

DEPARTMENT OF TRANSPORTATION**Research and Special Programs Administration****49 CFR Part 199**

[Docket No. PS-128, Amdt. No. 199-9]

RIN 2137-AC21

Alcohol Misuse Prevention Program

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

ACTION: Final rule.

SUMMARY: This final rule sets forth regulations requiring operators of gas, hazardous liquid and carbon dioxide pipelines and liquefied natural gas (LNG) facilities subject to the pipeline safety regulations to implement alcohol misuse prevention programs for employees who perform safety-sensitive functions. This final rule is consistent with the alcohol rules of other operating administrations (OAs) published elsewhere in today's *Federal Register*, except that RSPA is not requiring pre-employment or random testing. The final rule requires only post-accident, reasonable suspicion, return-to-duty, and follow-up testing. This rule requires operators to remove from safety-sensitive functions employees who engage in prohibited alcohol conduct, and not permit them to return to those functions until specific requirements are met. Operators must provide covered employees with written materials that specifically identify the employees covered by the rule, explain the requirements of the rule, and establish the consequences of engaging in prohibited conduct. Operators must maintain records concerning their programs and report data regarding employee alcohol misuse to RSPA annually. The rules are intended to ensure an alcohol-free workplace, and increase the overall safety of pipeline operations.

EFFECTIVE DATE: This rule is effective March 17, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Richard L. Rippert, Office of Pipeline Safety Compliance, RSPA, DOT, 400 Seventh Street, SW., Washington, DC 20590-0001 (202 366-6223); or the RSPA Dockets Unit, (202) 366-4453, for copies of this final rule or other material in the docket.

SUPPLEMENTARY INFORMATION:**Background**

On December 15, 1992, RSPA published a notice of proposed rulemaking (NPRM) (57 FR 59712) to require pipeline operators of gas,

hazardous liquid and carbon dioxide pipelines and liquefied natural gas (LNG) facilities, who are subject to 49 CFR part 192, 193, or 195, to implement alcohol misuse prevention programs for employees who perform certain covered functions. The NPRM proposed to exempt from the alcohol rules operators of "master meter systems" and "liquefied petroleum gas" (LPG) operators.

The comment period on the NPRM closed on April 14, 1993, and all comments received were considered, including the testimony of 16 individuals who presented statements at the three public hearings held on February 26, 1993, in Washington, DC; on March 2, 1993, in Chicago, Illinois; and on March 5, 1993, in San Francisco, California. RSPA received written comments from 108 persons including 75 pipeline operators, eight pipeline industry associations, seven individuals, five labor unions, four state agencies, three contractors, two consortiums, two vendors, one law firm and one Federal agency. All written comments, as well as the hearing transcripts and any statements or other materials submitted at the hearings, have been placed in the docket.

OST Common Preamble

As part of the DOT-wide alcohol misuse prevention rulemaking effort DOT issued a common preamble to all of the related NPRMs that were published on December 15, 1993 (57 FR 59382, *et seq.*). The common preamble precedes this document in today's *Federal Register* and should be read first to ensure a complete understanding of today's substantive final rule. This common preamble contains a thorough discussion of the comments submitted to the DOT alcohol docket and responds to comments submitted to the various DOT agency dockets that raised multimodal aspects of the final rules or the Act.

Discussion of Comments**Authority for RSPA Regulation of Alcohol Misuse.**

The majority of the commenters strongly objected to the mandatory imposition of alcohol misuse regulations, as proposed for the pipeline industry. They contended that: (1) Alcohol testing of pipeline operators is not required under the provisions of the Omnibus Transportation Employee Testing Act of 1991 (Omnibus Act); (2) the pipeline industry has an excellent safety record; (3) RSPA lacks a factual basis or statistical data that would support a finding of any alcohol-related

pipeline accidents; and (4) the proposed alcohol regulations would violate the Fourth Amendment of the Constitution. However, some commenters expressed support for inclusion of a limited alcohol testing program consisting of post-accident and reasonable suspicion testing elements and support for development of a "pilot or demonstration" alcohol program to be conducted by RSPA and various pipeline industry associations. The pilot program would be implemented by operators to develop statistical data which would support the need for an extensive alcohol testing program or data that would indicate implementation of a limited alcohol misuse prevention program was more feasible for the entire industry.

Most commenters opposed the proposed alcohol program, or suggested modifications to tailor the program to the needs of the pipeline industry. Several commenters noted that the pipeline industry is not covered by the Omnibus Act. Commenters stated that there is no indication that there is an alcohol problem in the pipeline industry, and thus there is no justification for imposing Federal regulation. Commenters also stated that pipelines pose different safety risks than other forms of public transportation because they do not carry passengers.

RSPA Response. RSPA is today issuing a final rule on alcohol testing based on its own existing statutory authority to promote safety and to ensure general application of DOT's alcohol misuse regulations to all employees performing safety-sensitive functions in the transportation industries. The two statutes under which RSPA administers the pipeline safety program are the Natural Gas Pipeline Safety Act of 1968, as amended (49 App. U.S.C. 1671 *et seq.*) and the Hazardous Liquid Pipeline Safety Act of 1979, as amended (49 App. U.S.C. 2001 *et seq.*). The broad safety authority in these statutes is applicable to various aspects of pipeline facilities, including "design, installation, inspection, emergency plans and procedures, testing, construction, extension, operation, replacement, and maintenance of pipeline facilities." 49 App. U.S.C. 1672 and 2002. Under this authority, RSPA can promulgate regulations where those regulations would enhance pipeline safety.

The lack of data cited by some commenters could be the result of a lack of testing and industry alcohol prevention programs rather than the absence of an alcohol problem in the pipeline industry. Alcohol misuse is a problem in society generally, and it is

reasonable to expect that the pipeline industry is not immune to the problem of alcohol misuse. As noted in the preamble to the NPRM, RSPA's drug rule was upheld even though there was no evidence of a particularized drug problem in the pipeline industry. *International Brotherhood of Electrical Workers v. Skinner*, 913 F.2d 1454 (9th Cir. 1990). Pipeline safety is very important, and operator error can contribute to accidents and incidents involving release of hazardous materials. Although pipelines do not carry people, they do transport very dangerous materials that, if released, can pose a serious threat to public safety, property, and the environment. Therefore, for safety reasons, we have decided to issue this final rule. Although the pipeline industry is not covered by the Omnibus Act, in order to provide a margin of safety in the pipeline industry, this final rule establishes a limited alcohol misuse prevention program. This program includes education, training, prohibitions on certain alcohol-related conduct, and post-accident, reasonable suspicion, return-to-duty, and follow-up testing. To balance our safety concerns with the cost to industry and the lack of evidence of a pipeline alcohol problem, we are not requiring random or pre-employment testing. With the exception of those two types of testing, this final rule is generally consistent with the rules of the other OAs. Such other alterations as are necessary to meet the special circumstances of the pipeline industry have been incorporated into the final rule. We will monitor the data we receive from post-accident and reasonable cause tests to determine if further action is warranted. This final rule will ensure that pipeline employees are subject to the same alcohol prohibitions, consequences, and educational efforts that apply to other transportation workers. Pipeline operators may conduct other types of alcohol testing if they have independent authority to do so.

Constitutional issues and comments on issues common to all of the OAs are addressed in detail in the common preamble to the OA alcohol rules, published elsewhere in today's *Federal Register*.

Applicability and Scope. Several commenters, including the American Gas Association, opposed application of the proposed rule to natural gas transmission and distribution companies. Some commenters indicated that the definition of "safety-sensitive function" and "performing a safety-sensitive function" are too broad and unclear. Other commenters stated that

the definition of "covered employee" should include only persons actually employed by an operator, and should not include applicants for employment. Some operators indicated that RSPA should clarify if the alcohol testing regulations are to be a free-standing program separate and distinct from the drug testing program or whether alcohol testing could be integrated with the existing drug testing program. They also pointed out that having different alcohol regulations for each of the OAs may create an administrative burden in complying with the various final rules.

