

accordance with operator/employee agreements and employer policies.

(e)(1) The provisions of this paragraph (e) apply if the policy of the operator permits reinstatement of an employee who has violated the provisions of this subpart.

(2) The operator shall designate a substance abuse professional to evaluate—

(i) The needs of the employee with respect to rehabilitation services such as counseling or treatment; and

(ii) Where rehabilitation services are required, the progress of the employee in establishing control over any substance abuse disorder before return to a safety-sensitive function. In deciding whether and under what conditions the employee is able to return to a safety-sensitive function, the substance abuse professional acts as the agent of the operator.

(3) At the operator's discretion, the designated substance abuse professional may be a salaried employee (e.g., an employee assistance counselor), a contractor, or a member of the staff of an otherwise unaffiliated health care provider.

(4) Nothing in this subpart shall be construed to determine the responsibility of the operator, employee, health insurance carrier or other person to bear the costs of substances abuse evaluation or rehabilitation services. Nothing in this subpart shall be construed to abridge existing agreements or policies with respect to payment or reimbursement of such costs.

§ 199.247 Contractor employee.

(a) With respect to those covered employees who are contractors or employed by a contractor, an operator may provide by contract that the alcohol testing, training and education required by this subpart be carried out by the contractor provided:

(b) The operator remains responsible for ensuring that the requirements of this subpart and part 40 of this title are complied with; and

(c) The contractor allows access to property and records by the operator, the Administrator, DOT agency with regulatory authority over the operator or covered employee, and if the operator is subject to the jurisdiction of a state agency, a representative of the state agency for the purposes of monitoring the employer's compliance with the requirements of this subpart and part 40 of this title.

Issued in Washington, DC, on December 2, 1992.

Andrew H. Card, Jr.,
Secretary of Transportation.

Douglas B. Ham,
Acting Administrator, Research and Special Programs Administration.

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Research and Special Programs Administration

49 CFR Part 199

[Docket No. PS-129; Notice No. 1]

RIN 2137-AB95

Drug Testing: MIS Standardized Data Collection and Reporting

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: Today's Federal Register contains a notice of proposed rulemaking issued by the Department of Transportation regarding the collection and reporting of drug and alcohol testing data. The Department's proposed rule concerns a DOT plan to measure the effectiveness of drug testing programs in all DOT-regulated modes of transportation, including pipeline. The present RSPA notice proposes a rule that is necessary to carry out the DOT plan with respect to pipeline operators. Together, the two proposed rules would require pipeline operators who are subject to drug and alcohol testing requirements to report annually to RSPA certain information about their drug and alcohol testing programs. RSPA would use the data to analyze its current approach to deterring and detecting illegal drug and alcohol misuse use in the pipeline industry, and, as appropriate, plan a more efficient and effective approach.

Elsewhere in today's Federal Register is the parallel "MIS" NPRM regarding 49 CFR part 40. The preamble to that NPRM contains many comments, discussions and questions that should be considered in reviewing this Operating Administration NPRM. Your comments on this NPRM should indicate that you are responding to questions or comments in the generic NPRM under 49 CFR part 40 or the specific NPRM under this Operating Administration rule.

DATES: Comments should be received by April 14, 1993. Late-filed comments will be considered to the extent practicable. Comments on the Secretary's notice

appearing elsewhere in today's Federal Register should be submitted as directed by that notice.

ADDRESSES: Send comments on this notice in duplicate to the Dockets Unit, room 8421, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001. Identify the docket and notice numbers stated in the heading of this notice. All comments and other docketed material will be available for inspection and copying in room 8421 between the hours of 8:30 a.m. and 5 p.m. each working day.

FOR FURTHER INFORMATION CONTACT: Mr. Richard L. Rippert, Office of Pipeline Safety Enforcement, RSPA, DOT, 400 7th Street, SW., Washington, DC 20590-0001 (202) 366-6223.

SUPPLEMENTARY INFORMATION:

Background

On November 21, 1988, RSPA published final drug testing rules (53 FR 47064). The rules are codified in 49 CFR part 199. These rules require each operator of pipelines or liquefied natural gas facilities used in the transportation of gas subject to 49 CFR part 192 or 193 (except master meter systems) or the transportation of hazardous liquids subject to 49 CFR part 195 to implement a drug testing program for specific categories of employees. The programs apply to employees that perform operation, maintenance, or emergency-response functions on pipelines or liquefied natural gas facilities.

