



**U.S. Department of Transportation
Office of the Secretary of Transportation
Office of Drug and Alcohol Policy and Compliance**

The Substance Abuse Professional Guidelines

**Substance Abuse Professional (SAP) Guidelines
for the
U.S. Department of Transportation Workplace Drug and Alcohol
Testing Program - (49 CFR Part 40)**

Revised May 6, 2022 (all previous editions are hereby rescinded)

These Guidelines are provided to you by the U.S. Department of Transportation (DOT) Office of Drug and Alcohol Policy and Compliance (ODAPC). These Guidelines apply only to employers; individuals who are acting as a Substance Abuse Professional (SAP) for DOT-regulated employers; and employees subject to DOT regulation 49 CFR part 40 (Part 40) and other DOT Agency regulations (i.e., the Federal Aviation Administration (FAA); the Federal Motor Carrier Safety Administration (FMCSA); the Federal Railroad Administration (FRA); the Federal Transit Administration (FTA); the Pipeline and Hazardous Materials Safety Administration (PHMSA) and the United States Coast Guard.

The information in this document addresses *and provides guidance* concerning the return to duty process and the SAP's responsibilities in that process. However, information contained in this publication should not be used to interpret *or be viewed as adding to or modifying* the legal requirements of the actual rule.

The term "employee" is used throughout this document. In this document, "employee," "applicant" and "donor" as used on the Federal Drug Testing Custody and Control Form (CCF) are all synonymous.

The term "service agent," which includes SAPs, is used several times throughout this document. Part 40 defines "service agent" as:

Any person or entity, other than an employee of the employer, who provides services to employers and/or employees in connection with DOT drug and alcohol testing requirements. This includes, but is not limited to, collectors, BATs and STTs, laboratories, MROs, substance abuse professionals, and C/TPAs. To act as service agents, persons and organizations must meet DOT qualifications, if applicable. Service agents are not employers for purposes of this part.

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This document may be updated or modified by ODAPC based on additional interpretations or other procedural changes. To ensure SAPs have the latest version, they should check the ODAPC web site ([transportation.gov/odapc](https://www.transportation.gov/odapc)) periodically and must also subscribe their email address to our list serve at: [transportation.gov/odapc/get-odapc-email-updates](https://www.transportation.gov/odapc/get-odapc-email-updates).

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THE SUBSTANCE ABUSE PROFESSIONAL (SAP)

SECTION I: INTRODUCTION

The DOT drug testing regulations have been in existence since 1989, and the alcohol testing regulations became effective in 1994. So, for decades, DOT-regulated safety-sensitive employees have known their obligations to remain drug-free and to not misuse alcohol. When an employee tests positive for drugs, has an alcohol violation, or refuses to submit to testing, the employee has chosen to violate their responsibilities to safety. Because of this threat to safety, they have immediately been removed from safety-sensitive duties and cannot return to work until they have successfully complied with your recommendations.

As a SAP, be absolutely sure you understand what is at stake each time you work with an employee who has violated DOT rules. Because you choose to be a SAP, the decisions you make and the actions you take regarding an employee that has violated the DOT drug and/or alcohol regulations have the potential to directly impact transportation safety if that employee returns to the performance of safety-sensitive duties. The traveling public is made up of kids, moms, dads, significant others, spouses, partners, close friends, acquaintances, strangers, co-workers, neighbors, and many others. All are riding on, literally and figuratively, the decisions you make. In your counseling work, you always view the person walking through your door as your client, and rightfully so. Now, DOT is asking that you view the public as your client as well.

We recognize this may represent a departure for you. However, we think it is crucial to the important role you play as “Gatekeeper” for DOT’s return-to-duty process. You represent the major decision point (and in some cases, the only decision point) an employer may have in choosing whether or not to place an employee behind the steering wheel of a school bus, in the cockpit of a plane, at the helm of an oil tanker, at the throttle of a train, in the engineer compartment of a subway car, or at the emergency control valves of a natural gas pipeline. Your responsibility to the public is enormous!

In accepting this responsibility, remember that, as a SAP, you are advocate for neither the employer nor the employee. Your function is to protect the public interest in safety by professionally evaluating the employee and recommending appropriate education and/or treatment, follow-up tests, and aftercare. Your recommendations should, to the greatest extent possible, protect the public safety in the event the employee returns to the performance of safety-sensitive functions.

As you know, the primary safety objective of the DOT rules is to prevent, through deterrence and detection, alcohol and controlled substance users from performing transportation industry safety-sensitive functions. As a SAP, you are responsible for several duties important to the evaluation, referral, and treatment of employees who have tested positive for alcohol and controlled substance use, or who refuse to be tested, or who have violated other provisions of the DOT rules.

QUALIFICATIONS TO BE A SAP:

The DOT regulation -- 49 CFR Part 40 -- defines a SAP as a person who evaluates employees who have violated a DOT drug and/or alcohol regulation and makes recommendations concerning education, treatment, follow-up testing, and aftercare. In order to be a SAP, you need to have certain credentials, possess specific knowledge, receive training, and achieve a passing score on an examination. You must meet all of the requirements before you perform any SAP functions. There is also a continuing education requirement.

Credentials: You cannot be a SAP unless you are a:

- licensed physician (Doctor of Medicine or Osteopathy); or
- licensed or certified social worker; or
- licensed or certified psychologist; or
- licensed or certified employee assistance professional; or
- state-licensed or certified marriage and family therapist; or
- an alcohol and drug abuse counselor certified by one of the organizations listed at <https://www.transportation.gov/odapc/sap>.

Knowledge:

You cannot be a SAP unless you have knowledge of and clinical experience in the diagnosis and treatment of substance abuse-related disorders. You cannot be a SAP without understanding how the SAP role relates to the special responsibilities employers have for ensuring the safety of the traveling public. You cannot be a SAP unless you are well informed about Part 40, pertinent DOT agency regulations, these SAP Guidelines, and any significant changes to them.

