

FTA Drug and Alcohol Testing Requirements

Q1: For FTA-covered employers, what is the effect of a declaration of a National, State, or local emergency on FTA testing requirements?

A: The declaration of a National, State, or local emergency does not exempt FTA-regulated employers from the applicable FTA testing requirements. As an FTA-regulated employer, you must comply with the drug and alcohol testing requirements found in 49 CFR Parts 40 and 655.

Q2: What are options for FTA-covered employers if the collection sites in their area are closed or program resources are unavailable due to COVID-19?

A: As an FTA-regulated employer, you are required to comply with the applicable FTA testing requirements. However, FTA recognizes that compliance may not be possible in certain areas, due to the unavailability of program resources, such as collection sites, laboratories, and service agents. If you are unable to conduct FTA drug or alcohol testing due to COVID-19-related supply shortages, facility closures, State or locally-imposed quarantine requirements, or other impediments, you will need to continue to comply with applicable FTA requirements to document why a test was not completed.

Further, FTA regulations require recipients to maintain other records. These include documentation of delays in post-accident testing and records relating to the collection process, including documents relating to the random selection process. If an FTA recipient's random testing programs and/or processes change due to COVID-19, these changes should be documented and retained according to the requirements of Parts 40 and 655.

Q3: Must FTA-covered employers meet FTA's minimum random testing rates while a declaration of a National Emergency exists?

A: 49 CFR § 655.45 requires FTA recipients to randomly test a certain percentage of their employees according to the published testing rate. Section 655.45(f) requires employers to "randomly select a sufficient number of covered employees for testing during each calendar year to equal an annual rate not less than the minimum annual percentage rates for random drug and alcohol testing determined by the Administrator." The Calendar Year (CY) 2020 random testing rates for drugs is 50% and 10% for alcohol.

To comply with Section 655.45(f), FTA recipients' random testing rate must meet or exceed the rate set by the Administrator at the end of each calendar year.

If, due to disruptions caused by the COVID-19 public health emergency, you are unable to perform random tests during the current testing period, you should make up the tests by the end of the calendar year to achieve the required minimum 50% rate for drug testing and 10% for alcohol testing for CY 2020. You should document in writing the specific reasons why you were unable to conduct tests on employees who were selected.

Q4: For FTA-covered employers, may a new employee or an employee returning from furlough begin work in a safety sensitive position, even if pre-employment or other testing is unavailable?

A: If employers are unable to conduct FTA drug and alcohol testing due to the unavailability of testing resources, the underlying modal regulations continue to apply. For example, if pre-employment testing is not conducted, the prospective employee must not be permitted to perform any safety-sensitive functions until testing is accomplished and a Medical Review Official (MRO) verified negative result is received.

If you furlough an employee and remove the employee from the random testing pool for 90 or more consecutive days, you are required under 49 CFR § 655.41 to conduct a pre-employment drug test of the employee prior to returning the employee to the random pool and safety-sensitive functions.

Q5: Should FTA-covered employers continue to conduct post-accident and reasonable-suspicion testing?

A: You are required to send covered employees for drug and alcohol testing as soon as practicable following an accident as required by 49 CFR § 655.44 and following a reasonable-suspicion event as required by 49 CFR § 655.43. However, as the regulations state, if you are unable to administer an alcohol test within 8 hours following the accident or event, or a drug test within 32 hours following the accident, you must document in writing the specific reasons why the test could not be conducted.

Q6: May an employee resume safety-sensitive work after a violation if FTA-covered employers are unable to conduct return-to-duty or other testing?

A: No. In accordance with 49 CFR § 655.46, you must not allow a safety-sensitive employee to return to perform any safety-sensitive functions, as defined in 49 CFR § 655.4, until return-to-duty testing is conducted following the procedures outlined in 49 CFR Part 40.

Q7: For FTA-covered employers, how does furlough affect follow-up testing?

A: If follow-up drug or alcohol testing cannot be completed in accordance with 49 CFR § 655.47 due to an employee being furloughed, his or her follow-up testing plan stops during the extended absence, as required by 49 CFR § 40.307(e). The testing plan must resume once the employee returns to the performance of safety-sensitive functions.

Q8: For FTA-covered employers, can their employees refuse to go for testing due to concerns about collection site contamination and possible exposure to COVID-19?

A: FTA is aware that some employees have expressed concern about potential public health risks associated with the testing process in the current environment. Please follow the Department of Transportation (DOT) Office of Drug and Alcohol Policy Compliance (ODAPC) [guidance](#), which states: It is the employer's responsibility to evaluate the circumstances of the employee's refusal to test, which may include evaluating the collection facility's preparations and procedures (e.g., maintaining safe social distances) as well as the circumstances of the individual employee (e.g., whether the employee is in a high-risk category or has family members who are), to determine whether or not the event should be considered a refusal per 49 CFR § 40.355(i). However, as COVID-19 is a novel public health risk, DOT asks employers to be sensitive to employees who indicate they are not comfortable or afraid to go to clinics/collection sites.

Q9: What should transit employees do if they are experiencing COVID-19 related symptoms?

A: Please follow the Department of Transportation (DOT) Office of Drug and Alcohol Policy Compliance (ODAPC) [guidance](#), which states: If you are experiencing COVID-19-related symptoms or have tested positive, you should contact your medical provider and let your employer know about your availability to perform work.

Q10: For transit employees concerned about the risks associated with testing during the public health emergency, may the employer require employees to submit to a test?

A: Please follow the Department of Transportation (DOT) Office of Drug and Alcohol Policy Compliance (ODAPC) [guidance](#), which states: If you have COVID-19-related concerns about testing, you should discuss them with your employer.

As a reminder, it is the employer's responsibility to evaluate the circumstances of the employee's refusal to test and determine whether or not the employee's actions should be considered a refusal per 49 CFR § 40.355(i).