

ATTACHMENT H

NOTICE TO BIDDERS

GUIDELINE FOR IMPLEMENTING AN ANTI-DRUG PROGRAM FOR PIPELINE PERSONNEL

On April 20, 1990, PGW instituted a drug testing program in compliance with the United States Department of Transportation (US DOT) regulations for the control of drug use in natural gas and Liquefied Natural Gas (LNG) facility operations (49CFR Part 199).

The regulations require that contractors who provide an operational, maintenance, or emergency response function for facility operators, must have in place a US DOT conforming program for the drug testing of their employees performing these functions.

As a requirement for the submission of its bid, the bidder must provide PGW with a written copy of its US DOT conforming employee drug testing program no later than the date of the award of any contract.

The bidder agrees, by submitting its bid, that upon the award of any contract, PGW shall have the right to access the bidder's property and records for the purpose of ensuring contractor compliance with the Part 199.

U.S. DEPARTMENT OF TRANSPORTATION
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION

GUIDELINE FOR IMPLEMENTING AN ANTI-DRUG PROGRAM FOR PIPELINE PERSONNEL

PURPOSE: These guidelines are for use by natural gas and hazardous liquid pipeline operators and operators of liquefied natural gas facilities in developing an anti-drug program under the Drug Testing rules in 49 CFR Part 199 (53 FR 49096: November 21, 1988). The guidelines may also be used by pipeline contractors or consortiums that wish to establish anti-drug programs in conformity with Part 199 requirements.

OTHER RELATED FEDERAL REGULATIONS

- a. Department of Transportation (DOT) Interim Final Rule, "Procedures for Transportation Workplace Drug Testing Program" (49 CFR Part 40: 53 FR 47002) establishes procedures that employees must follow when conducting drug testing under Part 199.
- b. Department of Health and Human Services (DHHS) Notice, "Current List of Laboratories Which Meet Minimum Standards to Engage in Urine Drug Testing for Federal Agencies" (54 FR 7475) issued February 21, 1989, identifies certified drug testing laboratories. This list is being continually updated by DHHS announcements in the Federal Register.

GENERAL

Part 199 requires operators of gas and hazardous liquid pipelines, other than master meter systems, and liquefied natural gas (LNG) facilities to have an anti-drug program for persons who perform on these facilities operating, maintenance, or emergency-response functions covered by the DOT pipeline safety standards in 49 CFR Part 192, 193, or 195. Testing under Part 199 is to be conducted prior to employment, after an incident, randomly, and upon reasonable cause.

In addition, Part 199 requires each operator to provide an Employee, Association Program (EAP). The EAP is to educate personnel about prohibited drugs, the policy against their use, and the assistance available, and to train supervisors in indications of drug use.

COMPLIANCE DATES

Operators with more than 50 employees subject to drug testing do not have to comply with Part 199 until April 20, 1990, and operators with 50 or fewer such employees do not have to comply until August 21, 1990. These dates were published in the Federal

Register (54 FR 14922) on April 13, 1989, modifying deadlines established when Part 199 was issued.

DEFINITIONS

- a. "Employee" means any person who performs on a pipeline or LNG facility an operating, maintenance, or emergency-response function regulated by 49 CFR Parts 192, 193, or 195. Such persons may be employed directly by the operator, or by a contractor engaged by the operator.
- b. "LNG facility" means a pipeline facility that is used for liquefying or solidifying natural gas or synthetic gas or transferring, storing, or vaporizing liquefied natural gas.
- c. "Pipeline" means all parts of those physical facilities through which gas or hazardous liquid moves in transportation, including valves, pipe, compressor or pumping units, metering stations, regulator stations, fabricated assemblies, and breakout tanks.
- d. "Pipeline facility" means new and existing pipelines, rights-of-way, and any equipment, facility, or building used in the transportation of gas or hazardous liquid or in the treatment of gas during transportation.

PERSONS COVERED

A. The following are some of the pipeline activities that make a person eligible for drug testing:

- Performing leakage surveys or electrical surveys
- Monitoring cathodic protection
- Welding or radiographing pipeline repairs
- Inspecting and testing pressure limiting devices
- Classifying fire, police, and other appropriate public officials of pipeline emergencies, and coordinating actual responses during an emergency
- marking pipelines in response to a one-call system notice
- monitoring odorization of gas
- controlling gas or hazardous liquid flow or pressure in a pipeline

The following are some of the activities for which drug testing is not required:

- Designing, constructing, or testing a new pipeline
- Performing accounting, payroll, or clerical duties
- Reading customer meters (unless the person is also patrolling or conducting a leak survey).

B. Persons are subject to drug testing for performing emergency-response activities only if the activity they perform is regulated. Talking to news media is not a regulated activity, while providing liaison with fire or police during an emergency is regulated.

