



PHMSA D&A Program

Requirement Overview and Rule Changes

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D&A Program Requirements



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."



Notice of Probable Violation (NOPV)

Operator did not maintain and follow a written anti-drug plan that conforms to the requirements of Part 199 and the DOT Procedures.

- Did not contain the specific methods and procedures required for compliance with all the requirements of Part 199 and the DOT Procedures
 - the name and address of the laboratory
 - the name and address of MRO, SAP
- Failed to distinguish company policies from PHMSA/DOT regulations

Proposed Penalty = \$ 31,600

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.



NON-DOT Testing With DOT

Who cannot be on a DOT testing pool?

- DOT tests must be completely separate from non-DOT tests in all respects.
- DOT tests must take priority and must be conducted and completed before a non-DOT test is begun. When conducting a urine DOT drug test, you must discard any excess urine left over from a DOT test and collect a separate urine void for the subsequent non-DOT test.



Notice of Probable Violation (NOPV)

Operator failed to differentiate its PHMSA D&A “covered employees” as defined in §199.3 from its non-DOT employees

- As a result, it conducted DOT drug tests in calendar year 2023 on employees who were not DOT-regulated employees; i.e. covered employees.

Proposed Penalty = \$ 36,800

Contractor Compliance and Program Challenges



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

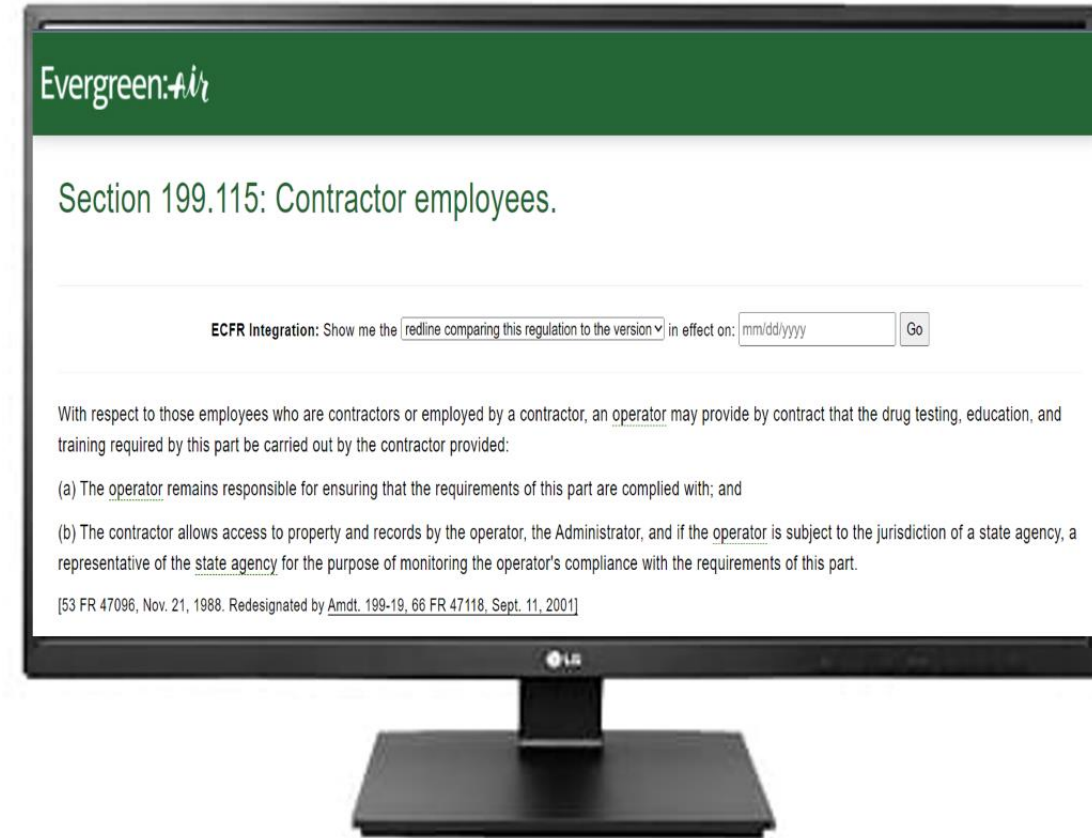
Operators compliance include contractor programs:

