



FTA Increases Random Drug Testing Rate for 2019

October 2018

When the Federal Transit Administration launched its drug and alcohol testing requirements in 1994, the rules required that 50 percent of transit employees in safety-sensitive duties would be randomly tested every year for drugs, and 10 percent of transit employees in safety-sensitive duties would be randomly tested every year for alcohol. The FTA drug and alcohol regulations then defined a process by which these random testing rates could be adjusted to 25 percent (for drugs) or either 25 or 50 percent (for alcohol), based on an analysis FTA was required to conduct every year.

From 2007 through 2018, the random testing rate for drugs in FTA's testing regime has been reduced to 25 percent, but no longer. According to an October 17, 2018, "Dear Colleague" letter from FTA (which you can read on the FTA website at <https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/regulations-and-guidance/ccam/policies-programs/118686/fta-dear-colleague-letter-2019-random-drug-testing-rate-increase-final-10-17-18.pdf>), the random testing rate for drugs will return to 50 percent, starting January 1, 2019. The random testing rate for alcohol under FTA's rules will remain at 10 percent for the 2019 calendar year.

The decision to change random testing rates is based on strict quantitative methods, over which FTA has not given itself any discretion. To determine if the rate must change, FTA looks at the rates of positive test results, and the rates of test refusals, as reported by its recipients and subrecipients of Section 5307, 5309, 5311 or 5339 funds, over the previous two reporting years. When these rates equal or exceed 1.0 percent of all random drug tests under FTAs rules, the rate is set at 50 percent; when the rate of positive (and refused) drug tests is less than 1.0 percent, the rate is set at 25 percent. For alcohol testing, the benchmarks are that the random rate can be 10 percent as long as positive (and refused) alcohol tests are less than 0.5 percent of all tests, 25 percent when these positive and refused tests are between 0.5 and 1.0 percent of all tests, and 50 percent when positive and refused tests equal or exceed 1.0 percent of all FTA random alcohol tests.

According to summary data that were shared with CTAA, the rate of positive drug tests had been inching steadily upward every year since 2012, and crossed the 1.0 percent threshold

in 2017. Interestingly, the two factors that FTA says have contributed the most to this increase have been (a) an increase in positive results for THC (marijuana and chemically related substances), and (b) an increase in covered employees' refusals to take random tests, which the rules treat as presumptive positives. While you may be tempted to jump to some additional conclusions about that increase in positive THC tests, FTA found that states that had legalized recreational marijuana generally had LOWER rates of positive THC test results than those states where recreational marijuana use continues to be a violation of state law.

Ever since 1994, FTA's drug and alcohol testing rules have pooled all covered safety-sensitive transit employees into one data set, irrespective of transit modality, urbanization or funding stream. CTAA has asked FTA if they can provide any analysis of how the drug and alcohol testing results break down by transit mode (e.g., fixed route bus, demand response transit, rail), by urban/rural, or by primary funding program, but it's uncertain whether the FTA drug and alcohol management information system captures those data with sufficient accuracy.

As a reminder, FTA's drug and alcohol testing rules cover safety-sensitive employees in transit agencies (and their contractors) that receive funding from Section 5307, 5309, 5311, or any FTA program whose grantees are to follow the regulations applicable to one of those programs (such as Section 5339). If your only source of FTA funding is Section 5310, or if you operate a public transit program that does not receive any FTA funding, these FTA rules do not apply to you. However, the Federal Motor Carrier Safety Administration's drug and alcohol testing rules apply to all transportation workers whose duties meet the federal criteria for requiring a commercial drivers license, except for CDL-holding employees who are covered by FTA's rule.

If you want more information on FTA's drug and alcohol requirements, visit the FTA site at <https://www.transit.dot.gov/drug-alcohol-program>, and make sure you're signed up to receive their periodic newsletters and updates.