

## V. Consequences for Employees Engaging in Alcohol-Related Conduct

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### C. Notice to the Federal Air Surgeon

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4. No covered employee who is required to hold a medical certificate under part 67 of this chapter to perform a safety-sensitive duty shall perform that duty following a violation of this appendix until and unless the Federal Air Surgeon has recommended that the employee be permitted to perform such duties.

5. Once the Federal Air Surgeon has recommended under paragraph C.4. of this section that the employee be permitted to perform safety-sensitive duties, the employer cannot permit the employee to perform those safety-sensitive duties until the employer has ensured that the employee meets the return-to-duty requirements in accordance with 49 CFR part 40.

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## VI. Alcohol Misuse Information, Training, and Substance Abuse Professional

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### C. Substance Abuse Professional Duties (SAP)

The SAP must perform the functions set forth in 49 CFR part 40, Subpart O and this appendix.

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Issued in Washington, DC on April 11, 2001.

**Jon L. Jordan,**

*Federal Air Surgeon.*

[FR Doc. 01-9410 Filed 4-27-01; 8:45 am]

BILLING CODE 4910-13-P

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 46 CFR Parts 4, 5, and 16

[USCG-2000-7759]

RIN 2115-AG00

#### Chemical Testing

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to revise its chemical drug testing regulations to conform with the Department of Transportation's (DOT) final rule on drug testing procedures published in the **Federal Register** on December 19, 2000. The Coast Guard proposes to amend the regulations on Marine Casualties and Investigations and Chemical Testing by removing obsolete sections and sections duplicating the DOT regulations; adding new definitions; and modifying existing text to incorporate new terms and procedures contained in the DOT

procedural requirements. This rulemaking would conform Coast Guard rules to the new requirements established by the December 19, 2000, DOT final rule.

**DATES:** Comments and related material must reach the Docket Management Facility on or before June 29, 2001.

**ADDRESSES:** To make sure that your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG-2000-7759), U.S. Department of Transportation, room PL-401, 400 Seventh Street SW., Washington, DC 20590-0001.

(2) By delivery to room PL-401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

(3) By fax to the Docket Management Facility at 202-493-2251.

(4) Electronically through the Web Site for the Docket Management System at <http://dms.dot.gov>.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL-401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at <http://dms.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call LT Jennifer Ledbetter, Coast Guard, telephone 202-267-0684. If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202-366-9329.

#### SUPPLEMENTARY INFORMATION:

##### Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (USCG-2000-7759), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand

delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

#### Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

#### Background and Purpose

On December 19, 2000 (65 FR 79462), the Department of Transportation (DOT) published a comprehensive revision to their drug and alcohol testing procedural rules (49 CFR Part 40). The revised Part 40 makes numerous changes in the way that drug and alcohol testing will be conducted in the future. While some provisions of the new rule will be made effective more quickly, as amendments to the existing Part 40, the entire revised part is scheduled to go into effect on August 1, 2001.

Part 40 is one element of a One-DOT set of regulations designed to deter and detect the use of illegal drugs and the misuse of alcohol by employees performing safety-sensitive transportation functions. DOT has published a summary of the major changes affecting the modal drug testing rules. These major changes include changes to the "return to duty" process (49 CFR 40.21); a requirement that all modes collect "split specimens" for drug testing (49 CFR 40.71 and subpart H); a new DOT process for employers to request waiver of the policy against stand down of employees pending completion of the test verification process (49 CFR 40.21); changes in qualifications and training requirements for testing personnel, medical review officers, and other technicians and substance abuse professionals (49 CFR 40.33, 40.121 and 281); revised role of consortium/third-party administrators (C/TPA) (49 CFR 40.345 and 347); and a requirement that employers check

with previous employers for drug and alcohol testing results of applicants for safety sensitive jobs (49 CFR 40.25).

It is important that the six DOT agency rules that cover specific transportation industries be consistent with the revised Part 40 to avoid duplication, conflict, or confusion among DOT regulatory requirements. For these reasons, the Coast Guard is proposing revisions to our drug and alcohol testing regulations affected by Part 40. We intend to issue final versions of these "conforming amendments" in time to be effective on August 1, 2001, the same date that the revised Part 40 takes effect.

There are several changes that we propose to make to ensure consistency with the revised Part 40. The next section of this preamble discusses each of these items in turn.

