

or immediately available to perform a covered function.

*Positive rate for random drug testing* means the number of verified positive results for random drug tests conducted under this part plus the number of refusals of random drug tests required by this part, divided by the total number of random drug tests results (*i.e.*, positives, negatives, and refusals) under this part.

*Prohibited drug* means any of the substances specified in 49 CFR part 40.

*Refuse to submit, refuse, or refuse to take* means behavior consistent with DOT Procedures concerning refusal to take a drug test or refusal to take an alcohol test.

*State agency* means an agency of any of the several states, the District of Columbia, or Puerto Rico that participates under the pipeline safety laws (49 U.S.C. 60101 *et seq.*)

[53 FR 47096, Nov. 21, 1988, as amended by Amdt. 199-2, 54 FR 51850, Dec. 18, 1989; 59 FR 62227, Dec. 2, 1994; Amdt. 199-13, 61 FR 18518, Apr. 26, 1996; Amdt. 199-15, 63 FR 13000, Mar. 17, 1998; Amdt. 199-19, 66 FR 47117, Sept. 11, 2001; 68 FR 11750, Mar. 12, 2003; 68 FR 75465, Dec. 31, 2003; 70 FR 11140, Mar. 8, 2005; 84 FR 16775, Apr. 23, 2019]

#### § 199.5 DOT procedures.

The anti-drug and alcohol programs required by this part must be conducted according to the requirements of this part and DOT Procedures. Terms and concepts used in this part have the same meaning as in DOT Procedures. Violations of DOT Procedures with respect to anti-drug and alcohol programs required by this part are violations of this part.

[Amdt. 199-19, 66 FR 47118, Sept. 11, 2001]

#### § 199.7 Stand-down waivers.

(a) Each operator who seeks a waiver under § 40.21 of this title from the stand-down restriction must submit an application for waiver in duplicate to the Associate Administrator for Pipeline Safety, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE, Washington, DC 20590-0001.

(b) Each application must—

(1) Identify § 40.21 of this title as the rule from which the waiver is sought;

(2) Explain why the waiver is requested and describe the employees to be covered by the waiver;

(3) Contain the information required by § 40.21 of this title and any other information or arguments available to support the waiver requested; and

(4) Unless good cause is shown in the application, be submitted at least 60 days before the proposed effective date of the waiver.

(c) No public hearing or other proceeding is held directly on an application before its disposition under this section. If the Associate Administrator determines that the application contains adequate justification, he or she grants the waiver. If the Associate Administrator determines that the application does not justify granting the waiver, he or she denies the application. The Associate Administrator notifies each applicant of the decision to grant or deny an application.

[Amdt. 199-19, 66 FR 47118, Sept. 11, 2001, as amended at 70 FR 11140, Mar. 8, 2005; 74 FR 2894, Jan. 16, 2009]

#### § 199.9 Preemption of State and local laws.

(a) Except as provided in paragraph (b) of this section, this part preempts any State or local law, rule, regulation, or order to the extent that:

(1) Compliance with both the State or local requirement and this part is not possible;

(2) Compliance with the State or local requirement is an obstacle to the accomplishment and execution of any requirement in this part; or

(3) The State or local requirement is a pipeline safety standard applicable to interstate pipeline facilities.

(b) This part shall not be construed to preempt provisions of State criminal law that impose sanctions for reckless conduct leading to actual loss of life, injury, or damage to property, whether the provisions apply specifically to transportation employees or employers or to the general public.

[Amdt. 199-9, 59 FR 7430, Feb. 15, 1994. Redesignated and amended by Amdt. 199-19, 66 FR 47119, Sept. 11, 2001]