What is a SAP?

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 a SAP's recommendations has been documented.

A Substance Abuse Professional (SAP) is a trained professional that evaluates employees who have violated a DOT drug and alcohol regulation and makes recommendations to an employer concerning education, treatment, follow-up testing and continuing care.
What is a SAP?

- A person who evaluates employees who have violated a DOT drug and alcohol regulation and makes recommendations concerning education, treatment, follow-up and after care or continuing care.
- Protects the public interest in safety.

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.

History of 49 C.F.R. § 40

- Workplace drug testing began in the 1960s when the U.S. 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 U.S. DoD 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.

- 14 people died and the autopsies indicated that 9 had evidence of marijuana.
- 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 across the board drug screening.

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.”

President Reagan, concerned about loss of productivity, poor morale and increased absenteeism associated with drug use, issued Executive Order 12564 and 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.”

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 (HHS) 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 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 DOT was a passenger train crash in Chevy Chase, Maryland in 1987 that killed 16 people, injured 174 more and caused millions of dollars in damages.

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.

The DOT regulations, which were finally 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.

49 C.F.R. § 40 is 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.
Purpose: To deter and prevent drug use in the workplace.

Goal: To convince employees not to use drugs due to risk of possible job loss.

The regulations were not expected to be able to abolish drug use in the workplace due to the limitations of a drug test.

Not all drug users will be identified when tested.

- This is due in part to:
  - the short detection period of the drugs being tested
  - 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.

Even though not always the case since its implementation, the DOT regulations now include all 6 operating administrations covered under the DOT:

- 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)
- United States Coast Guard (USCG)

Each operating administration individually defined:

- the safety-sensitive positions within their respective administrations
- acceptable reasons for testing
- circumstances that mandate testing following an accident or incident
- who is authorized to require the testing of an employee
- how the test must be conducted
In 1988, it was noted that alcohol was not included among the substances to be tested.
- The reason cited by DHHS 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 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, as well as all drivers with a commercial drivers license (CDL).

The DOT established a significant role for the Substance Abuse Professional (SAP) in the return-to-work process in the Omnibus Transportation Employee Testing Act of 1991.
- Evaluation
- Referral
- Treatment

In the initial act, the roles and the responsibilities of the SAP were defined, as well as the qualifications of the professionals who could provide SAP services.

Through experience, the DOT 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.
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.

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.

This training with 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.
- All SAPs are required to stay abreast of all regulation changes and incorporate them into their practice as instructed.

Current DOT regulations are accessible through the Department of Transportation’s website, [www.dot.gov/ost/dapc](http://www.dot.gov/ost/dapc) (click on Drug and Alcohol Testing Regulations) or requested by phone at 800.225.3784.
DOT Drug & Alcohol Testing Requirements

In order for the SAP to meet the DOT requirement for continuing education every 3 years, the SAP must maintain familiarity and knowledge of 49 C.F.R. § 40, which describes the procedures for Transportation Workplace Drug and Alcohol Testing Programs.

Reasons for Testing

There are 6 reasons for conducting a drug and/or alcohol test under the DOT regulations:

1) Applicant/Pre-Employment Testing
2) Post-Accident/Incident Testing
3) Random Testing
4) Reasonable Cause/Suspicion Testing
5) Return-to-Duty Testing
6) Follow-Up Testing

The reason for testing, the date and time of the test and the test result all impact the SAP evaluation.

A SAP must obtain this information from the employer or the medical review officer.

A SAP needs to be aware that some operating administrations have additional reasons to test, such as periodic medical examinations, and be able to recall each administration’s variances.
Applicant/Pre-Employment Testing

Performed following an employment offer for a safety-sensitive position or for someone who is changing from a non-safety-sensitive position to a safety-sensitive position.

- The prospective applicant may not be placed in a DOT covered position until the employer receives a negative test result verified by an MRO.
- Does not usually include alcohol testing, but it may if it is conducted in accordance with DOT alcohol testing regulations (prohibited for the USCG and PHMSA).

Post-Accident/Incident Testing

Performed after an accident or incident.

- Each operating administration has its own definition as what type of event would qualify as a covered accident or incident.
  - For example, according to the FMCSA, an employer can test a surviving driver for alcohol and controlled substance use when any person involved in the accident has been fatally injured or the driver received a citation for a moving traffic violation arising from performance of a safety-sensitive function related to the accident.
  - Note: The FRA operates a post-accident drug and alcohol program that was written prior to 49 C.F.R. § 40 and differs in a number of ways from the rest of the DOT programs.

Random Testing

All employees in DOT-covered positions must be placed in a testing pool from which they are randomly selected for testing.

- The method of selection must ensure that the pool is random.
- The number of employees to be tested is determined by each operating administration, based on the positivity rate of the preceding year.

- Alcohol tests must also be conducted on a random basis for all operating administrations except USCG and PHMSA.
- Tests must be conducted at an initial rate of 25% of all employees but may be increased or decreased (to as low as 10%) based on the rate of violation.
- May be administered to the group of employees who are randomly chosen for drug tests, but the alcohol test must precede the drug test.
Random Testing

When the employee is notified that he or she has been randomly selected to test, the employer or designated service agent must also notify the collection site to track the time allotted to the employee to get to the collection site.

All alcohol testing must be conducted just before, during or just after performance of safety-sensitive duties. They must be unannounced and conducted immediately after notification to the employee.

Reasonable Cause/Suspicion Testing

Requirements are clearly defined by each operating administration.

- For most cases, DOT supervisors must have formal training on the characteristics of drug and alcohol use in order to be able to request a reasonable cause/ suspicion test.
- Observable inappropriate workplace behaviors, which are often associated with drug or alcohol misuse or abuse, must be documented and clearly explained.
- In some administrations, a second trained supervisor must also observe and document the behaviors.

The observed urine test collection must be conducted by a same gender observer.

Although not part of the DOT regulations, it is recommended that companies have clear policies and procedures on how to confront an impaired employee for the safety of the employee and supervisor.

Percentage of Minimum Random Testing of Employee Population

<table>
<thead>
<tr>
<th>Agency</th>
<th>Random</th>
<th>Random</th>
</tr>
</thead>
<tbody>
<tr>
<td>FAA</td>
<td>25%</td>
<td>10%</td>
</tr>
<tr>
<td>FMCSA</td>
<td>50%</td>
<td>10%</td>
</tr>
<tr>
<td>FRA</td>
<td>25%</td>
<td>10%</td>
</tr>
<tr>
<td>FTA</td>
<td>25%</td>
<td>10%</td>
</tr>
<tr>
<td>PHMSA</td>
<td>25%</td>
<td>N/A</td>
</tr>
<tr>
<td>USCG</td>
<td>25%</td>
<td>N/A</td>
</tr>
</tbody>
</table>
**Return-to-Duty Testing**

In order for an employee who has previously tested positive for drugs and/or alcohol to return to a safety-sensitive position, the employee must have a negative drug and/or alcohol test prior to returning to work.

- The SAP determines the type of return-to-duty test to be conducted (e.g., alcohol test only, drug test only or drug and alcohol test).
- Must be collected by same gender direct observers and following the employer’s receipt of a letter indicating the employee has complied with the SAP’s recommendations.

**Follow-Up Testing**

Once an employee who has previously tested positive for drugs and/or alcohol has been cleared to return-to-duty, he or she is still subject to additional testing.

- The SAP determines the testing schedule:
  - determining the frequency of the testing
  - the extent of testing
  - type of tests to be conducted
- May not recommend less than 6 tests within the first 12 months, and the testing may not exceed 60 months.
- Must be directly observed by a same gender observer.

**Follow-Up Testing**

An employer may not conduct follow-up testing under company authority that goes beyond the follow-up testing that the SAP determines necessary.

However, the DOT is not opposed to an employer discussing his or her desires for having more than the minimum rule requirement of 6 tests in the 1st year of follow-up testing with the SAPs they intend to utilize.

**Types of Substances Tested**
Types of Substances Tested

The federal drug panel allows for testing of the following substances:

- amphetamines
- cocaine
- marijuana
- opiates
- phencyclidine (PCP)
- alcohol

Cocaine

Employees will frequently try to convince the SAP that the test was positive due to a prescription - a verified positive test means that the MRO was not provided with an appropriate prescription.

Marijuana

- Marijuana’s active ingredient: delta-9-tetra-hydro-cannabinol (THC)
- THC stored in fatty tissue of the body.
- 1-time user or less-than-once-a-month user, detection period may be between 3-10 days.
- For a chronic user, 2-3 times a week, can be detected in the urine up to 30 days after the last use.

When conducting the evaluation, the SAP must ask the employee the date of last use prior to the drug test, remembering that employees tend to minimize usage.

- Example: An employee states that 3 weeks ago was the first and only time he or she has ever smoked marijuana.
Marijuana

An employee may say that the marijuana was ingested through brownies or hemp seeds.

The MRO must not accept this as a legitimate medical explanation for the presence of THC in a specimen.

In this situation, the MRO will report the test as a positive, and the SAP must evaluate the employee and make a determination for the level of care needed.

If an employee has a positive test result for marijuana and even if the employee can produce a prescription for valid medical use, DOT still requires a positive test result must be reported by the MRO.

Many states have enacted medicinal marijuana laws.

- Federal regulation supersedes state law, so medical marijuana use must never be accepted as a legitimate medical explanation for an MRO-verified marijuana positive.
- It is still a positive test for marijuana under the DOT.
- Therefore, the employee must follow the return-to-duty process to return to a safety-sensitive position.

Further, when evaluating the employee, the SAP must question if the employee is medically able to perform the safety-sensitive position, since the illness requires regular use of marijuana.

- Marijuana use, even if prescribed, impacts one’s judgment and may disqualify an employee to perform in a safety-sensitive position.
- This is an issue that the SAP may want to discuss with the MRO.
Marijuana

SAPs can obtain the level of THC found in the employee’s urine test by contacting the MRO.

There are several factors that affect the level of THC in the urine:
- amount of water the employee drank prior to drug test
- when the employee last urinated
- how efficiently the employee’s body eliminates waste
- employee’s history of marijuana use

Therefore, it is difficult to draw any conclusions from the test level.

What is certain from the drug test is that the employee has ingested marijuana and the amount ingested was significant enough for the MRO to verify a marijuana positive test.

No further conclusions can be made by the SAP beyond this.

Opiates

The DOT test for opiates includes heroin, codeine and morphine.
- Codeine has a half-life of 2.5 - 3 hours, with a detection period of 2 - 3 days.
- Morphine has a half-life of 2 hours, with a detection period of 2 - 3 days.
- Codeine and morphine positives may be caused by a number of legitimate prescriptions, poppy seeds or heroin.

Heroin is identified by a specific metabolite called 6-acetylmorphine (6AM).
- Since 6AM is only present as a breakdown product of heroin, a positive 6AM is confirmation of heroin use.
- However, 6AM has a very short half-life of 3-4 minutes and is rarely recovered from urine.
Opiates

If the levels of morphine and/or codeine are between 2,000ng/mL and 15,000ng/mL, MRO will only verify the result as a positive test if at least 1 of the following conditions is met:

- Admission by the employee of unauthorized use.
- The presence of 6-acetylmorphine (heroin metabolite).
- Physical evidence of heroin use found upon physical examination of the employee.

SAP must evaluate for legitimate reason of medication use or if the employee has an opiate abuse/addiction problem.

- The SAP can contact the MRO for any additional information obtained during the MRO interview process.
- Obtaining a comprehensive medical history on the employee will assist SAP in determining the extent of the employee’s problem with opiates.
- Particularly true with employees who report a history of chronic pain.

Phencyclidine

- Phencyclidine (PCP) is a hallucinogen.
- There is no valid medical explanation for a PCP positive test.
- This drug has a half-life of seven to 16 hours and a detection period of 3 - 8 days.

Alcohol

The DOT-regulated procedures for alcohol testing are as detailed and strictly controlled as the drug testing procedures, but the alcohol testing procedures differ from drug testing procedures in several ways.

- Breath and/or saliva are tested, not urine, except in very specific situations in the FRA and USCG.
- Blood alcohol testing is prohibited under the DOT regulations, except for post accident testing under specific operating administrations.
Alcohol

- Results of alcohol test are known immediately following the screening and confirmatory tests.
- There is no MRO involvement.
- DOT regulation has set 0.04 BAC as the limit, which necessitates immediate removal from a safety-sensitive function.
  - Terms breath alcohol concentration (BAC) and blood alcohol concentration used interchangeably.

Blood Alcohol Concentration Symptoms

<table>
<thead>
<tr>
<th>AC%</th>
<th>Capability Loss</th>
<th>Level of Intoxication</th>
</tr>
</thead>
<tbody>
<tr>
<td>0.04</td>
<td>Comprehension/Concentration</td>
<td>15%</td>
</tr>
<tr>
<td>0.06</td>
<td>Judgment</td>
<td>35%</td>
</tr>
<tr>
<td>0.08</td>
<td>Muscle Control/Sensation</td>
<td>65%</td>
</tr>
<tr>
<td>0.1</td>
<td>Coordination</td>
<td>100%</td>
</tr>
<tr>
<td>0.2</td>
<td>Equilibrium/Sleepy</td>
<td>100%</td>
</tr>
<tr>
<td>0.3</td>
<td>Stupor</td>
<td>100%</td>
</tr>
<tr>
<td>0.4</td>
<td>Coma</td>
<td>100%</td>
</tr>
<tr>
<td>0.4</td>
<td>Death</td>
<td>100%</td>
</tr>
</tbody>
</table>

The SAP must understand the alcohol testing process as employees may state the positive alcohol test is due to cough syrup ingestion or use of mouthwash.
- Neither of which are likely to produce a positive test result.
- The time of the alcohol test and the reported BAC levels of the screening and confirmation tests give the SAP additional aid to clinical data concerning use of alcohol.
- Example: Testing positive for alcohol at 8:00 a.m. with a BAC of 0.04 indicates a strong likelihood that an employee was drinking heavily through the night or drank alcohol in the early morning hours before coming to work.

Employee prohibited from safety-sensitive functions. Will need to complete return-to-duty process in order to return to work under the following conditions:
- having an indicated breath alcohol concentration of 0.04 or greater
- using alcohol on duty
- being on duty within 4 hours (8 hours for a flight crew) after using alcohol
- using alcohol within 8 hours following an accident or until tested, when an employee knows of the accident and an alcohol test is required
- refusal to submit to a required alcohol test
Testing Thresholds

In the federal testing program, analytes of the following drugs and their limits are tested:

<table>
<thead>
<tr>
<th>Drug</th>
<th>Immunosassay Screening Limit</th>
<th>GC/MS Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>marijuana</td>
<td>50 ng/mL</td>
<td>15 ng/mL</td>
</tr>
<tr>
<td>cocaine</td>
<td>150 ng/mL</td>
<td>100 ng/mL</td>
</tr>
<tr>
<td>codeine/morphine</td>
<td>2,000 ng/mL</td>
<td>2,000 ng/mL</td>
</tr>
<tr>
<td>heroin</td>
<td>10 ng/mL</td>
<td>10 ng/mL</td>
</tr>
<tr>
<td>amphetamines</td>
<td>500 ng/mL</td>
<td>250 ng/mL</td>
</tr>
<tr>
<td>PCP</td>
<td>25 ng/mL</td>
<td>25 ng/mL</td>
</tr>
</tbody>
</table>

There are 2 criteria on which limit levels were established:

1) The limits be set high enough so that all of the laboratories were technically capable of testing at that level.

2) Relevant to both marijuana and cocaine metabolites: the limits be set high enough that innocent, “passive” inhalation of smoke would not cause a positive test.
   - A common defense is some variation of “my friends smoke around me all the time.”
   - The current thresholds for reporting a positive test are high enough to eliminate this as a valid explanation.

