performance are clearly within the control of the contractor.

(3) When a negative incentive is used, the contract must indicate a level below which performance is not acceptable.

1816.402–2 Performance incentives.

1816.402–270 NASA technical performance incentives.

(a) A performance incentive shall be included in all contracts based on performance-oriented documents (see FAR 11.101(a)) where the primary deliverable(s) is (are) hardware and where total value (including options) is greater than $25 million unless it is determined that the nature of the acquisition (for example, commercial off-the-shelf computers) would not effectively lend itself to a performance incentive. * * *

1816.405–270 [Amended]

6. Section 1816.405–270 is revised to read as follows:

1816.405–270 CPAF contracts.

(a) Use of an award fee incentive shall be approved in writing by the procurement officer. The procurement officer's approval shall include a discussion of the other types of contracts considered and shall indicate why an award fee incentive is the appropriate choice. Award fee incentives should not be used on contracts with a total estimated cost and fee less than $2 million per year. The procurement officer may authorize use of award fee for lower-valued acquisitions, but should do so only in exceptional situations, such as contract requirements having direct health or safety impacts, where the judgmental assessment of the quality of contractor performance is critical.

(b) Except as provided in paragraph (c) of this section, an award fee incentive may be used in conjunction with other contract types for aspects of performance that cannot be objectively assessed. In such cases, the cost incentive is based on objective formulas inherent in the other contract types (e.g., FPI, CPIF), and the award fee provision should not separately incentivize cost performance.

(c) Award fee incentives shall not be used with a cost-plus-fixed-fee (CPFF) contract.

1816.405–274 [Amended]

7. In section 1816.405–274, paragraph (e) is revised to read as follows:

1816.405–274 Award fee evaluation factors.

* * * * *

(e) When an AF arrangement is used in conjunction with another contract type, the award fee's cost control factor will only apply to a subjective assessment of the contractor's efforts to control costs and not the actual cost outcome incentivized under the basic contract type (e.g. CPIF, FPIF).

* * * * *

PART 1819—SMALL BUSINESS PROGRAMS

Subpart 1819.6—[Amended]

8. Section heading ''Subpart 1819.6—Certificates of Competency'' is revised to read ''Subpart 1819.6—Certificates of Competency and Determinations of Responsibility''.

PART 1837—SERVICE CONTRACTING

1837.102, 1837.102–70 [Removed]

9. Sections 1837.102 and 1837.102–70 are removed.

[FR Doc. 98–6674 Filed 3–16–98; 8:45 am]

BILLING CODE 7510–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 199

[RSPA Docket PS–128; Amendment 199–15]

RIN 2137–AC84

Drug and Alcohol Testing; Substance Abuse Professional Evaluation for Drug Use

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Final rule.

SUMMARY: In this final rule, the Research and Special Programs Administration (RSPA) modifies current procedures in its drug testing regulations by requiring a face-to-face evaluation by substance abuse professionals (SAP) for pipeline employees who have either received a positive drug test or have refused a drug test required by RSPA. In addition, the SAP could require a pipeline employee to complete a rehabilitation program before being eligible to return to duty. Similar requirements are included in the drug testing regulations of the other modal administrations. Adding these requirements will ensure conformity among the modal administrations which will assist with the overall management of RSPA's drug testing regulations.

DATES: This rule is effective April 16, 1998.

FOR FURTHER INFORMATION CONTACT: Catrina M. Pavlik, Drug/Alcohol Program Analyst, Research and Special Programs Administration, Office of Pipeline Safety, Room 2335, 400 Seventh Street, SW, Washington, DC 20590. Telephone: (202)366–6199, Fax: (202)366–4566, e-mail: catrina.pavlik@RSPA.dot.gov.

SUPPLEMENTARY INFORMATION:

Background

In accordance with 49 U.S.C. 60601 of the pipeline safety law, RSPA administers drug testing regulations for pipeline operators.

On August 20, 1997, RSPA published in the **Federal Register** (62 FR 44250, Docket No. PS–128, Amendment 15) a notice of proposed rulemaking to modify current procedures in its drug testing regulations governing situations in which pipeline employees test positive on a drug test. Because similar requirements are found in the drug testing regulations of the other modal administrations, and in RSPA's alcohol testing regulations, RSPA proposed to make the procedures and policy in those regulations applicable to pipeline operators under the drug testing regulations. RSPA proposed to require pipeline operators to utilize a substance abuse professional (SAP) to evaluate pipeline employees who have either received a positive drug test or have refused a drug test required by RSPA. In addition, the SAP could require an employee to complete a rehabilitation program before being eligible to return to duty, if needed. RSPA also proposed to revise the word ''employee'' to ''covered employee'' and to add the definition for ''covered function.'' Comments to the notice of proposed rulemaking were due on or before October 20, 1997.

Comments Received

RSPA received 10 comments: 6 from pipeline operators, 1 from a trade association and 3 from consortia. The comments fell within the following general categories: (1) Review of Drug Testing Results; (2) Drug Test Required—Return to Duty Testing; (3) SAP Determines Follow-up Testing; (4) Qualification for a SAP; and (5) Other Comments. The comments are addressed based on those categories.

