**Section § 382.305: Random testing.**

## Guidance Q&A

**Question 19: A motor carrier uses a consortium/third party administrator (C/TPA) to conduct its random selection of driver names. The C/TPA has many motor carriers in its random selection pool. The C/TPA has set up its random selection program to pick driver names and notifies the motor carrier whose driver the C/TPA has selected. The motor carrier notifies the C/TPA the driver is presently on long-term absence due to layoff, illness, injury, or vacation. The motor carrier also notifies the C/TPA it does not expect the driver to return to duty before the C/TPA’s next selection of driver names. The C/TPA then randomly orders and selects a driver’s name from the motor carrier that employs the driver who is unavailable rather than selecting the next name on the random selection list. Is this a scientifically valid and impartial method for selecting drivers for random testing in a motor carrier’s program?**

**Guidance:** This procedure is a scientifically valid method for selecting driver names. This method is similar to methods used by organizations, including the Department of Labor’s Bureau of Labor Statistics, to randomly order, select, and substitute names for sampling with replacement of groups of individual and companies. This procedure has a small degree of theoretical bias for a simple random sampling selection procedure. The theoretical bias, though, is so minimal the FMCSA does not believe the agency should prohibit its use.

This method is useful for operational settings, such as FMCSA’s motor carrier random testing program. The method is less impartial toward drivers than other theoretical methods, but maintains a deterrent effect for both motor carriers and drivers. This method should deter motor carriers from claiming drivers are unavailable each time the C/TPA selects one of its drivers, there by never having its drivers subject to actual random tests.

In addition, employers and C/TPA’s should establish operational procedures that will ensure, to the greatest extent possible, that the primary selections for random testing are tested. The operational procedures should include procedures that will ensure the random selection lists are updated in a timely manner. The updates will ensure that drivers who are no longer available to an employer will not be counted in the random selection lists. The operational procedures should also outline the measures for selecting alternates, including documenting the reasons for using an alternate.