Differences in Alcohol Testing Among Administrations
Differences in Alcohol Testing Among Administrations

Federal Aviation Administration (FAA):
- Employer must notify FAA of any employee holding a certificate under the various parts of 14 C.F.R. and the FAA Federal Air Surgeon of any safety-sensitive employee who holds an airman medical certificate and has an alcohol violation.
- Certain employee groups that have a second violation are permanently barred from their occupation.
- Employees who have a BAC between 0.02-0.039 must be out of service for at least 8 hours and must have a BAC below 0.02 to return to work.
- DUI offenses by crewmembers are reviewed for potential revocation of their pilot license if two DUIs are received in any given 36-month period.

Federal Motor Carriers Safety Administration (FMCSA):
- Commercial driver license (CDL) drivers with a BAC between 0.02-0.039 must be placed out of service for 24 hours.
- Police breath alcohol tests are accepted for post-accident testing.
- Pre-employment alcohol testing is optional.
- Alcohol use not permitted for 4 hours prior to performance of duty.

Federal Railroad Administration (FRA):
- The employer’s random testing plan must be submitted to the FRA.
- The employer must review the certificates of locomotive engineers for suspension or revocation when a violation occurs.
- Post-accident blood and urine testing for alcohol is required.
- Employees with a BAC between 0.02-0.039 must be out of service a minimum of 8 hours before returning to duty.
- Pre-employment alcohol testing is optional.

Federal Transit Administration (FTA):
- Mechanics, as well as vehicle operators, are covered under the DOT regulations.
- Pre-employment alcohol testing is optional.
- No alcohol use four hours prior to performance of duty.
- Employees with a BAC between 0.02-0.039 may be returned to covered service within 8 hours after his or her BAC retest is below 0.02.
Differences in Alcohol Testing Among Administrations

**Pipeline and Hazardous Materials Safety Administration (PHMSA):**
- There is no requirement to report violations to PHMSA.
- No random alcohol testing is permitted.
- No pre-employment alcohol testing is permitted.
- The employer’s alcohol plan is required to be submitted to PHMSA.
- Employees with a BAC between 0.02-0.039 may be returned to covered service within 8 hours after his or her BAC retest is below 0.02.

**United States Coast Guard (USCG):**
- 49 C.F.R. § 40 alcohol testing requirements do not apply to the maritime industry.
- No random alcohol testing is permitted.
- No pre-employment alcohol testing is permitted.
- Post-accident alcohol testing is required, but 49 C.F.R. § 40 procedures are not used.
- No alcohol use 4 hours prior to performance of scheduled duty.

Problems with Testing

There are many problems that can occur during the drug and alcohol testing processes. The SAP must be aware of these problems and how they are resolved in order to more effectively provide the employee with the best care possible given his or her testing outcome.
Occasionally, the laboratory will receive specimens that cannot be tested for several reasons:

- The specimens have no identifying labels.
- The specimens have labels that do not match the enclosed CCF.
- The specimens have broken seals or show evidence of tampering.
- The specimens do not contain an adequate volume of urine to complete the testing, possibly due to leakage.
- The specimens arrive at the lab without a collector’s identification and signature.

The laboratory must identify fatal flaws immediately and testing of the specimen must not begin. These specimens are immediately rejected and reported to the MRO as such. No further testing of the employee is allowed unless a negative result is required.

The MRO reports to the employer that the drug/alcohol test has been cancelled because of a fatal flaw and names the flaw.

Fatal flaws also occur with alcohol testing and result in the test being cancelled:

- When using an alcohol screening device (ASD), the ASD does not activate, the device is expired or the results are read either sooner or later than the time allotted by the manufacturer.
- When using an evidential breath tester (EBT), the sequential test number or alcohol concentration displayed on the EBT is not the same sequential test number or alcohol concentration on the printed result.

- The BAT conducts the test before the 15 minute wait period.
- The BAT does not conduct an air blank before the confirmation test.
- There is not a 0.00 result on the air blank before the confirmation test.
- The EBT does not print the test result.
- There is a calibration problem with the EBT.
Correctable Flaws

Some occurrences in the testing process do not result in the automatic cessation of testing; these are the "correctable flaws."

- Testing continues but the laboratory must attempt to correct the flaw by using Memorandums For Record (MFRs), which are also called Affidavits of Correction.
- These affidavits are sent by the service agent who identifies the flaw to the service agent who has committed the flaw.

- Most of the time, this process is initiated at the laboratory, but affidavits for missing donor/employee signatures or missing certifying scientist signatures are issued by MROs.
  - The service agent who has committed the error must acknowledge the error, sign and return the MFR and by doing so, affirm that the collection complied with the regulations.

- Testing may be completed on these specimens while the laboratory awaits the return of the affidavit, but if no affidavit is returned, the result of the testing is not issued and the laboratory is required to issue a rejected report to the MRO.
- The MRO must then report the test as cancelled.
- When this occurs, the person who has committed the flaw, generally the collector, must be identified and undergo error correction training after the MRO issues the cancelled test to the employer.

Drug Testing Correctable Flaws

Correctable flaws in the drug testing process include, but are not limited to, the following:

- CCFs without collector signatures
- CCFs without the donor/employee’s signature and no remarks
- Use of outdated or expired CCFs –
Drug Testing Correctable Flaws

- use of non-DOT CCFs
- specimen temperature is not checked and there are no remarks about the specimen being outside of normal temperature range - certifying scientist signature is omitted from the CCF
- employee’s signature is missing

Alcohol Testing Correctable Flaws

- lack of a signature of the BAT or STT on the alcohol testing form (ATF)
- the BAT or STT fails to note on the remarks line of the AFT that the employee has not signed the ATF after the result is obtained
- the BAT or STT uses a non-DOT form for the test

Documentable Flaws

There are errors which may occur but that do not result in a cancelled test.

The DOT regulations stipulate that a collector, laboratory, MRO, employer or other person administering the drug or alcohol testing process must document any errors in the testing process that they become aware of, even if they are not problems that will cause a test to be cancelled in accordance with the regulations.

Documentable Flaws

- Decisions that will determine the effect of the error will be adjudicated by administrative or legal proceedings, and employers and/or service agents may be subject to an enforcement action under DOT agency regulations or through the Public Interest Exclusion (PIE) if the infraction warrants it.
- DOT regulations state that no one concerned with the testing process may declare a test cancelled based on an error that does not have a significant adverse effect on the right of the employee to have a fair and accurate test.
Documentable Flaws

The following errors fit into this category but must be documented for future evaluation:

- a minor administrative mistake
- an error that does not affect the employee’s protections under 49 C.F.R. § 40, such as the collector forgetting to put bluing in the toilet water
- the collector who collected the specimen has not completed the required training
- there is a delay in the collection process

- the MRO who verifies the test result has the basic credentials to be a MRO but has not met the training requirement
- the failure to directly observe or monitor a collection that the regulations require or permit to be directly observed or monitored
- the unauthorized use of direct observation or monitoring for a collection
- claims that the employee was unfairly selected for testing

Refusal to Test

- If an employee declines to take a drug or alcohol test or takes action to obstruct the drug or alcohol testing process, the MRO reports the test as a refusal to test.
- The employee has a verified adulterated or substituted test result.
- The employee fails to provide adequate breath for alcohol testing without a valid medical explanation (called “shy lung”).
- The employee fails to provide adequate urine for drug testing without a valid medical explanation.
- The employee fails to appear or remain at the site, unless the test is a pre-employment test.
- The employee fails to permit directly observed or monitored collection as required by the DOT regulations.
Refusal to Test

- The employee fails to take a second test as directed.
- The employee fails to undergo a medical evaluation when requested.
- The employee fails to cooperate with the testing process in any way.
- The employee fails to arrive at the collection site within the given timeframe, unless the test is a pre-employment test.

Refusal to Test

The consequence of a refusal to test are the same as for any other violation of DOT agency drug and alcohol regulations:
→ the return-to-duty process is initiated.

Refusal to Test

Adulteration and substitution of a test indicate a deliberate attempt to sabotage the testing situation.
- This may indicate that the employee is a regular user of a drug and has little intention of giving up drug use.
- It may also indicate that the client has tried to educate him or herself on how to obstruct the testing process.

Validity Testing

Sometimes, a laboratory is not able to complete testing of a specimen because it contains a substance that is blocking 1 or more of the testing techniques used by the lab.

- When this is detected, a 2nd type of test is performed at the laboratory:
  - Specimen validity testing (SVT) – testing done by the laboratory to evaluate the urine specimen to determine if it is consistent with normal human urine.
  - Currently, this testing is still voluntary, although most laboratories perform validity testing at some level.
Validity Testing

Validity testing exists because donors have become very sophisticated at interfering with workplace drug testing.

Adulterating substances designed to block laboratory testing of urine specimens can be purchased over the Internet.

Extreme dilution, well beyond that seen in normal urine, is called substitution and also interferes with testing.

When interference is detected, the laboratory may proceed in 1 of 3 possible directions:

1) If the laboratory is equipped, it may conduct further testing to identify the adulterating substance.
2) If the laboratory is unequipped, it may ship the specimen to another laboratory for the additional testing.
3) Reject the specimen and issue the report to the MRO as an invalid specimen.

Diluents and Substitutions

As mentioned before, when an employee dilutes or substitutes the specimen, the laboratory will detect this and report a dilute or substitute test result.

This determination is made in addition to whether the specimen was found to be positive or negative for drugs and/or alcohol.

- **Dilute** = when its creatinine concentration level is greater than or equal to 2mg/dL but less than 20 mg/dL and when its specific gravity (SG) is greater than 1.001 but less than 1.003.

- **Substituted** = when its creatinine concentration level is less than 2mg/dL, and the specific gravity is less than or equal to 1.001 or greater than or equal to 1.020 on both the initial and confirmatory tests. Substitution is a matter of urine concentration - either the specimen is too dilute or too concentrated.
Diluents and Substitutions

- When the employer receives a verified dilute positive test result, the test result is treated as a positive test.
- When the employer receives a verified dilute negative test, the employee may be required to retest immediately if the MRO so chooses or if the employer has a policy in place regarding retesting for dilute negatives.
  - This retest may or may not be observed.
  - If the retest result is also a verified dilute negative, the test result must be accepted by the employer as a negative.
  - An employer may not send an employee for a third test.

Adulterants

Adulterants are substances that are either never found in human urine or, if are found, the levels at which they occur normally are considerably below the limit levels that are used to define adulteration.

Currently the criteria for adulterated specimens are the following, but it is expected that other compounds will be added to this list over time:

- Nitrite ≥ 500/mL
- pH ≤ 3 or ≥ 11
- An exogenous material is identified that is not a normal constituent (e.g. glutaraldehyde)
- Higher than normal physiologic concentration

Adulterated results are reported to the employer as refusal to test because specimen adulterated with (the name of the adulterant).

If the employee admits to having adulterated the test, the MRO reports refusal to test, because adulteration admitted as the test result.

- When the laboratory cannot positively identify the adulterant, the certifying scientist may still report probable adulteration verbally to the MRO during their discussion of the invalid result.
- When this occurs, the MRO talks with the employee and asks for a medical explanation.
- If no explanation is given, the MRO cancels the test and reports to the employer that an immediate re-collection is required, with the employee providing the specimen under direct same-sex observation.
Shy Bladder

Shy bladder = when the employee is unable to produce an adequate amount of urine for testing.

- In this event, the employee must produce a physician’s statement explaining why the employee was unable to give a sufficient urine specimen and submit it to the MRO.
- To be acceptable, a medical condition must be either a diagnosable physiological condition or a medically-documented pre-existing psychological disorder.

If the MRO reviews the physician’s statement and agrees that the employee has a medical condition which prevents the employee from giving a urine specimen, the test may be cancelled, unless a negative result is required, prior to the employee assuming a safety sensitive position.

A negative result is required in 3 cases: pre-employment, return-to-duty and follow-up testing.

In these cases, a physical evaluation must be conducted by the MRO or designated evaluating physician who will determine if there is clinical evidence of illicit drug use.

If there is no evidence of illicit drug use, the MRO can report the result as negative, with a written notation regarding the results of the evaluation.

If there is evidence of illicit drug use, the MRO reports a cancelled test.

Cancelled Tests

A cancelled test is neither a positive test nor a negative test, and employers may not attach consequences to a cancelled test.

- Employers may not use a cancelled test for purposes of a negative test by allowing employees to work in safety-sensitive positions;
- They do not count toward meeting the DOT required random testing rate.
- They do not provide a valid basis for an employer to conduct a non-DOT test.
Cancelled Tests

The following scenarios are additional examples of when a test will be cancelled that have not been described elsewhere:

1) The laboratory reports that the primary specimen is positive, but the split specimen is reported as “failure to reconfirm: drug/drug metabolite not detected.”

2) The laboratory reports the primary specimen is adulterated or substituted, and the split specimen is reported as “adulterant not found within criteria” or “specimen not consistent with substitution criteria.”
   - In this event, the MRO must report to DIER and the employee that both tests are cancelled.

3) The laboratory’s test of the primary specimen is positive, adulterated or substituted and the split specimen is unavailable for testing.

Alternative Specimens

The field of workplace drug and alcohol testing is constantly evolving.

The DOT currently mandates that drug testing may only be performed on urine samples and alcohol screening may be performed by saliva or breath, with all test results greater than 0.02 BAC confirmed by breath.

The DOT does not authorize the testing of blood, sweat, hair or other oral fluids for the presence of drugs or alcohol.
**Alternative Specimens**

- Currently, the Drug Testing Advisory Board (DTAB) of the Center for Substance Abuse Prevention (CSAP) at the Substance Abuse and Mental Health Services Agency (SAMHSA) in the Department of Health and Human Services (DHHS) is evaluating the use of alternative specimens and attempting to establish standards which would allow these specimens to be included in federal workplace testing programs.
- When these standards have been established, the DOT will also add alternative specimens to the testing program.
- Though it will probably be some time before alternative specimens become a part of the regulated testing environment, many non-regulated employers are currently using hair and oral fluids, and SAPs would be well advised to understand the technology.

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**Review of Service Agents**

**Service agent** = any person or entity, other than an employee of the employer, who provides services specified under 49 C.F.R. §§ 40 to employers and/or employees in connection with DOT drug and alcohol testing requirements.

- Consortium/Third Party Administrator (C/TPA)
- Breath Alcohol Technician (BAT)/Screening Test Technician (STT)
- Collector
- Laboratory
- Medical Review Officer (MRO)
- Substance Abuse Professional (SAP)

Service agents are not employers for purposes of the DOT regulations, nor are they employees of the DOT covered employer.
Consortium/Third-Party Administrator (C/TPA)

Consortium/third-party administrator (C/TPA) is a service agent that provides or coordinates the provision of a variety of drug and alcohol testing services to employers.

- Typically perform administrative tasks concerning operation of the employers’ drug and alcohol testing programs.
- Responsible for maintaining records on behalf of the employer, but must not be used as an intermediary in the transmission of the report to the employer.
- This term includes, but is not limited to, groups of employers who join together to administer, as a single entity, the DOT drug and alcohol testing programs of its members.

Breath Alcohol Technician (BAT)/Screening Test Technician (STT)

The alcohol testing collection process is similar to drug testing collections, but the staff is different.

- The 2 types of technicians who may conduct alcohol testing are:
  1) Screening test technician (STT)
  2) Breath alcohol technician (BAT)

- The STT may only conduct the initial alcohol screening test, but a BAT may conduct both a screening and confirmatory alcohol test.

There are 2 instruments used to test for alcohol:

1) Alcohol screening device (ASD), which may be used for a saliva screening test only
2) Evidential breath tester (EBT), which may be used for both screening and confirmatory tests using breath

All testing devices must be listed on the National Highway Traffic Safety Administration (NHTSA) conforming products list, which can be found at www.nhtsa.dot.gov.
There are extensive regulations that address the proper use and care of the testing devices to assure accuracy.

For example, the testing device must print the:
- test result
- sequential test number
- manufacturer’s name for the device
- device’s serial number
- time of the test

**BAT/STT Testing Requirements**

- If the screening test on the EBT or ASD indicates a BAC of less than 0.02, the test result is reported to the Designated Employer Representative (DER).
- If the BAC is 0.02 or above, a confirmation test must be conducted within 30 minutes, but not sooner than 15 minutes, of the presumptive positive alcohol test.
  - The employee is instructed not to eat, drink, put objects in the mouth or belch during the waiting time.