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



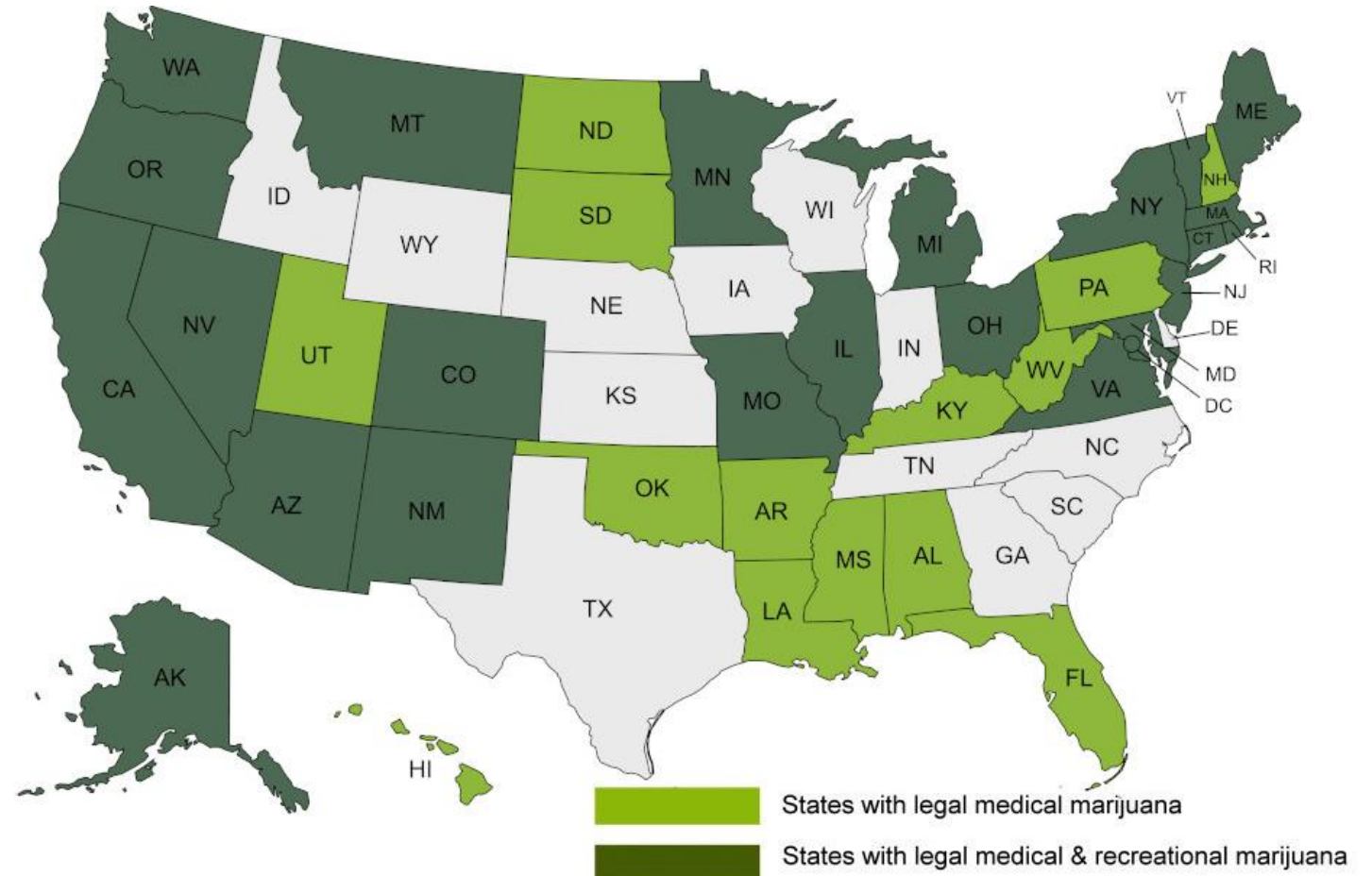
State laws

- Medical marijuana
- Recreational use



State Laws

- In 2012 Recreational marijuana became legal in only two states
- 2024 - Recreational marijuana legal in 31 states plus the District of Columbia (DC).
- 2024 - Medical marijuana legal in 40 states plus DC.



