



Anti-Drug & Alcohol Misuse Prevention

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Topics

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- Challenges
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Introduction

Why is a D&A Program Needed?

What is required?

Requirements

- Each operator shall maintain and follow a written anti-drug plan that conforms to the requirements of 49 CFR 199 and the DOT Procedures
- *DOT Procedures means the Procedures for Transportation Workplace Drug and Alcohol Testing Programs published by the Office of the Secretary of Transportation in part 40 of this title*

Requirements - PHMSA Q&A:

Question - Is it necessary to have every detail from both Part 199 and Part 40 written in an operator's plan? Or would statements such as, 'The Company will keep all required records for the specific time required by the Department of Transportation, as set out in §199.23, be sufficient to include in an written plan along with a copy of the regulations?

Answer - Section 199.7(a) (re-designated as §199.101) requires each operator to include in its anti-drug plan methods and procedures for compliance with all the requirements of Part 199 (including the requirements of Part 40). Although an operator need not repeat the requirements of Parts 40 and 199 in its anti-drug plan, **the plan must set out in detail the methods and procedures** the operator intends to use to meet each of those requirements. A general statement like the one you suggest would not suffice.

Required Testing

Pipeline operators and their contractors subject to the rule must test employees for misuse of drugs and alcohol:

- Pre-Employment: Investigation and Drug Testing
- Random (Drug only)
- Post-Accident
- Reasonable Suspicion
- Return-to-duty
- Follow-up

Required Testing (Pre-Employment Investigation)

Background Checks §40.25(a)

This requirement applies only to employees seeking to begin performing safety-sensitive duties for you for the first time (i.e., a new hire, an employee transfers into a safety-sensitive position).

If the employee refuses to provide this written consent, you must not permit the employee to perform safety-sensitive functions.

Required Testing (Pre-Employment Investigation)

Background Checks §40.25(b)

Employer must, after obtaining an employee's written consent, request the following:

1. Alcohol tests with a result of 0.04 or higher alcohol concentration;
2. Verified positive drug tests;
3. Refusals to be tested (including verified adulterated or substituted drug test results);
4. Other violations of DOT agency drug and alcohol testing regulations; and

Required Testing (Pre-Employment Investigation)

Background Checks §40.25(b) (cont)

5. With respect to any employee who violated a DOT drug and alcohol regulation, documentation of the employee's successful completion of DOT return-to-duty requirements (including follow-up tests).

If the previous employer does not have information about the return-to-duty process (e.g., an employer who did not hire an employee who tested positive on a pre-employment test), you must seek to obtain this information from the employee.

Required Testing (Pre-employment Drug Test)

Pre-employment requirement §199.105(a)

No operator may hire or contract for the use of any person as an employee unless that person passes a drug test or is covered by an anti-drug program that conforms to the requirements of this part

Required Testing (Random – Drug)

Random §199.105(c)

Current 2018 percentage = **50%**

- Why the increase?

49 CFR 199.105(c)(4) requires the Administrator to raise the minimum annual random drug testing rate from 25 percent to 50 percent when the data Management Information System (MIS) reports required by § 199.119(a) indicate the positive test rate is equal to or greater than 1 percent. 2016 Rate was greater than 1%

Required Testing (Post-Accident Drug)

Post-accident testing §199.105(b)

**This section has changed - Amendment 199-27 effective 3/24/17:
(Federal Register Volume 82, Number 13 1/23/17)**

Amended:

As soon as possible but no later than 32 hours after an accident, an operator must drug test each surviving covered employee whose performance of a covered function either contributed to the accident or cannot be completely discounted as a contributing factor to the accident.

Required Testing (Post-Accident Drug-Cont)

Post-accident testing §199.105(b)

Amended:

An operator may decide not to test under this paragraph but such a decision must be based on specific information that the covered employee's performance had no role in the cause(s) or severity of the accident.