A BAT using the EBT must administer a confirmation test.

If the confirmatory test is between 0.02 - 0.039, there are consequences.

Each operating administration has specific consequences, but all operating administrations require that the employee be immediately removed from his or her safety-sensitive position.

- If the confirmatory test is 0.04 or greater, the employee must be removed from performing safety-sensitive functions and must engage in the same return-to-work process as is required of a non-negative drug test result, starting with the SAP evaluation.
- The BAT must immediately report alcohol test results that are equal to or greater than 0.02 to the DER.
If an employee fails to appear for an alcohol test within the designated time limit established with the DER or C/TPA, the DER or C/TPA must be immediately notified.

In addition, when an employee appears for an alcohol and drug test, the alcohol test must be conducted prior to the drug test.

In alcohol testing, the DOT-authorized Alcohol Testing Form (ATF) must be used in all DOT alcohol tests.

- A new ATF has been developed and adopted and must be used exclusively beginning January 1, 2011.

Collector = instructs and assists employees at a drug testing collection site, receives and makes the initial inspection of the specimen provided and completes the appropriate paperwork for the specimen.
Pre-Collection Protocol

- Attempts to alter drug test results occur mostly en route to or at the collection site.
- The DOT regulations provide information on how collection sites are to be set up to maximize security, while still allowing privacy for most urine collections:
  - Employees/donors must produce photo ID prior to being tested or be accompanied by a supervisor who is able to verify their identity.
  - They must arrive at a specified time or be reported as tardy.
  - Unless there is a medical crisis, the collection must proceed immediately.

- Outer clothing, purses and other belongings are to stay with the collector during the collection process.
- Pockets must also be emptied to inspect their content.
- Collectors are instructed to work on only one collection at a time to prevent any specimen mix-up.
- The employee must wash his or her hands, select a collection kit and proceed to the designated collection area.
- The collector must color the toilet water blue to prevent “scooping” to substitute toilet water for urine.

- Testing Procedures

  Employees are to provide a specimen of at least 45 mL of fluid within a reasonable period of time.

  When the employee has finished voiding, he or she will present the specimen to the collector who will use the temperature strip attached to the collection container to measure, within four minutes of the void, the temperature of the specimen.
**Testing Procedures**

- If the temperature is within the 90º-100º Fahrenheit range, the collector will make additional observations of the specimen (e.g., color, odor) and record any irregularities on the Custody and Control Form (CCF).

- Since split specimens are now required for all drug testing collections, the collector will pour off 30 mL into Bottle A and the remainder into Bottle B, while still in the presence of the employee.

- The bottles will be tightly capped and a tamper evident seal will be peeled off the bottom of the CCF and applied to the appropriate bottles (A and B).

- The employee will be asked to initial the strip on each bottle prior to the bottles being placed into the tamper evident bag provided by the laboratory.

- If either of these tamper evident seals is broken, the laboratory will reject the specimen.

- The CCF paperwork will be completed and the first copy, referred to as CCF Copy 1, will be placed in the plastic bag with the urine specimens.

**Shy Bladder**

- If the employee is unable to successfully produce 45 mL of urine in one void during the 3-hour period, the collection process is stopped.

- The collector will immediately report the problem to the DER and explain that the worker has a “shy bladder.”

- The DER will report the situation to the MRO, who will then interview the employee.

- A medical evaluation may be ordered, but if the MRO’s final decision is that there is no legitimate medical explanation for the shy bladder, the test will be reported as a refusal to test.
Observed Collections

If the specimen temperature is not within 90º to 100º Fahrenheit within the first 4 minutes, the collector will send the specimen off to the laboratory and will immediately begin a new collection.

He or she will initiate a new CCF, open a new collection kit and proceed with an immediate observed collection using a monitor of the same gender as the employee.

- A note indicating the temperature will be placed on the comments section of the CCF’s and both specimens will be sent to the laboratory.
- The DER must then be notified of the problem.
- If the employee refuses to participate in this second procedure, the DER must be notified there has been a refusal to test and given the reason.
- In the event of a refusal to test, neither specimen will be sent to the laboratory.

In addition to this circumstance, observed collections must be ordered by the DER in the following situations:

- When a previous test has been reported as invalid with no legitimate medical explanation (suspicion of adulteration)
- When a split sample request is cancelled because the split is unavailable for any reason (e.g. not adequate specimen, loss of split specimen)
- When a split sample tested at the 2nd lab is reported as invalid

Observed collections by same gender observers must be ordered for all return-to-duty and follow-up tests for employees who have successfully complied with the SAP’s recommendations.

These observations must include a procedure for ensuring the employee does not have a prosthetic or other device designed to carry "clean" urine or a urine substitute.
All of this procedure must take place in the presence of the employee, who will be asked to read a certification statement and complete and sign a section attesting that the procedure was in compliance with the stated process on the form.

It is important for the SAP to know how carefully worded and explicit the regulations are to ensure that the specimen collection process is valid. Forensic procedures are used to ensure no one suffers adverse consequences should a urine specimen be incorrectly labeled when it is sent to the laboratory.

The following steps are mandated to ensure correct labeling of urine specimens:

- Collections in the DOT system must be recorded on DOT approved CCFs.
- Only 1 qualified collector will work with 1 donor at a time. This ensures that the collector is able to see the specimen at all times and is able to do all of the necessary sealing and labeling in the presence of the employee.
- The employee sees his or her kit opened and removed from the factory sealed plastic bag by the collector.

- The employee observes the pouring of specimen into the 2 bottles that will be transferred to the laboratory.
- The employee sees the tamper evident strips removed from the CCF and placed on each of the 2 specimen bottles.
- The employee can verify that the numbers identifying the specimen are the same as the numbers on CCF and were placed there by an impact printer at the laboratory.
- The employee initials the tape on the bottles, where they will remain for later identification if requested.
- The bottles are placed into a plastic bag, which also has a tamper evident seal.

When the MRO later interviews the employee in the event of a non-negative result, questions will be asked about the collection procedure to ensure chain-of-custody procedures have been carefully followed.

If they were not followed correctly, the integrity of the specimen is compromised and may have to be cancelled.
Collector Qualifications

- Collection is the component of the testing process most often challenged in arbitrations and other legal proceedings.
- With good reason, many have called collections the weakest link in the drug testing chain.
- To help prevent errors, DOT rules require collector qualification training and monitored proficiency demonstration on 5 mock collections.

Refresher trainings are required every 5 years.

The MRO may cancel a test if there is an undisputed collection error that could have a significant impact on the right of an employee to have a fair and accurate test.

When this happens, the collector is required to undergo error correction training and additional mock collections.

Collector Qualifications

Even though the majority of workplace drug collections are not performed under DOT regulations, the educated employer would be wise to insist on a process that matches the DOT protocols.

Unless there is a strong reason to do otherwise, it is recommended these procedures are followed and to accept the cover of the legal protection granted by their excellent record in court.

SAP Concerns

- When a SAP is performing an assessment, it is not unusual for the worker to deny drug use and claim an error in the testing procedure.
- Most often, this claim is about a perceived error in the collection process.
- The SAP who understands the safeguards in the federally mandated drug-testing process will not use assessment time investigating claims that the MRO has already reviewed and ruled as valid.
SAP Concerns

If significant doubt does remain in the SAP’s mind, it is best to call and discuss those doubts with the MRO.

It is important for the SAP to focus on the employee’s drug and alcohol use.

Some employees hope that the SAP does not understand the collection process and can be diverted from the evaluation process.

Laboratory

Laboratories = the facilities where the employee’s specimen is sent after it is packaged by the collector and the specimen is tested for traces of drugs or alcohol.

Federal certification, regular laboratory inspection and proficiency testing have made the laboratory the strongest part of the drug testing chain and the one least likely to be challenged in court or other legal proceedings.

Certification

Laboratories that are governed by the DOT regulations include any U.S. laboratory certified by the Department of Health and Human Services (HHS) under the National Laboratory Certification Program as meeting the minimum standards of Subpart C of the HHS Mandatory Guidelines for Federal Workplace Drug Testing Programs.

Foreign laboratories are also included if it has been approved for participation by DOT under this part.
Certification

A laboratory must adhere to and possess the following minimum standards to qualify for certification:

- maintain adequate facility security
- conduct personnel education, training and experience
- perform regular and thorough inspection by teams of trained inspectors
- perform regular proficiency testing on “blind” specimens coordinated by the National Laboratory Certification Program

Specimen Verification

Upon arrival at the laboratory, each specimen is carefully checked by assessing personnel, who look for leakage and signs of tampering before opening the outer plastic primary seal pack of the shipping container.

Specimen Verification

- The accessing laboratory personnel begin a new chain-of-custody document on which they enter every step of the process performed.
- The specimen bottles and CCF are removed from the plastic pack and inspected to be certain that adequate specimen is present in both bottles and to ensure the specimens all have the same identifying numbers on their bar codes.

Specimen Verification

- The CCF is inspected for the following:
  - the correct federal form has been used
  - adequate notes have been made by the collector pertaining to the temperature of the specimen
  - the presence, or omission of, all necessary collector information and signatures
Specimen Verification

The specimen and forms will be sent to the laboratory’s certifying scientist for specimen rejection if 1 of the following occurs:

- there is evidence of specimen tampering or a seal was broken
- there is inadequate specimen quantity
- there is a discrepancy in the numbers on the bottles and the paperwork
- the collector’s printed name and signature are missing from the CCF

- If an improper CCF form was used, or if only the collector’s signature is missing, an attempt will be made to obtain an affidavit from the collector explaining or correcting the error.
  - If this is not possible, the specimen will be reported as rejected.
- Chain-of-custody forms will follow the specimen and any samples (aliquots) removed from it.
  - These forms must be updated at each step of the sample’s process through the laboratory and must be available for inspection if there are challenges to the laboratory’s chain-of-custody procedure.

Two-Step Testing Process

1) A small sample of Bottle A (the first of two bottles filled at the collection site in split specimen testing) is poured into a carefully labeled tube for analysis by immunoassay.

2) If a specimen tests positive for 1 of the drug analytes the immunoassay targets, a 2nd aliquot of the specimen is taken from Bottle A and prepared for confirmation testing.
Two-Step Testing Process

**Note:** The only instance in which Bottle B will be used is when the MRO interviews the employee about a non-negative result and when given the opportunity, the employee requests that the split be reanalyzed.

The MRO will instruct the laboratory in writing to prepare the split for transport to a second federally certified laboratory designated by the employee or the MRO.

Quality Control

- In addition to federal laboratory certification inspections and proficiency sample testing, laboratories are required to use regular and mandated internal quality control procedures.
- At a minimum, 10% of specimens tested by a laboratory must be quality control (QC) samples.
  - This means that when the screening auto-analyzer or the GC/MS is analyzing a batch of 50 specimens, at least 5 of them will be samples with known quantity of drug analyte.

Quality Control

- Some of these specimens will be known to the laboratory technician who is running the QC tests and will be used to assure him or her that the equipment and the reagents are functioning properly.
- Some of QC samples will be known only to the certifying scientist, who will use them to monitor the proficiency of the laboratory technician.

Quality Control

In addition to these quality control specimens, the federal program mandates that companies/employers who test more than 2,000 employees per year must submit blind performance test specimens to the laboratory that are identical in appearance and paperwork to specimens from their employees.
Medical Review Officer (MRO)

Medical review officers (MROs) = responsible for receiving and reviewing all laboratory results generated by an employer’s drug testing program and is capable of evaluating varying medical explanations for non-negative drug test results.

MROs play a key role in maintaining a fair and accurate drug-testing program.

Qualification Requirements

- MROs have a defined set of qualifications and education requirements to which they must adhere.
- MROs must have both knowledge of and clinical experience in substance use disorders.
- They must be licensed physicians in any state or province, have knowledge of the federal regulations and have passed a written examination given by a nationally recognized certifying board.
- In addition, requalification training must be completed every 5 years that includes a written examination in order to maintain superior competence.

MRO Responsibilities

DOT defines the MRO’s role in the federal drug testing program as that of an impartial “gatekeeper and advocate for the accuracy and integrity” of the program.

As such, the role of the MRO more closely resembles that role of an independent expert than a traditional physician.

There is no doctor-patient relationship over established by the MRO acting under the federal regulations.
MRO Responsibilities

- MROs are required to look for legitimate medical explanations for non-negative specimens.
  - Non-negative specimens = positive, invalid, adulterated or substituted specimens
- The laboratory may also reject some specimens, which must be reported by the MRO to the employer as cancelled.
- MROs may have no financial connection to any laboratory involved in the DOT drug-testing program, nor may they derive any financial benefit from having an employer use a specific laboratory.

Test Verification Protocol

Most of the MRO’s time is spent processing the confirmed non-negative drug test results from the laboratory.

Except when the laboratory has rejected the specimen, the MRO must compile data and interview employees to answer the following questions:
- Is this the right specimen?
- Is the laboratory report accurate?
- Is there a legitimate medical explanation for the lab finding?

When the MRO receives the confirmed electronic or written testing results from the laboratory, he or she is required to review each one, even if it is negative.
- Negative results must not be reported to the employer until the MRO has received and verified copy 2 of the CCF.
- The negative MRO results may be issued to employers as electronic data files if more convenient.
Test Verification Protocol

- After the MRO has satisfactorily identified the employee, the MRO attempts to contact him or her.
  - Federal regulations require the MRO to personally speak to the employee, although the MRO’s staff may make the initial contact.
  - The MRO or staff must make at least 3 attempts to contact the employee, spaced reasonably over a period of at least 24 hours.
- If the MRO is unable to make contact after 3 attempts, he or she must notify the DER.

- The DER then attempts to contact the employee and request him or her to call the MRO within the next 72 hours.
- The employee must be informed that if he or she does not comply, the MRO will be forced to report the drug test result to the employer without the employee having the benefit of an MRO interview.
- When the DER has contacted the employee and the MRO has been notified, a 72-hour clock is started.
- The result is reported either after the employee interview or at the end of the time period; regardless of the outcome, the test result is verified by the MRO.

- If the employee does not call, and neither the MRO nor the DER can make contact with him or her, the result is reported to the employer 10 days after the MRO received the confirmed positive.

- The MRO may reopen the case within 60 days of this report if the employee calls with a sound, plausible reason as to why no contact was made.
- Extremely detailed documentation is required at every phase of this process.

The purpose of the contact with the employee is to inform him or her about the review process and to report the results of the laboratory test.

- Before the MRO collects any medical information, the employee must be informed that the MRO is required to report to the employer any information learned that may affect the employee’s performance of safety-sensitive duties or that the employee is in violation of any departmental rule.
- Commonly called a “Medical Miranda” by MROs.
The MRO tells the employee what drug(s) were found by the laboratory, or the basis of the confirmed laboratory report of adulteration or substitution.

The employee is asked to provide a legitimate medical explanation for the laboratory findings.

The MRO may also ask questions about the collection process, although not required to do so, to assess the integrity of the collection process. If there is any question about the chain-of-custody procedures, the MRO can call the collector to investigate the concerns.

If the employee claims there is a legitimate medical explanation of the non-negative test result, the MRO must verify that the employee has been truthful by obtaining appropriate medical records, interviews with other physicians, pharmacists or requiring employees to consent to a medical examination.

Once verification has been completed, the MRO may downgrade the confirmed positive to a negative and report it as such to the employer if a negative result is required.

In all other cases (post accident, random), the result is issued as cancelled.

If the MRO believes that a prescription medication, or other medical information that has been obtained, is likely to cause the employee to pose a significant safety risk in the performance of his duties, the MRO must report this to the employer.

The USCG has an additional step in the return-to-work process for a mariner who wants to work again in the maritime industry.

The MRO is responsible for a return-to-work letter, which must be presented to the Administrative Law Judge who is hearing the case. This is in addition to the SAP’s letter to the employer.
Remember, every specimen is split into two components and shipped to the laboratory in two different bottles: Bottle A and Bottle B.

