

resubmit existing response plans until 2 years from now.

### Regulatory History

RSPA published an interim final rule (IFR) on January 5, 1993 (58 FR 244). This interim final rule implemented provisions of OPA 90. With limited exceptions, this direct final rule applies to all onshore transportation-related oil pipelines whether or not such pipelines are exempt from existing Federal pipeline safety regulations or statutes. RSPA conducted a public meeting in New Orleans, Louisiana on January 27, 1997, to solicit feedback from interested parties on implementation of the regulation and revisions to the IFR. A copy of the transcript of the public meeting is available in the docket. This direct final rule modifies the interim final rule, 49 CFR Part 194 (58 FR 244, January 5, 1993). RSPA intends to issue a final rule for 49 CFR Part 194 at a later date.

### Rulemaking Notices and Analyses

#### *Executive Order 12866 and DOT Regulatory Policies and Procedures*

This direct final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 (58 FR 51735) and, therefore, was not reviewed by the Office of Management and Budget (OMB). The direct final rule is not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

#### *Executive Order 12612*

The direct final rule has been analyzed with the principles and criteria in Executive Order 12612 ("Federalism") (52 FR 41685), and does not have sufficient federalism impacts to warrant the preparation of a federalism assessment.

#### *Regulatory Flexibility Act*

Based on the facts available, I certify that this direct final rule will not have a significant economic impact on a substantial number of small entities.

#### *Paperwork Reduction Act*

There are no new information collection requirements in this direct final rule. In fact, this rulemaking eases the paperwork burden on pipeline operators by reducing the reporting frequency from three to five years.

#### *Unfunded Mandates Reform Act of 1995*

This direct final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of \$100 million or more to either State, local, or

tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the direct final rule.

### List of Subjects in 49 CFR Part 194

Oil pollution, Facility Response Plan, Pipeline safety.

In consideration of the foregoing, RSPA amends part 194 of title 49 of the Code of Federal Regulations as follows:

1. The authority citation for Part 194 continues to read as follows:

**Authority:** 33 U.S.C. 1231, 1321(j)(1)(C), (j)(5) and (j)(6); sec. 2, E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.53.

2. Section 194.121(a) is revised to read as follows:

#### **§ 194.121 Response plan review and update procedures.**

(a) Each operator shall review its response plan at least every 5 years from the date of submission and modify the plan to address new or different operating conditions or information included in the plan.

\* \* \* \* \*

Issued in Washington, DC on December 16, 1997.

**Kelley S. Coyner,**

*Acting Administrator.*

[FR Doc. 97-33289 Filed 12-23-97; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

#### 49 CFR Part 199

[Docket No. PS-102; Amendment 199-16]

RIN 2137-AC67

#### Control of Drug Use and Alcohol Misuse in Natural Gas, Liquefied Natural Gas, and Hazardous Liquid Pipeline Operations

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

**ACTION:** Direct final rule.

**SUMMARY:** This direct final rule amends the "Scope and Compliance" section of the Drug Testing Rules to revise the applicability requirement with respect to any operator whose employees are located outside the territory of the United States.

**DATES:** This direct final rule is effective on April 15, 1998. If RSPA does not receive any adverse comment or notice of intent to file an adverse comment by February 23, 1998, the rule will become effective on the date specified. RSPA

will issue a subsequent notice in the **Federal Register** by March 16, 1998 to confirm that fact and reiterate the effective date. If an adverse comment is received, RSPA will issue a timely notice in the **Federal Register** to confirm that fact, and RSPA may withdraw the direct final rule in whole or in part. RSPA may then incorporate the adverse comment into a subsequent direct final rule or may publish a notice of proposed rulemaking.

**ADDRESSES:** Send comments in duplicate to the Dockets Unit, Room 8421, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590. Please identify the docket and amendment number stated in the heading of this notice. All comments and docketed material will be available for inspection and copying in Room 8421 between 8:30 a.m. and 5:00 p.m. each business day.

**FOR FURTHER INFORMATION CONTACT:** Catrina Pavlik, Drug/Alcohol Program Analyst, Research and Special Programs Administration, Office of Pipeline Safety, Room 2335, 400 Seventh Street, SW, Washington, DC 20590. Telephone: (202) 366-6199, Fax: (202) 366-4566, e-mail: catrina.pavlik@RSPA.dot.gov. Information is also available on the Office of Pipeline Safety's internet home page at OPS.dot.gov.