### Discussion of Proposed Rule

The Coast Guard proposes to revise its chemical drug testing regulations to conform with the Department of Transportation's (DOT) final rule on drug testing procedures published on December 19, 2000 **Federal Register** (65 FR 79462). This NPRM would conform Coast Guard rules to the new requirements established today by 49 CFR Part 40. The Coast Guard proposes to revise 46 CFR Parts 4, 5, and 16 by removing obsolete sections and sections duplicating the DOT regulations; adding new definitions; and modifying existing text to incorporate new terms and procedures contained in the DOT procedural requirements.

Some new DOT requirements, such as the requirement for split specimens, can be implemented without a revision or conforming amendment to Coast Guard regulations. In this case, the requirement is in 49 CFR Part 40, and our regulations require employers to follow the procedures in that part when conducting required chemical tests for dangerous drugs.

The DOT revisions include new qualification and training requirements for Medical Review Officers (MROs) and Substance Abuse Professionals (SAPs). The Coast Guard is not proposing to change the current dual role of the MRO in the return-to-duty decision process. However, where an individual performs both SAP and MRO functions, Part 40 requires the individual to meet the qualification and training requirements for individuals performing each of these functions. We request comments on how these changes should be implemented by the Coast Guard. Should an MRO, in order to perform SAP functions, separately have to meet the SAP training requirements? Should

fulfillment of the MRO training requirements satisfy the requirements for SAP training? Should the MRO, performing what are called SAP functions in Part 40, have to follow the same Part 40 procedures as SAPs in the return to duty process?

Other DOT changes, such as the minimum number of follow-up drug tests required during the first year after return to work in a safety-sensitive position, would require a conforming amendment to add this requirement to our existing regulatory text.

The following is a brief discussion of how the Coast Guard proposes to amend its regulations affected by DOT's final rule.

#### 46 CFR Part 4

Throughout this part, we propose to update cross-references to point to the revised sections in 49 CFR Part 40 and the proposed revisions to 46 CFR Part 16.

#### 46 CFR Part 5

Table 5.569. We propose to clarify the Table of Appropriate Orders in § 5.569 to distinguish between a Chemical test for dangerous drugs and for alcohol, because Part 40 treats them separately.

#### 46 CFR Part 16

Definitions. We propose to change some definitions in § 16.105 by removing terms that are no longer used in 46 CFR Part 16 or 49 CFR Part 40; by revising terms to conform to the definitions in 49 CFR Part 40; and by adding terms found in 49 CFR Part 40 that are currently not found in 46 CFR Part 16.

### New Sections

We would add § 16.107 *Waivers*. This section would contain existing waivers as well as the new DOT waiver for stand-down of crewmembers following a confirmed positive test.

We propose adding a § 16.109 describing DOT's new Public Interest Exclusion (PIE) in 49 CFR Part 40, subpart R.

We propose adding § 16.115 *Penalties*. To inform the public of the penalties prescribed by 46 U.S.C. 2115 for violation of dangerous drug and alcohol testing regulations.

We also propose adding § 16.203 *Employer responsibilities*. to restate DOT's general requirements for employers in 49 CFR Part 40, subpart B.

### Revisions

*Section 16.201 Application*. In § 16.201 we propose revising paragraph (a) by requiring all chemical drug tests to be conducted as detailed in the

procedures found in 49 CFR 40. We would revise paragraph (c) to require a sponsoring organization, like employers and prospective employers, to report a mariner's positive chemical drug test to the nearest Coast Guard Officer in Charge, Marine Inspection. We would update the cross-reference to § 16.370 in paragraph (e).

*Section 16.207 Conflict with foreign laws*. We propose to remove the section heading and paragraph (a) of this section because it is obsolete. The delayed date for testing vessels operating in foreign jurisdictions has expired and this paragraph is no longer needed.

*Section 16.260 Records*. We propose to revise § 16.260(a) by adding a cross-reference to DOT recordkeeping requirements in 49 CFR 40.333.

*Subpart C*. Most of the requirements in Subpart C are now covered in detail by the revised 49 CFR Part 40 and these sections are no longer needed in Part 16. In Subpart C, § 16.301, § 16.350(b), and § 16.370(d) are not covered in detail by 49 CFR Part 40. We propose to redesignate these paragraphs.

