

## DEPARTMENT OF TRANSPORTATION

## Research and Special Programs Administration

## 49 CFR Part 199

[Docket No. PS-128, Amdt. No. 199-9]

RIN 2137-AC21

## Alcohol Misuse Prevention Program

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

ACTION: Final rule.

**SUMMARY:** This final rule sets forth regulations requiring operators of gas, hazardous liquid and carbon dioxide pipelines and liquefied natural gas (LNG) facilities subject to the pipeline safety regulations to implement alcohol misuse prevention programs for employees who perform safety-sensitive functions. This final rule is consistent with the alcohol rules of other operating administrations (OAs) published elsewhere in today's *Federal Register*, except that RSPA is not requiring pre-employment or random testing. The final rule requires only post-accident, reasonable suspicion, return-to-duty, and follow-up testing. This rule requires operators to remove from safety-sensitive functions employees who engage in prohibited alcohol conduct, and not permit them to return to those functions until specific requirements are met. Operators must provide covered employees with written materials that specifically identify the employees covered by the rule, explain the requirements of the rule, and establish the consequences of engaging in prohibited conduct. Operators must maintain records concerning their programs and report data regarding employee alcohol misuse to RSPA annually. The rules are intended to ensure an alcohol-free workplace, and increase the overall safety of pipeline operations.

**EFFECTIVE DATE:** This rule is effective March 17, 1994.

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard L. Rippert, Office of Pipeline Safety Compliance, RSPA, DOT, 400 Seventh Street, SW., Washington, DC 20590-0001 (202 366-6223); or the RSPA Dockets Unit, (202) 366-4453, for copies of this final rule or other material in the docket.

## SUPPLEMENTARY INFORMATION:

## Background

On December 15, 1992, RSPA published a notice of proposed rulemaking (NPRM) (57 FR 59712) to require pipeline operators of gas,

hazardous liquid and carbon dioxide pipelines and liquefied natural gas (LNG) facilities, who are subject to 49 CFR part 192, 193, or 195, to implement alcohol misuse prevention programs for employees who perform certain covered functions. The NPRM proposed to exempt from the alcohol rules operators of "master meter systems" and "liquefied petroleum gas" (LPG) operators.

The comment period on the NPRM closed on April 14, 1993, and all comments received were considered, including the testimony of 16 individuals who presented statements at the three public hearings held on February 26, 1993, in Washington, DC; on March 2, 1993, in Chicago, Illinois; and on March 5, 1993, in San Francisco, California. RSPA received written comments from 108 persons including 75 pipeline operators, eight pipeline industry associations, seven individuals, five labor unions, four state agencies, three contractors, two consortiums, two vendors, one law firm and one Federal agency. All written comments, as well as the hearing transcripts and any statements or other materials submitted at the hearings, have been placed in the docket.

## OST Common Preamble

As part of the DOT-wide alcohol misuse prevention rulemaking effort DOT issued a common preamble to all of the related NPRMs that were published on December 15, 1993 (57 FR 59382, *et seq.*). The common preamble precedes this document in today's *Federal Register* and should be read first to ensure a complete understanding of today's substantive final rule. This common preamble contains a thorough discussion of the comments submitted to the DOT alcohol docket and responds to comments submitted to the various DOT agency dockets that raised multimodal aspects of the final rules or the Act.

## Discussion of Comments

## Authority for RSPA Regulation of Alcohol Misuse.

The majority of the commenters strongly objected to the mandatory imposition of alcohol misuse regulations, as proposed for the pipeline industry. They contended that: (1) Alcohol testing of pipeline operators is not required under the provisions of the Omnibus Transportation Employee Testing Act of 1991 (Omnibus Act); (2) the pipeline industry has an excellent safety record; (3) RSPA lacks a factual basis or statistical data that would support a finding of any alcohol-related

pipeline accidents; and (4) the proposed alcohol regulations would violate the Fourth Amendment of the Constitution. However, some commenters expressed support for inclusion of a limited alcohol testing program consisting of post-accident and reasonable suspicion testing elements and support for development of a "pilot or demonstration" alcohol program to be conducted by RSPA and various pipeline industry associations. The pilot program would be implemented by operators to develop statistical data which would support the need for an extensive alcohol testing program or data that would indicate implementation of a limited alcohol misuse prevention program was more feasible for the entire industry.

