

## Pipeline and Hazardous Materials Safety Administration, DOT

## § 199.3

- 199.103 Use of persons who fail or refuse a drug test.
- 199.105 Drug tests required.
- 199.107 Drug testing laboratory.
- 199.109 Review of drug testing results.
- 199.111 Retention of samples and additional testing.
- 199.113 Employee assistance program.
- 199.115 Contractor employees.
- 199.117 Recordkeeping.
- 199.119 Reporting of anti-drug testing results.

### Subpart C—Alcohol Misuse Prevention Program

- 199.200 Purpose.
- 199.201 [Reserved]
- 199.202 Alcohol misuse plan.
- 199.203–199.205 [Reserved]
- 199.209 Other requirements imposed by operators.
- 199.211 Requirement for notice.
- 199.213 [Reserved]
- 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.

AUTHORITY: 49 U.S.C. 5103, 60102, 60104, 60108, 60117, and 60118; 49 CFR 1.53.

SOURCE: 53 FR 47096, Nov. 21, 1988, unless otherwise noted.

### Subpart A—General

#### § 199.1 Scope.

This part requires operators of pipeline facilities subject to part 192, 193, or 195 of this chapter to test covered employees for the presence of prohibited drugs and alcohol.

[Amdt. 199–19, 66 FR 47117, Sept. 11, 2001]

#### § 199.2 Applicability.

(a) This part applies to pipeline operators only with respect to employees located within the territory of the United States, including those employees located within the limits of the

“Outer Continental Shelf “ as that term is defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331).

(b) This part does not apply to any person for whom compliance with this part would violate the domestic laws or policies of another country.

(c) This part does not apply to covered functions performed on—

(1) Master meter systems, as defined in § 191.3 of this chapter; or

(2) Pipeline systems that transport only petroleum gas or petroleum gas/air mixtures.

[Amdt. 199–19, 66 FR 47117, Sept. 11, 2001]

#### § 199.3 Definitions.

As used in this part—

*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 pipeline facilities.

*Administrator* means the Administrator, Pipeline and Hazardous Materials Safety Administration or his or her delegate.

*Covered employee, employee, or individual to be tested* means a person who performs a covered function, including persons employed by operators, contractors engaged by operators, and persons employed by such contractors.

*Covered function* means an operations, maintenance, or emergency-response function regulated by part 192, 193, or 195 of this chapter that is performed on a pipeline or on an LNG facility.

*DOT Procedures* means the Procedures for Transportation Workplace Drug and Alcohol Testing Programs published by the Office of the Secretary of Transportation in part 40 of this title.

*Fail a drug test* means that the confirmation test result shows positive evidence of the presence under DOT Procedures of a prohibited drug in an employee’s system.

*Operator* means a person who owns or operates pipeline facilities subject to part 192, 193, or 195 of this chapter.

*Pass a drug test* means that initial testing or confirmation testing under DOT Procedures does not show evidence of the presence of a prohibited drug in a person’s system.

## § 199.5

*Performs a covered function* includes actually performing, ready to perform, or immediately available to perform a covered function.

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

*Prohibited drug* means any of the following substances specified in Schedule I or Schedule II of the Controlled Substances Act (21 U.S.C. 812): marijuana, cocaine, opiates, amphetamines, and phencyclidine (PCP).

*Refuse to submit, refuse, or refuse to take* means behavior consistent with DOT Procedures concerning refusal to take a drug test or refusal to take an alcohol test.

*State agency* means an agency of any of the several states, the District of Columbia, or Puerto Rico that participates under the pipeline safety laws (49 U.S.C. 60101 *et seq.*)

[53 FR 47096, Nov. 21, 1988, as amended by Amdt. 199-2, 54 FR 51850, Dec. 18, 1989; 59 FR 62227, Dec. 2, 1994; Amdt. 199-13, 61 FR 18518, Apr. 26, 1996; Amdt. 199-15, 63 FR 13000, Mar. 17, 1998; Amdt. 199-19, 66 FR 47117, Sept. 11, 2001; 68 FR 11750, Mar. 12, 2003; 68 FR 75465, Dec. 31, 2003; 70 FR 11140, Mar. 8, 2005]

### § 199.5 DOT procedures.

The anti-drug and alcohol programs required by this part must be conducted according to the requirements of this part and DOT Procedures. Terms and concepts used in this part have the same meaning as in DOT Procedures. Violations of DOT Procedures with respect to anti-drug and alcohol programs required by this part are violations of this part.

[Amdt. 199-19, 66 FR 47118, Sept. 11, 2001]

### § 199.7 Stand-down waivers.

(a) Each operator who seeks a waiver under § 40.21 of this title from the stand-down restriction must submit an application for waiver in duplicate to the Associate Administrator for Pipeline Safety, Pipeline and Hazardous Materials Safety Administration, De-

## 49 CFR Ch. I (10-1-07 Edition)

partment of Transportation, Washington, DC 20590.

(b) Each application must—

(1) Identify § 40.21 of this title as the rule from which the waiver is sought;

(2) Explain why the waiver is requested and describe the employees to be covered by the waiver;

(3) Contain the information required by § 40.21 of this title and any other information or arguments available to support the waiver requested; and

(4) Unless good cause is shown in the application, be submitted at least 60 days before the proposed effective date of the waiver.

(c) No public hearing or other proceeding is held directly on an application before its disposition under this section. If the Associate Administrator determines that the application contains adequate justification, he or she grants the waiver. If the Associate Administrator determines that the application does not justify granting the waiver, he or she denies the application. The Associate Administrator notifies each applicant of the decision to grant or deny an application.

[Amdt. 199-19, 66 FR 47118, Sept. 11, 2001, as amended at 70 FR 11140, Mar. 8, 2005]

### § 199.9 Preemption of State and local laws.

(a) Except as provided in paragraph (b) of this section, this part 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 part is not possible;

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

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

(b) This part 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.

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