



# PHMSA D&A

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# Drug & Alcohol



- PHMSA D&A Requirements
- Program Challenges
- Covered Functions
- Rule Changes
- Common Findings



## **PHMSA D&A Requirements**

# D&A Program - Applicability



- Requirements of Part 199 applies to pipeline operators only with respect to employees located within the territory of the United States, including those employees located within the limits of the "Outer Continental Shelf “.
- Part 199 does not apply to any person for whom compliance with this part would violate the domestic laws or policies of another country.

# D&A Program - Applicability



- Does not apply to covered functions performed on
  - Master meter systems, as defined in §191.3 of this chapter; or
  - Pipeline systems that transport only petroleum gas or petroleum gas/air mixtures.

# D&A Program Requirements



Operators must have a written Anti-Drug Plan and a written Alcohol Misuse Plan to conduct drug and alcohol (D&A) tests in accordance with PHMSA's Drug & Alcohol Testing regulations in Part 199 and the DOT's Procedures for Transportation Workplace Drug and Alcohol Testing programs in Part 40.

# D&A Plan - NOPV



PHMSA requested a copy of the Operators written anti-drug plan. In response, the Operator provided a nine-page D&A document:

- Did not contain the specific methods and procedures required for compliance with all the requirements of Part 199 and the DOT Procedures.
- Did not contain the name and address of the laboratory Superior used to analyze drug test specimens.
- Did not contain the name and address of Medical Review Officer.
- Did not contain the name and address of Substance Abuse Professional.
- Failed to distinguish company policies from PHMSA/DOT regulations.
- Failed to distinguish DOT from non-DOT requirements.
- Contained outdated and incorrect statements.
- Penalty = \$ 31,600

# D&A Program Requirements



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

- Assign a Designated Employee Rep (DER).
- 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.
- Contractors.



# D&A - Contractors



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:

- The operator is responsible for ensuring that the requirements of this part are complied with; and
- The contractor(s) 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.

## **Covered Employee & Covered Functions**



# Covered Function - Requirements

Operators must have a process to ensure the operator properly identifies the covered employees who are required to be DOT tested for the presence of prohibited drugs and alcohol.

- Operators cannot conduct DOT tests for the presence of prohibited drugs and/or alcohol on any individual who is not a covered employee.

# Covered Function - Requirements



Can an Operator just take a list of all OQ qualified employees to identifies the covered employees?

- While OQ Covered Tasks meet requirements for covered functions - not all covered functions are covered tasks such as some emergency-response functions.
- Reviewing Operations, Maintenance and Emergency Functions that are performed on the pipeline facility will ensure no employees are missed and employees that do not perform covered functions are not included.



# Covered Function - Requirements



Review Operations, Maintenance and Emergency Functions





# Covered Function - Examples

- 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.





# Covered Function - Examples

- Operating, maintaining, or repairing pipelines.
- Controlling pipeline operations or monitoring
  - This includes Control Rooms
- Emergency response activities for pipelines emergency response personnel dispatched to pipeline incidents that perform functions on the pipeline facility.



# Covered Function - Examples

Employees that perform covered functions even if they only perform them occasionally are subject to PHMSA Part 199 drug & alcohol testing requirements.

## §199.3 Definitions

***Performs a covered function*** - includes actually performing, ready to perform, or immediately available to perform a covered function.

- PHMSA has issued several interpretations that explain employees who performs a covered function is a covered employee regardless of their job title or whether they perform those functions full-time, part-time, or as a back-up.