Most commenters opposed the proposed alcohol program, or suggested modifications to tailor the program to the needs of the pipeline industry. Several commenters noted that the pipeline industry is not covered by the Omnibus Act. Commenters stated that there is no indication that there is an alcohol problem in the pipeline industry, and thus there is no justification for imposing Federal regulation. Commenters also stated that pipelines pose different safety risks than other forms of public transportation because they do not carry passengers.

**RSPA Response.** RSPA is today issuing a final rule on alcohol testing based on its own existing statutory authority to promote safety and to ensure general application of DOT's alcohol misuse regulations to all employees performing safety-sensitive functions in the transportation industries. The two statutes under which RSPA administers the pipeline safety program are the Natural Gas Pipeline Safety Act of 1968, as amended (49 App. U.S.C. 1671 *et seq.*) and the Hazardous Liquid Pipeline Safety Act of 1979, as amended (49 App. U.S.C. 2001 *et seq.*). The broad safety authority in these statutes is applicable to various aspects of pipeline facilities, including "design, installation, inspection, emergency plans and procedures, testing, construction, extension, operation, replacement, and maintenance of pipeline facilities." 49 App. U.S.C. 1672 and 2002. Under this authority, RSPA can promulgate regulations where those regulations would enhance pipeline safety.

The lack of data cited by some commenters could be the result of a lack of testing and industry alcohol prevention programs rather than the absence of an alcohol problem in the pipeline industry. Alcohol misuse is a problem in society generally, and it is



reasonable to expect that the pipeline industry is not immune to the problem of alcohol misuse. As noted in the preamble to the NPRM, RSPA's drug rule was upheld even though there was no evidence of a particularized drug problem in the pipeline industry. *International Brotherhood of Electrical Workers v. Skinner*, 913 F.2d 1454 (9th Cir. 1990). Pipeline safety is very important, and operator error can contribute to accidents and incidents involving release of hazardous materials. Although pipelines do not carry people, they do transport very dangerous materials that, if released, can pose a serious threat to public safety, property, and the environment. Therefore, for safety reasons, we have decided to issue this final rule. Although the pipeline industry is not covered by the Omnibus Act, in order to provide a margin of safety in the pipeline industry, this final rule establishes a limited alcohol misuse prevention program. This program includes education, training, prohibitions on certain alcohol-related conduct, and post-accident, reasonable suspicion, return-to-duty, and follow-up testing. To balance our safety concerns with the cost to industry and the lack of evidence of a pipeline alcohol problem, we are not requiring random or pre-employment testing. With the exception of those two types of testing, this final rule is generally consistent with the rules of the other OAs. Such other alterations as are necessary to meet the special circumstances of the pipeline industry have been incorporated into the final rule. We will monitor the data we receive from post-accident and reasonable cause tests to determine if further action is warranted. This final rule will ensure that pipeline employees are subject to the same alcohol prohibitions, consequences, and educational efforts that apply to other transportation workers. Pipeline operators may conduct other types of alcohol testing if they have independent authority to do so.

Constitutional issues and comments on issues common to all of the OAs are addressed in detail in the common preamble to the OA alcohol rules, published elsewhere in today's *Federal Register*.

**Applicability and Scope.** Several commenters, including the American Gas Association, opposed application of the proposed rule to natural gas transmission and distribution companies. Some commenters indicated that the definition of "safety-sensitive function" and "performing a safety-sensitive function" are too broad and unclear. Other commenters stated that

the definition of "covered employee" should include only persons actually employed by an operator, and should not include applicants for employment. Some operators indicated that RSPA should clarify if the alcohol testing regulations are to be a free-standing program separate and distinct from the drug testing program or whether alcohol testing could be integrated with the existing drug testing program. They also pointed out that having different alcohol regulations for each of the OAs may create an administrative burden in complying with the various final rules.

