**§ 16.207 [Removed]**

15. Remove § 16.207.

16. In § 16.260 revise paragraph (a) to read as follows:

**§ 16.260 Records.**

(a) Employers must maintain records of chemical tests as provided in 49 CFR 40.333 and must make these records available to Coast Guard officials upon request.

* * * * *

**§ 16.301 [Redesignated as § 16.113]**

17. Redesignate § 16.301 as § 16.113 and transfer it to subpart A.

**§ 16.310 [Removed]**

18. Remove § 16.310.

**§ 16.320 [Removed]**

19. Remove § 16.320.

**§ 16.330 [Removed]**

20. Remove § 16.330.

**§ 16.340 [Removed]**

21. Remove § 16.340.

22. In newly redesignated § 16.113, revise the section heading, designate the existing text as paragraph (a), and add paragraph (b) to read as follows:

**§ 16.113 Chemical drug testing.**

* * * * *

(b) Each specimen collected in accordance with this part will be tested, as provided in 49 CFR 40.85, for the following:

(1) Marijuana;
(2) Cocaine;
(3) Opiates;
(4) Phencyclidine (PCP); and
(5) Amphetamines.

**§ 16.350 [Removed]**

23. Remove § 16.350.

**§ 16.360 [Removed]**

24. Remove § 16.360.

25. Redesignate § 16.370(d) as § 16.201(g) and revise it to read as follows:

**§ 16.201 Application.**

* * * * *

(g) Before an individual who has failed a required chemical test for dangerous drugs may return to work aboard a vessel, the MRO must determine that the individual is drug-free and the risk of subsequent use of dangerous drugs by that person is sufficiently low to justify his or her return to work. In addition, the individual must agree to be subject to increased unannounced testing—

(1) For a minimum of six (6) tests in the first year after the individual returns to work as required in 49 CFR part 40; and

(2) For any additional period as determined by the MRO up to a total of 60 months.

**§ 16.370 [Removed]**

26. Remove § 16.370.

**§ 16.380 [Removed]**

27. Remove § 16.380.

28. Remove and reserve subpart C.

Dated: November 22, 2000.

**Joseph J. Angelo,**

*Director of Standards, Acting Assistant Commandant for Marine Safety and Environmental Protection.*

[FR Doc. 01–9411 Filed 4–27–01; 8:45 am]

**BILLING CODE 4910–15–U**

## DEPARTMENT OF TRANSPORTATION

## Research and Special Programs Administration

## 49 CFR Part 199

**[Docket No. RSPA–00–8417; Notice 1]**

**RIN 2137–AD55**

## Drug and Alcohol Testing for Pipeline Facility Employees

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** We propose to conform the pipeline facility drug and alcohol testing regulations with corresponding DOT regulations (Procedures for Transportation Workplace Drug and Alcohol Testing Programs). We also propose miscellaneous changes to the pipeline facility drug and alcohol testing regulations to make them easier to apply and understand. The proposals are intended to ensure the pipeline facility drug and alcohol testing regulations are clear and consistent with the DOT regulations.

**DATES:** Persons interested in submitting written comments on the proposed rules must do so by June 14, 2001. Late filed comments will be considered so far as practicable.

**ADDRESSES:** You may submit written comments by mailing or delivering an original and two copies to the Dockets Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. The Dockets Facility is open from 10:00 a.m. to 5:00 p.m., Monday through Friday, except on Federal holidays when the facility is closed. Or you may submit written comments to the docket electronically at the following Web address: http://dms.dot.gov. See the **SUPPLEMENTARY INFORMATION** section for additional filing information.

**FOR FURTHER INFORMATION CONTACT:** L. M. Furrow by phone at 202–366–4559, by fax at 202–366–4566, by mail at U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC, 20590, or by e-mail at buck.furrow@rspa.dot.gov.

**SUPPLEMENTARY INFORMATION:**

### Filing Information, Electronic Access, and General Program Information

All written comments should identify the docket and notice numbers stated in the heading of this notice. Anyone who wants confirmation of mailed comments must include a self-addressed stamped postcard. To file written comments electronically, after logging onto http://dms.dot.gov, click on ''Electronic Submission.'' You can read comments and other material in the docket at this Web address: http://dms.dot.gov. General information about our pipeline safety program is available at this address: http://ops.dot.gov.

