

**Title 43**  
**NATURAL RESOURCES**  
**Part XIII. Office of Conservation – Pipeline Safety**

Louisiana Pipeline Safety  
Drug and Alcohol Regulations

[CFR Part 199]  
(through amendment 199-22)  
(effective March 2007)

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**Title 43**  
**NATURAL RESOURCES**  
**Part XIII. Office of Conservation--Pipeline Safety**  
**Subpart 4. Drug and Alcohol Testing**  
**Chapter 61. General [Part 199--Subpart A]**

**§6101. Scope [49 CFR 199.1]**

A. This Subpart requires operators of pipeline facilities subject to LAC 43:XIII or LAC 33:V.Subpart 3 (49 CFR Part 192 and 195) to test covered employees for the presence of prohibited drugs and alcohol. [49 CFR 199.1]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751-757, redesignated as R.S. 30:701-707 and R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 16:134 (February 1990), repromulgated LR 16:532 (June 1990), amended LR 18:852 (August 1992), LR 21:826 (August 1995), LR 27:1554 (September 2001), LR 30:1292 (June 2004).

**§6102. Applicability [49 CFR 199.2]**

A. This Subpart 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). [49 CFR 199.2(a)]

B. This Subpart does not apply to any person for whom compliance with LAC 43:XIII or LAC 33:V.Subpart 3 (49 CFR Part 192 and 195) would violate the domestic laws or policies of another country. [49 CFR 199.2(b)]

C. This Subpart does not apply to covered functions performed on: [49 CFR 199.2(c)]

1. master meter systems, as defined in §303 of this Part; or [49 CFR 199.2(c)(1)]

2. pipeline systems that transport only petroleum gas or petroleum gas/air mixtures. [49 CFR 199.2(c)(2)]

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**§6103. Definitions [49 CFR 199.3]**

A. As used in this Chapter:

*Accident*--an incident reportable under 49 CFR Part 191 involving gas pipeline facilities or LNG facilities, or an accident reportable under CFR Part 195 involving hazardous liquid pipeline facilities.

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

*Covered Employee, Employee, or Individual to be Tested*--a person who performs a covered function, including persons employed by operators, contractors engaged by operators, and persons employed by such contractors.

*Covered Function*--an operations, maintenance, or emergency-response function regulated by 49 CFR Part 192, 193, or 195 that is performed on a pipeline or on an LNG facility.

*DOT Procedures*--the "Procedures for Transportation Workplace Drug and Alcohol Testing Programs" published by the Office of the Secretary of Transportation in CFR Part 40.

*Fail a Drug Test*--the confirmation test result shows positive evidence of the presence under DOT procedures of a prohibited drug in an employee's system.

*Operator*--a person who owns or operates pipeline facilities subject to CFR Part 192, 193, or 195.

*Pass a Drug Test*--initial testing or confirmation testing under DOT procedures does not show evidence of the presence of a prohibited drug in a person's system.

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

*Positive Rate for Random Drug Testing*--the number of verified positive results for random drug tests conducted under this Subpart plus the number of refusals of random drug tests required by this Subpart, divided by the total number of random drug tests results (i.e., positives, negatives, and refusals) under this Subpart.

*Prohibited Drug*--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*--behavior consistent with DOT procedures concerning refusal to take a drug test or refusal to take an alcohol test.

*State Agency*--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.)

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**§6105. DOT Procedures [49 CFR 199.5]**

A. The anti-drug and alcohol programs required by this Subpart must be conducted according to the requirements of this Subpart and the DOT

procedures. Terms and concepts used in this Subpart have the same meaning as in the DOT procedures. Violations of DOT procedures with respect to anti-drug and alcohol programs required by this Subpart are violations of this Subpart. [49 CFR 199.5]

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**§6107. Stand-Down Waivers [49 CFR 199.7]**

A. Each operator who seeks a waiver under 49 CFR §40.21 from the stand-down restriction must 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. [49 CFR 199.7(a)]

B. Each applicant must: [49 CFR 199.7(b)]

1. identify 49 CFR 40.21 as the rule from which the waiver is sought; [49 CFR 199.7(b)(1)]

2. explain why the waiver is requested and describe the employees to be covered by the waiver; [49 CFR 199.7(b)(2)]

3. contain the information required by 49 CFR §40.21 and any other information or arguments to support the waiver requested; and [49 CFR 199.7(b)(3)]

4. unless good cause is shown in the application, be submitted at least 60 days before the proposed effective date of the waiver. [49 CFR 199.7(b)(4)]

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. [49 CFR 199.7(c)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751-757.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 30:1293 (June 2004).