# Covered Function - NOPV

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

- Penalty = \$ 36,800

# Covered Function - NOPV

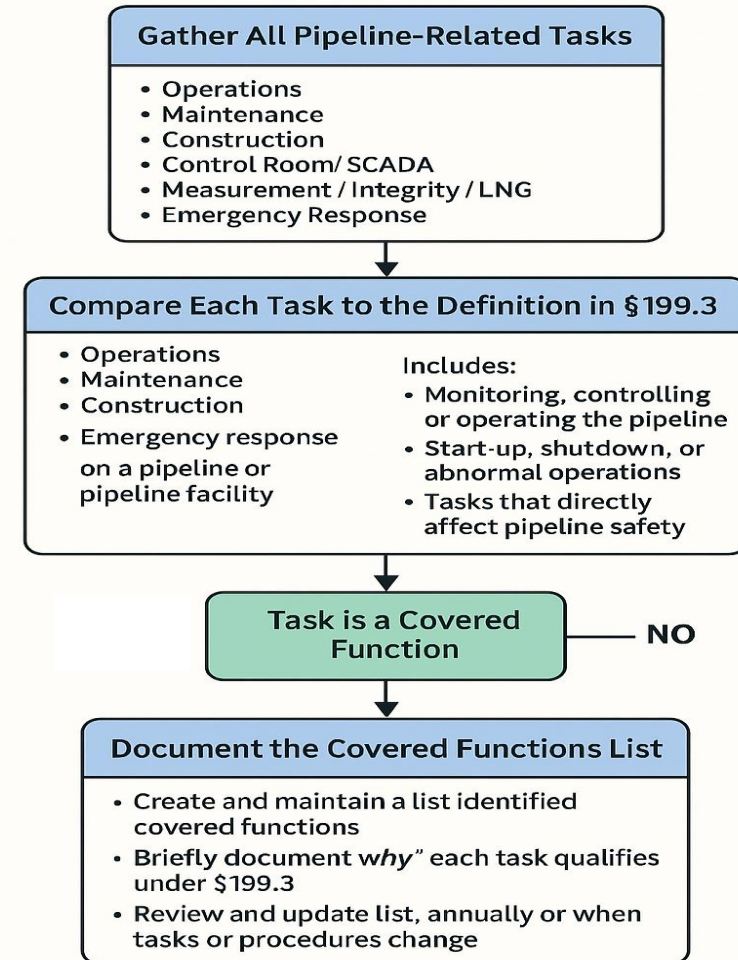


Have a process to ensure you properly identify the covered employees.

Ensure the process is communicated and implemented

- HR on-boarding process
- Job rotation (DOT to Non-DOT and Non-Dot to DOT)

## Covered Function Identification Process (49 CFR §199.3 – DOT PHMSA)



# PHMSA Program Changes/Updates



PHMSA Program Changes/Updates

# Changes to rules – Part 40



## **NPRM - Federal Register Volume 89, Number 236 (Monday, December 9, 2024)**

- In the May 2023 Final Rule, PHMSA required an oral fluid test to be conducted in certain circumstances where an observed collection is required. However, because oral fluid testing is not yet available, DOT proposes to amend DOT's regulations to require the conduct of directly observed urine collections in those circumstances for an interim period. This rulemaking would correct the inadvertent factual impossibility created by the May 2023 Final Rule.

# Changes to rules – Part 40



**NPRM - Federal Register Volume 90, Number 167 (Tuesday, September 2, 2025)**

Procedures for Transportation Workplace Drug and Alcohol Testing Programs: Addition of Fentanyl to the Department of Transportation's Drug-Testing Panel; Harmonization With Certain Items in the HHS Mandatory Guidelines for Urine and Oral Fluid; and Technical Amendments.

Comments Closed - October 17, 2025



# Changes to rules – Part 40

## **SNPRM - Federal Register Volume 90, Number 188 (Wednesday, October 1, 2025)**

- This supplemental proposal would update terminology in DOT's drug and alcohol testing regulations.
- § 40.65 and § 40.67
  - Replaced “Gender” to “Sex”

(Comments closed 15 Nov 2025)

# Certified Drug Testing Laboratory List | SAMHSA



## Current List of HHS-Certified Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine and Oral Fluid Drug Testing for Federal Agencies.

- HHS-Certified Laboratories Approved To Conduct Oral Fluid Drug Testing
- At this time, there are **no laboratories certified** to conduct drug and specimen validity tests on oral fluid specimens.
- <https://www.samhsa.gov/substance-use/drug-free-workplace/drug-testing-resources/lab-list>

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# Updates – ODAPC Handbook



## **Notice - Office of Drug and Alcohol Policy and Compliance (ODAPC)**

- ODAPC has updated the “What Employers Need to Know About DOT Drug and Alcohol Testing” guidelines, also known as the 'Employer Handbook'.
- Last revised in June 2015, this new version can be viewed at:

**[http://www.dot.gov/odapc/employer\\_handbook](http://www.dot.gov/odapc/employer_handbook).**

- A summary of the changes made to the 'Employer Handbook' can be found on the last page of the booklet.