### Background

On April 29, 1996, DOT issued an advance notice of proposed rulemaking (61 FR 18713) concerning changes to its regulations called Procedures for Transportation Workplace Drug and Alcohol Testing Programs (49 CFR Part 40). These regulations prescribe requirements applicable to all employers who must conduct drug and alcohol testing under separate regulations administered by DOT agencies such as RSPA. Subsequently, on December 9, 1999, DOT issued a notice of proposed rulemaking (64 FR 69076) to change Part 40 comprehensively. The Final Rule document revising Part 40 has now been published (65 FR 79462; December 19, 2000). Consequently, we are proposing to amend the drug and alcohol testing regulations for pipeline facilities (49 CFR Part 199) to conform them to revised Part 40.

### Common Preamble

Elsewhere is today's **Federal Register**, DOT is publishing a preamble related to the notices of proposed rulemaking that RSPA and other DOT agencies are publishing to conform their drug and alcohol testing regulations to revised Part 40. This common preamble provides an overview of the issues involved.

### Proposed Amendments to Part 199

*Structure and Organization*

When the rules in Subpart B-Alcohol Misuse Prevention Program were added

to Part 199, the drug testing requirements in §§ 199.1 through 199.25 were designated as Subpart A. However, § 199.1, ''Scope and compliance,'' § 199.3, ''Definitions,'' and § 199.5, ''DOT procedures,'' are relevant to Part 199 in general. So we propose to designate § 199.1 through § 199.5 as Subpart A—General. Sections 199.7 through 199.25 would be designated as Subpart B—Drug Testing and redesignated as §§ 199.101 through 199.119, respectively. The heading ''Subpart B-Alcohol Misuse Prevention Program'' would be redesignated as ''Subpart C—Alcohol Misuse Prevention Program.''

Another section that relates to Part 199 in general is § 199.207, ''Preemption of state and local laws.'' We propose to transfer this section to Subpart A—General as § 199.7.

In § 199.1, the first sentence of paragraph (a) would be revised to state that the scope of Part 199 includes both drug and alcohol testing. And the second sentence of paragraph (a), concerning the exclusion from Part 199 of master meter and petroleum gas systems, would be clarified and transferred to new § 199.2. In view of these proposed changes concerning the scope and applicability of Part 199 in general, § 199.201, concerning the applicability of Subpart B, would be removed as superfluous.

Sections 199.1(b) and 199.213, which provide compliance dates, would be removed because the dates have expired.

The first sentence of § 199.5 now provides that the ''anti-drug program'' required by Part 199 must be conducted according to the requirements of Part 199 and DOT Procedures (or 49 CFR part 40). To make this sentence apply to the Part 199 alcohol program as well, we propose to change ''anti-drug program'' to ''anti-drug and alcohol programs.'' In view of this proposed change, § 199.203, which makes DOT Procedures applicable to alcohol tests under Part 199, would be removed as superfluous. The definition of ''DOT Procedures'' in § 199.3 would be revised similarly.

Under § 199.9(b)(2) [or redesignated § 199.103(b)(2)], a medical review officer's recommendation for return to duty is one of three conditions an employee must meet to escape the consequences of failing or refusing a drug test. We propose to make this condition consistent with § 199.11(e) [or redesignated § 199.105(e)] and DOT Procedures. First, the reference to the medical review officer's recommendation for return to duty would be deleted. Under Part 40 substance abuse professionals, not medical review officers, play the lead role in the return to duty process. Secondly, this point would be emphasized by adding that a substance abuse professional must have determined that the employee has successfully completed any required education or treatment.

Sections 199.225(a)(2)(ii) and 199.225(b)(4)(ii) require operators to submit certain post-accident and reasonable-suspicion test records for the years 1995, 1996, and 1997. Because the deadlines for compliance with these reporting requirements have expired, we propose to remove §§ 199.225(a)(2)(ii) and 199.225(b)(4)(ii).

*Definitions*

The definitions in Part 199 are now stated in two sections: §§ 199.3 and 199.205. To make it easier to find and use Part 199 definitions and to eliminate unnecessary repetition within Part 199 and with Part 40, we propose to transfer to § 199.3 those definitions in § 199.205 that are not duplicated in either § 199.3 or Part 40. Section 199.205 would then be removed.

