



What Does the 25% Random FMCSA Drug Testing Rate Really Mean for You and Your Company?

By now you have heard that the Federal Motor Carrier Safety Administration (FMCSA) has reduced its random drug testing rate from 50% of CDL drivers tested to 25%, effective Jan. 1, 2016. So, why was this change made?

Based on FMCSA's Management Information System reports (MIS) for calendar years 2011, 2012, and 2013, the positive rate for controlled substances random testing fell below the 1.0% threshold for 3 consecutive calendar years. As a result, the FMCSA lowered its controlled substances minimum annual percentage rate for random controlled substances testing to 25% of the average number of driver positions.

On August 17, 2001, a final rule titled, "Controlled Substances and Alcohol Use and Testing" (66 FR 43097), established the process by which FMCSA determines whether the minimum annual percentage rate for random controlled substances testing should be increased or decreased. All modes (FAA, FTA, FRA, PHMSA, FMCSA, etc.) started out at a 50% random rate and all modal regulations contain the same provision that the rate will/can only be lowered to 25% if the positive rate is below 1% for two consecutive years (49 CFR 382.305 for FMCSA). If the positive rate for any mode ever goes above 1% for any given year, the rate automatically reverts back to the 50% rate (49 CFR 382.305(e)(2) for FMCSA). FMCSA actually didn't lower it until the positive rate was below 1% for more than three years.

14 CFR 120.109 says:

- (b) Random drug testing. (1) Except as provided in paragraphs (b)(2) through (b)(4) of this section, the minimum annual percentage rate for random drug testing shall be 50 percent of covered employees.
- (2) The Administrator's decision to increase or decrease the minimum annual percentage rate for random drug testing is based on the reported positive rate for the entire industry. All information used for this determination is drawn from the statistical reports required by §120.119. In order to ensure reliability of the data, the Administrator considers the quality and completeness of the reported data, may obtain additional information or reports from employers, and may make appropriate modifications in calculating the industry positive rate. Each year, the Administrator will publish in the Federal Register the minimum annual percentage rate for random drug testing of covered employees. The new minimum annual percentage rate for random drug testing will be applicable starting January 1 of the calendar year following publication.
- (3) When the minimum annual percentage rate for random drug testing is 50 percent, the Administrator may lower this rate to 25 percent of all covered employees if the Administrator determines that the data received under the reporting requirements of this subpart for two consecutive calendar years indicate that the reported positive rate is less than 1.0 percent.
- (4) When the minimum annual percentage rate for random drug testing is 25 percent, and the data received under the reporting requirements of this subpart for any calendar year indicate that the reported positive rate is equal to or greater than 1.0 percent, the Administrator will increase the minimum annual percentage rate for random drug testing to 50 percent of all covered employees.

It's important to note that all other modes were decreased to 25% many years ago and their positive rate has not varied dramatically or gone back above 1%. This has shown that a 25% testing rate provides as much deterrent effect as a 50% testing rate. Oftentimes employees don't even know the random testing rate. The number can change annually and employer policies generally refer to the "current modal random testing rate" to avoid a constant need to update wording.

Results from the 2013 FMCSA Drug and Alcohol Testing Survey

According to 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. These motor carriers are responsible for ensuring the completeness, accuracy, and timeliness of the data submitted and provides information on the number of random tests conducted and the corresponding positive rates.

For the 2013 survey

(http://ntl.bts.gov/lib/56000/56700/56784/Drug_and_Alcohol_Survey_Results_2013_Analysis_Brief-FINAL-508C.pdf), notices were sent out to 3,251 randomly selected motor carriers primarily via email and U.S. mail for those motor carriers with invalid or no email addresses. Of these forms, 2,236 were completed and returned to FMCSA, with usable data coming from 1,654 carriers comprising of 497,270 CDL drivers based on their responses. 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 2013.

In the table below, the estimated positive random controlled substance test rate in 2013 is 0.7 percent. The 95-percent confidence interval for this estimate ranges from 0.6–0.8 percent. 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 2011 and 2012, the estimated positive usage rate for drugs was estimated to be 0.9 percent and 0.6 percent, respectively.

Estimates of random and non-random drug usage rates among CDL drivers, 2011-13

Category	2011 Est.	2011 S.E.	2012 Est.	2012 S.E.	2013 Est.	2013 S.E.
Random Testing: Any Drug	0.9%	0.1%	0.6%	0.1%	0.7%	0.1%
Non-random Testing:	1.2%	0.1%	1.3%	0.1%	1.8%	0.5%
Pre-employment						
Post-crash	1.8%	0.6%	1.3%	0.5%	2.8%	0.8%

Est. = Estimate; S.E. = Standard Error

Source: Analysis Division, FMCSA, U.S. Department of Transportation (USDOT)

To ensure reliability of the data for 2015, the FMCSA Administrator made the decision to maintain the annual testing percentage rate at 50 percent and sought additional information related to drivers' positive test rates. This lower annual percentage testing rate change from 50% to 25% reflects the sustained low positive test rate.

