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## Office of Pipeline Safety

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### MNOPS Alert Notice – 03 - 2022 to Pipeline Operators

#### *49 CFR Parts 199 & 40 Amendments, DOT Drug Testing Clarification, and Recreational Cannabis*

**Date:** November 16, 2022

**Purpose:**

The purpose of this Alert Notice is to provide updates related to recent amendments to 49 CFR Parts 40 and 199 that could affect your policies regarding drug and alcohol testing, provide clarification regarding common misconceptions related to Department of Transportation (DOT) drug testing of employees, and alert pipeline operators to recent legal changes in the state of Minnesota related to recreational cannabis.

**Guidance Pertains to the Following Codes:**

- I) 49 CFR Part 199
- II) 49 CFR Part 40

**Background:**

*49 CFR Parts 199 & 40 Amendments:*

Federal Drug and Alcohol regulations require pipeline operators to maintain and follow a written anti-drug and alcohol misuse plan that *conforms* to Part 199 and Part 40. When Parts 199 or 40 are amended, pipeline operators must amend their written plans to reflect changes. Please review the following recent amendments to Parts 199 and 40 and update your drug and alcohol plans as necessary:

- [40-30 \(4/13/2015\) chain of custody and CCF form requirements](#)
- [40-31 \(8/8/2016\) update "service agent" definition](#)
- [40-32 \(1/1/2018\) add four drugs, add MDA as initial test analyte, remove MDEA as confirmatory test analyte, different web links](#)
- [199-26 \(3/6/2015\) remove 199.111 because conflicted with 40\)](#)
- [199-27 \(3/24/2017\) post-accident drug test 32 hour limit and alcohol test update and record, MIS form](#)
- [199-28; 40-33 \(4/23/2019\) opioids.](#)

### *Clarification on DOT Testing of Covered Employees:*

The Pipeline and Hazardous Materials Safety Administration (PHMSA) has received numerous requests for interpretation of who is, and who is not, a “covered employee” as it relates to DOT drug and alcohol testing.

For clarification, §199.3 defines a covered employee to mean an employee who performs a covered function, defined as an operations, maintenance, or emergency response function regulated by Part 192, 193, and/or 195 and which must be performed on a pipeline or LNG facility.

Pipeline operators are encouraged to re-evaluate their internal drug and alcohol testing programs to ensure only those employees identified as covered employees are subject to DOT drug and alcohol testing. This should include an assessment of each employee’s job functions/duties and whether or not it’s possible they might be expected to perform any covered function either during their regular work day or in the event of an emergency response. Please keep in mind that an Operator Qualification (OQ) covered task may not necessarily be a drug and alcohol covered function. Operators should also keep in mind that non-DOT drug and alcohol testing may be used on non-covered employees.

### *Recreational Cannabis:*

Recent changes in both federal and state law have created circumstances in which tetrahydrocannabinol (THC), the psychoactive compound found in marijuana, is no longer a controlled substance. The purpose of this alert notice is to provide background on this legal change to ensure that operators and their employees understand how this will impact their drug and alcohol programs.

The 2018 Farm Bill made changes to the federal Controlled Substances Act by legalizing hemp, which is defined as a cannabis plant containing THC at concentrations less than 0.3% by weight. THC concentrations sourced from hemp plants, along with other non-psychoactive cannabinoids such as CBD, are now legal at the federal level and are no longer a controlled substance. As of July 1, 2022, hemp-derived THC, in limited concentrations, was made legal in the state of Minnesota.

Despite these changes to the Controlled Substances Act at the federal level, THC is still a prohibited drug per 49 CFR Part 40. It is critical that employees who perform covered functions understand that while hemp-derived THC is legal at both the federal and state levels, no changes have been made to 49 CFR Part 40 or Part 199 reflecting this. If a covered employee takes a DOT drug test and THC is detected at concentrations above 50 ng/mL<sup>3</sup>, that is considered a failed test whether the THC came from legal hemp or illicit marijuana.

Additionally, covered employees should exercise caution in the consumption of non-psychoactive cannabinoids such as CBD. While CBD on its own will not cause a covered employee to fail a drug test, a 2020 study conducted by the Food and Drug Administration determined that 49% of the tested CBD products were contaminated with THC.

Additionally, labeling can be misleading on CBD products which could lead to a covered employee inadvertently consuming THC and failing a drug test.

Please review the following articles for additional information:

[DOT Recreational Marijuana Notice](#)

[DOT CBD Notice](#)

[DOT Medical Marijuana Notice](#)

**Please contact our office if you have any questions regarding this alert notice.**

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