- During the MRO’s interview with the employee, the MRO must tell the employee that he or she has up to 72 hours from the time of the interview to request the split specimen be analyzed.
- The employer must ensure the test takes place if the employee requests it.

The employee is not required to pay for the test of the split specimen before it takes place; this is the responsibility of the employer, but the employer may seek reimbursement afterward.

- The employee must be given contact information for the MRO in case further interaction is necessary.
- Additional testing of the same specimen (e.g., DNA testing) is not authorized.

- If Bottle B does not reconfirm the positive test result from Bottle A, both results are then cancelled and no further testing of the employee is allowed unless a negative result is required (e.g., pre-employment, return to duty or follow-up testing).

- If a negative result is required, the employee must be retested. This circumstance will result in a report made to DOT.

- If Bottle B cannot be tested because it is not available for any reason, the result from Bottle A is cancelled, and an immediate, observed specimen is collected from that employee.
  - A report is also sent to DOT in this circumstance.

- If Bottle B is not available because a drug screen collector failed to collect one, that collector must undergo error correction training.
Substance Abuse Professional (SAP) – U.S. Department of Transportation Alcohol and Drug Testing Regulation Qualification and Requalification Course

Substance Abuse Professional (SAP) evaluates 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.

Qualification Requirements

In order to qualify to be an SAP, a counselor must have one of the following credentials:

- Alcohol and drug abuse counselor certified by NAADAC/NCC (National Certification Commission) or the International Certification Reciprocity Consortium (IC&RC)
- Licensed physician (Doctor of Medicine or Osteopathy)
- Licensed or certified social worker
- Licensed or certified psychologist
- Licensed or certified employee assistance professional
- National Board of Certified Counselors (NBCC) Masters Addiction Counselor (MAC)
- Licensed Marriage and Family Therapists (LMFT)
Eligible SAPs must also possess the following knowledge requirements:

- Be knowledgeable about and have clinical experience in the diagnosis and treatment of alcohol and controlled substance use disorders.
  - The DOT does not specify what constitutes adequate clinical experience or knowledge, so it is recommended that SAPs have documented work experience and/or training in the addiction profession.
  - SAPs must be able to defend their educational qualifications and work experience if challenged by an employer, employee, CITPA or DOT agency representative.

- Be knowledgeable about the SAP function as it relates to employer interests in safety-sensitive duties.
  - Specifically, understand from the employer’s perspective the employer’s responsibility to the public in maintaining safety in public transportation.
  - Understand the rules and regulations governing drug and alcohol testing outlined in 49 C.F.R. § 40 and the rules governing the particular the operating administration of the employer for whom the employee works or worked.

- Finally, eligible SAPs must also receive SAP qualification training and pass an examination administered by a nationally recognized professional or training organization.
  
The DOT has specified that the following components must be covered in any acceptable training program:

1) background, rationale and coverage of the DOT’s drug and alcohol testing program
2) 49 C.F.R. § 40 and DOT agency drug and alcohol testing rules

3) key DOT drug testing requirements, including collections, laboratory testing, MRO review and problems in drug testing;
4) key DOT alcohol testing requirements, including the testing process, the roles of BATs and STTs and problems in alcohol testing
5) SAP qualifications and prohibitions
Qualification Requirements

6) the role of the SAP in the return-to-duty process, including the initial employee evaluation, referrals for education and/or treatment, the follow-up evaluation, continuing treatment recommendations and the follow-up testing plan

7) SAP consultation and communication with employers, MROs and treatment providers

8) reporting and record keeping requirements

9) issues that SAPs confront in carrying out their duties under the program

SAP Responsibilities

- The fundamental responsibility of the SAP is to provide a comprehensive face-to-face assessment and clinical evaluation to determine what level of care the employee needs in resolving problems associated with alcohol and/or prohibited drug use, as well as mental illness.

- Any identified problems areas in the employee’s life must be address because it may affect his or her ability to do the job.

- An individual can pose just as much of a risk when mentally unstable as he or she can being under the influence of substances when functioning in a safety-sensitive position.

- To be clear, it is not the responsibility of the SAP to establish whether a substance use problem exists.
  - This has already been determined by a verified positive drug test, a refusal to test, a breath alcohol test of .04 or higher or a violation of the prohibitions on the use of alcohol or drugs under a DOT agency regulation.

- Rather, it is the SAPs responsibility to determine the extent of the employee’s substance misuse problem through the assessment process.

- The scope of the SAP assessment must be comprehensive and the level of care determination defendable.
SAP Responsibilities

- After this assessment, the SAP must recommend a course of education and/or treatment through which the employee must demonstrate successful compliance prior to returning to DOT safety-sensitive duty.
  - in-patient treatment
  - partial in-patient treatment
  - outpatient treatment
  - intensive outpatient treatment
  - alcohol and other drug education
  - continuing care
- Education recommendations: reputable drug and alcohol education courses, self-help groups and community lectures.

Because of the nature of the SAP responsibilities and consequences of an unfavorable outcome, it is not uncommon for an employee or employer to attempt to influence the SAP when making decisions regarding his or her recommended treatment.

- Do not be intimidated by the employee, employer or union representative in regard to the level of care recommendation or return to work time frame.
- If the employee wants to challenge the lab result, he can do so and return to the SAP once the challenge is resolved.
- The SAP must not engage in lengthy arguments with the employee over the adequacy of the laboratory procedures.

The SAP must not be influenced by the financial situation that an employee may experience following termination or lay off due to a non-negative test result.

The process instituted by the DOT strongly supports the value of hiring and retaining employees in recovery, but inadequate or premature treatment recommendations must not be made to the detriment of the traveling public’s safety.

Upon determining the recommended level of care, the SAP will serve as a referral source to assist the employee’s entry into an acceptable program.

- Must have a working knowledge of quality programs and qualified counselors, as well as insurance, benefit plans and payment requirements.
- Must be cognizant of the employer’s policies regarding payment for treatment; on-duty-time treatment programming; and the granting of administrative, sick and/or annual leave for both in-patient and outpatient treatment.
- Information must be made available to the employee regarding meetings of AA, NA and/or Al-Anon, as well as other reputable self-help groups.
SAP Responsibilities

The SAP develops and directs a follow-up testing plan for the employee returning to work following successful compliance. The number and frequency of unannounced follow-up tests is directed by the clinician.

- In the first 12 months following the employee’s return to safety-sensitive duties.
- If poly-substance use has been indicated, the follow-up testing plan must include testing for drugs.
- Follow-up testing can last up to 60 months but can be terminated at any time after one year.
- Follow-up testing requirement is in addition to any other tests accomplished through the employer’s testing program.

Prior to the employee’s return to safety-sensitive duties:

- SAPs required to provide face-to-face follow-up evaluation to determine successful compliance with recommendations of initial evaluation.
- Evaluation must be accomplished before employer considers employee for return to safety-sensitive functions.
- Evaluation provides the employer with assurance that the employee has made appropriate clinical progress toward successful compliance of the return-to-duty process.

- In directing follow-up testing plan, SAP will specify number and frequency of the follow-up tests.
- The employer responsible for ensuring individual is tested according to the plan.
- Follow-up testing - important way that the employer has to determine if the employee has stopped using controlled substances or misusing alcohol.
- Important to note, employer must conduct all follow-up tests (as well as the return-to-duty test) as directly observed collections with same sex observer.

- There are times when an employee will need continuing assistance with an alcohol or drug problem.
- SAP will provide the employer with recommendations that the employee is to continue in treatment/continuing care once returned to safety-sensitive duties.
- Payment is left for employers and employees to decide upon.
SAP Responsibilities

- Important that employers are required to refer and provide an employee who has violated DOT rules with a list of qualified SAPs.
- Employer not required to retain an employee nor provide the SAP evaluation or any subsequent recommended education or treatment.
- If employer offers employee opportunity to return to a DOT safety-sensitive position, employer must ensure that employee goes through the entire SAP return-to-duty process in compliance with the SAP's recommendations.

Civic Responsibilities

- Work of SAP very important part of DOT's efforts to help make America's transportation industries the safest in the world.
- Job as "gatekeeper" of the return-to-duty process provides important service to employee, employer and traveling public.
- Absolutely imperative that SAP understands what is at stake each time he or she works with an employee who has violated DOT rules.
- Because SAP qualification is voluntary, SAP willingly elects to have a special relationship and bond with everyone employee will encounter if employee returns to performance of safety-sensitive duties.

This theory may represent a departure from many clinicians' regular duties.
- It is crucial to the important role SAPs play as "gatekeepers" of the DOT's return-to-duty process.
- SAPs represent major decision point, in some cases the only decision point, an employer may have in choosing whether or not to place an employee behind the wheel of a school bus, in cockpit of a plane, at helm of an oil tanker, at throttle of a train, in engineer's compartment of a subway car or at emergency control valves of natural gas pipeline. Responsibility to the public is enormous.

Further, this role is not in the special relationship with the employer or employee, but with the public.
- SAPs charged with protecting the public's safety by professionally evaluating the employee and recommending appropriate education and/or treatment, follow-up tests and continuing care.
- Any recommendations must be based on the employee's specific needs and protect the public safety event that employee returns to the performance of safety-sensitive functions.
Prohibitions

- Potential conflict of interest situations inherently exists.
- DOT established specific prohibitions in regard to referrals for education or treatment of employee following the SAP evaluation.
- DOT wishes to ensure that there is no opportunity for an employee to accuse the SAP of making a level of care decision and subsequent referral based on a financial advantage to the SAP.
- Therefore, a SAP must not refer an employee to his/her own practice or to any person, agency or organization where the SAP may make financial gain from the referral. However, there are exceptions to this prohibition.

The SAP may refer an employee to any of the following providers of assistance, even if the SAP has a financial relationship with them:
- a public agency (e.g. a treatment facility) operated by a state, county or municipality;
- a person employed by or under contract to the employer to provide alcohol and drug treatment and/or education services (e.g. the employer’s contracted treatment provider);
- the sole source of a therapeutically appropriate treatment under the employee’s health insurance program (e.g. the single substance use disorder inpatient treatment program made available by the employee’s insurance); or
- the sole source of therapeutically appropriate treatment reasonably accessible to the employee.

Referrals

- It is not the SAP’s responsibility to locate collection sites.
- SAP must be aware there are inadequate numbers of alcohol collection sites available, even in metropolitan areas.
- Could present a dilemma to SAP who feels pressured to avoid recommending alcohol testing.
- SAP must recommend alcohol testing in all situations where alcohol is the drug of choice, even if employee was referred due to drug positive or if SAP feels employee is at risk to use alcohol.
Referrals

- Finding good treatment facilities can be challenging for SAPs.
- SAMSHA Website very helpful in locating licensed treatment facilities (www.samhsa.gov)
- Number of treatment facilities that offer various levels of care for substance use disorders is limited, especially for those who live in rural areas, have co-occurring disorders or have limited financial resources.
- If employee does not have insurance, publicly funded facilities often have significant waiting lists or there are no public treatment facilities geographically accessible for employee.

Recommendations

- If SAP plans to provide services for a specific company, it is in the SAP’s best interest to develop a contract with that company indicating what services will be provided.
- Example: under the DOT regulations, the SAP is not required to perform a “fitness duty” evaluation, nor does the SAP make the decision to return the employee back to a safety-sensitive position.
- A contract outlining specific expectations will reduce or eliminate confusion regarding the role of the SAP.

- Managed healthcare does not have the same obligation to public safety as the SAP.
- If SAP educates managed-care case manager, most appropriate level of care will subsequently be approved, particularly if the SAP is using the ASAM criteria for placement.
- SAP may also request from the managed care company a second level review or, if the SAP has a consulting psychiatrist available, a doctor-to-doctor review.

- Also recommended, a contract or some type of “Statement of Understanding” between SAP and employee.
- Contract can include what services the SAP provides, especially if there is a fee paid by the employee, and what information will be released and to whom without a signed Release of Information from the employee.
- SAP can stipulate in writing that education and treatment costs are not included in the SAP fee.
Recommendations

- Also helpful, although not addressed in the DOT regulations, for SAP’s to establish in writing with employee how long employee has to meet recommendations before another evaluation would be required.
- Otherwise, the employee could delay meeting the recommendations for several months.
- May make it questionable as to whether initial SAP recommendations are still appropriate level of care.
- Finally, though not required as part of the DOT regulations, it is strongly recommended that SAPs have consultation and supervision available on a regular basis since cases are often challenging and complex.

Consultation

- SAPs may be requested to consult on how to establish a drug-free workplace.
- To aid in this effort, a free kit is available for employers offered through the Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Prevention (C-SAP), entitled “Making Your Workplace Drug Free.”
- Kit details components of a drug-free workplace and includes a sample policy. Kit can be ordered online through the National Clearinghouse for Alcohol and Drug Information, contact information listed in the Resources section of manual.
- Another good resource for information on steps to a drug-free workplace is the U.S. Department of Labor’s Working Partners program (www.dol.gov/dol/workpartners.htm).
- SAP could provide assistance to employer in monitoring compliance to SAP continuing care recommendations once the employee has been returned to safety-sensitive duties.
- Depending on knowledge of workplace policy development, SAP could assist employer in establishing a model compliance monitoring policy.
- This could include development of a “Last Chance Agreement” and the company policy needed to support this type of program.
Required Clinical Services and Documentation

- Once an employee’s specimen is confirmed and verified as non-negative, he/she is immediately removed from his/her safety-sensitive position and referred to a SAP for evaluation.
- SAP must then individualize a plan to return the employee to duty drug and/or alcohol-free.
- The following steps outline the general process of evaluating an employee's ability to return to a safety-sensitive position from referral to termination of care.

SAP Step-by-Step Process

1. The employee is referred from the employer.
2. The SAP gathers basic information regarding the employee’s referral, including reason for referral, job performance to this point and previous incidents or positive test results. (A Sample Interview Questionnaire for Employer is included in Appendix B for your reference.)
3. The SAP schedules a face-to-face initial evaluation with the employee.
4. The SAP asks the employee to bring a collateral contact.

Required SAP Clinical Services and Documentation

- Substance Abuse Professional’s U.S. Department of Transportation Alcohol and Drug Testing Regulation Qualification and Requalification Course

SAP Step-by-Step Process

- Substance Abuse Professional’s U.S. Department of Transportation Alcohol and Drug Testing Regulation Qualification and Requalification Course
SAP Step-by-Step Process

2. The SAP conducts the initial evaluation with the employee.

- The SAP explains to the employee the return-to-duty process.
- The SAP explains to the employee his or her rights and the confidentiality regulation before obtaining any information from him or her. (A Sample Client Rights Statement is included in Appendix C for your reference.)
- The employee completes and signs all necessary intake forms, such as demographic information and Release of Confidential Information, including one for the collateral contact. (A Sample Consent for the Release of Confidential Information is included in Appendix D for your reference.)

3. The SAP completes the initial evaluation report.

- The SAP completes the written bio-psycho-social-spiritual assessment, utilizing the employee’s collateral contact. (A completed and blank Sample Bio-psycho-social-spiritual Assessment is included in Appendix I for your reference.)
- The SAP develops an individualized treatment plan for the employee, using the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition - Text Revision (DSM-IV-TR) to justify his or her diagnosis and the ASAM PPC-2R, ASAM Placement Criteria for the Treatment of Substance Related Disorders, Second Edition-Revised to justify level of care and education/treatment recommendations. (A completed and blank Sample Individualized Treatment Plan is included in Appendix J for your reference.)

4. The employee is referred to a service provider with a copy of the assessment/treatment plan.

5. The SAP sends the initial evaluation report to the employer. (A Sample Initial Evaluation Report is included in Appendix K for your reference.)

6. The SAP provides case management/consultation while the employee is in services with the treatment provider. (A completed and blank Sample Case Management/Consultation Clinical Service Note (CSN) is included in Appendix L for your reference.)
7. The SAP conducts the final evaluation of the employee.