**§6109. Preemption of State and Local Laws**

**[49 CFR 199.9]**

A. Except as provided in Subsection B of this Section, this Subpart preempts any state or local law, rule, regulation, or order to the extent that: [49 CFR 199.9(a)]

1. compliance with both the state or local requirement and this Subpart is not possible; [49 CFR 199.9(a)(1)]

2. compliance with the state or local requirement is an obstacle to the accomplishment and execution of any requirement in this Subpart; or [49 CFR 199.9(a)(2)]

3. the state or local requirement is a pipeline safety standard applicable to interstate pipeline facilities. [49 CFR 199.9(a)(3)]

B. This Chapter 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. [49 CFR 199.9(b)]

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**Title 43**  
**NATURAL RESOURCES**  
**Part XIII. Office of Conservation--Pipeline Safety**  
**Subpart 4. Drug and Alcohol Testing**  
**Chapter 63. Drug Testing [Subpart B]**

**§6300. Purpose [49 CFR 199.100]**

A. The purpose of this Chapter is to establish programs designed to help prevent accidents and injuries resulting from the use of prohibited drugs by employees who perform covered functions for operators of certain pipeline facilities subject to 49 CFR Part 192, 193, or 195. [49 CFR 199.100]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751-757, redesignated as R.S. 30:701-707 and R.S. 30:501 et seq.

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**§6301. Anti-Drug Plan [49 CFR 199.101]**

A. Each operator shall maintain and follow a written anti-drug plan that conforms to the requirements of this Chapter and the DOT procedures. The plan must contain: [49 CFR 199.101(a)]

1. methods and procedures for compliance with all the requirements of this Chapter, including the employee assistance program; [49 CFR 199.101(a)(1)]

2. the name and address of each laboratory that analyzes the specimens collected for drug testing; and [49 CFR 199.101(a)(2)]

3. the name and address of the operator's medical review officer and, substance abuse professional; and [49 CFR 199.101(a)(3)]

4. procedures for notifying employees of the coverage and provisions of the plan. [49 CFR 199.101(a)(4)]

B. The administrator or the state agency that has submitted a current certification under the pipeline safety laws (49 U.S.C. 60101 et seq.) With respect to the pipeline facility governed by an operator's plans and procedures may, after notice and opportunity for hearing as provided in 49 CFR 190.237 or the relevant state procedures, require the operator to amend its plans and procedures as necessary to provide a reasonable level of safety. [49 CFR 199.101(b)]

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**§6303. Use of Persons Who Fail or Refuse a Drug Test [49 CFR 199.103]**

A. An operator may not knowingly use as an employee any person who: [49 CFR 199.103(a)]

1. fails a drug test required by this Chapter and the medical review officer makes a determination under DOT procedures; or [49 CFR 199.103(a)(1)]

2. refuses to take a drug test required by this Chapter. [49 CFR 199.103(a)(2)]

B. Paragraph A.1 of this Section does not apply to a person who has: [49 CFR 199.103(b)]

1. passed a drug test under DOT procedures; [49 CFR 199.103(b)(1)]

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 [49 CFR 199.103(b)(2)]

3. not failed a drug test required by this Chapter after returning to duty. [49 CFR 199.103(b)(3)]

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**§6305. Drug Tests Required [49 CFR 199.105]**

A. Each operator shall conduct the following drug tests for the presence of a prohibited drug. [49 CFR 199.105]

1. *Pre-Employment Testing.* No operator may hire or contract for the use of any person as an employee unless that person passes a drug test or is covered by an anti-drug program that conforms to the requirements of this Chapter. [49 CFR 199.105(a)]

2. *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. [49 CFR 199.105(b)].

3. *Random Testing* [49 CFR 199.105(c)].

a. Except as provided in Subparagraph 3.b through d of this Subsection, the minimum annual percentage rate for random drug testing shall be 50 percent of covered employees. [49 CFR 199.105(c)(1)]

b. The administrator's decision to increase or decrease the minimum annual percentage rate for random drug testing is based on the reported positive

rate for the entire industry. All information used for this determination is drawn from the drug MIS reports required by this Chapter. In order to ensure reliability of the data, the administrator considers the quality and completeness of the reported data, may obtain additional information or reports from operators, and may make appropriate modifications in calculating the industry positive rate. Each year, the administrator will publish in the *Federal Register* the minimum annual percentage rate for random drug testing of covered employees. The new minimum annual percentage rate for random drug testing will be applicable starting January 1 of the calendar year following publication. [49 CFR 199.105(c)(2)]

c. When the minimum annual percentage rate for random drug testing is 50 percent, the administrator may lower this rate to 25 percent of all covered employees if the administrator determines that the data received under the reporting requirements of §6319 for two consecutive calendar years indicate that the reported positive rate is less than 1 percent. [49 CFR 199.105(c)(3)]

d. When the minimum annual percentage rate for random drug testing is 25 percent, and the data received under the reporting requirements of §6319 for any calendar year indicate that the reported positive rate is equal to or greater than 1 percent, the administrator will increase the minimum annual percentage rate for random drug testing to 50 percent of all covered employees. [49 CFR 199.105(c)(4)]

e. The selection of employees for random drug testing shall be made by a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with employees' social security numbers, payroll identification numbers, or other comparable identifying numbers. Under the selection process used, each covered employee shall have an equal chance of being tested each time selections are made. [49 CFR 199.105(c)(5)]