It is important to note that your degrees and certificates alone do not confer to you these knowledge requirements. Therefore, as part of the knowledge requirement, you must also subscribe to the ODAPC list serve at: [transportation.gov/odapc/get-odapc-email-updates](https://www.transportation.gov/odapc/get-odapc-email-updates). You must also keep current on DOT agency regulations, DOT SAP Guidelines. These and other materials are available on the ODAPC Web site ([transportation.gov/odapc](https://www.transportation.gov/odapc)).

Training:

You cannot be a SAP unless you receive qualification training. The qualification training must include the nine required components specified in Section 40.281(c) of Part 40.

Examination:

Following completion of your training, you must satisfactorily complete an examination. This examination must be given by a nationally recognized professional or training organization, and must comprehensively cover all the elements required for the qualification training. Please be aware that DOT requires these training or professional organizations to have their SAP examination validated by a test evaluation organization.

Continuing Education:

During each 3-year period following satisfactory completion of your training and examination, you must complete at least 12 professional development hours (e.g., Continuing Education Units) relevant to your performing SAP duties.

For Example:

August 2011: Successfully completed SAP exam

August 2011- August 2014: 12 CEUs

August 2014 - August 2017: 12 CEUs

August 2017 - August 2020: 12 CEUs

August 2020 - August 2023: 12 CEUs

OVERVIEW OF RESPONSIBILITIES

Your fundamental responsibility is to provide a comprehensive face-to-face assessment and clinical evaluation of employees that have violated the DOT drug and alcohol testing regulation, to determine what level of assistance the employee needs in resolving problems associated with alcohol use or prohibited drug use.

NOTE: Under DOT guidance, those “face-to-face” evaluations have been permitted to occur virtually during the COVID public health emergency.

[transportation.gov/odapc/Statement_of_Enforcement_Discretion_SAPs_and_Service_Agents](https://www.transportation.gov/odapc/Statement_of_Enforcement_Discretion_SAPs_and_Service_Agents))

After an assessment and clinical evaluation, you must recommend a course of education and/or treatment with which the employee must demonstrate successful compliance prior to returning to DOT safety-sensitive duty. Treatment recommendations can include, but are not limited to in-patient treatment, partial in-patient treatment, out-patient treatment, education programs, and aftercare. Education recommendations can include, but are not limited to bona fide drug and alcohol education courses, self-help groups, and community lectures. When recommending a course of education (whether face-to-face or on-line), the SAP should have a working knowledge of that course of education.

Upon the determination of the best recommendation for assistance, you will serve as a referral source to assist the employee's entry into an acceptable program. As a SAP, you should have a working knowledge of quality programs and qualified counselors, as well as insurance, benefit plans, and payment requirements. When possible, you should also 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 out-patient treatment. You should also make information available to the employee regarding meetings of Alcoholics Anonymous, Narcotics Anonymous, and Al-Anon, as well as other tenable self-help groups.

Prior to the employee's return to safety-sensitive duties, you are required to provide a face-to-face follow-up evaluation with the employee to determine if the individual has demonstrated successful compliance with recommendations of the initial evaluation. This evaluation must be accomplished before an employer can consider the employee for return to safety-sensitive functions. Therefore, the evaluation serves to provide the employer with assurance that the employee has made appropriate clinical progress sufficient to satisfy you that they are safe for an employer to proceed with return-to-duty testing, if the employer decides to have the employee perform safety-sensitive functions.

NOTE: Because some DOT agency regulations have unique “fitness for duty requirements”, as a SAP you must not make a “fitness for duty” determination as part of the follow-on evaluation unless required to do so under applicable DOT agency regulations (i.e., FAA).

As the SAP, you also develop and direct a follow-up testing plan for the employee returning to work following successful compliance with recommendations of the initial evaluation. The number and frequency of unannounced follow-up tests is directed by you, and must consist of at least six tests 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 should include testing for drugs as well as alcohol (for the alcohol rule violator), and for alcohol as well as drugs (for the drug rule violator). Follow-up testing can last up to 60 months, but can be terminated by you any time after 1 year (if all tests recommended up to that point are completed). This follow-up testing requirement is in addition to tests accomplished through the employer's random testing program.

In establishing the follow-up testing plan, you will specify the number and frequency of the follow-up tests. The employer would then be responsible for ensuring that the individual is tested according to the plan; therefore, it is important for the follow-up testing plan to be as specific as possible so the employer understands how to implement it. If the employer has any questions, be prepared to discuss the plan with them. Follow-up testing is an important way for the employer to determine if the employee has stopped using controlled substances or misusing alcohol. It is important to note that the employer must conduct all of the follow-up tests (as well as the return-to-duty test) as directly observed collections.

You must **NEVER give the employee a copy of their follow-up testing plan.** You should also instruct the employer not to share the follow-up testing plan with the employee. If the employee knows the number and duration of the follow-up testing program, the employee can anticipate when and for how long they will be tested. This significantly reduces the effectiveness of the follow-up testing program.

REMINDER: FRA’s return-to-duty/follow-up testing requirements for engineers and conductors require no fewer than 6 alcohol tests and 6 drug tests during the first 12 months following return to service [see 240.119(f)(2) and 242.115(f)(2) respectively].

As you know, there are times when an employee will need continuing assistance with an alcohol or drug problem even if the employee is ready to return to work. At these times, you will provide the employee and employer with your recommendations for “aftercare” – continuing education and/or treatment needed after return to safety-sensitive duties.

It is important to note that employers are not required to provide a SAP evaluation or any subsequent recommended education or treatment for an employee. However, if the employer offers the employee an opportunity to return to DOT safety-sensitive duty, the employer must ensure that the employee goes through the entire SAP return-to-duty process to include successful compliance with the SAP’s recommendations. Payment is left for employers and employees to decide and may be determined by existing management-labor agreements, employer policies, or health care benefits.

