



DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA-2001-11213, Notice No. 25]

Drug and Alcohol Testing: Determination of Minimum Random Testing Rates for 2021

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notification of determination.

SUMMARY: This notification of determination announces FRA's minimum annual random drug and minimum annual random alcohol testing rates for covered service and maintenance-of-way (MOW) employees for calendar year 2021.

DATES: This determination takes effect [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Gerald Powers, FRA Drug and Alcohol Program Manager, by email: gerald.powers@dot.gov or by telephone: 202-493-6313; or Sam Noe, FRA Drug and Alcohol Program Specialist, by email: sam.noe@dot.gov or by telephone: 615-719-2951.

SUPPLEMENTARY INFORMATION: FRA is announcing the 2021 minimum annual random drug and alcohol testing rates for covered service and MOW employees. For calendar year 2021, the minimum annual random testing rates for covered service employees will continue to be 25 percent for drugs and 10 percent for alcohol, while the minimum annual random testing rates for MOW employees will continue to be 50 percent for drugs and will be lowered to 10 percent for alcohol. Because these rates represent minimums, railroads and contractors may conduct FRA random testing at higher rates.

Discussion

To set its minimum annual random testing rates for each year, FRA examines the last two complete calendar years of railroad industry drug and alcohol program data submitted to its Management Information System (MIS). FRA has also, however, reserved the right to consider factors other than MIS-reported data before deciding whether to lower annual minimum random testing rates. See 63 FR 71789 (Dec. 30, 1998).

Random Testing Rates for Covered Service Employees

The rail industry's random drug testing positive rate for covered service employees (employees subject to the Federal hours of service laws and regulations) remained below 1.0 percent for 2018 and 2019. The Administrator has therefore determined the minimum annual random drug testing rate for the period January 1, 2021, through December 31, 2021, will remain at 25 percent for covered service employees. The industry-wide random alcohol testing violation rate for covered service employees remained below 0.5 percent for 2018 and 2019. Therefore, the Administrator has determined the minimum random alcohol testing rate will remain at 10 percent for covered service employees for the period January 1, 2021, through December 31, 2021.

Random Testing Rates for MOW Employees

MOW employees became subject to FRA random drug and alcohol testing in June 2017. See 81 FR 37894 (June 10, 2016). FRA now has MIS data for two full consecutive years of the industry-wide performance rates for MOW employees, 2018 and 2019. While FRA may lower the minimum random drug testing rate to 25 percent whenever the industry-wide random drug positive rate is less than 1.0 percent for two consecutive calendar years while testing at the 50 percent rate, FRA has reserved the right to consider other factors before deciding whether to lower annual minimum random testing rates. See 63 FR 71789 (Dec. 30, 1998).

As illustrated in the figures in the appendix below, in contrast to the drug testing positive rate for covered service employees that remained substantially below 1.0 percent for 2018 and 2019, the random drug testing positive rate for MOW employees is not only trending upwards, but also approaching the 1.0 percent positive rate threshold at which point the Administrator will raise the drug testing rate under 49 CFR 219.625(d)(2). Specifically, the industry-wide random drug testing violation rate for MOW employees increased from 0.69 percent in 2018 to 0.8 percent in 2019, and MOW employees continue to have a higher positive testing rate than covered service employees.¹ The Administrator further notes that MOW employees who were performing duties for a railroad before June 12, 2017, were exempted from the pre-employment drug testing requirement. *See* 49 CFR 219.501(e). As such, some MOW employees may remain who have never been subject to FRA drug testing because they have not yet been randomly selected.

Taking these factors into consideration, the Administrator finds it is currently not in the interest of railroad safety to lower the random drug testing rate for MOW employees. Therefore, for the period January 1, 2021, through December 31, 2021, the Administrator has determined that the minimum annual random drug testing rate will continue to be 50 percent for MOW employees.

Because the random alcohol testing violation rate for MOW employees remained substantially below 0.5 percent for 2018 and 2019, and has been trending downwards, the Administrator has determined that the minimum annual random alcohol testing rate will be lowered to 10 percent for MOW employees for the period January 1, 2021, through December 31, 2021.

¹ While the drug testing positive rate for covered service employees also increased from 0.50 percent in 2018 to 0.57 percent in 2019, a concerning trend upwards, 0.57 percent is far below the 0.80 positive rate for MOW employees and remains substantially below the 1.0 percent threshold for raising rates.

Appendix

Figure 1. Random Drug Testing Violation Rate for Covered Service and MOW Employees