RSPA Response. The NPRM proposed to include essentially the same classes of operators and covered functions as are subject to the anti-drug rule. This rule is adopting as final the NPRM proposal that operators of gas, hazardous liquid and carbon dioxide pipelines, and LNG facilities, who are subject to 49 CFR part 192, 193, or 195, implement alcohol misuse prevention programs for covered employees who perform certain functions covered by the pipeline safety regulations. Persons who perform regulated operation, maintenance, and emergency response functions for operators of these pipelines and facilities directly affect transportation safety. The final rule does not apply, however, to operators of master meter systems or LPG operators. The terms "covered functions" and "safety-sensitive functions" as used here and in the common preamble are synonymous and refer to the performance of an operation, maintenance, or emergency-response function performed on a pipeline or an LNG facility. The term "safety-sensitive function" is used in the Omnibus Transportation Employee Testing Act to describe functions which employees perform.

Operators may combine their RSPA drug and alcohol programs. This final rule is consistent with the other OA rules in order to minimize, to the extent possible, any compliance burden for operators subject to the rules of more than one OA. Because RSPA is not imposing pre-employment testing, the definition of a "covered employee" does not include an applicant for employment.

In the NPRM, RSPA solicited comment on five issues regarding implementation of the proposed alcohol regulations. The questions and comments are summarized below:

1. Are there covered functions the performance of which appears to sufficiently implicate safety to warrant regulating alcohol-related conduct and imposition of a testing requirement?

Several commenters indicated support for requiring only post-accident and reasonable suspicion testing to be mandated by RSPA. Many commenters indicated that pre-employment, random, and return-to-duty were costly and unnecessary as proposed in the NPRM. The commenters supported the current definition of "employee" in the drug testing regulations, and stated that the definition should not be expanded. RSPA agrees that the proposed definition of "employee" is adequate and has not expanded it. As discussed above, the final rule does not require either pre-employment or random testing.

2. Do pipeline operators have any data on the size of the population that would be affected and the incidence of alcohol misuse by this population?

Many operators stated they currently have company-mandated alcohol testing policies in place. These provisions cover testing in post-accident and reasonable suspicion situations. Some commenters indicated zero incidence of alcohol misuse. During the development of the drug testing regulations, many commenters suggested that RSPA include alcohol testing as a tested substance in any required testing program. They also pointed out that alcohol is probably the substance most abused by the public. As discussed above, the lack of data in the pipeline industry does not mean that there is not a problem with alcohol misuse. Therefore, RSPA is requiring a limited alcohol misuse program for the pipeline industry.

3. What additional costs would be incurred by inclusion of other functions and what would be the offsetting benefits (e.g., in terms of accident prevention, productivity, employee lost time)?

Many commenters agreed that increasing the scope of covered employees, especially if random testing were implemented, would substantially increase the costs associated with the regulations. Administrative costs and employee lost time would be increased. Furthermore, inconsistencies develop if alcohol regulations are implemented and differences in scope of coverage between the drug and alcohol testing programs were to occur. This would lead to drug and alcohol testing programs covering different employees. Therefore, the final alcohol rule applies to the same covered functions as the drug rule.

4. Does the industry or public have any information on alcohol-related accidents?

Many commenters argued that RSPA, DOT and the National Transportation

Safety Board (NTSB) have no statistical data to support alcohol-related accidents. Some commenters believe that in the absence of a comprehensive factual analysis, it is unreasonable to conclude that all the proposed types of federally-mandated alcohol testing should be required in the pipeline industry. As discussed above, RSPA has carefully evaluated all facets of the alcohol testing regulations including the required types of testing, categories of covered employees, costs associated with implementation of a testing program and the societal benefits. RSPA has determined that implementation of a limited alcohol testing program is appropriate.

5. Are there other ways that RSPA could reduce the burden on small operators?

Many commenters believe that a limited program such as post-accident and reasonable suspicion testing could be effectively implemented and would not adversely affect the numerous small gas operators. They suggested that allowing the use of non-evidential breath testing devices for screening would lower the overall costs of the entire program. Several commenters suggested that operators with less than 50 employees be excluded from the requirements of alcohol testing. To reduce the burden on small entities, the final rule exempts master meter operators and LPG operators. For all other operators, the final rule eliminates the requirement for random and pre-employment testing. In addition, RSPA has determined that small operators (50 or fewer covered employees) should be excluded from the annual submission of an alcohol MIS report to lessen the burden. RSPA will periodically conduct a sampling of the small operators alcohol programs. Discussion of alternatives for testing methods devices is contained in the common preamble published elsewhere in today's *Federal Register*. Although DOT is not permitting the use of non-evidential breath testing devices, the final rule permits the use for screening of certain evidential devices that are less costly and in the future will allow use of other devices (for screening) that we approve as meeting DOT criteria.

Reasonable Suspicion Testing

Many commenters indicated they were frustrated by use of the phrase "reasonable suspicion" for alcohol testing when the term "reasonable cause" is used in the drug testing regulations. Some commenters supported the NPRM proposal that a supervisor who makes the determination that reasonable suspicion

exists to test a covered employee shall not conduct the breath alcohol test on that employee, if another supervisor is readily available. Other commenters indicated that alcohol testing should not be conducted by supervisors, but should be handled by the operator's contract collectors.

RSPA Response. RSPA considers the two terms to be synonymous. The term "reasonable suspicion" is used in the Omnibus Act, and for consistency with other OA alcohol rules, this final rule uses the term "reasonable suspicion." RSPA will consider amending the drug rules to adopt the same terminology. RSPA is concerned about the potential for abuse and harassment of an employee, if the same supervisor who makes the determination that reasonable suspicion exists also conducts the breath test on the employee. Therefore, RSPA has revised this provision to stipulate that the supervisor who makes the determination that reasonable suspicion exists shall not conduct the breath alcohol test on that employee.

Pre-Duty Use

The NPRM proposed to require each operator to prohibit a covered employee from using alcohol within four hours prior to performing safety-sensitive functions. The final rule adopts an amended provision that prohibits using alcohol within four hours prior to performing covered functions, or within the period of time after an employee has been notified to report to duty to respond to an emergency. In the pipeline industry, an operator commonly has only a limited number of employees or a single employee qualified and available to respond in an emergency situation. In such a case, an employee may be in an unofficial "on-call" status. For example, an employee who finished work for the day and returned home, had a beer at 6 p.m., and was called at 8 p.m. to respond to an emergency, would be prohibited from using alcohol from 8 p.m. until completion of the safety-sensitive duties. This provision is intended to be used only for emergency situations where an operator has no other recourse. Even in an emergency situation, however, if an operator notifies an employee to report, and the operator believes the employee cannot perform because he or she is impaired by alcohol, the operator should not permit the employee to perform safety-sensitive functions.

Alcohol Plans

The NPRM proposed to require operators to develop, maintain, and follow a written alcohol misuse

prevention plan. This type of plan proved beneficial in assisting the industry in establishing anti-drug testing programs and educating the industry about the requirements of the drug rule. RSPA requested operators to provide specific comments on whether a model drug and alcohol plan would be beneficial to employers to standardize the requirements of the rules and assist in compliance issues. A number of commenters were in favor of RSPA developing guidance material for use by operators. Commenters stated that guidance materials would aid the operators in the development of a written alcohol misuse prevention plan addressing the requirements contained in the RSPA final rule and part 40. Commenters, however, indicated that such guidance material should not be used as an enforcement tool in limiting an operator's plan to the same language contained in the guidance materials.

RSPA Response. RSPA is developing guidance materials for operators, to assist them in implementing alcohol misuse prevention plans, that we plan to publish prior to implementation of the regulations. The guidance materials could be used by operators and contractors that provide services to operators subject to the regulations. RSPA does not intend for the guidance materials to limit an operator's ability to provide more detail for its employees. The guidance material for alcohol would be added to the existing drug testing guidance material for ease of reference.

Management Information System (MIS) Report

The NPRM proposed to require operators to report alcohol statistical information, as an essential tool for monitoring compliance with the rule. Many commenters were opposed to one or more of the reporting elements proposed in the NPRM. Comments submitted by Exxon and the Interstate Natural Gas Association of America addressed several areas of the form that they contended would present an undue burden in the collection and reporting of data. These comments included objections to the data on employee categories; dual coverage and reporting for employees covered by other DOT agencies; and the requirement to submit annual reports no later than February 15th. Some operators objected to the size and complexity of the report format and the numerous detailed instructions required to complete the form. One consortium indicated that costs of designing software and integrating this type of informational software into the current drug management programs

would be immense. Another consortium, which represents numerous small operators and municipalities, suggested that consortia should be allowed to report on behalf of the companies they serve, thus reducing the paperwork required. Many operators provided suggested changes and modifications to reduce the recordkeeping and reporting burden.