Your work as a SAP is a very important part of DOT’s efforts to help make our transportation industries the safest in the world. You represent one of the professionals willing to accept a vital role in protecting public safety. The job you do as “Gatekeeper” of the return-to-duty process provides important help to the employee, the employer, and to the traveling public.

SECTION II: SAP DUTIES

THE EVALUATION PROCESS

Consistent with sound clinical and established SAP standards of care in clinical practice, and utilizing reliable alcohol and drug abuse assessment tools, you must conduct a face-to-face evaluation, either in-person or virtually (per applicable guidance), of the client. This type of session is essential to provide you with an opportunity to objectively evaluate the "non-verbals" - those physical cues to internal feelings, thoughts, and behaviors of the employee. In other words, mere audio assessments are not acceptable, there must be audio-visual assessment, if done virtually. You should be cognizant of the client's appearance, posture, carriage, ability to make eye contact, and ability to relate in-person as well as other physical characteristics that would be indicative of alcohol and drug use and abuse. Attention should be placed upon the rule violation that brought the employee to the point of being required to have the SAP evaluation. Always inquire whether this is the employee’s first rule violation, and if it is not, it is advisable to take into consideration previous incidents in determining whether additional recommendations and extended follow-up scheduling is appropriate. Always, you must provide immediate attention to individuals who may be in danger to themselves or others.

The evaluation should be comprised of a review of the employee’s psychosocial history, an in-depth review of the employee’s drug and alcohol use history (with information regarding onset, duration, frequency, and amount of use; substance(s) of use and choice; emotional and physical characteristics of use; and associated health, work, family, personal, and interpersonal problems); and an evaluation of the employee’s current mental status. The evaluation should provide a diagnosis, treatment recommendations, and a treatment plan that the employee must complete before becoming eligible for the required follow-up evaluation and subsequent return (if the employer desires) to safety-sensitive functions.

When an employee has tested positive on or refused a drug test because of adulterating or substituting a specimen, you may consult with the Medical Review Officer (MRO) who verified the employee's drug test in gathering information for this evaluation. The MRO and you are free to discuss the test result, quantitation levels (if available), and any other pertinent medical information disclosed during the MRO's verification interview with the employee. This information should be provided without the employee's signed release.

It is important to note that when the MRO verifies a drug test as positive or as a refusal (i.e., adulterated or substituted), the MRO has already considered all legitimate medical explanations, therefore you are prohibited from considering certain factors in determining recommendations for assistance. Some of these are:

1. Employee claims that the testing process was unjust or inaccurate.
2. Employee statements attempting to lessen the seriousness of a DOT rule violation.
3. Your own personal opinions about the justification and rationale for drug and alcohol testing.

Upon your determination of what level of assistance the employee needs with a drug or alcohol problem, you must inform the employer in writing of this decision. You must send this report directly to the employer and not to a third party or entity for forwarding to the employer.

NOTE: As a SAP, you must also provide these written reports directly to the employee if the employee has no current employer and to the gaining DOT-regulated employer if the event the employee obtains another transportation industry safety-sensitive position. **As mentioned earlier, it is important to remember to never provide the employee with the follow-up testing plan.** That must be provide only to an employer or, in the case of an owner-operated trucking company, only to the C/TPA for the employer.

No third party is authorized to change your report in any way. This notification should be in letter format with your own letterhead, signed and dated by you, and must contain the following items:

1. Employee's name and social security number (SSN);
NOTE: You may truncate the SSN number to the last 4 digits;
2. Employer's name and address;
3. Reason for the assessment (specific violation of the rules and date);
4. Date(s) of your assessment;
5. Your recommendation for education and/or treatment; and
6. Your telephone number.

Employees and employers are prohibited from seeking a second SAP evaluation in order to obtain another recommendation after a qualified SAP has evaluated the employee. Employers are not to rely upon a second evaluation if the employee obtains one contrary to this prohibition.

In addition, no one may change in any way your evaluation or recommendations for assistance. For example, a third party is not permitted to make your recommendation more or less stringent by changing the evaluation or seeking another SAP's evaluation. However, you may modify your evaluation and recommendations based on new or additional information (e.g., from an education or treatment program).

THE REFERRAL PROCESS

Following the evaluation, your referral of the employee to the appropriate program(s) is vital. This referral should be consistent with clinically evaluated employee needs. You should also consider other factors such as the employee's insurance coverage and ability to pay for care, the employer's treatment contracts and policies regarding availability of leave for employees needing assistance, and the availability of appropriate treatment and education programs.

You should have a working knowledge of quality programs and qualified counselors. When recommending a course of education (whether in person or on-line), you should have a working knowledge of that specific course. When a variety of appropriate treatment programs are available within the employee's geographical area, you may permit the employee to select the facility or practice from a SAP-approved provider list. You should facilitate the referral by making contact with the recommended program. It is not necessary for you to make the initial appointment for the employee unless you believe it is necessary. You should transmit, by appropriate means, the treatment plan with diagnostic determinations to the treatment provider.

You cannot refer an employee to your private practice or to a person or organization from which you receive remuneration, or to a person or organization in which you have a financial interest. By precluding you from making referrals to entities with which you are financially associated (to include any in-patient, out-patient, and education organizations or practices), this prohibition prevents the appearance of a conflict of interest. However, this requirement could impose hardship upon an employer and employees in remote areas, or in situations where employee assistance is provided by contract or through a health insurance program. Therefore, the rules do not prohibit you from referring an employee for assistance by:

1. A public agency (e.g., an out-patient treatment facility) operated by a State, county, or municipality;
2. 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);

3. The sole source of therapeutically appropriate treatment under the employee's health insurance program (e.g., the single substance abuse in-patient treatment program made available by the employee's insurance coverage plan); or
4. The sole source of therapeutically appropriate treatment reasonably accessible to the employee (e.g., the only education program reasonable located within the general commuting area).

