

# Webinar: Streamline Your D&A Program

We enjoy each opportunity to share information with our clients and others in the various industries we serve. Operator Qualifications (OQ) Compliance is close to our heart because that is ingrained in our DNA and the root of our history. A component of a successful OQ program is Drug and Alcohol (D&A) compliance. Below is a summary of the questions asked during our recent webinar. Responses by Dennis, Kuhn, speaker

## Questions & Answers Summary

**Explain more about combining C/TPA testing, specifically which are allowed or not allowed, and why?**

You can include authorizations of the release of information for FMCSA and PHMSA on the same page. As long as it is under DOT you can use a combined pool for testing. Most companies do not mix these due to differences in requirements. Each regulatory group has specific requirements either related to definitions, the timing of testing or percentages, and administration or documentation. Only the testing process is the same.

With regard to a question about using a clearinghouse. The clearinghouse requirement is developed and required for FMCSA.

**What are the benefits and cautions of having a D&A program overseen by a third-party?**

The benefit depends on the service you select with the TPA. They can manage a big portion of your requirements. The caution is you will still need to monitor compliance, as the company under the requirements of 199 and part 40 you are the ones held responsible for assuring compliance.

**Pre-employment testing: What if there is no background information for past employment, for example, hasn't worked in X number of years?**

You must request the information from DOT-regulated employers who have employed the employee during any period during the two years before the date of the employee's application or transfer.



**Must a company obtain a pre-employment alcohol screen or do we just need a drug screen for pre-employment?**

PHMSA only requires that you have a pre-employment drug test.

**Is there a program to help you randomly pick employees for testing?**

There are several third-party companies (TPAs) that offer this service. We do not endorse nor have we tested any random selection software. However, there are several options including free software available online.

**Provide more information about 3rd party requirements, specifically, documentation needed, handling of subcontractors, ownership for testing, and DAMIS submittal?**

Unless otherwise required by the operator, any contractor company will need to meet all requirements for 49 CFR 199 and Part 40. This is not different for contractors or subcontractors:

*199.115 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:*

*(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.*

DAMIS submittal is a requirement for Operators. They need to collect the data and information from all contractors performing work on their behalf and submit it directly to DAMIS. We recommended Operators develop a structured and well-defined process to collect this information to streamline the process leading up to the annual deadline.

**Please share specifics about substances tested. Can you test for CBD and require employees to not use CBD?**

Under DOT, you can only test for the 5-panel testing: Marijuana metabolites (THCA) - Cocaine metabolite (Benzoyllecgonine) – Codeine/Morphine – Hydrocodone/Hydromorphone – Oxycodone/Oxymorphone – 6-Acetylmorphine – Phencyclidine – Amphetamine/Methamphetamine – Methylenedioxyamphetamine (MDMA)\Methylenedioxyamphetamine (MDA)  
If you wish to test for CBD use that does not contain THC, you would need to do so outside of DOT as part of your Drug-Free workplace program/company policy.



### **Can you provide more information related to non-DOT D&A programs?**

There are no DOT requirements related to having a Company Drug-Free workplace program. Non-DOT programs are usually developed based on state and/or county laws that are on top of any company policy.

DOT testing must be completely separate. You cannot use the same collected specimen that was taken for non-dot to use for DOT.

*(a) DOT tests must be completely separate from non-DOT tests in all respects.*

*(b) DOT tests must take priority and must be conducted and completed before a non-DOT test is begun. For example, you must discard any excess urine leftover from a DOT test and collect a separate void for the subsequent non-DOT test.*

*(c) Except as provided in paragraph (d) of this section, you must not perform any tests on DOT urine or breath specimens other than those specifically authorized by this part or DOT agency regulations. For example, you may not test a DOT urine specimen for additional drugs, and a laboratory is prohibited from making a DOT urine specimen available for a DNA test or other types of specimen identity testing.*

*(d) The single exception to paragraph (c) of this section is when a DOT drug test collection is conducted as part of a physical examination required by DOT agency regulations. It is permissible to conduct required medical tests related to this physical examination (e.g., for glucose) on any urine remaining in the collection container after the drug test urine specimens have been sealed into the specimen bottles.*

*(e) No one is permitted to change or disregard the results of DOT tests based on the results of non-DOT tests. For example, as an employer you must not disregard a verified positive DOT drug test result because the employee presents a negative test result from a blood or urine specimen collected by the employee's physician or a DNA test result purporting to question the identity of the DOT specimen.*

*(f) As an employer, you must not use the CCF or the ATF in your non-DOT drug and alcohol testing programs. This prohibition includes the use of the DOT forms with references to DOT programs and agencies crossed out. You also must always use the CCF and ATF for all your DOT-mandated drug and alcohol tests.*

### **How often does the 60-minute drug and alcohol supervisor training need to be done? One time or annually?**

To satisfy the requirements, it is one time. However, we recommend establishing recurring training.

### **For reasonable cause or reasonable suspicion, are auditors expecting to see that the individual took the training once, or do they expect to see re-training?**

The current requirement is one time. However, we recommend establishing recurring training.



**Post-accident testing: Incidents and accidents are sometimes used interchangeably but have different meanings.**

Accident means an incident reportable under Part 191 of this chapter involving gas pipeline facilities or LNG facilities, or an accident reportable under Part 195 of this chapter involving hazardous liquid pipeline facilities.

**Incident** means any of the following events:

(1) An event that involves a release of gas from a pipeline, gas from an underground natural gas storage facility (UNGSF), liquefied natural gas, liquefied petroleum gas, refrigerant gas, or gas from an LNG facility, and that results in one or more of the following consequences:

- (i) A death, or personal injury necessitating in-patient hospitalization;
- (ii) Estimated property damage of \$50,000 or more, including a loss to the operator and others, or both, but excluding the cost of gas lost; or
- (iii) Unintentional estimated gas loss of three million cubic feet or more.

(2) An event that results in an emergency shutdown of an LNG facility or a UNGSF. Activation of an emergency shutdown system for reasons other than an actual emergency within the facility does not constitute an incident.

(3) An event that is significant in the judgment of the operator, even though it did not meet the criteria of paragraph (1) or (2) of this definition.

**An accident** report is required for each failure in a pipeline system subject to this part in which there is a release of the hazardous liquid or carbon dioxide transported resulting in any of the following:

(a) Explosion or fire not intentionally set by the operator.

(b) Release of 5 gallons (19 liters) or more of hazardous liquid or carbon dioxide, except that no report is required for a release of less than 5 barrels (0.8 cubic meters) resulting from a pipeline maintenance activity if the release is:

- (1) Not otherwise reportable under this section;
- (2) Not one described in § 195.52(a)(4);
- (3) Confined to company property or pipeline right-of-way; and
- (4) Cleaned up promptly;

(c) Death of any person;

(d) Personal injury necessitating hospitalization;

(e) Estimated property damage, including cost of clean-up and recovery, value of lost product, and damage to the property of the operator or others, or both, exceeding \$50,000.

## Additional Information

Veriforce offers a number of professional consulting services including, Drug & Alcohol Program HQ Based Assessments and Operator Qualification Assessment or Program Development.

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