f. The operator shall randomly select a sufficient number of covered employees for testing during each calendar year to equal an annual rate not less than the minimum annual percentage rate for random drug testing determined by the administrator. If the operator conducts random drug testing through a consortium, the number of employees to be tested may be calculated for each individual operator or may be based on the total number of covered employees covered by the consortium who are subject to random drug testing at the same minimum annual percentage rate under this Chapter or any DOT drug testing rule. [49 CFR 199.105(c)(6)]

g. Each operator shall ensure that random drug tests conducted under this Chapter are unannounced and that the dates for administering random tests are spread reasonably throughout the calendar year. [49 CFR 199.105(c)(7)]

h. If a given covered employee is subject to random drug testing under the drug testing rules of more than one DOT agency for the same operator, the employee shall be subject to random drug testing at the percentage rate established for the calendar year

by the DOT agency regulating more than 50 percent of the employee's function. [49 CFR 199.105(c)(8)]

i. If an operator is required to conduct random drug testing under the drug testing rules of more than one DOT agency, the operator may: [49 CFR 199.105(c)(9)]

i. establish separate pools for random selection, with each pool containing the covered employees who are subject to testing at the same required rate; or [49 CFR 199.105(c)(9)(i)]

ii. randomly select such employees for testing at the highest percentage rate established for the calendar year by any DOT agency to which the operator is subject. [49 CFR 199.105(c)(9)(ii)]

4. *Testing Based on Reasonable Cause.* Each operator shall drug test each employee when there is reasonable cause to believe the employee is using a prohibited drug. The decision to test must be based on a reasonable and articulable belief that the employee is using a prohibited drug on the basis of specific, contemporaneous physical, behavioral, or performance indicators of probable drug use. At least two of the employee's supervisors, one of whom is trained in detection of the possible symptoms of drug use, shall substantiate and concur in the decision to test an employee. The concurrence between the two supervisors may be by telephone. However, in the case of operators with 50 or fewer employees subject to testing under this Chapter, only one supervisor of the employee trained in detecting possible drug use symptoms shall substantiate the decision to test. [49 CFR 199.105(d)]

5. *Return-to-Duty.* 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 applicable provisions of DOT procedures concerning substance abuse professionals and the return-to-duty process. [49 CFR 199.105(e)]

6. *Follow-Up Testing.* A covered employee refuses to take or has a positive drug test 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. [49 CFR 199.105(f)]

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21:955 (September 1995), amended LR 27:1554 (September 2001), LR 30:1294 (June 2004).

**§6307. Drug Testing Laboratory**  
**[49 CFR 199.107]**

A. Each operator shall use for the drug testing required by this Chapter only drug testing laboratories certified by the Department of Health and Human Services under the DOT procedures. [49 CFR 199.107(a)]

B. The drug testing laboratory must permit: [49 CFR 199.107(b)]

1. inspections by the operator before the laboratory is awarded a testing contract; and [49 CFR 199.107(b)(1)]

2. unannounced inspections, including examination of records, at any time, by the operator, the administrator, and if the operator is subject to state agency jurisdiction, a representative of that state agency. [49 CFR 199.107(b)(2)]

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**§6309. Review of Drug Testing Results**  
**[49 CFR 199.109]**

A. *MRO Appointment.* Each operator shall designate or appoint a medical review officer (MRO). If an operator does not have a qualified individual on staff to serve as MRO, the operator may contract for the provision of MRO services as part of its anti-drug program. [49 CFR 199.109(a)]

B. *MRO Qualifications.* Each MRO must be a licensed physician who has the qualifications required by DOT procedures. [49 CFR 199.109(b)]

C. *MRO Duties.* The MRO must perform functions for the operator as required by DOT procedures. [49 CFR 199.109(c)]

D. *MRO Reports.* The MRO must report all drug test results to the operator in accordance with DOT procedure. [49 CFR 199.109(d)]

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 or costs shall be made in accordance with the operator/employee agreements and operator/employee policies. [49 CFR 199.109(e)]

F. The operator shall ensure that a substance abuse professional, who determines that a covered employee requires assistance in resolving problems 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 Subsection does not prohibit a substance abuse professional from referring a covered employee for assistance provided through: [49 CFR 199.109(f)]

1. a public agency, such as state, parish, or municipality; [49 CFR 199.109(f)(1)]

2. the operator or a person under contract to provide treatment for drug problems on behalf of the operator; [49 CFR 199.109(f)(2)]

3. the sole source or therapeutically appropriate treatment under the employee's health insurance program; or [49 CFR 199.109(f)(3)]

4. the sole source of therapeutically appropriate treatment reasonably accessible to the employee. [49 CFR 199.109(f)(4)]

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**§6311. Retention of Samples and Additional Testing**  
**[49 CFR 199.111]**