State Laws – Public Perception

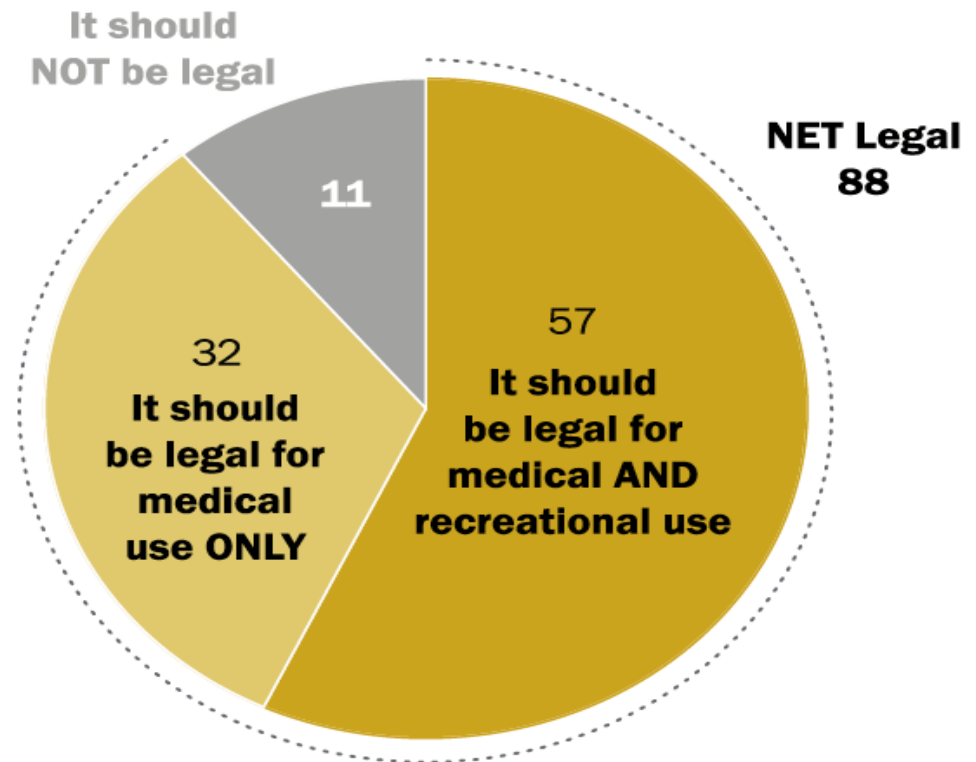
88% of U.S. adults say marijuana should be legal.

- Six-in-ten Americans say that marijuana should be legal for medical and recreational purposes
- A third say that marijuana should be legal for medical use only.

Just 11% of Americans say that the drug should not be legal at all.

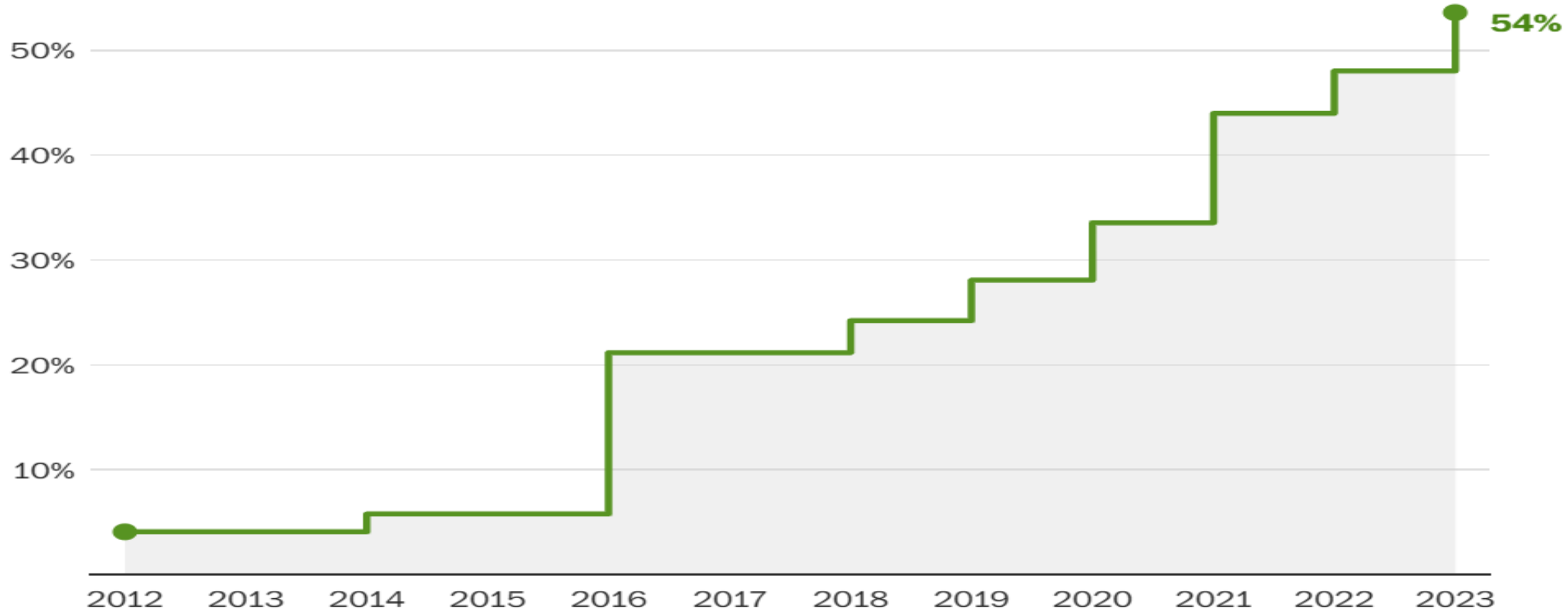
Only about 1 in 10 U.S. adults say marijuana should not be legal at all

