

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 121****Federal Highway Administration****49 CFR Parts 382 and 391****Federal Railroad Administration****49 CFR Part 219****Federal Transit Administration****49 CFR Part 653****Research and Special Programs Administration****49 CFR Part 199****Coast Guard****46 CFR Part 16**

[OST Docket No. 48498, Notice 92-29]

RIN 2105-AB94

Random Drug Testing Program

AGENCY: Office of the Secretary, Federal Aviation Administration, Federal Highway Administration, Federal Railroad Administration, Federal Transit Administration, Research and Special Programs Administration, and the United States Coast Guard, DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: In response to public comments received during the President's regulatory moratorium, petitions submitted by industry, and on their own initiative, the five operating administrations that currently require random drug testing—the Federal Aviation Administration (FAA), the Federal Highway Administration (FHWA), the Federal Railroad Administration (FRA), the Research and Special Programs Administration (RSPA) and the United States Coast Guard (USCG) (collectively referred to as "DOT" or "the agencies")—are considering modifying the random drug testing program. [The Federal Transit Administration (FTA)—also a part of DOT—published elsewhere in today's Federal Register a drug testing NPRM that proposes to adopt, among other things, the 50 percent random testing rate that is currently used by the other operating administrations. This ANPRM is not intended to affect the random drug testing program to be established by that rulemaking. Rather, this ANPRM will review the general issue. FTA joins the other operating administrations in

issuing this random drug testing program notice requesting public comment and data concerning whether there are less costly alternatives to the current random testing program that can maintain an adequate level of deterrence and detection of illegal drug use.

DATES: Comments are due February 16, 1993. A public meeting on technical and scientific issues will be held on February 1, 1992, from 8:30 a.m. to 5 p.m. and on February 2, 1992, from 8:30 a.m. to 12:30 p.m. Seating is limited to 150, which will be offered on a first-come, first-served basis.

ADDRESSES: Comments should be sent to Docket 48498, Office of Documentary Services (C-55), U.S. Department of Transportation, room 4107, 400 Seventh Street, SW., Washington, DC 20590-0001. To provide a copy for each operating administration's docket and to facilitate the Department's review, we request that an original and seven additional copies of each comment be submitted.

The technical meeting will be held at the Holiday Inn—Capitol, 550 C St., SW., Washington, DC 20024. (202) 479-4000. The hotel is offering participants a special rate, if they mention the meeting when they reserve their room.

FOR FURTHER INFORMATION CONTACT: Dr. Donna Smith, Acting Director, Office of Drug Enforcement and Program Compliance, (202) 366-3784.

SUPPLEMENTARY INFORMATION: The Department of Transportation seeks comment on the effectiveness of the current random drug testing program for transportation industry employees. In the April 1992 "Report to the President: Review of Regulations," DOT Secretary Card committed to review this issue and determine whether adequate deterrence and detection of illegal drug use could be achieved at a lower rate of random testing and at a lower cost. In addition, several petitions have been filed with various operating administrations seeking to simply lower the rate of random drug testing.

The purpose of this notice is to seek data and ideas on additional strategies that would ensure the continued effectiveness of the Department's anti-drug program while reducing its cost. The Department is reluctant to propose a specific change in random testing requirements at this time because of the lack of data for transportation industry workers and because most of the operating administration programs have only been in place for a short time. Other than the experience of the military services that was relied on when the operating administrations originally set their random testing rates

at 50 percent, we are unaware of any long-term reliable data indicating the relative deterrent effectiveness of different random testing rates. However, as described later in this document, DOT is gathering data that may help on this issue. Although the anti-drug regulations have been promulgated by various DOT agencies, we are issuing a Departmental ANPRM because of the commonality of the issues. We invite comment and supporting data on whether different programs for different industries would be appropriate. We have numbered specific questions within brackets throughout the ANPRM, and would appreciate it if commenters would reference those numbers in their responses.

Regulatory Background

DOT agencies have been involved in drug testing since the mid-1980s. The USCG has tested its uniformed personnel for drug use since 1982. DOT began testing certain of its civilian employees in September 1987.