# Program Challenges



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## State laws

- Recreational use
- Medical use



## Program Monitoring

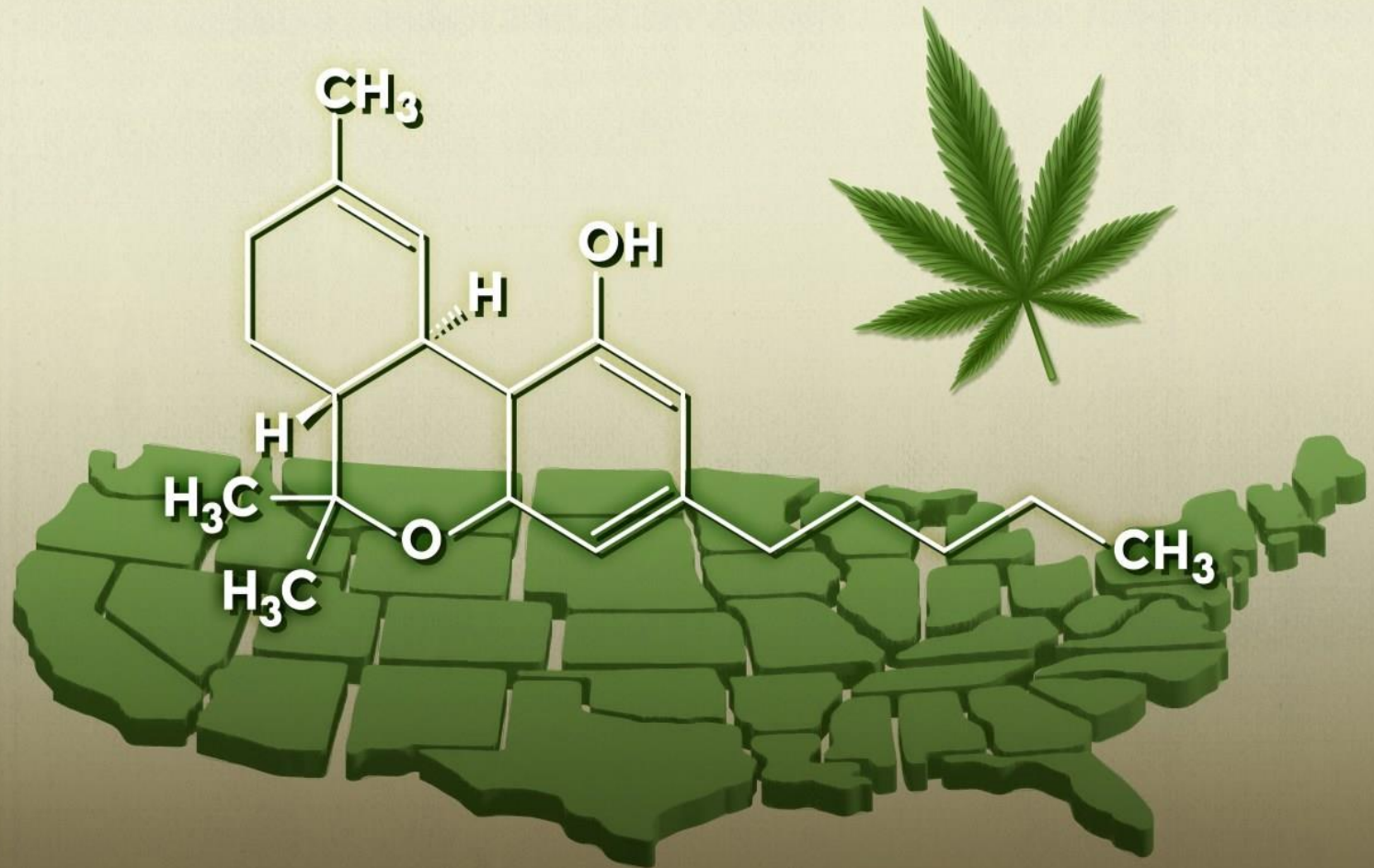
- Consortia / Third Party Administrators (TPA's)
- Contractor Compliance

# Program Challenges – State Laws



## State laws

- Medical marijuana
- Recreational use





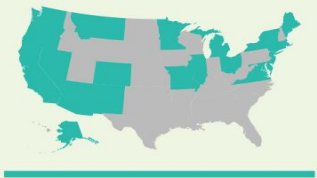
# Program Challenges – State Laws

## State laws

- In 2012 Recreational marijuana became legal in only two states
- 2025 - Recreational marijuana legal in 31 states plus the District of Columbia (DC).
- 2025 - Medical marijuana legal in 40 states plus DC.



