CFR 382.305(h)). The new annual random testing percentage rate would then apply starting January 1 of the following calendar year.

In accordance with 49 CFR 382.403, each calendar year FMCSA requires motor carriers selected for the survey to submit their DOT drug and alcohol testing program results. Selected motor carriers are responsible for ensuring the completeness, accuracy, and timeliness of the data submitted. The survey requires motor carriers to provide information to the Agency on the number of random tests conducted and the

corresponding positive rates.

For the 2018 survey, forms were sent to 4,480 randomly selected motor carriers. Of these forms, 1,908 were completed and returned to FMCSA, resulting in usable data from 1,552 carriers (comprising of 300,635 CDL drivers) for random controlled substance testing. Respondents providing non-usable data represent entities that are out of business, exempt, have no testing program in place, or belong to consortia that did not test any drivers for the carrier during 2018.

The estimated positive random controlled substance test rate in 2018 is 1 percent. The 95-percent confidence interval for this estimate ranges from 0.9 to 1.1 percent. In other words, if the survey were to be replicated, it would be expected that the confidence interval derived from each replication would contain the true usage rate in 95 out of 100 surveys. For 2016 and 2017, the estimated positive usage rate for drugs was estimated to be 0.7 percent and 0.8 percent, respectively. A more detailed discussion of the 2018 drug and alcohol testing survey results can be found in the Analysis Brief included in the docket for this Notice.

### **Part 382 Compliance**

Based on the 2018 survey results, the estimated percentage of subject motor carriers with random controlled substance and alcohol testing programs in place is 94 percent, and the estimated percentage of all CDL drivers participating in such programs is 99 percent. FMCSA estimates there are 3.2 million CDL holders operating in interstate commerce and 1 million CDL holders operating in intrastate commerce. With this population, at least 1.05 million random controlled substances tests would be conducted with an annual random testing rate of 25 percent of all driving positions. At a 50 percent

annual random testing rate, approximately 2.1 million random controlled substances tests will need to be conducted in calendar year 2020.

The new minimum annual percentage rate for random drug testing will be effective January 1, 2020. This change reflects the increased positive test rate and will result in an estimated \$50 to 70 million increase in costs to the industry by requiring that more drivers be tested.

**Minimum Annual Percentage Rates for Random Controlled Substances Testing for 2020**

Beginning January 1, 2020, the minimum annual percentage rate for random controlled substances testing is 50 percent of the average number of driver positions. The minimum annual percentage rate for random alcohol testing will remain at 10 percent.

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Elaine L. Chao  
Secretary