Required Testing (Post-Accident Drug-Cont)

Post-accident testing §199.105(b)

Added:

If a test required by this section is not administered within the 32 hours following the accident, the operator must prepare and maintain its decision stating the reasons why the test was not promptly administered. If a test required by paragraph (b)(1) of this section is not administered within 32 hours following the accident, the operator must cease attempts to administer a drug test and must state in the record the reasons for not administering the test.

Required Testing (Post-Accident Alcohol)

Post-accident testing §199.225

This section has changed - Amendment 199-27 effective 3/24/17:
(Federal Register Volume 82, Number 13 1/23/17)

Amended:

As soon as practicable following an accident, each operator must test each surviving covered employee for alcohol if that employee's performance of a covered function either contributed to the accident or cannot be completely discounted as a contributing factor to the accident. The decision not to administer a test under this section must be based on specific information that the covered employee's performance had no role in the cause(s) or severity of the accident.

Required Testing (Post-Accident Alcohol Cont)

Post-accident testing §199.225

If test is not administered within 2 hours following the accident you must prepare and maintain on file a record stating the reasons the test was not promptly administered

Tests not administered within eight hours following the accident, the operator shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test.

Required Testing (Post-Accident Records)

(Federal Register Volume 82, Number 13 1/23/17) effective 3/24/17

§ 199.117 Recordkeeping - Added:

(a) (5) Records of decisions not to administer post-accident employee drug tests must be kept for at least 3 years.

§ 199.227 Retention of records - Added:

(b) (4) Three years. Records of decisions not to administer post-accident employee alcohol tests must be kept for a minimum of three years.

Required Testing (Reasonable Cause/Suspicion)

Reasonable cause §199.105(d) (*Drug*)

Each operator shall drug test each employee when there is reasonable cause to believe the employee is using a prohibited drug.

Reasonable suspicion §199.225(b) (*Alcohol*)

Each operator shall require a covered employee to submit to an alcohol test when the operator has reasonable suspicion to believe that the employee has violated the prohibitions in this subpart.

Required Testing (Return-To-Duty)

§199.105(e) (Drug)

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 complied with applicable provisions of DOT Procedures concerning substance abuse professionals and the return-to-duty process.

§199.225(b) (Alcohol) the employee shall undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02.

Required Testing (Follow-up)

§199.105(f) (*Drug*)

A covered employee who refuses to take or has a positive drug test shall be subject to unannounced follow-up drug tests...following the covered employee's return to duty.

§199.225(d) (*Alcohol*)

Operator shall ensure that the employee is subject to unannounced follow-up alcohol testing as directed by a substance abuse professional

Prohibited Drugs

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, (expanded to include four semi-synthetic opioids)
- amphetamines, and
- phencyclidine (PCP).

Responsibilities

Operators are responsible for meeting 49 CFR parts 40 and 199 to include but not limited to:

- All actions of your officials, reps, and agents (including service agents) in carrying out the requirements of the DOT agency regulations.
- Maintain and follow a written Anti-Drug & Alcohol Misuse Prevention Plan that conforms to the requirements
 - Ensure that all covered employees are aware of the provisions and coverage of the plan
- Contractor compliance

Employees and Functions That Fall Under the Requirement

Required Employees

Any employee or individual that performs a covered function must meet the federal requirements.

In accordance with **§199.3** a covered employee, employee, or individual to be tested is:

- A person who performs a **covered function**, including persons employed by operators, contractors engaged by operators, and persons employed by such contractors.

Required Employees

Covered Function is defined as:

- Operations, maintenance, or emergency-response function regulated by part 192, 193, or 195 that is performed on a pipeline or on an LNG facility.