The intent of these prohibitions is to ensure that your referral in no way is of financial benefit to you. And, because you need to have knowledge of reliable treatment resources, you need to maintain objectivity in determining what actually constitutes a reliable resource.

THE FOLLOW-UP EVALUATION PROCESS

Your evaluation of the employee prior to his or her return to safety-sensitive duties is vital for the employer to gauge the employee's success in meeting the requirements of the treatment plan specified in your initial evaluation. The violation of a DOT drug and alcohol rule has rightfully caused the employee's ability to perform safety-sensitive duties to be called into question. The employee's ability to demonstrate successful compliance with the initial treatment recommendations is key to an employer's decision to return an employee to transportation safety-sensitive duties. Importantly, your follow-up evaluation is clinically based, and should provide the employer a concise assessment of the employee's success in fulfilling requirements of the treatment plan.

In some cases, you have latitude to conduct the follow-up evaluation prior to the employee's completion of the full range of recommended education and/or treatment. However, it is important to note that an employee in an in-patient or partial in-patient/day-treatment program should not be considered eligible for receiving a follow-up evaluation prior to program completion. An employee entering this type of program is not to receive a follow-up evaluation while still participating in that program. Upon program completion, the employee can be evaluated prior to subsequent entry into or completion of an after-care out-patient treatment program.

With a premium on public safety, an employer is best served if you conduct a follow-up evaluation designed to confirm that the employee has demonstrated successful compliance with the recommended education and/or treatment plan, instead of one that is simply a cursory, administrative review. You should base the determination of whether the employee demonstrates successful compliance with the initial recommendations based upon written reports from, and personal communication with, the education and/or treatment program professionals, as well as a face-to-face interview with the employee.

Written information from the education and/or treatment program could include a progress report and/or discharge summary. The personal contact with treatment program professionals may be telephone conversations regarding the nature of the employee's progress, prognosis for success, and any other salient factors that could assist your follow-up evaluation.

It is imperative that you focus on more than simply the employee's attendance in the program, but rather on the level of participation and the progress the employee made in dealing with his or her drug or alcohol problem. Documentation of this contact should be included in the client's case record.

Furnished with information from the education and/or treatment program, you must conduct a face-to-face clinical interview, either in-person or virtually (per applicable guidance), with the employee to discuss the education and/or treatment effort, behavioral changes, and plans for continued treatment plan follow through, as well as return-to-duty and follow-up testing issues. At this point, you can determine that the employee has either demonstrated successful compliance with your recommended education and/or treatment program, or that the employee has not demonstrated successful compliance with your recommendations.

FOLLOW-UP EVALUATIONS REPORT

Demonstration of Successful Compliance:

Based upon clinical judgment that the employee has made progress sufficient to warrant return to safety-sensitive functions, **you must provide written notice directly to the employer or, in the case of an owner-operated trucking company, only to the C/TPA for the employer** that explains the situation, any continuing care recommendations, and a follow-up testing plan.

NOTE: Never provide the details of the follow up testing plan (or the follow-up report with the testing plan) to the employee, as the employee could then plan/time future substance use in a way that would avoid a subsequent positive test result. This is a frequent mistake that we see made by SAPs and by employers. Please always emphasize to the employer that your follow-up testing recommendations must never be shared with the employee.

Your report should be in letter format with your own letterhead, signed and dated by you, and should contain the following items:

1. Employee's name and social security number;
NOTE: You may truncate the SSN number to the last 4 digits;
2. Employer's name and address;
3. Reason for the initial assessment (specific violation of DOT regulations and violation date);
4. Date(s) of initial assessment and synopsis of the treatment plan;
5. Name of the practice(s) or service(s) providing the recommended education and/or treatment;
6. Inclusive dates of the employee's program participation;

7. Clinical characterization of the employee's program participation;
8. Your clinical determination as to the whether the employee has demonstrated successful compliance;
9. Follow-up testing plan;
10. Employee's continuing care needs with specific treatment, aftercare, and/or support group services recommendations; and
11. Your telephone number.

If you believe the employee needs additional treatment, aftercare, 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, you must provide recommendations for these services in the report. An employer may, as part of a return-to-duty agreement (or similar arrangement) with the employee, require the employee to participate in these recommended services. If the employee fails subsequently to do so, he or she may be subject to disciplinary action by the employer.

No Demonstration of Successful Compliance:

Based upon clinical judgment that the employee has not demonstrated successful compliance with the treatment recommendation, you must provide written notice directly to the employer that explains this situation. You should first contact the employer to determine if the employer wants to authorize an additional follow-up evaluation and more time for the employee to make progress. The employer's decision should be consistent with the employee's prospects for progress, and with the employer's policy and/or labor-management agreements. Your report should be in letter format with your own letterhead, signed and dated by you, and should contain the following items:

1. Employee's name and social security number;
NOTE: You may truncate the SSN number to the last 4 digits;
2. Employer's name and address;
3. Reason for the initial assessment (specific violation of DOT regulations and violation date);
4. Date(s) of initial assessment and synopsis of the treatment plan;
5. Name of the practice(s) or service(s) providing the recommended education and/or treatment;
6. Inclusive dates of the employee's program participation;

7. Clinical characterization of the employee's program participation;
8. Date(s) of the first follow-up evaluation;
9. Date(s) of any further follow-up evaluation you have scheduled;
10. Your clinical reasons for determining that the employee has not demonstrated successful compliance; and
11. Your telephone number.

THE FOLLOW-UP TESTING PROCESS

Follow-up testing serves as more than an employer's additional assurance that an employee is performing safety-sensitive work in an alcohol-free and/or drug-free manner. It serves the recovering employee as an adjunct to the total and on-going rehabilitation effort. Despite the fact that treatment can be short term, the rehabilitation process for the recovering alcohol abuser and drug user usually requires long-term effort on the part of the employee. Because most relapses occur during the first 12 months following treatment, this effort can be enhanced in many ways during this first year (and thereafter) – among these are the recovering employee's required participation in follow-up testing program, as well as participation in aftercare programs and in self-help groups.