1. Review of Drug Testing Results

The notice of proposed rulemaking proposed that if the Medical Review Officer (MRO) determines, after appropriate review, that there is no legitimate medical explanation for the confirmed positive test result, other than the unauthorized use of prohibited drug(s), the MRO shall verify the test result as positive. If unauthorized use is

found, the MRO shall require that the covered employee who engages in conduct prohibited under Section 199.9, be evaluated face-to-face by a substance abuse professional who shall determine what assistance, if any, the covered employee needs in resolving problems associated with illegal drug use.

All ten commenters supported this portion of the notice of proposed rulemaking. They stated that they were already performing this function for employees that are covered by another operating administration. They also said that conformity among the modes would make administering this program much easier.

RSPA received 2 comments on the continued employment of a covered employee after a positive drug test result or a refusal to test. In addressing the concerns of these commenters, RSPA has decided to change the language so that the MRO, not only must refer the covered employee to a SAP, but must also refer him/her to the personnel or administrative officer for the pipeline operator. This will enable the operator to follow through with internal proceedings that are in accordance with the operator's anti-drug plan.

2. Drug Test Required—Return To Duty Testing

The notice proposed language in Section 199.11(e) which stated that a covered employee who refuses to take or does not pass a drug test may not return to duty in the covered function until the covered employee has been evaluated by a SAP, and has properly followed any prescribed rehabilitation program.

We received 3 comments to review and clarify the language in this section. The first commenter was concerned that the proposed language creates the inference that a covered employee who refuses to take a drug test or who does not pass a drug test has a right to return to work upon evaluation by a SAP. Specifically, the concern was that the wording may have the unintended effect of altering the employer/employee relationship and requiring an employer to provide a rehabilitation opportunity to an employee, with that employee thereafter having a right to return to work for the employer. The second commenter wanted RSPA to clarify that the evaluation conducted by the SAP would be done on a face-to-face basis. The third commenter requested clarification of the ''pass or fail'' language.

RSPA agrees with the three comments and is revising the phrasing of the language in Section 199.11(e) along with the previously mentioned change in Section 199.15(d)(2). This will not alter the existing employer/employee relationship and will not require that the employer provide rehabilitation to an employee. RSPA is also clarifying that the SAP evaluation must be conducted on a face-to-face basis, and has changed the language to use ''positive or negative.''

One comment suggested that the follow-up testing requirements be separated from the return-to-duty requirements. RSPA has modified Section 199.11 to add Follow-Up Testing under a new subsection (f).

3. SAP Determines Follow-up Testing

RSPA received 2 comments requesting clarification of the language on the role of the MRO in relation to the SAP when determining the follow-up testing schedule. After further consideration, RSPA has agreed to remove the consultation requirement between the MRO and the SAP when determining the follow-up testing schedule. The role of determining the follow-up testing schedule will be the sole function of the SAP.

4. Qualifications for a SAP

RSPA received 1 comment requesting specific language on an MRO's ability to serve as a SAP. This change is not necessary because the definition of a SAP, found in 49 CFR Part 40, does not prohibit an MRO from becoming a SAP.

5. Other Comments

RSPA received 2 comments from pipeline operators requesting changes in parts of the regulations that were not covered by the notice of proposed rulemaking, such as, substituting a 72 hour time period for the 60 day time period requirement, eliminating the RSPA option for the pipeline operator to require payment in advance for a retest, and eliminating the RSPA requirement for an MRO to declare a specimen negative that has been determined to be scientifically insufficient.

RSPA received 1 comment requesting clarification on whether a positive pre-employment test result necessitates return-to-duty and follow-up testing. RSPA currently addresses this in Section 199.11(a). It states that no operator may hire or contract any person unless that person passes a drug test or is covered by an anti-drug program that conforms to the requirements of the drug testing regulations.

Advisory Committee Review

The Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC) and the Technical Pipeline Safety Standards Committee (TPSSC) met on November 18, 1997, to consider the items discussed in the August 20, 1997, Notice of Proposed Rulemaking, in Docket No. PS–128. (The THLPSSC and TPSSC were established by statute to evaluate the technical feasibility, reasonableness, and practicability of proposed regulations.) The consensus of the THLPSSC and TPSSC was to support the Notice of Proposed Rulemaking.

Regulatory Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule requires that pipeline employees who either test positive for prohibited drugs or refuse to be tested must be evaluated by a substance abuse professional (SAP) who could require that an employee undergo rehabilitation prior to the employee's return to duty in a covered function. The reason for this rule change is to conform RSPA's drug testing program to its alcohol testing program as well as the drug and alcohol testing programs of all other DOT modes.