Section 16.370(d) currently requires an MRO to determine when an individual is ready to return to work after testing positive and allows the MRO to prescribe follow-up testing for up to 60 months as appropriate. In order to ensure intermodal consistency, DOT has prescribed a mandatory minimum number of follow-up tests after return to work. We propose to revise § 16.370(d) to include the new DOT requirement for a minimum of 6 follow-up drug tests during the first year after an individual returns to work. This new requirement would be in addition to all other Coast Guard requirements for rehabilitation and education following a positive drug test. Revised § 16.370(d) would be redesignated and we propose to remove the remaining provisions in Subpart C.

### Regulatory Evaluation

DOT has assessed the economic impacts of this proposed rulemaking. Because this proposed rule makes conforming changes to align Coast Guard regulations with the revised 49 CFR Part 40, DOT determined that it has no additional costs to industry. Their analysis is published in their December 19, 2000, final rule, Procedures for Transportation Workplace Drug and Alcohol Testing Programs [OST 1999-6578].

### Analyses Under Other Executive Orders

DOT also found no significant impact that would warrant further analysis of this rulemaking in accordance to the Small Business Regulatory Enforcement

Fairness Act of 1996, the Paperwork Reduction Act of 1995, Federalism impacts under Executive Order 13132, the Unfunded Mandates Reform Act of 1995, Enhancing the Intergovernmental Partnership under Executive Order 12875, Taking of Private Property under Executive Order 12630, Civil Justice Reform under Executive Order 12988, and the Protection of Children from Environmental Health Risks and Safety Risks under Executive Order 13045.

It is well settled that States are precluded from regulation in categories that are reserved for regulation by the Coast Guard. It is also well settled, now, that all of the categories covered in 46 U.S.C. 3306, 3703(a), 7101 and 8101 (design, construction, repair, alteration, maintenance, operation, equipping, personnel qualification and manning of vessels) as well as casualty reporting and any other categories where Congress intended the Coast Guard to be the sole source of a vessel's obligations are within the field foreclosed from State regulation. (See the decision of the Supreme Court in the consolidated cases of *United States v. Locke and Intertanko v. Locke*, 529 U.S. 89, 120 S.Ct 1135 (March 6, 2000). Rules regarding drug and alcohol testing for merchant marine personnel fall into the covered category of personnel certification rules, with the Coast Guard intended to be the sole source of those rules, thereby precluding States from regulation. Because States may not promulgate rules within these categories, preemption is not an issue under Executive Order 13132.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental

jurisdiction and you have questions concerning its provisions or options for compliance, please consult LT Jennifer Ledbetter, Coast Guard, telephone 202-267-0684.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

**Environment**

We considered the environmental impact of this proposed rule and concluded that, under figure 2-1, paragraphs (34)(a), of Commandant Instruction M16475.JC, this rule is categorically excluded from further environmental documentation. The proposed rule would be promulgated to comply with new DOT regulations. The promulgation of new regulations by the Coast Guard would be editorial or procedural in nature. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

**List of Subjects**

*46 CFR Part 4*

Administrative practice and procedure, Alcohol abuse, Drug abuse, Drug testing, Investigations, Marine safety, National Transportation Safety Board, Nuclear vessels, Reporting and recordkeeping requirements, Safety, Transportation.

*46 CFR Part 5*

Administrative practice and procedure, Alcohol abuse, Drug abuse, Investigations, Seamen.

*46 CFR Part 16*

Drug testing, Marine safety, Penalties, Reporting and recordkeeping requirements, Safety, Transportation.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 46 CFR Parts 4, 5, and 16 as follows:

**PART 4—MARINE CASUALTIES AND INVESTIGATIONS**

1. The citation of authority for part 4 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 43 U.S.C. 1333; 46 U.S.C. 2103, 2306, 6101, 6301, 6305; 50 U.S.C. 198; 49 CFR 1.46. Authority for subpart 4.40: 49 U.S.C. 1903(a)(1)(E); 49 CFR 1.46.

**§ 4.06 [Amended]**

- 2. In § 4.06-1(f) remove "and 16.207".
- 3. In § 4.06-20(b) revise "\$ 16.330 of this part" to read "49 CFR part 40".
- 4. In § 4.06-40(b) revise "\$ 16.310" to read "\$ 16.113" and revise "\$ 16.320" to read "49 CFR part 40, subpart D,".
- 5. In § 4.06-50(b) in the first sentence revise "49 CFR 40.33" to read "49 CFR 40.121" and in the second sentence revise "49 CFR 40.33" to read "49 CFR part 40, subpart G,".

