DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 654

[Docket No. 92-I]

RIN 2132-AA38

Prevention of Alcohol Misuse in Transit Operations

AGENCY: Federal Transit Administration, DOT.

ACTION: Final rule; technical amendments.

SUMMARY: The Federal Transit Administration (FTA) is making some minor and technical amendments to its alcohol rule to correct a citation, add words that inadvertently had been omitted, 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 alcohol rule.

Applicability—Commuter Railroads and CDL Holders

The applicability provision, section 654.3, 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 FHWA's regulation 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 existing 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 FTA's rules.

Also, section 654.3 is changed to correct a citation error in a reference to the regulations of the United States Coast Guard. The citation should read 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.

À 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 grant programs.

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 not only for mass transportation, but also for services ancillary to mass transportation. The definition of a mass transit vehicle thus now includes not only buses and vans, but also non-revenue service commercial motor vehicles and vehicles used by armed security personnel.

Starting Date for Alcohol Testing Programs

Section 654.15 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.

Post-Accident Testing

Sections 654.33(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 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 other covered employees the employer must determine whether that employee contributed to the accident, using the best information available at the time of the decision.

Supervisor Acting as a Breath Alcohol Technician

Section 654.45 is added to include a prohibition against the supervisor acting as the Breath Alcohol Technician for covered employees under his or her direct supervision. In the final drug rule, published on the same day as the final alcohol rule, we prohibited a supervisor from acting as the collection site person. It was always our intent for the two rules, which cover the same employers and employees, to be as similar as possible, and this omission was unintentional. We now correct that omission.