RSPA concluded that because all pipeline companies already employ SAPs for their alcohol testing programs it is likely the same professional will be used to perform this same function on the drug testing program. Furthermore, this final rule requires that employees who test positive could be required to undergo rehabilitation before their return to duty. RSPA, however, does not require that the employer pay for this treatment. Many employees may also be terminated or placed in non-covered functions rather than be given the opportunity for treatment. Therefore, the cost of the treatment is not the financial responsibility of the employer. Another factor that was taken into account is that the most recent drug testing results show that only 0.7% of the employees tested positive for drugs. Therefore, the number of employees who would need to be evaluated by a SAP is minimal. Given the fact that pipeline companies already employ or presently contract with SAPs, they are not required to pay for or offer rehabilitation for employees who test positive, and that a minimal number of employees would require evaluation, RSPA believes that this rule will have little to no economic impact on any pipeline company. RSPA finds that this rule is not significant under Section 3(f) of Executive Order 12866 and also not significant under the Regulatory Policies and Procedures of the Department of Transportation.

Executive Order 12612

This final rule would not have substantial direct effect 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 final rule would not have sufficient federalism implications to warrant preparation of a federalism assessment.

Regulatory Flexibility Act

Because this final rule will impose little to no additional cost on pipeline operators (see discussion on the regulatory evaluation), RSPA certifies under section 605 of the Regulatory Flexibility Act (5 U.S.C.) that this rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

There are no new information collection requirements in this rule.

Unfunded Mandates Reform Act of 1995

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

List of Subjects in 49 CFR Part 199

Drug testing, Pipeline safety.

In consideration of the foregoing RSPA amends, 49 CFR part 199 as follows:

PART 199—[AMENDED]

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

Authority: 49 App. U.S.C. 60101 *et seq.*; 49 CFR 1.53.

2. Section 199.3 is amended by removing the definition of *Employee* and adding new definitions of *Covered employee* and *Covered function* to read as follows:

§ 199.3 Definitions.

* * * * *

Covered employee means a person who performs, on a pipeline or LNG facility, an operations, maintenance, or emergency-response function regulated by part 192, 193, or 195 of this chapter. This does not include clerical, truck driving, accounting, or other functions not subject to part 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 means an operations, maintenance, or emergency-response function conducted on the pipeline or LNG facility that is regulated by part 192, 193, or 195.

* * * * *

3. Section 199.11 is amended by revising paragraph (e) and adding paragraph (f) to read as follows:

§ 199.11 Drug tests required.

* * * * *

(e) *Return to duty testing.* A covered employee who refuses to take or has a positive drug test may not return to duty in the covered function until the covered employee has had a face-to-face evaluation conducted by a substance abuse professional, and has properly followed any prescribed assistance.

(f) *Follow-up testing.* A covered employee who refuses to take or has a positive drug test shall be subject to unannounced follow-up drug tests administered by the operator following the covered employee's return to duty. The number and frequency of such follow-up testing shall be determined by a substance abuse professional, but shall consist of at least six tests in the first 12 months following the covered employee's return to duty. In addition, follow-up testing may include testing for alcohol as directed by the substance abuse professional, to be performed in accordance with 49 CFR part 40. Follow-up testing shall not exceed 60 months from the date of the covered employee's return to duty. The substance abuse professional may terminate the requirement for follow-up testing at any time after the first six tests have been administered, if the substance abuse professional determines that such testing is no longer necessary.

4. Section 199.15 is amended by revising paragraph (d)(2) and adding new paragraphs (e) and (f) to read as follows:

§ 199.15 Review of drug testing results.

* * * * *

(d) * * *

(2) If the MRO determines, after appropriate review, that there is no legitimate medical explanation for the confirmed positive test result other than the unauthorized use of a prohibited drug, the MRO shall refer:

(i) The individual tested to a personnel or administrative office for further proceedings in accordance with the operator's anti-drug plan; and

(ii) For evaluation by a SAP who shall determine what assistance, if any, the employee needs in resolving problems associated with drug misuse.

* * * * *

(e) Evaluation and rehabilitation may be provided by the operator, by a substance abuse professional under contract with the operator, or by a substance abuse professional not affiliated with the operator. The choice of substance abuse professional and assignment of costs shall be made in accordance with the operator/employee agreements and operator/employee policies.

(f) The operator shall ensure that a substance abuse professional, who determines that a covered employee requires assistance in resolving problems with drug abuse, does not refer the covered employee to the substance abuse professional's private practice or to a person or organization from which the substance abuse professional receives remuneration or in which the substance abuse professional has a financial interest. This paragraph does not prohibit a substance abuse professional from referring a covered employee for assistance provided through:

(1) A public agency, such as a State, county, or municipality;

(2) The operator or a person under contract to provide treatment for drug problems on behalf of the operator;

(3) The sole source of therapeutically appropriate treatment under the employee's health insurance program; or

(4) The sole source of therapeutically appropriate treatment reasonably accessible to the employee.

Issued in Washington, DC, on March 11, 1998.

Kelley S. Coyner,

Acting Administrator.

[FR Doc. 98–6859 Filed 3–16–98; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 980225048–8059–02; I.D. 030698A]

RIN 0648–AK58

Pacific Halibut Fisheries; Catch Sharing Plans

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.