



Pipeline and Hazardous Materials Safety Administration (PHMSA)

Drug & Alcohol Regulations

South Dakota / North Dakota Pipeline Safety Operator Training

March 11, 2025

Wayne T. Lemoi

D&A Program Manager

PHMSA, Office of Pipeline Safety



Know what's below.
Call before you dig.

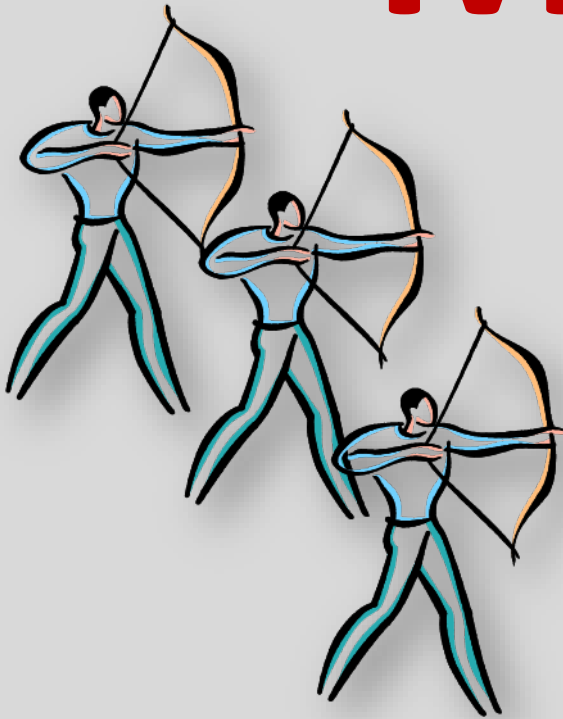




**PHMSA/DOT
Drug & Alcohol
testing MYTHS**

PHMSA's Observation

MYTHS



Employers, C/TPAs,
Collectors, STT/BAT,
Private Sector Auditors, etc.

PHMSA/DOT
Drug & Alcohol Program

Back to Basics



Dept of Transportation

Not...

