

insurance/pension costs in Government contracts. Insurance/pension specialists and the Defense Contract Audit Agency (DCAA) assist ACOs in making these determinations by conducting CIPRs.

(b) CIPRs can take the following forms:

(1) *Initial CIPR*. A comprehensive review of the contractor's insurance program, pension plan, and other deferred compensation plan. Includes a detailed review of the contractor's policies, procedures, and practices to determine whether the programs and plans in compliance with FAR and Cost Accounting Standards (CAS).

(2) *Special CIPR*. A review of the contractor's insurance program, pension plan, or other deferred compensation plan where the review concentrates on specific significant areas.

(3) *Incurred cost CIPR*. A review of costs incurred for insurance, pension, or other deferred compensation to determine allowability and compliance with FAR, CAS, and contract clauses.

(4) *Forward pricing CIPR*. A review of costs proposed for insurance, pension, or other deferred compensation to determine allowability and compliance with FAR and CAS.

(c) As the DoD Executive Agency, the Defense Logistics Agency provides program management and participates with DCAA in the performance of all CIPRs meeting the criteria in 242.7302.

(d) When special reviews of the contractor's insurance/pension program are desired, forward a request to the ACO. The review should be performed as part of an ACO-initiated special CIPR or, if possible, as part of the incurred cost or forward pricing CIPR if one is scheduled to be conducted in the near future.

242.7302 Requirements.

(a) An initial CIPR shall be conducted within 2 years after a contractor first exceeds \$40 million of annual qualifying sales to the Government. Qualifying sales are sales for which certified cost or pricing data were required under 10 U.S.C. 2306a, as implemented in FAR 15.804, or which are contracts other than firm-fixed-price or fixed-price with economic price adjustment. Sales include prime contracts, subcontracts, and modifications to such contracts and subcontracts.

(b) A special CIPR shall be performed for all contractors (including, but not limited to, those meeting the requirements in paragraph (a) of this section), when any of the following circumstances exists and it is anticipated that there may be a

significant impact on Government contract costs:

(1) Information reveals a deficiency in the contractor's insurance/pension program.

(2) The contractor proposes or implements changes in the insurance, pension, or deferred compensation plans.

(3) The contractor is involved in a merger, acquisition, or divestiture.

(4) Follow-up on contractor implementation of prior CIPR recommendations is needed.

(5) Verification of Government recovery of credits is needed.

(c) Incurred cost and forward pricing CIPRs shall be performed when it is determined that participation of an insurance/pension specialist is essential to determine cost allowability.

242.7303 Responsibilities.

(a) The administrative contracting officer is responsible for—

(1) Determining the need for a CIPR under 242.7302;

(2) Requesting and scheduling the reviews with the appropriate Defense Logistics Agency activity;

(3) Notifying the contractor of the proposed date and purpose of the review, and obtaining any preliminary data needed by the insurance/pension specialist and DCAA;

(4) Reviewing the CIPR report, advising the contractor of the results, and asking the contractor to submit any significant changes in insurance/pension plans for review and acceptance prior to making the change;

(5) Providing other interested contracting officers copies of documents related to the CIPR;

(6) Ensuring adequate follow-up on all CIPR recommendations; and

(7) Performing contract administration responsibilities related to Cost Accounting Standards administration as delineated in FAR subparts 30.2 and 30.6.

(b) The insurance/pension specialist responsible for—

(1) Preparing and maintaining the schedule of CIPRs to be performed during the next 12 months and providing the military departments and DCAA a copy of the schedule;

(2) Heading the team that conducts the review (the team leader). Another party may be designated as the team leader when agreed to by both the insurance/pension specialist and that party. The team leader is responsible for—

(i) Maintaining complete documentation for CIPR reports;

(ii) To the extent possible, resolving discrepancies between audit reports and

CIPR draft reports prior to releasing the final CIPR report;

(iii) Preparing and distributing the final CIPR report;

(iv) Providing the final audit report and/or the insurance/pension specialist's report as an attachment to the CIPR report; and

(v) Preparing a draft letter for the administrative contracting officer's use in notifying the contractor of CIPR results; and

(3) When requested, advising administrative contracting officers and other Government representatives concerning contractor insurance/pension matters.

(c) DCAA is responsible for—

(1) Participating as a member of the CIPR team;

(2) Submitting information and advice to the team based on analysis of the contractor's books, accounting records, and other related data;

(3) Issuing an audit report to the insurance/pension specialist for incorporation into the final CIPR report; and

(4) Performing contract audit responsibilities related to Cost Accounting Standards administration as delineated in FAR subparts 30.2 and 30.6.