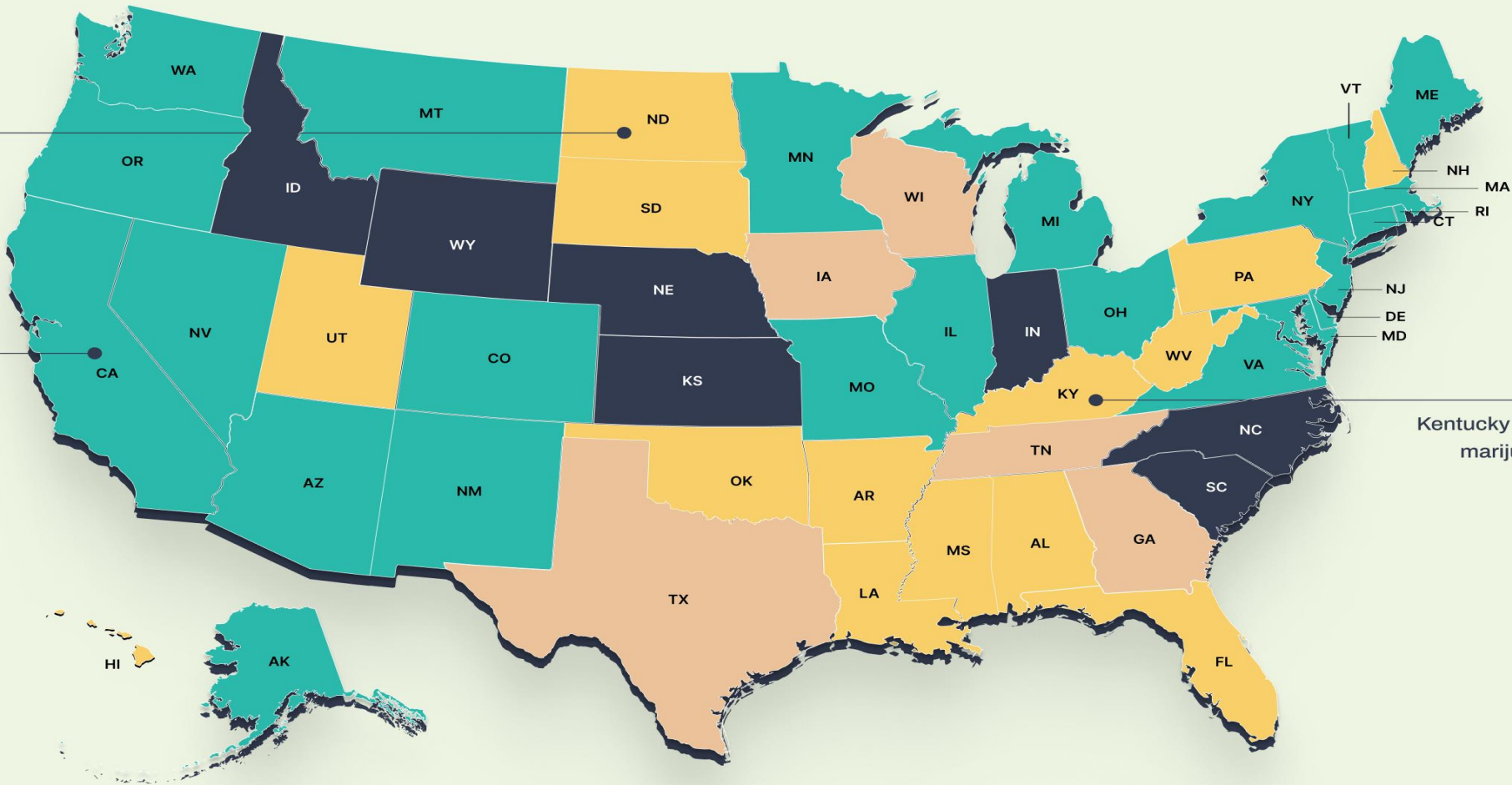
# The Cannabis Map of the United States



Most expensive cannabis in the United States.

California has the highest number of dispensaries.

Kentucky legalized medical marijuana in 2025.



# Program Challenges – State Laws



## Public perception

**The vast majority of Americans support legalizing marijuana.**

- January-February 2025 Center survey.
- Nine-in-ten U.S. adults say either that marijuana should be legal for medical *and* recreational.
- 12% say the drug should not be legal at all.

These views have held relatively steady over the past six years.

# Program Challenges – State Laws



Delta 8, or Delta-8 THC, is a naturally occurring compound in cannabis, similar to Delta 9 THC. It can also be produced by chemically converting other cannabinoids like CBD.

## DELTA 8 VS DELTA 9

16%

Around 16 percent of regular marijuana users also use Delta 8.

- **DELTA 8:** Milder psychoactive effects, less intense high.
- **DELTA 9:** Main psychoactive component in cannabis, responsible for the "high."
- **GUMMIES:** A popular form for both, offering ease of use, discretion, and long-lasting effects (4-8 hours).



- THC is so very low in CBD, Delta, tests don't pick it up?
- Employees should be aware that some legal products can show up positive on drug tests.
- No regulation. That means the government is not ensuring the level of THC remains low.





# Program Challenges – State Laws

## What can you do?

- Provide information concerning use of Marijuana and DOT requirements.
  - Medical Marijuana Notice (2009)
  - Recreational Marijuana Notice (2012)
  - DOT "CBD" Notice

<https://www.transportation.gov/odapc>

# Program Challenges – Contractor/TPA



## Program Monitoring

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





# Program Challenges – Contractor/TPA

## **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

# Common Findings



Common Findings

# Program Challenges – Contractor



- Company rep or employee didn't understand PHMSA D&A requirements.
- 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.
- Failure to identify contractors who performed covered work.
- Required annual testing percentages not met.
- No oversight on C/TPA's.



**Questions?**

**Thank You**

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