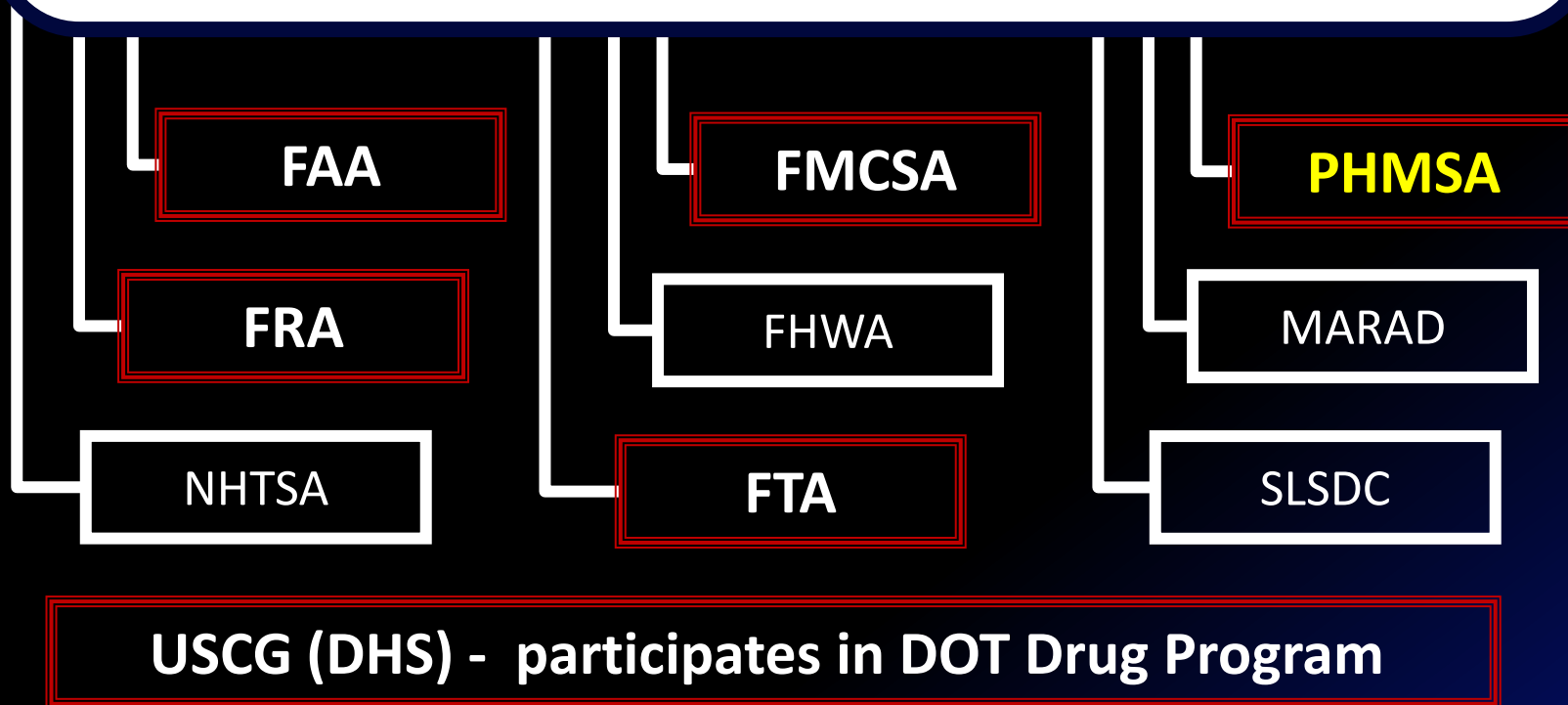
Dept of Energy or
Dept of Oil & Gas





DOT Agency*

Required D&A Programs



* Actually Administrations

PHMSA regulates Pipelines used in **Transportation**



Chief Counsel

Govt and Public Affairs

Chief Financial Officer

Administration and
Management Services

PHMSA (OPS) D&A Organization

Office of
Pipeline Safety



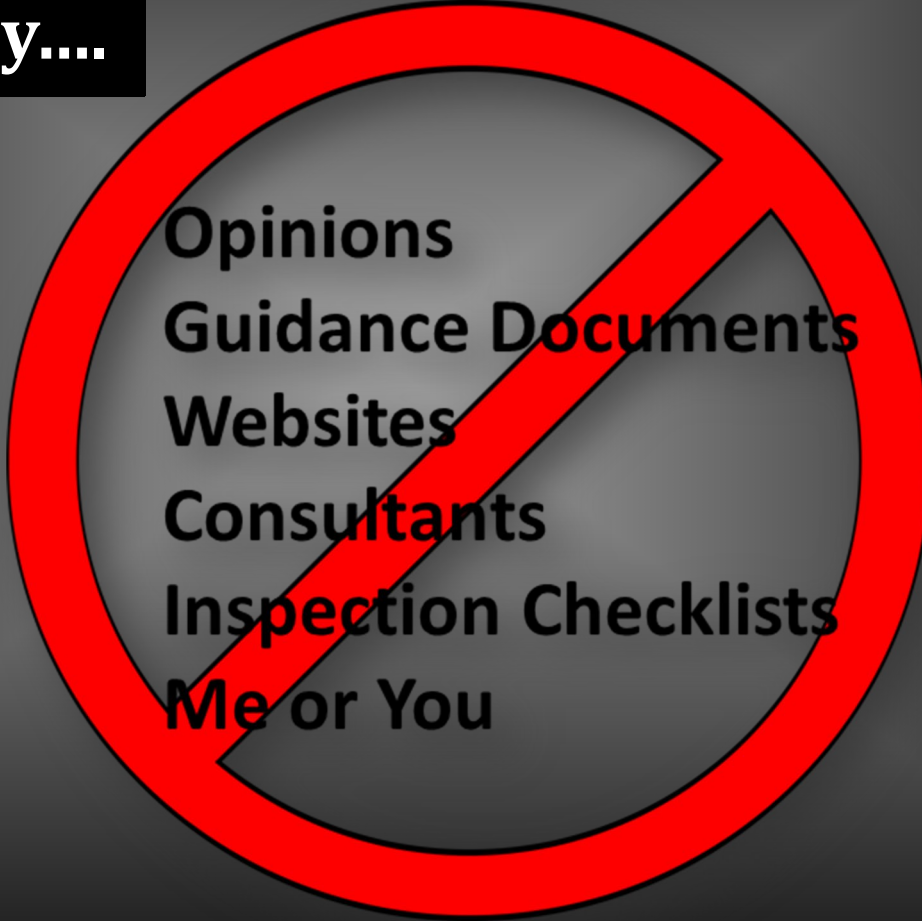
A large blue industrial pipe with a flange and bolts, set against a background of a grassy field. The pipe is the central focus, with a large blue flange on the right side. The background shows a green field with some dry grass or straw. The lighting is bright, suggesting a sunny day.