**RSPA Response.** The NPRM proposed to include essentially the same classes of operators and covered functions as are subject to the anti-drug rule. This rule is adopting as final the NPRM proposal that operators of gas, hazardous liquid and carbon dioxide pipelines, and LNG facilities, who are subject to 49 CFR part 192, 193, or 195, implement alcohol misuse prevention programs for covered employees who perform certain functions covered by the pipeline safety regulations. Persons who perform regulated operation, maintenance, and emergency response functions for operators of these pipelines and facilities directly affect transportation safety. The final rule does not apply, however, to operators of master meter systems or LPG operators. The terms "covered functions" and "safety-sensitive functions" as used here and in the common preamble are synonymous and refer to the performance of an operation, maintenance, or emergency-response function performed on a pipeline or an LNG facility. The term "safety-sensitive function" is used in the Omnibus Transportation Employee Testing Act to describe functions which employees perform.

Operators may combine their RSPA drug and alcohol programs. This final rule is consistent with the other OA rules in order to minimize, to the extent possible, any compliance burden for operators subject to the rules of more than one OA. Because RSPA is not imposing pre-employment testing, the definition of a "covered employee" does not include an applicant for employment.

In the NPRM, RSPA solicited comment on five issues regarding implementation of the proposed alcohol regulations. The questions and comments are summarized below:

1. Are there covered functions the performance of which appears to sufficiently implicate safety to warrant regulating alcohol-related conduct and imposition of a testing requirement?

Several commenters indicated support for requiring only post-accident and reasonable suspicion testing to be mandated by RSPA. Many commenters indicated that pre-employment, random, and return-to-duty were costly and unnecessary as proposed in the NPRM. The commenters supported the current definition of "employee" in the drug testing regulations, and stated that the definition should not be expanded. RSPA agrees that the proposed definition of "employee" is adequate and has not expanded it. As discussed above, the final rule does not require either pre-employment or random testing.

2. Do pipeline operators have any data on the size of the population that would be affected and the incidence of alcohol misuse by this population?

Many operators stated they currently have company-mandated alcohol testing policies in place. These provisions cover testing in post-accident and reasonable suspicion situations. Some commenters indicated zero incidence of alcohol misuse. During the development of the drug testing regulations, many commenters suggested that RSPA include alcohol testing as a tested substance in any required testing program. They also pointed out that alcohol is probably the substance most abused by the public. As discussed above, the lack of data in the pipeline industry does not mean that there is not a problem with alcohol misuse. Therefore, RSPA is requiring a limited alcohol misuse program for the pipeline industry.

3. What additional costs would be incurred by inclusion of other functions and what would be the offsetting benefits (e.g., in terms of accident prevention, productivity, employee lost time)?

Many commenters agreed that increasing the scope of covered employees, especially if random testing were implemented, would substantially increase the costs associated with the regulations. Administrative costs and employee lost time would be increased. Furthermore, inconsistencies develop if alcohol regulations are implemented and differences in scope of coverage between the drug and alcohol testing programs were to occur. This would lead to drug and alcohol testing programs covering different employees. Therefore, the final alcohol rule applies to the same covered functions as the drug rule.

4. Does the industry or public have any information on alcohol-related accidents?

Many commenters argued that RSPA, DOT and the National Transportation



Safety Board (NTSB) have no statistical data to support alcohol-related accidents. Some commenters believe that in the absence of a comprehensive factual analysis, it is unreasonable to conclude that all the proposed types of federally-mandated alcohol testing should be required in the pipeline industry. As discussed above, RSPA has carefully evaluated all facets of the alcohol testing regulations including the required types of testing, categories of covered employees, costs associated with implementation of a testing program and the societal benefits. RSPA has determined that implementation of a limited alcohol testing program is appropriate.