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 199

[RSPA Docket PS-128; Amdt. 199-15]

RIN 2137-AC84

Drug and Alcohol Testing; Substance Abuse Professional Evaluation for Drug Use

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The Research and Special Programs Administration proposes to modify current procedures in its drug testing regulations governing situations in which pipeline employees test positive on a drug test. The proposed changes would require pipeline operators to require employees who test positive for the presence of prohibited drugs or who refuse to take a required drug test to be evaluated by a substance abuse professional (SAP), who could require an employee to undergo a rehabilitation program prior to the

employee's return to duty. The reason for this change is to conform RSPA's drug and alcohol testing regulations with the drug and alcohol regulations of the other Department of Transportation operating administrations. In addition, RSPA is proposing to define "covered employee" and "covered function." Finally, this rule would allow Medical Review Officers (MROs) who meet the SAP qualifications to perform the evaluation of individuals who have had a verified positive drug test or who have refused to take a required test.

DATES: Comments should be received by October 20, 1997. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Comments should be sent to the Dockets Unit, Room 8421, U.S. Department of Transportation, Research and Special Programs Administration, 400 Seventh Street, SW., Washington, DC 20590-0001. Comments should identify the Docket Number PS-128 and the RSPA Rulemaking Number 2137-AC84. Commenters should submit 3 copies. Commenters wishing to receive confirmation of receipt of their comments must include a stamped, self-addressed postcard with their comments. The docket clerk will date stamp the postcard and return it to the commenter. Comments will be available for inspection and copying in Room 8421 between 8:30 a.m. and 5 p.m. each business day.

FOR FURTHER INFORMATION CONTACT: Catrina M. Pavlik, Drug/Alcohol Program Analyst, Research and Special Programs Administration, Office of Pipeline Safety, Room 2335, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-6199, Fax: (202) 366-4566, e-mail: catrina.pavlik@RSPA.dot.gov.

SUPPLEMENTARY INFORMATION: The February 15, 1994, publication of the Department's common preamble to the Limitation on Alcohol Use by Transportation Workers discusses the requirement for a substance abuse professional evaluation when an employee tests positive for alcohol (59 FR 7302). RSPA's alcohol testing regulations include a requirement that pipeline operators use a SAP to evaluate pipeline employees whose test results indicate an alcohol concentration of 0.04% or greater, or who fail or refuse to undergo an alcohol test. These individuals are required to follow a rehabilitation program that is prescribed by the SAP before returning to duty. Unlike the other modal administrations, RSPA did not incorporate a similar requirement on pipeline operators whose employees tested positive for the

presence of prohibited drugs or refused to undergo a drug test. Under RSPA's drug testing regulations, an employee who either tests positive for a prohibited drug or who refuses to take a required drug test must be interviewed by an MRO to confirm a positive drug test and to determine whether there is a legitimate medical explanation for the confirmed test or for an employee's refusal to be tested. Once confirmed, the MRO is required to determine when the employee is eligible to take a return-to-duty test. Unlike the alcohol testing rules, the drug testing rules do not require employees to follow a rehabilitation program prescribed by a SAP. Upon receiving a negative test result from a return-to-duty test, the MRO is responsible for establishing an unannounced follow-up testing schedule for that employee. This schedule is not permitted to exceed 60 months.

Because of the desire to conform RSPA's drug testing regulations with the drug testing regulations of the other modal administrations, RSPA is proposing to require pipeline operators to utilize SAPs to evaluate pipeline employees who have either received a positive drug test or have refused a drug test required by RSPA. In addition, the SAP could require an employee to complete a rehabilitation program before being eligible to return to duty.

Conformity among the modes will assist with overall administration of RSPA's drug testing regulations. Currently 14% of the pipeline employees subject to RSPA's drug testing regulations are also subject to the drug testing regulations of one or more of the other DOT modes. According to the FY95 Management Information System (MIS) reports there are approximately 160,906 employees covered by RSPA's drug testing regulations. Of that number, 41 are also covered by FAA, 26,969 are also covered by FHWA, 210 are also covered by FTA, 216 are also covered by USCG and none are covered by FRA. Employees presently dual-covered by another operating administration are already required to undergo a substance abuse professional evaluation for a positive drug test. In addition to conforming RSPA's drug rules with the other modal administrations, this action would make RSPA's drug testing rule consistent with RSPA's alcohol rule.

RSPA sought informal feedback from the American Gas Association (AGA) and the American Petroleum Gas Association (APGA) on whether this requirement would have an impact on pipeline operators. After an informal survey of several of their members, AGA

and APGA stated that they felt this requirement would not be a burden to pipeline operators since those members are already adhering to this procedure for activities covered by other DOT operating administrations.

Requiring a SAP evaluation for a positive drug test or an employee's refusal to test would add an additional layer of activity to the return-to-duty role that has up until now involved only the MRO. If an MRO is certified as a SAP, he could perform all functions that would be required under the proposed regulations. This would entail certifying a test result as a negative/positive drug test. If a test is confirmed as positive or an individual refuses to take a test, the MRO could perform the SAP evaluation to determine what treatment, if any, is needed. Then, the MRO could schedule the return-to-duty test and follow-up testing. However if the MRO is not certified as a SAP, the MRO would continue to certify a test result but in the event of a positive test or refusal to take a test, the MRO would have to refer the employee to a SAP for evaluation and treatment. The SAP would consult with the MRO when scheduling the return-to-duty test and the follow-up testing.