The Department's civilian employee program is tightly controlled, centrally administered by headquarters staff, and monitored daily. Employee awareness and the visibility of the program are maintained through training programs conducted by regional drug program coordinators. Specimens are collected by a single contractor service, which operates under a uniform standard of procedures that provides for consistent and reliable collections.

The random testing program was phased-in and, by September 1988, DOT was testing a population of nearly 33,000 employees (primarily air traffic controllers, safety inspectors and individuals with high security clearances) at a testing rate of at least 50 percent each year for illegal drug use. The annual rate of positive random tests has declined from about 0.83 percent to as low as 0.21 percent over the last five years. Over the past three years, the rate consistently stayed well below 0.5 percent. The reports indicated that in this homogeneous, skilled, and stable population, there was no distinction in the percentage of positive testing results based on geography, age, etc. As a result of the apparent deterrent effect of the testing program as demonstrated by carefully-maintained recordkeeping, long experience, and the decreasing number of positive results, the Department lowered its federal employee random testing rate this year. Effective March 1, 1992, the Department has been conducting random testing at a rate of at least 25 percent annually. The positive rate continues to remain at a similarly low level. The Department

will continue to evaluate the data and may adjust the random testing rate, if necessary, back to 50 percent. The Department estimates that the reduction in the testing rate will save approximately 20 percent of the annual collection and laboratory testing costs.

The Federal Railroad Administration (FRA) has the longest experience with drug testing programs applicable to transportation industry workers. In 1986, railroads began pre-employment, post accident, and reasonable cause/suspicion testing, as required by the FRA.

In 1988, the Department of Transportation issued six final rules mandating anti-drug programs for certain transportation workers in the aviation, interstate motor carrier, pipeline, maritime, rail and transit industries. The rules included requirements for education, training, testing and sanctions. The testing component of each program included pre-employment, post-accident, reasonable cause, periodic (for those subject to periodic medical examinations) and random drug testing for approximately four million workers in safety-sensitive positions. Based on extensive experience and success in testing military and other populations, the Department imposed widescale random testing requirements because unannounced random drug testing is generally regarded as the best method of deterring illegal drug use.

The operating administrations' rules imposed a random testing rate of at least 50 percent per year. This means that if an employer has 400 covered employees, the employer must conduct at least 200 tests per year. Selection for testing must be random, with every employee in the random pool having an equal chance of being chosen each time a selection is made. Because of the randomness, some employees could be tested more than once in a given year, while others might not be tested for years. However, every covered employee would know that he or she had one chance in two of being tested each year. Employers were allowed to phase-in random testing at a rate of 25 percent for the first year, but had to increase to at least a 50 percent rate after one year.

After the final rules were issued, lawsuits delayed implementation of the rules for three of the six DOT agencies. As of today, only transit workers are not covered by the testing regulations. The 1988 final rule adopted by the Federal Transit Administration (formerly called the Urban Mass Transportation Administration) was vacated by the United States Court of Appeals for the

District of Columbia Circuit because of a lack of statutory authority. Legislation (the FTA provisions of the Omnibus Transportation Employee Testing Act of 1991, Pub. L. 102-143, Title V, October 28, 1991) was subsequently enacted to remedy this problem as well as address other significant concerns with alcohol abuse and illegal drug use by individuals in various transportation industries who perform safety-sensitive duties. An NPRM proposing to cover transit employees is published elsewhere in today's Federal Register. As proposed, transit employees would be subject to a random testing rate of at least 50 percent. As noted above, this ANPRM involves a longer-term review of random testing program issues and is not intended to effect the random rate decision that must be made as part of FTA's proposed rulemaking. Several other DOT agency-regulated industries or industry sectors only recently began random testing at a 50 percent rate per year.

The Federal Railroad Administration phased-in random testing in three groups: Large railroads, medium-size railroads, and short line railroads. In January 1990, large railroads began testing at 25 percent, medium-size railroads began testing at 25 percent in July 1990 and short line railroads began testing at 25 percent in November 1990. Random testing at a 50 percent rate began one year after these dates for each of the three categories.

In the aviation industry, the 25 percent rate was instituted for large air carriers in December 1989, for medium-size carriers in April 1990, and for the smallest carriers in August of 1990. Testing at 50 percent began one year after the initial phase-in. Testing of contractor employees (such as repair station personnel or security screeners) began one year after the carriers that they worked for or supported.