DOT's Office of Drug Enforcement and Program Compliance oversees drug policies and programs for the Secretary of Transportation. That office created a working group with representatives from the operating administrations to develop a comprehensive plan for a Management Information System (MIS) to obtain and analyze employer drug and alcohol testing data. Two of the operating administrations currently have reporting requirements in their regulations. The MIS system is designed to measure the effectiveness of the drug and alcohol testing programs in each mode of transportation. The MIS plan identified standard data elements that are critical to the review and management of the RSPA drug and alcohol program. The data would be the basis for monitoring implementation and addressing compliance and enforcement issues and evaluating the overall effectiveness of the operators' drug and alcohol testing programs.

To begin the administrative process necessary to collect these data, the

Department of Transportation has issued a notice of proposed rulemaking. The notice is published in today's *Federal Register* as a proposed amendment to the regulations of the Office of the Secretary. The Department's notice proposes to add an information collection requirement to 49 CFR part 40, as § 40.41. Under the Department's proposed rule, pipeline operators subject to part 199 would have to submit certain drug and alcohol testing data to RSPA annually in accordance with a rule we are proposing in the present notice. Operators would maintain data on a calendar-year basis (closing date of December 31) and the report would be required to be submitted to RSPA by February 15 of the following year. The report would be required to contain certain data elements that are outlined under the proposed § 40.41 in the Department's notice.

Operators with employees who fall under two or more DOT agency regulations requiring drug testing must submit data to each agency for those employees covered by that agency rule. Employees who perform functions covered by more than one agency should be identified by the operator as to which covered function they will be reported under. Drug and alcohol testing data on dual covered employees should be reported to RSPA and any other appropriate agency.

As set forth below, we are proposing to revise § 199.23, concerning recordkeeping, and add a new § 199.25 to part 199 to implement the Department's proposed information collection requirements. Although the proposed § 40.41 allows RSPA to amend the reporting form to collect additional or modified data, RSPA is not proposing to deviate from DOT's format at this time. RSPA is proposing further instructions for two items on the form that would apply to pipeline operators when submitting their drug and alcohol testing data. RSPA has provided a sample report format as an appendix, which is RSPA specific, in the NPRM.

If the Department's proposed amendment to part 40 becomes final, it would require pipeline operators to submit data regarding the testing of certain contractors or contractor personnel. Many contractors conduct their own drug and alcohol testing programs or participate in drug testing consortia. RSPA is concerned about any potential difficulties in collecting information from contractors or consortia. Do pipeline operators foresee any difficulties in collecting the appropriate information on contractor employees or from consortia covering

contractor employees, in order to comply with the proposed regulations? RSPA is considering whether to defer for the first year the requirement that pipeline operators report information on contractor employees regarding their drug and alcohol testing results. RSPA is concerned about multiple reports of identical information from contractors being submitted by the various pipeline operators for whom the contractor may perform services covered under the regulations. Would these difficulties, if any, create a hardship in meeting the proposed rule or the expected compliance deadline of February 15, 1994, with respect to contractors or consortia?

In accordance with § 199.1(a), part 199 does not apply to master meter systems. However, part 199 applies to operators of petroleum gas systems to which part 192 applies (See § 192.11). Many operators of petroleum gas systems operate more than one such system or the operators are small entities. Do operators of petroleum gas systems, subject to part 199, foresee any difficulties in their operations that may hinder compliance with the proposed rule? In accordance with Section 211 of the Pipeline Safety Reauthorization Act of 1988 (Pub. L. 100-561), RSPA has recently extended the part 195 regulations to cover certain high pressure pipelines used in the transportation of carbon dioxide (56 FR 26922; June 12, 1991). Those pipeline operators will have to implement a drug and alcohol testing program under part 199. Therefore, these operators are affected by the final rule to collect data about operator drug and alcohol testing programs. Do carbon dioxide pipeline operators foresee any difficulties in their operations that may hinder their compliance with this rule?

RSPA is proposing to revise some of the recordkeeping requirements contained in § 199.23(a)(2) to avoid duplicative information collection requirements. Section 199.23(a)(2) requires operators to keep certain records on employees who failed a drug test, including the type of test failed and records that demonstrate rehabilitation, if any. The required information includes (i) The functions performed by the employee, (ii) The prohibited drug(s) used, (iii) Disposition of the employee, and (iv) The age of the employee. The new MIS Annual Reporting System in 49 CFR 40.41 would require operators to maintain and report the information currently required in items (i)-(iii), as well as the type of test failed. RSPA is proposing to eliminate from recordkeeping or reporting requirements the fourth item,

concerning the age of each employee who failed a drug test. RSPA does not believe this is an essential data element.