TYPES OF DRUG TESTING

Operators are required to conduct the following five (5) types of drug testing under Part 199.

a. Pre-employment testing

- (1) A pre-employment drug test must be conducted when either an individual is hired for a covered position or when current employee is first transferred from a non-covered to a covered position, unless the individual is already subject to a Part 199 anti-drug program. Also, an employee who is separated from a Part 199 anti-drug program must be pre-employment tested prior to performing a covered function.
- (2) An operator is not required to test every application. Only those applicants who are offered a position must be tested before being employed in a covered position. The rules do not entitle pre-employment job applicants who test positive the right to have their samples retested. Only employees have this right.
- (3) An operator is required to conduct a pre-employment test of an application only the first time that person is hired or engaged by contract as an employee, provided the individual remains in a Part 199 anti-drug program. As long as an employee is subject to a Part 199 anti-drug program, an operator may use that individual to perform any covered function. An individual who participates in the Part 199 anti-drug program of a consortium would be able to provide services on a contract basis to different operators without having to submit to subsequent pre-employment drug tests.
- (4) An operator may allow a contract employee to continue in its anti-drug program after termination of the contract. For example, an operator who uses the same contract for a series of short-term jobs, and keeps them continuously in a Part 199 anti-drug program, would not be required to conduct more than the initial pre-employment drug test for each employee. In addition, the contract employee could perform a covered function for another operator and would not be required to participate in the other operator's Part 199 anti-drug program or to submit to another pre-employment drug test.
- (5) An individual who continues to serve as an employee on and after the compliance date under a contract for such service in effect before that date would not be subject to pre-employment testing.

(b) Random testing

- (1) Random testing applies to all persons who perform functions covered by the "employee" definition. This includes supervisory personnel who actually perform covered functions, but not those who just supervise such performance

by others. Even if a supervisor performs a covered function only in an emergency, by doing so that supervisor would serve as an employee and thus be subject to random testing. An "employee" also includes part-time and temporary employees of the operator or contractor who perform a function covered by the "employee" definition.

- (2) During the first 12 months, operators may phase-in unannounced testing based on random selection of covered employees. Operators are permitted to start the program at a lower testing rate and work up to a 50 percent annualized rate by the time of the final collection in the first year of the program. The total number of random tests during the first 12 months, however, would have to equal at least 25 percent of the employees in the anti-drug program.
- (3) The tests should be reasonably spaced throughout the year, such as a testing schedule of once a month. A plan that specified "batching" or the collection of large numbers of specimens on a once or twice-a-year basis is not considered to be truly random, can be disruptive to the workforce, and takes on the aspects of a "sweep" program.
- (4) After the first year of implementation, an employer is required to maintain an annualized rate of 50 percent of covered employees who are subject to the rule at the beginning of a calendar year.
- (5) To assure that the selection process for random testing is indeed random, all employees in an anti-drug program, including contract employees, if they are part of the program, must be placed in a common selection pool. All full-time, part-time, and temporary employees must be included in the pool. A separate pool of contractor employees may be established if the contractor provides a separate anti-drug program for those employees that conform to Part 199.
- (6) Operators may develop a random selection procedure using a random number table or computer-based number generator that is matched with an employee's payroll identification number or any other identifying number. It may be necessary for an employer to select a number of covered employees in excess of the actual number to meet the required percentage. Selection of a greater number of employees enables the employer to reach the appropriate annualized rate despite unavailability for testing due to vacations, medical leave, or travel requirements.

The following is an example of the random process: If an operator has 1,000 covered employees, at a 50 percent annual rate, the operator is required to conduct 500 unannounced tests based on random selection a year. Under the phased approach, however, the operator may conduct only a few drug tests at the start of the program and then gradually increase the number of test until, annualized rate of 50 percent is achieved. If an operator's plan calls for random testing 12 times a year, the operator will need to collect and test 42 urine specimens for analysis (500 divided by 12) on the last collection of the year, but may collect fewer specimens until then. Overall, the operator would have to collect and test at least 250 specimens (25 percent) for analysis during

the first year. In following years, the operator is required to maintain the 50 percent annualized rate. The RSPA encourages operators to establish a random system that will test approximately the same percentage of employees in each occupation.

- (7) If a consortium is established among operators, contractors, or contractors and operators, the consortium would be required to test at the appropriate rate employees selected from the total number of employees covered by the consortium.