Testing of pipeline personnel began next. Phase-in (25 percent testing) began in April 1990 for large operators and in August 1990 for small operators, with the 50 percent rate implemented one year later by each group.

Random and non-suspicion-based post-accident drug testing in the motor carrier industry were enjoined by court order, although the other types of testing were implemented on December 21, 1989. After the injunction was lifted, random testing by large motor carriers began in November 1991 at a 25 percent rate and testing by small motor carriers began in January 1992 at a 25 percent rate. One year after these dates, the rate increases to 50 percent. (The current rule covers just interstate motor carriers, but a proposed rule in today's Federal

Register would extend coverage to all holders of commercial driver's licenses, including employees of intrastate motor carriers and school bus drivers.)

The USCG rule regarding random testing of merchant seamen was enjoined by court order in December 1989. Other types of testing were phased-in commencing in June 1989. In July 1991, the USCG issued a revised rule addressing the court's concerns and justifying the categories of employees subject to random testing. In October of 1991, the maritime industry began testing at a 25 percent random rate with a requirement to increase to a 50 percent rate one year after implementation. There was no distinction between large and small maritime employers for this implementation of random testing.

Only the Federal Aviation Administration and the Federal Railroad Administration require their regulated employers to report testing statistics to them. The Federal Highway Administration, the U.S. Coast Guard and the Research and Special Programs Administration review records maintained by covered employers, but do not have composite data for all positive test results in their industries. Separate NPRMs published in today's Federal Register would require that the employers (or industries) regulated by all six operating administrations submit uniform data concerning drug testing on an annual basis to those administrations. (Data from the motor carrier industry would be gathered on a survey basis.)

Purpose of Random Testing

The primary purpose of the Department's anti-drug rules is to ensure safety by deterring drug use, with detection an important collateral benefit. The integrity of the random selection process, the timing of the collection, the use of correct collection procedures, and the credibility of the MRO (medical review officer) verification actions must be considered when assessing the effectiveness of any random testing program in deterring drug use and detecting drug users. When drug users go undetected because of errors in the selection, collection, or review processes, the deterrent value for that employee and others is strongly diminished.

Random testing to achieve deterrence is a form of drug use prevention. Prevention generally is carried out using one or more of four strategies: Education, persuasion, motivation, or facilitation. Many companies have an existing drug education program. Employer policies, supervisor training, and peer-identification programs are

examples of a persuasion strategy. Drug testing is usually considered a tool for a motivational strategy in drug use prevention. Comprehensive Employee Assistance Programs are a major component of a facilitation model. In our view, workplace drug use prevention programs should consist of a mix of the four prevention strategies. These strategies must maintain or increase the visibility of the program and, therefore, the employees' awareness of it. Different employers and different industries may find different mixes of education, persuasion, motivation, and facilitation more effective and efficient in deterring drug use.

As the Department noted during the drug testing rulemakings and as FRA found when it added random testing to an existing testing program, random testing does deter use. FRA and the military services noted reductions in the positive rates for other types of drug testing after starting random testing. The Department seeks comment and data on the minimum effective random testing rate.

[1] Does increasing or decreasing the testing rate affect an individual's perception of the chances of being "caught" and increase or decrease deterrence? Why?

[2] Is there a mathematical relationship between the testing rate and deterrence, e.g., does doubling the rate double the deterrence?

[3] How does the increase or decrease in the rate affect the costs of testing, considering constant costs that exist regardless of the testing rate?

[4] To the extent the rate of positive tests is not expected to increase with a random testing rate reduction, please explain why.

[5] What is the lowest testing rate at which the rate of positive tests will not increase over the current positive test rate and how is it determined?

Random testing also helps to identify and remove drug users from safety-sensitive positions. Sanctions against detected drug users serve as effective deterrents for others. With any given prevalence of drug use, the higher the random testing rate, the higher the number of drug users who will be detected. At present, DOT's regulations call for each covered employee to be subject to random testing at the same rate as all other covered employees of that employer. Testing must be based on random selection, and employers are not permitted to target individuals or

employee groups for selection for ostensibly "random" testing.

