

DC 20590. RSPA will allow the operator the option of sending the report on the computer disk provided by RSPA. If this option is used, a signature page attesting to the validity of the information on the computer disk must be sent to the address in this section.

(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 ex-

istence 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.

[Amdt. 199-9, 59 FR 7430, Feb. 15, 1994, as amended by Amdt. 199-14, 61 FR 65365, Dec. 12, 1996]

#### **§ 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

### § 199.233

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 without employee consent as provided by DOT Procedures concerning certain legal proceedings.

(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.

[Amdt. 199-9, 59 FR 7430, Feb. 15, 1994, as amended by Amdt. 199-19, 66 FR 47119, Sept. 11, 2001]

### 49 CFR Ch. I (10-1-02 Edition)

#### § 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