

defined in 49 CFR part 40) must certify the accuracy and completeness of the MIS report, no matter who prepares it.

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

§ 655.73 Access to facilities and records.

(a) Except as required by law, or expressly authorized or required in this section, no employer may release information pertaining to a covered employee that is contained in records required to be maintained by § 655.71.

(b) A covered employee is entitled, upon written request, to obtain copies of any records pertaining to the covered employee's use of prohibited drugs or misuse of alcohol, including any records pertaining to his or her drug or alcohol tests. The employer shall provide promptly the records requested by the employee. Access to a covered employee's records shall not be contingent upon the employer's receipt of payment for the production of those records.

(c) An employer shall permit access to all facilities utilized and records compiled in complying with the requirements of this part to the Secretary of Transportation or any DOT agency with regulatory authority over the employer or any of its employees or to a State oversight agency authorized to oversee rail fixed guideway systems.

(d) An employer shall disclose data for its drug and alcohol testing programs, and any other information pertaining to the employer's anti-drug and alcohol misuse programs required to be maintained by this part, to the Secretary of Transportation or any DOT agency with regulatory authority over the employer or covered employee or to a State oversight agency authorized to oversee rail fixed guideway systems, upon the Secretary's request or the respective agency's request.

(e) When requested by the National Transportation Safety Board as part of an accident investigation, employers shall disclose information related to the employer's drug or alcohol testing related to the accident under investigation.

(f) Records shall be made available to a subsequent employer upon receipt of

a written request from the covered employee. Subsequent disclosure by the employer is permitted only as expressly authorized by the terms of the covered employee's request.

(g) An employer may disclose information required to be maintained under this part pertaining to a covered employee to the employee or the decisionmaker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual, and arising from the results of a drug or alcohol test under this part (including, but not limited to, a worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the covered employee.)

(h) An employer shall release information regarding a covered employee's record as directed by the specific, written consent of the employee authorizing release of the information to an identified person.

(i) An employer may disclose drug and alcohol testing information required to be maintained under this part, pertaining to a covered employee, to the State oversight agency or grantee required to certify to FTA compliance with the drug and alcohol testing procedures of 49 CFR parts 40 and 655.

§§ 655.74–655.80 [Reserved]

Subpart I—Certifying Compliance

§ 655.81 Grantee oversight responsibility.

A grantee shall ensure that the recipients of funds under 49 U.S.C. 5307, 5309, 5311 or 23 U.S.C. 103(e)(4) comply with this part.

§ 655.82 Compliance as a condition of financial assistance.

(a) *General.* A recipient may not be eligible for Federal financial assistance under 49 U.S.C. 5307, 5309, or 5311 or under 23 U.S.C. 103(e)(4), if a recipient fails to establish and implement an anti-drug and alcohol misuse program as required by this part. Failure to certify compliance with these requirements, as specified in § 655.83, may result in the suspension of a grantee's eligibility for Federal funding.

(b) *Criminal violation.* A recipient is subject to criminal sanctions and fines

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for false statements or misrepresentations under 18 U.S.C. 1001.

(c) *State's role.* Each State shall certify compliance on behalf of its 49 U.S.C. 5307, 5309, 5311 or 23 U.S.C. 103(e)(4) subrecipients, as applicable. In so certifying, the State shall ensure that each subrecipient is complying with the requirements of this part. A section 5307, 5309, 5311 or 103(e)(4) subrecipient, through the administering State, is subject to suspension of funding from the State if such subrecipient is not in compliance with this part.

§ 655.83 Requirement to certify compliance.

(a) A recipient of FTA financial assistance shall annually certify compliance, as set forth in §655.82, to the applicable FTA Regional Office.

(b) A certification must be authorized by the organization's governing board or other authorizing official, and must be signed by a party specifically authorized to do so.

(c) A recipient will be ineligible for further FTA financial assistance if the recipient fails to establish and implement an anti-drug and alcohol misuse program in accordance with this part.

(d) FTA may determine that a recipient, who fails to comply with the USCG chemical and alcohol testing requirements, shall be in noncompliance with the alcohol misuse and controlled substances testing requirements of this part. A finding of noncompliance by FTA may lead to the suspension of eligibility for Federal public transportation funding.

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

PART 659—RAIL FIXED GUIDEWAY SYSTEMS; STATE SAFETY OVERSIGHT

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AUTHORITY: 49 U.S.C. 5330.

SOURCE: 70 FR 22578, Apr. 29, 2005, unless otherwise noted.

Subpart A—General Provisions

§ 659.1 Purpose.

This part implements 49 U.S.C. 5330 by requiring a state to oversee the safety and security of rail fixed guideway systems through a designated oversight agency.

§ 659.3 Scope.

This part applies only to states with rail fixed guideway systems, as defined in this part.

§ 659.5 Definitions.

Contractor means an entity that performs tasks required on behalf of the oversight or rail transit agency. The rail transit agency may not be a contractor for the oversight agency.

Corrective action plan means a plan developed by the rail transit agency that describes the actions the rail transit agency will take to minimize, control, correct, or eliminate hazards, and the schedule for implementing those actions.

FRA means the Federal Railroad Administration, an agency within the U.S. Department of Transportation.