RSPA currently defines "employee" in its drug testing regulations as a person who performs on a pipeline or Liquefied Natural Gas (LNG) facility an operating, maintenance, or emergency-response function regulated by part 192, 193, or 195. In addition, RSPA has published guidance material using and defining the terms "covered employee" and "covered function." As used in the guidance, a "covered employee" means "employee." RSPA proposes to substitute the word "employee" with the term "covered employee" in the definition section of the drug testing regulations (199.3), and proposes to add the definition of "covered function." In the RSPA alcohol testing regulations these terms are already defined in § 199.205, "Definitions." RSPA has determined that there is a need to make these definitions part of § 199.3 for clarification purposes and for consistency between the RSPA drug and alcohol testing regulations. The proposed changes would enable pipeline operators to know the accurate meaning of these phrases and how they pertain to the drug and alcohol testing regulations.

Regulatory Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposal requires that pipeline employees who either test positive for

prohibited drugs or refuse to be tested must be evaluated by a substance abuse professional (SAP) who could require that an employee undergo rehabilitation prior to the employee's return to duty in a covered function. The reason for this rule change is to conform RSPA's drug testing program to its alcohol testing program as well as the drug and alcohol testing programs of all other DOT modes.

RSPA concluded that because all pipeline companies already employ SAPs for their alcohol testing programs it is likely the same professional will be used to perform this same function on the drug testing program. Further, this proposal requires that employees who test positive could be required to undergo rehabilitation before their return to duty. RSPA, however, does not require that the employer pay for this treatment. Many employees may also be terminated or placed in non-covered functions rather than be given the opportunity for treatment. Therefore, the cost of the treatment is not the financial responsibility of the employer. Another factor that was taken into account is the fact that the most recent drug testing results show that only 0.8% of the employees tested positive for drugs. Therefore, the number of employees who would need to be evaluated by a SAP is minimal. Given the fact that pipeline companies already employ or presently contract with SAPs, they are not required to pay for nor offer rehabilitation for employees who test positive, and that a minimal number of employees would require evaluation, RSPA believes that this rule will have little to no economic impact on any pipeline company. RSPA finds that this rule is not significant under section 3(f) of Executive Order 12866 and also not significant under the Regulatory Policies and Procedures of the Department of Transportation.

Executive Order 12612

This regulation would not have substantial direct effect 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 would not have sufficient federalism implications to warrant preparation of a federalism assessment.

Regulatory Flexibility Act

Because this rule will require little to no additional cost to pipeline operators (see discussion on the regulatory

evaluation) RSPA certifies under section 605 of the Regulatory Flexibility Act (5 U.S.C.) that this rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

There are no new information collection requirements in this rule.

Unfunded Mandates Reform Act of 1995

This rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of \$100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

List of Subjects in 49 CFR Part 199

Drug testing, Pipeline safety.

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

PART 199—[AMENDED]

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

Authority: 49 App. U.S.C. 60101 *et seq.*; 49 CFR 1.53.

2. Section 199.3 would be amended by revising the definition of "employee" and adding a new definition of "covered function" to read as follows:

§ 199.3 Definitions.

Covered employee means a person who performs on a pipeline or LNG facility an operations, maintenance, or emergency-response function regulated by part 192, 193, or 195 of this chapter. This does not include clerical, truck driving, accounting, or other functions not subject to part 192, 193, or 195 of this chapter. The person may be employed by the operator, be a contractor engaged by the operator, or be employed by such a contractor.

Covered function means an operations, maintenance, or emergency-response function conducted on the pipeline or LNG facility that is regulated by Part 192, 193, or 195.

3. Section 199.11 would be amended by revising paragraph (e) to read as follows:

§ 199.11 Drug tests required.

(e) *Return to duty testing.* A covered employee who refuses to take or does not pass a drug test may not return to duty in the covered function until the covered employee has been evaluated

by a substance abuse professional, and has properly followed any prescribed rehabilitation program. The covered employee shall be subject to unannounced follow-up drug tests administered by the operator following the covered 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 covered employee's return to duty. In addition, follow-up testing may include testing for alcohol 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 covered 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.

4. Section 199.15 would be amended by revising paragraph (d)(2) and adding new paragraphs (e) and (f) to read as follows:

§ 199.15 Review of drug testing results.

* * * * *

(d) * * *
(2) If the MRO determines, after appropriate review, that there is no legitimate medical explanation for the confirmed positive test result other than the unauthorized use of a prohibited drug, the MRO shall require that the covered employee who engages in conduct prohibited under § 199.9 shall be evaluated by a substance abuse professional who shall determine what assistance, if any, the covered employee needs in resolving problems associated with illegal drug use.

* * * * *
(e) 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.

(f) The operator shall ensure that a substance abuse professional who determines that a covered employee requires assistance in resolving programs with drug abuse does not refer the covered 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 a covered 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 drug 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.

Issued in Washington, DC, on August 13, 1997.

Kelley S. Coyner,

Acting Administrator.

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