ANTI-DRUG & ALCOHOL PROGRAMS

Understanding the Regulatory Requirements

Leslie Prince, Compliance Systems LLC
## Drug & Alcohol Federal Regulations

<table>
<thead>
<tr>
<th>CFR Part</th>
<th>Description</th>
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<tbody>
<tr>
<td>49 CFR Part 40</td>
<td>Procedures for transportation workplace drug &amp; alcohol testing programs</td>
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<tr>
<td>49 CFR Part 199</td>
<td>PHMSA Drug &amp; Alcohol Testing</td>
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<tr>
<td>49 CFR Part 382</td>
<td>Federal Motor Carrier Safety Administration – Controlled Substances and Alcohol Use and Testing</td>
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PHMSA Drug Testing Requirements

There are six scenarios where an employee may be drug tested:
1. Pre-Employment
2. Post accident
3. Randomly – 50% for drugs;
4. Reasonable cause – supervisors must be trained
5. Return to Work – after a positive drug test or refusal
6. Follow-up – at least 6 tests after the Return to Duty
There are five scenarios where an employee may be tested for alcohol:
1. Post Accident
2. Reasonable suspicion
3. Return to Duty
4. Follow UP
Determining if a Post-Accident Test is Needed:

Was there an incident or accident?

Yes: Did the Incident / Accident Meet the Definition of a Reportable Incident under 191.3? See Definition in PHMSA D&A Plan

No: Did the employee’s performance of the covered function contribute to the incident or cannot be completely discounted as a contributing factor?

Yes: Post-Accident Drug Test Required

No: Drug Test Not Required

Did you have an internal policy requiring a Post-Accident Drug Test or Alcohol Test?

Yes: Must use Federal Custody Control Form (PHMSA) as soon as possible but no later than 32 hours after an accident

No: Post-Accident Alcohol Test Required

As soon as practicable following an accident (Must use DOT Alcohol Testing Form). If a test is not administered within 2 hours following an accident the operator is to prepare and maintain on file a record stating the reasons the test was not promptly administered.

Special Thanks: Tim Franklin, Municipal Gas Authority of Georgia
Part 40 - DOT Procedures

- How to conduct D&A tests
  - Who can perform them – techs must be trained
  - What procedures are to be used
    - Criteria or standards for drug specimen collection & testing – Must follow Part 40 and Part 199.
    - Alcohol concentration testing:
      - 0.000-0.019 - Negative
      - 0.020-0.039 – Off work
      - 0.040 and up – DOT Violation
If you have CDL Drivers:

- FMCSA Clearing House Regulations apply
  - Including pre-employment query

If you have CDL drivers that perform safety sensitive functions (covered tasks), you may need to create two separate pools to do random alcohol tests:

1. Employees that work on the pipeline and any CDL drivers that spend more than 50% of their time on the pipeline
2. CDL drivers that spend less than 50% of their time on the pipeline

SIF Anti-D&A Plan – Chapter 10

SIF Drug and Alcohol Reference Matrix

Chapter 10. SIF Drug and Alcohol Reference Matrix

Comprehensive Anti-Drug and Alcohol Misuse Program vs SIF Anti Drug Plan

10.1. Anti-Drug Program

Table 10.1. Protocol Area A, Anti-Drug Program, Plan and Policies

<table>
<thead>
<tr>
<th>Protocol</th>
<th>Regulation</th>
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<th>SIF</th>
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<tbody>
<tr>
<td>A.01</td>
<td>195.101</td>
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<td>A.01a</td>
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<td>A.01c</td>
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<td>A.01e</td>
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Table 10.2. Protocol Area B. Officials, Representatives and Agents

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<tr>
<td>B.01</td>
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<tr>
<td>B.01b</td>
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<td>B.01c</td>
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<tr>
<td>B.01d</td>
<td>40.35</td>
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SIF APGA SECURITY AND INTEGRITY FOUNDATION
The APGA SIF will keep the plan up-to-date with changes in regulations.

It is your responsibility to annually review the plan to ensure all your system specific information.

NOTE: Did you update your plan in 2018 when the synthetic opioids were added to the DOT test panel?
WHAT ODAPC SAYS FOR EMPLOYERS:

- MODAL REGULATIONS STILL APPLY
- EMPLOYERS SHOULD CONTACT COLLECTION SITES TO VERIFY THAT THEY ARE STILL PROVIDING SERVICES AND THEY ARE FOLLOWING CDC GUIDELINES.
- IF USUAL SITE IS NOT AVAILABLE, IS THERE AN ALTERNATIVE SITE?
- IS IT POSSIBLE TO FIND A MOBILE COLLECTOR
- IF YOU HAVE AN EMPLOYEE WHO REFUSES TO GO TO CLINIC DUE TO COVID-19 CONCERNS, YOU MUST EVALUATE THE REASON FOR THE REFUSAL TO DETERMINE IF YOU ARE GOING TO CALL THIS A REFUSAL TO TEST.

EMPLOYEES SHOULD

- PROACTIVELY DISCUSS CONCERNS ABOUT TESTING WITH EMPLOYER
What to do about testing during COVID-19

- WHAT PHMSA SAYS ABOUT TESTING:
  - Operators are permitted under the part 199 regulations to schedule the date, time, and location of the pre-employment drug test.
  - Moreover, the regulations allow for random drug testing to be spread reasonably throughout the calendar year.
  - PHMSA will consider using its enforcement discretion with regards to requirements found in 49 C.F.R. § 199.105(a) and (c).
  - DOCUMENT, DOCUMENT, DOCUMENT! Operators who are unable to comply with these regulations should maintain documentation explaining what specific requirements are not being met, how the non-compliance is related to COVID-19, and what alternative measures are being taken to ensure safety...including the clinics that you called to arrange for testing.
QUESTIONS?

“Raise your hand” to ask a question or type it into the chat box on the GoToMeeting platform.
SIF  APGA SECURITY AND INTEGRITY FOUNDATION

www.apgasif.org

Erin Kurilla  Leslie Prince
APGA SIF  Compliance Systems LLC
ekurilla@apga.org  leslie@compliancesystemsllc.com

Gerry Lee  Maurice Chaney
APGA SIF  Municipal Gas Authority of Georgia
glee@apga.org  mchaney@gasauthority.com