- The SAP conducts a face-to-face assessment update interview with the employee.
- The SAP completes the employee’s written bio-psycho-social-spiritual assessment update, using the information from the case management/consultation CSN note and the employee’s service provider discharge summary. (A completed and blank Sample Bio-psycho-social-spiritual Assessment Update is included in Appendix M for your reference.)
- The SAP compiles a follow-up evaluation report that justifies the employee’s successful or non-successful compliance determination and includes the follow-up testing plan and continuing care recommendations when appropriate.

8. The SAP sends the follow-up evaluation report (including the follow-up testing plan) to the employer, reminding the employer that a return-to-duty test is the initial test required prior to returning the employee to a safety-sensitive position. (A completed and blank Sample Final Evaluation Report is included in Appendix N for your reference.)

- Note: If the SAP decides to forward a copy of the follow-up evaluation to the employee, do not include the follow-up testing plan as part of the report to avoid letting the employee know the frequency of the plan.

### Initial Evaluation

- Although not stated in DOT regulations, it is recommended that SAP uses the same standardized process for each evaluation, in order to prevent any allegations of discrimination.
- Initial evaluation must be comprehensive bio-psycho-social-spiritual assessment, consisting of interview questions, standardized testing tools and collateral contacts.
- SAP must conduct complete drug and alcohol history, including onset of use, frequency, duration, amount used and dates of last three usages. It is also important to determine if the employee uses both alcohol and drugs.
DOT regulations require that initial evaluation must be face-to-face. DOT will not accept a telephone or online assessment as SAP learns vital information when the employee can be observed. SAP must be sensitive to non-verbal cues such as facial expression, posture, ability to make eye contact and reactions to questions during the evaluation process. SAP must also pay attention to appearance and ability of employee to relate to SAP. Note: The DOT does not stipulate who must pay for the initial evaluation.

SAP must obtain and document circumstances under which the employee is being referred for SAP assessment. This provides important clinical data, particularly in the case of reasonable suspicion and post-accident tests. In addition, during the assessment interview, information must be obtained in the following domains:

- Work history
- Educational history
- Legal problems ever encountered
- Marital status
- Role of religion
- Use of recreational time
- Medical health issues and history
- Substance use history of nuclear family and family of origin for at least two generations, when possible.

Information must be obtained from the employee regarding past mental health and substance use disorder treatment history and physical health. A mental status examination must be completed, since the SAP is also responsible for appropriately assessing any co-occurring disorder such a mental health problems.

SAP may want to consider incorporating one of the following standardized tests into the assessment:

- Drug Abuse Screening Test (DAST) – (Appendix F)
- Michigan Alcoholism Screening Test (MAST) – (Appendix G)
- Alcohol Use Disorder Identification Test (AUDIT) – (Appendix H)
- Addiction Severity Index (ASI)

For mental health purposes, the SAP may want to consider a self-assessment tool. One example is the Brief System Inventory (BSI), which is a 53-item self-report symptom inventory designed to reflect psychological symptom patterns.
Substance Abuse Professional’s U.S. Department of Transportation Alcohol and Drug Testing Regulation Qualification and Requalification Course

Assessment

- If employee tested positive or refused a drug test because of adulteration or substitution of a specimen, SAP may contact the medical review officer directly.
- MRO and SAP may discuss test result, quantitative levels and any other pertinent medical information disclosed during MRO’s verification interview with the employee.
- Remember: This information may be shared without a release of information from the employee.

DOT regulations require that initial evaluation result in a diagnosis, treatment recommendation(s) and a treatment plan for employee.
- Treatment plan outlines goals of treatment and timeframes by which employee will meet said goals in order to demonstrate successful compliance.
- SAP must to obtain a Release of Information to speak with the employee’s supervisor (if different than DER), physician, parole/probation officer and significant others (including the collateral contact brought to the assessment interview).
- Often employees will minimize consequences of use of drugs or misuse of alcohol.
- In addition, collateral contacts can be helpful when an employee is not forthcoming with information or verifying information received from employee.

Assessment

- After assessment is completed, treatment recommendations and treatment plan must be carefully explained to employee.
- This provides employee with a clear understanding of SAPs considerations in determining what constitutes successful compliance with the treatment recommendations prior to the follow-up evaluation being conducted.

Referral and Level of Care Recommendations

- To determine the employee’s recommended level of care and referral options, a SAP can consider these four questions to shape the treatment plan: what, why, where and how.
Referral and Level of Care Recommendations

WHAT
The DOT lists the following as some examples of appropriate educational recommendations:
- education provided by a bona fide drug and alcohol education course;
- support/self help group meetings, such as Alcoholics Anonymous (AA) or Narcotics Anonymous (NA), in addition to a minimum of education; and
- community lectures, where attendance can be independently verified, in addition to a minimum of education.

The SAP may mandate support group attendance, but he or she cannot mandate AA/NA specifically, due to religious connotation of these specific support groups.

An employee could also meet the recommendation for support group attendance through Rational Recovery groups or Women for Sobriety, for example.

DOT lists the following as appropriate treatment recommendations; however, a SAP is not limited to these options:
- in-patient hospitalization
- partial hospitalization
- outpatient counseling programs
- continuing care

Different treatment and educational resources can be combined to make the most effective recommendations for the employee.

WHY
Level of care recommendation and referral is an integral part of the return-to-duty process and is vital for the rehabilitation of the employee.

SAP needs to gather all information from evaluation and make a determination for a recommendation based on objective data and clinical history.

Although not addressed in the regulation, SAP must have objective criteria for making level of care decisions to prevent personal bias interfering in his/her decision.


Recommended that SAPs become familiar with ASAM placement criteria to be able to most effectively treat employee.

WHERE
According DOT regulations, all employees must be given some recommended course of education and/or treatment.

Referral is consistent with the clinical needs of the employee, as well as the many external barriers to treatment. The SAP Guidelines specify that SAP must take the following into consideration when making a referral:
- employee insurance coverage;
- employee ability to pay for care;
- employer treatment contracts;
- employer policies regarding availability of leave for employees needing assistance;
- availability of treatment and education programs.
Referral and Level of Care Recommendations

**How**
- Always better to refer people to people, rather than places.
- When client observes you making a referral to service provider by telephone, as well as by written communication (Letter to Service Provider with a Copy of Assessment and Treatment Plan), it sends a strong message that both entities are working cooperatively.
- Can minimize any desire to manipulate and minimize the extent of the problem.

**Remainder:** A Consent for the Release of Confidential Information must be signed by the employee before any information can be disclosed to an unauthorized third-party. *(A sample Consent for the Release of Confidential Information is included in Appendix D for your reference.)*

Report to Employer

**After initial assessment is complete, SAP must notify employer of his/her findings and recommendations. This notification must be in letter format on SAP’s individual letterhead and must contain the following items:**
- Employee’s name and social security number
- Reason for the assessment (specific violation of the rules and date)
- Date(s) of the SAP assessment
- SAP’s education and/or treatment recommendation
- SAP’s telephone number
- Signature of the SAP
- Date signed

**Important to make specific and concrete recommendations so employee cannot contend that recommendations were met when in the SAP’s assessment recommendations have not been met.**

This can be a source of disagreement in working with employee, if the SAP is not explicit when giving employee level of care recommendations.

Further, SAP is prohibited from sending report to third party or entity for forwarding to employer and under no circumstances is third party authorized to change SAP’s report in any way.

**SAPs level of care recommendation is final.**

No opportunity for an appeal’s process.

Employees and employers are prohibited from seeking a second SAP evaluation in hopes of a different recommendations after qualified SAP has evaluated employee.

Employers are not to rely upon or adhere to a second evaluation if the employee obtains one contrary to this prohibition.
Case Management/Consultation

- Case management/consultation is designed to assist the employee in gaining access to medical, social, educational, and other needed services that support the client during treatment and in AOD recovery process.
- Purpose of service is to treat employees from a holistic perspective by linking employee’s assessed needs to individualized treatment plan (ITP) goal(s) for services, developed mutually with employee to address those needs.

Further, case management/consultation is intended to:
- demonstrate that the case management activities carried out for an employee are designed to achieve the goals/objectives identified in the employee’s treatment plan;
- order additional services for the treatment plan on an as-needed basis;
- conduct treatment plan reviews or revisions as needed; and
- determine the employee’s progress toward treatment plan goals and completion status.

The following describes a best practice model in documenting case management and consultation:
- a description of the nature, content and extent of the service, including the name of any people and/or agencies contacted;
- documentation of what the clinician did in this process;
- outcome or results of the contact, which may include reference to a future plan; and
- documented on a Case Management/Consultation Clinical Service Note (CSN). – (Appendix L)

Final Evaluation
Face-to-face follow-up evaluation is final critical phase of the return-to-duty process for the SAP.

Clinically based question to be answered is whether or not employee has successfully complied with initial treatment recommendations. This is important because employer is dependent upon the SAP’s evaluation at this stage to be one of the many factors he/she must consider when gauging the employee’s ability to return to a safety-sensitive position as mandated by the DOT.

The follow-up evaluation must be clinically based on the face-to-face meeting and information received from service provider.

- SAP must confer with or obtain appropriate documentation from education or treatment program professionals from which the employee has been receiving service.
- When employee has attended treatment, it is helpful to obtain a written summary of the employee’s progress, areas of growth and areas of concern, family involvement in the treatment process and recommendations for continuing care.
- This information must be reviewed as part of the follow-up evaluation.

- Face-to-face evaluation must focus on determining if the employee has complied with the initial recommendations.
- This can be a difficult meeting if the employee has attended the recommended course of education or treatment but did not develop an understanding of addiction as an illness.
- To be clear, the follow-up evaluation must assess for more than just attendance compliance.
Assessment Update Interview

- Having follow-up evaluation prior to treatment completion does necessitate regular communication between the SAP and the treatment facility.
- When initiating follow-up evaluation prior to end of course of treatment, SAP must consider necessity of employer, SAP or employer’s Employee Assistance Program (EAP) to provide the monitoring of the employee’s continued attendance.

Final Evaluation Report

- If employee successfully complied with treatment recommendations as determined by follow-up evaluation, SAP must notify the employer or DER in writing.
- Note: SAP must send reports directly to DER and not to any third party or entity for forwarding to the DER.
- There is an exception to this in the circumstance of an owner/operator or other self-employed individual, then the service agent or C/TPA may act an intermediary in the transmission of SAP report to owner-operator or self-employed individual.

Final Evaluation Report

- DOT is very specific about what is to be contained in the final evaluation report.
- Report must be in letter format on the SAP’s individual letterhead and must contain following items:
  - employee’s name
  - employee’s social security number;
  - employer’s name and address;
  - reason for the initial assessment (specific violation of DOT regulations and violation date);
  - date(s) of initial assessment and synopsis of the treatment plan;
  - name of the practice(s) or service(s) providing the recommended education and/or treatment;
  - inclusive dates of the employee’s program participation;
  - clinical characterization of the employee’s program participation;
  - date of follow-up evaluation;
  - SAP’s clinical determination as to the whether the employee has demonstrated successful compliance;
Final Evaluation Report

- follow-up testing plan issued as an attachment to the employee if a copy of this letter is being sent to the employer;
- employee’s continuing care needs with specific treatment, continuing care and/or support group services recommendations;
- SAP’s signature;
- date signed; and
- SAP’s telephone number.

If the employee has been terminated and has no employer to whom a successful compliance report can be sent, the SAP must furnish all reports to the employee to give to the gaining DOT regulated employer. However, the SAP does not give the employee a copy of the testing schedule; the gaining employer must request this from the SAP.

If employee has been terminated from the initial employer, SAP must provide a report and testing schedule to new employer.
- Although terminated employee can give the SAP report to new employer, new employer must contact the SAP directly for testing schedule and any continuing care recommendation.
- SAP must have written consent from employee before releasing testing schedule.
- SAP must confirm that employee is attempting to obtain employment from that particular employer before releasing testing schedule.
- This is necessary to ensure that testing schedule is not released to a third party that would convey protected information to the employee.

If SAP determines that employee has not successfully complied with his/her recommendations, employee may not be returned to duty.
- SAP’s final evaluation report must be issued to employer or DER and must also include, in addition to the items above:
  - date(s) of any further follow-up evaluations the SAP has scheduled; and
  - SAP’s clinical reasons for determining that the employee has not demonstrated successful compliance.
- Employer may then, take personnel action consistent with the employer’s policy and procedures or labor/management agreements.
Substance Abuse Professional’s U.S. Department of Transportation Alcohol and Drug Testing Regulation Qualification and Requalification Course

Final Evaluation Report

- If SAP believes the employee needs additional treatment, continuing care, education or support group services to assist an employee to maintain sobriety or abstinence from drug use after the employee returns to safety-sensitive duties, SAP must provide recommendations for these services in the report.
- Employer may, as part of a return-to-duty agreement (or similar arrangement) with employee, require employee to participate in these recommended services.
- If employee fails subsequently to do so, he/she may be subject to disciplinary action by the employer.

Follow-Up Testing Plan

- SAP is charged with determining frequency of follow-up testing and type of test(s) required after an employee is returned to duty.
- SAP is sole determiner of number and frequency of follow-up tests, whether these tests will be for drugs, alcohol or both, unless otherwise directed by appropriate DOT agency.
- Although not part of DOT regulations, if SAP learns that employee has a problem with drugs and alcohol during any part of return-to-duty process, regardless of substance of misuse or abuse that initiated the SAP assessment, SAP can recommend that employee be tested for both drugs and alcohol.
- This follow-up testing schedule must be submitted to employer or gaining employer in writing.

Note: DOT prohibits SAPs from making recommendations to employers regarding employee’s fitness for duty.
- It is employer, not the SAP, who makes decision to put employee back to work in a safety-sensitive position.
- Once employer has made decision to return employee to a safety-sensitive position, following receipt of the SAP’s letter, employer sends the employee for a return-to-duty test.
- SAP determines type of test (drug only, alcohol only or both).
- Once employee receives a negative drug test result and/or an alcohol result of less than .02, the employer is allowed by DOT regulations to return employee to workplace.
Follow-Up Testing Plan

- Outlined by DOT regulations: SAP must recommend a minimum of six unannounced follow-up tests within first 12 months after employee returns to a safety-sensitive position.
- SAP may require employee to undergo up to 48 months of additional testing following initial 12-month period.
- DOT empowers SAP to recommend up to 60 months for follow-up testing, but may not exceed this time period.

Follow-Up Testing Plan

- Not specifically addressed in the regulations: SAP should determine frequency of follow-up testing based on employee’s drug of choice and time span that drug will be detected following use.
- Helpful if SAP consults with an MRO if any questions about half-life of the employee’s drug of choice.
- In determining length of time employee must be tested, SAP must consider length of time and frequency of employee’s use of drugs or alcohol.

Follow-Up Testing Plan

- It is employer’s responsibility to determine actual dates for testing SAP prescribes and to ensure that all follow-up testing are directly observed by same gender observers.
- Employer may not impose additional follow-up testing requirements under company policy on employee that go beyond the SAP’s follow-up testing plan.
- Follow-up testing requirements are in addition to other DOT tests that may be required, such as the random testing program, and no other types of testing can replace a scheduled follow-up test.
- Example: an employer may not use a random test to count as one of the required follow-up tests. Employees that are subject to follow-up testing may not be placed in any type of a follow-up testing pool.

Follow-Up Testing Plan

- Important for both the SAP and employee to understand that requirements of the SAP’s follow-up testing plan follow employee to subsequent employers or through breaks in service.
- Example: If in year two of a follow-up testing schedule an employee leaves one DOT-regulated employer and goes to another DOT regulated employer, the gaining employer is responsible for following the SAP’s follow-up testing plan for all subsequent months.
- In accordance with DOT regulations, the gaining employer must obtain two years of DOT testing results from prior employers with the employee’s written consent.
- If the gaining employer learns of a past non-negative test, the gaining employer needs to obtain a copy of the SAP’s reports and testing schedule from the prior employer.
If the SAP’s follow-up testing plan requires that the employee be tested once every other month for the first 12 months, and the employee is laid off after the first six months of return-to-duty, the employer must continue to test the employee every other month for the remaining six months once the employee is returned to the workplace.