**PART 5—MARINE INVESTIGATION REGULATIONS—PERSONNEL ACTION**

6. The citation of authority for part 5 continues to read as follows:

**Authority:** 46 U.S.C. 2103, 7101, 7301, and 7701; 49 CFR 1.46.

7. In § 5.569 in Table 5.569 revise the entry for "Violation of Regulation:" to read as follows:

**§ 5.569 Selection of an appropriate order.**

\* \* \* \* \*

TABLE 5.569.—SUGGESTED RANGE OF AN APPROPRIATE ORDER

| Type of offense                             | Range of order (in months) |
|---|----------------------------|
| * * * * *                                   |                            |
| Violation of Regulation:                    |                            |
| Refusal to take chemical drug test .....    | 12-24.                     |
| Refusal to take required alcohol test ..... | 12-24.                     |
| * * * * *                                   |                            |

**PART 16—CHEMICAL TESTING**

8. The citation of authority for part 16 continues to read as follows:

**Authority:** 46 U.S.C. 2103, 3306, 7101, 7301, and 7701; 49 CFR 1.46.

9. In § 16.105 remove the definition for “Dangerous drug level”, “Intoxicant”, and “Medical Review Officer”, revise the definitions for “Fails a chemical test for dangerous drugs” and “Refuse to submit”, and add in alphabetical order definitions for “Consortium/Third party administrator”, “Medical Review Officer (MRO)”, “Service agent”, and “Stand down” to read as follows:

**§ 16.105 Definitions of terms used in this part.**

\* \* \* \* \*

*Consortium/Third party administrator (C/TPA)* means a service agent who provides or coordinates the provision of a variety of drug and alcohol testing services to employers. C/TPAs typically perform administrative tasks concerning the operation of the employers’ drug and alcohol testing programs. This term includes, but is not limited to, groups of employers who join together to administer, as a single entity, the DOT drug and alcohol testing programs of its members.

\* \* \* \* \*

*Fails a chemical test for dangerous drugs* means that the result of a chemical test conducted in accordance with 49 CFR 40 was reported as “positive” by a Medical Review Officer because the chemical test indicated the presence of a dangerous drug at a level equal to or exceeding the levels established in 49 CFR part 40.

\* \* \* \* \*

*Medical Review Officer (MRO)* means a person who is a licensed physician and who is responsible for receiving and reviewing laboratory results generated by an employer’s drug testing program and evaluating medical explanations for certain drug test results.

\* \* \* \* \*

*Refuse to submit* means you refused to take a drug test as set out in 49 CFR 40.191.

\* \* \* \* \*

*Service agent* means any person or entity that provides services specified under this part or 49 CFR part 40 to employers and/or crewmembers in connection with DOT drug and alcohol testing requirements. This includes, but is not limited to, collectors, BATs and STTs, laboratories, MROs, substance abuse professionals, and C/TPAs. To act as service agents, persons and organizations must meet the

qualifications set forth in applicable sections of 49 CFR part 40. Service agents are not employers for purposes of this part.

\* \* \* \* \*

*Stand-down* means the practice of temporarily removing a crewmember from the performance of safety-sensitive functions based only on a report from a laboratory to the MRO of a confirmed positive test for a drug or drug metabolite, an adulterated test, or a substituted test, before the MRO has completed verification of the test result.

10. Add § 16.107 to subpart A to read as follows:

**§ 16.107 Waivers.**

(a) To obtain a waiver from 49 CFR 40.21 or from this part you must send your request for a waiver to the Commandant (G–MOA).

(b) Employers for whom compliance with this part would violate the domestic laws or policies of another country may request an exemption from the drug testing requirements of this part by submitting a written request to Commandant (G–MOA), at the address listed in § 16.500(a).

(c) An employer may request a waiver from the Coast Guard in order to stand-down a crewmember following the Medical Review Officer’s receipt of a laboratory report of a confirmed positive test for a drug or drug metabolite, an adulterated test, or a substituted test pertaining to the crewmember. Consistent with 49 CFR 40.21, the request for a waiver must include as a minimum: information about the organization and the proposed written company policy concerning stand-down. Specific elements required in the written waiver request are contained in 49 CFR 40.21(c).