Program Challenges

Challenges

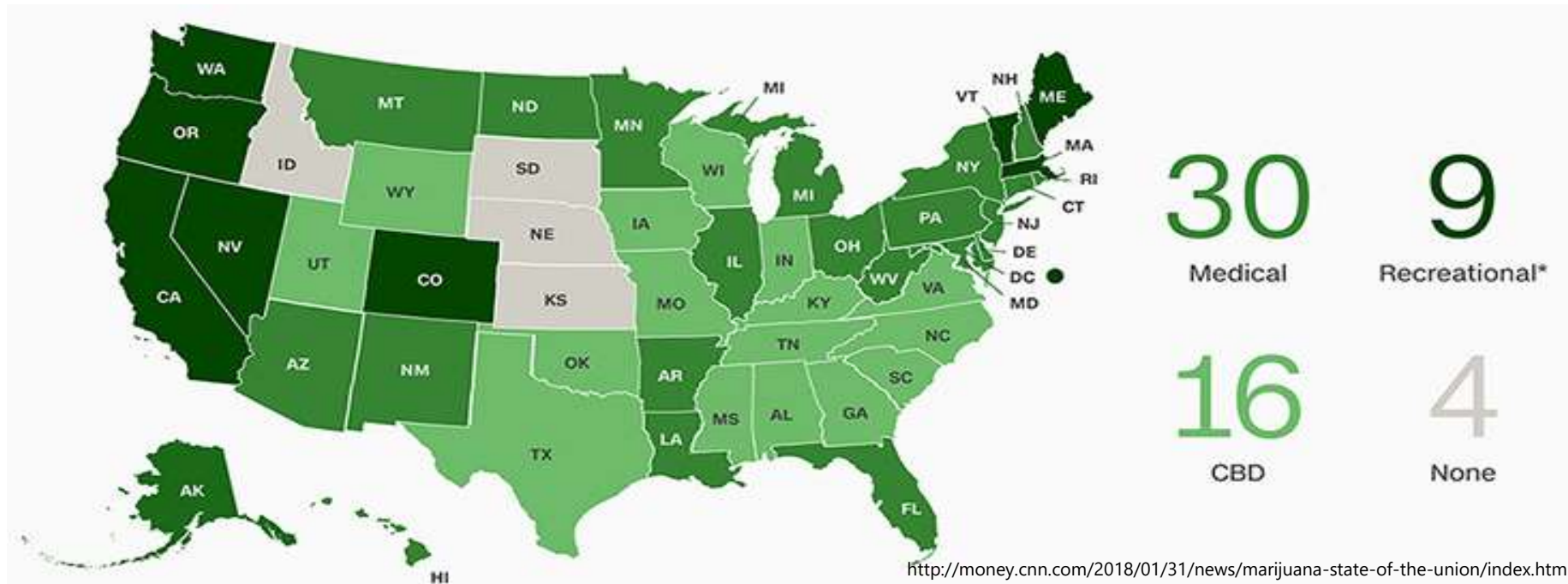
- Program Monitoring
 - C/TPA
 - Contractor Compliance
- State laws
 - Medical marijuana
 - Recreational use

Program Monitoring/Maintenance

- Need to periodically review entire program
 - When was the last review?
 - Are you using a C/TPA?
 - Monitor/audit your collection sites
- Develop method for contractor compliance and continued monitoring
 - Review Contractor D&A Plans for compliance
 - Conduct random/periodic on-site inspections
 - Monitor statistical data monthly/quarterly basis
 - Testing percentages,
 - Covered employee list at Job site

State Laws

- State Law challenges
- As of Jan, 2018, **30 states and the District of Columbia** currently have laws legalizing marijuana in some form



- **A 2017 Gallup poll showed that 64% of Americans support legalization**

State Laws

9 states & DC legalized marijuana for recreational use.

Alaska

California

Colorado

Maine

Massachusetts

Nevada

Oregon

Vermont

Washington

Washington, DC

State vs. Federal

- Medical use and or State legalized use of controlled substances
- CFR 49 parts 40 and 199 = Federal requirement
- No State can authorize violations of federal law
 - Medical Marijuana Statement (2009)
 - Recreational Marijuana Statement (2012)



Findings

Notice Of Amendment

Finding:

Despite being dated March 23, 2018, the Operators Drug and Alcohol Misuse Prevention Plan, reviewed during this inspection was considerably out of date. The plan was unclear with regards to pre-employment alcohol testing, contained incorrect information regarding post-accident alcohol testing, and failed to include new requirements from several regulatory amendments promulgated in the past few years. The Alcohol Misuse Prevention Plan and Anti-Drug plan contained large sections of verbatim and paraphrased language taken directly from the federal alcohol testing regulations making it difficult and unclear as to how the Operator actually implements its alcohol misuse policy and the federal alcohol testing regulations.