RSPA Response. This final rule requires the submission of annual statistical data on each operator's alcohol misuse prevention program. To reduce the burden on small operators (those with 50 or fewer covered employees), those operators are not required to submit annual reports. Small operators are required to keep records and submit to RSPA, upon written request, reports on their alcohol programs. To reduce the reporting burden on operators who have no verified positive test results, RSPA has limited the information to be provided and has developed a simplified "EZ Form" for submitting their reports. In addition, operators are not required to report alcohol testing data for contractors and their employees. Operators, however, are required to keep records on contractor data and make the records available for inspection. To simplify reporting, RSPA has eliminated the requirement to report data on covered employees by function. RSPA has incorporated these amendments into the final alcohol MIS report forms, which appear as exhibits A and B immediately following the rule text in this Federal Register. RSPA has determined that while the alcohol testing data elements are properly a matter of regulation, the format in which the data are reported should remain within the discretion of the Administrator. This will enable RSPA to make any revisions to the format that become necessary without undertaking additional rulemaking. Because RSPA does not have regulatory authority over consortia, the final rule requires operators to submit MIS reports. An operator may make arrangements with a consortium to provide data to the operator in whatever format the operator desires, but the responsibility for submitting drug and alcohol MIS reports to RSPA remains with the operator.

Contractor Compliance

The NPRM proposed that contractor employees should be included in the group of employees that must undergo alcohol misuse testing because their job performance is no less critical than the performance of employees who work directly for operators. RSPA proposed limiting the employees, including

contractors, covered by the alcohol misuse rule to those who perform operation, maintenance, or emergency-response functions, on the pipeline or LNG facility, that are regulated under part 192, 193, or 195. Seven commenters indicated that RSPA should exclude contractor employees from the definition of "employee." Some commenters suggested that RSPA should be responsible for ensuring that contractor employees are in compliance with parts 40 and 199.

RSPA Response. RSPA believes that contractor employees must be included in the group of employees subject to the alcohol misuse provisions. The performance of safety-sensitive functions by contract employees is no less critical than the performance of the employees who work directly for operators.

Advisory Committee Reviews

Section 4(b) of the Natural Gas Pipeline Safety Act of 1968, as amended (49 U.S.C. 1673(b)), and section 204(b) of the Hazardous Liquid Pipeline Safety Act of 1979, as amended (Pub. L. 97-468, January 14, 1983), each provide that proposed amendments to safety standards established under the statutes be submitted to the pipeline advisory committees for consideration. Of the 14 ballots received, 12 were in favor of implementing an alcohol misuse prevention program and 2 were opposed. The advisory members comments indicate they are generally in favor of an alcohol testing prevention program for the pipeline industry which has limited testing provisions (post-accident and reasonable suspicion) such as those discussed in this final rule.

In January 1993, copies of the NPRM were mailed to each member of the Technical Pipeline Safety Standards Committee and the Technical Hazardous Liquid Pipeline Safety Standards Committee. On November 29, 1993, RSPA mailed additional copies of the NPRM to each member, and requested that the committees vote by mail on the proposals in the NPRM, and provide any additional comments.

Regulatory Analyses and Notices

E.O. 12866 and DOT Regulatory Policies and Procedures

The final rule is a significant regulatory action under Executive Order 12866, and has been reviewed under that order. It is significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) because it is of substantial public interest. A regulatory evaluation is available for review in the docket. RSPA has

evaluated the industry-wide costs and benefits relating to the implementation of the alcohol misuse prevention program for pipeline operators. RSPA has calculated the total cost of this program for the first year to be \$1,876,270. The exclusion of pre-employment and random testing from the final rule has provided a substantial reduction in the total cost of the alcohol program. We have projected yearly program costs of \$186,407, with a slight increase every third year to allow for major equipment overhaul which would project a total program cost of \$258,907. The total 10-year program costs are estimated to be \$3,806,745. The total 10-year discounted costs are projected to be \$3,270,684 (uses net present value at 7%).

RSPA believes that major cost benefits will accrue from this rule, including the prevention of potential injuries, fatalities and property losses resulting from accidents attributed to alcohol misuse, and improved worker productivity and estimates the savings to be \$15,344,000.

Paperwork Reduction Act

The final rule sets forth new alcohol misuse prevention program requirements and includes information collection requirements subject to the Paperwork Reduction Act. These requirements have been submitted to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) and 5 CFR Part 1320. Information collection requirements are not effective until Paperwork Reduction Act clearance has been received.

Regulatory Flexibility Act

The final rule affects all entities subject to part 192, 193, or 195, except operators of master meter systems and liquefied petroleum gas (LPG) operators, which are exempt. Master meter systems and LPG operators 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.) that this final rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612

This regulation will 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 regulation does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 199

Alcohol testing, Drug testing, Pipeline safety, Recordkeeping and reporting.

In consideration of the foregoing, RSPA is amending 49 CFR part 199 as follows:

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

PART 199—DRUG AND ALCOHOL TESTING

2. The authority citation for part 199 continues to read as follows:

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

3. Sections 199.1 through 199.25 are designated as subpart A, and subpart B is added to read as follows:

Subpart B—Alcohol Misuse Prevention Program

Sec.	Purpose.
199.200	Purpose.
199.201	Applicability.
199.202	Alcohol misuse plan.
199.203	Alcohol testing procedures.
199.205	Definitions.
199.207	Preemption of State and local laws.
199.209	Other requirements imposed by operators.
199.211	Requirement for notice.
199.213	Starting date for alcohol testing programs.
199.215	Alcohol concentration.
199.217	On-duty use.
199.219	Pre-duty use.
199.221	Use following an accident.
199.223	Refusal to submit to a required alcohol test.
199.225	Alcohol tests required.
199.227	Retention of records.
199.229	Reporting of alcohol testing results.
199.231	Access to facilities and records.
199.233	Removal from covered function.
199.235	Required evaluation and testing.
199.237	Other alcohol-related conduct.
199.239	Operator obligation to promulgate a policy on the misuse of alcohol.
199.241	Training for supervisors.
199.243	Referral, evaluation, and treatment.
199.245	Contractor employees.

Subpart B—Alcohol Misuse Prevention Program

§ 199.200 Purpose.

The purpose of this subpart is to establish programs designed to help prevent accidents and injuries resulting from the misuse of alcohol by employees who perform covered functions for operators of certain

pipeline facilities subject to parts 192, 193, or 195 of this chapter.

§ 199.201 Applicability.

This subpart applies to gas, hazardous liquid and carbon dioxide pipeline operators and liquefied natural gas operators subject to parts 192, 193, or 195 of this chapter. However, this subpart does not apply to operators of master meter systems defined in § 191.3 or liquefied petroleum gas (LPG) operators as discussed in § 192.11 of this chapter.

§ 199.202 Alcohol misuse plan.

Each operator shall maintain and follow a written alcohol misuse plan that conforms to the requirements of this subpart and the DOT procedures in part 40 of this title. The plan shall contain methods and procedures for compliance with all the requirements of this subpart, including required testing, recordkeeping, reporting, education and training elements.

§ 199.203 Alcohol testing procedures.

Each operator shall ensure that all alcohol testing conducted under this subpart complies with the procedures set forth in part 40 of this title. The provisions of 49 CFR part 40 that address alcohol testing are made applicable to operators by this subpart.

§ 199.205 Definitions.

As used in this subpart:
Accident means an incident reportable under part 191 of this chapter involving gas pipeline facilities or LNG facilities, or an accident reportable under part 195 of this chapter involving hazardous liquid or carbon dioxide pipeline facilities.

Administrator means the Administrator of the Research and Special Programs Administration (RSPA), or any person who has been delegated authority in the matter concerned.

Alcohol means the intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohols including methyl or isopropyl alcohol.

Alcohol concentration (or content) means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test under this subpart.

Alcohol use means the consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.

Confirmation test means a second test, following a screening test with a result 0.02 or greater, that provides quantitative data of alcohol concentration.

Consortium means an entity, including a group or association of employers, recipients, or contractors, that provides alcohol testing as required by this subpart or other DOT alcohol testing rules and that acts on behalf of the operators.