Therefore, you must present the employer a plan for follow-up testing. You can re-evaluate the plan at any time and terminate the plan following first year if all the required tests for the first year were completed. Follow-up testing should be spread throughout the year by the employer, unpredictable, and unannounced. An employee's follow-up testing program can last up to 60 months. Typically, you will provide the employer with the recommended number of tests and the frequency of the tests (For example, 4 tests in the first 6 months and 2 in the final 6 months of the first year; 24 tests, once each month for 24 months). You should not prescribe the dates for each tests, but you can offer a reminder to the employer if the employee has a certain time when most likely to relapse (i.e., specific holidays or long weekends).

REMINDER: FRA return-to-duty/follow-up testing requirements for engineers and conductors require no fewer than 6 alcohol tests and 6 drug tests during the first 12 months following return to service [see 240.119(f)(2) and 242.115(f)(2) respectively].

Employers are best suited to arrange for the tests to be conducted because they are aware of employee performance issues and schedule circumstances. Consequently, the employer will choose the exact dates upon which to carry out your follow-up testing plan. This follow-up testing requirement is in addition to tests accomplished through the employer's DOT testing program. In other words, no other types of tests replace follow-up testing.

REMINDER: All follow-up drug testing must be directly observed. If a follow-up test is not directly observed and is 'negative', it doesn't count towards the follow-up testing program.

SECTION III: RELEASE OF INFORMATION

The ability to receive and communicate pertinent information regarding the employee's drug and alcohol test results and progress in the SAP return-to-duty process is imperative to SAP functioning. Here is what you need to know:

- Part 40 does not restrict your communication with MROs or with education and/or treatment program personnel. In addition, Part 40 authorizes you to provide written reports directly to the employer without obtaining a signed release from the employee.
- Federal and State laws and rules, codes of ethical standards, and certification and licensing boards by which counselors are regulated have supported the privileged client-counselor relationship. 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 abuse or neglect, when medical records are court ordered by a judge compelling disclosure, or when the counselor seeks medical or legal consultation.
- You are to make case records available, on request, to DOT agency representatives (e.g., inspectors conducting an audit or safety investigation) and representatives of the National Transportation Safety Board in an accident investigation.
- Upon request from the employee, you must also provide the employee with the employer reports, from which the you must redact follow-up testing requirements. You may also provide these reports without employee consent to service agents (e.g., a consortia/third-party administrator (C/TPA)) responsible for maintaining records on behalf of the employer, but must not use the C/TPA as an intermediary in the transmission of the report to the employer.
- The FMCSA has implemented the “Commercial Driver’s License Drug and Alcohol Clearinghouse” database (Clearinghouse). The Clearinghouse contains records of violations of drug and alcohol prohibitions in 49 CFR Part 382, Subpart B, including positive drug or alcohol test results and test refusals. This database provides real time information about CDL driver drug and alcohol program violations, making it difficult for drivers to conceal these violations from current or prospective employers. SAPs must use the Clearinghouse to report specific information about a CDL driver’s return-to-duty activities. **The Clearinghouse rule does not change any existing SAP responsibilities or functions required in 49 CFR Part 40.**
 - As a SAP you must:
 - Register with the Clearinghouse.
 - Confirm the driver’s request as their SAP in the Clearinghouse, once you have agreed to work with him/her per Part 40.
 - Report the date of driver’s initial assessment and the date you determine the driver is eligible for return-to-duty testing in the Clearinghouse.
 - You can learn more about the Clearinghouse at clearinghouse.fmcsa.dot.gov/Learn

SECTION IV: RECORD MAINTENANCE

You must maintain copies of your SAP reports to employers for 5 years (from the date on the 2nd report), and employee clinical records in accordance with Federal, state, and local laws regarding record maintenance. All records should be maintained in limited access areas that permit no unauthorized entry.

SECTION V: HINTS AND BEST BUSINESS PRACTICES FOR SAPs

Shared Wisdom

A few years ago a large group of SAPs gathered in Texas to share insights from their practices, explore treatment options that they might not have known about, and to refresh themselves on the DOT regulations. Not only was this SAP-planned and executed session of “Shared Wisdom” a great learning and networking opportunity for the SAPs involved, but it was also set up to allow continuing education credits! It is a great idea to network with other SAPs, share information among yourselves, and contact DOT for clarifications to share with your group, as needed. We are all partners in safety and sharing wisdom makes us all more effective.

Searchable Web Pages

Part 40 requires an employer to provide employees with a list of qualified SAPs. However, neither DOT nor any of its Agencies maintains a list of SAPs or any other service agents.

If an employer does not provide an employee with a list of qualified SAPs, DOT suggests that employees search the internet using search terms such as “DOT qualified Substance Abuse Professional” or “DOT and Substance Abuse Professional,” or by searching the employee’s State web site. As such, SAPs should make sure that their websites are searchable using these and other common search terms. Additionally, SAPs should feel free to contact employers with transportation safety-sensitive employees directly to let those employers know that they are qualified to perform SAP responsibilities for employees who have a DOT drug/alcohol violation.

NOTE: Remember that you NEVER want to call yourself a DOT-certified SAP. The DOT does not certify SAPs. This would be misleading and potentially actionable under the Public Interest Exclusion provisions of Subpart R of Part 40.

For additional information, see [transportation.gov/odapc/employee#SAP](https://www.transportation.gov/odapc/employee#SAP).

Succession Planning

If a SAP is in a sole practice and decides to close/ retire/ move to another city or State, it is a good idea to transfer the records to another practice, and notify each employee whose follow-up testing is not complete where the records have gone. If the SAP is in practice with others, it should be easier to ensure that the records remain accessible for future use.