Let's learn about

Pipeline Safety
Drug & Alcohol
Regulations

PHMSA D&A Testing

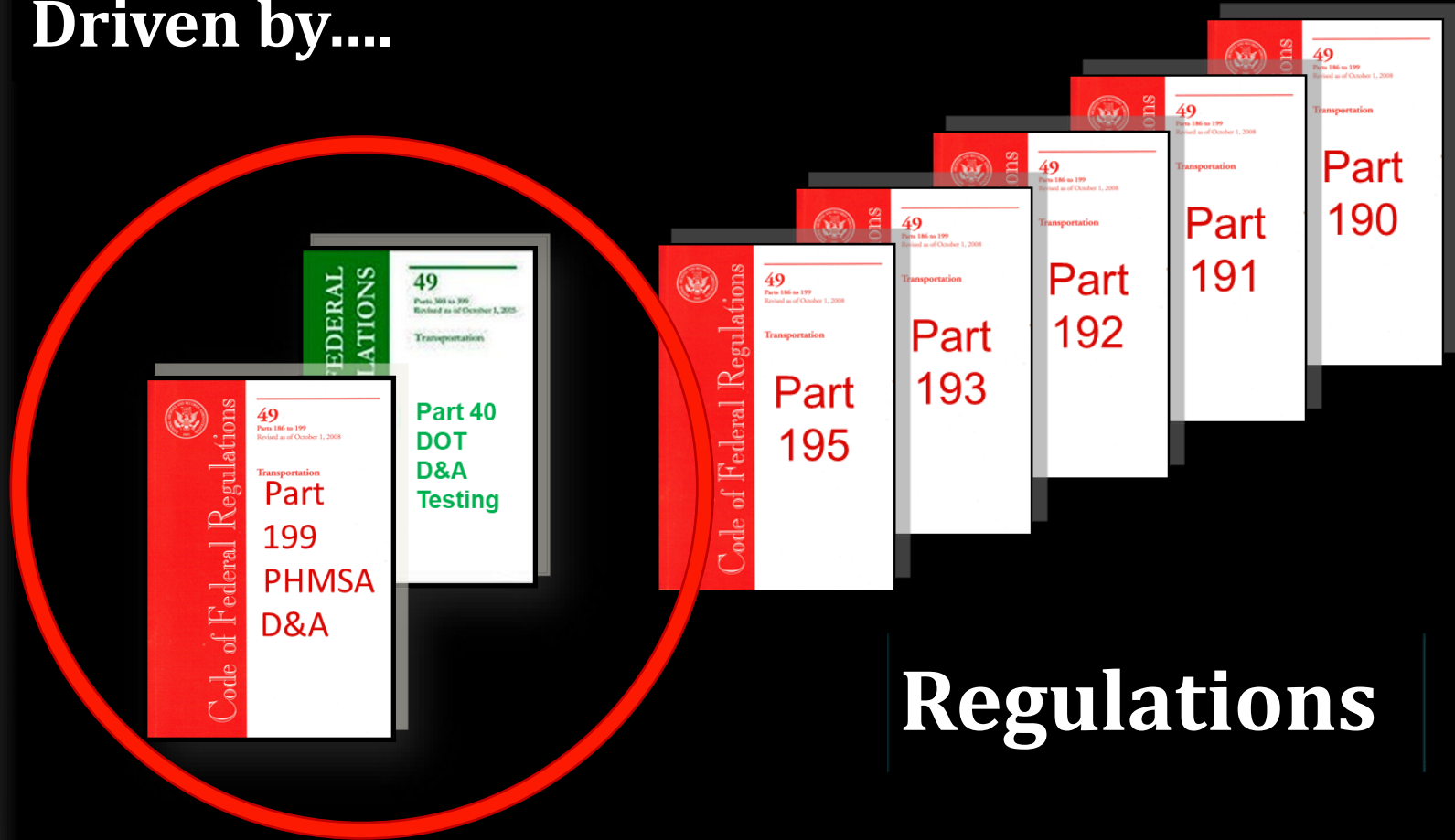
Not Driven by....



