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DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 655

Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of Calendar Year 2019 random drug and alcohol testing rates.

SUMMARY: The Federal Transit Administration (FTA) is increasing the minimum random drug testing rate from 25 percent to 50 percent in calendar year 2019 for employers subject to the FTA's drug and alcohol rule. The minimum random alcohol testing rate will remain at 10 percent for calendar year 2019.

DATES: Effective: January 1, 2019.

FOR FURTHER INFORMATION CONTACT: Iyon Rosario, Drug and Alcohol Program Manager for the Office of Transit Safety and Oversight, 1200 New Jersey Avenue, SE, Washington, DC 20590 (telephone: 202-366-2010 or e-mail: Iyon.Rosario@dot.gov).

SUPPLEMENTARY INFORMATION: On January 1, 1995, the FTA required large transit employers to begin drug and alcohol testing of employees performing safety-sensitive functions, and submit annual reports by March 15 of each year beginning in 1996. Small employers commenced their FTA-required testing on January 1, 1996, and began reporting the same information as the large employers starting on March 15, 1997. The rule initially required employers to conduct random drug tests for prohibited drug use at a rate equivalent to at least 50 percent of their total number of safety-sensitive employees and for misuse of alcohol at a rate of at least 25 percent of their total number of safety-sensitive employees.

The FTA updated the testing rules on August 1, 2001, and maintained a minimum random testing rate for prohibited drugs at 50 percent and the misuse of alcohol at 10 percent. However, pursuant to 49 CFR 655.45(c) and (d), both random testing rates could be adjusted based on industry-reported violations that have been verified over two preceding consecutive calendar years. Accordingly, the FTA in 2007 reduced the minimum random drug testing rate from 50 percent to 25 percent, where it has remained since then.

Pursuant to 49 CFR 655.45(c), the FTA will increase the minimum random drug testing rate from 25 percent back to 50 percent if the industry-reported data for any one calendar year indicates that the positive rate equals or exceeds one percent (positive rate means the number of verified positive results for random drug tests conducted under 49 CFR 655.45 plus the number of refusals of random tests, divided by the total number of random drug test results (i.e., positive, negative, and refusals)). Likewise, the minimum alcohol random rate will be increased from 10 percent to 25 percent should the reported data indicates that the violation rate is equal to or greater than 0.5 percent, but less than one percent for any one year (violation rate means the number of covered employees found during random tests administered under 49 CFR 655.45 to have an alcohol concentration of .04 or greater, plus the number of employees who refuse a required random test, divided by the total reported number of random alcohol tests). Furthermore, if the minimum random alcohol rate is 25 percent, and if the validated violation rate is equal to or greater than one percent for any one calendar year, then the minimum random alcohol rate will be increased to 50 percent.

Pursuant to 49 CFR 655.45(b), the FTA's decision to increase or decrease the minimum annual percentage rates for random drug and alcohol testing is based, in part, on the reported verified positive drug rate and alcohol violation rate for the entire public transportation industry.

The information used for this determination is drawn from the Drug and Alcohol Management Information System (MIS) reports required by 49 CFR 655.72. In determining the reliability of the data, the FTA considers the quality and completeness of the reported data, or may obtain additional information or reports from employers, and make appropriate modifications in calculating the industry's verified drug positive rate and alcohol violation rates.

For calendar year 2019, the FTA has determined that the minimum random drug testing rate for covered employees will increase from 25 percent to 50 percent based on a verified positive rate that exceeded 1.0 percent for random drug test data for calendar year 2017. The random drug testing positive rate for 2017 was 1.06 percent. Further, for calendar year 2019, the FTA has determined that the random alcohol testing rate for covered employees will remain at 10 percent because the violation rate was lower than 0.5 percent for calendar years 2016 and 2017. The random alcohol violation rates were 0.14 percent for 2016 and 0.16 percent for 2017.

Detailed reports on the FTA drug and alcohol testing data collected from transit employers may be obtained from the FTA's Office of Transit Safety and Oversight, 1200 New Jersey Avenue, SE, Washington, DC 20590, (202) 366-2010 or at <https://transit-safety.fta.dot.gov/DrugAndAlcohol/Publications/Default.aspx>

K. Jane Williams,

Acting Administrator.

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