(c) **Post-accident testing**

- (1) Part 199 requires operators to drug test employees whose performance either contributed to an accident or cannot be completely discounted as a contributing factor to the accident. The employee should be tested as soon as possible, but not later than 32 hours after the accident. Because certain drugs or drugs metabolites do not remain in the body for extended periods of time, testing should be done as soon as possible.
- (2) An "accident" on a gas pipeline or LNG facility is defined as an "incident" in § 191.3, as follows:
 - (a) An event that involves a release of gas from a pipeline or of liquefied natural gas or gas from an LNG facility and;
 - (i) A death or personal injury necessitating in-patient hospitalization; or
 - (ii) Estimated property damage, including cost of gas lost, of the operator or others, or both, of \$50,000 or more.
 - (b) An event that results in an emergency shutdown of an LNG facility.
 - (c) An event that is significant, in the judgment of the operator, even though it did not meet the criteria of paragraphs (1) and (2).

An "accident" on a hazardous liquid pipeline is defined as an "accident" in § 195.50 as follows:

..... any failure in a pipeline system subject to this part in which there is a release of the hazardous liquid transported resulting in any of the following:

- (a) Explosion or fire not intentionally set by the operator.
 - (b) Loss of 50 or more barrels of liquid.
 - (c) Escape to the atmosphere of more than five barrels a day of highly volatile liquids.
 - (d) Death of any person.
 - (e) Bodily harm to any person resulting in one or more of the following:
 - (i) Loss of consciousness
 - (ii) Necessity to carry the person from the scene.

- (iii) Necessity for medical treatment.
 - (iv) Disability which presents the discharge of normal duties or the pursuit of normal activities beyond the day of the accident.
- (3) A pipeline operator must take all reasonable steps to obtain a urine sample from an employee after an accident. In the case of a conscious but hospitalized employee, the operator should request the hospital or medical facility to obtain the sample and, if necessary, refer to the DOT drug testing requirements. If an employee is unconscious or otherwise unable to evidence consent to the procedure, the medical facility should collect the sample. If an employee who is subject to post-accident testing is conscious, able to urinate normally (in the opinion of the medical professional), and refuses to be tested, under 49 CFR §199.9, that person must be removed from duty as an “employee” as defined in 49 CFR § 199.3.

d. **Reasonable cause testing**

- (1) Part 199 requires that an operator drug test an employee when there is reasonable cause to believe the employee is using a prohibited drug. A decision to test must be based on specific contemporaneous physical, behavioral, or performance indicators of probable drug use. For instance, evidence of repeated errors, on-the-job, regulatory or company rule violations, or unsatisfactory time and attendance patterns, if coupled with a specific contemporaneous event that indicated probable drug use, could provide evidence to test an employee based on the reasonable cause.
- (2) In the case of operators with 51 or more employees subject to drug testing, before an employee may be tested for reasonable cause, two (2) of the employee’s supervisors must substantiate and concur in the decision to test. At least one of the two supervisors must have received EAP training for detecting symptoms of drug use. Any supervisor of the employee may substantiate and concur in a decision to test, even though that supervisor has not observed behavior of the employee indicating drug use. The two supervisors may concur by phone. In situations where only one supervisor is present at a job site, operators may, at their discretion, require another supervisor to travel to the job site.
- (3) In the case of operators with 50 or fewer covered employees, only one supervisor of the employee must substantiate the decision to test. This supervisor must be EAP trained in drug use symptoms.
- (4) Testing under Part 199 is currently limited to marijuana, cocaine, opiate, amphetamines, and PCP. However, for purposes of reasonable cause testing, with RSPA approval an operator may test for any substance listed in Schedules I and II of the Controlled Substances Act. The RSPA will not approve testing for any substance for which the Department of Health and Human Services has not developed testing protocols and threshold levels.

e. **Return to duty testing**

- (1) Persons who, based on an MRO's recommendation, return to duty as employees after completion of rehabilitation must be given unannounced drug tests, as scheduled by the MRO, in addition to being subject to the other types of testing. The period of such testing may not be more than 60 months after the employee has returned to duty. The rule does not set a minimum period of unannounced testing. However, a reasonable minimum is at least one (1) year of unannounced testing. Whether testing is conducted on a daily, weekly, monthly or longer basis is left to the discretion of the MRO.
- (2) If an employee under a Part 199 anti-drug program refuses to submit to a drug test or failed a drug test and the MRO determines prohibited drug use was the cause, an operator may not knowingly use that individual as an employee until he/she has successfully completed rehabilitation program, been recommended for return-to-duty by an MRO, and passed a drug test. If an employee fails a drug test but returns to duty after rehabilitation and successfully completes the schedule of unannounced testing, that employee may be hired by another operator without reevaluation of the earlier return-to-duty decision.