5. Are there other ways that RSPA could reduce the burden on small operators?

Many commenters believe that a limited program such as post-accident and reasonable suspicion testing could be effectively implemented and would not adversely affect the numerous small gas operators. They suggested that allowing the use of non-evidential breath testing devices for screening would lower the overall costs of the entire program. Several commenters suggested that operators with less than 50 employees be excluded from the requirements of alcohol testing. To reduce the burden on small entities, the final rule exempts master meter operators and LPG operators. For all other operators, the final rule eliminates the requirement for random and pre-employment testing. In addition, RSPA has determined that small operators (50 or fewer covered employees) should be excluded from the annual submission of an alcohol MIS report to lessen the burden. RSPA will periodically conduct a sampling of the small operators alcohol programs. Discussion of alternatives for testing methods devices is contained in the common preamble published elsewhere in today's *Federal Register*. Although DOT is not permitting the use of non-evidential breath testing devices, the final rule permits the use for screening of certain evidential devices that are less costly and in the future will allow use of other devices (for screening) that we approve as meeting DOT criteria.

#### *Reasonable Suspicion Testing*

Many commenters indicated they were frustrated by use of the phrase "reasonable suspicion" for alcohol testing when the term "reasonable cause" is used in the drug testing regulations. Some commenters supported the NPRM proposal that a supervisor who makes the determination that reasonable suspicion

exists to test a covered employee shall not conduct the breath alcohol test on that employee, if another supervisor is readily available. Other commenters indicated that alcohol testing should not be conducted by supervisors, but should be handled by the operator's contract collectors.

*RSPA Response.* RSPA considers the two terms to be synonymous. The term "reasonable suspicion" is used in the Omnibus Act, and for consistency with other OA alcohol rules, this final rule uses the term "reasonable suspicion." RSPA will consider amending the drug rules to adopt the same terminology. RSPA is concerned about the potential for abuse and harassment of an employee, if the same supervisor who makes the determination that reasonable suspicion exists also conducts the breath test on the employee. Therefore, RSPA has revised this provision to stipulate that the supervisor who makes the determination that reasonable suspicion exists shall not conduct the breath alcohol test on that employee.

#### *Pre-Duty Use*

The NPRM proposed to require each operator to prohibit a covered employee from using alcohol within four hours prior to performing safety-sensitive functions. The final rule adopts an amended provision that prohibits using alcohol within four hours prior to performing covered functions, or within the period of time after an employee has been notified to report to duty to respond to an emergency. In the pipeline industry, an operator commonly has only a limited number of employees or a single employee qualified and available to respond in an emergency situation. In such a case, an employee may be in an unofficial "on-call" status. For example, an employee who finished work for the day and returned home, had a beer at 6 p.m., and was called at 8 p.m. to respond to an emergency, would be prohibited from using alcohol from 8 p.m. until completion of the safety-sensitive duties. This provision is intended to be used only for emergency situations where an operator has no other recourse. Even in an emergency situation, however, if an operator notifies an employee to report, and the operator believes the employee cannot perform because he or she is impaired by alcohol, the operator should not permit the employee to perform safety-sensitive functions.

#### *Alcohol Plans*

The NPRM proposed to require operators to develop, maintain, and follow a written alcohol misuse

prevention plan. This type of plan proved beneficial in assisting the industry in establishing anti-drug testing programs and educating the industry about the requirements of the drug rule. RSPA requested operators to provide specific comments on whether a model drug and alcohol plan would be beneficial to employers to standardize the requirements of the rules and assist in compliance issues. A number of commenters were in favor of RSPA developing guidance material for use by operators. Commenters stated that guidance materials would aid the operators in the development of a written alcohol misuse prevention plan addressing the requirements contained in the RSPA final rule and part 40. Commenters, however, indicated that such guidance material should not be used as an enforcement tool in limiting an operator's plan to the same language contained in the guidance materials.

*RSPA Response.* RSPA is developing guidance materials for operators, to assist them in implementing alcohol misuse prevention plans, that we plan to publish prior to implementation of the regulations. The guidance materials could be used by operators and contractors that provide services to operators subject to the regulations. RSPA does not intend for the guidance materials to limit an operator's ability to provide more detail for its employees. The guidance material for alcohol would be added to the existing drug testing guidance material for ease of reference.

