Random Testing

The preamble discussion of random testing at 59 FR 7546 contained an error; we stated that "an employer must include a refusal to submit to a test as a result of 0.02 or greater." The phrase "0.02 or greater," however, should read "0.04 or greater." The regulatory text, however, is accurate, and is not changed by this technical amendment.

Random Testing Rate

Section 654.35(c)(1) is changed to conform the alcohol rule to the amendment to the drug rule published in the Federal Register on December 2, 1994, at 59 FR 62218, 62231. Specifically, the Administrator may decrease the random testing rate from 25 percent to 10 percent if the two initial years of data indicate that the violation rate for the entire transit industry is less than 0.5 percent. This means that the Administrator will use two years of data from large operators, which start testing a year before small operators, and one year of data for small operators to determine the initial violation rate for the entire transit industry. This change affects only the initial two years of the alcohol testing program.

Also, FTA is adding three new paragraphs inadvertently omitted from its rule, but included in the rules published by the Federal Aviation Administration, the Federal Railroad Administration, and the Federal Highway Administration on February 15, 1994, at 59 FR 7391-92, 7464, and 7509. (To be codified at Appendix J to part 121 (III)(C)(10), (III)(C)(11)(a), (III)(C)(11)(b); 49 CFR 219.608 (e), (f)(1), and (f)(2); and 49 CFR 382.305 (j), (k)(1), and (k)(2).) Moreover, FTA made the same change to its drug rule on December 2, 1994, in a rule published in the Federal Register at 59 FR 62217, 62231.

These new paragraphs, (j), (k)(1), and (k)(2) address situations in which a covered employee is subject to the alcohol testing regulations of more than one Department of Transportation (DOT) agency. Paragraph (j) directs the employer to apply the random testing rate of the DOT agency that regulates more than 50 percent of a covered employee's function.

When an employer has employees regulated by different DOT agencies, paragraphs (k)(1) and (k)(2) allow an employer to establish separate pools for employees based on the rate set by the DOT agency regulating them, or to establish one pool for all its employees, but randomly test them at the highest minimum rate set by another DOT agency.

Certification of Compliance

On October 12, 1994, the FTA published a Federal Register Notice, at 59 FR 51793, entitled "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements." In the Notice, FTA compiled a complete listing and the full text of the certifications and assurances necessary to receive financial assistance from the Federal Transit Administration. Instead of submitting a variety of certifications and assurances with each grant application, the grant applicant and its attorney certify compliance with all of the certifications and assurances relevant to any and all grants for which the grant applicant wishes to apply in fiscal year 1995 by signing the single Signature Page, attached to the Notice, at 59 FR 51813. The Notice, which will be updated and republished annually for use in future fiscal years, includes a certification of compliance with the FTA drug and alcohol testing program. Accordingly, we are deleting as unnecessary the sample certifications in the rule.

Retention of Records

The preamble discussion of this topic contained an error; specifically, it stated in the Section-by-Section Analysis, Subpart D, paragraph A, at 59 FR 7546 that "[t]he rule provides three separate record retention periods for different types of records—five years, three years, and one year." Actually, records must be retained for either five years, *two* years, or one year. The regulatory text, however, is accurate, and remains unchanged.

List of Subjects in Part 654

Alcohol testing, Grant programs transportation, Mass transportation, Reporting and recordkeeping requirements, Safety, Transportation.

For the reasons set forth in the preamble, the Federal Transit Administration amends Title 49, Code of Federal Regulations, part 654 as follows:

PART 654—PREVENTION OF ALCOHOL MISUSE IN TRANSIT OPERATIONS

1. The authority for part 654 continues to read as follows:

Authority: 49 U.S.C. 5331; 49 CFR 1.51.

§ 654.3 [Amended]

1a. Paragraph (b) of § 654.3 is amended by removing "part 219" and adding in its place "parts 219 and 382, as appropriate".

2. The note to § 654.3 is amended by removing the phrase "and 6" and adding in its place the phrase "and 16".

§ 654.7 [Amended]

- 3. In § 654.7, the definition of *accident* is amended in paragraph (3) by removing the period at the end of the first sentence and adding a semicolon; and by removing the remaining text in paragraph (3).
- 4. The definition of *large operator* is amended by adding the word "urbanized" after the word "an" and before the word "area".
- 5. The definition of *safety-sensitive function* is amended in paragraph (4) by adding the words "section 3 funding and is in an area of less than 50,000 in population or" after the word "receives" and before the word "section".
- 6. The definition of *small operator* is amended by removing the words "in an area" and adding in their place the words "in a nonurbanized area or in an urbanized area."
- 7. The definition of *vehicle* is amended by adding the words "or for ancillary services" after the word "transportation" and before the period.
- 8. In § 654.7 a new definition following the definition of "covered employee" is added as follows:

§ 654.7 Definitions.

Disabling damage means damage which precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after

(1) *Inclusion*. Damage to motor vehicles that could have been driven, but would have been further damaged if so driven.

(2) Exclusions.

simple repairs.

- (i) Damage which can be remedied temporarily at the scene of the accident without special tools or parts.
- (ii) Tire disablement without other damage even if no spare tire is available.
 - (iii) Headlamp or taillight damage.
- (iv) Damage to turn signals, horn, or windshield wipers which makes them inoperative.

§ 654.15 [Amended]

- 9. Section 654.15(a) is amended by adding the word "primarily" after the word "operating" and before the word "in" and by adding the word "urbanized" after the word "an" and before the word "area".
- 10. Section 654.15(b) is amended by removing the words "operating in an area" and adding in their place the words "operating primarily in a nonurbanized area or in an urbanized area".