ROLE OF THE MRO

- a. An operator's anti-drug plan must designate an MRO to interpret, evaluate, and monitor its drug testing program. If the operator does not have a qualified individual on staff to serve as the MRO, the operator may contract for MRO services as part of its drug testing program. This does not mean that each operator must have its own individual MRO. There are a number of possible alternative that an operator can select to meet this requirement. For example, operators of small systems may choose to associate with larger companies or to participate in a consortium with other operators or operators and contractors.
- b. The MRO must be licensed physician, either a doctor of medicine or a doctor of osteopathy, knowledgeable in drug abuse disorders, including the medical effects of prescription drugs and the pharmacology and toxicology of illicit drugs. A physician's knowledge of substance abuse could be obtained through clinical experience, classroom instruction, or a combination of the two. The primary responsibility of the MRO is to review and interpret positive test result obtained through an operator's drug testing program. It is important to remember that a positive laboratory test result does not automatically identify an employee/applicant as a user of prohibited drugs. The MRO must review confirmed positive test results and determine whether any legitimate alternative medical explanation could account for the positive result. Section 199.15 and 49 CFR Part 40 describes specific duties and responsibilities of the MRO.

ANTI-DRUG PLAN FORMAT

- a. The anti-drug plan must provide –
 - (1) Methods and procedures for compliance with all the requirements of Part 199, including the employee assistance program;
 - (2) The name and address of each laboratory selected to analyze the specimens collected for drug testing; and,
 - (3) The name and addresses of the medical review officer.
- b. The plan should include:
 - o All positions subject to drug testing, including contractor positions.
 - o Methods and procedures for compliance with 49 CFR Part 40.
 - o Positions which are to receive EAP training.
 - o Responsibilities of MRO.
 - o Persons responsible for recordkeeping.
 - o Methods of assuring confidentiality of drug test records.

RECORDKEEPING

- a. Each operator must maintain records concerning program administration for the period specified as provided in §199.23.
- b. Training records should include copies of training material and confirm that supervisors and employees have been trained.

Records that show an individual failed a drug test should contain documentation that supports the MRO's determination that there is no legitimate medical explanation for the confirmed positive test result other than an unauthorized use of a prohibited drug.

- c. Records that demonstrate rehabilitation should include the MRO's determination.

PRIVACY AND CONFIDENTIALITY

- a. Individual expectations of privacy and confidentiality must be carefully considered in establishing a record retention program. With the exception of the testing laboratory, MRO and designated personnel manager, the results of individual drug tests may not be release to anyone without the express written authorization of the tested individual, except upon request of RSPA or State agency officials as part of an accident investigation. Operators should clearly indicate to each individual, prior to testing, who will receive data (e.g., testing laboratory, MRO, designated operator personnel).
- b. To maintain confidentiality, written records should be stored in locked containers or in a secured location. It is advisable that such records should be made a part of individual, personnel files, which are accessible to quite a number of people in personnel and management functions.

- c. Unless any employee gives his or her written consent, an operator may not release the employee's rehabilitation or drug test records to a subsequent employer.

**U. S. DEPARTMENT OF TRANSPORTATION
RESEARCH AND SPECIAL PROGRAMS
ADMINISTRATION**

**MOST FREQUENTLY ASKED QUESTIONS CONCERNING THE
IMPLEMENTATION OF 49 CFR PART 199**



Research and Special

Programs Administration
MOST FREQUENTLY ASKED QUESTIONS ABOUT THE PIPELINE INDUSTRY
ANTI-DRUG PROGRAM

CONTRACTORS

Question: If the company decides to take on the testing of contractors, would current employees of contractors be subject to a "pre-employment" test in addition to the required "random" testing?

Answer: Pre-employment testing applies to each person an operator hires as an "employee" or newly engaged by the contract as an "employee" on and after the applicable compliance date set forth in 199.1(b), who is not part of an anti-drug program that conforms to Part 199. The term "employee" is defined to mean a person who performs a regulated operation, maintenance or emergency-response function on a pipeline or LNG facility. Contractors or persons employed by contractors who serve as employee on and after the compliance date under a contract for such services, in effect before that date would not be subject to pre-employment testing.

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Question: Is an operator required to "ensure compliance" by subcontractors who is hired by the operator's contractor to do some aspect of a job, even if such sub-contractor has no contractual relationship with the operator? If so, what specifically are some of the things the operator should do to ensure compliance by the sub? Who maintains the records?

Answer: Although subcontractors are not mentioned specifically, it is clear from the definition of "employee" under Section 199.3 that any person who performs a covered function on an operator's pipeline or LNG facility for wages or other remuneration is subject to drug testing under Part 199. Thus, contractor personnel, including subcontractors and anyone employed by a subcontractor, are subject to drug testing if they perform a covered function.

Part 199 places a legal responsibility on operators to meet the requirements of Part 199. This means operators are obligated to assure that any subcontractor that performs a covered function on a pipeline or LNG facility is drug tested as required. Part 199, leaves to

each operator's discretion the way by which it assures that personnel employed by subcontractors are drug tested as required. We have not published any guidelines as to how this assurance should be accomplished.

