

## § 655.5

suburban area, as well as any commuter rail service that was operated by the Consolidated Rail Corporation as of January 1, 1979; and

(ii) High speed ground transportation systems that connect metropolitan areas, without regard to whether they use new technologies not associated with traditional railroads.

(2) Such term does not include rapid transit operations within an urban area that are not connected to the general railroad system of transportation.

*Recipient* means an entity receiving Federal financial assistance under 49 U.S.C. 5307, 5309, or 5311; or under 23 U.S.C. 103(e)(4).

*Refuse to submit* means any circumstance outlined in 49 CFR 40.191 and 40.261.

*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

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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.