

**Research and
Special Programs
Administration**

(No Date)

Mr. Todd Horton
Central Drug Scan Inc.,
16560 Harbor Blvd., Suite A
Fountain Valley, CA 92708

Dear Mr. Horton:

This is in response to your correspondence dated May 18, 1995, requesting interpretation on two pre-employment situations.

QUESTION: Employer hires an individual from the union hall. The individual is instructed by his or her employer that he or she will be required to submit to a drug test under the Research and Special Programs Administration (RSPA) guidelines. The individual is then sent to the collection facility. Following completion of his or her drug collection the following morning - the individual will start working pending his or her result. Meanwhile the specimen is shipped to the laboratory by the collection site and unfortunately is lost. A few days later (approximately 4–7 days) the employer still does not have a result. Is the individual sent again to the clinic for another pre-employment test or does the individual keep working and be subject to other testing conditions of the program (i.e., random, post-accident, etc.)?

ANSWER: Under Section 199.11(a) it states that no operator may hire or contract for the use of any person as an employee unless that person **passes** a drug test or is covered by an anti-drug program that conforms to the requirements of this part. In the situation that you described above the employer should not have instructed the employee to perform a covered function until a negative test result had been received from the laboratory. The employer is in violation of Section 199.11(a), "Pre-employment." An individual must pass a pre-employment test before performing a covered function. In the situation above in which the specimen was lost, the individual would be required to provide an additional specimen for testing.

QUESTION: Same scenario, different circumstances. The individual gives a specimen, the lab receives the specimen and indicates the specimen is not acceptable because of insufficient quantity. Is the employer required to send that individual back to the collection site for another pre-employment test or does the individual continue with the program and then be subject to other testing conditions of the program (i.e., random, post-accident, etc.)?

ANSWER: The answer is the same as above. A new hire or a person transferring into a covered position must **pass** a pre-employment (receive a negative test result) drug test prior to performing a covered function. If the amount of a specimen is insufficient for testing that individual must provide another specimen for pre-employment testing. The operator must receive a negative drug test result before putting that employee into a covered position.

Thank you for your inquiry. If you need additional information please feel free to contact Catrina M. Pavlik on (202) 366-6199.

Sincerely,

G. Tom Fortner
Director for Compliance
and State Programs