Covered employee means a person who performs on a pipeline or at an LNG facility an operation, maintenance, or emergency-response function regulated by parts 192, 193, or 195 of this chapter. *Covered employee* and *individual or individual to be tested* have the same meaning for the purposes of this subpart. The term covered employee does not include clerical, truck driving, accounting, or other functions not subject to parts 192, 193, or 195. The person may be employed by the operator, be a contractor engaged by the operator, or be employed by such a contractor.

Covered function (safety-sensitive function) means an operation, maintenance, or emergency-response function that is performed on a pipeline or LNG facility and the function is regulated by parts 192, 193, or 195.

DOT agency An agency (or operating administration) of the United States Department of Transportation administering regulations requiring alcohol testing (14 CFR parts 61, 63, 65, 121, 135; 49 CFR parts 199, 219, 382, and 654) in accordance with part 40 of this title.

Employer or operator means a person who owns or operates a pipeline or LNG facility subject to parts 192, 193, or 195 of this chapter.

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

Refuse to submit (to an alcohol test) means that a covered employee fails to provide adequate breath for testing without a valid medical explanation after he or she has received notice of the requirement to be tested in accordance with the provisions of this subpart, or engages in conduct that clearly obstructs the testing process.

Screening test means an analytical procedure to determine whether a covered employee may have a prohibited concentration of alcohol in his or her system.

State agency means an agency of any of the several states, the District of Columbia, or Puerto Rico that participates under section 5 of the Natural Gas Pipeline Safety Act of 1968 (49 App. U.S.C. 1674) or section 205 of

the Hazardous Liquid Pipeline Safety Act of 1979 (49 App. U.S.C. 2009).

Substance abuse professional means a licensed physician (Medical Doctor or Doctor of Osteopathy), or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission), with knowledge of and clinical experience in the diagnosis and treatment of alcohol-related disorders.

§ 199.207 Preemption of State and local laws.

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

(1) Compliance with both the State or local requirement and this subpart is not possible;

(2) Compliance with the State or local requirement is an obstacle to the accomplishment and execution of any requirement in this subpart; or

(3) The State or local requirement is a pipeline safety standard applicable to interstate pipeline facilities.

(b) This subpart shall not be construed to preempt provisions of State criminal law that impose sanctions for reckless conduct 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.

§ 199.209 Other requirements imposed by operators.

Except as expressly provided in this subpart, nothing in this subpart shall be construed to affect the authority of operators, or the rights of employees, with respect to the use or possession of alcohol, including authority and rights with respect to alcohol testing and rehabilitation.

§ 199.211 Requirement for notice.

Before performing an alcohol test under this subpart, each operator shall notify a covered employee that the alcohol test is required by this subpart. No operator shall falsely represent that a test is administered under this subpart.

§ 199.213 Starting date for alcohol testing programs.

(a) *Large operators.* Each operator with more than fifty covered employees on February 15, 1994 shall implement the requirements of this subpart beginning on January 1, 1995.

(b) *Small operators.* Each operator with fifty or fewer covered employees on February 15, 1994 shall implement

the requirements of this subpart beginning on January 1, 1996.

(c) All operators commencing operations after February 15, 1994 shall have an alcohol misuse program that conforms to this subpart by January 1, 1996, or by the date an operator begins operations, whichever is later.

§ 199.215 Alcohol concentration.

Each operator shall prohibit a covered employee from reporting for duty or remaining on duty requiring the performance of covered functions while having an alcohol concentration of 0.04 or greater. No operator having actual knowledge that a covered employee has an alcohol concentration of 0.04 or greater shall permit the employee to perform or continue to perform covered functions.

§ 199.217 On-duty use.

Each operator shall prohibit a covered employee from using alcohol while performing covered functions. No operator having actual knowledge that a covered employee is using alcohol while performing covered functions shall permit the employee to perform or continue to perform covered functions.

§ 199.219 Pre-duty use.

Each operator shall prohibit a covered employee from using alcohol within four hours prior to performing covered functions, or, if an employee is called to duty to respond to an emergency, within the time period after the employee has been notified to report for duty. No operator having actual knowledge that a covered employee has used alcohol within four hours prior to performing covered functions or within the time period after the employee has been notified to report for duty shall permit that covered employee to perform or continue to perform covered functions.

§ 199.221 Use following an accident.

Each operator shall prohibit a covered employee who has actual knowledge of an accident in which his or her performance of covered functions has not been discounted by the operator as a contributing factor to the accident from using alcohol for eight hours following the accident, unless he or she has been given a post-accident test under § 199.225(a), or the operator has determined that the employee's performance could not have contributed to the accident.

§ 199.223 Refusal to submit to a required alcohol test.

Each operator shall require a covered employee to submit to a post-accident alcohol test required under § 199.225(a), a reasonable suspicion alcohol test

required under § 199.225(b), or a follow-up alcohol test required under § 199.225(d). No operator shall permit an employee who refuses to submit to such a test to perform or continue to perform covered functions.

§ 199.225 Alcohol tests required.

Each operator shall conduct the following types of alcohol tests for the presence of alcohol:

(a) *Post-accident.* (1) As soon as practicable following an accident, each operator shall test each surviving covered employee for alcohol if that employee's performance of a covered function either contributed to the accident or cannot be completely discounted as a contributing factor to the accident. The decision not to administer a test under this section shall be based on the operator's determination, using the best available information at the time of the determination, that the covered employee's performance could not have contributed to the accident.

(2) If a test required by this section is not administered within 2 hours following the accident, the operator shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test required by paragraph (a) is not administered within 8 hours following the accident, the operator shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test.

(3) A covered employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying the operator or operator representative of his/her location if he/she leaves the scene of the accident prior to submission to such test, may be deemed by the operator to have refused to submit to testing.

Nothing in this section shall be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit a covered employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.

(b) *Reasonable suspicion testing.* (1) Each operator shall require a covered employee to submit to an alcohol test when the operator has reasonable suspicion to believe that the employee has violated the prohibitions in this subpart.

(2) The operator's determination that reasonable suspicion exists to require the covered employee to undergo an alcohol test shall be based on specific, contemporaneous, articulable

observations concerning the appearance, behavior, speech, or body odors of the employee. The required observations shall be made by a supervisor who is trained in detecting the symptoms of alcohol misuse. The supervisor who makes the determination that reasonable suspicion exists shall not conduct the breath alcohol test on that employee.

(3) Alcohol testing is authorized by this section only if the observations required by paragraph (b)(2) of this section are made during, just preceding, or just after the period of the work day that the employee is required to be in compliance with this subpart. A covered employee may be directed by the operator to undergo reasonable suspicion testing for alcohol only while the employee is performing covered functions; just before the employee is to perform covered functions; or just after the employee has ceased performing covered functions.

(4) (i) If a test required by this section is not administered within 2 hours following the determination under paragraph (b)(2) of this section, the operator shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test required by this section is not administered within 8 hours following the determination under paragraph (b)(2) of this section, the operator shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test. Records shall be submitted to RSPA upon request of the Administrator.

(ii) Notwithstanding the absence of a reasonable suspicion alcohol test under this section, an operator shall not permit a covered employee to report for duty or remain on duty requiring the performance of covered functions while the employee is under the influence of or impaired by alcohol, as shown by the behavioral, speech, or performance indicators of alcohol misuse, nor shall an operator permit the covered employee to perform or continue to perform covered functions, until:

(A) An alcohol test is administered and the employee's alcohol concentration measures less than 0.02; or

(B) The start of the employee's next regularly scheduled duty period, but not less than 8 hours following the determination under paragraph (b)(2) of this section that there is reasonable suspicion to believe that the employee has violated the prohibitions in this subpart.

(iii) Except as provided in paragraph (b)(4)(ii), no operator shall take any action under this subpart against a covered employee based solely on the

employee's behavior and appearance in the absence of an alcohol test. This does not prohibit an operator with the authority independent of this subpart from taking any action otherwise consistent with law.

(c) *Return-to-duty testing.* Each operator shall ensure that before a covered employee returns to duty requiring the performance of a covered function after engaging in conduct prohibited by §§ 199.215 through 199.223, the employee shall undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02.

(d) *Follow-up testing.* (1) Following a determination under § 199.243(b) that a covered employee is in need of assistance in resolving problems associated with alcohol misuse, each operator shall ensure that the employee is subject to unannounced follow-up alcohol testing as directed by a substance abuse professional in accordance with the provisions of § 199.243(b)(2)(ii).