% of U.S. adults who say the following about marijuana



State Challenges

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

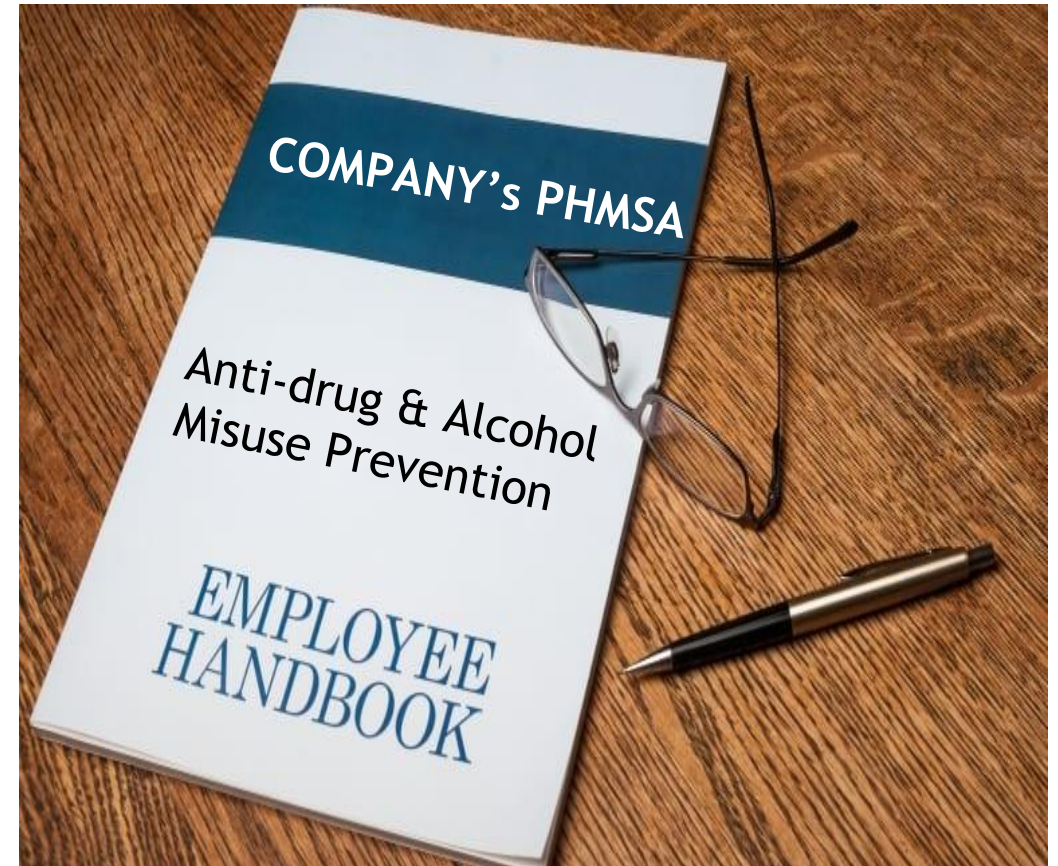


Source: 2020 U.S. Census

What can you do?