To the extent that detection is an important goal, lowering the random testing rate reduces the percentage of the workers tested over a given period and, therefore, reduces the number of drug users that would be identified. For example, if one assumes four testing periods per year and testing takes place over three years, then the following fractions of a workforce would be tested at least once during the three years at the following different annual testing rates.

Annual testing rate (percent)	Percent of workforce tested in 3 years
100	96.8
75	91.7
50	79.9
25	53.9
10	26.2

Available Data

The Department would appreciate public comment in identifying data concerning the effectiveness of random testing rates. The following summarizes the data currently available to the Department concerning the results of random testing in the regulated industries, the Department's civilian workforce, and the U.S. Coast Guard uniformed service.

AVIATION

	1990	1991
Total number of random tests	84,481	169,240
Number of positives	448	1,232
Percent positive	0.53	0.73

Data on 1991 reflects the inclusion of contractors and some testing at a 50 percent rate.

RAILROADS

	1990	1991
Total number of random tests	35,228	50,436
Number of positives	365	447
Percent positive	1.04	0.88

FRA's random testing regulations were issued in November 1988, with the first testing, as noted earlier, starting in January 1990. FRA has kept records of post-accident drug testing for the last five years. For purposes of analyzing any effect from the issuance of the requirement or the implementation of the testing, the positive rates for post-accident testing are provided; they are as follows:

Percent				
1987	1988	1989	1990	1991
5.1	5.6	3.0	3.0	1.1

For similar purposes, the positive rates for reasonable cause testing are provided; they are as follows:

Percent				
1987	1988	1989	1990	1991
5.4	4.7	3.6	1.8	1.9

FRA is currently conducting an experimental study of eight railroads, comparing testing results at the 25 percent and 50 percent random testing rates. The study began in July 1991 and is expected to be completed in July 1993. Data from the first year of the study are now being analyzed and will be released to the public shortly. Initial indications are that the FRA data do not show an increase in positive rates for the railroads conducting random testing at the 25 percent rate. However, all of these railroads had implemented testing at a 50 percent rate for some period and then lowered it for the experimental program.

Motor Carriers

In audits of 8,384 motor carrier drug testing programs by FHWA in FY 1992, records indicated that 13,612 random tests were conducted. There were 289 verified positive results (2.12 percent). The audits represent less than 5 percent of motor carriers subject to the FHWA rule. The FHWA selects motor carriers for these general compliance investigations by determining factors such as a safety rating or prior compliance problem. These compliance investigations do not offer scientific, statistically unbiased sampling methods.

U.S. DOT Employees

In the Department's Federal employee testing program, the random testing rate of at least 50 percent was phased-in over the first year of the program and achieved at the end of FY 1988. A testing rate of at least 50 percent was maintained in FY 1989-1991. In FY 1992, the figures reflect testing over the first five months with a rate of at least 50 percent, followed by seven months of testing with a rate of at least 25 percent. (As noted earlier, DOT decided to lower its testing rate in 1992.) The following table summarizes DOT Federal employee random testing data.

	FY88	FY89	FY90	FY91	FY92
Total number of random tests	5,047	17,926	18,103	18,671	12,454
Number of positives	42	92	43	40	39
Percent positive	0.83	0.51	0.23	0.21	0.31

As noted earlier, the USCG has been conducting random drug tests on its active duty and reserve uniformed personnel. Rather than setting a specific

testing rate as a requirement at the beginning of the fiscal year, the USCG conducts the maximum number of tests possible from the funds that are

appropriated. The percentage of positive results for random tests in each fiscal year and the approximate testing rate was as follows:

Percent	1987	1988	1989	1990	1991	1992
Percent positive	1.57	1.31	0.88	0.41	0.41	0.78
Testing rate	120	95	95	95	85	85

Testing Rates in Various Federal Agencies

Executive Order 12564, "Drug-Free Federal Workplace", signed by President Reagan in September 1986, required random drug testing of safety- and security-related Federal employees in 135 Federal executive branch agencies. According to a 1991 report of the General Accounting Office ("Employee Drug Testing: Status of Federal Agencies' Programs: Report to the Chairman, Committee on Governmental Affairs," U.S. Senate, (May 1991), GAO/FFD-91-70, 14-19.) there is a wide variation in the random drug testing rates at the 18 agencies that GAO reviewed.