(2) Follow-up testing shall be conducted when the covered employee is performing covered functions; just before the employee is to perform covered functions; or just after the employee has ceased performing such functions.

(e) *Retesting of covered employees with an alcohol concentration of 0.02 or greater but less than 0.04.* Each operator shall retest a covered employee to ensure compliance with the provisions of § 199.237, if an operator chooses to permit the employee to perform a covered function within 8 hours following the administration of an alcohol test indicating an alcohol concentration of 0.02 or greater but less than 0.04.

§ 199.227 Retention of records.

(a) *General requirement.* Each operator shall maintain records of its alcohol misuse prevention program as provided in this section. The records shall be maintained in a secure location with controlled access.

(b) *Period of retention.* Each operator shall maintain the records in accordance with the following schedule:

(1) *Five years.* Records of employee alcohol test results with results indicating an alcohol concentration of 0.02 or greater, documentation of refusals to take required alcohol tests, calibration documentation, employee evaluation and referrals, and MIS annual report data shall be maintained for a minimum of five years.

(2) *Two years.* Records related to the collection process (except calibration of evidential breath testing devices), and

training shall be maintained for a minimum of two years.

(3) *One year.* Records of all test results below 0.02 (as defined in 49 CFR part 40) shall be maintained for a minimum of one year.

(c) *Types of records.* The following specific records shall be maintained:

(1) Records related to the collection process:

(i) Collection log books, if used.

(ii) Calibration documentation for evidential breath testing devices.

(iii) Documentation of breath alcohol technician training.

(iv) Documents generated in connection with decisions to administer reasonable suspicion alcohol tests.

(v) Documents generated in connection with decisions on post-accident tests.

(vi) Documents verifying existence of a medical explanation of the inability of a covered employee to provide adequate breath for testing.

(2) Records related to test results:

(i) The operator's copy of the alcohol test form, including the results of the test.

(ii) Documents related to the refusal of any covered employee to submit to an alcohol test required by this subpart.

(iii) Documents presented by a covered employee to dispute the result of an alcohol test administered under this subpart.

(3) Records related to other violations of this subpart.

(4) Records related to evaluations:

(i) Records pertaining to a determination by a substance abuse professional concerning a covered employee's need for assistance.

(ii) Records concerning a covered employee's compliance with the recommendations of the substance abuse professional.

(5) Record(s) related to the operator's MIS annual testing data.

(6) Records related to education and training:

(i) Materials on alcohol misuse awareness, including a copy of the operator's policy on alcohol misuse.

(ii) Documentation of compliance with the requirements of § 199.231.

(iii) Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for alcohol testing based on reasonable suspicion.

(iv) Certification that any training conducted under this subpart complies with the requirements for such training.

§ 199.229 Reporting of alcohol testing results.

(a) Each large operator (having more than 50 covered employees) shall

submit an annual management information system (MIS) report to RSPA of its alcohol testing results in the form and manner prescribed by the Administrator, by March 15 of each year for the previous calendar year (January 1 through December 31). The Administrator may require by written notice that a small operator (50 or fewer covered employees), not otherwise required to submit annual MIS reports, submit such a report to RSPA.

(b) Each operator that is subject to more than one DOT agency alcohol rule shall identify each employee covered by the regulations of more than one DOT agency. The identification will be by the total number of covered employees. Prior to conducting any alcohol test on a covered employee subject to the rules of more than one DOT agency, the employer shall determine which DOT agency rule or rules authorizes or requires the test. The test result information shall be directed to the appropriate DOT agency or agencies.

(c) Each report, required under this section, shall be submitted to the Office of Pipeline Safety Compliance (OPS), Research and Special Programs Administration, Department of Transportation, room 2335, 400 Seventh Street, SW., Washington, DC 20590.

(d) Each report that contains information on an alcohol screening test result of 0.02 or greater or a violation of the alcohol misuse provisions of §§ 199.215 through 199.223 of this subpart shall be submitted on "RSPA Alcohol Testing MIS Data Collection Form" and include the following informational elements:

- (1) Number of covered employees.
- (2) Number of covered employees subject to testing under the alcohol misuse rule of another operating administration by each agency.
- (3) (i) Number of screening tests by type of test.
- (ii) Number of confirmation tests by type of test.
- (4) Number of confirmation tests indicating an alcohol concentration of 0.02 or greater but less than 0.04, by type of test.
- (5) Number of confirmation tests indicating an alcohol concentration of 0.04 or greater, by type of test.

(6) Number of covered employees with a confirmation test indicating an alcohol concentration of 0.04 or greater or who have violations of other alcohol misuse provisions who were returned to duty in covered positions (having complied with the recommendations of a substance abuse professional as described in §§ 199.235 and 199.243).

(7) Number of covered employees who were administered alcohol and

drug tests at the same time, with both a positive drug test and an alcohol test indicating an alcohol concentration of 0.04 or greater.

(8) Number of covered employees who were found to have violated other provisions of §§ 199.215 through 199.221, and any action taken in response to the violation.

(9) Number of covered employees who refused to submit to an alcohol test required under this subpart, and the action taken in response to the refusal.

(10) Number of supervisors who have received required training during the reporting period in determining the existence of reasonable suspicion of alcohol misuse.

(e) Each report with no screening alcohol test results of 0.02, or greater or violations of the alcohol misuse provisions of §§ 199.215 through 199.223 of this subpart shall be submitted on "RSPA Alcohol Testing MIS Data Collection EZ Form" and include the following informational elements. (This "EZ" report may only be submitted if the program results meet these criteria)

- (1) Number of covered employees.
- (2) Number of covered employees subject to testing under the alcohol misuse rule of another operating administration identified by each agency.
- (3) Number of screening tests by type of test.
- (4) Number of covered employees who refused to submit to an alcohol test required under this subpart, and the action taken in response to the refusal.
- (5) Number of supervisors who have received required training during the reporting period in determining the existence of reasonable suspicion of alcohol misuse.
- (f) A consortium may prepare reports on behalf of individual pipeline operators for purposes of compliance with this reporting requirement. However, the pipeline operator shall sign and submit such a report and shall remain responsible for ensuring the accuracy and timeliness of each report prepared on its behalf by a consortium.

§ 199.231 Access to facilities and records.

(a) Except as required by law or expressly authorized or required in this subpart, no employer shall release covered employee information that is contained in records required to be maintained in § 199.227.

(b) A covered employee is entitled, upon written request, to obtain copies of any records pertaining to the employee's use of alcohol, including any records pertaining to his or her alcohol tests. The operator shall promptly provide the

records requested by the employee. Access to a employee's records shall not be contingent upon payment for records other than those specifically requested.

(c) Each operator shall permit access to all facilities utilized in complying with the requirements of this subpart to the Secretary of Transportation, any DOT agency, or a representative of a state agency with regulatory authority over the operator.

(d) Each operator shall make available copies of all results for employer alcohol testing conducted under this subpart and any other information pertaining to the operator's alcohol misuse prevention program, when requested by the Secretary of Transportation, any DOT agency with regulatory authority over the operator, or a representative of a state agency with regulatory authority over the operator. The information shall include name-specific alcohol test results, records, and reports.

(e) When requested by the National Transportation Safety Board as part of an accident investigation, an operator shall disclose information related to the operator's administration of any post-accident alcohol tests administered following the accident under investigation.

(f) An operator shall make records available to a subsequent employer upon receipt of the written request from the covered employee. Disclosure by the subsequent employer is permitted only as expressly authorized by the terms of the employee's written request.

(g) An operator may disclose information required to be maintained under this subpart 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 an alcohol test administered under this subpart, or from the operator's determination that the covered employee engaged in conduct prohibited by §§ 199.215 through 199.223 (including, but not limited to, a worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the employee).

(h) An operator shall release information regarding a covered employee's records as directed by the specific, written consent of the employee authorizing release of the information to an identified person. Release of such information by the person receiving the information is permitted only in accordance with the terms of the employee's consent.

§ 199.233 Removal from covered function.

Except as provided in §§ 199.239 through 199.243, no operator shall permit any covered employee to perform covered functions if the employee has engaged in conduct prohibited by §§ 199.215 through 199.223 or an alcohol misuse rule of another DOT agency.

