



Anti Drug & Alcohol Misuse Prevention

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Topics

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- What is required of Operators
- Employees and functions that fall under the requirement
- Challenges
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Why is a D&A Program Needed?

ALCOHOL USE

Substance Abuse & Mental Health Services Administration (SAMHSA) conducted an alcohol use survey in 2014 and estimated:

- 139.7 million people consume alcohol (52.1% of the population)
 - 2013 – 136.9 million
 - 2011 – 133.4 million
- Nearly one quarter participated in binge drinking at least once within the 30 days – 60.9 million people.

ALCOHOL USE (cont.)

- 2013 Data:
- For persons employed, the rate of alcohol use was 65.8%, which was higher than the rate for unemployed adults (53.8%).
- Out of 58+ million binge drinkers, 44 million (76.1%) were employed.
- Among 16.2 million heavy drinkers, 12.4 million (76%) were employed.

ILLICIT DRUG USE

SAMHSA conducted an illicit drug use survey in 2014 and estimated:

- 27 million people use illicit drugs
 - 2013 = 22.4 million
 - 2011 = 19.9 million

2013 Data

- 15.4 million were employed
 - 2011 = 13.1 million
- 68.9% of illicit drug users were employed

ILLICIT DRUG USE

July-December 2014 Semi-annual HHS Lab Test Data

- Approximately 3 Million tests conducted
- 57,000 laboratory confirmed positives before MRO verification
- Rate rose from 1.75% to 1.79%

WHY WE NEED D&A PROGRAMS

Use of controlled substances and misuse of alcohol is a problem in the work place

Federal Requirement – *49 CFR parts 40 and 199*

- To help prevent accidents and injuries resulting from the use of prohibited drugs by employees who perform covered functions

WHAT IS REQUIRED OF OPERATORS

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

Scope:

Operators of pipeline facilities that are subject to part 192, 193, or 195, are required to test covered employees for the presence of prohibited drugs and alcohol.

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)

Each operator shall ensure that random drug tests conducted under this subpart are unannounced and that the dates for administering random tests are spread reasonably throughout the calendar year.

- Current 2016 percentage = 25%

Required Testing (Post-Accident Drug)

Post-accident testing §199.105(b)

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

Required Testing (Post-Accident-Cont)

Post-accident testing §199.105(b)

An operator may decide not to test under this paragraph but such a decision must be based on the best information available immediately after the accident that the employee's performance could not have contributed to the accident or that, because of the time between that performance and the accident, it is not likely that a drug test would reveal whether the performance was affected by drug use.



Required Testing (Post-Accident Alcohol)

Post-accident testing \$199.225

As soon as practicable following an accident, each operator shall 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.



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 (Reasonable Cause/Suspicion)

Reasonable cause §199.105(d)

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)

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)

Return-to-duty §199.105(e)

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.

Alcohol §199.225(b) 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)

Follow-up §199.105(f)

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.

Alcohol §199.225(d)

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,
- 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

RESPONSIBILITIES (Cont)

- Provide clear policies and provisions for education and training, drug and alcohol testing
- Provide when needed, referral for evaluation, education, and treatment to employees
- 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.

COVERED FUNCTION

In accordance with §199.3 a 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
 - Contractor Compliance
 - Third Party Evaluators (TPA)
- State laws
 - Medical marijuana
 - Recreational use

