



PHMSA D&A Program

Overseeing Your Contractors / Covered Functions

Significant OQ Changes (State Level)

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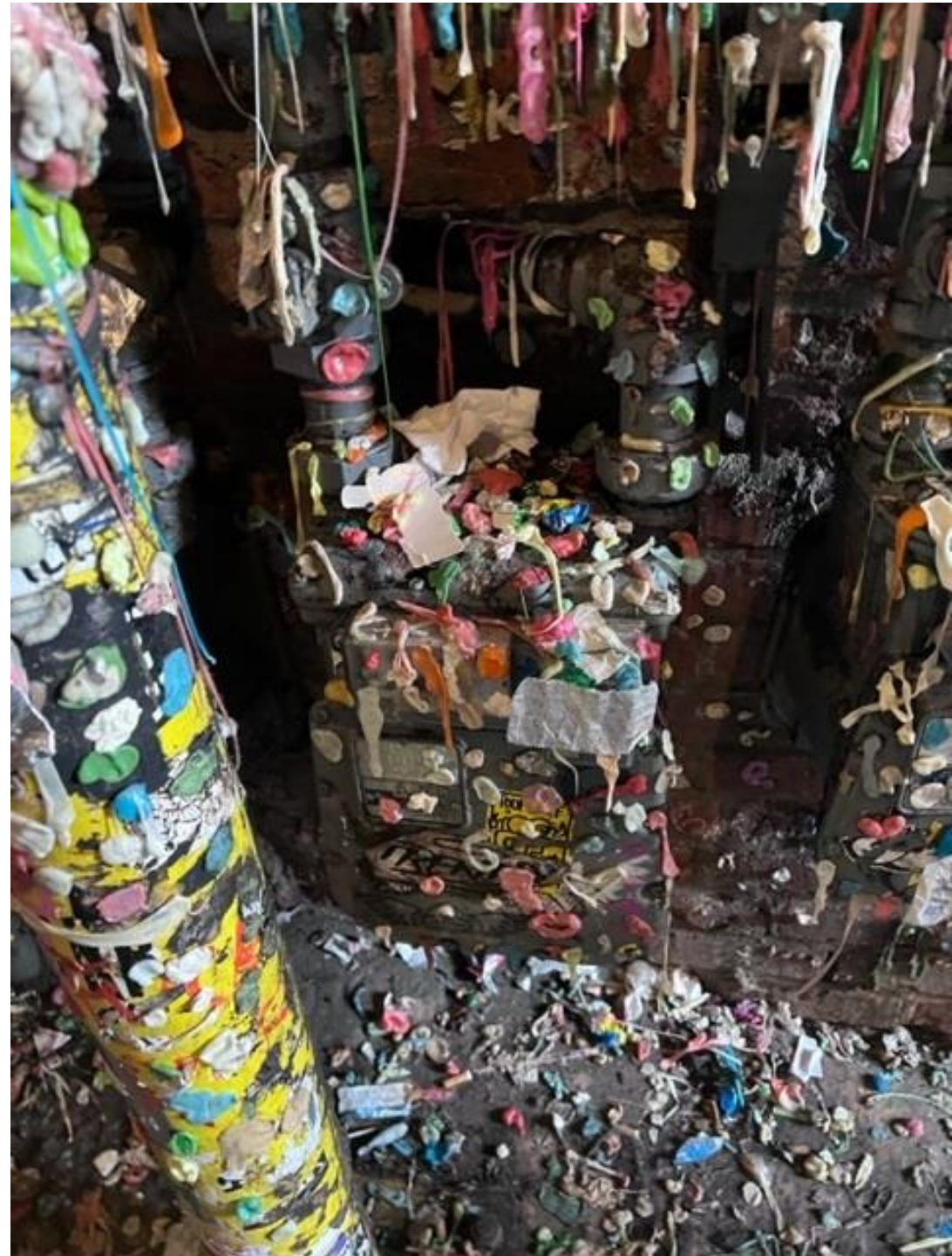
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Intro





Let's Talk D&A









Safety First







50



Add Alcohol to the Mix









D&A Program Requirements (Including Contractors Programs)



Responsibilities

Operators are required to maintain and follow a written anti-drug and alcohol misuse plan that conforms to the requirements of 49 CFR 199 and the DOT Procedures.

- Includes contractors

199.3 Definition:

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



Responsibilities

Do I have to have every detail in my written plan from Parts 199 and 40 written in my plan?

