

July 9, 1992

This is in response to your correspondence dated May 7, 1992, requesting an interpretation of Sections 199.9 and 199.23 regarding an employee who refuses to submit to a drug test and whether the operator must keep records showing the refusal to test.

The drug testing requirements contained in 49 CFR Part 199.9 require that an operator may not knowingly use as an employee any person who fails a drug test required by Part 199 or refuses to take a drug test required by Part 199. If an individual refuses to take a test, an operator may not use that person to perform an operation, maintenance, or emergency-response function on a pipeline or LNG facility which is regulated by Part 192, 193, or 195. An individual who refuses to take a test must be removed from performing a covered function and the individual is deemed to have tested positive.

Section 199.23(a)(2) requires that an operator maintain records of employee drug test results that show an employee failed a drug test, the type of test failed, and records that demonstrate rehabilitation, if any, must be kept for at least 5 years. An operator must maintain documentation which indicates that the employee refused to submit to a test required under Part 199.

Although the regulations do not clearly state that refusal to test is to be considered a positive test, an operator must remove the employee from performing a covered function. An operator must be able to demonstrate what steps or procedures are in place in their anti-drug plan to document that the employee was removed from performing the covered function.

Thank you for your inquiry. Please let me know if you need any more information about our drug testing requirements.

Sincerely,

Richard L. Rippert
Drug Compliance Coordinator
Enforcement