#### *Management Information System (MIS) Report*

The NPRM proposed to require operators to report alcohol statistical information, as an essential tool for monitoring compliance with the rule. Many commenters were opposed to one or more of the reporting elements proposed in the NPRM. Comments submitted by Exxon and the Interstate Natural Gas Association of America addressed several areas of the form that they contended would present an undue burden in the collection and reporting of data. These comments included objections to the data on employee categories; dual coverage and reporting for employees covered by other DOT agencies; and the requirement to submit annual reports no later than February 15th. Some operators objected to the size and complexity of the report format and the numerous detailed instructions required to complete the form. One consortium indicated that costs of designing software and integrating this type of informational software into the current drug management programs



would be immense. Another consortium, which represents numerous small operators and municipalities, suggested that consortia should be allowed to report on behalf of the companies they serve, thus reducing the paperwork required. Many operators provided suggested changes and modifications to reduce the recordkeeping and reporting burden.

**RSPA Response.** This final rule requires the submission of annual statistical data on each operator's alcohol misuse prevention program. To reduce the burden on small operators (those with 50 or fewer covered employees), those operators are not required to submit annual reports. Small operators are required to keep records and submit to RSPA, upon written request, reports on their alcohol programs. To reduce the reporting burden on operators who have no verified positive test results, RSPA has limited the information to be provided and has developed a simplified "EZ Form" for submitting their reports. In addition, operators are not required to report alcohol testing data for contractors and their employees. Operators, however, are required to keep records on contractor data and make the records available for inspection. To simplify reporting, RSPA has eliminated the requirement to report data on covered employees by function. RSPA has incorporated these amendments into the final alcohol MIS report forms, which appear as exhibits A and B immediately following the rule text in this Federal Register. RSPA has determined that while the alcohol testing data elements are properly a matter of regulation, the format in which the data are reported should remain within the discretion of the Administrator. This will enable RSPA to make any revisions to the format that become necessary without undertaking additional rulemaking. Because RSPA does not have regulatory authority over consortia, the final rule requires operators to submit MIS reports. An operator may make arrangements with a consortium to provide data to the operator in whatever format the operator desires, but the responsibility for submitting drug and alcohol MIS reports to RSPA remains with the operator.

#### Contractor Compliance

The NPRM proposed that contractor employees should be included in the group of employees that must undergo alcohol misuse testing because their job performance is no less critical than the performance of employees who work directly for operators. RSPA proposed limiting the employees, including

contractors, covered by the alcohol misuse rule to those who perform operation, maintenance, or emergency-response functions, on the pipeline or LNG facility, that are regulated under part 192, 193, or 195. Seven commenters indicated that RSPA should exclude contractor employees from the definition of "employee." Some commenters suggested that RSPA should be responsible for ensuring that contractor employees are in compliance with parts 40 and 199.

**RSPA Response.** RSPA believes that contractor employees must be included in the group of employees subject to the alcohol misuse provisions. The performance of safety-sensitive functions by contract employees is no less critical than the performance of the employees who work directly for operators.

#### Advisory Committee Reviews

Section 4(b) of the Natural Gas Pipeline Safety Act of 1968, as amended (49 U.S.C. 1673(b)), and section 204(b) of the Hazardous Liquid Pipeline Safety Act of 1979, as amended (Pub. L. 97-468, January 14, 1983), each provide that proposed amendments to safety standards established under the statutes be submitted to the pipeline advisory committees for consideration. Of the 14 ballots received, 12 were in favor of implementing an alcohol misuse prevention program and 2 were opposed. The advisory members comments indicate they are generally in favor of an alcohol testing prevention program for the pipeline industry which has limited testing provisions (post-accident and reasonable suspicion) such as those discussed in this final rule.