"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."



D&A Program Inspections

(Includes Your Contractors)



Responsibilities

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

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



Contractor D&A Programs

Operators compliance include contractor programs:

- **199.115: Contractor employees**
- **199.245: Contractor employees**

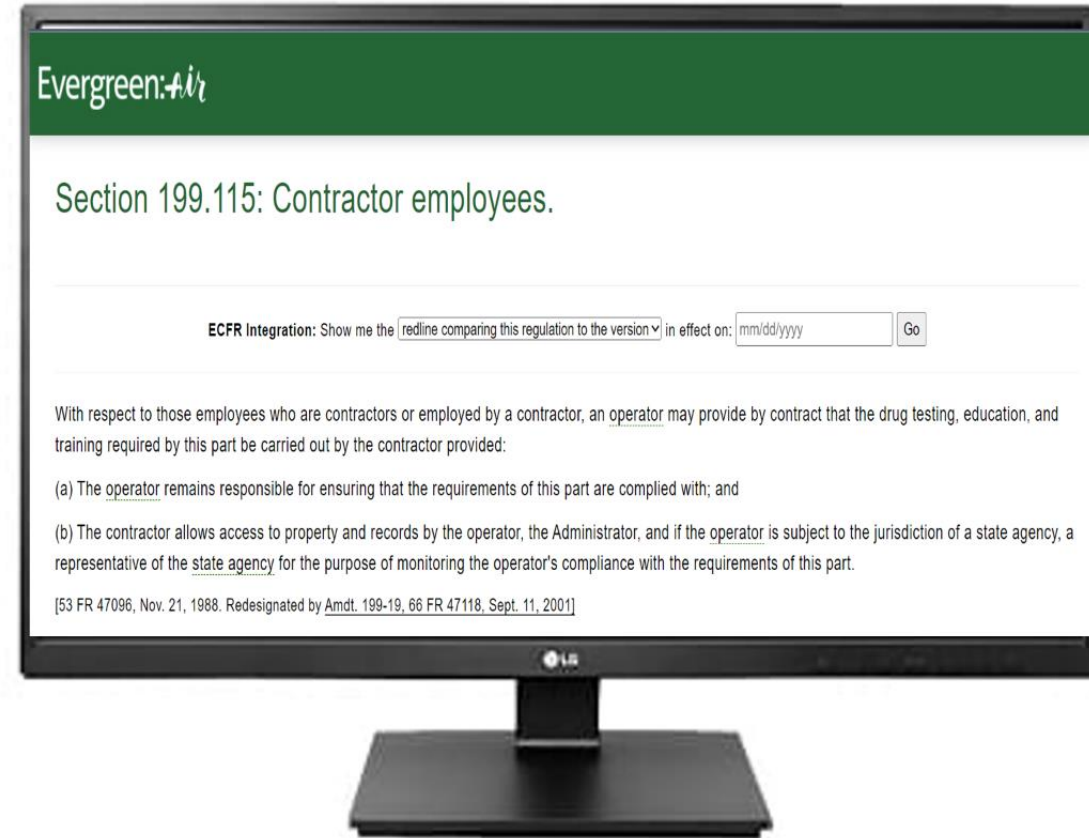


With respect to those employees who are contractors or employed by a contractor, an operator may provide by contract that the drug testing, education, and training required by this part be carried out by the contractor provided:



§199.115 Sub Part B (Drug testing) Contractor employees

- a) The operator remains responsible for ensuring that the requirements of this part are complied with; and
- b) The contractor allows access to property and records by the operator, the Administrator, and if the operator is subject to the jurisdiction of a state agency, a representative of the state agency for the purpose of monitoring the operator's compliance with the requirements of this part.



§199.245 Sub Part C (Alcohol testing)

Evergreen:*Air*

Section 199.245: Contractor employees.

ECFR Integration: Show me the in effect on:

- (a) With respect to those covered employees who are contractors or employed by a contractor, an operator may provide by contract that the alcohol testing, training and education required by this subpart be carried out by the contractor provided:
- (b) The operator remains responsible for ensuring that the requirements of this subpart and part 40 of this title are complied with; and
- (c) The contractor allows access to property and records by the operator, the Administrator, any DOT agency with regulatory authority over the operator or covered employee, and, if the operator is subject to the jurisdiction of a state agency, a representative of the state agency for the purposes of monitoring the operator's compliance with the requirements of this subpart and part 40 of this title.

