THE SUBSTANCE ABUSE PROFESSIONAL’S U.S. DEPARTMENT OF TRANSPORTATION ALCOHOL AND DRUG TESTING REGULATION QUALIFICATION & RE-QUALIFICATION COURSE

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This independent study training manual, provided by NAADAC, the Association for Addiction Professionals, meets the qualification and re-qualification standards for Substance Abuse Professionals (SAPs) under the United States Department of Transportation (DOT) Regulation 49 Code of Federal Regulations Part 40, sub-section O. In order to initially qualify or re-qualify as an SAP, you must successfully pass the enclosed written examination, which meets the standards stipulated in the DOT regulations. NAADAC continually updates this course to assist Substance Abuse Professionals (SAPs) in meeting the Department of Transportation (DOT) requirement for on-going training that allows professionals to remain current on changes and new developments in the DOT drug and alcohol testing program. This edition of the Substance Abuse Professional’s U.S. Department of Transportation Alcohol and Drug Testing Regulation Qualification & Re-Qualification Course integrates all relevant regulations and laws enacted as of the printing of this manual.

NAADAC is committed to advancing the competency, understanding and history of the Substance Abuse Professional and recognizes that this role is impacted not only by collection and laboratory processes but also by the expectations of the employer and the employee. Please be advised that this manual is an abbreviated version of the DOT regulations and the most recent updates, as they apply to SAPs. Not every DOT regulation is outlined, and the SAP is responsible for being aware of all regulations that affect his or her job performance.

NAADAC would like to thank the authors of this and previous editions of the Substance Abuse Professional’s U.S. Department of Transportation Alcohol and Drug Testing Regulation Qualification & Re-Qualification Course manuals. The expertise of Kathy Benson, Dale Kaplan, Wanda McMichael and Misti Storie were essential to the development of this course. In addition, the editorial contributions of Donovan Kuehn, Shirley Beckett Mikell and Cynthia Moreno Tuohy helped polish this course beyond the expectation of the authors. NAADAC also extends its appreciation and thanks to the numerous other contributors and organizations who granted NAADAC access to their vast information resources and knowledge: Dr. Donald Ian Macdonald, Dr. James Ferguson, Employee Health Programs (EHP), the South Carolina Department of Alcohol and Other Drug Abuse Services (DAODAS), the American Society of Addiction Medicine (ASAM) and the many countless others who dedicated their time, efforts, energy and knowledge to the production of this course.

Finally, I would like to take this opportunity to thank those who have given us feedback regarding this manual and corresponding examinations. Please rest assured that your recommendations and suggestions are greatly valued and have played a major role in the development of this manual. I encourage you to continue to support us as we strive to develop products that enable all of us to grow as professionals.

Build upon a Heritage and Leave a Legacy.

Sincerely,

Don Osborn, MS, MA, MAC, LMHC
President of NAADAC, the Association for Addiction Professionals
EXECUTIVE SUMMARY

In an effort to help facilitate effective intervention and treatment for employees who have been identified through the Workplace Drug and Alcohol Testing Program as having an alcohol or prohibited drug problem, the Department of Transportation (DOT) created a role for Substance Abuse Professionals (SAPs). SAPs evaluate employees who have violated a DOT drug and alcohol regulation and makes recommendations to the employer concerning education, treatment, continuing care for the employee and follow-up testing.

The Department of Transportation (DOT) has establishment guidelines and procedures for its federal urine drug testing programs and for overseeing the implementation of the policy and programs within all six of its agencies.

The Department of Transportation established a significant role for the Substance Abuse Professional in the return-to-work process after

Each operating administration individually defined the safety-sensitive positions within their respective administrations, and these were all subject to drug testing under the regulations. Each administration’s regulations defined acceptable reasons for testing, the circumstances that mandate testing following an accident or incident, who is authorized to require the testing of an employee and how a test must be conducted.

49 C.F.R. § 40, which describes the procedures for Transportation Workplace Drug and Alcohol Testing Programs. These procedures mandate which employees can be tested for drugs and/or alcohol, when an employee/applicant can be tested, what circumstances must be present in order to test, who is authorized to require an employee to test and how the test must be conducted.

The Department of Transportation established a significant role for the Substance Abuse Professional in the return-to-work process after the Omnibus Transportation Employee Testing Act of 1991. After the passage of this Act, the roles and the responsibilities of the SAP were defined, as well as the qualifications of the professionals who could provide SAP services.

