III. Definition of Accident—Armed Security Personnel

In the rules, an accident is limited to events involving the operation of a mass transit vehicle. Some commenters, however, note that the definition of accident does not include the discharge of a firearm by armed security personnel, who are considered safety-sensitive workers subject to the drug and alcohol testing program.

While we are aware of the danger that drug or alcohol impaired security personnel could pose to the traveling public, in developing the rules we assumed that, in the event of a discharge of a weapon, affected security personnel would be subject to an appropriate internal review of the circumstances that triggered the discharge. In this connection, FTA has stated that its drug and alcohol testing rules do not cover police officers who provide some services to a transit property, but are not supervised by the transit system, recognizing that in most municipalities police officers who discharge firearms are subject to their own internal comprehensive review procedures regarding any such incident.

We now seek comment on this issue in general but do not propose a revision of the rule in this Notice of Proposed Rulemaking. Should we amend the definition of "accident" to include the discharge of a firearm by a covered employee while on duty? Should all discharges be covered or just those deemed "accidental," or only those incidents resulting in injury or death? Or is this matter one that should be left to the transit system to address under its own procedures? In this regard, we seek comment on the existing safety procedures applicable to armed security transit personnel in the event of a discharge of a weapon.

IV. Regulatory Process Matters

A. Executive Order 12688

The FTA evaluated the industry 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 proposed change to the post-accident testing provision would alter the costs and benefits of either part 653 or 654. On the other hand, the exclusion of volunteers from coverage under the rules would 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 proposes 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 proposed changes will not change that analysis.

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 the proposed rules, if adopted.

G. Energy Impact Implications

These proposed regulations 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 proposes to amend 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, or a volunteer who is required by Federal law or regulation to hold a Commercial Driver's License when performing a safety-sensitive function for the employer.

§ 653.45 [Amended]

3. The first sentence of section 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, or a volunteer who is required to hold a Commercial Driver's License under Federal law or regulation when performing a safety-sensitive function for the employer.

§654.33 [Amended]

6. The first sentence of section 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".

Issued on: January 31, 1995.

Gordon J. Linton,

Administrator.

[FR Doc. 95–2732 Filed 2–3–95; 8:45 am] BILLING CODE 4910–57–U