Alternatives

There are a number of alternatives to the current 50 percent random testing rate that DOT could consider. They include:

- (1) Making an across-the-board modification of the rate for all DOT anti-drug programs;
- (2) Modifying how the random testing rate is implemented (e.g., frequency of testing, etc.)
- (3) Making a selective modification of the rate by
 - (a) Operating administration (e.g., FAA or FRA could modify its rate);
 - (b) Job category (e.g., pilots, train engineers);
 - (c) Any other category that warranted a different rate based on drug use prevalence or other factors (e.g., age or geographic region);
- (4) Establishing a performance standard program (as discussed later);
- (5) Permitting employers who take specified additional steps to deter drug use to reduce their random testing rate;
- (6) Modifying the random testing rate for all operating administration rates for a specific time period, subject to reconsideration after the results are analyzed;

(7) Conducting demonstration programs in each operating administration before further action is taken; or

(8) Combining some of the alternatives.

[6] DOT requests comment on these alternatives and information on any other possible alternatives.

Modifying the random testing rate across-the-board in each operating administration would result in the simplest rule and program changes and would be the easiest to enforce. Lowering the rate could reduce costs significantly with an undetermined impact on deterrence, but it would unavoidably result in less detection of drug users. Some argue that what data DOT has show very low positive rates and, therefore, the random testing rate can be reduced.

[7] Is the rate of positive test results low because the 50 percent testing rate is the minimum effective deterrent?

[8] Does a low rate of positives alone warrant a change? Does this make the rate "acceptable" for safety purposes?

[9] Is detecting fewer users acceptable even though the positive rate is the same?

Changes in how random testing is implemented in the workplace may be another approach to maintaining deterrence at a lower testing rate. For example, increasing the number of times random testing is conducted during the year may serve to increase awareness and visibility of the testing program, thus maintaining effective deterrence even though the actual number of employees tested is decreased. Procedures that ensure each person randomly selected is actually tested (e.g., if a selected employee is not available, the name would be kept confidential until the employee is available for testing), as opposed to random testing procedures that allow selected individuals to "be excused" because of temporary unavailability,

may also serve to maintain effective deterrence by making it more difficult for drug users to avoid detection. A policy that requires a re-collection of a specimen from a selected individual when a random test has been cancelled or the results invalidated would help deter individuals from adulterating their specimens or otherwise obstructing the testing process.

Authorizing variable random rates among operating administrations or within a workplace is another option to consider in improving deterrence and detection while reducing the overall random rate. Employers could test certain categories of employees at higher rates based on prevalence or incidence differences in the population. For example, if prevalence of drug use is greater among mechanics than among flight attendants, the employer could test mechanics at a 50 percent rate and flight attendants at a 20 percent rate. Variable rates enable deterrence and detection efforts to be targeted where drug use is most likely. A variable rate strategy, however, should be based on prevalence and incidence data, not individualized suspicion or personal characteristics. Such an approach would require employers to maintain several random pools and systematically determine drug use prevalence and incidence data, something especially difficult for small firms. This approach may present compliance and enforcement difficulties.

Another of the options DOT is exploring is use of a "performance standard" for establishing random testing rates for a specified group such as an industry, a job category, or an individual employer. The group's overall rate of testing would be determined by the success of the group in deterring drug use as measured by its rate of positive random tests. For example, if a group's positive rate is less than one percent over a given period of time, the group could be permitted to

reduce the random testing rate (e.g., to 25 percent or 10 percent.) If the positive rate increased under a reduced random testing rate, the group would be required to return to a higher random testing rate. The advantage of this approach is that it could lower costs to large segments of the transportation industry, if groups could maintain low positive rates. It would also provide an incentive to achieve low positive rates, the ultimate objective of DOT's program, and would reward those groups with effective programs. Such an approach would also encourage such groups to use whatever additional steps other than testing that are appropriate in their situation, perhaps resulting in more effective programs. For example, some groups may find increased education helpful in increasing the effectiveness of their anti-drug programs.