A sample-testing schedule is shown in Table 3 to serve as a general guide for testing frequency. It is important to remember that not all employees require the same schedule and the suggestions below will not be appropriate for each client. When determining an appropriate testing schedule, SAP must consider:

- the half-life of metabolite of the drug of choice;
- the length, amount and frequency that the employee has been using the substance of abuse; and
- those who abuse substances often switch from illegal drug use to alcohol abuse.

<table>
<thead>
<tr>
<th>Reason for failed test</th>
<th>Recommended Frequency of Testing</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Month 1-2</td>
</tr>
<tr>
<td>Someone else’s prescription</td>
<td>1 test/month</td>
</tr>
<tr>
<td>Cocaine, Methamphetamine, Amphetamine</td>
<td>1 test/week</td>
</tr>
<tr>
<td>Marijuana, alcohol and/or other drugs</td>
<td>2 tests/month</td>
</tr>
<tr>
<td>Refusal to test</td>
<td>1 test/week</td>
</tr>
</tbody>
</table>

**Employer Responsibilities**
**Employer Responsibilities**

- SAPs cannot adequately perform their role requirements without understanding the employer’s responsibilities: delineated in 49 C.F.R. § 40 Subpart B.
- Because responsibilities are so great, employer often chooses to designate a third party administrator or consortium to manage the employer’s DOT drug and alcohol-testing program.
- This has implications for SAP, as SAP releases all reports directly to the employer and not to any third party administrator or consortium for re-release to employer.

**Employer Responsibilities**

- The primary responsibility of the employer prior to hiring an employee is to obtain the applicant’s previous two years of testing information from applicant’s previous employer: 49 C.F.R. § 40.25 requires employers to check on the previous two years of drug and alcohol testing background of new hires and other employees beginning safety-sensitive work.

**Employer Responsibilities**

- Two exceptions to the two-year records requirement.
- Employers covered under FMCSA regulations must seek three years of previous testing records.
- For employers seeking pilot information under Pilot Records Improvement Act (PRIA), there is a five-year requirement.
- Employers need the written consent of the applicant/employee to obtain these records.
- Previous employers are required to provide two years of testing information as requested by a new employer.

**Employer Responsibilities**

- Employer may not have an employee work in a safety-sensitive position for more than 30 days, unless there is adequate documentation indicating that a good faith effort was made to obtain the past testing information from the prior employer(s).
- Employee must be removed from a safety-sensitive position if employer has verification of a non-negative test and employee has not shown documentation of compliance with return-to-duty process.
**Employer Responsibilities**

- Employer must ask employee if he/she had a positive test or refused to test on any pre-employment drug or alcohol test administered by an employer to which employee applied for but did not obtain a DOT covered position over past two years.
- If answer is yes, employee may not perform safety-sensitive functions until employee shows evidence of completion of return-to-duty process.
- Employer must obtain the testing schedule from SAP after receiving documentation that employee has complied with return-to-duty process.

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**Employer Responsibilities**

- The following are additional responsibilities that must be adhered to in order for an employer to stay compliant with the DOT regulations:
  - Provide employees with educational materials about the alcohol and drug use policy and procedures, as well as available programs.
  - Provide supervisors with access to one-hour trainings in recognizing the signs and symptoms of alcohol misuse.

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**Employer Responsibilities**

- Ensure requests from employees for split specimen testing are honored. This means the employer has to pay for the cost of the test for the split specimen but may require repayment from the employee.
- Ensure observed collections take place as required by the DOT. This is often done through a service agent who is acting on the employer’s behalf.
- Ensure that STTs and BATs are appropriately qualified.

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**Employer Responsibilities**

- Ensure that the DOT and non-DOT testing programs are managed as two totally separate programs. This means that the appropriate Custody and Control Forms (CCF) are used. A DOT CCF must not be used for non-DOT testing. Employees must be in two separate random testing pools, DOT and non-DOT. Further, if an employee is called to test for both DOT and non-DOT testing, the DOT test has priority. A separate void must be collected for the non-DOT test.
Employer Responsibilities

- Ensure no other tests are performed on DOT urine or breath specimens other than those specifically authorized by DOT or DOT agency regulations.
- DNA, AIDS and other types of tests are prohibited on DOT specimens.
- Only exception is when a DOT drug test is collected as part of a physical examination required by DOT agency regulations.

Employer Responsibilities

- Authorize an employee to act as the Designated Employer Representative (DER). The DER is able to take immediate action to remove employees from safety-sensitive positions and to make decisions in the testing and evaluation processes. The DER also receives test results and other communications for the employer. Further, a service agent may not act as a Designated Employer Representative according to the DOT, only an employee.

Employer Responsibilities

- When appropriate and necessary, only the employer may request a waiver allowing for a stand down from DOT.
- Without waiver, this action is prohibited by the DOT.
- Waiver would permit an employer to remove an employee from a safety-sensitive position or stand the employee down upon the MRO’s receipt from laboratory of confirmed positive test, an adulterated or a substituted test but prior to MRO verification.
- MRO would complete verification process during employee’s removal from safety-sensitive position.
- Employer must make the case to the appropriate operating administration that standing down the employee is necessary for safety in the organization.
- Employer must also include a statement, which supports request including any data on safety problems or incidents that could have been prevented if a stand down procedure had been in place.
- Employer may not discontinue pay during the period of stand down and maintain confidentiality.

Employer Responsibilities

- Remove an employee immediately from a safety-sensitive position under the following circumstances:
  - receipt of a verified positive drug test;
  - receipt of a verified refusal to test because of adulteration or substitution;
  - receipt of an alcohol test of 0.02 or higher.
- Provide any applicant, new employee/employee who violates a DOT drug and alcohol regulation a listing of SAPs, including name, telephone number and address, who are readily available to the employee and acceptable to the employer. Employee may not be charged for the SAP list of names.
Employer Responsibilities

- Before returning employee who violates a DOT drug and alcohol regulation to a safety-sensitive covered position, verify that the employee has successfully completed return-to-duty process.
- Return-to-duty process includes obtaining a SAP assessment and complying with SAP recommendations.
- Once employer receives letter from SAP verifying that employee has complied with SAP’s recommendations, employer must send employee for return-to-duty drug and/or alcohol test in accordance with SAP recommendation for testing.
- It is employer’s responsibility to send employee for return-to-duty test, not SAP’s.

Employer Responsibilities

- Monitor continuing care recommendations made by the SAP.
- Test employee in accordance with drug/alcohol testing schedule submitted by SAP.
- To determine the actual dates for the tests, not the SAP’s.
- Remove an employee from performing safety-sensitive functions upon receipt of an alcohol test result between 0.02-0.39 BAC.
- That length of time the employee is removed is specific according to the DOT operating administration regulations.

Employer Responsibilities

- Immediately send employee for observed drug test when drug test result indicates employee’s specimen was invalid and MRO advised the DER that there is no medical justification.
- When in receipt of a cancelled test result when a negative test result is required, immediately send the employee to test again.
- Other employer actions may differ according to DOT agency regulations.
- There may be no personnel action taken for a cancelled test.

Employer Responsibilities

- When in receipt of a diluted verified positive drug test, the test is treated as a positive drug test.
- When in receipt of a diluted negative drug test, employer may request employee to take another test immediately if this is dictated by the employer’s policies.
- Second test becomes test on record for DOT purposes and must not be observed.
- If test also is reported as a negative dilute, test is considered negative.
- Cannot be a third test requested of the employee.
- Employer must have a policy in place, which clearly describes how negative dilute tests are treated to ensure all employees who have negative dilute tests are treated in the same way.
Employer Responsibilities

- Under no circumstances can an employer change or disregard a verified DOT test result. This means a test taken by a primary care physician, which is subsequently negative, cannot negate a positive test result.

- Employer with 2,000 or more DOT covered employees must ensure one percent of specimens (blind specimens) are sent to all labs used in the following proportions:
  - 75% negatives
  - 15% positive for one or more drugs and
  - 10% adulterated and/or substituted.
  - Responsibility is often given to the consortium/third-party administrator.

Employer Responsibilities

- Management Information System (MIS) Reporting - Employers subject to DOT or USCG drug and alcohol testing regulations must submit their annual drug and alcohol testing data as required by their respective DOT agency or the USCG.
  - This data made-up of four sections:
    - employer information,
    - covered employees (i.e., employees performing DOT regulated safety-sensitive duties) information,
    - drug testing data
    - and alcohol testing data.
  - Note: Annual drug and alcohol testing data submitted for a specific calendar year is to be submitted by March 15th of the following calendar year.

Operating Administration Testing Regulations

- Each DOT operating administration has a distinct and significant purpose and manages different sectors of the transportation industry.
  - The Federal Aviation Administration (FAA): safety of civil aviation, which includes all commercial airplanes, space shuttles and privately-owned airplanes. FAA specific regulations are outlined in 14 C.F.R. § 121.
  - The Federal Motor Carriers Safety Administration (FMCSA): safety of large trucks and buses. FMCSA specific regulations are outlined in 49 C.F.R. § 382.
The Federal Railroad Administration (FRA): safety of all U.S. railroad transportation. FRA specific regulations are outlined in 49 C.F.R. § 219.

The Federal Transit Administration (FTA): safety of all public transportation, including buses, subways, light rail, commuter rail, monorail, passenger ferry boats, trolleys, inclined railways and people movers. FTA specific regulations are outlined in 49 C.F.R. § 655.

The Pipeline and Hazardous Materials Safety Administration (PHMSA): the safety of the more than one million daily shipments of hazardous materials in the United States and the nation's energy that is transported by pipelines. PHMSA maintains drug-testing program for pipeline industry formerly operated by RSPA. PHMSA specific regulations are outlined in 49 C.F.R. § 199.

The United States Coast Guard (USCG): the safety of all U.S. ports and waterways. USCG specific regulations are outlined in 46 C.F.R. § 4, 5, and 16.

The six operating administrations issued conforming regulations that bring each of their drug and alcohol testing programs into compliance with 49 C.F.R. § 40.

Following section outlines regulations for each operating administration and illustrates subtle differences between each administration.

Important for SAP to understand these differences and recognize which set of testing regulations a client is performing under when referred to a SAP.

Federal Aviation Administration (FAA)
Federal Aviation Administration (FAA)

- **Covered employee:** One who performs flight crewmember duties, flight attendant duties, flight instruction duties, aircraft dispatch duties, aircraft maintenance or preventive maintenance duties, ground security coordinator duties, aviation screening duties or air traffic control duties.

- **Types of tests for drugs:** Pre-employment, random, reasonable cause, post-accident, return to duty and follow-up. Periodic testing for Part 67 medical certificate holders.

Federal Aviation Administration (FAA)

- **Types of tests for alcohol:** Pre-employment (optional), random, reasonable suspicion, post-accident, return to duty and follow-up.

- **Definition of accident requiring testing:** Defined by the FAA - an occurrence associated with the operation of an aircraft that takes place between times any person boards the aircraft with intention of flight and all such persons have disembarked, and in which any person suffers death or serious injury, or in which the aircraft receives substantial damage.

- **Testing must occur if employee’s performance either contributed to accident or cannot be completely discounted as a contributing factor of accident.**

- **Decision not to test an employee must be based on a determination, using best information available at time of the determination, that employee’s performance could not have contributed to accident.**

Federal Aviation Administration (FAA)

- **Reasonable cause determination:** Two of employee’s supervisors, one of whom is trained, shall substantiate and concur in decision to test employee. If 50 or fewer employees, a single trained supervisor can make determination.

- **Trained supervisor makes the determination based upon specific contemporaneous physical, behavioral or performance indicators of probable drug use.**

- **Reasonable suspicion determination:** A trained supervisor shall make the determination based upon specific, contemporaneous, articulable observations concerning the employee’s appearance, behavior, speech or body orders.

Federal Aviation Administration (FAA)

- **Pre-duty alcohol use prohibitions:** Eight hours prior to performance of flight crewmember duties, flight attendant duties, and air traffic controller duties. Four hours prior to performance of all other duties outlined above.

- **Actions for BACs 0.02 - 0.039:** If the employer chooses to return the employee to covered services within 8 hours of the initial testing, the BAC retest must be below 0.02.
Federal Aviation Administration (FAA)

- **Employee training (drugs):** Employer must train all employees who perform safety-sensitive duties on effects and consequences of prohibited drug use on personal health, safety and work environment, and manifestations and behavioral cues that may indicate drug use and abuse.
- **Employers must implement education program for safety-sensitive employees:** displaying and distributing informational materials, a community service hot-line telephone number for employee assistance and employer’s policy regarding drug use in workplace which must include information regarding consequences under rule of using drugs while performing safety-sensitive functions, receiving a verified positive drug test result, or refusing to submit to a drug test required under rule.

- **Employee training (alcohol):** No formal training for employees is required for alcohol use.
- **Employers must provide covered employees with educational materials explaining alcohol misuse requirements and employer’s policies and procedures with respect to meeting those requirements.**
- **Information must be distributed to each covered employee and must include information on effects of alcohol misuse on an individual’s health work personal life, signs and symptoms of an alcohol problem and consequences for covered employees found to have violated regulatory prohibitions.**

Federal Aviation Administration (FAA)

- **Supervisor training (drugs):** One-hour training required on specific, contemporaneous physical, behavioral, and performance indicators of probable drug use.
- **Supervisors must receive employee training as defined above.**
- **Reasonable recurrent training is required.**
- **Supervisor training (alcohol):** One-hour training required on the physical, behavioral, speech, and performance indicators of probable alcohol misuse.

- **Other:** Medical review officers must notify the FAA of any employee or applicant who is required to hold a medical certificate issued under 14 C.F.R. § 67 and has a positive drug test result. An employer cannot permit an employee who is required to hold a medical certificate under Part 67 to perform a safety-sensitive function to resume that duty until the employee has received a medical certificate or a special issuance certificate issued by the FAA Federal Air Surgeon and the employer has ensured that the employee meets the return-to-duty requirements in accordance with 49 C.F.R. § 40.
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Federal Aviation Administration (FAA)

- Employers must notify FAA Federal Air Surgeon of any safety-sensitive employee who is required to hold an airman medical certificate issued under 14 C.F.R. § 67 who has a positive drug test result, an alcohol test result of 0.04 or greater or who has refused to submit to testing.
- MRO may report a positive or refusal (i.e. adulterated, substituted results or no medical explanation for providing an insufficient specimen) on behalf of the employer.
- Employer cannot permit employee who is required to hold a medical certificate under part 67 to perform a safety-sensitive function to resume that duty until the employee has received a medical certificate or a special issuance certificate issued by the FAA Federal Air Surgeon and the employer has ensured that the employee meets the return to duty requirements in accordance with 49 C.F.R. § 40.

According to FAA’s regulation 14 C.F.R. § 120, Subpart E, section 120.113(d), when a MRO verifies a drug test result or a SAP performs the initial evaluation, must ask employee whether he/she holds or would be required to hold an airman medical certificate issued under 14 C.F.R. § 67 of this chapter to perform a safety-sensitive function for the employer.

- SAP must wait until employee obtains airman medical certificate before reporting to employer that employee demonstrated successful compliance with SAP’s treatment and/or education recommendations.
- Note: Medical certificates are not operating certificates, but employees cannot continue to perform airman duties without a medical certificate or a special issuance medical certificate.

Federal Motor Carrier Safety Administration (FMCSA)
**Covered employee**:
One who operates a **Commercial Motor Vehicle (CMV)** weighing 26,001 pounds or greater; or is designed to transport 16 or more occupants (to include driver); or is of any size and is used in transport of hazardous materials that require vehicle to be advertised as such.

**Types of tests for drugs**:
Pre-employment, random, reasonable suspicion, post-accident, return-to-duty and follow-up.

- **Types of tests for alcohol**:
  - Pre-employment (optional), random, reasonable suspicion, post-accident, return-to-duty and follow-up.
- **Definition of accident requiring testing**:
  Any accident involving a fatality. Testing also required in accidents in which a vehicle is towed from the scene or in which someone is treated medically away from scene; and a citation is issued to the CMV driver.