Modal Random Testing Rates for 2012, 2013, and 2014

The DOT Agency that regulates a specific transportation industry sets the random testing rate. The Administrator of each DOT Agency is authorized to either increase or decrease the random drug and alcohol testing rates based on the reported random drug test positive rate for the industry. If the reported random drug test positive rate is less than 1.00%, the agency administrator may continue the minimum random drug testing rate at 25%. Should it reach or pass 1.00%, they must increase the random testing rate to 50%. To establish an appropriate rate, Administrators use information reported from the drug and alcohol Management Information System (MIS) form required by 49 CFR Part 40 and other indicators. The rates are always effective starting January 1 of the calendar year.

The random rates are annual minimum requirements. So if a DOT Agency requires a drug testing rate of 50%, then an employer with 100 safety-sensitive employees would have to ensure that 50 or more random drug tests were conducted during the calendar year.

Below are the random drug testing rates for the last 3 years.

Please note, MIS Reports come in March 15 so many agencies don't have their 2015 numbers yet. We will include those when they are ready.

Federal Aviation Administration (FAA)

- 2013 - 0.485%
- 2014 - 0.534%
- 2015 – TBA

Federal Railroad Administration (FRA)

- 2013 - 0.39%
- 2014 - 0.37%
- 2015 - TBA

Federal Transit Administration (FTA)

- 2013 - 0.74%
- 2014 - 0.87%
- 2015 - TBA

Pipeline and Hazardous Materials Safety Administration (PHMSA)

- 2013 - 0.978%
- 2014 - 0.914%
- 2015 – TBA

United States Coast Guard (USCG)

- 2013 – 0.773%
- 2014 – 0.79%
- 2015 – TBA

Federal Motor Carrier Safety Administration (FMCSA)

- 2013 – 0.7%
- 2014 – TBA
- 2015 – TBA

How Does this Change Affect Your Company?

We understand that this FMCSA change could result in less testing and less income for businesses that rely solely on FMCSA testing. This is one reason why DATIA has always promoted and provided education on how to diversify company testing programs. Modal random testing rates vary and it is important to understand the need for them to be a balance between service providers and those that are required to drug test to encourage the employers to remain compliant.

As DATIA reported earlier in December, Congress passed H.R. 22, an act authorizing SAMHSA to finalize guidelines for hair testing to be used by FMCSA employers within the year. This was in part due to DATIA efforts, as well as the fact that nearly every large trucking company has a DOT-urine drug testing program and a company hair testing program. The trucking companies are facing huge liability costs should one of their drivers cause an accident involving personal injury/death so they take their testing programs very seriously.

Anecdotally, DATIA is hearing from members that their FMCSA clients are opting to continue random testing at 50% with the extra testing being done under company policy. As stated above, this is due to the fact that the companies see the value of drug testing and want to protect their company from accidents and the related liability.

Promoting the highest possible standards of professionalism and quality control in the drug and alcohol testing industry including and especially regarding safety is always of the utmost concern to DATIA. We will be working with the laboratories to monitor the FMCSA positive rate throughout the year since the 2016 MIS data won't be due until 2017.

The following chart outlines the annual minimum drug and alcohol random testing rates established within DOT Agencies and the USCG for 2016

DOT Agency	2016 Random Drug Testing Rate
Federal Motor Carrier Safety Administration [FMCSA]	25%
Federal Aviation Administration [FAA]	25%
Federal Railroad Administration [FRA]	25%
Federal Transit Administration [FTA]	25%
Pipeline & Hazardous Materials Safety Administration [PHMSA]	25%
United States Coast Guard [USCG] <i>(now with the Dept. of Homeland Security)</i>	25%

References:

- <https://.gpo.gov/fdsys/pkg/FR-2015-12-24/pdf/2015-32364.pdf>
- http://ntl.bts.gov/lib/56000/56700/56784/Drug_and_Alcohol_Survey_Results_2013_An_alysis_Brief-FINAL-508C.pdf
- http://www.faa.gov/about/office_org/headquarters_offices/avs/offices/aam/drug_alcohol/regulations/
- <https://.gpo.gov/fdsys/pkg/FR-2016-01-22/pdf/2016-01222.pdf>
- <https://.gpo.gov/fdsys/pkg/FR-2015-03-18/pdf/2015-06225.pdf>
- Gerald Powers, Alcohol/Drug Program Manager, FRA
- Blaine Keener, Director of Safety Data Systems and Analysis, PHMSA Office of Pipeline Safety (OPS),