

March 9, 1990

Mr. James V. Davis
City of Albany
Post Office Box 128
Albany, Georgia 31702

Dear Mr. Davis:

I am responding to the two questions about 49 CFR Part 199 in your letter of February 27, 1990, to Cesar De Leon.

First you asked whether an operator may condition reinstatement of an employee on the employee's successful completion of a rehabilitation program. Section 199.9(b) prescribes the minimum conditions under which an operator may reinstate an individual after that individual is removed from a covered position for failing a drug test. Successful completion of rehabilitation is not one of the minimum conditions. However, an operator may exceed the minimum conditions and make rehabilitation a condition of reinstatement if the operator has authority to do so that is not based on compliance with Part 199.

Your second question is whether an operator may terminate a reinstated employee for subsequent failure of a drug test. In such circumstances, ? 199.9(b)(3) requires that the employee be removed from the covered position without an opportunity for future reinstatement. Part 199 does not require the operator to terminate employment of the individual; if possible, he or she could be shifted to a non-covered position. If an operator decides to terminate employment, it cannot rely on Part 199 for authority to do so.

Sincerely,

George W. Tenley, Jr.
Director
Office of Pipeline Safety