Section 199.205 contains definitions of the following terms that also are defined in § 199.3: accident, administrator, covered employee, covered function, operator, and state agency. The proposed transfer would make this repetition unnecessary. In addition, § 199.205 defines the following terms that also are defined in 49 CFR 40.3: alcohol, alcohol concentration, alcohol use, confirmation test, consortium, DOT agency, employer, and screening test. Because § 199.5 provides that terms and concepts used in Part 199 have the same meaning as in Part 40, it is unnecessary to transfer these definitions to § 199.3. Consequently, only definitions of the following two terms in § 199.205 would be transferred to § 199.3: performing a covered function, and refuse to submit to an alcohol test. The definition of ''performing a covered function'' would be revised for clarity.

The definitions of ''covered employee'' and ''covered function'' included in §§ 199.3 and 199.205 may be unclear because similar terms are used in both definitions. So we propose to clarify these definitions. The term ''covered employee'' (and ''employee'' or ''individual to be tested'') would be defined as a person who performs a covered function, including persons employed by operators, contractors engaged by operators, and persons employed by such contractors. The term ''covered function'' would be defined as an operations, maintenance, or emergency-response function regulated by [49 CFR] part 192, 193, or 195 that is performed on a pipeline or LNG facility. The statement in the present definition of ''covered employee'' that covered functions do not include clerical, truck driving, accounting, or other functions not subject to part 192, 193, or 195 would be deleted as unnecessary.

The definition of ''prohibited drug'' in § 199.3 would be revised by removing the second sentence, which authorizes operators, under certain conditions, to test for drugs other than marijuana, cocaine, opiates, amphetamines, and phencyclidine. This revision is necessary because specimens collected for purposes of drug testing under Part 199 may not be tested for any other drugs (49 CFR 40.85). As indicated by 49 CFR 40.13, operators may collect other specimens to test for other drugs.

The definition of ''refuse to submit'' in § 199.3 would be clarified to explain that it applies equally to the terms ''refuse'' and ''refuse to take'' a drug test. Moreover, the definition would be revised to refer to DOT procedures on refusal to take a drug test (49 CFR 40.191(b)). Under these procedures, refusal to take a drug test includes submission of an adulterated or substituted specimen. The definition would be further revised to include a similar definition proposed to be transferred from § 199.205 regarding alcohol testing and to refer to DOT procedures on refusal to take an alcohol test (49 CFR 40.261).

*Enforcing DOT Procedures*

Part 199 refers to the drug and alcohol testing procedures in Part 40 as ''DOT Procedures'' and incorporates these procedures by reference (§ 199.5). Our practice is to enforce compliance with Part 40 as if it were a Part 199 regulation. To remove any uncertainty about this enforcement practice, we propose to amend § 199.5 to make it clear that a violation of Part 40 is a violation of Part 199. In addition, to further the enforceability of Part 40, we propose to remove from § 199.5 the statement that in the event of conflict with Part 40, Part 199 prevails. If there is a substantive difference between Part 40 and Part 199, we will state the difference explicitly in Part 199.

*Drug Tests Required*

DOT Procedures (49 CFR 40.61) cover the appropriate steps to collect urine specimens from employees who need medical attention. Moreover, § 40.61(b)(3) specifically forbids collection from an unconscious employee. Therefore, we propose to delete the following sentence from

§ 199.11(b) [or redesignated § 199.105(b)]: ''If an employee is injured, unconscious, or otherwise unable to evidence consent to the drug test, all reasonable steps must be taken to obtain a urine sample.''

Section 199.11(e) prescribes the role of a substance abuse professional in returning to duty a covered employee who refuses or fails a drug test. For consistency with Part 40, § 199.11(e) [or redesignated § 199.105(e)] would be revised to refer to DOT Procedures.

*Medical Review Officers*

Section 199.15(b) loosely defines the qualifications required of a medical review officer (MRO). To assure consistency and compliance with the detailed MRO qualifications stated in 49 CFR 40.121, we propose to revise § 199.15(b) [or redesignated § 199.109(b)] to refer to those qualifications.

Section 199.15(c) states a few functions of medical review officers, focusing primarily on the review of positive and negative test results. In contrast, Part 40 covers MRO functions comprehensively, including the review of reports of tests not performed for reasons including adulterated or substituted specimens. Therefore, we propose to amend § 199.15(c) [or redesignated § 199.109(c)] to state that the MRO must provide functions for the operator as required by DOT Procedures.