A. Samples that yield positive results on confirmation must be retained by the laboratory in properly secured, long-term, frozen storage for at least 365 days as required by the DOT procedures. Within this 365-day period, the employee or his representative, the operator, the administrator, or, if the operator is subject to the jurisdiction of a state agency, the state agency may request that the laboratory retain the sample for an additional period. If, within the 365-day period, the laboratory has not received a proper written request to retain the sample for a further reasonable period specified in the request, the sample may be discarded following the end of the 365-day period. [49 CFR 199.111(a)]

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. The employee may specify testing by the original laboratory that is certified by the Department of Health and Hospitals. The operator may require the employee to pay in advance the cost of shipment (if any) and reanalysis of the sample, but the employee must be reimbursed for such expense if the additional test is negative. [49 CFR 199.111(b)]

C. If the employee specifies testing by a second laboratory, the original laboratory must follow approved chain-of-custody procedures in transferring a portion of the sample. [49 CFR 199.111(c)]

D. Since some analytes may deteriorate during storage, detected levels of the drug below the detection limits established in the DOT procedures, but equal to or greater than the established sensitivity of the assay, must, as technically appropriate, be reported and considered corroborative of the original positive results. [49 CFR 199.111(d)]

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**§6313. Employee Assistance Program**  
**[49 CFR 199.113]**

A. Each operator shall provide an employee assistance program (EAP) for its employees and supervisory personnel who will determine whether an employee must be drug tested based on reasonable cause. The operator may establish the EAP as a part of its internal personnel services or the operator may contract with an entity that provides EAP services. Each EAP must include education and training on drug use. At the discretion of the operator, the EAP may include an opportunity for employee rehabilitation. [49 CFR 199.113(a)]

B. Education under each EAP must include at least the following elements: display and distribution of informational material; display and distribution of a community service hot-line telephone number for employee assistance; and display and distribution of the employer's policy regarding the use of prohibited drugs. [49 CFR 199.113(b)]

C. Training under each EAP for supervisory personnel who will determine whether an employee must be drug tested based on reasonable cause must include one 60-minute period of training on the specific, contemporaneous physical, behavioral, and performance indicators of probable drug use. [49 CFR 199.113(c)]

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**§6315. Contractor Employees [49 CFR 199.115]**

A. With respect to those employees who are contractors or employed by a contractor, an operator may provide by contract that the drug testing, education, and training required by this Chapter be carried out by the contractor provided: [49 CFR 199.115]

1. the operator remains responsible for ensuring that the requirements of this Chapter are complied with; and [49 CFR 199.115(a)]

2. the contractor allows access to property and records by the operator, the administrator, and if the operator is subject to the jurisdiction of a state agency, a representative of the state agency for the purpose of monitoring the operator's compliance with the requirements of this Chapter. [49 CFR 199.115(b)]

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HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 16:136 (February 1990), repromulgated LR 16:535 (June 1990), amended LR 30:1296 (June 2004).

**§6317. Recordkeeping [49 CFR 199.117]**

A. Each operator shall keep the following records for the periods specified and permit access to the records as provided by Subsection B of this Section. [49 CFR 199.117(a)]

1. Records that demonstrate the collection process conforms to this Chapter must be kept for at least three years. [49 CFR 199.117(a)(1)]

2. Records of employee drug test that indicate a verified positive result, records that demonstrate compliance with the recommendations of a substance abuse professional, and MIS annual report data shall be maintained for a minimum of five years: [49 CFR 199.117(a)(2)]

a. the function performed by each employee who had a positive drug test; [49 CFR 199.117(a)(2)(i)]

b. the prohibited drugs which were used by an employee who had a positive drug test; [49 CFR 199.117(a)(2)(ii)]

c. the disposition of each employee who had a positive drug test or refused a drug test (e.g., termination, rehabilitation, removed from covered function, other). [49 CFR 199.117(a)(2)(iii)]

3. Records of employee drug test results that show employees passed a drug test must be kept for at least one year. [49 CFR 199.117(a)(3)]

4. Records confirming that supervisors and employees have been trained as required by this Chapter must be kept for at least three years. [49 CFR 199.117(a)(4)]

B. Information regarding an individual's drug testing results or rehabilitation must be released upon written consent of the individual and as provided by DOT procedures. Statistical data related to drug testing and rehabilitation that is not name-specific and training records must be made available to the administrator or the representative of a state agency upon request. [49 CFR 199.117(b)]

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**§6319. Reporting of Anti-Drug Testing Results**  
**[49 CFR 199.119]**

A. Each large operator (having more than 50 covered employees) shall submit an annual MIS report to *PHMSA* of its anti-drug testing using the Management Information System (MIS) form and instructions as required by 49 CFR Part 40 (at 40.25 and Appendix H to Part 40), not later than March 15 of each year for the prior calendar year (January 1-December 31). The administrator shall require by written notice that small operators (50 or fewer covered employees) not otherwise required to submit annual MIS reports to prepare and submit such reports to *PHMSA*. [49 CFR 199.119(a)]