In January 1993, copies of the NPRM were mailed to each member of the Technical Pipeline Safety Standards Committee and the Technical Hazardous Liquid Pipeline Safety Standards Committee. On November 29, 1993, RSPA mailed additional copies of the NPRM to each member, and requested that the committees vote by mail on the proposals in the NPRM, and provide any additional comments.

#### Regulatory Analyses and Notices

##### *E.O. 12866 and DOT Regulatory Policies and Procedures*

The final rule is a significant regulatory action under Executive Order 12866, and has been reviewed under that order. It is significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) because it is of substantial public interest. A regulatory evaluation is available for review in the docket. RSPA has

evaluated the industry-wide costs and benefits relating to the implementation of the alcohol misuse prevention program for pipeline operators. RSPA has calculated the total cost of this program for the first year to be \$1,876,270. The exclusion of pre-employment and random testing from the final rule has provided a substantial reduction in the total cost of the alcohol program. We have projected yearly program costs of \$186,407, with a slight increase every third year to allow for major equipment overhaul which would project a total program cost of \$258,907. The total 10-year program costs are estimated to be \$3,806,745. The total 10-year discounted costs are projected to be \$3,270,684 (uses net present value at 7%).

RSPA believes that major cost benefits will accrue from this rule, including the prevention of potential injuries, fatalities and property losses resulting from accidents attributed to alcohol misuse, and improved worker productivity and estimates the savings to be \$15,344,000.

#### Paperwork Reduction Act

The final rule sets forth new alcohol misuse prevention program requirements and includes information collection requirements subject to the Paperwork Reduction Act. These requirements have been submitted to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) and 5 CFR Part 1320. Information collection requirements are not effective until Paperwork Reduction Act clearance has been received.

#### Regulatory Flexibility Act

The final rule affects all entities subject to part 192, 193, or 195, except operators of master meter systems and liquefied petroleum gas (LPG) operators, which are exempt. Master meter systems and LPG operators constitute the bulk of small businesses or other small entities that operate gas pipeline systems subject to part 192. There are few, if any, small entities that operate hazardous liquid or carbon dioxide pipelines subject to part 195, or LNG facilities subject to part 193. Therefore, I certify under section 605 of the Regulatory Flexibility Act (5 U.S.C.) that this final rule will not have a significant economic impact on a substantial number of small entities.

#### Executive Order 12612

This regulation will not have substantial direct effects on states, on the relationship between the Federal Government and the states, or on the distribution of power and



responsibilities among the various levels of Government. Therefore, in accordance with Executive Order 12612 (52 FR 41685; October 30, 1987), RSPA has determined that this regulation does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

#### List of Subjects in 49 CFR Part 199

Alcohol testing, Drug testing, Pipeline safety, Recordkeeping and reporting. In consideration of the foregoing, RSPA is amending 49 CFR part 199 as follows:

1. The title for part 199 is revised to read as follows:

#### PART 199—DRUG AND ALCOHOL TESTING

2. The authority citation for part 199 continues to read as follows:

Authority: 49 App. U.S.C. 1672, 1674a, 1681, 1804, 1808, and 2002; 49 CFR 1.53.

3. Sections 199.1 through 199.25 are designated as subpart A, and subpart B is added to read as follows:

#### Subpart B—Alcohol Misuse Prevention Program

Sec.	
199.200	Purpose.
199.201	Applicability.
199.202	Alcohol misuse plan.
199.203	Alcohol testing procedures.
199.205	Definitions.
199.207	Preemption of State and local laws.
199.209	Other requirements imposed by operators.
199.211	Requirement for notice.
199.213	Starting date for alcohol testing programs.
199.215	Alcohol concentration.
199.217	On-duty use.
199.219	Pre-duty use.
199.221	Use following an accident.
199.223	Refusal to submit to a required alcohol test.
199.225	Alcohol tests required.
199.227	Retention of records.
199.229	Reporting of alcohol testing results.
199.231	Access to facilities and records.
199.233	Removal from covered function.
199.235	Required evaluation and testing.
199.237	Other alcohol-related conduct.
199.239	Operator obligation to promulgate a policy on the misuse of alcohol.
199.241	Training for supervisors.
199.243	Referral, evaluation, and treatment.
199.245	Contractor employees.

