

§ 655.4

49 CFR Ch. VI (10–1–07 Edition)

(2) Any contractor of a recipient or subrecipient of Federal assistance under:

- (i) 49 U.S.C. 5307, 5309, or 5311; or
- (ii) 23 U.S.C. 103(e)(4).

(b) A recipient operating a railroad regulated by the Federal Railroad Administration (FRA) shall follow 49 CFR Part 219 and § 655.83 for its railroad operations, and shall follow this part for its non-railroad operations, if any.

(c) A recipient operating a ferryboat regulated by the United States Coast Guard (USCG) that satisfactorily complies with the testing requirements of 46 CFR Parts 4 and 16, and 33 CFR Part 95 shall be in concurrent compliance with the testing requirements of this part. This exception shall not apply to the provisions of section 655.45, or subparts G, or H of this part.

[66 FR 42002, Aug. 9, 2001, as amended at 71 FR 69198, Nov. 30, 2006]

§ 655.4 Definitions.

For this part, the terms listed in this section have the following definitions. The definitions of additional terms used in this part but not listed in this section can be found in 49 CFR Part 40.

Accident means an occurrence associated with the operation of a vehicle, if as a result:

- (1) An individual dies; or
- (2) An individual suffers bodily injury and immediately receives medical treatment away from the scene of the accident; or
- (3) With respect to an occurrence in which the mass transit vehicle involved is a bus, electric bus, van, or automobile, one or more vehicles (including non-FTA funded vehicles) incurs disabling damage as the result of the occurrence and such vehicle or vehicles are transported away from the scene by a tow truck or other vehicle; or
- (4) With respect to an occurrence in which the mass transit vehicle involved is a rail car, trolley car, trolley bus, or vessel, the mass transit vehicle is removed from operation.

Administrator means the Administrator of the Federal Transit Administration or the Administrator's designee.

Anti-drug program means a program to detect and deter the use of prohibited drugs as required by this part.

Certification means a recipient's written statement, authorized by the organization's governing board or other authorizing official that the recipient has complied with the provisions of this part. (See § 655.82 and § 655.83 for certification requirements.)

Contractor means a person or organization that provides a safety-sensitive service for a recipient, subrecipient, employer, or operator consistent with a specific understanding or arrangement. The understanding can be a written contract or an informal arrangement that reflects an ongoing relationship between the parties.

Covered employee means a person, including an applicant or transferee, who performs or will perform a safety-sensitive function for an entity subject to this part. A volunteer is a covered employee if:

- (1) The volunteer is required to hold a commercial driver's license to operate the vehicle; or
- (2) The volunteer performs a safety-sensitive function for an entity subject to this part and receives remuneration in excess of his or her actual expenses incurred while engaged in the volunteer activity.

Disabling damage means damage that precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs.

(1) *Inclusion.* Damage to a motor vehicle, where the vehicle could have been driven, but would have been further damaged if so driven.

(2) *Exclusions.* (i) Damage that can be remedied temporarily at the scene of the accident without special tools or parts.

(ii) Tire disablement without other damage even if no spare tire is available.

(iii) Headlamp or tail light damage.

(iv) Damage to turn signals, horn, or windshield wipers, which makes the vehicle inoperable.

DOT or The Department means the United States Department of Transportation.

DOT agency means an agency (or "operating administration") of the

United States Department of Transportation administering regulations requiring drug and alcohol testing. See 14 CFR part 121, appendices I and J; 33 CFR part 95; 46 CFR parts 4, 5, and 16; and 49 CFR parts 199, 219, 382, and 655.

Employer means a recipient or other entity that provides mass transportation service or which performs a safety-sensitive function for such recipient or other entity. This term includes subrecipients, operators, and contractors.

FTA means the Federal Transit Administration, an agency of the U.S. Department of Transportation.

Performing (a safety-sensitive function) means a covered employee is considered to be performing a safety-sensitive function and includes any period in which he or she is actually performing, ready to perform, or immediately available to perform such functions.

Positive rate for random drug testing means the number of verified positive results for random drug tests conducted under this part plus the number of refusals of random drug tests required by this part, divided by the total number of random drug tests results (*i.e.*, positive, negative, and refusals) under this part.

Railroad means:

(1) All forms of non-highway ground transportation that run on rails or electromagnetic guideways, including:

(i) Commuter or other short-haul rail passenger service in a metropolitan or 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 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.