Operators are legally responsible for maintaining required records with respect to subcontractors. As indicated above, this obligation may be assigned to the contractor if the contractor agrees.

Question: What are some of the specific things an operator should do to ensure compliance? For example, would it be considered good-faith compliance by the operator to: (a) include the appropriate clause in its contract? (b) require the contractor to submit affidavits of compliance? (c) require each contractor to submit to the operator a copy of the contractor's drug policy?

Answer: Part 199 places the legal responsibility to meet Part 199 requirements exclusively on operators. If an operator contracts with someone to carry out Part 199 requirements, the operator still has the obligation to comply with Part 199 requirements, and is subject to penalties and other sanctions if the contractor does not fully carry out the drug testing requirements. An operator cannot satisfy this compliance obligation merely by taking one of the three (3) stems you suggest, either by itself or in combination with others, because none of these steps shows that the Part 199 drug testing requirements are actually being met. An operator might consider using one or more of the steps as an indication that its contractors are performing as the contract provides. However, to assure itself that Part 199 requirements are actually being met and to minimize the chance of incurring a civil penalty for noncompliance, the operator should also monitor the contractor's drug testing program.

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Employee assistance Programs

Question: Is there a set curriculum that this 60-minute training session must follow?

Answer: Any curriculum may be used as long as the training objectives were met.

Question: Does the person who is giving the course have to be certified in any way?

Answer: Part 199 does not require that trainers be certified.

Question: what types of records need to be kept in order to verify that a person has taken the course?

Answer: Under 199.23 operators must keep for at least three (3) years records confirming that supervisors and employees have been trained as required. Part 199 does not prescribe the form or style or records to be kept.

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Laboratory:

Question: Does use of a laboratory certified under the DOT procedures relieve the operator from compliance with requirements regarding lab functions? Similarly, can operator seek approval of its collecting agent and MRO to avoid responsibility for compliance with requirements regarding these functions?

Answer: Operators are responsible for compliance with all aspects of the drug testing rules in Part 40 and 199. Use of a certified lab is required and does not relieve the operator from assuring that the laboratory performs in accordance with the Part 40 and 199 requirements. We do not entertain requests for approvals of collecting agents or MROs.

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MRO:

Question: Can an applicant who fails a pre-employment drug test given to applicants in general be referred to MRO?

Answer: Part 199 requirements pertaining to MROs apply only to drug tests conducted or processed as required by Part 199. Thus, any drug testing or operator conducts that is not done to satisfy Part 199 requirements, is done voluntarily and need not adhere to the rules in Part 199 governing MROs. Accordingly, an applicant from a covered

position who failed such a voluntary test need not be given an opportunity to consult with MRO.

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Plans:

Question: Does the Office of Pipeline Safety require submittal of plans for approval?

Answer: RSPA drug testing regulations do not require operators to submit their plans for approval by this office.

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Random Selection:

Question: What would be the just way to implement random drug testing under the DOT rule?

Answer: The rules allow each operator to devise a random selection procedure that meets its needs. Under DOT rules, each pipeline operator's random selection procedure must be designed to identify employees for drug testing on a statistically equal basis.

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Record Keeping:

Question: How are operators to keep records under 199.23 (a) (3) showing that employees passed a drug test if the MRO only reports confirmed positive test results to the operator?

Answer: The intent of the rule is that each operator requires its MRO to review and report all drug test results to the operator.

Question: Section 199.23 sets out record-keeping requirements. Section 199.21, which covers contractor "employees" provides that contractors shall

allow the operator access to their records so their compliance can be ensured. This implies that the contractor, not the operator, keeps records as to individuals employed by the contractor, and as to other aspects of the contractor's testing, education and training. Please state whether those records should be maintained by the operator or the contractor.

Answer: Part 199 places a legal responsibility on operators to maintain certain records pertaining to contractor personnel who are subject to drug testing under part 199. Operators may carry out his responsibility by assigning the record-keeping duty to their contractors and taking appropriate steps to assure that all required records are properly kept. If the required records are kept by a contractor, they must be held confidential and made available for government inspection as provided in 199.23(b).

Question: Section 199.23 references records that must be maintained. It references the operator, rather than the MRO, as the party maintaining records. Page 10 of September 1989 Guideline indicates that designated personnel of the operator may have access to individual test results. Under Section 391.87(d) of the Federal Highway Administration regulations, however the MRO is the sole custodian of individual test results. There appears to be a conflict between the two sets of regulations.

Answer: Under Part 199, there is a distinction between test results kept by MRO's and test results kept by operators. MROs keep the analytical data they receive from the test laboratory indicating whether an individual has passed or failed a drug test. After reviewing the laboratory data and confirming any test failures, MROs report to operators simply whether employees have passed or failed a drug test, without giving the operator the supporting laboratory data. Under 199.23, operators must maintain a record of this pass or failed information for the required period and keep the record confidential. The guidelines indicate that only the operator's designated personnel manager has access to this record unless the employee consents in writing to access by others or we or a state agency request the record as part of an accident investigation.