B. Each report required under this Section shall be submitted to the Office of Pipeline Safety, *Pipeline and Hazardous Materials Safety Administration*, U.S. Department of Transportation, Room 7128, 400 Seventh Street, SW, Washington, DC 20590. The operator may submit a paper report or data electronically using the version of the MIS form provided by DOT. This electronic version of the form can be accessed via the Internet at the following Office of Pipeline Safety web address: <http://ops.dot.gov/drug.htm>. [49 CFR 199.119(b)]

C. To calculate the total number of covered employees eligible for random testing throughout the year, as an operator, you must add the total number of covered employees eligible for testing during each random testing period for the year and divide that total by the number of random testing periods. Covered employees, and only covered employees, are to be in an employer's random testing pool, and all covered employees must be in the random pool. If you are an employer conducting random testing more often than once per month (e.g., you select daily, weekly, bi-weekly), you do not need to compute this total number of covered employees rate more than on a once per month basis. [49 CFR 199.119(c)]

D. As an employer, you may use a service agent (e.g., C/TPA) to perform random selections for you; and your covered employees may be part of a larger random testing pool of covered employees. However, you must ensure that the service agent you use is testing at the appropriate percentage established for your industry and that only covered employees are in the random testing pool. [49 CFR 199.119(d)]

E. Each operator that has a covered employee who performs multi-DOT agency functions (e.g., an

employee performs pipeline maintenance duties and drives a commercial motor vehicle), count the employee only on the MIS report for the DOT agency under which he or she is randomly tested. Normally, this will be the DOT agency under which the employee performs more than 50 percent of his or her duties. Operators may have to explain the testing data for these employees in the event of a DOT agency inspection or audit. [49 CFR 199.119(e)]

F. A service agent (e.g., Consortia/Third Party Administrator as defined in 49 CFR Part 40) may prepare the MIS report on behalf of an operator. However, each report shall be certified by the operator's anti-drug manager or designated representative for accuracy and completeness. [49 CFR 199.119(f)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751-757, redesignated as R.S. 30:701-707 and R.S. 30:501 et seq.

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**Title 43**  
**NATURAL RESOURCES**  
**Part XIII. Office of Conservation--Pipeline Safety**  
**Subpart 4. Drug and Alcohol Testing**  
**Chapter 65. Alcohol Misuse Prevention Program [Subpart C]**

**§6501. Purpose [49 CFR 199.200]**

A. The purpose of this Chapter 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 LAC 43:XIII, and LAC 33:V Subpart 3 [Parts 192, 193, or 195]. [49 CFR 199.200]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751-757, redesignated as R.S. 30:701-707 and R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 21:828 (August 1995), amended LR 30:1297 (June 2004).

**§6502. Alcohol Misuse Plan [49 CFR 199.202]**

A. Each operator must maintain and follow a written alcohol misuse plan that conforms to the requirements of this part and DOT procedures concerning alcohol testing programs. The plan shall contain methods and procedures for compliance with all the requirements of this Chapter, including required testing, recordkeeping, reporting, education and training elements. [49 CFR 199.202]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751-757, redesignated as R.S. 30:701-707 and R.S. 30:501 et seq.

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**§6509. Other Requirements Imposed by Operators [49 CFR 199.209]**

A. Except as expressly provided in this Chapter, nothing in this Chapter 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. [49 CFR 199.209(a)]

B. Operators may, but are not required to, conduct pre-employment alcohol testing under this Subpart. Each operator that conducts pre-employment alcohol testing must: [49 CFR 199.209(b)]

1. 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); [49 CFR 199.209(b)(1)]

2. 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); [49 CFR 199.209(b)(2)]

3. conduct the pre-employment tests after making a contingent offer of employment or transfer, subject to the employee passing the pre-employment alcohol test; [49 CFR 199.209(b)(3)]

4. conduct all pre-employment alcohol tests using the alcohol testing procedures in DOT procedures; and [49 CFR 199.209(b)(4)]

5. not allow any covered employee to begin performing covered functions unless the results of the employee's test indicates an alcohol concentration of less than 0.04. [49 CFR 199.209(b)(5)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751-757, redesignated as R.S. 30:701-707 and R.S. 30:501 et seq.

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**§6511. Requirement for Notice [49 CFR 199.211]**

A. Before performing an alcohol test under this Chapter, each operator shall notify a covered employee that the alcohol test is required by this Chapter. No operator shall falsely represent that a test is administered under this Chapter. [49 CFR 199.211]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751-757, redesignated as R.S. 30:701-707 and R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 21:830 (August 1995), amended LR 30:1297 (June 2004).

**§6515. Alcohol Concentration [49 CFR 199.215]**

A. 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. [49 CFR 199.215]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751-757, redesignated as R.S. 30:701-707 and R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 21:830 (August 1995), amended LR 30:1298 (June 2004).