While a SAP may give the evaluation reports to the employee, a SAP must NEVER give the employee the follow-up testing plan that has been developed. If there is no follow-up testing plan for subsequent employer to use, then the employee will need to see another SAP to resume the process. A SAP should try to help to avoid this issue through proper succession planning.

SECTION VI: QUESTIONS AND ANSWERS

1. Under the DOT rules, must a SAP be certified by DOT in order to perform SAP functions?

No, DOT does not certify, license, or approve individual SAPs. However, the SAP must be able to demonstrate to the employer qualifications necessary to meet DOT rule requirements. (See page 5 – Qualifications to be a SAP: Credentials, Knowledge, Training, Examination and Continuing Education.)

2. Will DOT add more certified counselor groups to the SAP function the way they added NAADAC and ICRC counselors?

If a certification organization wants DOT to authorize its certified drug and alcohol counselors to be added to the list of those with appropriate credentials to become a SAP, the organization should petition DOT in writing. Before petitioning DOT, the organization must obtain National Commission for Certifying Agencies (NCCA) accreditation and meet the minimum requirements outlined at Appendix E of Part 40. DOT will review the petition and supporting information before making a decision on whether or not to include those counselors in Part 40.

3. Must nationally recognized test and training groups who administer SAP evaluations have those examinations validated?

Yes, because DOT places a premium on the return-to-duty process, we want to make sure that SAPs are trained and pass an examination that has validity. Therefore, SAP examinations must be validated by a test evaluation organization. Doing so guarantees that an objective outside expert believes that the test has validity. A poorly designed test or a less-than-deliberate exam is a hapless compliment to an effective training requirement; and a well-designed examination can serve to readily point out substandard training efforts. The validation process should include a discussion of test items, knowledge domains, and how effective the test items measure the domains. It should also include a psychometric review that offers an interpretation of the test and the value of how the items and questions are structured. Ultimately, DOT can be assured that SAPs passing the examination have done so because they learned the materials and not because the examination was seriously flawed.

4. Are employers required to refer a fired employee to a SAP?

Yes, the rule requires an employer to provide the employee (including an applicant or new employee) who violates a DOT drug and alcohol regulation a list of qualified SAPs

readily available to the employee. This list should include the names, addresses, and telephone numbers of qualified SAPs.

In the scenario where the employer fires the employee, that employer must provide a list of at least two qualified SAPs or access to a service that can provide the employee with a list of qualified SAPs ready available to the employee. This employer has no further obligation (e.g., facilitate referral to the SAP; ensure that the employee receives a SAP evaluation; pay for the evaluation; or seek to obtain, or maintain the SAP reports) than to present the employee with the required resource list and ensure that SAPs on the list are qualified.

NOTES: 1. If the employer makes use of a SAP network, the network must provide the employee with the appropriate list of SAPs.
2. If the employer intends to have the employee return to duty (with that employer), the employer needs only to provide the employee with the specifics of the SAP who will conduct the evaluation.

5. How will the SAP evaluation process differ if the employee is fired by the employer rather than retained following a rule violation?

Either way, an employee cannot perform any DOT safety-sensitive duties for any employer until and unless the employee completes the SAP evaluation, referral, and education/treatment process and return-to-duty test.

However, the SAP process has the potential to be more complicated when the employer does not retain the employee. In such circumstances, the SAP will likely not have a connection with the employer for whom the employee worked nor have immediate access to the exact nature of the rule violation. The SAP may need to contact the former employer and the MRO to discuss the violation. In addition, the SAP may have to hold the employer reports until asked to forward that information to a gaining employer wishing to return the individual to safety-sensitive duties.

A gaining employer may determine to his or her own satisfaction (e.g., by having the prospective employee meet with the gaining employer's designated SAP, or by having the gaining employer's SAP confer with the employee's SAP) that the prospective employee has demonstrated successful compliance with recommended treatment.

6. Can SAP evaluations be conducted telephonically or online?

SAP evaluations cannot be conducted telephonically. However, under DOT guidance, SAPs have been permitted to conduct evaluations remotely since April 2020¹. Both the initial and follow-up SAP evaluations are clinical processes. Body language and appearance offer important physical cues vital to the evaluation process. Tremors, needle marks, dilated pupils, exaggerated movements, yellow eyes, glazed or bloodshot eyes, lack of eye contact, a physical slowdown or hyperactivity, appearance, posture, carriage, and ability to

¹ To view the DOT's guidance published in April 2020, go to https://www.transportation.gov/odapc/Statement_of_Enforcement_Discretion_SAPs_and_Service_Agents

communicate in person are vital components that cannot be determined telephonically. In-person sessions carry with them the added advantage of the SAP's being able to provide immediate attention to individuals who may be a danger to themselves or others.

NOTE: In April 2020, the DOT recognized that conducting face-to-face assessments and evaluations during the COVID-19 public health emergency may not be possible or advisable for certain individuals. As such, DOT issued guidance allowing SAPs to conduct remote evaluations. This guidance allows SAPs to conduct a remote “face-to-face” evaluation and assessment while the guidance is in effect.

The flexibility to conduct remote assessments and evaluations is voluntary, and SAPs may continue to conduct in-person face-to-face assessments and evaluations as appropriate.

While the DOT does not prescribe the exact manner in which the remote evaluations should be conducted, SAPs who choose to conduct initial assessments and evaluations and follow up evaluations remotely should consider the following parameters:

- a. The technology you use should permit a real-time two-way audio and visual communication and interaction between you and the employee.
- b. You should determine if the quality of the technology (e.g., speed of the internet connection, clarity of the display, application being used, etc.) is sufficient for you to gather all the visual (e.g., non-verbal physical cues) and audible information you would normally observe in an in-person face-to-face interaction.
- c. You may only utilize the technology if your State-issued license authorizes you to do so and within the parameters of that authority.

7. What are some of the benefits of a SAP determining during the initial evaluation if depression plays a role in the employee’s current mental status?