Section 199.15(d)(1) provides that MROs are not required to take further action if they determine there is a legitimate medical explanation for a confirmed positive test result other than the unauthorized use of prohibited drugs. However, Part 40 does require MROs to take further action in these circumstances. Under § 40.163, MROs must report all test results to employers. Also, § 199.15(d)(2) is jumbled and could be misinterpreted to require MROs to refer individuals with verified positive test results to a substance abuse professional, when under Part 40 employers make such referrals. So we propose to amend § 199.15(d) [or redesignated § 199.109(d)] to state that MROs must report all test results to operators in accordance with DOT Procedures. Because other Part 40 requirements describe what employers must do after receiving MRO reports, the existing provisions in § 199.15(d) regarding further proceedings and evaluation by a substance abuse professional would be deleted as superfluous.

*Retention of Samples and Retesting*

Under § 199.17(b), if an MRO determines there is no legitimate medical explanation for a confirmed positive test result other than the unauthorized use of a prohibited drug, the ''original sample'' must be retested if the employee makes a written request for retesting within 60 days of receipt of the final test result from the MRO. This provision is inconsistent with 49 CFR 40.153(b), which allows employees only 72 hours to make a timely request for an additional test, and the request need not be in writing. So we propose to revise § 199.17(b) [or redesignated § 199.111(b)] to require additional testing if the employee makes a timely request for additional testing according to DOT Procedures.

Revised Part 40 requires split specimen collections (49 CFR 40.71(a)). And the reference to DOT Procedures in §§ 199.5 and 199.7 will make split specimen collections mandatory under Part 199. Under the Part 40 split specimen collection process, employers divide each collected urine specimen into a primary specimen and a split specimen. If a covered employee requests additional testing, Part 40 requires that the test be done only on the split specimen (49 CFR 40.153).

In view of this requirement, we are concerned about the appropriateness of the term ''original sample'' in § 199.17(b). We believe ''original sample'' could be misunderstood to mean ''primary specimen.'' We propose to amend § 199.17(b) [or redesignated § 199.111(b)] to indicate that the split specimen must be tested when a covered employee requests additional testing. Also, since the concept of ''retesting'' is no longer suitable under this section, the term would be dropped and replaced by ''testing'' or ''additional testing''.

*Pre-Employment Alcohol Testing*

Part 199 does not require operators to conduct pre-employment tests for alcohol. However, § 199.209 makes it clear that Part 199 does not affect the authority of operators to conduct tests for alcohol that are not required by Part 199. We are proposing to amend § 199.209 to require that if operators conduct pre-employment tests for alcohol, the tests must be done according to DOT Procedures.

*Stand-Down Waivers*

Revised Part 40 prohibits employers from temporarily removing employees from performing safety-sensitive functions based on an unverified positive drug test result (49 CFR 40.21(a)). At the same time, Part 40 permits employers to petition DOT agencies to waive this stand-down restriction (49 CFR 40.21(b)). To facilitate this waiver process, we are proposing a new procedural rule, § 199.9, for operators to follow when seeking from RSPA a waiver of the Part 40 stand-down restriction. The proposed rule advises operators how they should prepare stand-down waiver requests and to whom the requests should be sent.

*Checking Previous Test Results*

Under revised Part 40, employers may not hire or use any person in a safety-sensitive position unless they seek to obtain from previous DOT-regulated employers of the person certain drug and alcohol testing information (49 CFR 40.25). To call attention to this new requirement, we propose to refer to it in new § 199.11. In addition, consistent with § 40.25, we propose to require operators to remove employees from covered functions, pending successful completion of the return-to-duty process, if after reviewing the information the operator learns the employee violated a DOT agency drug or alcohol testing rule.

*Release of Information*

New Part 40 authorizes employers to release employee-specific drug and alcohol testing information without the employee's consent in connection with certain legal proceedings (§ 40.323). However, § 199.23(b) does not permit releases of drug information in legal proceedings without employee consent. And although § 199.231(g) permits releases of alcohol information without employee consent in certain legal proceedings, § 199.231(g) is not consistent with § 40.323 in several respects. In addition, § 199.23(b) limits the drug test information operators must furnish RSPA or a state pipeline safety agency regardless of employee consent to information related to accident investigations. A similar limitation is not in § 199.231(d) governing the release to RSPA and state agencies of alcohol test information, nor is it in § 40.331 governing the release of name-specific alcohol and drug information to DOT and state agencies. Consequently, we propose to amend § 199.23(b) [redesignated § 199.117(b)] to provide that operators may or are required to release information without the employee's consent as provided by DOT Procedures. Section 199.231(g) would be amended to permit releases without consent in legal proceedings as provided by DOT Procedures.

