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DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA-2009-0408]

Pipeline Safety: Reporting Drug and Alcohol Test Results for Contractors and Multiple Operator Identification Numbers

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice; Issuance of Advisory Bulletin.

SUMMARY: This notice advises operators of gas, hazardous liquid, and carbon dioxide pipelines and liquefied natural gas facilities that the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), is modifying the Drug & Alcohol Management Information System (DAMIS) to allow the reporting of contractor data without duplication and will begin collecting annual drug and alcohol testing data for contractor employees with Management Information System (MIS) reports due March 15, 2010. The collection of contractor MIS reports will provide data for the entire pipeline industry to calculate the required minimum annual percent rate for random drug testing. Operators will also identify all OPS issued operator identification numbers (OpID) covered by a MIS report of operator employees.

FOR FURTHER INFORMATION CONTACT: Stanley T. Kastanas, Program Manager, Substance Abuse Prevention Program at 202-550-0629 or by e-mail at

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SUPPLEMENTARY INFORMATION:

I. Background

Under 49 CFR Part 199, each pipeline operator having more than 50 covered employees must submit an annual MIS report to OPS of its drug and alcohol testing results for covered employees by March 15 of each year for the prior calendar year. Operators with 50 or fewer covered employees may be required to submit annual MIS reports if notified by OPS in writing. A covered employee is a person employed by the operator, a contractor engaged by the operator, or a person employed by such a contractor, who performs operations, maintenance, or emergency response functions regulated by 49 CFR Parts 192, 193, and 195.

In a final rule titled “Management Information System (MIS) Standardized Data Collection and Reporting” (58 FR 68258, Dec. 23, 1993), OPS concluded that submission of contractor testing data by operators could result in duplicative reporting and inaccurate data. OPS noted that inaccuracies could affect the positive rate for the entire industry, thereby affecting the minimum annual percent rate for random drug testing. Accordingly, OPS deferred collecting contractor testing data, but stated that operators must continue to maintain the records required by 49 CFR Part 199, and ensure their pipeline contractors maintain the same. During subsequent meetings of the Technical Pipeline Safety Standards Committee and the Technical Hazardous Liquid Pipeline Safety Standards Committee, OPS discussed its intent to begin collecting contractor

testing data. Comments at these meetings were supportive of the initiative to collect contractor data.

OPS does not directly regulate pipeline contract companies with respect to drug and alcohol testing, but places the responsibility on operators to ensure all covered employees are tested and, depending on the number of covered employees, the testing results are submitted to OPS either annually or by OPS written request. Accordingly, pipeline operators monitor contractor compliance with drug and alcohol testing requirements as required by 49 CFR Part 199.

Operators use a variety of methods to monitor contractor employees, such as testing of contract employees, requiring pipeline contractors to have their own testing programs, or working with pipeline contractors that belong to drug testing consortium groups. Collecting contractor testing data is essential for analyzing OPS's approach to detecting and deterring use of controlled substances. The information is also necessary to calculate the minimum annual percentage rate for random drug testing, which is based on the reported positive rate for the entire industry. Collecting this data does not require a rule amendment because 49 CFR Part 199 requires operators to report testing data for all covered employees, which includes contract employees performing work on their pipelines. The preamble to the current rule merely deferred submission of the data until the development of a methodology.

OPS is modifying DAMIS to allow the reporting of contractor data without duplication when the contractor works for multiple operators. DAMIS is also being modified to allow pipeline operators to submit a single operator employee MIS report for pipeline systems operated under more than one OPS issued OpID.