Termination:

Question: May an operator terminate a reinstated employee for subsequent failure of a drug test?

Answer: In such circumstances, 199.9(b) (3) requires that the employee be removed from the covered position without an opportunity of future reinstatement. Part 199 does not require the operator to terminate employment of the individual; if possible, he or she could be shifted to a non-covered position. If an operator decides to terminate employment, it cannot rely on Part 199 for authority to do so.

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Testing:

Pre-employment Testing:

Question: Whether contractors must "pre-employment drug test" their current employees by the April 20, 1990 deadline, before an operator can hire them, or must these employees merely be part of a random drug testing program by that date?

Answer: Under Part 199, pre-employment testing applies to persons hired or otherwise engaged on or after the compliance deadline to perform a function covered by Part 199, except persons who, when they are so hired or engaged, are covered by a Part 199 anti-drug program.

Question: Whether contractors which routinely layoff "seasonal employees" during the winter months and then rehire them in the spring must subject these employees to "pre-employment drug testing" when they are rehired?

Answer: Employees that are rehired on a seasonal basis would not be subject to pre-employment testing each time they're rehired if they remain in a Part 199 anti-drug program during the off-season.

Question: Does the length of the layoff (three months vs. six months) afford the above decision?

Answer: The length of the layoff is not relevant to the determination to test or not to test.

Question: Must we allow applicants a retest, similar to all employees who tests positive, or proceed based on the positive result?

Answer: The rules entitle pre-employment job applicants who test positive to have their samples retested.

Question: Do existing employees who transfer or are promoted into a safety sensitive area need a "pre-employment" test, or do they just go into the pool of employees for random testing purposes?

Answer: Pre-employment testing applies to each person hired or engaged by contract as an "employee". Internal transfers or promotions into any "employee" function are subject to the pre-employment testing requirements, unless the person involved is already part of an anti-drug program that conforms to Part 199.

Question: Are drug testing programs relevant to contractors used infrequently or on very short projects?

Answer: All contractor personnel, including those used infrequently or on very short projects are subject to drug testing under Part 199 when they perform, an operation, maintenance, or emergency response function on a pipeline or LNG facility which is regulated by Part 192, 193, or 195.

Reasonable Cause:

Question: Given that determining whether reasonable cause exists to believe an employee is using a prohibited drug is a subjective judgment, and that testing is not required if the employee's supervisors do not substantiate and concur in the decision to test (a matter outside the operator's control), will the operators be subject to sanctions for failure to conduct a reasonable-cause test? How can operators safeguard against such sanctions?

Answer: An operator is required to conduct a reasonable-cause test under 199.11(d) when he/she becomes aware, or should be aware, of supervisors of the employee substantiate and concur in the operator's decision to test on the basis of that evidence. Operators will be

subject to sanctions for failing to test under supervisors when faced with such evidence, even though the determination regarding reasonable cause is somewhat subjective. Note that the subjectivity is minimized by the guidance provided in the rule itself and by the training supervisors must be given to recognize symptoms of illegal drug use. If the supervisors do not substantiate and concur in the decision to test, reasonable cause testing is not required and no sanctions will be incurred. The best safeguard against sanctions is preparation and implementation of an adequate anti-drug plan under 199-7 to comply with the reasonable-cause testing requirement. (This statement applies only to employers with 50 or more employees.)

Random Testing:

Question: After the first 12 months of random testing, may the full 50 percent be tested all at once or must the testing be conducted evenly through the year?

Answer: The rule regarding random testing 199.11(c) requires that during the initial 12-month phase-in period, random testing must be "spread reasonably through the 12-month period." Although the rule does not expressly require either reasonable or even spacing of test after the first year, we interpret the rule to require this practice so that the sampling process will be truly random and the testing will be less disruptive.

Question: Will random testing be applicable to supervisory personnel?

Answer: Random testing applies to all persons who perform functions covered by the 'employee' definition. This includes supervisory personnel who actually perform covered functions, not just supervise such performance by others. Even if a supervisor performs a covered function only in an emergency, by doing so that supervisor would serve as an employee and thus be subject to random testing.

Testing - Consent:

Question: Must an employee give his/her consent to the testing?

Answer: Part 199 does not require operators to obtain an employee's consent to drug testing or to complete a "consent" form. Neither does Part 199

authorize operators to conduct drug testing in the absence of consent. However, under 199.9 (a) (2), if a person refuses to take a required drug test, an operator may not use that person to perform an operating, maintenance, or emergency-response function on a pipeline or LNG facility which is regulated by Part 192,193, 195.