Opinions
Guidance Documents
Websites
Consultants
Inspection Checklists
Me or You

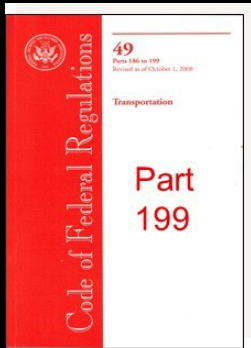
PHMSA D&A Testing

Driven by....



Regulations

PHMSA D&A Testing Regulations



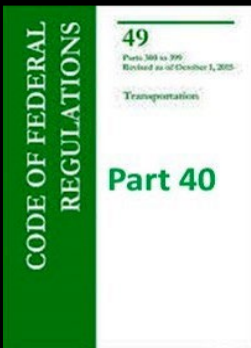
PART 199—DRUG AND ALCOHOL TESTING

Subpart A - General

15 pages

Subpart B - Drug Testing

Subpart C - Alcohol Misuse Prevention Program

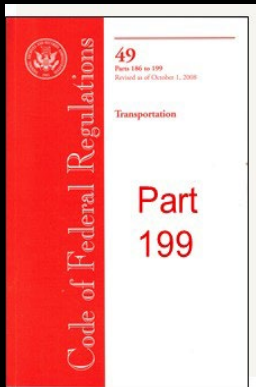


PART 40—PROCEDURES FOR TRANSPORTATION WORKPLACE DRUG AND ALCOHOL TESTING PROGRAMS

108 pages

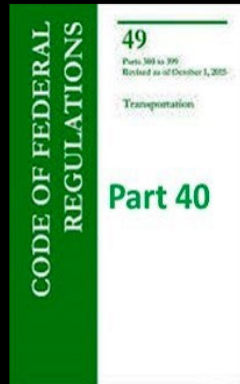
Subparts A - O

PHMSA D&A Testing Regulations



PHMSA

Who? – When? – Why?



DOT

How?

Who gave PHMSA the

Authority

to promulgate
regulations?



Primer on Regulatory Authority



Start with Statutory Authority



CONGRESS

Pipeline Safety Laws
49 USC 60101-60301 (*et seq.*)

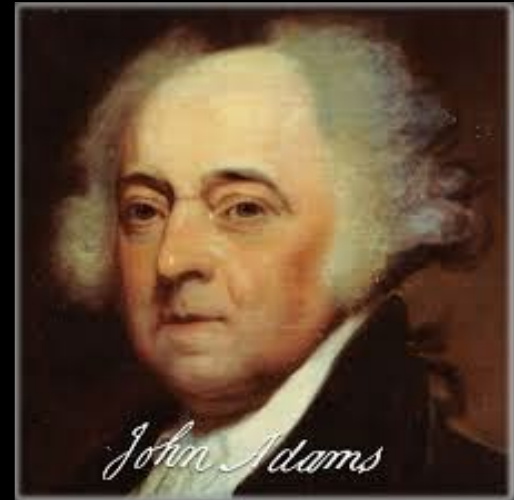


The Federal Pipeline Safety Laws
are **codified** under Title 49

Statutory Authority

“The laws are a dead letter until an administration begins to carry them into execution.”

President John Adams



Implementing Regulations



49 U.S.C. 60101 *et seq.*



DOT Secretary

49 CFR §1.97



Office of
Pipeline Safety



PHMSA

**Develop, Implement & Administer
Pipeline Safety Regulations**

Implementing Regulations

Amt 191-31

the process
recordkeeping requirements
assessment, Safety devices.

