



U.S. Department
of Transportation

Pipeline and Hazardous Materials
Safety Administration

1200 New Jersey Avenue SE
Washington DC 20590

DEC 04 2019

Mr. Billy Stover
Fleetworthy Solutions
DOT Regulatory Compliance Consultant
4600 American Parkway
Suite 300
Madison, WI 53718

Dear Mr. Stover:

In a letter to the Pipeline and Hazardous Materials Safety Administration (PHMSA) dated October 28, 2019, you requested an interpretation of the PHMSA *Drug and Alcohol Testing* regulations in 49 Code of Federal Regulations (CFR) Part 199. Specifically, you requested clarification as to whether certain employees would be subject to DOT drug and alcohol (D&A) testing, i.e., the testing described in the U.S. Department of Transportation (DOT) *Procedures for Transportation Workplace Drug and Alcohol Testing Programs* in 49 CFR Part 40.

Part 199 requires operators of pipeline facilities subject to Parts 192, 193, or 195 to D&A test “covered employees” for the presence of prohibited drugs and alcohol using the DOT procedures in Part 40. A “covered employee” is an individual who performs a D&A “covered function.” Therefore, to determine whether an employee is subject to DOT D&A testing, it is essential to understand the various terms used and/or defined by PHMSA.

Per §199.3:

Covered employee, employee, or individual to be tested means a person who performs a “covered function,” including persons employed by operators, contractors engaged by operators, and persons employed by such contractors.

Covered function means an operations, maintenance, or emergency-response function regulated by Parts 192, 193, or 195 of this chapter that is performed on a “pipeline” or on an “LNG facility.”

Per §192.3:

Pipeline means all parts of those physical facilities through which gas moves in transportation, including pipe, valves, and other appurtenance attached to pipe, compressor units, metering stations, regulator stations, delivery stations, holders, and fabricated assemblies.

Per §195.2:

Pipeline or pipeline system means all parts of a pipeline facility through which a hazardous liquid or carbon dioxide moves in transportation, including, but not limited to, line pipe, valves, and other appurtenances connected to line pipe, pumping units, fabricated assemblies associated with pumping units, metering and delivery stations and fabricated assemblies therein, and breakout tanks.

Per §193.2007:

LNG facility means a pipeline facility that is used for liquefying natural gas or synthetic gas or transferring, storing, or vaporizing liquefied natural gas.

A close read of the definitions above shows that the operations, maintenance, and emergency response functions described in the term "*covered functions*" means only those functions performed on those parts of a pipeline system through which the product flows in transportation or on those parts of an LNG plant where LNG is liquefied, vaporized, stored, or transferred. Parts 192, 193, and 195 each have subparts, sections, and paragraphs describing these operations, maintenance, and emergency functions.

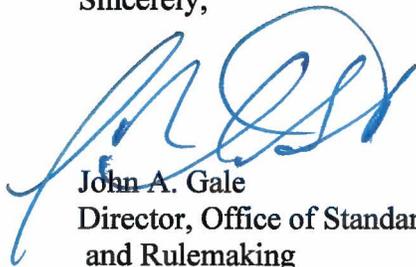
You presented a scenario in which an employee is on-site and moves an extension cord to prevent slips, trips, or falls. You asked if this employee would be considered as performing a "*covered function*," and thus, would be a "*covered employee*" subject to DOT D&A testing.

While it is possible an employee performing an operations, maintenance, or emergency response function (i.e. *covered function*) on a pipeline or LNG facility may move an extension cord, the mere movement of an extension cord independent of an operations, maintenance, or emergency response function on a pipeline or LNG facility is not a "*covered function*." Therefore, this employee is not considered a "*covered employee*" and must not be DOT D&A tested.

Notwithstanding the above, nothing in Part 199 prohibits an employer from D&A testing any of its employees using non-DOT procedures.

If we can be of further assistance, please contact Tewabe Asebe at 202-366-5523.

Sincerely,



John A. Gale
Director, Office of Standards
and Rulemaking

October 31, 2019

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October 28, 2019

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Request for Interpretation

Dear Sir or Madam:

Requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 199 and 40) applicability of the DOT drug testing regulations to the definition of “covered employee.”

Background

Understanding a person is subject to the drug testing regulations under 49 CFR Parts 199 and 40 when that person performs an operation, maintenance, or emergency-response function on a pipeline or LNG facility, which is regulated by Part 192, 193, or 195. Primary regulation in Part 192 that concerns an operator’s response to a pipeline emergency is 49 CFR 192.615, “Emergency plans.” Under § 192.615(a), an operator must have procedures for receiving notices of events that require immediate response by the operator.

Question 1

Pipeline operators determine which categories of employees (including contractors) are subject to the drug testing regulations. In the case when an employee is on-site and moves an extension cord to prevent slips, trips, or falls (either on the pipeline or not on the pipeline), would this employee be considered as performing a covered function as described in 49 Part 192, an independent function for which procedures are required by 49 CFR 192.615(a), or it does not appear that the employee is performing covered functions? Since the work does not appear to satisfy Part 192, 193, or 195 operating, maintenance, or emergency-response requirements, the contractor employees would not be subject to drug testing.

I respectfully request a written response to this inquiry at your earliest convenience.

Sincerely,



Billy Stover
DOT Regulatory Compliance Consultant
Fleetworthy Solutions