§ 199.235 Required evaluation and testing.

No operator shall permit a covered employee who has engaged in conduct prohibited by §§ 199.215 through 199.223 to perform covered functions unless the employee has met the requirements of § 199.243.

§ 199.237 Other alcohol-related conduct.

(a) No operator shall permit a covered employee tested under the provisions of § 199.225, who is found to have an alcohol concentration of 0.02 or greater but less than 0.04, to perform or continue to perform covered functions, until:

(1) The employee's alcohol concentration measures less than 0.02 in accordance with a test administered under § 199.225(e); or

(2) The start of the employee's next regularly scheduled duty period, but not less than eight hours following administration of the test.

(b) Except as provided in paragraph (a) of this section, no operator shall take any action under this subpart against an employee based solely on test results showing an alcohol concentration less than 0.04. This does not prohibit an operator with authority independent of this subpart from taking any action otherwise consistent with law.

§ 199.239 Operator obligation to promulgate a policy on the misuse of alcohol.

(a) *General requirements.* Each operator shall provide educational materials that explain these alcohol misuse requirements and the operator's policies and procedures with respect to meeting those requirements.

(1) The operator shall ensure that a copy of these materials is distributed to each covered employee prior to start of alcohol testing under this subpart, and to each person subsequently hired for or transferred to a covered position.

(2) Each operator shall provide written notice to representatives of employee organizations of the availability of this information.

(b) *Required content.* The materials to be made available to covered employees shall include detailed discussion of at least the following:

(1) The identity of the person designated by the operator to answer

covered employee questions about the materials.

(2) The categories of employees who are subject to the provisions of this subpart.

(3) Sufficient information about the covered functions performed by those employees to make clear what period of the work day the covered employee is required to be in compliance with this subpart.

(4) Specific information concerning covered employee conduct that is prohibited by this subpart.

(5) The circumstances under which a covered employee will be tested for alcohol under this subpart.

(6) The procedures that will be used to test for the presence of alcohol, protect the covered employee and the integrity of the breath testing process, safeguard the validity of the test results, and ensure that those results are attributed to the correct employee.

(7) The requirement that a covered employee submit to alcohol tests administered in accordance with this subpart.

(8) An explanation of what constitutes a refusal to submit to an alcohol test and the attendant consequences.

(9) The consequences for covered employees found to have violated the prohibitions under this subpart, including the requirement that the employee be removed immediately from covered functions, and the procedures under § 199.243.

(10) The consequences for covered employees found to have an alcohol concentration of 0.02 or greater but less than 0.04.

(11) Information concerning the effects of alcohol misuse on an individual's health, work, and personal life; signs and symptoms of an alcohol problem (the employee's or a coworker's); and including intervening evaluating and resolving problems associated with the misuse of alcohol including intervening when an alcohol problem is suspected, confrontation, referral to any available EAP, and/or referral to management.

(c) *Optional provisions.* The materials supplied to covered employees may also include information on additional operator policies with respect to the use or possession of alcohol, including any consequences for an employee found to have a specified alcohol level, that are based on the operator's authority independent of this subpart. Any such additional policies or consequences shall be clearly described as being based on independent authority.

§ 199.241 Training for supervisors.

Each operator shall ensure that persons designated to determine whether reasonable suspicion exists to require a covered employee to undergo alcohol testing under § 199.225(b) receive at least 60 minutes of training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse.

§ 199.243 Referral, evaluation, and treatment.

(a) Each covered employee who has engaged in conduct prohibited by §§ 199.215 through 199.223 of this subpart shall be advised of the resources available to the covered employee in evaluating and resolving problems associated with the misuse of alcohol, including the names, addresses, and telephone numbers of substance abuse professionals and counseling and treatment programs.

(b) Each covered employee who engages in conduct prohibited under §§ 199.215 through 199.223 shall be evaluated by a substance abuse professional who shall determine what assistance, if any, the employee needs in resolving problems associated with alcohol misuse.

(c) (1) Before a covered employee returns to duty requiring the performance of a covered function after engaging in conduct prohibited by §§ 199.215 through 199.223 of this subpart, the employee shall undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02.

(2) In addition, each covered employee identified as needing assistance in resolving problems associated with alcohol misuse—

(i) Shall be evaluated by a substance abuse professional to determine that the employee has properly followed any rehabilitation program prescribed under paragraph (b) of this section, and

(ii) Shall be subject to unannounced follow-up alcohol tests administered by the operator following the employee's return to duty. The number and frequency of such follow-up testing shall be determined by a substance abuse professional, but shall consist of at least six tests in the first 12 months following the employee's return to duty. In addition, follow-up testing may include testing for drugs, as directed by the substance abuse professional, to be performed in accordance with 49 CFR part 40. Follow-up testing shall not exceed 60 months from the date of the employee's return to duty. The substance abuse professional may terminate the requirement for follow-up testing at any time after the first six tests

have been administered, if the substance abuse professional determines that such testing is no longer necessary.

(d) Evaluation and rehabilitation may be provided by the operator, by a substance abuse professional under contract with the operator, or by a substance abuse professional not affiliated with the operator. The choice of substance abuse professional and assignment of costs shall be made in accordance with the operator/employee agreements and operator/employee policies.

(e) The operator shall ensure that a substance abuse professional who determines that a covered employee requires assistance in resolving problems with alcohol misuse does not refer the employee to the substance abuse professional's private practice or to a person or organization from which the substance abuse professional receives remuneration or in which the substance abuse professional has a financial interest. This paragraph does

not prohibit a substance abuse professional from referring an employee for assistance provided through—

- (1) A public agency, such as a State, county, or municipality;
- (2) The operator or a person under contract to provide treatment for alcohol problems on behalf of the operator;
- (3) The sole source of therapeutically appropriate treatment under the employee's health insurance program; or
- (4) The sole source of therapeutically appropriate treatment reasonably accessible to the employee.

§ 189.245 Contractor employees.

(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, any 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 operator's compliance with the requirements of this subpart and part 40 of this title.

Issued in Washington, DC on January 25, 1994.

Federico Peña,

Secretary of Transportation.

Ana Sol Gutiérrez,

Acting Administrator, Research and Special Programs Administration.

Note: The following appendix and exhibit will not appear in the Code of Federal Regulations.

BILLING CODE 4910-00-P

**APPENDIX B - ALCOHOL TESTING MANAGEMENT INFORMATION SYSTEM (MIS)
DATA COLLECTION FORM**

INSTRUCTIONS

The following instructions are to be used as a guide for completing the alcohol testing information in the Research and Special Programs Administration (RSPA) and the U.S. Department of Transportation (DOT) **Alcohol Testing MIS Data Collection Form**. These instructions outline and explain the information requested and indicate the probable sources for this information. A sample testing results table with a narrative explanation is provided on pages ii-iii as an example to facilitate the process of completing the form correctly.

This reporting form includes three sections. Collectively, these sections address the data elements required in the RSPA and the DOT alcohol testing regulations. The three sections, the page number for the instructions, and the page location on the reporting form are:

<u>Section</u>	<u>Instructions Page</u>	<u>Reporting Form Page</u>
A. PIPELINE EMPLOYER INFORMATION	i	1
B. COVERED EMPLOYEES	i	1
C. ALCOHOL TESTING INFORMATION	i-iv	2

Page 1 **EMPLOYER INFORMATION** (Section A) requires the company name for which the report is done, a current address, and the name of the person responsible for completing the form. Be sure to check which one of the five categories (gas gathering; gas transmission; gas distribution; transportation of hazardous liquids; and transportation of carbon dioxide) characterizes the **primary** nature of your operation. Finally, a signature, date, and current telephone number (including the area code) are required certifying the correctness and completeness of the form.

Page 1 **COVERED EMPLOYEES** (Section B) requires a count for each employee category that must be tested under DOT regulations. There is only one category of covered employees for RSPA -- Operation/Maintenance/Emergency Response. The most likely source for this information is the employer's personnel department. These counts should be based on the company records for the reported year.

Additional information must be completed if your company employs personnel who perform duties covered by the alcohol rules of more than one DOT operating administration. **NUMBER OF EMPLOYEES COVERED BY MORE THAN ONE DOT OPERATING ADMINISTRATION**, requires that you identify the number of employees in each employee category under the appropriate additional operating administration(s).