In consideration of the foregoing,
PHMSA amends 49 CFR parts 191 and
192 as follows:

PART 191—TRANSPORTATION OF NATURAL AND OTHER GAS BY PIPELINE; ANNUAL, INCIDENT, AND OTHER REPORTING

■ 1. The authority citation for part 191
continues to read as follows:

Authority: 30 U.S.C. 185(w)(3), 49 U.S.C.
5121, 60101 *et seq.*, and 49 CFR 1.97.

■ 2. The heading for part 191 is revised
to read as set forth above.

■ 3. In § 191.1, paragraphs (a) and (b)(2)
and (3) are revised, paragraph (b)(4) is
removed, and paragraph (c) is added to
read as follows:



United States Government

Congress



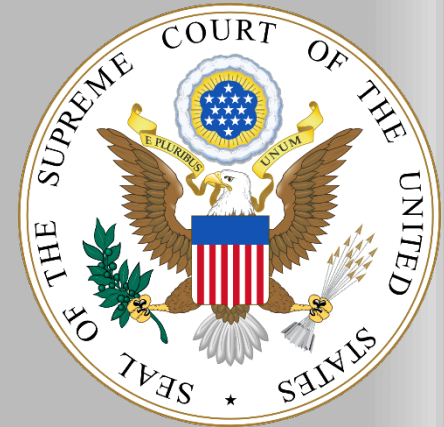
- Senate
- House of Representatives

President



- Chief Executive
- Head-of-State
- Commander-in-Chief U.S. Armed Forces

Supreme Court



Highest Federal Judiciary





Rock



Paper



Scissors



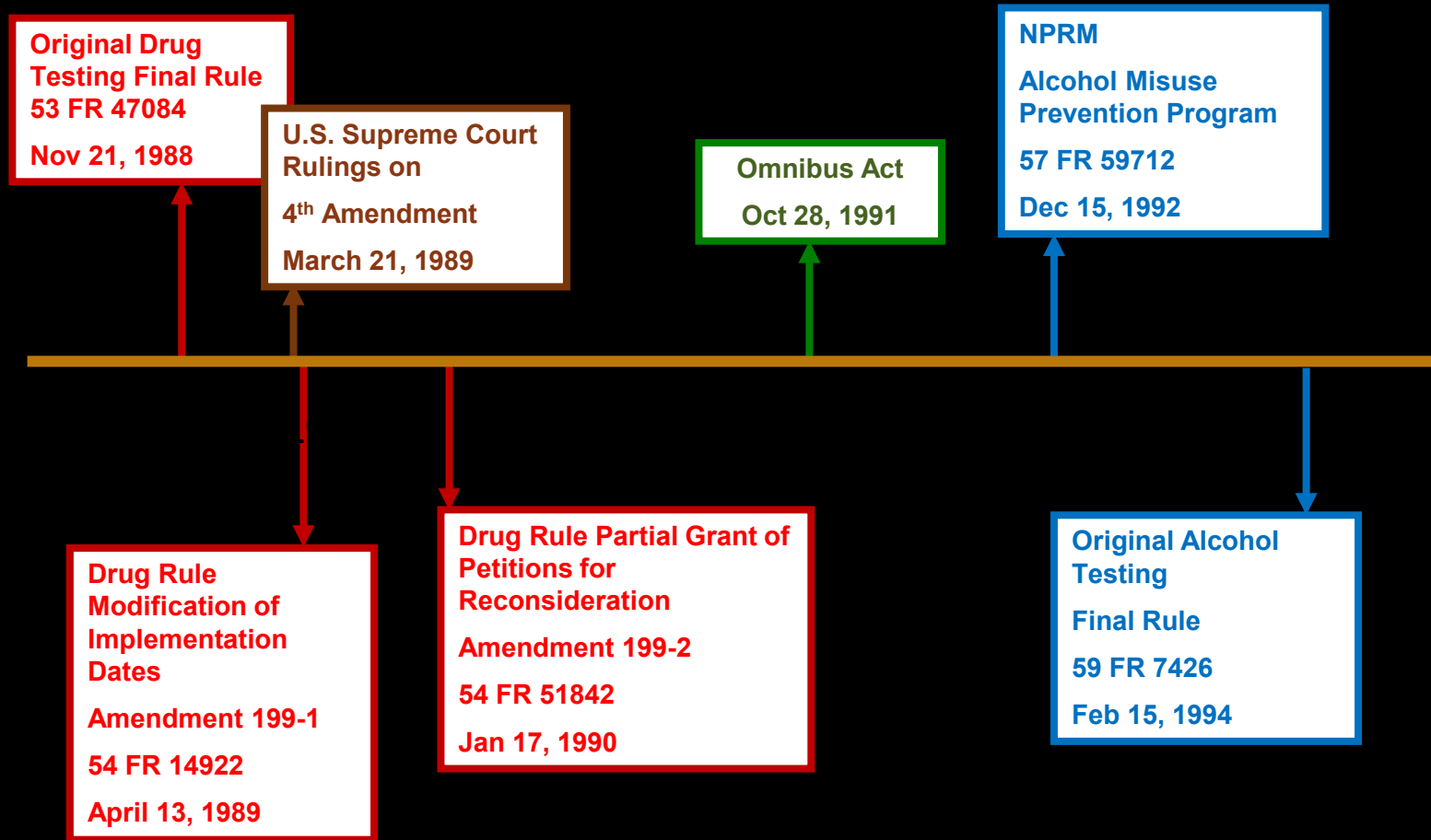
U.S. Supreme Court Rulings on Drug & Alcohol Testing

