Kansas Administrative Regulations

Kansas Corporation Commission

Article 4.—Motor Carriers of Persons and Property—Motor Carriers

82-4-3b. Procedures for transportation workplace drug and alcohol testing programs.

(a)(1) With the exceptions specified in this subsection, 49 C.F.R. Part 40, as in effect on October 1, 2022, is hereby adopted by reference.

(2) The following revisions shall be made to 49 C.F.R. 40.3:

(A) In the definition of "DOT, The Department, DOT agency," the phrase "the Kansas Corporation Commission and" shall be added after "these terms encompass."

(B) In the definition of "Employee," the term "U.S." shall be inserted before the phrase "Department of Health and Human Services."

(C) In the definition of "HHS," the phrase "U.S." shall be added before the phrase "Department of Health and Human Services" in both instances.

(D) The following definition of "special agent or authorized representative" shall be added after the definition of "Shipping container":

"'Special agent or authorized representative' means an authorized representative of the commission, and members of the Kansas highway patrol or any other law enforcement officer in the state who is certified in the inspection of motor carriers based on the motor carrier safety assistance program standards."

(3) 49 C.F.R. 40.5 and 49 C.F.R. 40.7 shall be deleted.

(4) In 49 C.F.R. 40.21, paragraphs (b), (c), and (d) shall be deleted. In paragraph (e), the text "and DOT agency drug testing regulations" and "by the DOT agency just as you are for other violations of this part and DOT agency rules" shall be deleted.

(5) 49 C.F.R. 40.26 shall be deleted and replaced by the following: "Management information system ("MIS") data shall be reported to the commission within 10 days of the commission's request for the information. MIS data shall be reported in a certified form acceptable to the commission. A certified form acceptable to the commission shall include the following information:

"(a) Information regarding the employer, including:

"(1) The name of the employer's business and, if applicable, the name it does business as;

"(2) the company's physical address and, if applicable, e-mail address;

"(3) the printed name and signature of the company's official certifying the MIS data;

"(4) the date the MIS data was certified;

"(5) the name and telephone number of the person preparing the form, if it is different from the person certifying the MIS data;

"(6) the name and telephone number of the C/TPA, if applicable; and

"(7) the employer's motor carrier identification number.

"(b) Information regarding the covered employees, including:

"(1) the total number of safety-sensitive employees in all categories;

"(2) the total number of employee categories;

"(3) the name of the employee category or categories; and

"(4) the total number of employees for each category.

"(c) Information regarding the drug testing data, including:

"(1) The type of test, which includes:

"(A) Pre-employment;

"(B) random;

"(C) post-accident;

"(D) reasonable suspicion or cause;

"(E) return-to-duty; and

"(F) follow-up.

"(2) The number of tests by result, including:

"(A) Total number of test results;

"(B) verified negative results;

"(C) verified positive results for one or more drugs;

"(D) positive for marijuana;

"(E) positive for cocaine;

"(F) positive for PCP;

"(G) positive for opiates;

"(H) positive for amphetamines;

"(I) canceled results; and

"(J) refusal results, including:

"(i) Adulterated;

"(ii) substitutes;

"(iii) shy bladder with no medical explanation; and

"(iv) other refusals to submit to testing.

"(d) Information regarding alcohol testing data, including:

"(1) The type of test, including the same types as listed in paragraph (c)(1) above;

"(2) the number of tests by results, including:

"(A) total number of screen test results;

"(B) screening tests with results below 0.02;

"(C) screening tests with results of 0.02 or greater;

"(D) number of confirmation test results;

"(E) confirmation tests with results of 0.02 through 0.039;

"(F) confirmation tests with results of 0.04 or greater;

"(G) canceled results; and

"(H) refusal results, including:

"(i) Shy lung with no medical explanation; and

"(ii) other refusals to submit to testing."

(6) 49 C.F.R. 40.29 shall be deleted.

(7) 49 C.F.R. 40.37 shall be deleted.

(8) Subparts D through F shall be deleted.

(9) The following changes shall be made to Subpart H:

(A) In 49 C.F.R. 40.171, paragraphs (b)(2) and (c) shall be deleted.

(B) In 49 C.F.R. 40.173 (a), the phrase "functions noted in §§40.175–40.185" shall be replaced by "split specimen testing."

(C) 49 C.F.R. 40.175 through 49 C.F.R. 40.189 shall be deleted.

(10) The following changes shall be made to Subpart I:

(A) In 49 C.F.R. 40.191, the following changes shall be made:

(i) In paragraph (a)(1), "(see 40.61(a))" shall be deleted.