**Regulatory Analyses and Notices**

*Executive Order 12866 and DOT Policies and Procedures*

RSPA does not consider this proposed rulemaking to be a significant regulatory action under Section 3(f) of Executive Order 12866 (58 FR 51735; Oct. 4, 1993). Therefore, the Office of Management and Budget (OMB) has not received a copy of this rulemaking to review. RSPA also does not consider this proposed rulemaking to be significant under DOT regulatory policies and procedures (44 FR 11034: February 26, 1979).

The proposed rules are non-significant because they would merely change Part 199 to conform it to revised 49 CFR part 40, which has already had extensive comment and analysis. The economic impacts of the underlying Part 40 changes were analyzed in connection with the Part 40 rulemaking, and the proposed rules would not have any incremental economic impacts on their own. Regarding the clarifying and organizational changes we are proposing that are not directly due to revised Part 40, our assessment of these changes is that the economic impact would be too minimal to warrant the preparation of a Regulatory Evaluation.

*Regulatory Flexibility Act*

The proposed rules are consistent with revised Part 40 and have no incremental economic impacts of their own. Therefore, based on the facts available about the anticipated impacts of this proposed rulemaking, I certify, pursuant to Section 605 of the Regulatory Flexibility Act (5 U.S.C. 605), that the proposed rules, if adopted as final, would not have a significant impact on a substantial number of small entities.

*Paperwork Reduction Act*

All the information collection requirements of Part 40 have been analyzed and approved by OMB. These proposed rules would impose no information collection requirements that have not already been reviewed in the Part 40 rulemaking. So no further Paperwork Reduction Act review is necessary.

*Executive Order 12612*

The proposed rules would not have a 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), we have determined that the proposed rules would not have sufficient federalism implications to warrant preparation of a federalism assessment.

*Executive Order 13084*

The proposed rules have been analyzed in accordance with the principles and criteria contained in Executive Order 13084, ''Consultation and Coordination with Indian Tribal Governments.'' Because the proposed rules would not significantly or uniquely affect the communities of the Indian tribal governments and would not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13084 do not apply.

*Executive Order 13132*

Revised Part 40 has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). The proposed rules have no incremental Federalism impacts for purposes of Executive Order 13132. So no further analysis is needed for Federalism purposes.

*Impact on Business Processes and Computer Systems*

We do not want to impose new requirements that would mandate business process changes when the resources necessary to implement those requirements would otherwise be applied to ''Y2K'' or related computer problems. The proposed rules would not mandate business process changes or require modifications to computer systems. Because the proposed rules would not affect the ability of organizations to respond to those problems, we are not proposing to delay the effectiveness of the requirements.

*Unfunded Mandates Reform Act of 1995*

The proposed rules would not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. The rules would 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 would be the least burdensome alternative that achieves the objective of the rules.

*National Environmental Policy Act*

We have analyzed the proposed rules for purposes of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*). Because the proposed rules parallel present requirements of revised Part 40 or involve clarifying or organizational changes, we have preliminarily determined that the proposed rules would not significantly affect the quality of the human environment. A final determination on environmental impact will be made after the end of the comment period.

**List of Subjects in 49 CFR Part 199**

Drug testing, Pipeline safety, Reporting and recordkeeping requirements, Safety, Transportation.

In consideration of the foregoing, we propose to amend 49 CFR Part 199 as follows:

## PART 199—DRUG AND ALCOHOL TESTING

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

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

2. The heading for subpart A is revised to read as follows:

### Subpart A—General

3. In § 199.1, paragraph (a) is revised, paragraph (b) is removed, and paragraphs (c) and (d) are redesignated as paragraphs (b) and (c), respectively, to read as follows:

**§ 199.1 Scope and compliance.**

(a) 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.

* * * * *

4. Section 199.2 is added to read as follows:

**§ 199.2 Applicability.**

This part does not apply to covered functions performed on—

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

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

5. In § 199.3, the introductory text is revised, the definitions of ''Covered employee'' and ''Refuse to submit'' are removed, the definitions of ''Covered function,'' ''DOT Procedures,'' and ''Prohibited drug'' are revised, and definitions of ''Covered employee, employee, or individual to be tested,'' ''Performs a covered function,'' and ''Refuse to submit, refuse, or refuse *to take* are added in alphabetical order, to read as follows:

**§ 199.3 Definitions.**

As used in this part—

* * * * *

*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 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.