Page 2 **ALCOHOL TESTING INFORMATION** (Section C) requires information for alcohol testing by category of testing. These categories include: (1) post-accident, (2) reasonable suspicion, (3) return to duty, and (4) follow-up testing. All numbers entered into this table should be for company employees in a **covered position** only. Each part of this table must be completed for each category of testing.

These numbers **do not** include refusals for testing. A sample section of the table with example numbers is presented on page iii.

Four types of information are necessary to complete this table. The first blank column with the heading "NUMBER OF SCREENING TESTS" requires a count of all screening alcohol tests performed. It should not include refusals to test. The second blank column with the heading "NUMBER OF CONFIRMATION TESTS" requires a count of all confirmation alcohol tests performed.

The third blank column with the heading "NUMBER OF CONFIRMATION TEST RESULTS EQUAL TO OR GREATER THAN 0.02, BUT LESS THAN 0.04" refers to the number of test results equal to or greater than 0.02, but less than 0.04.

The fourth blank column with the heading "NUMBER OF CONFIRMATION TEST RESULTS EQUAL TO OR GREATER THAN 0.04" refers to the number of specimens with a result equal to or greater than 0.04. **Note: For return to duty testing, a confirmation test result equal to or greater than 0.02 is a violation of the alcohol rule. Therefore, if the number of results equal to or greater than 0.04 is unknown, you may report all results in the third column of the table.**

A sample table is provided on page iii with example numbers.

SAMPLE TEST RESULTS TABLE

The following example is for Section C, **ALCOHOL TESTING INFORMATION**, which summarizes post-accident testing results. The procedures detailed here also apply to the other categories for testing in Section C which require you to summarize testing results for covered employees. This example will use "Post-Accident" testing to illustrate the procedures for completing the form.

A

Screening tests were performed on 47 covered employees during the reporting year. This information is entered in the first blank column of the table in the row marked "POST-ACCIDENT".

B

Confirmation tests were necessary for 6 of the 47 covered employees. Enter this information in the second blank column of the table in the row marked "POST-ACCIDENT". The confirmation test results for these 6 employees were the following:

<u>Employee</u>	<u>Confirmation Result</u>
#1	0.06
#2	0.01
#3	0.11
#4	0.04
#5	0.03
#6	0.02

C

The confirmation test results for 2 of the covered employees were equal to or greater than 0.02, but less than 0.04. Enter this information in the third blank column of the table in the row marked "POST-ACCIDENT".

D

The confirmation test results for 3 of the covered employees were equal to or greater than 0.04. Enter this information in the fourth blank column of the table in the row marked "POST-ACCIDENT".

TYPE OF TEST	NUMBER OF SCREENING TESTS	NUMBER OF CONFIRMATION TESTS	NUMBER OF CONFIRMATION TEST RESULTS EQUAL TO OR GREATER THAN 0.02, BUT LESS THAN 0.04	NUMBER OF CONFIRMATION TEST RESULTS EQUAL TO OR GREATER THAN 0.04
POST-ACCIDENT	47	6	2	3

A
B
C
D

Note that adding up the numbers for confirmation results in columns three and four will not always match the number entered in the second column, "NUMBER OF CONFIRMATION TESTS". These numbers may differ since some confirmation test results may be less than 0.02.

Remember that the same procedures indicated above are to be used for completing all categories of testing in the table in Section C.

Page 2 Following the table that summarizes **ALCOHOL TESTING INFORMATION**, you must provide a count of the "Number of employees who engaged in alcohol misuse who were returned to duty in a covered position (having complied with the recommendations of a substance abuse professional as described in RSPA regulations)". This information should be available from the personnel office and/or the drug and alcohol program manager.

Page 2 Next you must provide information on **ACTIONS TAKEN ON ALCOHOL TEST RESULTS EQUAL TO OR GREATER THAN 0.04**. Indicate the number of employees subjected to the following actions:

- **No longer employed with company** - include covered employees who resigned or were terminated as the result of a confirmation test result equal to or greater than 0.04.
- **Reassigned to non-covered functions** - include covered employees who were reassigned within the company to a non-covered position as the result of a confirmation test result equal to or greater than 0.04.
- **Entered rehabilitation, if applicable, and/or returned to covered functions** - include covered employees who are undergoing or have completed a rehabilitation program and/or covered employees who have returned to a covered function.

- **Other** - include covered employees who did not fall under one of the previous options and specify the action taken.

Enter the sum of the number of actions taken on the line marked **TOTAL**.

- Page 2 **Number of employees administered drug and alcohol tests at the same time resulting in a verified positive drug test and an alcohol test indicating an alcohol concentration of 0.04 or greater**, requires that a count of all such employees be entered in the indicated box.
- Page 2 **VIOLATIONS OF OTHER ALCOHOL PROVISIONS/PROHIBITIONS OF THIS REGULATION**, requires supplying the number of covered employees who used alcohol prior to performing a safety-sensitive function, while performing a safety-sensitive function, and before taking a required post-accident alcohol test. The action taken with covered employees who violate any of these RSPA alcohol regulation provisions is also to be supplied. Other violations not delineated in this table may also be provided.
- Page 2 **EMPLOYEES WHO REFUSED TO SUBMIT TO AN ALCOHOL TEST** requires information on the **NUMBER OF COVERED EMPLOYEES** who refused to submit to an alcohol test required under the RSPA regulation and the action taken following the refusal.
- Page 2 **ALCOHOL TRAINING/EDUCATION** requires information on the number of supervisory personnel who have received the required alcohol training during the current reporting period.

RSPA ALCOHOL TESTING MIS DATA COLLECTION FORM

OMB No 2137-0579

A. PIPELINE EMPLOYER INFORMATION

Company _____ Year Covered by This Report: _____

Address _____ Person responsible for completing the form: _____

Check the one box that indicates the primary nature of your operation.

- Gas gathering
- Gas transmission
- Gas distribution
- Transportation of hazardous liquids
- Transportation of carbon dioxide

I, the undersigned certify that the information provided on this Research and Special Programs Administration Alcohol Testing Management Information System Data Collection Form is, to the best of my knowledge and belief, true, correct, and complete for the period stated.

Signature

Date of Signature

Title

Phone Number

Title 18, U.S.C. Section 1001, makes it a criminal offense subject to a maximum fine of \$10,000, or imprisonment for not more than 5 years, or both, to knowingly and willfully make or cause to be made any false or fraudulent statements or representations in any matter within the jurisdiction of any agency of the United States.

The Research and Special Programs Administration estimates that the average burden for this report form is 3.1 hours. You may submit any comments concerning the accuracy of this burden estimate or any suggestions for reducing the burden to: Office of Pipeline Safety, RSPA, DOT; 400 7th St., S.W.; Washington, DC 20590; OR Office of Management and Budget, Paperwork Reduction Project (2137-0579); Washington, DC 20503.

B. COVERED EMPLOYEES

COVERED EMPLOYEES						
EMPLOYEE CATEGORY	NUMBER OF RSPA COVERED EMPLOYEES	NUMBER OF EMPLOYEES COVERED BY MORE THAN ONE DOT OPERATING ADMINISTRATION				
		FAA	FHWA	FRA	FTA	USCG
Operation/Maintenance/Emergency Response						

READ BEFORE COMPLETING THE REMAINDER OF THIS FORM

- 1 All items refer to the **current** reporting period only (for example January 1 1994 - December 31 1994)
- 2 This report is only for testing **REQUIRED BY THE RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION (RSPA) AND THE U.S. DEPARTMENT OF TRANSPORTATION (DOT)**
 - Results should be reported only for employees in **COVERED POSITIONS** as defined by RSPA/DOT alcohol testing regulations
 - The information requested should only include testing for alcohol using the standard procedures required by DOT regulation 49 CFR Part 40
- 3 Information on refusals for testing should only be reported in the table "EMPLOYEES WHO REFUSED TO SUBMIT TO AN ALCOHOL TEST" Do not include refusals for testing in other sections of this report
- 4 Complete all items. **DO NOT LEAVE ANY ITEM BLANK** If the value for an item is zero (0) place a zero (0) on the form