### SUPPLEMENTARY INFORMATION:

#### I. Background

On November 21, 1988, RSPA, along with other operating administrations of the Department of Transportation, adopted regulations requiring pre-employment, post-accident, reasonable cause, and random drug testing (53 FR 47084).

The drug testing required by these rules applies to some persons located outside of the United States. However, the rule provided that drug testing would not apply to any person for whom compliance would violate the domestic laws or policies of another country. The rule provided that 49 CFR part 199 would not be effective until January 1, 1990, with respect to any person for whom a foreign government contends that application of the rule raises questions of compatibility with the country's laws or policies.

At the same time, RSPA stated that the Department of Transportation and other elements of the U.S. Government would enter into discussions with foreign governments to attempt to resolve any conflict between our rules and foreign government laws or policies. If as a result of those discussions an amendment to the rules

was necessary, we committed to issue an amendment by December 1, 1989.

On April 13, 1989, RSPA published an amendment to part 199 (Amdt. No. 199-1; 54 FR 14922) which provided that the rules would not be effective until January 1, 1991, with respect to persons with a foreign law conflict. Similar amendments were published on December 27, 1989, extending the effective date to January 2, 1992 (Amdt. No. 199-3; 54 FR 53290), April 24, 1991, extending the date to January 2, 1993 (Amdt. No. 199-5; 56 FR 18986), and July 14, 1992, extending the date to January 2, 1995 (Amdt. No. 199-7; 57 FR 31279). These amendments provided additional time for government-to-government discussions to reach a permanent resolution of this issue.

RSPA has revisited the issue of requiring foreign operators to drug test persons located outside of the United States who are performing covered functions. Due to the complexity of the legal issues, RSPA has determined that it would be a better use of agency resources to concentrate its enforcement efforts on operators whose employees are located within U.S. territory including the outer continental shelf. There are few pipeline employees who would be excepted by this rule. Because of the legal issues, these employees have never been subject to drug or alcohol testing by RSPA.

## II. Regulatory Analyses and Notices

### *Executive Order 12866 and DOT Regulatory Policies and Procedures*

This amendment will alleviate the burden for pipeline operators whose employees are located outside the territory of the United States to comply with the requirement to subject those employees who perform a covered function (such as, SCADA system operators) to the drug testing regulations. Currently, there are approximately 50 covered employees performing a covered function who are located in Canada. Most pipelines that

run from Canada to the United States have either a metering facility or valves located at the border. This delineates a separation of entities at the border. At that point, a U.S. operator becomes responsible for the pipeline (i.e., operations, maintenance, and emergency-response functions). At this time, there are no SCADA systems located in Mexico. There are pipelines that run from Mexico to the U.S., but the SCADA control system is located in the U.S. Because of the minimal number of operators with employees who perform covered functions outside of the United States, RSPA concludes that it would not be cost effective for those pipeline operators to comply with this regulation. In addition, RSPA does not have sufficient resources to inspect these operators to ensure that they are complying with part 199. Therefore, this part of the regulation is being revised to exclude pipeline operators with employees located outside United States' territory, including the outer continental shelf.

This amendment is non-major under Executive Order 12866, and is not considered significant under DOT Regulatory Policy and Procedures (44 FR 22034; February 26, 1979). There is no additional cost to the pipeline operators to delete this portion of the rule. This change does not warrant the preparation of a Regulatory Evaluation.

### *Executive Order 12612*

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism"), and RSPA has determined that preparation of a federalism assessment is not warranted.

### *Regulatory Flexibility Act*

Based on the above facts, I certify under Section 606 of the Regulatory Flexibility Act that this amendment does not have a significant impact on a substantial number of small entities.

### *Paperwork Reduction Act*

This final rule does not impose any new information collection requirements.

### *Unfunded Mandates Reform Act of 1995*

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

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

Alcohol testing, Drug testing, Pipeline safety.

In consideration of the foregoing, RSPA is amending 49 CFR as follows:

### **PART 199—DRUG AND ALCOHOL TESTING**

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

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

#### **§ 199.1 [Amended]**

2. Paragraph (d) of § 199.1 is revised to read as follows:

#### **§ 199.1 Scope and compliance.**

\* \* \* \* \*

(d) This part applies to pipeline operators, only with respect to pipeline 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).

Issued in Washington, D.C. on December 10, 1997.

**Kelley S. Coyner,**

*Acting Administrator.*

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