

April 17, 1992

This is in response to your letter of February 18, 1992, requesting guidance on whether a pipeline operator who is subject to 49 CFR Part 199 is precluded from contracting for the services of an outside party to assist the operator in determining whether it or its contractors are in compliance with those regulations, where the outside party requires access to employee testing and rehabilitation records, and where the outside party agrees to treat such records confidentially manner in accordance with the regulations.

**The regulations do not prohibit an operator from retaining assistance from an** outside firm or third party provides to assist or conduct auditing of any aspects of regulatory compliance, including review of confidential information, as long as the provider maintains such information in a private and confidential manner in accordance with the regulations.

An operator may designate, as its agent, a third party provider to conduct drug testing audits on contractors that provide services for which drug testing under Part 199 would apply. Thus, the contractor would have to allow the third party provider access to their property and records to determine if the contractor was conducting a drug testing program in accordance with Part 199 requirements. As the agent for the operator, the third party provider shall exercise the same care and responsibility in ensuring the privacy and confidentiality of all records that are audited or reviewed at the contractor facilities.

A third party provider (outside firm) acting as an agent of the operator will have its actions imputed to the operator. It is thus incumbent on the operator to ensure that its agent is complying with the applicable DOT regulations. An operator who procures a third party auditing services should provide specific guidance and direction as to the extent or detail in which a contractor's records shall be reviewed to ensure compliance with the provisions of Part 199. Care should also be exercised by an operator when evaluating compliance data, supplied by the third party, before any action is instituted to discipline or terminate the services of a contractor for non-compliance with Part 199 requirements.

Ultimately, the operator remains responsible for ensuring compliance with Part 199 regulations.

Thank 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