

April 29, 1994

This is in response to your correspondence of January 28, 1994, requesting clarification of the Department of Transportation, Research and Special Programs Administration's (RSPA) Drug Testing Regulations at 49 CFR Part 199. Specifically, you requested guidance on RSPA's pre-employment testing procedures at 49 CFR Section 199.11.

Your situation involves an employee who had been employed by the company prior to the effective date of the drug testing program on April 20, 1990. RSPA regulations permitted some latitude to operators on the initial date for compliance (April 20, 1990 for companies with more than 50 employees), by not requiring pre-employment drug testing of their employees who were performing a covered function on that date. However, on that date, the employee was not performing a covered function, and his name has since been added to the random testing pool but has not been selected for random testing to date.

**QUESTION: The question is whether this employee should be subject to a pre-employment drug test since he was not performing a covered function on the day of compliance?**

**ANSWER:** Since the employee was not performing a covered function for your company on the effective date (April 20, 1990) of RSPA's anti-drug program, the employee would have to undergo a pre-employment drug test. A negative test result would be required prior to allowing the individual to continue work in a covered position which is subject to the requirements of Part 199.

Thank you for your inquiry. Please let me know if you need additional information about our drug testing requirements.

Sincerely,

Richard L. Rippert  
Drug and Alcohol Program Manager  
Office of Pipeline Safety  
Compliance