

# DOT Drug & Alcohol Testing Statement of Enforcement Discretion for Substance Abuse Professionals <sup>1</sup>

December 20, 2022

This Statement of Enforcement Discretion authorizes Substance Abuse Professionals (SAP) to conduct remote assessments and evaluations for employees with drug and alcohol violations.

The U.S. Department of Transportation's (DOT) Office of Drug and Alcohol Policy and Compliance (ODAPC) issues this statement of enforcement discretion, effective January 1, 2023. Unless otherwise modified or terminated by ODAPC, the enforcement discretion ends on the effective date of any final rule following DOT's [notice of proposed rulemaking](#) (NPRM) published on February 28, 2022. SAPs and affected employees would follow any assessment and evaluation procedures specified in that final rule.

## **Substance Abuse Professional (SAP) Assessments and Evaluations**

Under DOT regulations at 49 CFR §§ 40.291, 40.293, and 40.301, SAPs must conduct face-to-face assessments and evaluations of employees who have violated DOT drug and alcohol regulations. ODAPC had historically maintained that the "face-to-face" assessment and evaluation must be done "in person." ODAPC recognized, however, that conducting face-to-face assessments and evaluations during the COVID-19 public health emergency may not have been possible or advisable for certain individuals. ODAPC therefore issued a Statement of Enforcement Discretion on April 4, 2020, and extended it several times, to allow SAPs to conduct remote "face-to-face" evaluations and assessments.

On February 28, 2022, DOT published an NPRM that, among other things, proposed to allow SAPs to conduct assessments and evaluations either in-person or remotely provided that certain requirements are met. The proposed requirements include criteria that are intended to ensure that the SAP can objectively evaluate an employee's non-verbal and physical characteristics that might be indicative of problems associated with alcohol abuse and/or drug use. Those criteria are based on and consistent with those in the currently applicable Statement of Enforcement Discretion issued by ODAPC. The current enforcement discretion extends through December 31, 2022. To provide consistent program administration for SAPs and affected employees, ODAPC has determined to continue this enforcement discretion until the effective date of any final rule following the February 2022 NPRM. If ODAPC were to terminate the current enforcement discretion during the pendency of the rulemaking, employees with drug and alcohol violations and SAPs could be subject to abruptly changing requirements applicable to the performance of assessments and evaluations, which could slow the return-to-duty process for employees who have violated the Department's drug and alcohol rules.

Consistent with the original Statement of Enforcement Discretion and the proposal in the NPRM, 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. In addition, while ODAPC 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:

1. The technology you use should permit a real-time two-way audio and visual communication and interaction between you and the employee.

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<sup>1</sup> This document is a temporary notice of enforcement discretion. Regulated entities may rely on this notice as a safeguard from departmental enforcement as described herein. To the extent this notice includes guidance on how regulated entities may comply with existing regulations, it does not have the force and effect of law and is not meant to bind the regulated entities in any way.

2. 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.
3. You may only utilize the technology if your State-issued license authorizes you to do so and within the parameters of that authority.

ODAPC further recommends that, when a SAP conducts assessments and evaluations remotely, the format of the assessment be documented in the final report for reference.

ODAPC will not consider an evaluation or assessment performed remotely as an act of serious non-compliance for purposes of starting a public interest exclusion proceeding against the service agent while this statement of enforcement discretion is in effect.

ODAPC Guidance Document #: ODAPC GEN07