C. ALCOHOL TESTING INFORMATION

TYPE OF TEST	NUMBER OF SCREENING TESTS	NUMBER OF CONFIRMATION TESTS	NUMBER OF CONFIRMATION TEST RESULTS EQUAL TO OR GREATER THAN 0.02, BUT LESS THAN 0.04	NUMBER OF CONFIRMATION TEST RESULTS EQUAL TO OR GREATER THAN 0.04
POST-ACCIDENT				
REASONABLE SUSPICION				
RETURN TO DUTY				
FOLLOW-UP				

Number of employees who engaged in alcohol misuse who were returned to duty in a covered position (having complied with the recommendations of a substance abuse professional as described in RSPA regulations):

ACTIONS TAKEN ON ALCOHOL TEST RESULTS EQUAL TO OR GREATER THAN 0.04	NUMBER
No longer employed with company:	
Reassigned to non-covered functions:	
Entered rehabilitation, if applicable, and /or returned to covered functions:	
Other (specify):	
TOTAL	

Number of employees administered drug and alcohol tests at the same time resulting in a verified positive drug test and an alcohol test indicating an alcohol concentration of 0.04 or greater:

VIOLATIONS OF OTHER ALCOHOL PROVISIONS/PROHIBITIONS OF THIS REGULATION		
NUMBER OF COVERED EMPLOYEES	VIOLATION	ACTION TAKEN
	Covered employee used alcohol while performing safety-sensitive function.	
	Covered employee used alcohol within 4 hours of performing safety-sensitive function.	
	Covered employee used alcohol before taking a required post-accident alcohol test.	

EMPLOYEES WHO REFUSED TO SUBMIT TO AN ALCOHOL TEST	NUMBER OF REFUSALS
Number of employees who refused to submit to an alcohol test required under the RSPA rule:	
ACTION TAKEN	NUMBER
No longer employed with company:	
Reassigned to non-covered functions:	
Entered rehabilitation, if applicable, and/or returned to covered functions:	
Other (specify):	

ALCOHOL TRAINING/EDUCATION	NUMBER
Supervisors who have received initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable alcohol use as required by RSPA alcohol testing regulations:	

**EXHIBIT B - ALCOHOL TESTING MANAGEMENT INFORMATION SYSTEM (MIS)
"EZ" DATA COLLECTION FORM**

INSTRUCTIONS

The following instructions are to be used as a guide for completing the Research and Special Programs Administration (RSPA) and the U.S. Department of Transportation (DOT) Alcohol Testing MIS "EZ" Data Collection Form. This form should only be used if there is no alcohol misuse to be reported by your company. These instructions outline and explain the information requested and indicate the probable sources for this information. This reporting form includes three sections. These sections address the data elements required in the RSPA and DOT alcohol testing regulations.

SECTION A - PIPELINE EMPLOYER INFORMATION requires the company name for which the report is done, a current address, and the name of the person responsible for completing the form. Be sure to check which one of the five categories (gas gathering; gas transmission; gas distribution; transportation of hazardous liquids; and transportation of carbon dioxide) characterizes the **primary** nature of your operation. Finally, a signature, date, and current telephone number (including the area code) are required certifying the correctness and completeness of the form.

SECTION B - COVERED EMPLOYEES requires a count for each employee category that must be tested under the RSPA regulation. There is only one category of covered employees for RSPA --- Operation/Maintenance/Emergency Response. The most likely source for this information is the employer's personnel department. These counts should be based on the company records for the reported year.

Additional information must be completed if your company employs personnel who perform duties covered by the alcohol rules of more than one DOT operating administration. **NUMBER OF EMPLOYEES COVERED BY MORE THAN ONE DOT OPERATING ADMINISTRATION**, requires that you identify the number of employees in each employee category under the appropriate additional operating administration(s).

SECTION C - ALCOHOL TESTING INFORMATION requires information for alcohol testing, refusals for testing, and education/training. The first table requests information on the **NUMBER OF SCREENING TESTS CONDUCTED** in each category for testing. All numbers entered into this table should be for applicants or company employees in **covered positions** only. Each part of this table must be completed for each category of testing including: (1) post-accident, (2) reasonable suspicion, (3) return to duty, and (4) follow-up testing. These numbers **do not** include refusals for testing. Simply enter the number of alcohol screening tests conducted for each category of testing.

Following the table that summarizes **ALCOHOL TESTING INFORMATION**, you must provide a count of the number of employees who engaged in alcohol misuse who were returned to duty in a covered position (having complied with the recommendations of a substance abuse professional as described in RSPA regulations). This information should be available from the personnel office and/or alcohol program manager.

EMPLOYEES WHO REFUSED TO SUBMIT TO AN ALCOHOL TEST requires information on the **NUMBER OF COVERED EMPLOYEES** who refused to submit to an alcohol test required under the RSPA regulation and the action taken following the refusal. Indicate the number of employees subjected to the following actions:

- **No longer employed with company** - include covered employees who resigned or were terminated as the result of a refusal to submit to an alcohol test.
- **Reassigned to non-covered functions** - include covered employees who were reassigned within the company to a non-covered position as the result of a refusal to submit to an alcohol test.
- **Entered rehabilitation, if applicable, and/or returned to covered functions** - include covered employees who are undergoing or have completed a rehabilitation program and/or covered employees who have returned to a covered function.
- **Other** - include covered employees who did not fall under one of the previous options and specify the action taken.

ALCOHOL TRAINING/EDUCATION requires information on the number of supervisory personnel who have received the required alcohol training during the current reporting period.

**RSPA ALCOHOL TESTING MIS "EZ" DATA COLLECTION FORM OMB No. 2137-0579
(No Alcohol Misuse)**

A. PIPELINE EMPLOYER INFORMATION

Company _____ Year Covered by This Report: _____

Address _____ Person responsible for completing the form: _____

Check the one box that indicates the primary nature of your operation:

- | | |
|---|--|
| <input type="checkbox"/> Gas gathering | <input type="checkbox"/> Transportation of hazardous liquids |
| <input type="checkbox"/> Gas transmission | <input type="checkbox"/> Transportation of carbon dioxide |
| <input type="checkbox"/> Gas distribution | |

I, the undersigned, certify that the information provided on the attached Research and Special Programs Administration Alcohol Testing Management Information System Data Collection Form is, to the best of my knowledge and belief, true, correct, and complete for the period stated.

Signature

Date of Signature

Title

Phone Number

Title 18, U.S.C. Section 1001, makes it a criminal offense subject to a maximum fine of \$10,000, or imprisonment for not more than 5 years, or both, to knowingly and willfully make or cause to be made any false or fraudulent statements or representations in any matter within the jurisdiction of any agency of the United States.

The Research and Special Programs Administration estimates that the average burden for this report form is 3.0 hours. You may submit any comments concerning the accuracy of this burden estimate or any suggestions for reducing the burden to: Office of Pipeline Safety, RSPA, DOT; 400 7th St., S.W.; Washington, DC 20590; OR Office of Management and Budget, Paperwork Reduction Project (2137-0579); Washington, DC 20503.

B. COVERED EMPLOYEES

COVERED EMPLOYEES						
EMPLOYEE CATEGORY	NUMBER OF RSPA COVERED EMPLOYEES	NUMBER OF EMPLOYEES COVERED BY MORE THAN ONE DOT OPERATING ADMINISTRATION				
		FAA	FHWA	FRA	FTA	USCG
Operation/Maintenance/Emergency Response						

C. ALCOHOL TESTING INFORMATION

NUMBER OF SCREENING TESTS CONDUCTED				
EMPLOYEE CATEGORY	POST-ACCIDENT	REASONABLE SUSPICION	RETURN TO DUTY	FOLLOW-UP
Operation/Maintenance/ Emergency Response				

Number of employees who engaged in alcohol misuse who were returned to duty in a covered position (having complied with the recommendations of a substance abuse professional as described in RSPA regulations): _____

C. ALCOHOL TESTING INFORMATION (cont.)

EMPLOYEES WHO REFUSED TO SUBMIT TO AN ALCOHOL TEST	NUMBER OF REFUSALS
Number of employees who refused to submit to an alcohol test required under the RSPA rule:	
ACTION TAKEN	NUMBER
No longer employed with company:	
Reassigned to non-covered functions:	
Entered rehabilitation, if applicable, and/or returned to covered functions:	
Other (specify):	

ALCOHOL TRAINING/EDUCATION	NUMBER
Supervisory personnel who have received initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable alcohol use as required by RSPA alcohol testing regulations:	

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