Contractor D&A Programs

Are you prepared for an audit? What is your process to oversee your contractor programs?

A-9: Contractor Anti-Drug and Alcohol Misuse Prevention Programs

If a pipeline operator allows contractors who perform covered functions on the operator's regulated pipeline or LNG facility to conduct their own D&A Programs

Does the operator have a process to oversee contractors to ensure they comply with Parts 199 and 40? [§199.115 & §199.245]

Do the contractors allow access to property and records by the operator, PHMSA, and a representative of a state agency (if applicable) to allow for the monitoring the operator's compliance with Part 199? [§199.115(b)].

No Issue Identified

Potential Issue Identified



Challenges



Program Monitoring

- Consortia / Third Party Administrators (TPA's)
- Contractor Compliance



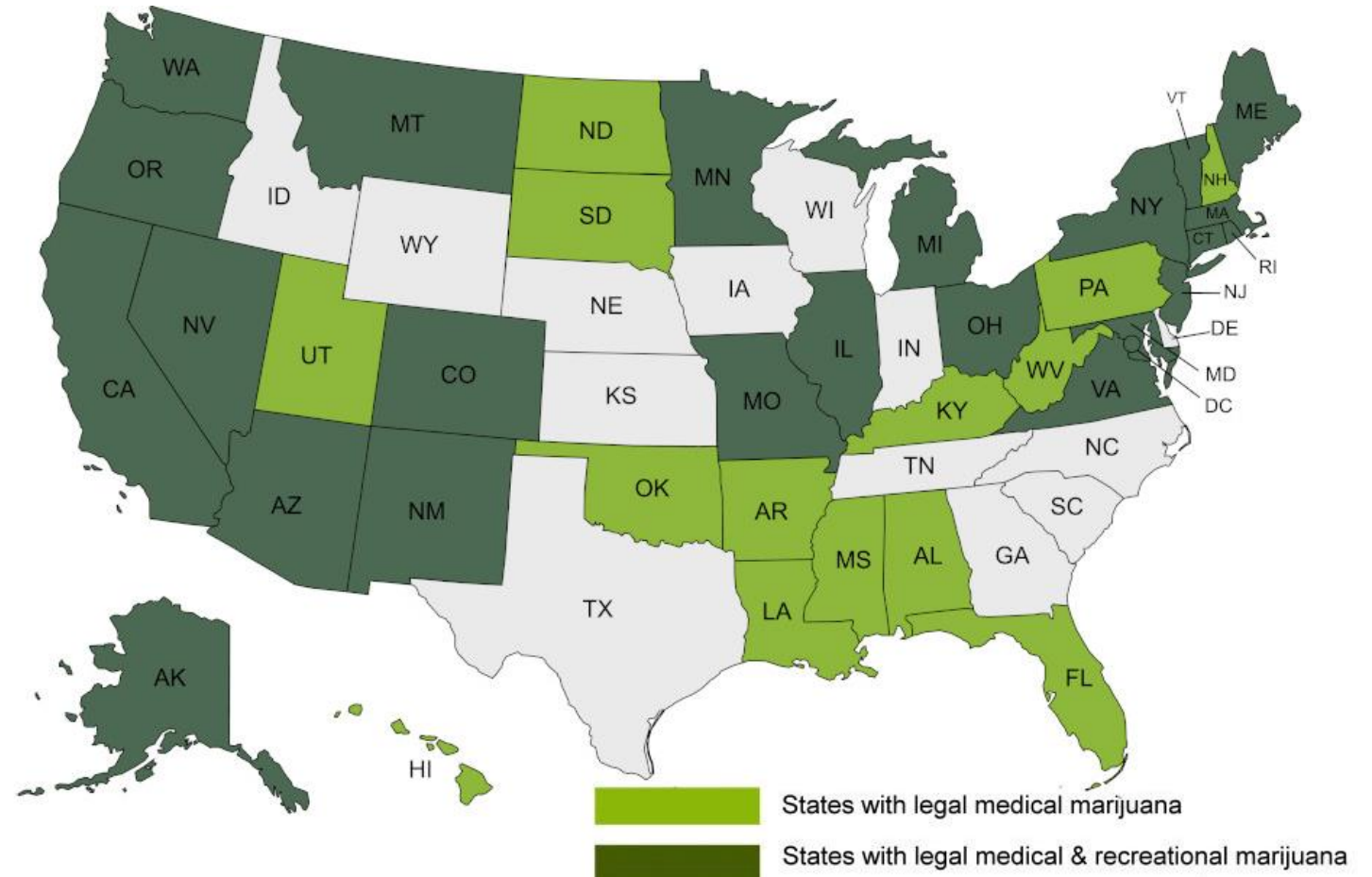
State laws

- Medical marijuana
- Recreational use



State Laws

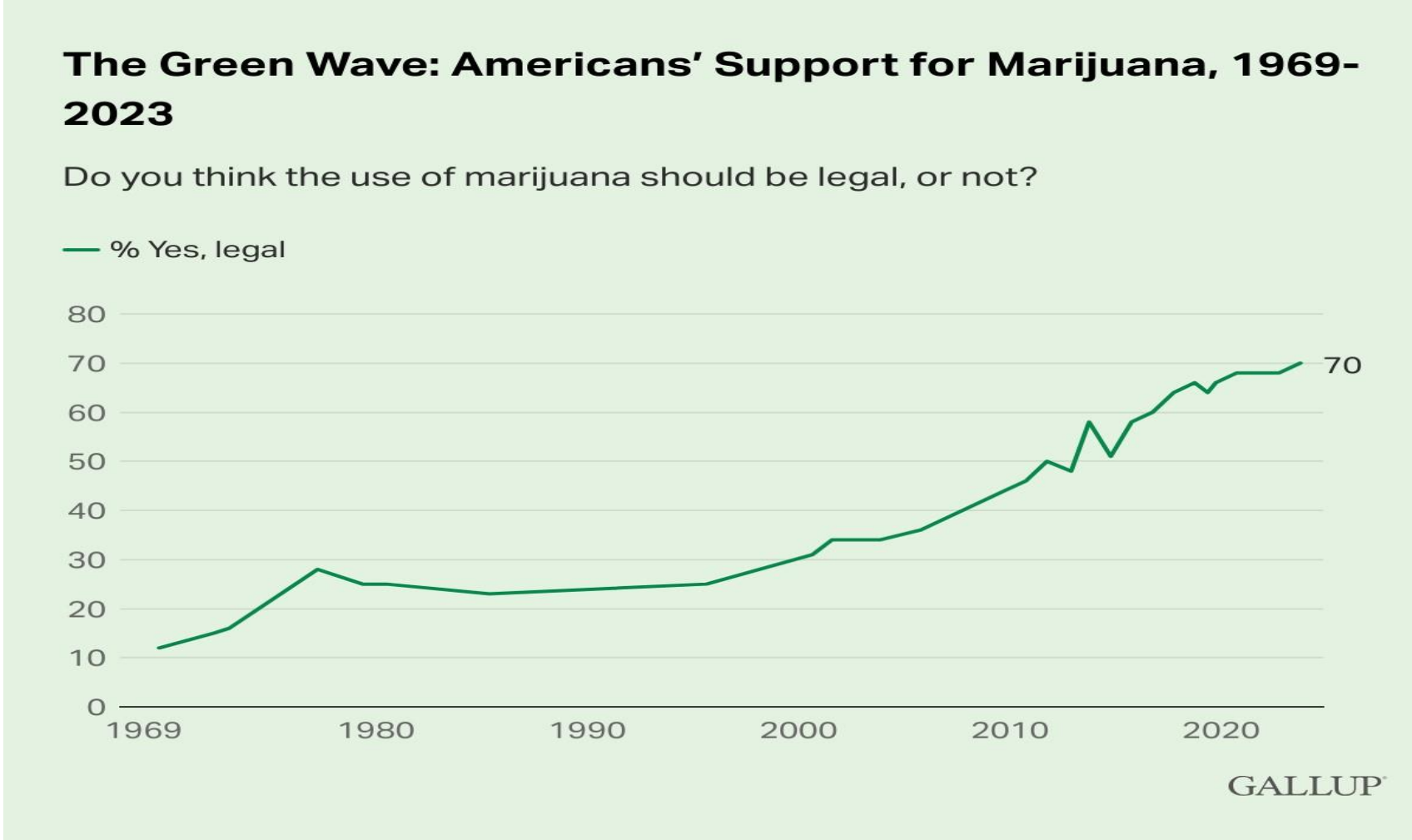
- In 2012 Recreational marijuana became legal in only two states
- 2023 - Recreational marijuana legal in 24 states plus the District of Columbia (DC).
- 2023 - Medical marijuana legal in 40 states plus DC.