**§6517. On-Duty Use [49 CFR 199.217]**

A. 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. [49 CFR 199.217]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751-757, redesignated as R.S. 30:701-707 and R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 21:830 (August 1995), amended LR 30:1298 (June 2004).

**§6519. Pre-Duty Use [49 CFR 199.219]**

A. 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. [49 CFR 199.219]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751-757, redesignated as R.S. 30:701-707 and R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 21:830 (August 1995), amended LR 30:1298 (June 2004).

**§6521. Use Following an Accident [49 CFR 199.221]**

A. 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 §6525.A, or the operator has determined that the employee's performance could not have contributed to the accident. [49 CFR 199.221]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751-757, redesignated as R.S. 30:701-707 and R.S. 30:501 et seq.

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**§6523. Refusal to Submit to a Required Alcohol Test [49 CFR 199.223]**

A. Each operator shall require a covered employee to submit to a post-accident alcohol test required under §6525.A.1, a reasonable suspicion alcohol test required under §6525.A.2, or a follow-up alcohol test required under §6525.A.4. No operator shall permit an employee who refuses to submit to such a test to perform or continue to perform covered functions. [49 CFR 199.223]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751-757, redesignated as R.S. 30:701-707 and R.S. 30:501 et seq.

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**§6525. Alcohol Tests Required [49 CFR 199.225]**

A. Each operator shall conduct the following types of alcohol tests for the presence of alcohol. [49 CFR 199.225]

1. *Post-Accident* [49 CFR 199.225(a)]

a. 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. [49 CFR 199.225(a)(1)]

b. If a test required by this Section is not administered within two 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.1 is not administered within eight 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. [49 CFR 199.225(a)(2)(i)]

c. 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. [49 CFR 199.225(a)(3)]

2. *Reasonable Suspicion Testing* [49 CFR 199.225(b)]

a. 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 Chapter. [49 CFR 199.225(b)(1)]

b. 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. [49 CFR 199.225(b)(2)]

c. Alcohol testing is authorized by this Section only if the observations required by Subparagraph 2.b 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 Chapter. 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. [49 CFR 199.225(b)(3)]

d.i. If a test required by this Section is not administered within two hours following the

determination under Subparagraph 2.b 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 eight hours following the determination under Subparagraph 2.b 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. [49 CFR 199.225(b)(4)(i)]

ii. Reserved.

iii. 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: [49 CFR 199.225(b)(4)(iii)]

(a). an alcohol test is administered and the employee's alcohol concentration measures less than 0.02; or [49 CFR 199.225(b)(4)(iii)(A)]

(b). the start of the employee's next regularly scheduled duty period, but not less than eight hours following the determination under Subparagraph 2.b of this Section that there is reasonable suspicion to believe that the employee has violated the prohibitions in this Chapter. [49 CFR 199.225(b)(4)(iii)(B)]

iv. Except as provided in Clause 2.d.ii, no operator shall take any action under this Chapter 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 Chapter from taking any action otherwise consistent with law. [49 CFR 199.225(b)(4)(iv)]

3. *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 §§6515-6523, the employee shall undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02. [49 CFR 199.225(c)]

4. *Follow-Up Testing* [49 CFR 199.225(d)]

a. Following a determination under §6543 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 §6543.C.2.b . [49 CFR 199.225(d)(1)]

b. 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. [49 CFR 199.225(d)(2)]

5. *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 §6537, if an operator chooses to permit the employee to perform a covered function within eight hours following the administration of an alcohol test indicating an alcohol concentration of 0.02 or greater but less than 0.04. [49 CFR 199.225(e)]

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#### **§6527. Retention of Records [49 CFR 199.227]**

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. [49 CFR 199.227(a)]

B. *Period of Retention.* Each operator shall maintain the records in accordance with the following schedule. [49 CFR 199.227(b)]

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. [49 CFR 199.227(b)(1)]

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. [49 CFR 199.227(b)(2)]

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. [49 CFR 199.227(b)(3)]

C. *Types of Records.* The following specific records shall be maintained: [49 CFR 199.227(c)]

1. records related to the collection process: [49 CFR 199.227(c)(1)]

a. collection log books, if used; [49 CFR 199.227(c)(1)(i)]

b. calibration documentation for evidential breath testing devices; [49 CFR 199.227(c)(1)(ii)]

c. documentation of breath alcohol technician training; [49 CFR 199.227(c)(1)(iii)]

d. documents generated in connection with decisions to administer reasonable suspicion alcohol tests; [49 CFR 199.227(c)(1)(iv)]

e. documents generated in connection with decisions on post-accident tests; [49 CFR 199.227(c)(1)(v)]

f. documents verifying existence of a medical explanation of the inability of a covered employee to provide adequate breath for testing; [49 CFR 199.227(c)(1)(vi)]

2. records related to test results: [49 CFR 199.227(c)(2)]

a. the operator's copy of the alcohol test form, including the results of the test; [49 CFR 199.227(c)(2)(i)]

b. documents related to the refusal of any covered employee to submit to an alcohol test required by this Chapter; [49 CFR 199.227(c)(2)(ii)]

c. documents presented by a covered employee to dispute the result of an alcohol test administered under this Chapter; [49 CFR 199.227(c)(2)(iii)]