The Department of Transportation’s (DOT) regulations give an employee who works in a DOT covered safety-sensitive position and fails a drug and/or alcohol test the opportunity to return to that safety-sensitive position once compliance to an SAP’s recommendations has been documented.

This manual will provide information for people preparing for the U.S. DOT Substance Abuse Professional Qualification exam, as well as professionals who are planning to expand their own knowledge. This manual will outline critical information for professionals working on SAP issues, including service agents, the agencies covered by DOT regulations, the drugs tested for, reasons for testing, ethical concerns and the steps an SAP must take with a client.
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I. WHAT IS A SUBSTANCE ABUSE PROFESSIONAL (SAP)?

A Substance Abuse Professional (SAP), according to the U.S. Department of Transportation Office of Drug & Alcohol Policy & Compliance, is a person who evaluates employees who have violated a DOT drug and alcohol program regulation and makes recommendations concerning education, treatment, follow-up testing and aftercare. SAPs represent the major decision point (and in some cases the only decision point) an employer may have in choosing whether or not to place an employee behind the steering wheel of a school bus, in the cockpit of a plane, at the helm of an oil tanker, at the throttle of a train, in the engineer compartment of a subway car or at the emergency control valves of a natural gas pipeline. A Substance Abuse Professional's responsibility to the public is enormous. To be clear, an SAP is not an advocate for the employer or the employee. An SAP's function is to protect the public interest in safety by professionally evaluating the employee and recommending appropriate education and/or treatment, follow-up tests and aftercare.

The Department of Transportation’s (DOT) regulations give an employee who works in a DOT covered safety-sensitive position and fails a drug and/or alcohol test the opportunity to return to that safety-sensitive position once compliance to an SAP’s recommendations has been documented. This gives the recovery community additional validation that individuals can be in recovery from substance use disorders and re-enter the workplace as productive, vital employees. This is a tremendous step forward in acknowledging substance use disorders as illnesses that do not have to eliminate an employee from the workplace long-term.

Through experience, the Department of Transportation recognized that the SAP qualifications alone were not adequate to ensure that the SAP had the necessary information to perform SAP functions. In December 2000, the regulations were revised with a clear mandate that SAPs must have specific qualification training prior to performing SAP functions.

The fundamental responsibility of the SAP is to provide a comprehensive face-to-face assessment and clinical evaluation to determine what level of assistance the employee needs in resolving problems associated with alcohol use or prohibited drug use. After this assessment, the SAP must recommend a course of education and/or treatment with which the employee must comply prior to returning to DOT safety-sensitive duty. The work of the SAP is a very important part of DOT’s efforts to help make America’s transportation industries the safest in the world. The job as “gatekeeper” of the return-to-duty process provides an important service to the employee, the employer and to the traveling public.
II. HISTORY OF 49 C.F.R. § 40

Workplace drug testing began in the 1960s when the United States military initiated drug testing to identify heroin users among the large numbers of veterans returning from Vietnam. The testing program was extended to screening soldiers reporting for active duty in the early 1970s. In 1980, the United States Department of Defense published a survey of substance use among active duty military personnel. Overall, drug use in the military services was reported at 26%, but among young, enlisted men aged 18 to 25, usage was as high as 47% in the U.S. Navy and Marine Corps. In May 1981, a Marine Corps aircraft crashed aboard the aircraft carrier Nimitz. Fourteen people died and the autopsies indicated that nine had evidence of marijuana. In addition, it was learned that the pilot was taking a prescribed antihistamine without the knowledge of his commanding officer or flight surgeon. The publicity surrounding the crash influenced the decision by the Navy to implement comprehensive drug screening.²

In 1986, the U.S. federal government became more involved in attempting to stop the illegal drug trade as a part of the Reagan Administration’s “War on Drugs.” In the spring of 1986, the President’s Commission on Organized Crime issued a report stating that attempts to limit the supply of illicit drugs were inadequate. The Commission made several recommendations to decrease the demand for illicit drugs and requested that the federal government provide a model that emphasized the negative aspects of drug use. President Ronald Reagan, concerned about loss of productivity, poor morale and increased absenteeism associated with drug use, directed the heads of all federal agencies to “formulate immediately clear policy statements with implementing guidelines, including suitable drug testing to express the unacceptability of drug use by Federal employees.”³

President Ronald Reagan issued Executive Order 12564 in 1986, directing each federal agency to develop a comprehensive program to achieve a drug-free workplace for federal employees.⁴ The key components of a drug-free workplace established by this Executive Order included:

- a policy statement;
- establishment of an Employee Assistance Program (EAP);
- supervisory training in identifying and addressing illegal drug use by employees;
- education for employees about the dangers of drug use;
- provisions for self referral and supervisory referrals to treatment; and
- provisions for drug testing.