Program Monitoring/Maintenance

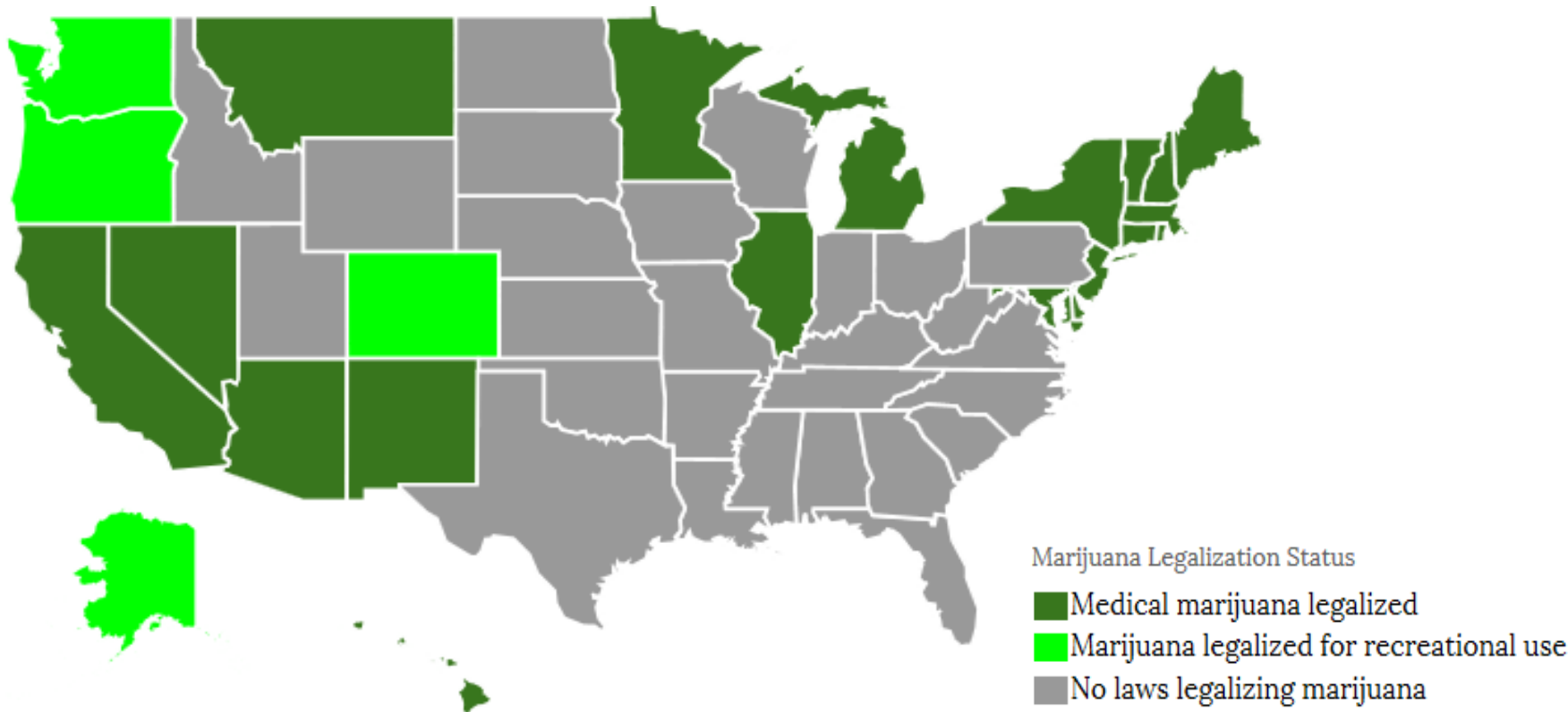
- Need to periodically review entire program
 - When was the last review?
 - Are you using a TPA?
 - DER trained?
- Need to develop method for contractor compliance and continued monitoring
 - Review Contractor D&A Plans for compliance
 - Develop checklist
 - Conduct random/periodic on-site inspections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

Program Monitoring/Maintenance

- How do you assure contractors that do not meet compliance are not performing covered functions?
 - Need to communicate non compliance of contractors to field personnel
 - Is the covered pool updated and available for verification?

State Laws

- As of May 2016, 25 states and the District of Columbia currently have laws legalizing marijuana in some form



State Laws

4 states & DC legalized marijuana for recreational use.



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

Operator did not have “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.

Notice Of Amendment

Operators anti-drug plan 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.

Civil Penalties

A civil penalty of \$40,000 for Operators violation of 49 C.F.R. § 199.225(a)(1), for failing to test each covered employee for alcohol whose performance of a covered function either contributed to the accident or could not be completely discounted as a contributing factor to that accident.

Common Findings During Audits

- Required annual testing percentages not met
- DAMIS Reporting
 - No data to report (contractor compliance)
 - Operator failed to identify contractors whom performed covered work
- Flooding the pool (Non-DOT mixed w/ DOT)
- Plan does not meet the minimum requirements
- Laboratory not approved

Common Findings During Audits

- DER not understanding regulations/requirements
- Drug/Alcohol Plans outdated
 - Missing data or inaccurate
- Post-accident testing not meeting regulations/requirements
- Rehabilitation process/procedures not followed
- Testing statistics not maintained or submitted
- Records not maintained or available

Scenario

- The Scenario: In the case of the Exxon Valdez, the court ruled that although there was no indication that Captain Hazelwood was drinking while in treatment for his alcoholism and in command of the Exxon Valdez, the company “should have known.”
- The Outcome: Because the court held Exxon responsible, the company was fined, separate from compensatory damages, \$5.5 billion in punitive damages — about one year’s profits for Exxon.

D&A & OQ

CONNECTING THE REQUIREMENTS

- D&A and OQ
 - Cannot perform covered work until compliance with D&A are met
- How is it monitored?
 - Need to demonstrate that the person(s) (Internal and Contractors) meet D&A, prior to performing covered work



§ 199.105 Drug tests required.

Added 2nd paragraph separating the existing section into 2 separate parts with (1) addressing who should / shall undergo post-accident testing; (2) address what steps the operator must take if they chose not to conduct post-accident testing.

§ 199.117 Recordkeeping.

Adds additional record retention when the decision not to administer post-accident testing is made by the operator.





§ 199.119 Reporting of anti-drug testing results.

In (a) the language stating that small operators “shall require by written notice” has been modified to state “may require by written notice”.

(b) was modified to require submission to be electronically files if possible and provides provisions for when electronic filling creates and undue burden.

§ 199.225 Alcohol tests required.

Added and deleted language to add clarification as the requirements for post-accident testing and / or the decision not to conduct post-accident testing.






§ 199.227 Retention of records.

Adds additional record retention when the decision not to administer post-accident testing is made by the operator.

§ 199.229 Reporting of alcohol testing results.

In (a) the language stating that small operators “shall require by written notice” has been modified to state “may require by written notice”.

(c) was modified to require submission to be electronically files if possible and provides provisions for when electronic filling creates and undue burden.



Questions



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