State Laws – Public Perception

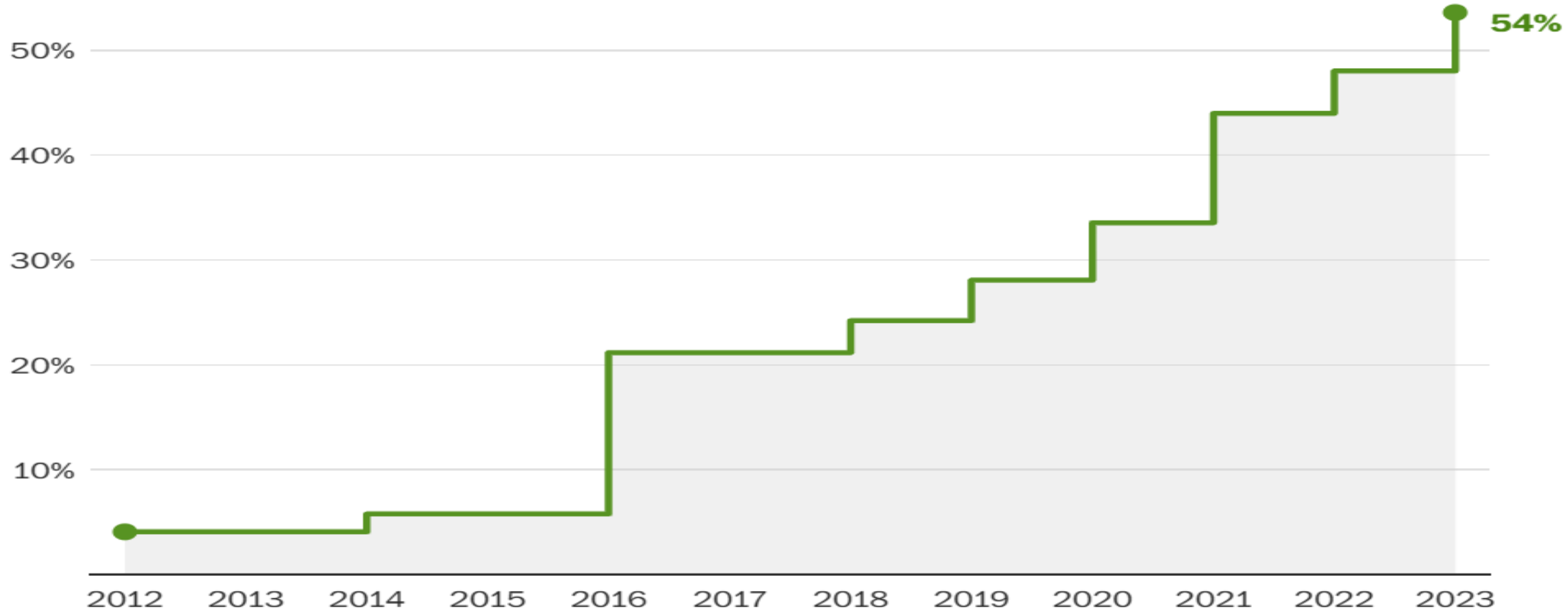
2021 Gallup poll showed that 68% of Americans support legalization.

2023 is up to 70%



State Challenges

Share of the U.S. population that lives in states where recreational marijuana is legal



Source: 2020 U.S. Census

State vs. Federal

What can you do?

- Medical use and/or State legalized use of controlled substances
- CFR 49 parts 40 and 199 = Federal requirement

