



U.S. Department
of Transportation
**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

March 03, 2022

Ms. Melissa Kurtz
Business Representative
I.B.E.W. Local Union 503
2657 Route 17M
Goshen, NY 10924

Dear Ms. Kurtz:

In your December 7, 2021, letter to the Pipeline and Hazardous Materials Safety Administration (PHMSA) you requested an interpretation of the federal pipeline safety regulations in 49 CFR § 192.615 with respect to customer service representatives (CSRs) working for Orange and Rockland Utilities, a subsidiary of Con Edison. Essentially, you asked if these CSRs are PHMSA drug and alcohol (D&A) “covered employees” subject to the Department of Transportation (DOT) drug testing.

While 49 CFR Part 199 refers to Parts 192, 193, and 195 and knowledge of those federal pipeline safety regulations is essential to meet the D&A testing regulations in Part 199, the D&A regulations requiring interpretation are found in 49 CFR Part 199, not § 192.615. Specifically, in § 199.3, PHMSA defines a D&A “covered employee” and “covered function.”

PHMSA promulgated the first drug testing regulations in 1988 wherein PHMSA required pipeline operators to have an “anti-drug program for employees who perform certain sensitive safety-related functions covered by the pipeline safety regulations.”¹ While the original drug testing rule did not define covered employee or covered function, it was explained in the rule preamble that the drug testing regulations were limited to “those who perform regulated operation, maintenance, or emergency-response functions...on existing pipelines.”²

PHMSA added the definitions of “covered employee” and “covered function” to Part 199 with Amendment 199-15 on March 17, 1998. In that amendment, PHMSA defined “covered function” to mean “an operations, maintenance, or emergency-response function conducted on the pipeline or LNG facility that is regulated by Part 192, 193, or 195.”³ PHMSA changed the definition of “covered function” to the current version with Amendment 199-19 on September 11, 2001. Covered function now means “an operations, maintenance, or emergency-response

¹ 53 FR 47084.

² 53 FR 47089.

³ 63 FR 12998, 13000 (emphasis added).

The Pipeline and Hazardous Materials Safety Administration, Office of Pipeline Safety provides written clarifications of the Regulations (49 CFR Parts 190-199) in the form of interpretation letters. These letters reflect the agency's current application of the regulations to the specific facts presented by the person requesting the clarification. Interpretations are not generally applicable, do not create legally-enforceable rights or obligations, and are provided to help the specific requestor understand how to comply with the regulations.

function regulated by [P]art 192, 193, or 195 of this chapter that is performed on a pipeline or on an LNG facility.”⁴

From the onset of the drug testing regulations in 1988, PHMSA has specified that the functions performed by employees subject to the regulations are operations, maintenance, and emergency-response functions performed on a pipeline.

Your question relates to a natural gas pipeline facility regulated under Part 192, in which § 192.3 defines a “pipeline” to mean “all parts of those physical facilities through which gas moves in transportation, including pipe, valves, and other appurtenance attached to pipe, compressor units, metering stations, regulator stations, delivery stations, holders, and fabricated assemblies.” You also reference § 192.615, which, among other things, requires operators to establish written procedures and perform other actions to minimize the hazard resulting from a gas pipeline emergency.

The D&A testing regulations do not necessarily cover all emergency-response functions listed in § 192.615. Only those functions in § 192.615 that are performed on a pipeline are “covered functions.” So, while “receiving, identifying, and classifying notices of events which require immediate response by the operator” [§ 192.615(a)(2)] is a required emergency-response function, it is not performed on a pipeline and is therefore not a D&A covered function. However, the “emergency shutdown and pressure reduction in any section of the operator’s pipeline system necessary to minimize hazards to life or property” [§ 192.615(a)(6)] is a D&A covered function because it is performed on a pipeline.

In your letter, you referenced PHMSA interpretation PI-20-0007 (April 24, 2020), which cited to an earlier interpretation (PL-90-003 dated February 13, 1990) that stated service clerks responsible for performing the following three things are “covered employees” subject to D&A testing:

1. receiving telephone notices of gas leaks,
2. identifying those notices that require immediate response by the company; and
3. dispatching personnel to the scene.

PHMSA listed those three steps because the accomplishment of all three steps is necessary to meet the requirement that the emergency response function is being performed on a pipeline. In the absence of step three, the emergency response of the CSRs is not performed on a pipeline.

You also explain in your letter that the CSRs working for Orange and Rockland Utilities receive telephone notices of gas leaks and identify those notices that require immediate response by the company, but they do not dispatch personnel to the scene. Instead they send gas emergency calls to the operator’s gas emergency response center (GERC), the hub for all gas leak dispatching.

Without reviewing the operator’s CSR processes, and based only on the information you provided in your letter, the “dispatching of personnel to the scene” function (item # 3 above) is not performed by the CSRs but by the operator’s GERC. If that is correct, then the CSRs are not

⁴ 66 FR 47114, 47118 (emphasis added).

performing an emergency response on the pipeline and, therefore, are not “covered employees” subject to PHMSA drug testing.

Notwithstanding the above, nothing in Part 199 prohibits an employer from D&A testing any of its employees using non-DOT procedures, including those employees already subject to D&A testing under PHMSA regulations.

If we can be of further assistance, please contact Tewabe Asebe at 202-366-5523.

Sincerely,

John A. Gale
Director, Office of Standards
and Rulemaking



**I.B.E.W.
LOCAL UNION 503**

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December 7, 2021

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Good afternoon,

My name is Melissa Kurtz and I am the Business Representative for I.B.E.W. Local 503 located in Goshen NY. My Local represents many of the workers at Orange and Rockland Utilities which is a subsidiary of Con Edison.

Many of the Members that work in the Customer Service Department have come to us with a concern that they are falsely being deemed "covered employees" for D&A testing and should not be tested for marijuana.

I am writing you today to request that PHMSA perform an interpretation of the federal pipeline safety regulations in 49 CFR 192.615 with respect to the Customer Service Representatives (CSRs) working for Orange and Rockland Utilities. In interpretation response #PI-20-0007, you state, "Under 49 CFR 192.615, any person who performs on a gas pipeline a regulated operating, maintenance, or emergency response function is subject to DOT mandated drug testing." This office also lists three tasks associated with being a "covered employee" subject to D&A testing:

1. Receiving telephone notices of gas leaks. **The CSRs at Orange and Rockland Utilities do perform this task. They routinely answer both electric and gas emergency calls as well as other billing inquiries.**
2. Identifying those notices that require immediate response by the Company. **Through the use of a Company developed line of questioning the CSRs are trained to send the gas emergency calls to the GERC.**
3. Dispatching personnel to the scene. **This task is NEVER performed by our CSRs. Orange and Rockland has an established GERC (Gas Emergency Response Center) which is the hub for all gas leak dispatching, time reporting and leak tracking. At no time does a CSR dispatch any gas response personnel to any leak or location.**

Local 503 believes that due to the fact that the CSRs at Orange and Rockland Utilities do NOT perform all three functions making them "covered employees", that they are wrongfully being tested for marijuana using DOT procedures. This Local is not disputing that the Company has the right to drug and alcohol testing, we simply do not believe that the CSRs fall into the DOT testing pool.

If any further information is needed, please feel free to contact me at (845) 294-1337. I look forward to an interpretation response from PHMSA regarding this issue.

Sincerely,

Melissa Kurtz
Business Representative
I.B.E.W Local Union 503