(ii) In paragraphs (a)(2) and (a)(3), "(see 40.63(c))" shall be deleted.

(iii) In paragraph (a)(4), "(see 40.67(1) and 40.69(g))" shall be deleted.

(iv) In paragraph (a)(5), "(see 40.193(d)(2))" shall be deleted.

(v) In paragraph (a)(7), "under 40.193(d)" shall be deleted.

(vi) Paragraph (d) shall be deleted.

(B) In 49 C.F.R. 40.193, the following changes shall be made:

(i) Paragraphs (a) through (h) shall be deleted.

(ii) In paragraph (i), the phrase "as provided in paragraph (d)(1) of this section" shall be replaced by "because a medical condition has, or with a high degree of probability could have, precluded the employee from providing a sufficient amount of urine."

(C) 49 C.F.R. 40.195 shall be deleted.

(D) The following changes shall be made to 49 C.F.R. 40.197:

(i) In paragraph (b)(2)(i), "(see 40.67(b) and (c))" shall be deleted.

(E) 49 C.F.R. 40.199 through 49 C.F.R. 40.205 shall be deleted.

(F) The following changes shall be made to 49 C.F.R. 40.209:

(i) In paragraph (b)(4), "(see 40.61(a))" shall be deleted.

(ii) Paragraph (b)(7) shall be deleted.

(G) In 49 C.F.R. 40.210, the sentences "Only urine specimens screened and confirmed at HHS certified laboratories (see §40.81) are allowed for drug testing under this part. Point-of-collection urine testing or instant tests are not authorized." shall be deleted.

(11) In Subpart J, 49 C.F.R. 40.211 and 49 C.F.R. 40.217 shall be deleted.

(12) The following changes shall be made to Subpart K:

(A) 49 C.F.R. 40.221 through 49 C.F.R. 40.225 shall be deleted.

(B) In 49 C.F.R. 40.227, the phrase "in accordance with 40.271(b)" shall be deleted.

(C) 49 C.F.R. 40.229 through 49 C.F.R. 40.235 shall be deleted.

(13) Subparts L and M shall be deleted.

(14) The following changes shall be made to Subpart N:

(A) The following changes shall be made to 49 C.F.R. 40.261:

(i) In paragraph (a)(1), "(see 40.241(a))" shall be deleted.

(ii) In paragraph (a)(2), "(see 40.243(a))" shall be deleted.

(iii) In paragraph (a)(3), "(see 40.243(a))" shall be deleted.

(iv) In paragraph (a)(6), "(see 40.241(g) and 40.251(d))" shall be deleted.

(v) Paragraph (c) shall be deleted.

(B) 49 C.F.R. 40.263 shall be deleted.

(C) In 49 C.F.R. 40.265, paragraphs (a) and (b) shall be deleted.

(D) 49 C.F.R. 40.267 through 49 C.F.R. 40.271 shall be deleted.

(E) In 49 C.F.R. 40.273, paragraph (c) shall be deleted.

(15) The following changes shall be made to Subpart O:

(A) 49 C.F.R. 40.281 through 49 C.F.R. 40.283 shall be deleted. Each motor carrier shall use a U.S. DOT-certified substance abuse professional.

(B) 49 C.F.R. 40.291 through 49 C.F.R. 40.293 shall be deleted.

(C) 49 C.F.R. 40.299 through 49 C.F.R. 40.303 shall be deleted.

(D) 49 C.F.R. 40.307 shall be deleted.

(E) 49 C.F.R. 40.311 and 40.313 shall be deleted.

(16) In Subpart P, 49 C.F.R. 40.327 and 49 C.F.R. 40.329 shall be deleted.

(17) Subparts Q and R shall be deleted.

(18) In 49 C.F.R. Part 40, Appendix A through Appendix H shall be deleted.

(19) All sections marked "reserved" shall be deleted.

(b) As used in this regulation, each reference to a portion of 49 C.F.R. Part 40 shall mean that portion as adopted by reference in this regulation.

(c) Whenever the federal regulations adopted in this regulation refer to portions of the federal regulations or other operating standards that are not already adopted by reference in article 4 of the commission's regulations, the references shall not be applicable to this regulation unless otherwise specifically adopted.

(Authorized by and implementing K.S.A. 2023 Supp. 66-1,112, K.S.A. 2023 Supp. 66-1,112g, and K.S.A. 66-1,129; effective, T-82-12-29-04, Dec. 29, 2004; effective April 29, 2005; amended Oct. 2, 2009; amended Sept. 20, 2013; amended July 26, 2019; amended Feb. 10, 2023; amended Dec. 6, 2024.)

***** Authenticated Kansas Administrative Regulation *****