### **DEPARTMENT OF TRANSPORTATION**

#### **Federal Transit Administration**

49 CFR Part 653

[Docket No 92-H]

RIN 2132-AA37

# Prevention of Prohibited Drug Use in Transit Operations

**AGENCY:** Federal Transit Administration, DOT.

ACTION: Final rule; technical

amendments.

SUMMARY: The Federal Transit Administration (FTA) is making technical amendments to its anti-drug rule to correct a citation, add words that inadvertently had been omitted, redesignate a provision, and clarify portions of the preamble discussion of the rule. This rule is intended to clarify the existing rule.

**DATES:** This rule is effective March 6, 1995.

### FOR FURTHER INFORMATION CONTACT:

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supplementary information: FTA recipients and other interested parties may access this rule through the FTA's Transit Safety and Security Bulletin Board using a microcomputer and a modem. The telephone number for the Bulletin Board is 1–800–231–2061. The Bulletin Board is a user-friendly, menudriven system with information accessible seven days a week, twenty-four hours a day. Once registration is completed, interested parties may access this and other regulations.

To obtain additional information regarding access to the Bulletin Board, please contact the Operator, at (617) 494–2108, or leave a message on the Message Board of the Bulletin Board.

The FTA is making the following technical amendments to its anti-drug rule.

# Applicability—Commuter Railroads and CDL Holders

The applicability provision, section 653.5, clarifies which Department of Transportation (DOT) drug and alcohol testing program covers Commercial Drivers License (CDL) holders who work for commuter railroads. Three DOT agencies are involved in this issue: FTA,

which funds commuter railroads; the Federal Railroad Administration (FRA), which regulates railroads, including commuter railroads; and the Federal Highway Administration (FHWA), which requires CDL holders to be tested for prohibited drugs and the misuse of alcohol. Under the FTA's final rule, to avoid jurisdictional problems, commuter railroads that receive FTA funds are to comply with FRA's drug and alcohol regulation. Because the FRA regulation only covers hours-of-service employees, however, there remains a question as to which agency's drug and alcohol program covers CDL holders who work for a commuter railroad. This rule clarifies that it is FHWA's regulation that covers such CDL holders.

We also note that the FRA hours-ofservice classification system does not include the same kinds of workers covered under FTA's rules; for example, armed security personnel are covered by FTA's rules but not FRA's. Because FTA in its rule has delegated its authority to require commuter railroads to implement a drug and alcohol testing program to FRA, commuter railroad workers who are not safety-sensitive under FRA's rule are not subject to testing, even though they would be if they were subject to FRA's rules.

Section 653.5 is changed to correct a citation error in a reference to the regulations of the United States Coast Guard. The citation now reads 33 CFR part 95 and 46 CFR parts 4, 5, and 16.

# **Definitions**

The definition of the term "disabling damage" is changed to be consistent with the definition used by the Federal Highway Administration, and is now defined independently of the term "accident."

The definition of "large operator" is changed to add the word "urbanized," which inadvertently was omitted. Thus, a large operator operates primarily in an urbanized area of 200,000 or more in population.

Å parallel change is made to the definition of "small operator," which operates primarily in a nonurbanized area or in an urbanized area of less than 200,000 in population. These changes are consistent with the way the Federal Transit Administration administers its

The definition of "safety-sensitive function" is changed, at subsection (4), to clarify that the rule excludes from coverage maintenance contractors working for recipients or small operators primarily serving an area of less than 50,000 in population, regardless of whether they receive section 18 or section 3 funding.

The definition of "vehicle" is changed to add, in the category of "mass transit vehicle," certain vehicles used for services ancillary to mass transportation. The definition of a mass transit vehicle thus now includes not only buses and vans, but also nonrevenue service commercial motor vehicles and vehicles used by armed security personnel.

### **Starting Date for Drug Testing Programs**

Section 653.13 makes a conforming change in the implementation section of the rule to reflect the addition of the word "urbanized" to the definition of large operator.

### Referral, Evaluation, and Treatment

Section 653.37(a) is changed to add the word "or," which clarifies that an employee who either refuses to submit to a drug test or has a verified positive drug test result must be advised of the resources available to him or her in evaluating and resolving problems associated with prohibited drug use, including the names, addresses, and telephone numbers of substance abuse professionals and counseling and treatment programs.

# Supervisors Acting as a Collection Person

The reasonable suspicion testing provision, section 653.43, specifically prohibited a supervisor from acting as a collection site person for covered employees under his or her direct supervision. This provision, however, was misplaced; it was our intention to prohibit a direct supervisor from acting as a collection site person for any of the tests required under the rule. Accordingly, we have redesignated section 653.43(c) as section 653.65.

# **Post-Accident Testing**

Sections 653.45(a)(1), (a)(2)(i), and (a)(2)(ii) are amended to change the phrase "on duty in," to "operating." The provision as drafted required the testing of any safety-sensitive employee on duty in a revenue service vehicle when an accident occurred. The rule, however, was not meant to use the same standard for both vehicle operators and other covered employees who happen to be in the vehicle at the time of the accident. Thus, the mass transit vehicle operator must be tested if an accident has occurred and he or she has received a citation from a State or local law enforcement official. (In a Notice of Proposed Rulemaking published in the Federal Register on February 6, 1995, at 60 FR 7169, the FTA seeks comment on whether this citation requirement should be deleted.) We note that to test