**Reasonable suspicion determination**:
One trained supervisor or company official can make the decision based upon specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the employee.

- **Pre-duty alcohol use prohibitions**:
  Four hours prior to performance of duty.
- **Actions for BACs 0.02–0.039**:
The employee cannot be returned to duty until the next day or the start of the employee’s next regularly scheduled duty period, but not less than 24 hours following the test.

**Employee training**:
The employer must provide educational materials explaining drug and alcohol regulatory requirements to the employee, as well as the employer’s policies and procedures for meeting regulation requirements. Distribution to each employee of these educational materials and the employer’s policy regarding the use of drugs and alcohol is mandatory.

**Supervisor training**:
An one-hour training is required on the specific, contemporaneous physical, behavioral, and performance indicators of probable drug use. An one-hour training is also required on the specific, contemporaneous physical, behavioral, and performance indicators of probable alcohol use.
Federal Motor Carrier Safety Administration (FMCSA)

- **Reportable employee drug and alcohol violations:** Currently no requirements to report violations to FMCSA.
- **Other:** Drivers are prohibited from using alcohol for eight hours following an accident (as described above) or until they have undergone a post-accident alcohol test, whichever occurs first.

Federal Railroad Administration (FRA)

- **Covered employees:** One who performs hours of service functions at a rate sufficient to be placed into railroad’s random testing program. Categories are: locomotive engineers, trainmen, conductors, signalmen, operators, train dispatchers, locomotive hostlers/helpers, utility employees and switchmen.
- **Types of tests for drugs:** Pre-employment, random, reasonable suspicion, reasonable cause, post-accident, return-to-duty and follow-up.
- **Types of tests for alcohol:** Pre-employment (optional), random, reasonable suspicion, reasonable cause, post-accident, return-to-duty and follow-up.
- **Definition of accident requiring testing:** FRA’s post-accident testing rule goes well beyond normal 49 C.F.R. § 40 procedures. For surviving employees, these specimens are collected at an independent medical facility.
- **Testing, at FRA’s contract laboratory:** Provides FRA with accident investigation and usage data.
Federal Railroad Administration (FRA)

- **Reasonable-suspicion determination**: One trained supervisor can make decision for alcohol testing based upon specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the employee. Decision to conduct drug test requires two supervisors; however, only on-site supervisor must be trained in this area.

- **Reasonable-cause determination**: Employers are authorized to use federal authority to test covered employees after specific operating rule violations and/or accidents which meet the criteria in 49 C.F.R. § 219 Subpart D.

- **Pre-duty alcohol use prohibitions**: Four hours prior to performance of duty or after receiving notice to report for covered service, whichever is the shorter period.

- **Actions for BACs 0.02 – 0.039**: The employee cannot be returned to duty until the start of the employee’s next regularly scheduled duty period, but not less than eight hours following the test. Railroads are prohibited from taking further disciplinary action under their own authority.

- **Reportable employee drug and alcohol violations**: Currently no requirements to report violations. Engineers are only certificate holders in rail industry, will have their certificates reviewed for suspension or revocation by employer when a violation occurs.

- **Note**: FRA alcohol violation occurs at 0.04 percent or greater.

- When locomotive engineer is in a voluntary referral program, counseling professional must report engineer’s refusal to cooperate in recommended course of counseling or treatment.
Refusal to test results in a mandatory minimum nine-month removal from covered service. During this nine-month period, there is no prohibition against the employee working a non-covered service position if agreeable to the employer.

Locomotive engineers (or others certified as locomotive engineer at time of the alcohol or drug violation) require both alcohol and drug return-to-duty and follow up testing tests.

Locomotive engineers who have a DUI are required by Part 240 to be evaluated to determine whether they have an active substance use disorder.

A DUI is not considered to be a violation of FRA regulations if it occurred during the employee’s off-duty time; therefore, any testing would be conducted under employer authority.

Covered employee: One who performs a revenue vehicle operation, revenue vehicle and equipment maintenance, revenue vehicle control or dispatch, Commercial Drivers License (CDL) non-revenue vehicle operation or armed security duties.

Types of tests for drugs: Pre-employment, random, reasonable suspicion, post-accident, return-to-duty and follow-up.
Types of tests for alcohol: Pre-employment (optional), random, reasonable suspicion, post-accident, return-to-duty and follow-up.

Definition of accident requiring testing: Any accident involving a fatality requires testing. Testing following a non-fatal accident is discretionary; if the employer can show the employee’s performance could have in no way contributed to the accident, no test is needed. Non-fatal accidents that may require testing must have disabling damage to any vehicle or immediate medical attention away from the scene to meet the testing threshold.

Reasonable-suspicion determination: One trained supervisor or company official can make decision to test based upon specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the employee.

Pre-duty alcohol use prohibitions: Four hours prior to performance of duty.

Actions for BACs 0.02 – 0.039: If employer chooses to return employee to covered service within 8 hours of initial testing, BAC retest must be below 0.02.

Employee training: The employer must display and distribute to all employees the employer’s policy (mandatory) regarding the use of alcohol and drugs and a community service hot-line telephone number, if available. One-hour of training on the effects and consequence of prohibited drug use on personal health, safety, and the work environment and on the signs and symptoms that may indicate prohibited drug use is required.

Supervisor training: One-hour training is required on specific, contemporaneous physical, behavioral, and performance indicators of probable drug use and alcohol use, each.

Reportable employee drug and alcohol violations: There are currently no requirements to report violations to the FTA.

Other: Anyone with direct or immediate supervisory authority over an employee may not collect that person’s urine, saliva or breath.
Pipeline and Hazardous Materials Safety Administration (PHMSA)

Covered employee: One who performs an operation, maintenance or emergency-response function on a pipeline or liquefied natural gas (LNG) facility.

Types of tests for drugs: Pre-employment, random, reasonable cause, post-accident, return-to-duty and follow-up.

Types of tests for alcohol: Post-accident, reasonable suspicion, return-to-duty and follow-up.

Definition of accident requiring testing: An accident is one involving gas pipeline facilities or LNG facilities or involving hazardous liquid or carbon dioxide pipeline facilities.

Reasonable-suspicion determination: One trained supervisor can make the decision based upon signs and symptoms.

Reasonable-cause determination: One trained supervisor can make the decision based upon reasonable and articulable belief that the employee is using prohibited drugs on the basis of specific, contemporaneous physical, behavioral or performance indicators of probable drug use.
Pipeline and Hazardous Materials Safety Administration (PHMSA)

- Pre-duty alcohol use prohibitions: Four hours prior to performance of duty.
- Actions for BACs 0.02 – 0.039: If the employer chooses to return the employee to covered service within eight hours of initial testing, the BAC retest must be below 0.02.

Employee training (drugs):
- Must display and provide all employees with Employee Assistance Program (EAP) informational materials.
- Must display and distribute a community service hot-line telephone number and the employer’s policy regarding the use of prohibited drugs.
- Employee Training (alcohol): Employer must develop materials that explain policies and procedures, as well as names of those who can answer questions about the program, and distribute them to each covered employee.

- Supervisor training: An one-hour training is required on the specific, contemporaneous physical, behavioral, and performance indicators of probable drug use and one hour of probable alcohol use training.
- Reportable employee drug and alcohol violations: Currently no requirements to report violations to the PHMSA.

United States Coast Guard (USCG)
Substance Abuse Professional’s U.S. Department of Transportation Alcohol and Drug Testing Regulation Qualification and Requalification Course

United States Coast Guard (USCG)

- Covered employee: One who is on board a vessel acting under the authority of a license, certificate of registry or merchant mariner’s document.
- Person engaged or employed on board a U.S. owned vessel and such vessel is required to engage, employ or be operated by a person holding a license, certificate of registry or merchant mariner’s document.

United States Coast Guard (USCG)

- Definition of incident requiring testing:
  - “A discharge of 10,000 gallons or more of oil into the navigable waters of the United States, whether or not resulting from a marine casualty,
  - A discharge of a reportable quantity of a hazardous substance into the navigable waters or into the environment of the United States, whether or not resulting from a marine casualty
  - Marine casualty or accident required to be reported to the Coast Guard, involving a vessel in commercial service, and resulting in any of the following:
    - One or more deaths; an injury to any person (including passengers) which requires professional medical treatment beyond first aid, and, which renders the person unable to perform routine vessel duties;
    - Damage to property in excess of $100,000; actual or constructive total loss of any inspected vessel; or actual or constructive total loss of any uninspected, self-propelled vessel of 100 gross tons or more.”

United States Coast Guard (USCG)

- Types of tests for drugs: Pre-employment, periodic, random, reasonable cause, post-serious marine incident (SMI), return-to-duty and follow-up.
- Types of tests for alcohol: 49 C.F.R. § 40 alcohol-testing requirements do not apply to the maritime industry. 46 C.F.R. § 4.06 requires post-SMI chemical testing for alcohol use. 33 C.F.R. § 95.035 allows for a marine employer or a law enforcement officer to direct an individual to undergo a chemical test for intoxicants when reasonable cause exists or an accident has occurred.

United States Coast Guard (USCG)

- Reasonable-suspicion determination: The marine employer must have a reasonable and articulable belief that the individual has used a dangerous drug. Belief based on the direct observation of specific, contemporaneous physical, behavioral, or performance indicators of probable use and where practicable based on the observation of two persons in supervisory positions.
- Reasonable-cause determination: Employee directly involved in occurrence of marine casualty or individual operated vessel and effect of intoxicant(s) consumed by individual on person’s manner, disposition, speech, muscular movement, general appearance or behavior is apparent by observation.
**Pre-duty alcohol use prohibitions:** Four hours prior to performance of scheduled duty.

**Employee training:** Employer must display and distribute to all employees the employer’s policy regarding the use of drugs and alcohol and a community service hot-line telephone number. Distribution to each employee of the employer’s policy regarding the use of drugs and alcohol is mandatory. Formal training must include the effects of drugs and alcohol on personal health, safety and work environment and manifestations and behavioral cues that may indicate drug and alcohol use and abuse.

**Supervisor training:** One-hour training required on effects of drugs and alcohol on personal health, safety, and work environment and manifestations and behavioral cues that may indicate drug, alcohol use and abuse.

**Reportable employee drug and alcohol violations:** Results of all post-SMI tests and positive drug test results for all mariners who hold a license, certificate of registry or merchant mariner’s document must be reported to the nearest Coast Guard Officer in Charge, Marine Inspection.

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**Ethics**

**49 C.F.R. § 40 Subpart P: Drug and Alcohol Testing Procedures**
As with all other arenas involving sensitive information, confidentiality is cornerstone of DOT drug and alcohol testing regulations.

At every point in drug/alcohol testing process, employee’s right to confidentiality must be preserved.

Confidentiality is addressed in each profession’s Code of Ethics (NAADAC’s Code of Ethics is included in Appendix O for your reference.) and certification and licensing boards, as well as state and federal laws, safeguard client confidentiality.

49 C.F.R. § 40 Subpart P: Drug and Alcohol Testing Regulations

49 C.F.R. § 40 is a federal document for DOT-regulated drug/alcohol program within transportation industries, requirements within 49 C.F.R. § 40 regarding SAP’s interactions with MROs:

Treatment/education professionals and employers supersede other federal, state and local laws.

When SAPs are to consult with MROs, share referral information with the treatment/educational professionals and provide reports to employers, a signed consent by the employee is not required.

However, a signed consent form is still required for medical information to be shared with parole and probation officers, significant others, employee’s personal physician or any other third party of interest, including test results.

Third party is defined by DOT as any party or organization to whom other subparts of the regulation do not explicitly authorize or require the transmission of information in the course of the drug or alcohol process.

49 C.F.R. § 40 limits the SAP to provide employers only information that is basic to the employer’s decision-making process regarding the return of the employee to his/her former safety-sensitive position.

Reports to employer must include information on employee’s compliance to level of care recommendation.

Regulations do not require SAP to share sensitive case record information. Details about employee’s personal history are not required or requested by DOT.

If employer insists on additional information, SAP does not have to comply. It is recommended that SAP clarify with employer, prior to assuming role of SAP, what information will be released in return-to-duty process.
Substance Abuse Professional’s U.S. Department of Transportation Alcohol and Drug Testing Regulation Qualification and Requalification Course

Prohibitions

- DOT clearly outlines necessary elements of valid release of information form.
- Blanket release does not meet these requirements.
- Releases must be specific, indicating exactly what information is to be released, to whom this information is to be released, explicitly identifying a person or organization and for how long the release is valid.
- Without these three minimum criteria, release does not authorize any transference of information.

- DOT has specific regulations regarding the release of confidential information in certain legal proceedings.
- Information may only be released regarding an employee’s drug or alcohol test without the employee’s consent if legal proceedings are brought by or on behalf of an employee due to a result from a positive DOT drug or alcohol test or a refusal to test.

Examples of such situations include:
- a lawsuit, such as a wrongful discharge action;
- a legal proceeding, such as an arbitration concerning disciplinary action taken by the employer; or
- administrative proceedings, such as an unemployment compensation hearing.

- Another situation where information may be released without the employee’s consent is in a criminal or civil action resulting from an employee’s performance of safety-sensitive duties.
- In such case, a court of competent jurisdiction must determine that the testing information sought is relevant to the case and issue an order directing the employer to produce the information.
- This information can only be released to the decision maker in the lawsuit (e.g. the court in the suit).
- A service agent must also release drug and alcohol test information to an employer in a legal proceeding as described above.
- Regardless, employee must be informed in writing of any information released of drug and alcohol testing information without consent.

Medical Review Officer and Confidentiality

- Medical review officer must report drug test results and medical information learned as part of the verification process to third parties without the employee’s consent only under specific circumstances.
- Example: MRO is not required to gain consent from the employee if it is determined in MRO’s medical judgment that information is likely to result in employee being determined medically不合格 under an applicable DOT agency regulation or continuance of employee in safety-sensitive position is likely to pose a significant safety risk.
Medical Review Officer and Confidentiality

- Third parties who MRO is authorized by section 40.327 to release information include:
  - the employer, a physician or other health care provider responsible for determining the medical qualifications of the employee under an applicable DOT safety agency regulation
  - SAP evaluating the employee as part of the return-to-duty process,
  - DOT agency or the National Transportation Safety Board (NTSB) in the course of an accident investigation.
- Note: If law of foreign country, such as Canada, prohibits an MRO from providing medical information to employer, MRO may comply with prohibition.

Employee Rights to Information

- The MRO or service agent must provide, within ten business days of receiving a written request of access from an employee, copies of any records pertaining to the employee’s use of alcohol and/or drugs, including records of the employee’s DOT mandated drug/alcohol tests.
- Any charge may not exceed the cost of preparation and reproduction.
- Laboratory that conducted the tests must also provide, within ten business days of receiving written request from an employee made through the MRO, the records relating to the results of the employee’s drug test (laboratory report and date package).
- The SAP must make available to an employee, a copy of all SAP reports upon request and respond to an employee’s specific written request authorizing the release of information about that employee’s drug/alcohol test to an identified person.
**DOT Agency and NTSB Right to Information**

- All DOT-covered employers and service agents must always allow DOT agency representatives access to facilities used for DOT agency drug and alcohol program functions.
- All written, printed and computer-based drug and alcohol program records and reports, including copies of name specific records or reports, files, materials, data documents, agreements, contracts, policies and statements required by 49 C.F.R. § 40 and DOT agency regulations must be made available upon request.

**In an accident investigation, NTSB may request and must be provided with all information concerning post-accident tests administered after accident of employee in question.**
- Federal, state or local safety agency with regulatory authority over the employer, service agent or employee may request drug and alcohol test records concerning employee directly from his/her employers or service agents.