Post-Accident Testing:

Question: The issue involves a situation in which there is a pipeline accident which requires post-accident testing. If one of the workers involved in the accident requires hospitalization, the rules do not authorize the employer or require the treating facility to collect the blood or urine samples needed to perform the post accident testing.

Answer: In the case of a conscious but hospitalized employee, the operator should request the hospital or medical facility to obtain a specimen, following the chain of custody and other requirements provided by 49 CFR and 40. If an employee is unconscious and otherwise unable to evidence consent to the procedure, after the individual's condition is stabilized, the medical facility should collect a specimen in compliance with the chain of custody and guidelines provided in 49 CFR 199 and 40, and the medical facility should retain the specimen until the individual has regained consciousness. If an employee who is subject to post-accident testing is conscious, able to urinate normally (in the opinion of a medical professional), and refuses to be tested, under 49 CFR 199.9 that person must be removed from duty as an "employee".

Testing Pool:

Question: Are job positions and contractor-performed functions on a hazardous liquid pipeline under the jurisdiction of 49 CFR Part 195 covered by the drug testing rules in 49 CFR Part 199?

Answer: A person is subject to drug testing under Part 199 when that person performs on a Part 195 pipeline an operation, maintenance, or emergency-response function that is regulated by Part 195. (See the Part 199 definition of "employee".) This jurisdictional test may be transformed into two questions, both of which must be answered affirmatively from part 199 to require drug testing of a person working on a hazardous liquid pipeline:

- (1) Does the function the person performs involve operation of a pipeline, maintenance of a pipeline, or response to a pipeline emergency?
- (2) Is the function the subject of a Part 195 regulation?

Question: Is a REGULATORY COMPLIANCE MANAGER position subject to drug testing?

Answer: The person who has this job is not subject to drug testing for determining whether an accident is reportable under Part 195 or for submitting accident reports. Accident reporting does not involve operation or maintenance of a pipeline or response to a pipeline emergency.

Question: Is a person serving as "MANAGER CORROSION PROTECTION" subject to testing?

Answer: The person serving as "manager corrosion protection" is subject to drug testing because the corrosion control duties that person performs involve maintenance of a pipeline and are functions regulated by 195.414 and 195.416.

Question: Is the person who REPAIRS PUMPS subject to testing?

Answer: Repair of pumps, when the pump is part of a pipeline, involves maintenance of a pipeline, which covered in general terms by 195.422. The person who repairs pipeline pumps is subject to drug testing.

Question: Is the person who maintains FIRE EQUIPMENT subject to testing?

Answer: Maintenance of fire equipment at a pump station is covered by 195.430 and involves response to a pipeline emergency. Performing such maintenance would qualify a person for drug testing under part 199.

Questions: Is the individual who repairs CONTROL DEVICES and programmable valve controllers subject to testing?

Answer: Repair of pressure control devices and programmable valve controllers that are part of a SCADA system involves pipeline maintenance covered

by 195.420 and 195.428. Anyone who performs such repair would be subject to drug testing.

Question: Is the individual who repairs SCADA-related telephone equipment at a pump station subject to drug testing.

Answer: Repair of SCADA-related telephone equipment at a pump station involves maintenance of part of a pipeline pressure control system, which is covered by 195.420 and 195.428. Persons performing this work are subject to drug testing.

Question: Are individuals responsible for launching and RECEIVING of a PIG subject to testing?

Answer: Launching and receiving of a pig would cause a person to be subject to drug testing if it involves maintenance of a pipeline that is regulated under 195.402(f). The supervision of these functions would not cause a person to be subject to drug testing if that person is not performing these functions.

Question: Are individuals who EVALUATE the PIG data subject to testing?

Answer: Evaluation of pig data involves maintenance of a pipeline that is regulated under 195.402(f). Performing the evaluation would make a person subject to drug testing.

Question: Do RSPA anti-drug rules apply to ONE-CALL services?

Answer: One-call services which notify membership of planned excavation are not subject to 49 CFR 199 unless the service is also receiving, identifying, or classifying notices of events or making emergency decisions which need immediate response by the operator or notice to fire, police, or other public officials.

Question: Is an employee subject to drug testing for WITNESSING a LIVE GAS TEST?

Answer: By "live gas test", we assume you mean a leak test or strength test prescribed by Subpart J of part 192. When such testing is done in connection with the construction of a new pipeline, the testing is not a covered function under Part 199. However, if such testing is done to

satisfy an operation or maintenance requirement of Part 192, the testing is a covered function. In this event, if by witnessing a test an employee performs a function essential to either conducting the test or otherwise meeting Part 192 requirements (such as checking the line for leaks), the employee is subject to drug testing. Witnessing a test for some reason unconnected with compliance with a Part 192 operation or maintenance requirement would not subject an employee to drug testing.

