

DELEGATION STATUS FOR PART 63 STANDARDS—NEW MEXICO (EXCLUDING BERNALILLO COUNTY AND INDIAN COUNTRY) <sup>1</sup>—Continued

Subpart	Source category	New Mexico
TTTTT .....	Primary Magnesium Refining .....	.....

<sup>1</sup> Program delegated to New Mexico Environment Department (NMED).

<sup>2</sup> Authorities that cannot be delegated include § 63.6(g), Approval of Alternative Non-Opacity Standards; § 63.6(h)(9), Approval of Alternative Opacity Standards; § 63.7(e)(2)(ii) and (f), Approval of Major Alternatives to Test Methods; § 63.8(f), Approval of Major Alternatives to Monitoring; and § 63.10(f), Approval of Major Alternatives to Recordkeeping and Reporting. In addition, all authorities identified in the certain subparts that EPA has designated that cannot be delegated.

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**DEPARTMENT OF TRANSPORTATION**

**Research and Special Programs Administration**

**49 CFR Part 199**

[Docket RSPA-97-2995; Notice 11]

**Pipeline Safety: Drug Testing; Random Testing Rate**

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

**ACTION:** Notice of minimum annual percentage rate for random drug testing.

**SUMMARY:** Each year, pipeline operators randomly select employees to test for prohibited drugs. The number of employees selected may not be less than the minimum annual percentage rate the Research and Special Programs Administration's (RSPA) Office of Pipeline Safety (OPS) determines, which is either 50 percent or 25 percent of covered employees based on the industry's positive rate of random tests. In accordance with applicable standards, RSPA/OPS has determined that the positive rate of random drug tests reported by operators this year for testing done in calendar year 2002 is less than 1.0 percent. Therefore, in calendar year 2004, the minimum annual percentage rate for random drug testing is 25 percent of covered employees.

**DATES:** Effective January 1, 2004, through December 31, 2004.

**FOR FURTHER INFORMATION CONTACT:** Sheila Wright, RSPA, OPS, Room 7128, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366-4554 or e-mail [sheila.wright.rspa.dot.gov](mailto:sheila.wright.rspa.dot.gov).

**SUPPLEMENTARY INFORMATION:** Operators of gas, hazardous liquid, and carbon dioxide pipelines and operators of liquefied natural gas facilities must annually submit Management Information System (MIS) reports of drug testing conducted in the previous

calendar year (49 CFR 199.119(a)). This information is used to calculate the minimum annual percentage rate at which operators must randomly select covered employees for drug testing during the next calendar year (49 CFR 199.105(c)(2)). If the minimum annual percentage rate for random drug testing is 50 percent, RSPA/OPS may lower the rate to 25 percent if it determines that the positive rate reported for random tests for two consecutive calendar years is less than 1.0 percent (49 CFR 199.105(c)(3)). If the minimum annual percentage rate is 25 percent, RSPA/OPS will increase the rate to 50 percent if it determines that the positive rate reported for random tests for any calendar year is equal to or greater than 1.0 percent (49 CFR 199.105(c)(4)). Part 199 defines "positive rate" as "the number of positive results for random drug tests \* \* \* plus the number of refusals of random tests \* \* \*, divided by the total number of random drug tests \* \* \* plus the number of refusals of random tests. \* \* \*"

Through calendar year 1996, the minimum annual percentage rate for random drug testing in the pipeline industry was 50 percent of covered employees. Based on MIS reports of random testing conducted in 1994 and 1995, RSPA/OPS lowered the minimum rate from 50 percent to 25 percent for calendar year 1997 (61 FR 60206; November 27, 1996). The minimum rate remained at 25 percent in calendar years 1998 (62 FR 59297; Nov. 3, 1997); 1999 (63 FR 58324; Oct. 30, 1998); 2000 (64 FR 66788; Nov. 30, 1999); 2001 (65 FR 81409; Dec. 26, 2000); and 2002 (67 FR 2611; Jan. 18, 2002).

Using the MIS reports received this year for drug testing conducted in calendar year 2002, RSPA/OPS calculated the positive rate of random testing to be 0.7 percent. Since the positive rate continues to be less than 1.0 percent, RSPA/OPS is announcing that the minimum annual percentage rate for random drug testing is 25 percent of covered employees for the period January 1, 2004, through December 31, 2004.

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

Issued in Washington, DC, on December 4, 2003.

**Stacey L. Gerard,**

*Associate Administrator for Pipeline Safety.*

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**DEPARTMENT OF TRANSPORTATION**

**National Highway Traffic Safety Administration**

**49 CFR Part 571**

[Docket No. NHTSA 2003-15855]

**Federal Motor Vehicle Safety Standards; Occupant Crash Protection**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Denial of petition for rulemaking.

**SUMMARY:** This document denies a petition for rulemaking to amend Federal Motor Vehicle Safety Standard (FMVSS) No. 208, "Occupant Crash Protection," because it is redundant to pending rulemaking action by the agency.

**FOR FURTHER INFORMATION CONTACT:** For non-legal issues: Louis Molino, Office of Crashworthiness Standards, NVS-112, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone (202) 366-2264. Fax: (202) 493-2290.

For legal issues: Rebecca MacPherson, Office of Chief Counsel, NCC-20, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-2992. Fax: (202) 366-3820.

**SUPPLEMENTARY INFORMATION:**

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**I. Background**

On May 12, 2000, we published in the **Federal Register** (65 FR 30680) a final