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

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 thereafter

- 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 their process.



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 Changes 2024

Federal Register Volume 89, Number 120 (Friday, June 21, 2024) (Final)

- Contains technical amendments to part 40, which was effective June 1, 2023
- The purpose - to clarify certain provisions of the rule and address omissions



Rule Changes

PHMSA rule updates - Federal Register Volume 89, Number 120 (Friday, June 21, 2024)

- **Direct Final Rule** for Procedures for Transportation Workplace Drug and Alcohol Testing Programs (49CFR Part 40), which became effective on June 1, 2023, to provide temporary qualification requirements for mock oral fluid monitors, provide for consistent privacy requirements by identifying which individuals may be present during an oral fluid collection, and clarify how collectors are to specify that a sufficient volume of oral fluid was collected.



Rule Changes

PHMSA rule updates - Federal Register Volume 89, Number 120 (Friday, June 21, 2024)

- DOT published this rule without a prior proposed rule because they view this as a noncontroversial action and anticipate no adverse comment on any of the provisions of the rule.
- However, in the “Proposed Rules” section of this issue, PHMSA published a separate document containing the same amendments that serves as the proposed rule to amend the procedures for DOT's drug testing program (49 CFR part 40) **if adverse comments are received on any of the provision in this direct final rule.**



Rule Changes

Federal Register Volume 89, Number 148 (Thursday, August 1, 2024)

- Due to the receipt of adverse comments, the DOT is withdrawing the direct final rule “Procedures for Transportation Workplace Drug and Alcohol Testing Programs,” published on June 21, 2024



Rule Changes

Federal Register Vol. 89, No. 214 (Tuesday, November 5, 2024)

The U.S. Department of Transportation (DOT) revises its drug and alcohol testing procedures, as amended by a final rule published on May 2, 2023, to provide temporary qualification requirements for mock oral fluid monitors, provide for consistent requirements by identifying which individuals may be present during an oral fluid collection, and clarify how collectors are to document that a sufficient volume of oral fluid was collected.



Rule Changes

Federal Register Vol. 89, No. 214 (Tuesday, November 5, 2024)

§ 40.33 What training requirements must a collector meet for urine collection?

(c)(2) Another person must monitor and evaluate your performance, in person or by a means that provides real-time observation and interaction between the instructor and trainee, and attest in writing that the mock collections are “error-free.” This person must be a qualified urine collector who has demonstrated necessary knowledge, skills, and abilities by:

- (i) Regularly conducting DOT urine drug test collections for a period of at least one year;
- (ii) Conducting urine collector training under this part for at least one year; or
- (iii) Successfully completing a urine “train the trainer” course.



Rule Changes

Federal Register Vol. 89, No. 214 (Tuesday, November 5, 2024)

§ 40.35 What training requirements must a collector meet for oral fluid collection?

(c)(2) Another person must monitor and evaluate your performance, in person or by a means that provides real-time observation and interaction between you and the qualified collector, who must attest in writing that the mock collections are “error-free.” Except as provided in paragraph (c)(3) of this section, this person must be a qualified oral fluid collector who has demonstrated necessary knowledge, skills, and abilities by:

- (i) Regularly conducting DOT oral fluid drug test collections for a period of at least one year;
- (ii) Conducting oral fluid collector training under this part for at least one year; or
- (iii) Successfully completing an oral fluid “train the trainer” course.



Rule Changes

Federal Register Vol. 89, No. 214 (Tuesday, November 5, 2024)

§ 40.35 (c)(3) As the person monitoring and evaluating the collector's five mock collections pursuant to paragraphs (c)(1) and (2) of this section, you need not be a qualified oral fluid collector to do so if you meet the necessary knowledge, skills, and abilities in paragraph (c)(2)(ii) or (iii) until otherwise specified (one year after HHS publishes a Federal Register notification of the first certified oral fluid drug testing laboratory (HHS notification)).

The one-year requirement in paragraph (c)(2)(ii) is not applicable until otherwise specified (one year after the HHS notification).



Rule Changes

Federal Register Vol. 89, No. 214 (Tuesday, November 5, 2024)

§ 40.73 How is an oral fluid specimen collected?

(a)(1) As the oral fluid collector, you must not allow any person other than you, the employee, or a DOT agency representative to actually witness the testing process.