Research shows that more than half of all substance abusers are suffering from depression. Identifying and treating an employee’s underlying depression will increase the likelihood of successful substance abuse treatment outcomes and successful return-to-duty.

8. Do community lectures and self-help groups qualify as education and/or treatment?

Self-help groups and community lectures qualify as education, but do not qualify as treatment. While self-help groups such as Alcoholics Anonymous (AA) and Narcotics Anonymous (NA) are crucial to many employees' recovery processes, these efforts alone are not considered to be treatment programs. If an employee’s clinical evaluation indicates a need for treatment, community lectures and self-help groups will not suffice. However, they can serve as vital adjuncts in support of treatment program efforts. Therefore, if a client is referred to one of these groups or to community lectures as a result of the SAP evaluation,

the employee's attendance, when it can be independently validated, can satisfy a SAP recommendation for education.

9. Can an employee who has violated the rules return to safety-sensitive duty prior to completing the SAP return-to-duty process?

No. Employees (including applicants) who violate DOT drug and alcohol rules are prohibited from performing any DOT regulated safety-sensitive function for any DOT-regulated employer until successfully completing the SAP return-to-duty process. An employer is prohibited from permitting the employee to engage in safety-sensitive duties until receiving the report indicating that the employee has demonstrated successful compliance with prescribed education and/or treatment.

The employer must ensure that the employee passes a return-to-duty test. The employer must also ensure that for a drug test, it is conducted under direct observation. The employee must have a negative drug test result and/or an alcohol test result with an alcohol concentration of less than 0.02.

10. Is an employer obligated to return an employee to safety-sensitive duty following the SAP's finding during the follow-up evaluation that the employee has demonstrated successful compliance with the treatment recommendation?

No. The DOT rules do not obligate an employer to return the employee to a safety-sensitive job. Demonstrating successful compliance with prescribed education and/or treatment and testing negative on the return-to-duty drug test and/or below 0.02 on the return-to-duty alcohol test, are not guarantees of employment or of return to work in a safety-sensitive position. They are preconditions the employee must meet in order to be considered for hiring or reinstatement into safety-sensitive duties by an employer.

11. Can an employee receive the follow-up evaluation from a SAP who did not conduct the initial SAP evaluation?

Yes. Although it is strongly recommended that the same SAP be involved throughout the return-to-duty process, circumstances may arise that prevent this from happening. For instance, the initial SAP may no longer be in the area, not still under contract to or employed by the employer to conduct the service, or has retired or stopped performing SAP functions. Additionally, the employee may have moved from the area to a new location. In all cases, the employer responsibility is to ensure that both the initial SAP and the follow-up SAP are qualified to do the job.

12. What does Part 40 mean when it says that SAPs are to use their “own letterhead” when transmitting their reports directly to the employer?

“SAP’s own letterhead” (49 CFR §40.311) means the letterhead the SAP uses in her or his daily counseling practice. If the SAP is in private practice, the SAP should use the letterhead of her or his practice. If the SAP works directly for an Employee Assistance

Program (EAP) organization, the SAP should use the EAP's letterhead. If the SAP works directly for a community mental health service, the SAP should use the service's letterhead.

What the DOT wants to avoid is a SAP network provider requiring the SAP to use the provider's letterhead rather than that of the SAP. The DOT also wants to avoid another service agent that contracts the SAP's services to require the contracted SAP to use the service agent's letterhead. There should be no appearance that anyone changed the SAP's recommendations or that the SAP's report failed to go directly from the SAP to the employer. In addition, DOT wants to ensure that an employer and DOT agency representatives can readily contact the SAP at the address listed on the letterhead.

13. Who is responsible for reimbursing the SAP for services rendered?

Payment for SAP evaluations and services is left for employers and employees to decide, and may be governed by existing labor-management agreements and health care benefits. DOT does not determine or become involved with payment issues.

14. Can the SAP direct that an employee be tested for both alcohol and drugs for the return-to-duty test and during the follow-up testing program?

Yes. If the SAP determines that an employee referred for alcohol misuse also uses drugs, or that an employee referred for drug use also misuses alcohol, the SAP can require that the individual be tested for both substances. The SAP's decision to test for both can be based upon information gathered during the initial evaluation, the SAP's consultation contacts with the treatment program, and/or the information presented during the follow-up evaluation.

15. Can random testing be substituted for required follow-up testing?

No. Follow-up testing is directly related to a rule violation and subsequent return to safety-sensitive duty. Follow-up testing occurs under direct observation. Random tests are independent of rule violations and are not conducted under direct observation. Therefore, the two test types are to be separated -- one cannot be substituted for the other or be conducted in lieu of the other. Follow-up testing should be unpredictable, unannounced, and conducted not less than six times throughout the first 12 months after the employee returns to safety-sensitive functions. Follow-up testing can last up to 60 months. An employee subject to follow-up testing will continue to be subject to an employer's random testing program.

NOTE: A follow-up test that is cancelled is not a completed test. Any cancelled follow-up test and/or a follow-up test that was not directly observed must be immediately recollected with no advance notice to the employee.

16. If a company has several employees in follow-up testing, can those employees be placed into a follow-up random testing pool and selected for follow-up testing on a random basis?

No. Follow-up testing is not to be conducted in a randomized way. An employee's follow-up testing program is to be individualized and designed to ensure that the employee is tested the appropriate number of times as directed by the SAP. Furthermore, if the SAP asks you to consider certain factors in planning the follow-up tests, you should do so. For example, if the SAP indicates to you that long weekends are challenges for the employee, you should take that into consideration and test the employee after the employee is off work for several days to ensure that the employee is remaining free of substance abuse. Random testing is neither individualized nor can it ensure that the employee receives the requisite number of tests.