Regulatory Analyses and Notices

E.O. 12291 and DOT Regulatory Policies and Procedures

The proposed rule is not major under Executive Order 12291 (46 FR 13193; February 19, 1981). It is significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). The rule proposed by this notice merely implements an amendment the Department is proposing to part 40. The Department has concluded that the proposed amendment to part 40 would cause minimal change in the existing compliance burden and cost of the anti-drug programs affected by the amendment. Therefore, we have not further evaluated the costs and benefits of this proposed rule.

Paperwork Reduction Act

This notice proposes new information collection requirements. These requirements will be submitted to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act of 1980 (44 U.S.C. Chap. 35) and 5 CFR part 1320. RSPA estimates the reporting burden for the collection requirement will average 5½ hours per operator for drug testing data and approximately 4 hours for alcohol testing data. This estimate includes time for reviewing instructions, searching existing records, and completing and reviewing the collection of information.

Comments regarding this burden estimate or any other aspect of this information collection requirement, including suggestions for reducing this burden, should be sent to Desk Officer, Research and Special Programs Administration, Office of Information and Regulatory Affairs, Office of Management and Budget, 728 Jackson Place, NW., Washington, DC 20503. Persons submitting comments to OMB are requested to submit a copy of their comments to RSPA as stated above under the ADDRESSES section of this preamble.

Regulatory Flexibility Act

The proposed rule affects all entities subject to part 192 (other than operators of master meter systems), 193, or 195, and operators of carbon dioxide pipelines covered by Docket PS-112. Operators of master meter systems constitute the bulk of small businesses or other small entities that operate gas pipeline systems subject to part 192. There are few, if any, small entities that

operate hazardous liquid or carbon dioxide pipelines subject to part 195, or LNG facilities subject to part 193. Therefore, I certify under Section 605 of the Regulatory Flexibility Act (5 U.S.C. 605) that this proposed rule would not, if adopted as final, have a significant economic impact on a substantial number of small entities.

Executive Order 12612

The proposed rulemaking action would not have substantial direct effects on states, on the relationship between the Federal Government and the states, or on the distribution of power and responsibilities among the various levels of Government. Therefore, in accordance with Executive Order 12612 (52 FR 41685; October 30, 1987), RSPA has determined that this notice does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 99

Pipeline safety, Drug testing, Recordkeeping and reporting.

In consideration of the foregoing, RSPA proposes to amend 49 CFR part 199 as follows:

PART 199—DRUG AND ALCOHOL TESTING—MANAGEMENT INFORMATION SYSTEM REPORTING

1. The authority citation for part 199 is revised to read as follows:

Authority: 49 App. U.S.C. 1672, 1674a, 1681, 1804, 1808, and 2002; 49 CFR 1.53.

2. § 199.23 would be amended by revising paragraph (a)(2) to read as follows:

§ 199.23 Recordkeeping.

(a) * * *

(2) Records of employee drug and alcohol test results that show employees failed a test and records that demonstrate rehabilitation, if any, must be kept for at least 5 years.

* * * * *

3. Section 199.25 would be added to read as follows:

§ 199.25 Annual drug and alcohol testing report.

(a) Each operator shall submit, not later than February 15, a report of its drug and alcohol testing program for the previous calendar year.

(b) Each report must be made to the Information Resources Manager for

Pipeline Safety, Research and Special Programs Administration, Department of Transportation, room 8417, 400 Seventh Street, SW., Washington, DC 20590.

(c) *Instructions.* The following instructions for completion of the report form are in addition to those in § 40.41 of this chapter:

(1) In part A of the report form under "company name," each operator shall state the primary nature of its operations as either gas gathering, gas transmission, gas distribution, transportation of hazardous liquid, or transportation of carbon dioxide.

(2) In part B of the report form, each operator shall report only information on the following employee categories: Operation, maintenance, and emergency-response. If an employee can be assigned to more than one category (e.g., a maintenance worker also responds to emergencies), report the information according to the employee's primary duties.

4. Part 199 is amended by adding Appendix B to read as follows:

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