II. Advisory Bulletin (ADB-09-04)

To: Operators of Gas, Hazardous Liquid, and Carbon Dioxide Pipelines and Liquefied Natural Gas Facilities

Subject: Reporting Drug and Alcohol Test Results for Contractors and Multiple Operator Identification Numbers

Advisory: Beginning with MIS reports due by March 15, 2010, OPS will begin collecting annual drug and alcohol testing data for contractor employees. This Advisory Bulletin closes the action identified in a Federal Register Publication titled “Notice of Intent to Issue an Advisory Bulletin; Request for Public Comment” (70 FR 20800, April 21, 2005), for development of a methodology for collection of contractor testing data. Contractors will be identified both by name and business tax identification number (BTIN) in the MIS report. The inclusion of the BTIN will ensure employees of the same contractor are only counted once when OPS calculates the required random testing rate.

In order to verify reporting of operator employees, each MIS report for operator employees will include each OPS issued OpID covered by the MIS report.

Under Part 199, operators who had 50 or more operator and contractor employees performing § 199.3 “*covered functions*” during calendar year 2009, must submit a MIS report. OPS may also request in writing, MIS reports from operators with fewer than 50 operator and contractor employees performing covered functions. In January 2010, OPS plans to notify each operator who is required, or requested, to submit a report before March 15, 2010 by mail. The notification will include detailed instructions for including all OpID and each contractor BTIN in both online and paper MIS reports.

The total number of covered employees is not limited to employees who physically worked in a maintenance, operations, or emergency response role during the previous calendar year. The definition of “performs a covered function” in Part 199.3 includes actually performing, ready to perform, or immediately available to perform a covered function. Operators need to be cognizant of this definition when calculating the number of covered employees for both the operator and contractors. Employees who “perform a covered function” as defined in § 199.3, are required to be included in the random drug testing pool. The average size of a properly maintained random drug testing pool defines the number of covered employees.

While the total number of covered employees determines if an operator must submit a MIS report, operator and contractor employee testing data must be submitted in separate MIS reports. Additionally, to ensure that contractor employees are only counted once in the entire set of calendar year 2009 MIS reports, data for each contractor with a unique BTIN will be submitted

in a separate MIS report. After mailing the detailed instructions to operators, OPS will post the same information on the Drug & Alcohol Program website at

<http://www.phmsa.dot.gov/pipeline/regs/drug>.

Operators are encouraged to submit MIS reports online. The online reporting option improves data accuracy and helps reduce the number of incomplete MIS reports. If an operator submits a paper MIS report to OPS, the operator will not receive a confirmation receipt for the MIS report. If an operator submits an online MIS report and includes an e-mail address, a confirmation receipt will be sent.

Submission of MIS Reports

OPS offers the following information to help operators prepare for submitting calendar year 2009 MIS reports. For clarity, the process steps are presented for single OpID reporting and multiple OpID reporting.

Single OpID Reporting

Step 1: Determine the number of operator employees performing § 199.3 covered functions during calendar year 2009.

Step 2: Obtain the BTIN for each contractor who provided § 199.3 covered functions during calendar year 2009. Determine the number of employees performing § 199.3 covered functions during calendar year 2009 for each contractor. Sum the number of contractor employees.

Step 3: Add the number of operator and contractor employees from Steps 1 and 2. If this number is less than 50, a MIS report is required only if you receive a letter from OPS requesting a MIS report.

Multiple OpID Reporting

Step 1: Determine the number of operator employees performing § 199.3 covered functions during calendar year 2009 for each reporting OpID. Sum the number of operator employees.

Step 2: Obtain the BTIN for each contractor who provided § 199.3 covered functions during calendar year 2009 to any reporting OpID. Determine the number of employees performing § 199.3 covered functions during calendar year 2009 for each contractor. Sum the number of contractor employees.

Step 3: Add the total number of operator and contractor employees from Steps 1 and 2. If this number is less than 50, a MIS report is required only if you receive a letter from OPS requesting a MIS report.

Authority: 49 U.S.C. chapter 601 and 49 CFR 1.53.

Issued in Washington, DC, on JAN 12 2010.

A handwritten signature in black ink, appearing to read "J. Wiese". The signature is stylized with a large, circular flourish on the left side.

Jeffrey D. Wiese,

Associate Administrator for Pipeline Safety.