

## DEPARTMENT OF TRANSPORTATION

## Federal Transit Administration

## 49 CFR Parts 653 and 654

[Docket No. 92-H or I]

RIN 2132-AA37; 2132-AA38

## Prevention of Prohibited Drug Use in Transit Operations; Prevention of Alcohol Misuse in Transit Operations

AGENCY: Federal Transit Administration, DOT.

ACTION: Final rule.

**SUMMARY:** The Federal Transit Administration (FTA) is amending its drug and alcohol testing rules to exempt volunteers and eliminate the citation requirement in the non-fatal, post-accident testing provision applicable to non-rail vehicles. This rule is intended to ease administrative burdens and clarify certain provisions in the existing rules.

EFFECTIVE DATE: September 1, 1995.

**FOR FURTHER INFORMATION CONTACT:** For program issues, Judy Meade, Office of Safety and Security, Federal Transit Administration, telephone: 202-366-2896. For legal questions, Nancy Zaczek or Kristin O'Grady, Office of Chief Counsel, Federal Transit Administration, telephone: 202-366-4011 (voice); 202-366-2979 (TDD). Copies of the regulation are available in alternative formats upon request.

**SUPPLEMENTARY INFORMATION:** On February 6, 1995, FTA published a Notice of Proposed Rulemaking (NPRM) proposing to amend its drug and alcohol testing rules to (1) exempt volunteers and (2) eliminate the citation requirement in the non-fatal, post-accident testing provision applicable to non-rail vehicles. FTA also sought comment on whether an "accident" should be defined to include the discharge of a firearm by a transit security officer. FTA received 83 comments over a two-month period.

## I. Volunteers

Under FTA's current drug and alcohol rules, 49 CFR Parts 653 and 654, a volunteer who performs a safety-sensitive function generally is subject to testing for prohibited drugs and the misuse of alcohol. Since issuance of the final rules in 1994, however, a number of entities have urged the agency to exempt volunteers from application of the rules.

## Comments

On the volunteer issue, FTA received 54 comments from large and small

transit operators, one insurance carrier, two U.S. senators, one U.S. representative, and two associations. An overwhelming majority of these commenters (50 of 54) favored exempting volunteers. Only four commenters (two large transit operators, one small transit operator, and one trade organization) opposed exempting volunteers from FTA's drug and alcohol testing rules. The commenters raised a number of key issues:

*Volunteers are not likely to be involved in drug or alcohol-caused collisions.* Several commenters pointed out that no statistical evidence suggests that volunteer transit drivers have been involved in drug or alcohol-caused collisions. Many small operators stated that they have operated for years without one incident relating to the use of drugs or alcohol. Several operators noted that they already provide a comprehensive screening program that evaluates a volunteer's driving record along with their criminal history. For example, one program requires a medical statement signed by a physician, a vehicle inspection statement signed by a mechanic, proof of insurance, a driver's license print-out, and a code of conduct which includes a statement that the driver will not use mood-altering drugs or alcohol while serving as a volunteer. In addition, this same program requires annual medical and vehicle statements from its existing drivers. Further, commenters claimed that volunteers are generally retired professionals with a heightened level of safety. According to commenters, the majority of volunteers are over 60 years old, community-minded, and not likely to be drug or alcohol users.

*People will not volunteer if they must submit to drug and alcohol testing rules.* Commenters stated that volunteers consider a drug and alcohol test an invasion of privacy. Since volunteers are not compensated for their services and are not entitled to the benefits that employees receive, volunteers are not likely to submit to drug and alcohol testing requirements. In fact, several commenters stated that some volunteers have indicated that they would not continue to volunteer if they had to submit to a drug or alcohol test. Some commenters claimed that volunteerism is down from last year and argued that required drug and alcohol testing will surely exacerbate this downward trend.

*It is costly and impractical for organizations to administer drug and alcohol tests to volunteers.* Many volunteers are part-time and serve a variety of functions, e.g. clerical support, in addition to safety-sensitive work. Commenters stated that

segregating these functions would cause administrative havoc. According to a number of commenters, volunteers do not perform safety-sensitive work on a regular and consistent basis. As a result, testing would be difficult to administer. Several commenters argued that the cost of administering these tests would be prohibitive. Some claimed that the cost of providing testing would drain operating budgets and drastically reduce the services that are provided. For example, one commenter estimated that the cost of providing drug testing for its volunteers would exceed \$43,000 per year. This additional cost would translate into 597 fewer rides per month or 7,164 rides per year. Another dimension of the problem would be the cost of losing the use of volunteers' vehicles. A number of commenters indicated that volunteers often provide transportation with their own vehicles. The potential loss of those drivers would place a tremendous hardship on transit providers in rural areas.

*Exempting volunteers compromises rider safety.* As mentioned above, four commenters believe that exempting volunteer drivers from drug and alcohol testing is contrary to the spirit of the testing mandates of Congress and in direct conflict with safe practice and common sense. One commenter suggested that the exemption compromises safety and erodes the intent of a drug and alcohol-free workplace.

## Discussion

FTA agrees with those commenters that favor exempting volunteers from the drug and alcohol testing requirements. Based on the comments submitted to FTA, the significant cost of subjecting volunteers to drug and alcohol testing far outweighs the safety benefits. Commenters indicated that volunteers often are screened by the operator and are mature citizens with good driving records. Furthermore, the costs related to conducting drug and alcohol testing of volunteers are considerable. First, the operator must divert funds from its transportation functions to pay for drug and alcohol testing. Second, the operator may lose volunteers and their vehicles if drug and alcohol testing is required. Third, the time volunteers are able to donate is always limited and would be further restricted by the time consumed by the testing process. Finally, many of the operators that depend heavily on volunteers are small and cannot easily absorb the extra cost that testing volunteers would involve.

As noted above, a few commenters argued that exempting volunteer drivers