Executive Order 12564 was followed by Public Law 100-171, which established the funding and statutory authority for these comprehensive testing programs.

The Department of Health and Human Services (DHHS) was charged with the establishment of guidelines and procedures for the federal urine drug testing programs and for overseeing the implementation of the policy and programs. The DHHS Mandatory Guidelines...
Mandatory Guidelines refer to the Mandatory Guidelines for Federal Workplace Drug Testing Programs initially published in the Federal Register on April 11, 1988 and revised over the years periodically. These guidelines are used to establish the scientific and technical parameters used in federal drug testing programs.

for Federal Workplace Drug Testing set scientific and technical standards for drug testing for federal employees and for federal certification of drug testing laboratories. The Guidelines contain procedures for:

- collecting urine specimens;
- analyzing the specimens;
- establishing classes of drugs of abuse; and
- implementing a physician review of the drug test results, called medical review officers (MROs).

One of the precedents to the establishment of drug testing within the Department of Transportation was a passenger train crash in Chevy Chase, Maryland, in 1987 that killed 16 people, injured 174 more and caused millions of dollars in damage. The urine screens of the driver and the brakeman both came back positive for marijuana. As a result of this accident, the Secretary of Transportation issued the anti-drug rules in 1988, which were implemented in 1990.

DOT based its drug testing regulations on DHHS Mandatory Guidelines for Federal Workplace Drug Testing, with some changes to fit the transportation workplace. The DOT first published its regulation on drug testing procedures, 49 Code of Federal Regulations (C.F.R.) § 40, on November 21, 1988, as an interim final rule. The final rule, which responded to comments on the interim rule, was published a year later on December 1, 1989.

The DOT regulations, which were implemented in 1990, provided for the protection of individual privacy, the integrity and security of test specimens and the accuracy, reliability and confidentiality of drug test results. The procedures outlined in 49 C.F.R. § 40 are biased toward privacy protections for the individual and safeguard against false positive results or the erroneous identification of any person as using illicit drugs. These rules, which govern only DOT regulated industries, have become the standard for testing in regulated and non-regulated industries.

The purpose of the DOT regulations is to deter and prevent drug use in the workplace. The regulations were not expected to be able to abolish drug use in the workplace due to the limitations of a drug test. The goal of the testing process is to convince employees not to use drugs due to risk of possible job loss.

For a variety of reasons, not all drug users will be identified when tested. This is due in part to the short detection period of the drugs being tested and the date and time of the last use of the drug. A negative test only indicates that at the time of the test, the employee did not have drugs in his/her system. It is not a fitness-for-duty test.

Initially, the 1988 DOT regulations included all six of the separate operating administrations covered under the DOT:

- Federal Aviation Administration (FAA);
- Federal Highway Administration (FHWA), now known as the Federal Motor Carriers Safety Administration (FMCSA);
The final ruling covered safety-sensitive workers in the remaining five operating administrations:

- **Federal Railroad Administration (FRA);**
- **Research and Special Programs Administration (RSPA), now known as the Pipeline and Hazardous Materials Safety Administration (PHMSA);**
- **United States Coast Guard (USCG);** and
- **Urban Mass Transportation Administration (UMTA), now known as the Federal Transit Administration (FTA).**

However, the Urban Mass Transportation Administration (UMTA), which covered intrastate drivers remaining within state lines, such as school bus operators, utility companies, transit operators and drivers employed by city, state or county governments and other modes of transportation not involving the shipment of goods or products across state lines, sued and won their case in Federal court that the UMTA was not under the regulation of the DOT. Subsequently, the first DOT testing requirements excluded intrastate providers of the UMTA.

The final ruling covered safety-sensitive workers in the remaining five operating administrations:

- **Federal Aviation Administration (FAA);**
- **Federal Highway Administration (FHWA), now known as the Federal Motor Carriers Safety Administration (FMCSA);**
- **Federal Railroad Administration (FRA);**
- **Research and Special Programs Administration (RSPA), now known as Pipeline and Hazardous Materials Safety Administration (PHMSA); and**
- **United States Coast Guard (USCG).**

Each operating administration individually defined the safety-sensitive positions within their respective administrations, and these were all subject to drug testing under the regulations. Each administration’s regulations defined acceptable reasons for testing, the circumstances that mandate testing following an accident or incident, who is authorized to require the testing of an employee and how a test must be conducted. (Each of these components will be explained in detail later in the manual.) However, because these specific regulations were similar, but not exactly the same, inconsistent state and local laws resulted.