Warning Letter

Finding:

Operator did not use a random drug testing selection process in 2016 and 2017 that ensured each covered employee had an equal chance of being tested each time selections were made.

Notice Of Amendment

No “on-site” supervisory personnel who were provided the 60-minute training regarding identification of probable drug use.

- The interim area manager is trained but is only “on-site” approximately once every 3 months.

Procedures were found inadequate by PHMSA.

- Did not include accident definitions
- Post accident drug testing procedures did not explicitly define which employees are covered by Company’s anti-drug plan

Violation of 49 C.F.R. § 199.225(a)(1), for failing to test each covered employee following an accident

- A civil penalty of \$40,000

Common Findings During Audits

- Required annual testing percentages not met
 - No data to report (contractor compliance)
 - Failure to identify employees who perform covered work
- Flooding the pool (Non-DOT mixed w/ DOT)
- Plan does not meet the minimum requirements
- No oversight on TPA's and percentages not being met

DAMIS

DAMIS Submittal

- Pipeline Operators are required to submit contractor drug and alcohol information for those companies who performed covered work in calendar year 2017 by 15 March 2018.
 - This is not the time to find out your contractors did not meet requirements

DAMIS Submittal Common Findings

- Common issues

- Contractors did not meet required testing percentages
- Contractor did not have an approved D&A Plan

- Recommendations

- Constant monitoring of Contractor D&A Compliance
 - Assure contractors meet the federal requirements prior to allowing work performed
 - Monitor contractor compliance throughout the year
 - Conduct periodic audits of Contractors D&A program

D&A & OQ

Connecting the Requirements

○ **D&A and OQ**

- Cannot perform covered work until compliance with D&A are met
- Covered Function vs Covered Task
- No Span of Control Span Of Control for D&A

○ **How is it monitored?**

- Need to demonstrate that the person(s) meet D&A, prior to performing covered work
 - Obtain and verify covered employee list at job site

Final Rule Part 40

Federal Register Volume 82, Number 217 (Monday, November 13, 2017)

NPRM to Part 40-Proposed Rule

On November 13th, 2017 the Department of Transportation (DOT) amended its drug-testing program regulation to add the following drugs to the DOT testing panel:

- Hydrocodone,
- Hydromorphone,
- Oxymorphone, and
- Oxycodone.

Added methylenedioxyamphetamine (MDA) as an initial test analyte;

Removed methylenedioxyethylamphetamine, (MDEA) as a confirmatory test analyte.

NPRM to Part 40-Proposed Rule – (Cont)

The revision of the drug testing panel is intended to harmonize with the revised Mandatory Guidelines established by the U.S. Department of Health and Human Services for Federal drug-testing programs for urine testing.

This rule also adds clarification to certain drug-testing program provisions where necessary, removes outdated information in the regulations that is no longer needed, and proposes to remove the requirement for employers and Consortium/Third Party Administrators to submit blind specimens.

NPRM to Part 40 (Common Questions)

When did this become rule?

- The rule was published on November 13, 2017 and became effective January 1, 2018.

NPRM to Part 40 (Common Questions-Cont)

What does this mean for employers and are employers responsible for service agents and contractors hired?

- Review your written program, address changes and communicate as applicable.
- As an employer you should have a process in place to assure any service agents TPA etc., are complying with your policy.

NPRM to Part 40 (Common Questions-Cont)

What does this mean for my employees?

- In addition to the current testing requirements, Employees will also be tested for four semi-synthetic opioids (i.e., hydrocodone, oxycodone, hydromorphone, oxymorphone aka: OxyContin[®], Percodan[®], Percocet[®], Vicodin[®], Lortab[®], Norco[®], Dilaudid[®], Exalgo[®]).
- Employees under a mandated DOT testing program will no longer be tested for MDEA

Questions?

Thank You



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