Provide Education to Employees

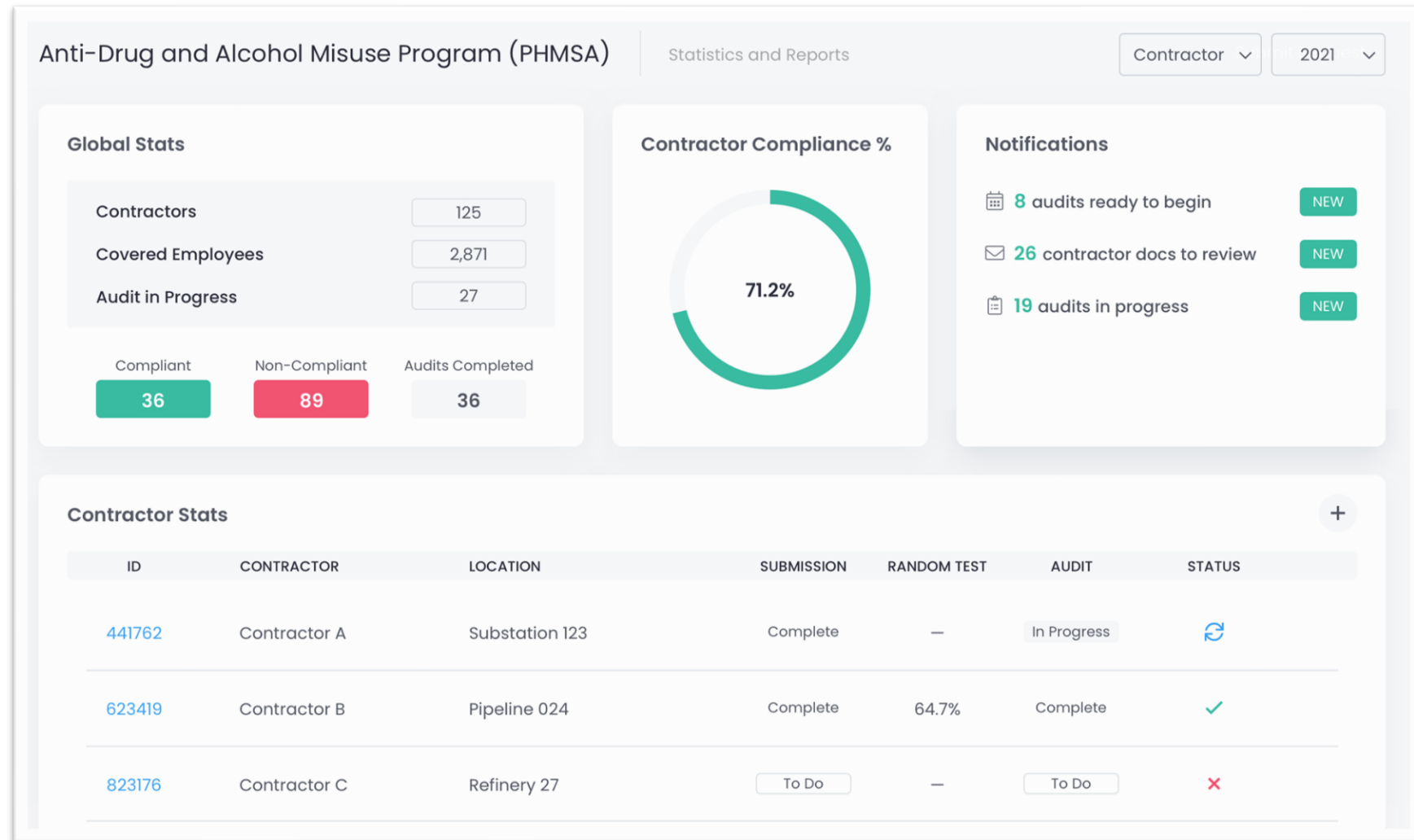
- DOT "Marijuana" Notice(s)
 - <https://www.transportation.gov/odapc>
 - Medical Marijuana Notice (2009)
 - Recreational Marijuana Notice (2012)



Contractor D&A Programs

Have a process:

Assure the process audits and monitors your contractor D&A programs to gauge effectiveness and ensure it satisfies requirements



Contractor D&A Programs

Conduct Inspections / Reviews

Review Internal and contractor plans.

- December is typically when the Administrator updates the testing percentages.
- Stay up to date with rule changes.
- Review Covered Pool – do not flood the pool

Ensure contractor plan reviews are conducted prior to work performed and annually

- Plan reviews should also include document reviews to assure compliance with plan.



Contractor D&A Programs

Conduct Inspections / Reviews

Review and maintain contractor covered employee pool listing(s)

- Ensure process Have a process to verify the employees working are on the testing pool.
- Monitor random percentages

If using a 3rd party to monitor contractor programs, periodically review/audit the process.

- Do plan reviews/audits to assure minimum requirements are met



Covered Functions



Covered Functions

What is a covered function?

- **Covered function** means an operations, maintenance, or emergency-response function regulated by part 192, 193, or 195 of this chapter that is **performed on a pipeline or on an LNG facility**.

OQ Covered Tasks are covered functions but not all covered functions are covered tasks.