In the Federal Register, the official journal of the Federal Government of the United States, Vol. 53, Monday, April 11, 1988, it was noted that alcohol was not included among the substances to be tested. The reason cited by the Department of Health and Human Services at that time was that alcohol was not an illegal substance, and the Executive Order 12564 only authorized federal testing for illicit drugs listed in Schedule I and Schedule II of the Controlled
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Substances Act. Therefore, alcohol testing was not part of the DHHS Guidelines and was not part of the DOT regulations issued in 1989.

In August 1991, another major accident was caused by a drunken motorman in the New York City subway system. This event hastened the passage by the United States Congress of the Omnibus Transportation Employee Testing Act in 1991. This act expanded the scope of workplace testing to include alcohol testing of safety-sensitive employees in the aviation, motor carrier, railroad and mass transit industries. This covered non-Federal employers operating in both the public and private sectors. Further, the Omnibus Act also expanded its scope to all drivers with a commercial drivers license (CDL), which included intrastate drivers, forcing the Federal Transit Administration (FTA) to finally comply with the Department of Transportation regulations.

However, the Omnibus Act neglected to cover the United States Coast Guard (USCG) and PHMSA, even though these operating administrations had been covered in the original DOT regulations. Regardless, the Department of Transportation continued to maintain the drug testing requirements for USCG and PHMSA. The PHMSA even published an alcohol misuse prevention rule in February 1994 that incorporated the policy, program and other requirements of the other DOT administrations’ alcohol testing rules, but they do not mandate random alcohol testing. The USCG continued to require alcohol testing following certain types of accidents.

To comply with this new law, the DOT issued comprehensive regulatory revisions, creating new requirements and expanding current rules on the types and procedures of alcohol and drug testing within the national transportation system. These rules, effective March 17, 1994, mandated that all employers providing any type of transportation service, either directly or through contract, participate in the required alcohol and drug testing program. This regulation also made other changes to 49 C.F.R. § 40, including requirements for split sample testing collections in the four operating administration rules covered by the Omnibus Transportation Act - this included FMCSA, FTA, FRA and FAA. The PHMSA and USCG did not require split specimens at that time, but do now.

The new rules mandated that all employers providing commercial transportation services with 50 or more safety-sensitive employees begin alcohol and drug testing on January 1, 1995, and that employers with fewer than 50 safety-sensitive employees be in compliance within twelve months. Further, it also created the role of the Substance Abuse Professional (SAP) as a key part of the return-to-work process, which enables employees who have failed to comply with the DOT regulations concerning the use of alcohol or drugs to return to a safety-sensitive position.

Since 49 C.F.R. § 40 was first published in 1988, the DOT has issued a great deal of additional guidance, more than 100 written interpretations and a significant amount of informal advice. In December 1999, in an attempt to incorporate all of these interpretations and guidance
into one easily understandable regulation, a Notice of Proposed Rule Making (NPRM) for a new 49 C.F.R. § 40 was issued. The regulations were further condensed when the Clinton administration requested that government policies be issued in plain English. The DOT undertook the task of making the regulations more understandable, and an easier, user-friendly, question and answer format resulted.

Many additions, deletions and changes to the regulations have occurred since the program was implemented. This manual is reflective of each current regulation, to the best of its ability, as of its printing. However, the regulations are constantly being evaluated and revised to strengthen the DOT alcohol and drug testing program. As such, all SAPs are required to stay abreast of all regulation changes and incorporate them into their practice as instructed.

NOTE: The operating administrations covered under the DOT regulations have undergone many name and structural changes since the original regulations were enacted. For example, the Research and Special Programs Administration (RSPA) divided into the Research and Innovative Technology Administration (RITA) and the Pipeline and Hazardous Materials Safety Administration (PHMSA). However, only the Pipeline and Hazardous Materials Safety Administration (PHMSA) will have responsibility for the drug testing program formerly operated by RSPA for the pipeline industry. These alterations can be confusing when determining which employees are under the jurisdiction of a SAP. To be clear, there are only six operating administrations covered by the DOT regulations as of the printing of this manual:

- Federal Aviation Administration (FAA);
- Federal Motor Carriers Safety Administration (FMCSA);
- Federal Railroad Administration (FRA);
- Federal Transit Administration (FTA);
- Pipeline and Hazardous Materials Safety Administration (PHMSA); and
- United States Coast Guard (USCG).