#### Subpart B—Alcohol Misuse Prevention Program

##### § 199.200 Purpose.

The purpose of this subpart is to establish programs designed to help prevent accidents and injuries resulting from the misuse of alcohol by employees who perform covered functions for operators of certain

pipeline facilities subject to parts 192, 193, or 195 of this chapter.

##### § 199.201 Applicability.

This subpart applies to gas, hazardous liquid and carbon dioxide pipeline operators and liquefied natural gas operators subject to parts 192, 193, or 195 of this chapter. However, this subpart does not apply to operators of master meter systems defined in § 191.3 or liquefied petroleum gas (LPG) operators as discussed in § 192.11 of this chapter.

##### § 199.202 Alcohol misuse plan.

Each operator shall maintain and follow a written alcohol misuse plan that conforms to the requirements of this subpart and the DOT procedures in part 40 of this title. The plan shall contain methods and procedures for compliance with all the requirements of this subpart, including required testing, recordkeeping, reporting, education and training elements.

##### § 199.203 Alcohol testing procedures.

Each operator shall ensure that all alcohol testing conducted under this subpart complies with the procedures set forth in part 40 of this title. The provisions of 49 CFR part 40 that address alcohol testing are made applicable to operators by this subpart.

##### § 199.205 Definitions.

As used in this subpart:

**Accident** means an incident reportable under part 191 of this chapter involving gas pipeline facilities or LNG facilities, or an accident reportable under part 195 of this chapter involving hazardous liquid or carbon dioxide pipeline facilities.

**Administrator** means the Administrator of the Research and Special Programs Administration (RSPA), or any person who has been delegated authority in the matter concerned.

**Alcohol** means the intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohols including methyl or isopropyl alcohol.

**Alcohol concentration (or content)** means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test under this subpart.

**Alcohol use** means the consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.

**Confirmation test** means a second test, following a screening test with a result 0.02 or greater, that provides quantitative data of alcohol concentration.

**Consortium** means an entity, including a group or association of employers, recipients, or contractors, that provides alcohol testing as required by this subpart or other DOT alcohol testing rules and that acts on behalf of the operators.

**Covered employee** means a person who performs on a pipeline or at an LNG facility an operation, maintenance, or emergency-response function regulated by parts 192, 193, or 195 of this chapter. **Covered employee and individual or individual to be tested** have the same meaning for the purposes of this subpart. The term covered employee does not include clerical, truck driving, accounting, or other functions not subject to parts 192, 193, or 195. The person may be employed by the operator, be a contractor engaged by the operator, or be employed by such a contractor.

**Covered function (safety-sensitive function)** means an operation, maintenance, or emergency-response function that is performed on a pipeline or LNG facility and the function is regulated by parts 192, 193, or 195.

**DOT agency** An agency (or operating administration) of the United States Department of Transportation administering regulations requiring alcohol testing (14 CFR parts 61, 63, 65, 121, 135; 49 CFR parts 199, 219, 382, and 654) in accordance with part 40 of this title.

**Employer or operator** means a person who owns or operates a pipeline or LNG facility subject to parts 192, 193, or 195 of this chapter.

**Performing (a covered function):** An employee is considered to be performing a covered function (safety-sensitive function) during any period in which he or she is actually performing, ready to perform, or immediately available to perform such covered functions.

**Refuse to submit (to an alcohol test)** means that a covered employee fails to provide adequate breath for testing without a valid medical explanation after he or she has received notice of the requirement to be tested in accordance with the provisions of this subpart, or engages in conduct that clearly obstructs the testing process.

**Screening test** means an analytical procedure to determine whether a covered employee may have a prohibited concentration of alcohol in his or her system.

**State agency** means an agency of any of the several states, the District of Columbia, or Puerto Rico that participates under section 5 of the Natural Gas Pipeline Safety Act of 1968 (49 App. U.S.C. 1674) or section 205 of