(c)(2) The collector must ensure the collection is performed correctly (i.e., using the oral fluid device in the manner described by its manufacturer), that the collection device is working properly, and that a sufficient specimen volume is collected. After the employee provides a sufficient specimen, check the “Volume Indicator(s) Observed” box in Step 2 of the Federal CCF to document that you observed the volume indicator(s) during the collection.



Rule Changes

Oral Fluid Testing Approved Labs from the Substance Abuse and Mental Health Services Administration, HHS ?

Federal Register/Vol. 89, No. 231/Monday, December 2, 2024

At this time, there are no laboratories certified to conduct drug and specimen validity tests on oral fluid specimens.



2025 Testing Rates / 2024 DAMIS

Federal Register Volume 89, Number 224 (Wednesday, November 20, 2024)

PHMSA has determined that the Minimum Annual Percentage Rate for Random Drug Testing for covered employees will be **50 percent** during calendar year **(CY) 2025**. Starting January 1, 2025, through December 31, 2025.

For CY 2024 reporting, Multi-Factor Authentication (MFA) login procedures must be used for submitting drug & alcohol testing data into the Drug and Alcohol Management Information System (DAMIS) database.



2024 DAMIS

Pipeline operators are no longer required to “accept” contractor reports.

- Operator will simply list the contractor, and the contractor's DAMIS report automatically becomes part of the operator's report once the contractor has submitted its report to DAMIS.
- If no Login.gov invitation has been created for the contractor, the primary operator can generate a new Login.gov invitation by entering a new email address for the contractor.

DAMIS Login:

- In early January 2024, DAMIS generated a one-time/one-use Login.gov invitation for the confirmed email addresses. PHMSA also makes Login.gov invitations available in the PHMSA Portal.



2024 DAMIS

Contractors:

- Contractors must prepare a single, complete, and accurate DAMIS report that includes all its D&A covered employees and all their DOT D&A test data.
- A contractor does not prepare or submit a separate and distinct DAMIS report for each pipeline operator, or for a contractor's separate offices or locations, unless those offices are distinct and separate under their own BTIN.

Contractor Login:

- MFA allows access for contractors to enter their D&A testing data directly into DAMIS. In September 2023.
- Contractors can also request a new Login.gov invitation for a new email address by sending a request to PHMSAPipelineDAMIS@dot.gov.



Notice of Proposed Rule Change

Federal Register Vol. 89, No. 199 (Tuesday, October 15, 2024) Proposed Rules

The Department of Transportation (DOT) proposes to amend its regulations for DOT workplace D&A testing.

- To allow, but not require, electronic signatures on documents required to be created and utilized under the regulations, the use of electronic versions of forms, and the electronic storage of forms and data.

The comment period for this NPRM ends on December 16, 2024 (Docket DOT-OST-2022-0027).



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?
- Are you monitoring your contractors D&A testing data throughout the year?



When was the last time you
conducted a review or assessment of
your PHMSA required D&A program?



Notice of Probable Violation (NOPV)

NOPV - Proposed Civil Penalty and Proposed Compliance Order:

Operator, or its C/TPA, placed employees not covered by DOT agency regulations in the same random drug test pool with DOT covered employees.

Operator did not conduct random drug tests for the presence of a prohibited drug at the minimum annual percentage rate of 50 percent of its covered employees.

Incomplete annual MIS report to PHMSA in 2018 and incorrectly reported its annual MIS reports to PHMSA for calendar years 2018, 2019, and 2020.

PENALTY: \$72,400



Notice of Amendment (NOA)

NOA

The City's anti-drug plan was inadequate because it did not conform to the requirements of 49 C.F.R. Part 199 and 49 C.F.R. Part 40 (DOT Procedures).

The City's alcohol misuse plan was inadequate because it did not conform to the requirements of Part 199 and 49 C.F.R. Part 40 (DOT Procedures) concerning alcohol testing programs.



Common Findings

- Company rep or employee didn't understand PHMSA D&A requirements
- Required annual testing percentages not met
- Failure to identify employees who perform covered functions
- Flooding the pool (Non-DOT mixed w/ DOT)
- Written Plan combined Drug Free Workplace non-DOT requirements
- Written Plan does not meet the minimum requirements
- Operator failed to identify contractors who performed covered work
- Records not maintained



ANY
QUESTIONS?



Thank You

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