

Kansas Administrative Regulations

Kansas Corporation Commission

Article 11.—Natural Gas Pipeline Safety

82-11-10. Drug and alcohol testing.

The federal regulations titled "drug and alcohol testing," 49 C.F.R. Part 199 as in effect October 1, 2018, excluding sections labeled "reserved," are hereby adopted by reference only as they apply to operators of pipeline facilities that deal in the transportation of natural gas by pipeline, with the following modifications:

(a) All references to "DOT agency" shall be replaced with "federal or state agency."

(b) 49 C.F.R. 199.1 shall be deleted and replaced by the following: "This regulation requires operators of pipeline facilities subject to K.A.R. 82-11-4 to test covered employees for the presence of prohibited drugs and alcohol."

(c) 49 C.F.R. 199.2 shall be deleted and replaced by the following:

"(a) This part applies to operators of intrastate natural gas pipelines within the state of Kansas.

"(b) This part does not apply to covered functions performed on:

"(1) Master meter systems, as defined in K.A.R. 82-11-3; or

"(2) pipeline systems that transport only petroleum gas or petroleum gas/air mixtures."

(d) 49 C.F.R. 199.3 shall be deleted and replaced by the following: "As used in this part:

"(a) 'accident' means an incident involving gas pipeline facilities or liquefied natural gas facilities reportable under K.A.R. 82-11-3;

"(b) 'administrator' means the Administrator, Pipeline and Hazardous Materials Safety Administration;

"(c) 'covered employee, employee, or individual to be tested' means a person who performs a covered function, including persons employed by operators, contractors engaged by operators, and persons employed by such contractors;

"(d) 'covered function' means an operations, maintenance, or emergency response function regulated by K.A.R. 82-11-4 and K.A.R. 82-11-8 that is performed on a pipeline or on a liquefied natural gas facility;

"(e) 'DOT Procedures' means the Procedures for Transportation Workplace Drug and Alcohol Testing Programs published by the Office of the Secretary of Transportation in 49 C.F.R. Part 40 as in effect on October 1, 2018;

"(f) 'fail a drug test' means that the confirmation test results show positive evidence under DOT Procedures of a prohibited drug in the employee's system;

"(g) 'operator' means a person who owns or operates pipeline facilities subject to K.A.R. 82-11-1 through K.A.R. 82-11-11;

"(h) 'pass a drug test' means that initial testing or confirmation testing under DOT Procedures does not show evidence of the presence of a prohibited drug in the person's system;

"(i) 'performs a covered function' includes actually performing, ready to perform, or immediately available to perform a covered function;

"(j) 'positive rate for random drug testing' means the number of verified positive results for random drug tests conducted under this part plus the number of refusals of random drug tests required by this part, divided by the total number of random drug tests results (i.e., positives, negatives, and refusals) under this part;

"(k) 'prohibited drug' means any of the following substances specified in Schedule I or Schedule II of the Controlled Substances Act, 21 U.S.C. § 812 -- marijuana, cocaine, opiates, amphetamines, and phencyclidine (PCP);

"(l) 'refuse to submit, refuse, or refuse to take' means behavior consistent with DOT Procedures concerning refusal to take a drug test or refusal to take an alcohol test;

"(m) 'state agency' means the state corporation commission of the state of Kansas."

(e) 49 C.F.R. 199.5 shall be deleted and replaced by the following: "The antidrug and antialcohol programs required by this part shall be conducted according to the requirements of this part and K.A.R. 82-4-3b. Terms and concepts used in this part shall have the same meaning as in K.A.R. 82-4-3b. Violations of K.A.R. 82-4-3b with respect to antidrug and antialcohol programs required by this part shall be violations of this part."

(f) 49 C.F.R. 199.7 shall be deleted and replaced by the following:

"(a) Each operator who seeks a waiver under 49 C.F.R. 40.21 from the stand-down restriction shall submit an application for waiver in duplicate to the gas pipeline safety section of the state agency and the Associate Administrator for Pipeline Safety, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE, Washington, DC 20590-0001;

"(b) If the applicant is granted a waiver pursuant to 49 C.F.R. 40.21, a copy of the waiver shall be submitted to the gas pipeline safety section of the state agency.

"(c) Each operator who seeks a waiver under 49 C.F.R. 40.21 from the stand-down restriction shall provide the gas pipeline safety section of the commission a copy of the associate administrator's decision regarding the waiver within 10 days from the date the operator receives the associate administrator's decision."

(g) 49 C.F.R. 199.9 shall be deleted.

(h) 49 C.F.R. 199.100 shall be deleted.

(i) 49 C.F.R. 199.101(b) shall be deleted and replaced with the following: "After notice and opportunity for hearing as provided in 49 C.F.R. 190.206 or K.A.R. 82-11-6, K.A.R. 82-1-230, and K.A.R. 82-1-232(b), the associate administrator or the state agency, with respect to pipeline facilities governed by an operator's plans and procedures may require the operator to amend its plans and procedures as necessary to provide a reasonable level of safety."

(j) The last sentence in 49 C.F.R. 199.225(b)(4)(i) shall be deleted and replaced with the following: "Records shall be submitted to PHMSA upon request of the administrator or the gas pipeline safety section upon request from the staff of the gas pipeline safety section of the state agency."

(k) 49 C.F.R. 199.229(d) shall be deleted and replaced with the following: "A service agent (e.g., Consortia/Third Party Service Administrator as defined in 49 C.F.R. Part 40.3) may prepare the MIS report on behalf of an operator. However, each report shall be certified by the operator's antidrug manager or designated representative for accuracy and completeness."

(Authorized by and implementing K.S.A. 66-1,150; effective April 16, 1990; amended March 12, 1999; amended July 7, 2003; amended June 26, 2009; amended Aug. 5, 2011; amended Dec. 10, 2021.)

***** Authenticated Kansas Administrative Regulation *****