The 4th Amendment

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Drug & Alcohol Regulations

- Early Timeline -



U.S. Supreme Court Rulings

1 - Skinner v. Railway Labor Executives Association

Railway trade unions sued the Sec of Transportation to have Federal Railroad Administration (FRA) drug test regulations declared unconstitutional under the 4th Amendment of the U.S. Constitution.

The 4th Amendment

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Decided March 21, 1989

2 - National Treasury Employees Union v. Von Raab

The National Treasury Employees Union sued the Commissioner of the U.S. Customs Service alleging that drug testing violated the 4th Amendment of the United States Constitution.

U.S. Supreme Court Rulings

In Summation – The Court...

Found that drug tests were **“searches”** and **“seizures”** under the 4th Amendment of the Constitution, which protects us from **unreasonable searches and seizures.**

Concluded, however, that some drug and alcohol tests were **“reasonable”** under a **“balancing test”** that measures the privacy interests of the employees against the Government's public safety interests.

Acknowledged the Government had a **“compelling interest”** in detecting and deterring the use of drugs and alcohol but only by workers in **“safety-sensitive jobs.”**

U.S. Supreme Court Rulings

In Good Ol' Plain Language

The Skinner and Von Raab cases established that drug and alcohol testing is

- permissible without a warrant, probable cause, or particularized suspicion,
- if the Government can show that a testing program is reasonable and includes only safety-related jobs.

And since the pipeline industry is

- pervasively regulated to ensure safety,
- employees in safety-related jobs have a diminished expectation of privacy attached to that employment.

The DOT D&A testing of Private Sector Employees is required by DOT Agency Regulations

Foot Stomper



But....

The U.S. DOT says,

*“There is no Federal transportation safety interest in using this testing for individuals other than safety-sensitive employees. Consequently, DOT testing **cannot be conducted** on employees **not regulated** by the DOT agencies.”*

Office of the Secretary of Transportation, February 28, 2022, 87 FR 11161

The D&A testing of **non-covered employees** using the DOT procedures in Part 40 or DOT forms **is a violation of Part 40.**



Foot Stomper



**Let's talk
about some*
PHMSA/DOT
D&A Myths**

*** But certainly not all !**

D&A Myths

DOT =



Pipeline

Pilots and other people

**DOT is the Federal Motor Carrier Safety
Administration (FMCSA)**

D&A Myths



DOT



FMCSA



already
we
HMSA



FMCSA



PHMSA



FTA

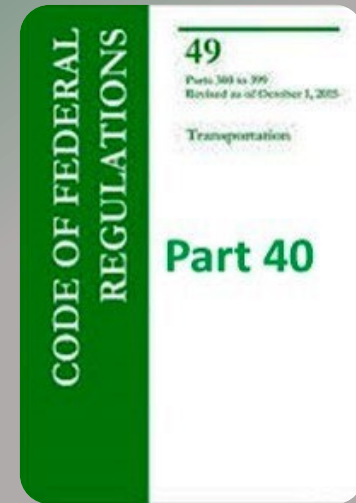


FAA



FRA





§ 40.1 Who does this regulation cover?