There are many potential obstacles to implementing such an approach. It would require collection of additional testing data from each group that might offset savings in testing costs. Although this may not be a difficulty for some operating administrations, it may be more problematic in others. In the motor carrier industry, for example, even if the reports could be submitted, it is not clear that FHWA could effectively review and respond to reports from hundreds of thousands of motor carriers on millions of employees. From the Department's point of view, a performance standard program would be harder to administer because the operating administrations would have to monitor both positive rates and random testing rates for every affected group to ensure proper compliance. In addition, it may be difficult to effectively apply a low random testing rate in small companies. (For example, if a company with one or two employees had to test at only 10 percent, employees might not be deterred if they knew the next test might not be for five or six years—and DOT would not get any reports to determine whether the rate of positive test results was being kept low.) Finally, there would be less detection of drug users at a lower rate. The Department is also concerned with whether this type of performance standard would be an incentive to cheating. Employers might be tempted to falsify test results that were positive in order to maintain a reduced random testing rate.

As another approach, the Department could consider reducing the random testing rate but requiring additional steps such as increased education. Or, it could offer a lower rate to those employers that took extra steps to increase deterrence.

Another approach would be to conduct a demonstration program in each operating administration. FRA is currently in the middle of such a program. These studies could include pilot projects that explore positive rates in relationship to different random testing rates. Demonstration programs that include other deterrent or prevention initiatives in addition to random testing could explore the relationship among education, training and awareness strategies and the random testing rate. Pilot studies have the advantage of examining specific variables in relationship to deterrence and detection outcomes in a controlled study environment.

As discussed earlier, there are many alternative methods in addition to testing to deter illegal drug use, including education.

[10] Which methods do commenters believe to be the most effective? What is the basis for your belief?

[11] Should the Department mandate use of one or more of these methods in addition to current requirements in the anti-drug rules, or should it leave it up to the discretion of employers as a supplement to a testing program? Why?

In an attempt to explore the relevant research, random testing implementation strategies, and drug deterrence methodologies, to help it in this rulemaking, the Department will convene a conference on workplace random testing and drug deterrence. The conference will be open to the public. Details on the conference agenda, date and location will be offered in a subsequent announcement. Information gathered from the conference will be considered along with comments received on this ANPRM in determining the next appropriate action.

Additional Questions

The Department would appreciate commenters responding to the following additional questions and providing whatever data or studies might support their position.

[12] Should other factors apply to any decision to adjust the random testing rate besides deterrence, detection, and costs? What are they and why are they relevant?

[13] What data would justify a change? Are low positive rates alone sufficient? How do we determine if positive rates are low because the 50 percent testing rate is acting as a deterrent?

[14] What is the effect of the quality of the selection and collection process on the positive rates that are currently being produced? As the selection and

collection processes improve with experience or enforcement, will the positive rates be higher? How should any potential for increased detection with improved collection affect any decision concerning the random testing rate?

[15] Can performance-based programs be developed, operated, and audited within the currently operating consortia programs? If so, how? Does participation in a consortium exacerbate the problems associated with implementation and enforcement of a performance standard for random rates?

[16] If analysis of positive rates is necessary before a decision can be made to reduce the random testing rate, for how long a period must DOT have data? What should DOT do about those industries for which it currently has little or no data? Should operating administrations that have reliable, accurate data consider taking action now? Elsewhere in today's Federal Register we are proposing extensive data collection for all six operating administrations. This data would not, however, be available for some time.

[17] What if positive rates were to increase after DOT lowered the random testing rate? Is some increase in the rate of positive tests acceptable? How much and why? Are there other reasons the rate could rise beside the lower random test rate?

[18] What cost reductions could be expected if the random testing rate is reduced to 25 percent? 10 percent? What is the basis for these estimates? Even if some increase in positive rates is expected with a lower random testing rate, is a reduction in the random testing rate nevertheless justified based on reduced costs? Please explain.

[19] Are there offsetting cost increases that could occur at a reduced random testing rate (e.g., consortium cost per test, more accidents)?

[20] If a change is made, should it apply equally to all of the DOT operating administrations' programs, or only as justified by operating administration specific data? If particular industries, segments of industries or particular employers achieve very low positive rates, should they be allowed to have different testing rates? Could this be effectively implemented? Should random testing rates be linked to drug use in particular groups based on prevalence or incidence data available for such groups (i.e., age groups, occupational categories, specific types of worksites)?