- Operating under SOC for OQ requires D&A.



Covered Functions

Who must be on a DOT PHMSA D&A Program?

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.

- § 199.3 defines “performs a covered function” to include “actually performing, ready to perform, or immediately available to perform a covered function.”



Covered Functions

PHMSA: Interpretation 199.3 76

“...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.



Recent Rule Changes



Rule Changes

Part 40: Now Includes Oral Fluid Testing

This rule went into effect on June 1, 2023

- *Oral fluid specimen. A specimen that is collected from an employee's oral cavity and is a combination of physiological fluids produced primarily by the salivary glands. An oral fluid specimen is considered to be a direct observation collection for all purposes of this part.*



Rule Changes

Part 40: Now Includes Oral Fluid Testing

Affected areas within Part 40 that have been changed/updated:

40.3, .13, .14, .21, .23, .25, .26, .29, .31, .33, .35, .37, .40, .41, .43, .45, .47, .48, .49, .51, .61, .63, .65, .67, .69, .71, .72, .73, .74, .75, .78, .79, .81, .83, .85, .86, .87, .88, .89, .90, .91, .92, .93, .96, .97, .99, .111, .121, .123, .127, .129, .135, .139, .141, .145, .151, .159, .161, .163, .177, .179, .181, .187, .191, .193, .195, .197, .199, .201, .207, .208, .209, .210, .225, .261, .281, .283, .285, .291, .293, .297, .301, .307, .311, .327, .345, .355, .365, and

Appendices E through H



Rule Change Actions

Have you updated your company D&A plan to reflect the changes?

- Have your contractor plans been updated and reviewed?
- If you are using a third party to review contractor compliance, do you have a process to verify?

Note: At this time, there are no laboratories certified to conduct drug and specimen validity tests on oral fluid specimens. Federal Register / Vol. 88, No. 230 / Friday, December 1, 2023 / Notices



Proposed Rule Changes

Federal Register / Vol. 88, No. 199 / Tuesday, October 17, 2023 / Notices

- **Possible Addition of Fentanyl to the Urine and Oral Fluid Analyte Table**
 - **Drug Testing Advisory Board (DTAB) met via web conference on December 5, 2023. Comments can be submitted up to 30 days after the DTAB meeting, but no later than January 4, 2024, via e-mail to: DFWP@samhsa.hhs.gov.**



Changes to DAMIS Login

Change is Coming to How Users Access the DOT's Drug and Alcohol Management Information System (MIS)

- Effective 1 Jan 2024 You will need to go through www.Login.gov to access the DOT's drug and alcohol MIS.
- Employers will receive an email or letter from DOT with a 32-digit code and will enter this code once they open the MIS website.



OQ PROGRAM CHANGES

State Level



STATE LEVEL OQ PROGRAM CHANGES: NY



NY

- Established OQ White Paper – 2017.
- 2021 NPRM based on White Paper.
- March 2022 - Final Rule
- In regulation March 2023

NY OQ Rule Changes - (16 NYCRR Part 255)

- **Changes to the 4-part test:**
 - Covered tasks are all activities, identified by the operator, that:
 - are performed on a pipeline facility; and
 - affect the operation or integrity of the pipeline.
- **OQ Program Effectiveness Reviews**
 - develop program measures to determine the effectiveness of the qualification program



NY OQ Rule Changes - (16 NYCRR Part 255)

- **Detail the training requirements, including the minimum training needed per covered task**
 - Shall include on-the-job training that includes hands-on learning or simulations
 - Evaluations shall not be conducted within 48 hours of training
- **Engineering Functions - have and follow a written program that includes a training, mentoring, and evaluation process**
 - Determine functions specific to the design, construction, operation, and integrity of pipelines that contain elevated risk.



Significant OQ Changes at the State Level - Will You Be Affected?

- New York - In regulation March 2023 (16 NYCRR Part 255)
 - MA, CT - proposing new regulations
 - NE, MI – considering changes
- NJ - 2Part Test
 - Recently edited *N.J.A.C. 14:3-1.1*: Added definition:
Covered task means: an activity, identified by the operator, that is performed on a pipeline facility and affects the operation, safety, or integrity of the pipeline.
- MO, OH – OQ for New Construction
- IN – Effective July 3, 2023



Significant OQ Changes at the State Level - Will You Be Affected?

We may see other states contemplate taking action to improve Operator Qualification Programs at the state level.



Questions?

Thank You

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