(a) This part tells all parties who conduct drug and alcohol tests required by Department of Transportation (DOT) agency regulations

HOW

to conduct these tests and what procedures to use.

D&A Myths



Refineries



Drilling



Offshore

Oil Wells

**If PHMSA does Not regulate
the pipeline or LNG facility
– PHMSA does Not regulate
D&A!**



Your Service Agent says....

To Be Safe you need to...

DOT D&A Test

- all ~~oil~~ & gas employees
- every employee ~~that~~ sets foot on the operator's property
- all ~~contractor~~ employees
- all ~~construction~~ employees
- anyone ~~who~~ gets in an accident on the operator's property or using an operator's equipment



What's the harm?

**Pipeline operators and
contractors are DOT D&A
testing way too many,
Non-covered Employees!!**



50%



IS THIS HEAVEN?



MLB Drug Testing Program

MAJOR LEAGUE BASEBALL'S JOINT DRUG PREVENTION AND TREATMENT PROGRAM

Covered Players



Major League Baseball's Joint Drug Prevention and Treatment Program is a joint effort of the Office of the Commissioner of Baseball and the Major League Baseball Players Association, and, jointly, the "Parties") to: (i) educate Players on the risks associated with the use of Prohibited Substances (defined in Section 2 below); (ii) deter and end the use of Prohibited Substances by Players.

The Program covers: (i) all Players on the Major League Clubs' 40-man rosters; (ii) any Player who becomes a free agent under Article XIX or Article XX of the Basic Agreement; (iii) any Player who is released from a Major League roster unless the Player voluntarily retires or signs a Minor League contract or a contract with a club in an unaffiliated professional baseball league; and (iv) Foreign Professionals and Certain Free Agents, as specified in Attachments 3 and 4 to the Program ("Players").

Pittsburgh Pirates

Covered Employees (players)

- Major League 40-man Roster-----→ 40
- Minor League players (estimated) -----→ 160
- Total Covered Employees -----→ ± 200

Total employees ± 880



**Covered
Player**



**Covered
Employee**

What Does the Regulation Say?

§199.1 Scope

This part requires operators of **pipeline facilities** subject to **part 192, 193, or 195** of this chapter to test **covered employees** for the presence of **prohibited drugs and alcohol**.

§199.3 Definitions

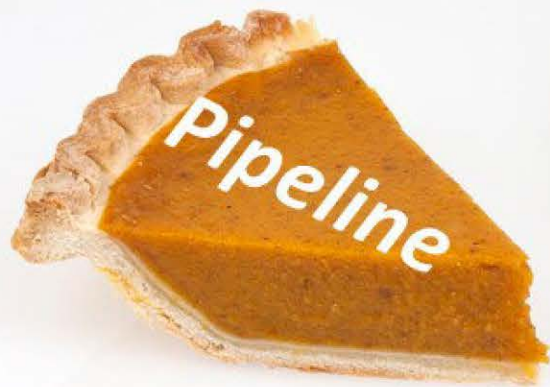
Pipeline facility means new and existing **pipeline**, rights-of-way, and any equipment, facility, or building used in the transportation of gas or in the treatment of gas during the course of transportation.

What Does the Regulation Say?

§199.3 Definitions

Pipeline facility means new and existing *pipeline*, rights-of-way, and any equipment, facility, or building used in the transportation of gas or in the treatment of gas during the course of transportation.

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.



What Does the Regulation Say?

§199.3

Covered employee means a person who performs a **covered function**, including persons employed by operators, contractors engaged by operators, and persons employed by such contractors.