Question: Is a person who TURNS VALVES subject to drug testing?

Answer: A person is subject to drug testing under part 199 when he or she performs an operating maintenance, or emergency-response function on a pipeline or LNG facility which is regulated by the gas pipeline safety standards in Part 192. Although Part 192 has no rule governing this function specifically, 192.605(a) requires each operator to include in its operating and maintenance plan "instructions for employees covering operating procedures during normal operations. "Because normal operations include the switching of gas sources, this switching function should be covered by procedures in the operating and maintenance plan for your pipeline. Therefore, the function of switching the source of gas is an operating function regulated by Part 192, and the person who performs that function is subject to drug testing.

Question: Is a REFINING OR MARKETING employee who operates a pump which feeds a pipeline and also monitors pumping pressures, rates and leak detection systems, subject to 49 CFR 195 and, consequently to be tested under 199?

Answer: If operation of a pump and the associated monitoring are conducted on refinery or terminal piping as opposed to a Part 195 pipeline, then these functions would not be subject to Part 199.

Console Operator - Under general supervision, to operate a computer console; to assign work to, check the work of, and to work with employees in the computer operating areas; as assigned, to assist in procedures analysis and programming work; and to perform related work as assigned.

Field Representative - Check completed electric wiring and /or gas piping for approval as to company requirements; arrange for installation of meters.

Loop Line Construction and New Construction.

Answer: Local fire department personnel are not subject to drug testing under Part 199 unless they are employed by the plant operator or act under a contract to provide emergency-response services.

Question: Are DISPATCHERS covered by the drug-testing rule?

Answer: Any pipeline company employee who is responsible for receiving telephone notices of gas leaks, identifying those notices that require immediate response by the company, and dispatching personnel to the scene would be subject to drug testing. The employee would be covered by the rule because he or she would be performing on a pipeline emergency-response function.

POSITIONS WHICH ARE NOT COVERED

The following positions DO NOT meet the requirements for drug testing under the definition of "employee" as stated in Section 199.3, unless they also have additional duties which are included in 199.3.

Draftsman - Prepares the working plans and details drawings from notes, rough or detailed sketches for engineering, construction or manufacturing purposes.

Customer Representative - Handles customer telephone inquiries and interviews customers in the office, furnishing information and service in connection with bill inquiries, service applications, interruption in service, etc.

Adjuster - Correspondence Clerk, analyze inquiries, formulate replies by letter and telephone to customers.

Collector - Makes field calls for the purpose of collecting past due amounts.

Credit Representatives

Word Processing Typist

Accounting Clerk

Scope Operator - Operates a single or multiple positions telephone switchboard; handles incoming, outgoing and interplant or office calls; records toll calls and takes messages; may give routine information to persons who call in.

Question: Would similar working relationships result in similar exemptions with regard to Transportation of Natural and Other Gases (49 CFR 192)?

Answer: Although we do not envision similar working relationships with respect to natural gas pipeline transportation, Part 199 applies to any person who performs a regulated operation, maintenance, or emergency-response function on a pipeline subject to Part 192.

Question: Are METER READER and customer service representatives subject to drug testing under 49 CFR 199?

Answer: Persons subject to drug testing are those who on a pipeline or LNG facility, perform and operating, maintenance, or emergency response function which is regulated by 49 CFR Part 192, 193, or 195. If a company used a person who is a meter reader or customer service representative to perform one of these functions, that person is subject to drug testing. Because different companies may assign different responsibilities to their meter readers and customer service representatives, these persons could be subject to testing at one company but not at another.

As provided by the Part 199 definition of "employee", if the act of cutting off service at the meter is done to implement an operating, maintenance or emergency response requirement of 49CFR Part 192, the person who performs the cut-off is subject to drug testing. For example, a person who cuts off gas at the meter under an operator's emergency procedures requires by 192.615 is subject to drug testing. Another example of someone subject to testing would be a person who cuts off gas at the meter under the abandonment and inactivation requirements of 192.727.

Question: Are operators of petroleum gas system and LANDFILL GAS SYSTEMS that are not "master meter systems" subject to Part 199?

Answer: In accordance with 199.1, Part 199 applies to operators of gas pipeline facilities that are subject to Part 192, other than operators of master meter systems. Part 192 covers landfill gas systems that are used in the transportation of gas to consumers. A petroleum gas system falls under Part 192 if it serves 10 or more customers or if a portion of the system is located in a public place (192.11). Therefore, if a petroleum

pas or landfill gas system is determined to be subject to Part 192, the system operator is subject to Part 199.

Question: Are LOCALFIRE DEPARTMENT PERSONNEL who may respond to a plant emergency covered?