

Safety-sensitive function means any of the following duties, when performed by employees of recipients, subrecipients, operators, or contractors:

(1) Operating a revenue service vehicle, including when not in revenue service;

(2) Operating a nonrevenue service vehicle, when required to be operated by a holder of a Commercial Driver's License;

(3) Controlling dispatch or movement of a revenue service vehicle;

(4) Maintaining (including repairs, overhaul and rebuilding) a revenue service vehicle or equipment used in revenue service. This section does not apply to the following: an employer who receives funding under 49 U.S.C. 5307 or 5309, is in an area less than 200,000 in population, and contracts out such services; or an employer who receives funding under 49 U.S.C. 5311 and contracts out such services;

(5) Carrying a firearm for security purposes.

Vehicle means a bus, electric bus, van, automobile, rail car, trolley car, trolley bus, or vessel. A mass transit vehicle is a vehicle used for mass transportation or for ancillary services.

Violation rate for random alcohol testing means the number of 0.04 and above random alcohol confirmation test results conducted under this part plus the number of refusals of random alcohol tests required by this part, divided by the total number of alcohol random screening tests (including refusals) conducted under this part.

[66 FR 42002, Aug. 9, 2001, as amended at 68 FR 75462, Dec. 31, 2003]

§ 655.5 Stand-down waivers for drug testing.

(a) An employer subject to this part may petition the FTA for a waiver allowing the employer to stand down, per 49 CFR Part 40, an employee following a report of a laboratory confirmed positive drug test or refusal, pending the outcome of the verification process.

(b) Each petition for a waiver must be in writing and include facts and justification to support the waiver. Each petition must satisfy the requirements for obtaining a waiver, as provided in 49 CFR 40.21.

(c) Each petition for a waiver must be submitted to the Office of Safety and Security, Federal Transit Administration, U.S. Department of Transportation, 400 Seventh Street, SW. Washington, DC 20590.

(d) The Administrator may grant a waiver subject to 49 CFR 40.21(d).

§ 655.6 Preemption of state and local laws.

(a) Except as provided in paragraph (b) of this section, this part preempts any state or local law, rule, regulation, or order to the extent that:

(1) Compliance with both the state or local requirement and any requirement in this part is not possible; or

(2) Compliance with the state or local requirement is an obstacle to the accomplishment and execution of any requirement in this part.

(b) This part shall not be construed to preempt provisions of state criminal laws that impose sanctions for reckless conduct attributed to prohibited drug use or alcohol misuse leading to actual loss of life, injury, or damage to property, whether the provisions apply specifically to transportation employees or employers or to the general public.

§ 655.7 Starting date for testing programs.

An employer must have an anti-drug and alcohol misuse testing program in place by the date the employer begins operations.

Subpart B—Program Requirements

§ 655.11 Requirement to establish an anti-drug use and alcohol misuse program.

Each employer shall establish an anti-drug use and alcohol misuse program consistent with the requirements of this part.

§ 655.12 Required elements of an anti-drug use and alcohol misuse program.

An anti-drug use and alcohol misuse program shall include the following:

(a) A statement describing the employer's policy on prohibited drug use and alcohol misuse in the workplace, including the consequences associated with prohibited drug use and alcohol

§ 655.13

49 CFR Ch. VI (10–1–10 Edition)

misuse. This policy statement shall include all of the elements specified in § 655.15. Each employer shall disseminate the policy consistent with the provisions of § 655.16.

(b) An education and training program which meets the requirements of § 655.14.

(c) A testing program, as described in Subparts C and D of this part, which meets the requirements of this part and 49 CFR Part 40.

(d) Procedures for referring a covered employee who has a verified positive drug test result or an alcohol concentration of 0.04 or greater to a Substance Abuse Professional, consistent with 49 CFR Part 40.

§ 655.13 [Reserved]

§ 655.14 Education and training programs.

Each employer shall establish an employee education and training program for all covered employees, including:

(a) *Education.* The education component shall include display and distribution to every covered employee of: informational material and a community service hot-line telephone number for employee assistance, if available.

(b) *Training*—(1) *Covered employees.* Covered employees must receive at least 60 minutes of training on the effects and consequences of prohibited drug use on personal health, safety, and the work environment, and on the signs and symptoms that may indicate prohibited drug use.

(2) *Supervisors.* Supervisors and/or other company officers authorized by the employer to make reasonable suspicion determinations shall receive at least 60 minutes of training on the physical, behavioral, and performance indicators of probable drug use and at least 60 minutes of training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse.

§ 655.15 Policy statement contents.

The local governing board of the employer or operator shall adopt an anti-drug and alcohol misuse policy statement. The statement must be made available to each covered employee, and shall include the following:

(a) The identity of the person, office, branch and/or position designated by the employer to answer employee questions about the employer's anti-drug use and alcohol misuse programs.

(b) The categories of employees who are subject to the provisions of this part.

(c) Specific information concerning the behavior and conduct prohibited by this part.

(d) The specific circumstances under which a covered employee will be tested for prohibited drugs or alcohol misuse under this part.

(e) The procedures that will be used to test for the presence of illegal drugs or alcohol misuse, protect the employee and the integrity of the drug and alcohol testing process, safeguard the validity of the test results, and ensure the test results are attributed to the correct covered employee.

(f) The requirement that a covered employee submit to drug and alcohol testing administered in accordance with this part.

(g) A description of the kind of behavior that constitutes a refusal to take a drug or alcohol test, and a statement that such a refusal constitutes a violation of the employer's policy.

(h) The consequences for a covered employee who has a verified positive drug or a confirmed alcohol test result with an alcohol concentration of 0.04 or greater, or who refuses to submit to a test under this part, including the mandatory requirements that the covered employee be removed immediately from his or her safety-sensitive function and be evaluated by a substance abuse professional, as required by 49 CFR Part 40.

(i) The consequences, as set forth in § 655.35 of subpart D, for a covered employee who is found to have an alcohol concentration of 0.02 or greater but less than 0.04.

(j) The employer shall inform each covered employee if it implements elements of an anti-drug use or alcohol misuse program that are not required by this part. An employer may not impose requirements that are inconsistent with, contrary to, or frustrate the provisions of this part.