§199.3

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



**Pipeline
Facilities**



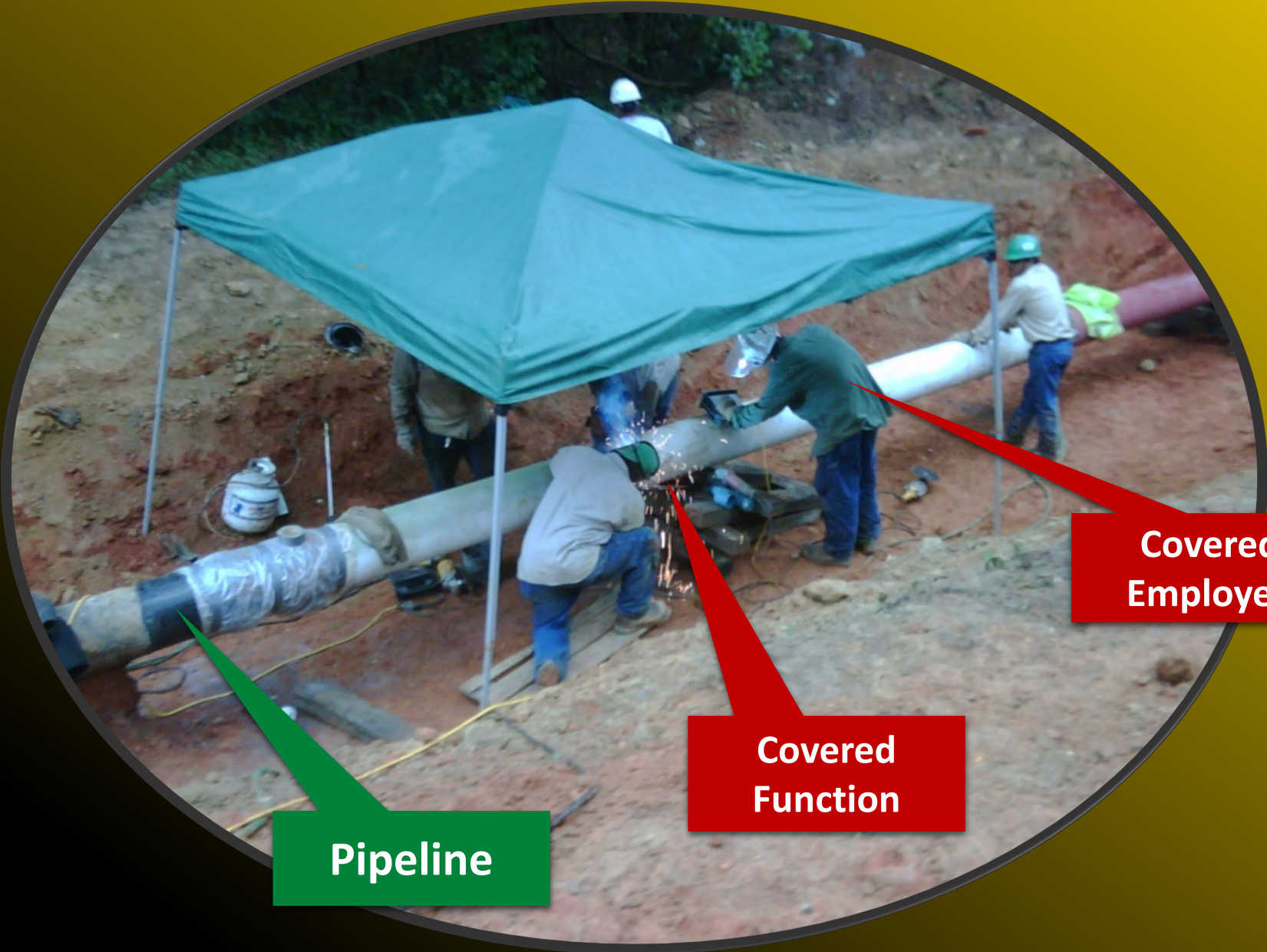
Pipeline

Pipeline Facility

If you mow this ROW should you be DOT D&A Tested?

How about if you clear the ROW of rattlesnakes?





Pipeline

**Covered
Function**

**Covered
Employee**



Thank You!



Questions

