

November 14, 1991

This is in response to your letter of September 17, 1991, requesting confirmation on how a pipeline operator would meet its obligation to ensure contractor compliance as required by ? 199.21 of the drug regulations.

An operator may elect to implement one of the following steps: (a) include an appropriate clause in its contract; (b) require the contractor to submit affidavits of compliance; (c) require each contractor to submit to the operator a copy of the contractor's anti-drug plan. However, an operator cannot satisfy this compliance obligation merely by taking one of the above steps, either by itself or in combination with the others, because none of these steps show that the Part 199 drug testing requirements are actually being met. Ultimately, the pipeline operator is responsible for assuring that its employee(s)' contractors comply with Part 199. If a contractor violates Part 199, the pipeline operator is subject to enforcement action.

An operator might consider using one or more of the steps as an indication that its contractor is performing in accordance with the contract. However, to assure itself that Part 199 requirements are actually being met and to minimize the chance of incurring a civil penalty for noncompliance, the operator should also "monitor" the contractor's drug testing program. This "monitoring" could consist of any or all of the following elements: (a) develop checklist(s) for reviewing contractor anti-drug plans to ensure compliance with Parts 199 and 40; (b) conduct record audit of contractor's plan; (c) perform random/periodic on-site inspections of contractor's anti-drug program; and (d) require drug testing statistical data on a monthly/quarterly basis.

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

Sincerely,

Richard L. Rippert
Drug Compliance Coordinator
Office of Pipeline Safety
Enforcement