[21] What additional means of increasing deterrence are available to the government and industry to supplement random drug testing? How

would these strategies work? What would they cost? What is the evidence they work?

[22] How might DOT restructure its requirements for drug use prevention programs to maximize the efficiency and effectiveness of prevention within the transportation industry?

[23] Could a "performance standard" work? Would there be too much incentive for some groups to cheat? How could DOT effectively implement or enforce such a standard, especially for motor carriers? Is the data collection that would be required more trouble and expense than conducting a higher rate of random tests? Would the trouble and expense vary by operating administration? Please comment on the difficulties in administering such a program and the increase in enforcement oversight that would be required. How could it effectively be implemented for small companies? Would it work if implemented industry-by-industry or among segments of a given industry? Could it be effectively implemented and enforced employer-by-employer?

[24] Any reduction in the random testing rate will result in less detection. The lower the rate, the less the detection. Are there alternative approaches apart from random testing that could offset potential reductions in detection? What is their projected efficiency and effectiveness, compared with current programs? What would they cost? What is the basis of the numbers? Are there safety implications?

[25] Are there any additional data or studies concerning rates of drug testing and deterrence that may be relevant to the Department's consideration?

[26] Should each operating administration conduct a demonstration program to gather data on the relative effectiveness of different rates specific to its regulated industry? What outcome measures would be appropriate in such pilot programs?

[27] Should one or more operating administrations reduce the random testing rate for a specific time period and then analyze the results? What period of time is adequate for determining the impact on deterrence?

Regulatory Analyses and Notice

DOT Regulatory Policies and Procedures

The ANPRM is considered to be a significant rulemaking under DOT Regulatory Policies and Procedures, 44 FR 11034, because of the substantial public and Congressional interest in this subject. It is difficult to estimate potential costs or benefits at this time because the Department is not proposing specific options.

Executive Order 12612

This ANPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12630

This ANPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, and it has been determined that any potential modification in the random drug testing program does not pose the risk of a taking of constitutionally protected private property.

Regulatory Flexibility Act

Depending on what, if any, action is ultimately proposed and adopted, a potential modification in the random drug testing program could have a significant economic impact on a substantial number of small entities. The Department specifically seeks public comment on the effect, if any, of potential changes in the program on small entities as well as any suggested alternative approaches. Further review will be conducted based on comments received on this notice and when, and if, a notice of proposed rulemaking is issued.

Paperwork Reduction Act

There are a number of reporting or recordkeeping requirements associated with DOT-mandated drug testing. Because the purpose of this notice is to solicit information, no specific changes are being proposed at this time. The Department notes that effective implementation of possible alternatives

and the gathering of data necessary to justify any changes, compare alternatives, or permit the implementation of some approaches may require recordkeeping and reporting by the affected industries. We are proposing substantial data collection concerning drug testing elsewhere in today's Federal Register.

National Environmental Policy Act

The Department has determined that this rulemaking is not a major Federal action significantly affecting the quality of the human environment and that an environmental impact statement is not required.

Authority: FAA—49 U.S.C. App. 1354(a), 1355, 1356, 1357, 1401, 1421-1430, 1472, 1485, 1502; 49 U.S.C. 106(g) revised, Pub. L. 97-449, January 12, 1983.

FHWA—49 U.S.C. 504 and 3102; 49 CFR 1.48.

FRA—45 U.S.C. 431, 437, 438, as amended; Pub. L. 100-342, Pub. L. 102-143; and 49 CFR 1.49(m).

FTA—49 CFR 1.51, Pub. L. 102-143.

RSPA—49 App. U.S.C. 1672, 1674a, 1681, 1804, 1808, 2002, 2040; 49 CFR 1.53.

USCG—46 U.S.C. 2103, 3306, 7101, 7301, 7701; 49 CFR 1.46.

Multi-modal ANPRM on Random Drug Testing Program.

Issued on December 2, 1992, in Washington, DC.

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Secretary.

Thomas C. Richards,
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Thomas D. Larson,
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