

## **PART 40 QUESTIONS AND ANSWERS**

The Office of General Counsel and Office of Drug and Alcohol Policy and Compliance of the Department of Transportation are providing this question and answer. It constitutes an official and authoritative guidance and interpretation concerning 49 CFR Part 40 (see 49 CFR 40.5).

This Question and Answer is dated 07/17.

**QUESTION:**

Is the United States Coast Guard (USCG) a DOT Agency with respect to the DOT's drug and alcohol testing regulation, 49 CFR Part 40?

**ANSWER:**

- Although included in the definition of a DOT Agency [see §40.3], the USCG is a DOT Agency with respect to Part 40 only when the USCG regulation [e.g., 46 CFR Part 16 or 46 CFR Part 4] incorporates Part 40 to carry out its chemical testing regulation. For example:
  - With respect to drug testing, the USCG regulation at 46 CFR §16.113(a) states, “Drug testing programs required by this part must be conducted in accordance with 49 CFR part 40, Procedures for Transportation Workplace Testing Programs.”
  - With respect to alcohol testing and submitting alcohol testing annual data to the USCG, the USCG regulation at 46 CFR §16.500(a)(2) states, “The provisions in 49 CFR part 40 for alcohol testing do not apply to the Coast Guard or to marine employers, and alcohol testing data is not required or permitted to be submitted by this section.”
- Because the USCG regulation, 46 CFR Part 16, incorporates Part 40 for drug testing, the USCG is a DOT agency for the drug testing component of Part 40. But because Part 40 does not apply to alcohol testing under 46 CFR Part 16, the USCG is not a DOT Agency with respect to the alcohol testing component of 49 CFR Part 40, including subparts J–N.