

November 5, 1990

Subject    Action:    Requirement to Give Pre-employment Drug Test  
                          to All Covered Position Employees for  
                          Companies that had not Implemented their Drug  
                          Program at Required Dates

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A continuing question about the drug program that needs to be resolved about the Part 199 Drug Testing Program is this:

Are companies required to give pre-employment drug tests to all employees working in covered positions if the operator did not have its drug program implemented by the effective date of April 20, or August 21, 1990?

I have been advised by Bea Vandervaulk, RSPA, and Donna Smith, Drug Office, that Robert Ashby, OST Counsel, has advised that requiring operators to give a pre-employment test to employees who were on the job and working in a "covered" position at the effective drug testing date is a legally defensible position when the operator did not have a Part 199 Drug Testing Program in place as of the effective drug testing dates. Unfortunately, there have been conflicting RSPA answers to the above question.

I recommend that OPS adopt the following enforcement policy:

- o Operators that do not have a drug testing program meeting the requirements of Part 199 as of the applicable drug testing implementation dates are in probable violation and should be cited according to CFR, Part 199 procedures.
- o OPS, after a finding of violation that an operator did not have a drug

testing program which included the test requirements as specified in Title 49, CFR, Part 199.11(a), will require that all employees hired after the applicable drug testing implementation dates and working in a covered position be given pre-employment drug tests.

- o In addition, OPS may choose to require, by a Compliance Order, that pre-employment tests be required for post Part 199 drug implementation date employees working in covered positions. In general, OPS would issue a Compliance Order requiring pre-employment test for employees already in covered positions as of the Part 199 drug testing implementation dates only if an operator continues to refuse to implement a drug testing program meeting the requirements of Part 199.