* * * * *

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

* * * * *

*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.

* * * * *

6. Section 199.5 is revised to read as follows:

**§ 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.

6a. Subpart B is redesignated as subpart C.

7. Existing §§ 199.7, 199.9, 199.11, 199.13, 199.15, 199.17, 199.19, 199.21, 199.23, and 199.25 are redesignated as §§ 199.101, 199.103, 199.105, 199.107, 199.109, 199.111, 199.113, 199.115, 199.117, and 199.119, respectively, in new subpart B, and a subpart B heading is added to read as follows:

## Subpart B—Drug Testing

8. New § 199.9 is added to subpart A to read as follows:

**§ 199.9 Stand-down waivers.**

(a) Each operator who seeks a waiver under § 40.21 of this title from the stand-down restriction shall submit an application for waiver in duplicate to the Associate Administrator for Pipeline Safety, Research and Special Programs Administration, Department 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.

9. New § 199.11 is added to subpart A to read as follows:

**§ 199.11 Checking Previous Test Results.**

(a) As required by DOT Procedures, no operator may hire or use any person to perform a covered function unless the operator has sought to obtain from previous DOT-regulated employers of the person certain drug and alcohol testing information.

(b) If, after reviewing the information, the operator learns the employee violated a DOT agency drug or alcohol testing rule, the operator shall remove the employee from covered functions, pending successful completion of the return-to-duty process.

10. In redesignated § 199.103, paragraph (a)(1) is amended by removing the term ''§ 199.15(d)(2)'' and adding ''DOT Procedures'' in its place, and by revising paragraph (b)(2) to read as follows:

**§ 199.103 Use of persons who fail or refuse a drug test.**

* * * * *

(b) * * *

(2) Been considered by the medical review officer in accordance with DOT Procedures and been determined by a substance abuse professional to have successfully completed required education or treatment; and

* * * * *

11. In redesignated § 199.105, paragraph (b) is revised, paragraphs (c)(3) and (c)(4) are amended by removing the term ''§ 199.25'' and adding ''§ 199.119'' in its place wherever the term appears, and paragraph (e) is revised, to read as follows:

**§ 199.105 Drug tests required.**

* * * * *

(b) *Post-accident testing.* As soon as possible but no later than 32 hours after an accident, an operator shall drug test each employee whose performance either contributed to the accident or cannot be completely discounted as a contributing factor to the accident. An operator may decide not to test under this paragraph but such a decision must be based on the best information available immediately after the accident that the employee's performance could not have contributed to the accident or that, because of the time between that performance and the accident, it is not likely that a drug test would reveal whether the performance was affected by drug use.

* * * * *

(e) *Return to duty testing.* A covered employee who refuses to take or has a positive drug test may not return to duty in the covered function until the covered employee has complied with DOT Procedures on return to duty and the role of a substance abuse professional.

* * * * *

12. In redesignated § 199.109, paragraphs (b), (c), and (d) are revised to read as follows:

**§ 199.109 Review of drug testing results.**

* * * * *

(b) *MRO qualifications.* Each MRO must be a licensed physician who has the qualifications required by DOT Procedures.

(c) *MRO duties.* The MRO shall perform functions for the operator as required by DOT Procedures.

(d) *MRO reports.* The MRO shall report all drug test results to the operator in accordance with DOT Procedures.

* * * * *

13. In redesignated § 199.111, the section heading and the first sentence of paragraph (b) are revised, the second sentence of paragraph (b) and paragraph (c) are amended by removing the term ''retesting'' and adding ''testing'' in its place wherever the term appears, and the last sentence of paragraph (b) is amended by removing the term ''retest'' and adding ''additional test'' in its place, to read as follows:

**§ 199.111 Retention of samples and additional testing.**

* * * * *

(b) If the medical review officer (MRO) determines there is no legitimate medical explanation for a confirmed positive test result other than the unauthorized use of a prohibited drug, and if timely additional testing is requested by the employee according to DOT Procedures, the split specimen must be tested. * * *

* * * * *

14. The first sentence of redesignated § 199.117(b) is revised to read as follows:

**§ 199.117 Recordkeeping.**

* * * * *

(b) Information regarding an individual's drug testing results or rehabilitation may be released only upon the written consent of the individual, except as provided by DOT Procedures. * * *

**§ 199.201 [Removed and Reserved]**

15. Section 199.201 is removed and reserved.

16. In § 199.202, the first sentence is revised to read as follows:

**§ 199.202 Alcohol misuse plan.**

Each operator shall maintain and follow a written alcohol misuse plan that conforms to the requirements of this part and DOT Procedures concerning alcohol testing programs. * * *

**§§ 199.203, 199.205 [Removed and Reserved]**

17. Sections 199.203 and 199.205 are removed and reserved.

18. Section 199.207 is redesignated as new § 199.7 and transferred to subpart A, and redesignated § 199.7 is amended by removing the term ''subpart'' and adding ''part'' in its place wherever the term appears.