3. records related to other violations of this chapter; [49 CFR 199.227(c)(3)]

4. records related to evaluations: [49 CFR 199.227(c)(4)]

a. records pertaining to a determination by a substance abuse professional concerning a covered employee's need for assistance; [49 CFR 199.227(c)(4)(i)]

b. records concerning a covered employee's compliance with the recommendations of the substance abuse professional; [49 CFR 199.227(c)(4)(ii)]

5. records related to the operator's MIS annual testing data; [49 CFR 199.227(c)(5)]

6. records related to education and training: [49 CFR 199.227(c)(6)]

a. materials on alcohol misuse awareness, including a copy of the operator's policy on alcohol misuse; [49 CFR 199.227(c)(6)(i)]

b. documentation of compliance with the requirements of §3335; [49 CFR 199.227(c)(6)(ii)]

c. 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; [49 CFR 199.227(c)(6)(iii)]

d. certification that any training conducted under this Chapter complies with the requirements for such training. [49 CFR 199.227(c)(6)(iv)]

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#### **§6529. Reporting of Alcohol Testing Results** **[49 CFR 199.229]**

A. Each large operator (having more than 50 covered employees) shall submit an annual (MIS) report to RSPA of its alcohol testing results using the Management Information System (MIS) form and instructions as required by 49 CFR Part 40 (at §40.25 and Appendix H to Part 40), not later than March 15 of each year for the previous calendar year (January 1-December 31). The administrator may require by written notice that small operators (50 or fewer covered employees), not otherwise required to submit annual MIS reports, submit such a report to RSPA. [49 CFR 199.229(a)]

B. Each operator that has a covered employee who performs multi-DOT agency functions (e.g., an employee performs pipeline maintenance duties and drives a commercial motor vehicle), count the employee only on the MIS report for the DOT agency under which he or she is tested. Normally, this will be the DOT agency under which the employee performs

more than 50 percent of his or her duties. Operators may have to explain the testing data for these employees in the event of a DOT agency inspection or audit. [49 CFR 199.229(b)]

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. The operator may report data electronically using the version of the MIS form provided by DOT. This form can be accessed via the Internet at the following Office of Pipeline Safety web address: <http://ops.dot.gov/drug.htm>. [49 CFR 199.229(c)]

D. A service agent (e.g., Consortia/Third Party Administrator as defined in Part 40) may prepare the MIS report on behalf of an operator. However, each report shall be certified by the operator's anti-drug manager or designated representative for accuracy and completeness. [49 CFR 199.229(d)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751-757, redesignated as R.S. 30:701-707 and R.S. 30:501 et seq.

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#### **§6531. Access to Facilities and Records** **[49 CFR 199.231]**

A. Except as required by law or expressly authorized or required in this Chapter, no employer shall release covered employee information that is contained in records required to be maintained in §6527. [49 CFR 199.231(a)]

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. [49 CFR 199.231(b)]

C. Each operator shall permit access to all facilities utilized in complying with the requirements of this Chapter to the secretary of transportation, any DOT agency, or a representative of a state agency with regulatory authority over the operator. [49 CFR 199.231(c)]

D. Each operator shall make available copies of all results for employer alcohol testing conducted under this Chapter 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. [49 CFR 199.231(d)]

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. [49 CFR 199.231(e)]

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. [49 CFR 199.231(f)]

G. An operator may disclose information without employee consent as provided by DOT procedures concerning certain legal proceedings. [49 CFR 199.231(g)]

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. [49 CFR 199.231(h)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751-757, redesignated as R.S. 30:701-707 and R.S. 30:501 et seq.

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#### **§6533. Removal from Covered Function** **[49 CFR 199.233]**

A. Except as provided in §§6539-6543, no operator shall permit any covered employee to perform covered functions if the employee has engaged in conduct prohibited by §§6515 through 6523 or an alcohol misuse rule of another DOT agency. [49 CFR 199.233]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751-757, redesignated as R.S. 30:701-707 and R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 21:834 (August 1995), amended LR 30:1301 (June 2004).

#### **§6535. Required Evaluation and Testing** **[49 CFR 199.235]**

A. No operator shall permit a covered employee who has engaged in conduct prohibited by §§6515-6523 to perform covered functions unless the employee has met the requirements of §6543. [49 CFR 199.235]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751-757, redesignated as R.S. 30:701-707 and R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 21:834 (August 1995), amended LR 30:1301 (June 2004).