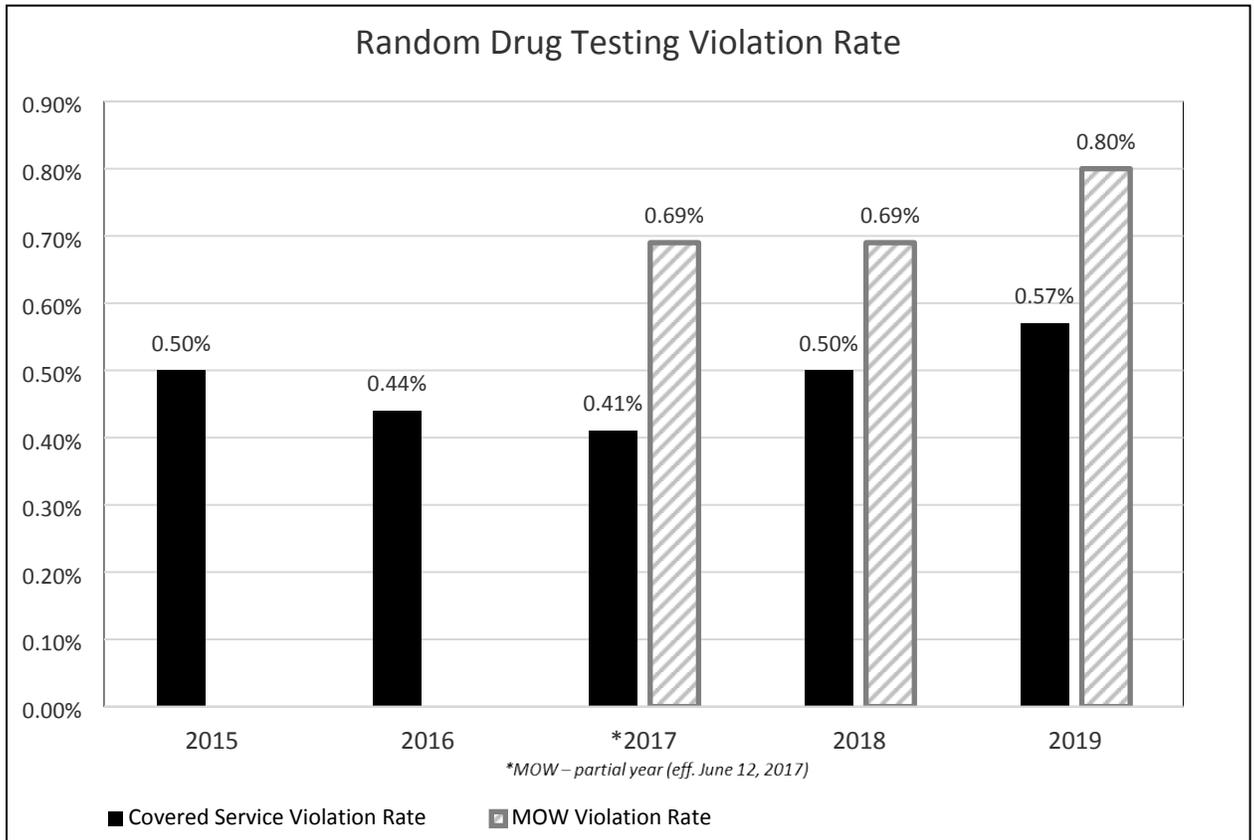
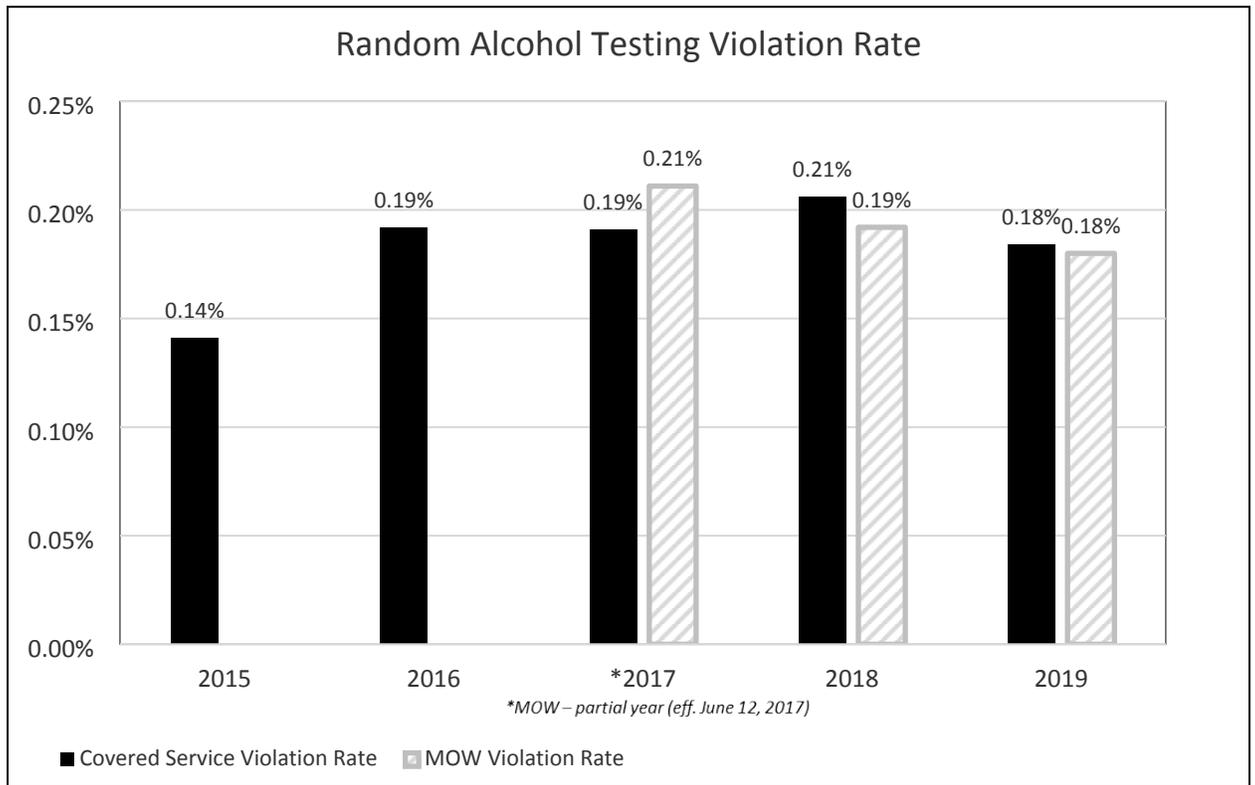


Figure 2. Random Alcohol Testing Violation Rate for Covered Service and MOW Employees



Issued in Washington, D.C.

Quintin C. Kendall,
Deputy Administrator.

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