19. In § 199.209, the existing text is designated as paragraph (a) and new paragraph (b) is added to read as follows:

**§ 199.209 Other requirements imposed by operators.**

* * * * *

(b) As an operator, you may, but are not required to, conduct pre-employment alcohol testing under this part. If you choose to conduct pre-employment alcohol testing, you must comply with the following requirements:

(1) You must conduct a pre-employment alcohol test before the first performance of covered functions by every covered employee (whether a new employee or someone who has transferred to a position involving the performance of covered functions).

(2) You must treat all covered employees the same for the purpose of pre-employment alcohol testing (i.e., you must not test some covered employees and not others).

(3) You must conduct the pre-employment tests after making a contingent offer of employment or transfer, subject to the employee passing the pre-employment alcohol test.

(4) You must conduct all pre-employment alcohol tests using the alcohol testing procedures in DOT Procedures.

(5) You must not allow a covered employee to begin performing covered functions unless the result of the employee's test indicates an alcohol concentration of less than 0.04.

**§ 199.213 [Removed and Reserved]**

20. Section 199.213 is removed and reserved.

**§ 199.225 [Amended]**

21. In § 199.225, paragraphs (a)(2)(ii) and (b)(4)(ii) are removed and reserved.

22. Section 199.231(g) is revised to read as follows:

**§ 199.231 Access to facilities and records.**

* * * * *

(g) An operator may disclose information without employee consent as provided by DOT Procedures concerning certain legal proceedings.

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Issued in Washington, DC, on March 30, 2001.

**Stacey L. Gerard,**

*Associate Administrator for Pipeline Safety.*

[FR Doc. 01–9412 Filed 4–27–01; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

## Federal Railroad Administration

## 49 CFR Part 219

**[FRA Docket No. RSOR–6, Notice No. 48]**

**RIN 2130–AB43**

## Control of Alcohol and Drug Use: Proposed Changes To Conform With New DOT Transportation Workplace Testing Procedures

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT or Department).

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** On December 19, 2000, DOT published a final rule comprehensively changing its procedures for transportation workplace drug and alcohol testing programs. These amendments to the DOT drug and alcohol testing rule became effective on January 18, 2001; the revised DOT testing rule will become effective on August 1, 2001. The new DOT testing rule uses a plain language, question-and-answer format to make the Department's procedures clearer, more comprehensive, and more up-to-date.

FRA and the other DOT agencies with substance abuse programs governed by DOT testing procedures (the Federal Aviation Administration (FAA), the Federal Motor Carrier Safety Administration (FMCSA), the Federal Transit Administration (FTA), the Research and Special Programs Administration (RSPA), and the United States Coast Guard (USCG)) are publishing NPRMs in today's **Federal Register** proposing changes that would conform their individual regulations to the new DOT procedures. See the Department's Common Preamble to this NPRM for an additional discussion of the changes proposed in this NPRM.

**DATES:** Written comments must be received by June 14, 2001. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

**ADDRESSES:** Anyone wishing to file a comment should refer to the FRA docket and notice numbers (FRA Docket No. RSOR–6, Notice No. 48). You may submit your comments and related material by only one of the following methods:

By mail to the Docket Management System, U.S. Department of Transportation, room PL–401, 400 7th Street, SW., Washington, DC 20590–0001; or Electronically through the Web site for the Docket Management System at http://dms.dot.gov. For instructions on how to submit comments electronically, visit the Docket Management System Web site and click on the ''Help'' menu.

The Docket Management Facility maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room PL–401 on the plaza level of the Nassif Building at the same address during regular business hours. You may also obtain access to this docket on the Internet at http://dms.dot.gov.

**FOR FURTHER INFORMATION CONTACT:** Lamar Allen, Alcohol and Drug Program Manager, FRA Office of Safety, RRS–11, 1120 Vermont Avenue, NW., Mail Stop