#### **§6537. Other Alcohol-Related Conduct** **[49 CFR 199.237]**

A. No operator shall permit a covered employee tested under the provisions of §6525, 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: [49 CFR 199.237(a)]

1. the employee's alcohol concentration measures less than 0.02 in accordance with a test

administered under §6525.A.5; or [49 CFR 199.237(a)(1)]

2. the start of the employee's next regularly scheduled duty period, but not less than eight hours following administration of the test. [49 CFR 199.237(a)(2)]

B. Except as provided in Subsection A of this Section, no operator shall take any action under this Chapter 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 Chapter from taking any action otherwise consistent with law. [49 CFR 199.237(b)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751-757, redesignated as R.S. 30:701-707 and R.S. 30:501 et seq.

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#### **§6539. Operator Obligation to Promulgate a Policy on the Misuse of Alcohol** **[49 CFR 199.239]**

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. [49 CFR 199.239(a)]

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 Chapter, and to each person subsequently hired for or transferred to a covered position. [49 CFR 199.239(a)(1)]

2. Each operator shall provide written notice to representatives of employee organizations of the availability of this information. [49 CFR 199.239(a)(2)]

B. *Required Content.* The materials to be made available to covered employees shall include detailed discussion of at least the following: [49 CFR 199.239(b)]

1. the identity of the person designated by the operator to answer covered employee questions about the materials; [49 CFR 199.239(b)(1)]

2. the categories of employees who are subject to the provisions of this Chapter; [49 CFR 199.239(b)(2)]

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 Chapter; [49 CFR 199.239(b)(3)]

4. specific information concerning covered employee conduct that is prohibited by this Chapter; [49 CFR 199.239(b)(4)]

5. the circumstances under which a covered employee will be tested for alcohol under this Chapter; [49 CFR 199.239(b)(5)]

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; [49 CFR 199.239(b)(6)]

7. the requirement that a covered employee submit to alcohol tests administered in accordance with this Chapter; [49 CFR 199.239(b)(7)]

8. an explanation of what constitutes a refusal to submit to an alcohol test and the attendant consequences; [49 CFR 199.239(b)(8)]

9. the consequences for covered employees found to have violated the prohibitions under this Chapter, including the requirement that the employee be removed immediately from covered functions, and the procedures under §6543; [49 CFR 199.239(b)(9)]

10. the consequences for covered employees found to have an alcohol concentration of 0.02 or greater but less than 0.04; [49 CFR 199.239(b)(10)]

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. [49 CFR 199.239(b)(11)]

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 Chapter. Any such additional policies or consequences shall be clearly described as being based on independent authority. [49 CFR 199.239(c)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751-757, redesignated as R.S. 30:701-707 and R.S. 30:501 et seq.

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#### **§6541. Training for Supervisors**

**[49 CFR 199.241]**

A. Each operator shall ensure that persons designated to determine whether reasonable suspicion exists to require a covered employee to undergo alcohol testing under §6525.A.2 receive at least 60 minutes of training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse. [49 CFR 199.241]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751-757, redesignated as R.S. 30:701-707 and R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 21:834 (August 1995), amended LR 30:1302 (June 2004).

#### **§6543. Referral, Evaluation, and Treatment**

**[49 CFR 199.243]**

A. Each covered employee who has engaged in conduct prohibited by §§6515-6523 of this Chapter 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. [49 CFR 199.243(a)]

B. Each covered employee who engages in conduct prohibited under §§6515-6523 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. [49 CFR 199.243(b)]

C.1. Before a covered employee returns to duty requiring the performance of a covered function after engaging in conduct prohibited by §§6515-6523 of this Chapter, the employee shall undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02. [49 CFR 199.243(c)(1)]

2. In addition, each covered employee identified as needing assistance in resolving problems associated with alcohol misuse: [49 CFR 199.243(c)(2)]

a. shall be evaluated by a substance abuse professional to determine that the employee has properly followed any rehabilitation program prescribed under Subsection B of this Section, and [49 CFR 199.243(c)(2)(i)]

b. 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. [49 CFR 199.243(c)(2)(ii)]

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. [49 CFR 199.243(d)]

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 Subsection does not prohibit a substance abuse professional from referring an



employee for assistance provided through: [49 CFR 199.243(e)]

1. a public agency, such as a state, county, or municipality; [49 CFR 199.243(e)(1)]

2. the operator or a person under contract to provide treatment for alcohol problems on behalf of the operator; [49 CFR 199.243(e)(2)]

3. the sole source of therapeutically appropriate treatment under the employee's health insurance program; or [49 CFR 199.243(e)(3)]

4. the sole source of therapeutically appropriate treatment reasonably accessible to the employee. [49 CFR 199.243(e)(4)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751-757, redesignated as R.S. 30:701-707 and R.S. 30:501 et seq.

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**§6545. Contractor Employees [49 CFR 199.245]**

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 Chapter be carried out by the contractor provided: [49 CFR 199.245(a)]

1. the operator remains responsible for ensuring that the requirements of this Chapter and 49 CFR Part 40 are complied with; and [49 CFR 199.245(b)]

2. 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 Chapter and 49 CFR Part 40. [49 CFR 199.245(c)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751-757, redesignated as R.S. 30:701-707 and R.S. 30:501 et seq.

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