11. Add § 16.109 to subpart A to read as follows:

**§ 16.109 Public Interest Exclusion (PIE).**

Service agents are subject to Public Interest Exclusion (PIE) actions in accordance with 49 CFR part 40, subpart R. The PIE is an action which excludes from participation in DOT’s drug and alcohol testing program any service agent who, by serious noncompliance with this part or with 49 CFR part 40, has shown that it is not currently acting in a responsible manner.

12. Add § 16.115 to subpart A to read as follows:

**§ 16.115 Penalties.**

Violation of this part is subject to the civil penalties set forth in 46 U.S.C. 2115. Any person who fails to implement or conduct, or who otherwise fails to comply with the

requirements for chemical testing for dangerous drugs as prescribed under this part, is liable to the United States Government for a civil penalty of not more than \$5,000 for each violation. Each day of a continuing violation will constitute a separate violation.

13. In § 16.201 revise paragraphs (a), (c), and (e), and add paragraph (f) to read as follows:

**§ 16.201 Application.**

(a) Chemical testing of personnel must be conducted as required by this subpart and in accordance with the procedures detailed in 49 CFR part 40.

\* \* \* \* \*

(c) If an individual holding a license, certificate of registry, or merchant mariner’s document fails a chemical test for dangerous drugs, the individual’s employer, prospective employer, or sponsoring organization must report the test results in writing to the nearest Coast Guard Officer in Charge, Marine Inspection (OCMI). The individual must be denied employment as a crewmember or must be removed from duties which directly affect the safe operation of the vessel as soon as practicable and is subject to suspension and revocation proceedings against his or her license, certificate of registry, or merchant mariner’s document under 46 CFR part 5.

\* \* \* \* \*

(e) An individual who has failed a required chemical test for dangerous drugs may not be re-employed aboard a vessel until the requirements of paragraph (g) of this section and 46 CFR Part 5, if applicable, have been satisfied.

(f) Medical Review Officers (MRO) may report positive test results of unemployed, self-employed, or individual mariners to the Coast Guard.

14. Add § 16.203 to read as follows:

**§ 16.203 Employer responsibilities.**

(a) Employers must ensure that they and their crewmembers meet the requirements of this part.

(b) Employers are responsible for all the actions of their officials, representatives, and agents in carrying out the requirements of this part.

(c) All agreements and arrangements, written or unwritten, between and among employers and service agents concerning the implementation of DOT drug testing requirements are deemed, as a matter of law, to require compliance with all applicable provisions of this part and DOT agency drug testing regulations. Compliance with these provisions is a material term of all such agreements and arrangements.

**§ 16.207 [Removed]**

15. Remove § 16.207.  
16. In § 16.260 revise paragraph (a) to read as follows:

**§ 16.260 Records.**

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

\* \* \* \* \*

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

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

**§ 16.310 [Removed]**

18. Remove § 16.310.

**§ 16.320 [Removed]**

19. Remove § 16.320.

**§ 16.330 [Removed]**

20. Remove § 16.330.

**§ 16.340 [Removed]**

21. Remove § 16.340.  
22. In newly redesignated § 16.113, revise the section heading, designate the existing text as paragraph (a), and add paragraph (b) to read as follows:

**§ 16.113 Chemical drug testing.**

\* \* \* \* \*

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

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

**§ 16.350 [Removed]**

23. Remove § 16.350.

**§ 16.360 [Removed]**

24. Remove § 16.360.  
25. Redesignate § 16.370(d) as § 16.201(g) and revise it to read as follows:

**§ 16.201 Application.**

\* \* \* \* \*

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

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

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

**§ 16.370 [Removed]**

26. Remove § 16.370.

**§ 16.380 [Removed]**

27. Remove § 16.380.  
28. Remove and reserve subpart C.

Dated: November 22, 2000.

**Joseph J. Angelo,**

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

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

BILLING CODE 4910-15-U

**DEPARTMENT OF TRANSPORTATION****Research and Special Programs Administration****49 CFR Part 199**

[Docket No. RSPA-00-8417; Notice 1]

RIN 2137-AD55

**Drug and Alcohol Testing for Pipeline Facility Employees**

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

**ACTION:** Notice of proposed rulemaking.

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

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

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

**INFORMATION** section for additional filing information.

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

**SUPPLEMENTARY INFORMATION:****Filing Information, Electronic Access, and General Program Information**

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

**Background**

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

**Common Preamble**

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

**Proposed Amendments to Part 199****Structure and Organization**

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