17. Who is responsible for paying for follow-up testing recommended by the SAP?

The DOT rules do not affix responsibility for payment for follow-up testing upon any particular party. DOT has left discussions regarding payment to employer policies, to agreements with individual employees, and to labor-management agreements. In some instances, this issue has become part of labor-management negotiations. However, in making the decision to return the employee to safety-sensitive duty, the employer is, in essence, determining that costs associated with hiring and training a new employee exceeds costs associated with conducting follow-up testing of the returning employee.

NOTE: Some employers conduct the return-to-duty and follow-up tests and then deduct the costs of the testing from the employee's pay. That way, the employee has a chance to work and the employer is not fronting the extra costs of these direct observation collections.

In any case, whether the employer or the employee pays, if the employee returns to performance safety-sensitive functions, the employer must ensure that follow-up testing occurs as required. The employer will be held accountable if the follow-up testing plan is not followed.

18. Can a SAP recommend that six follow-up tests be conducted in less than 12 months and then suspend testing after all six are conducted?

No. Follow-up testing must be conducted a minimum of six times during the first 12 months following the employee's return to safety sensitive functions. The intent of this requirement is that testing be spread throughout the 12-month period and not be grouped into a shorter interval. When the SAP believes that the employee needs to be tested more frequently during the first few months after returning to duty, the SAP may recommend more than the minimum six tests or can direct the employer to conduct more of the six tests during the first months rather than toward the latter months of the year. In any case, the follow-up testing is to last at least 1 year.

19. With respect to follow-up testing, what happens if the employee changes employers without first completing the follow-up testing plan?

The requirements of the SAP's follow-up testing plan "follow the employee" to subsequent employers or through breaks in service. Part 40 provides examples at §40.307.

20. What actions are to occur if an employee tests positive or refuses a test while in the follow-up testing program?

If an employee violates a drug or alcohol testing regulation again before completing a follow-up testing program, the employee needs to start all over again – with a new SAP evaluation process, a new return-to-duty test, and a new follow-up testing plan. The current follow-up testing process ends, and just like any other violation, the employee must be removed immediately from safety-sensitive duties and referred back to a SAP. The employee is prohibited from performing any DOT-regulated safety-sensitive duties until a SAP determines the employee successfully completed the education and/or treatment.

In addition, the employee is subject to employer policies related to subsequent violations of DOT rules or a DOT agency regulation that applies to a permanent prohibition.²

21. Can the employer monitor a SAP's recommendations for continuing services the employee needs even after the employee returns to safety-sensitive duties?

Yes. If the SAP believes the employee needs additional treatment, aftercare, 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, the SAP must provide recommendations for these services in the follow-up evaluation report. An employer may, as part of a return-to-duty agreement with the employee, require the employee to participate in these recommended services.

The employer may make use of SAP and employee assistance program services in assisting and monitoring the employee's compliance with these SAP recommendations. If the employee fails subsequently to comply, he or she may be subject to disciplinary action by the employer.

22. What is the difference between 49 CFR Part 40 and individual DOT's Agency's regulations?

49 CFR Part 40, or "Part 40" as we call it, is a DOT-wide regulation that prescribes how to conduct testing and how to return employees to safety-sensitive duties after they violate a DOT drug and alcohol regulation. Part 40 applies to all DOT-required testing, regardless of what DOT agency-specific rule applies to an employer. For example, whether you are an

² Federal Aviation Administration's (FAA's) regulation, 14 CFR part 120, included a permanent prohibition of service when and employee has multiple violations. Visit <https://www.faa.gov/go/drugabatement> for more information

airline covered by FAA rules or a trucking company covered by FMCSA rules, Part 40 procedures for collecting and testing specimens and reporting of test results apply to you.

Each DOT Agency-specific regulation spells out who is subject to testing, when, and in what situations, for a particular transportation industry. You can find more information about specific DOT agency regulations at: [transportation.gov/odapc/dot-agencyuscg-drug-and-alcohol-program-facts](https://www.transportation.gov/odapc/dot-agencyuscg-drug-and-alcohol-program-facts).

23. As a SAP, where can I get more information and answers to my questions?

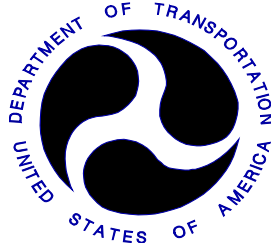
First, go to Part 40 for your answers. You can obtain a copy of Part 40 by contacting our office at 202.366.3784 or from our website at: [transportation.gov/odapc/](https://www.transportation.gov/odapc/).

Second, the DOT's drug and alcohol testing website will give you easy access to all the program guidance and requirements. Most things you and others who help you with your program need to know about the drug and alcohol testing requirements are available on our website. Look for the "SAP Page" under "Resources for Key Persons".

Third, in addition to DOT's 49 CFR Part 40 drug and alcohol regulations, the specific DOT Agencies regulations can be found at [transportation.gov/odapc/agencies](https://www.transportation.gov/odapc/agencies).

Fourth, other SAPs in the network you build for yourself will be good sources of information and best practices.

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Changes from previous version [August 25, 2009]:

- Cover Page: new layout
- Page 2: explanation about these guidelines
- Page 3: added “Table of Contents”
- Page 4: section I re-organized
- Page 5: removed list of certifying organizations and provide link to the list
- Page 6: added language about virtual evaluations permitted per DOT guidance
- Page 7: added a ‘Note’ about FRA return-to-duty and follow up testing requirements for locomotive engineers and conductors (also on page 14)
- Page 12: created ‘Follow-Up Evaluation Report’ section
- Page 15: added language about FMCSA’s Clearinghouse requirement
- Page 16: added new section “SECTION V: Hints and Best Practices for SAPs”
- Page 18: Question #4, clarified SAP list requirements,
- Page 18: Question #6, inserted guidance regarding virtual evaluations by SAPs
- Page 23: Question #20, added footnote regarding FAA permanent prohibition
- Page 23: removed old question #s 22 & 23 and added new question #s 22 and 23
- Updated web site addresses/hyperlinks, and reformatted as necessary