

definition of "accident" should include the discharge of a firearm by armed security personnel (who are considered safety-sensitive workers subject to the drug and alcohol testing program). Most commenters opposed an amendment to the definition of "accident" to include the discharge of a firearm by a covered employee while on duty. Most of these commenters were transit operators who noted that they already have internal policies and procedures for dealing with accidental discharges of firearms. A few commenters favored including the discharge of a firearm in the definition of "accident," mostly for safety reasons. Since there seems to be little interest in amending the definition of accident to include the discharge of firearms, FTA will not take any action at this time.

IV. Regulatory Process Matters

A. Executive Order 12688

The FTA evaluated the costs and benefits of the drug and alcohol testing rules when it issued 49 CFR parts 653 and 654 on February 15, 1994, at 59 FR 7531-7611. It is not anticipated that the change to the post-accident testing provision should significantly alter the costs and benefits of either part 653 or 654. On the other hand, the exclusion of volunteers from coverage under the rules should slightly lower the overall cost of the program.

B. Departmental Significance

Neither rule is a "significant regulation" as defined by the Department's Regulatory Policies and Procedures, because it involves only minor changes to parts 653 and 654.

C. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the FTA evaluated the effects of parts 653 and 654 on small entities when they were issued in February 1994. These changes will not significantly change that analysis, but should reduce the cost of drug and alcohol testing for small entities.

D. Paperwork Reduction Act

This rule does not include information collection requirements subject to the Paperwork Reduction Act.

E. Executive Order 12612

We reviewed parts 653 and 654 under the requirements of Executive Order 12612 on Federalism. These proposed rules, if adopted, will not change those assessments.

F. National Environmental Policy Act

The agency determined that these regulations had no environmental implications when it issued parts 653 and 654, and there will be none under these amendments.

G. Energy Impact Implications

These amendments do not affect the use of energy.

List of Subjects in 49 CFR Parts 653 and 654

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

For the reasons set forth in the preamble, the FTA is amending Title 49, Code of Federal Regulations, parts 653 and 654 as follows:

Part 653—PREVENTION OF PROHIBITED DRUG USE IN TRANSIT OPERATIONS

1. The authority citation for part 653 continues to read as follows:

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

2. The definition of "covered employee" in section 653.7 is revised to read as follows:

§ 653.7 Definitions

* * * * *

Covered employee means a person, including an applicant or transferee, who performs a safety-sensitive function for an entity subject to this part; however, a volunteer is covered only if operating a vehicle designed to transport sixteen or more passengers, including the driver.

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§ 653.45 [Amended]

3. The first sentence of § 653.45(a)(2)(i) is amended by removing "if that employee has received a citation under State or local law for a moving traffic violation arising from the accident" and adding "unless the employer determines, using the best information available at the time of the decision, that the covered employee's performance can be completely discounted as a contributing factor to the accident".

PART 654—PREVENTION OF ALCOHOL MISUSE IN TRANSIT OPERATIONS

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

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

5. The definition of "covered employee" in section 654.7 is revised to read as follows:

§ 654.7 Definitions

* * * * *

Covered employee means a person, including an applicant or transferee, who performs a safety-sensitive function for an entity subject to this part; however, a volunteer is covered only if operating a vehicle designed to transport sixteen or more passengers, including the driver.

* * * * *

§ 654.33 [Amended]

6. The first sentence of § 654.33(a)(2)(i) is amended by removing "if that employee has received a citation under State or local law for a moving traffic violation arising from the accident" and adding "unless the employer determines, using the best information available at the time of the decision, that the covered employee's performance can be completely discounted as a contributing factor to the accident".

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Administrator.

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