**Laboratory and Release of Confidential Information**

- Laboratory must not release or provide a specimen or any part of a specimen to requesting party without first obtaining written consent from the Office of Drug and Alcohol Policy Compliance (ODAPC).
- If a party seeks a court order directing a lab to release a specimen or part of a specimen contrary to any provision of 40.13, a lab must take necessary legal steps to contest the issuance of the order.
- However, 49 C.F.R. § 40.13 does not require the lab to disobey a court order.

49 C.F.R. § 2: Federal and Confidentiality Regulations for Alcohol and Drug Clients
## 42 C.F.R § 2: Federal Confidentiality Regulations for Alcohol and Drug Clients

- A release of confidential information must contain the following:
  - name or general designation of the program or person permitted to make the disclosure;
  - name or title of the individual or name of the organization to which disclosure is to be made;
  - name of the client;
  - purpose of the disclosure;

### Exceptions to confidentiality
- if the client poses a clear and imminent danger to self or others;
- if there is known or suspected child/elderly abuse or neglect;
- when medical records are court ordered by a judge compelling disclosure; or
- in case of a medical emergency.

- Any disclosure must be limited to the information necessary to carry out the purpose of the disclosure.

### Exceptions to confidentiality primarily occur:
- if the client poses a clear and imminent danger to self or others;
- if there is known or suspected child/elderly abuse or neglect;
- when medical records are court ordered by a judge compelling disclosure; or
- in case of a medical emergency.

Health Insurance Portability and Accountability Act (HIPAA)
### Health Insurance Portability and Accountability Act (HIPAA)

- Ordinarily, medical information gathered in the course of the return-to-duty process would be protected under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) rules.

- However, the confidentiality regulations specified in the Omnibus Transportation Employees Testing Act of 1991, 49 C.F.R. § 40 and DOT agency and USCG drug and alcohol testing regulations supersede HIPAA rules.

- It is not necessary to obtain employee written authorization where use or disclosure of otherwise protected health information is required to perform duties of a service agent.

- Note: 49 C.F.R. § 40 and DOT and USCG regulations still provide for confidentiality of individual test-related information in a variety of other circumstances.

- Explaining confidentiality limitations to the employee can eliminate potential problems in the future.

- An employer or service agent in the DOT program may disclose the information without the written authorization from the employee under many circumstances. For example:
  - Employers need no written authorizations from employees to conduct DOT tests.
  - Collectors need no written authorizations from employees to perform DOT urine collections, to distribute Federal Drug Testing Custody and Control Forms (CCF) or to send specimens to laboratories.

- Screening test technicians and breath alcohol technicians need no written authorizations from employees to perform DOT saliva or breath alcohol tests (as appropriate) or to report alcohol test results to employers.

- Laboratories need no written authorizations from employees to perform DOT drug and validity testing or to report test results to medical review officers (MROs).

- MROs need no written authorizations from employees to verify drug test results, to discuss alternative medical explanations with prescribing physicians and issuing pharmacists, to report results to employers, to confer with Substance Abuse Professionals (SAPs) and evaluating physicians or to report other medical information (see § 40.327).
**Health Insurance Portability and Accountability Act (HIPAA)**

- Evaluating physicians need no written authorizations from employees to report evaluation information and results to MROs or to employers, as appropriate.
- Employers and service agents need no written authorizations from employees to release information to requesting federal, state or local safety agencies with regulatory authority over them or employees.

**Public Interest Exclusion (PIE)**

- **Purpose of the Public Interest Exclusion (PIE):** To protect public interest, including transportation employers and employees, from serious non-compliance with 49 C.F.R. § 40 rules by service agents.
- **Service agents:** Include medical review officers, Substance Abuse Professionals, laboratories, collectors, breath alcohol technicians, screening test technicians and consortia/third party administrators.

- PIE is a mechanism based on Department’s existing non-procurement suspension and debarment rules (49 C.F.R. § 29).
- Mechanism would permit DOT, following a series of procedures designed to ensure fairness, to impose a PIE.
- PIE would direct DOT regulated employers not to use the service agent for a period of time.
- Mechanism rests on DOT’s existing authority to establish requirements for conduct of drug/alcohol testing process and to direct employers to use only products and services that meet these standards.
- This is parallel to the restriction that employers may only use HHS certified laboratories, evidential breath testing devices have to be on National Highway Traffic Safety Administration’s conforming products lists and SAPs and MROs must meet regulatory qualifications.
Public Interest Exclusion (PIE)

- All service agents, including SAPs, may be subject to a Public Interest Exclusion (PIE).
- PIE process may be initiated by any credible information source that reports concerns to drug/alcohol program manager of a DOT operating administration.
- Initiating official can informally contact service agent to determine if there is any information that may affect initiating official’s determination regarding necessity to send correction notice.
- Correction notice identifies specific areas in which service agent must come into compliance in order to avoid being subject to a PIE proceeding.
- If service agent is able to make/document appropriate corrections within 60 days, PIE proceeding will not be initiated.
- If not done, service agent will receive notice of proposed exclusion (NOPE).
- NOPE contains the initiating official’s recommendations concerning the issuance of a PIE, but it is not a decision by the Department to issue a PIE. The decision to proceed with a PIE is made by the ODAPC Director or designee.
- Service agent may, within 30 days of receiving a NOPE, contest the issuance of a PIE by providing the Director of ODAPC information and argument in opposition to the proposed PIE.
- Burden of proof that the service is in non-compliance is on the initiating official.
- The pervasiveness of noncompliance within a service agent’s organization is an important consideration in determining the scope of the PIE.
- If the actions were so egregiously non-compliant and the service agent is unwilling to correct them, then he/she could be prohibited from providing services for a pre-determined length of time (between one and five years).
- Service agent will also have his/her name published on the DOT’s “List of Excluded Drug and Alcohol Service Agents” maintained on their Website (www.dot.gov/ost/dapc).
- Name also published in Federal Register notice to inform public of any occasion in which a service agent is added to or taken off list.
- Employers/employees may not use services of particular service agent as long as PIE is in effect.
Public Interest Exclusion (PIE)

- The DOT is clear that a PIE is to be used only in cases of serious non-compliance to the DOT drug and alcohol testing regulations or failure to cooperate with the DOT regarding drug and alcohol testing. Some examples of serious misconduct, as stipulated by 49 C.F.R. §40.365, are:
  - an MRO who verifies a test as positive without an interview with the employee;
  - an MRO or SAP who practices without meeting the qualifications of the position, as stipulated by the DOT;
  - an MRO who refuses to provide information to the DOT;
  - a SAP who does not conduct face-to-face assessments; and
  - any service agent who discloses an employee’s test result information to any party not authorized by DOT agency regulations or without written consent from the employee.

DOT Record Maintenance Requirements

- All employers and service agents are required to thoroughly document their work, program, decision-making and compliance with respect to DOT regulations.
- All records must be kept in secure, controlled access location, such as locked file cabinet.
- Once an employee has completed his/her treatment recommendations and has been cleared to return to duty, all written documentation pertaining to the alcohol and/or drug testing must be kept for a certain period of time.

### DOT Record Maintenance Requirements

<table>
<thead>
<tr>
<th>Agency</th>
<th>1 Year</th>
<th>2 Years</th>
<th>3 Years</th>
<th>5 Years</th>
</tr>
</thead>
<tbody>
<tr>
<td>FMCS</td>
<td>records related to the alcohol and drug collection process; previous employer records</td>
<td>annual MIS reports; employee evaluation and referrals to SAPs; follow-up tests and follow-up schedules; refusals to test; alcohol test results 0.02 or greater; verified positive drug test results; DOT documentation</td>
<td></td>
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</tr>
<tr>
<td>FTA</td>
<td>education and training records; records related to the alcohol and drug collection process; previous employer records</td>
<td>annual MIS reports; employee evaluation and referrals to SAPs; follow-up tests and follow-up schedules; refusals to test; alcohol test results 0.02 or greater; verified positive drug test results; DOT documentation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>FAA</td>
<td>education and training records; records related to the alcohol and drug collection process; previous employer records</td>
<td>annual MIS reports; employee evaluation and referrals to SAPs; follow-up tests and follow-up schedules; refusals to test; alcohol test results 0.02 or greater; verified positive drug test results; employee dispute records; negative drug test results for pilots; alcohol test results less than 0.02 for pilots</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
DOT Record Maintenance Requirements

<table>
<thead>
<tr>
<th>Industry</th>
<th>Regulation</th>
</tr>
</thead>
<tbody>
<tr>
<td>FAA – Airline</td>
<td>14 C.F.R. part 120, Subpart E, section 120.111, 120.219</td>
</tr>
<tr>
<td>FMCSA – Motor Carrier</td>
<td>49 C.F.R. part 382.401</td>
</tr>
<tr>
<td>FRA – Railroad</td>
<td>49 C.F.R. part 219.901 and 219.903</td>
</tr>
<tr>
<td>FTA – Transit</td>
<td>49 C.F.R. part 655.71</td>
</tr>
<tr>
<td>PHMSA – Pipelines</td>
<td>49 C.F.R. part 199.227</td>
</tr>
<tr>
<td>USCG – Maritime</td>
<td>46 C.F.R. Part 16.280</td>
</tr>
</tbody>
</table>

Industry specific regulations requiring record keeping vary and can be found in the following locations:

- As outlined above, most DOT agencies have similar record keeping requirements.
- Prudent employer can establish a record retention policy that addresses both the DOT agency minimum requirement and other business information needs (e.g. statute of limitations for accidents), but this is not required.

Employer Requirements

- Maintain drug and alcohol test results for three years under 49 C.F.R. § 40.25
- Records of the inspection, maintenance and calibration of the Evidential Breath Testing Device (EBT) inspection for two years
- Records of negative and cancelled drug test results and alcohol test results with a concentration of less than 0.02 for one year.
Employer Requirements

- Employers must maintain the following records for five years:
  - employee record of alcohol test results indicating a breath alcohol concentration (BAC) of 0.02 or greater;
  - employee records of verified positive drug test results;
  - documentation of refusals to test, including adulterated and substituted drug test results;
  - SAP reports; and
  - all follow-up tests and schedules for follow-up tests.

- Employers required to maintain documentation on testing process administration, return-to-duty process administration, employee training and supervisor training.
- Employers may be required to submit annual report to DOT agency regarding testing activity and results.
- Employers may keep electronic records for their own purposes, but DOT requires that paper records be kept in addition.
- If records are kept electronically, they must be password protected.

- Employers may have consortium or third party administrator keep records.
- Do not have to maintain duplicate set of records, but ultimately must ensure procedures are in place that guarantee accurate and current records are saved according to DOT regulations.
- Service agents may also maintain records for employers, must produce records at the employer’s principal place of business in timeframe required by DOT agency when requested.
- After receiving request, regardless of who maintains records, employers must provide all information in their possession concerning employee’s DOT drug and alcohol tests that occurred in the two years (or three years for FMCSA covered employees) preceding the request.
- Includes information received from a former employer.

Laboratory Requirements

- At conclusion of testing a specimen that is reported non-negative (positive, adulterated, substituted or invalid), the laboratory will ensure that the split specimen (Bottle B) and any remaining portion of the original bottle (Bottle A) are stored for a minimum of one year in the laboratory freezer and that all paper work and documentation are retained.
MRO Requirements

- MROs are required to retain records of confirmed laboratory negatives for one year and confirmed non-negatives for five years.
- Only verified results may be released to employers but employees, DOT officials and NTSB officials investigating accidents are entitled to the records in their entirety upon presentation of proper identification and legal documentation.
- MROs, upon presentation of request signed by employee, may release records to anyone employee specifies.
- Employers required to check into drug testing background of applicants for a period of two years prior to application.
- With employee signed consent, MROs are required to release these records to prospective employers.

SAP Requirements

- SAPs must maintain copies of reports to employers for five years, and employee clinical records in accordance with federal, state and local laws regarding record maintenance.

Case Study Instructions

1. Identify which screening and assessment instruments are essential to utilize.
   - Mental Health Screening Form-III (MHSF-III) - Appendix E
   - Drug Abuse Screening Test (DAST) - Appendix F
   - Michigan Alcoholism Screening Test (MAST) - Appendix G
   - Alcohol Use Disorders Identification Test (AUDIT) - Appendix H

2. Complete a bio-psycho-social-spiritual assessment
   - Sample Bio-psycho-social-spiritual Assessment - Appendix I
   - Note: Some information may have to be inferred from the case study to gain a full picture of the client.
Case Study Instructions

3. Develop an individualized treatment plan for the client using the DSM-IV-TR to justify his or her diagnosis and the ASAM PPC-2R, ASAM Placement Criteria for the Treatment of Substance Related Disorders, Second Edition-Revised to justify level of care and education/treatment recommendations.
   - Sample Individualized Treatment Plan - Appendix J

4. Prepare a referral letter to a service provider for the client.

5. Prepare an initial evaluation report for the employer.
   - Sample Initial Evaluation Report - Appendix K

6. Prepare a final evaluation report of the client and follow-up testing plan, utilizing a bio-psycho-social-spiritual assessment update.
   - Sample Bio-psycho-social-spiritual Assessment Update - Appendix M
   - Sample Final Evaluation Report - Appendix N

Case Study #1

John Doe is a 45-year-old black male who was referred to the SAP by the ABC Company’s Designated Employer Representative (DER). The DER stated Mr. Doe is a company truck driver who reported to her that he wants help due to his abuse of amphetamines to help him stay awake while driving. Mr. Doe reported to the SAP that he abuses no other drugs, just occasionally goes out to the club and has a few drinks. His wife, who does not drink, is usually with him and drives home from the club. He reports having a DUI over 10 years ago. The company DER Manager wants the SAP to do an evaluation on Mr. Doe and recommend to the company if Mr. Doe can safely continue working as truck driver.

Case Study #2

Joe Stone, a 37-year-old white male, is an engineer for ZXY Railway. He was referred to the SAP after testing positive for codeine after hitting a sign during a required pre-duty driving test. Mr. Stone reports he was off-duty and was called into work to fill in for someone else. He stated he had a cold over the weekend, and at night, he had been taking some of his daughter’s prescription cough medicine. Mr. Stone states he did not think about the fact that he had taken the cough medicine when asked to come in and that he felt fine when he reported for work. He reported to the SAP that he does not use any other drugs but may have an occasional beer or two if he goes out with the guys. Mr. Stone does not think he needs to be referred for services since he was not using illegal drugs. Further, he believes had he not been called into work, he would not be in this situation because he would not have taken the medication if he was scheduled to work.
Case Study #3

Susie Que is a 35-year-old Asian female aircraft mechanic. She is seeking SAP services after testing positive for opiates during a random drug screen. She reports she has severe back pain and has to take prescription Lortabs to manage the pain. During the initial evaluation, she reported that she has not had a prescription from the physician in over six months but had taken some of her grandmother’s medication that was prescribed to her after surgery two weeks ago. Ms. Que reports that she does not drink or use any other drugs. She states she participated in a Pre-Trial Intervention Program five years ago due to a conviction for prescription narcotics but had her record expunged. Ms. Que also reports that when the violation first occurred, Jane Doe, a qualified SAP, referred her to an intensive outpatient program (IOP) at the Local County Alcohol and Drug Commission three months ago but she did not attend program because she had to leave the country to visit her mom who was very ill at the time. She stated now that her mother is doing better, and she wants to get this behind her and get back to work.

Case Study #4

Mary Green is a 40-year-old black, female truck driver. She was referred to the SAP after causing an accident in her commercial vehicle. Ms. Green was taken to the hospital and left after being treated but prior to submitting a urine or blood specimen. She violated DOT regulations because she failed to report for mandatory testing within the DOT required timeline following an accident. Ms. Green informs the SAP that she is under the care of her primary physician who has prescribed her pain medicine for her shoulder injury from the accident. After completing the final evaluation, Ms. Green was referred to XYZ Treatment Center and successfully completed the recommended eight hours of substance abuse education. She has now presented in the SAP’s office for her final evaluation. She reports the class was very informative, and she learned not only a lot about addiction but also gained insight into how substances can negatively affect a person’s life and job performance. When questioned about her treatment for her shoulder injury, she informed the SAP that she remains under her physician’s care and is still on medication for pain.

Thank You for Participating!