

DOT COVID-19 Drug & Alcohol Testing Statement of Enforcement Discretion for Substance Abuse Professionals

and

Notice of Termination of the April 4, 2020 Statement of Enforcement of Discretion for Service Agent Re-qualification Timelines¹

April 4, 2020; updated June 17, 2020; September 22, 2020; December 09, 2020; May 27, 2021, November 29, 2021, and June 15, 2022

On March 23, 2020, the U.S. Department of Transportation (DOT) Office of Drug and Alcohol Policy and Compliance (ODAPC) provided [guidance](#) about the impact of the Coronavirus Disease 2019 (COVID-19) public health emergency on DOT drug and alcohol testing requirements for employers, employees, and service agents. On April 4, 2020, ODAPC provided supplemental information specific to performing remote evaluations by Substance Abuse Professionals (SAP) and the re-qualification timelines for collectors, Medical Review Officers (MRO), Screening Test Technicians (STT) and Breath Alcohol Technicians (BAT), and SAPs.

As published on April 4, 2020, this statement was effective through June 30, 2020 and was extended several times thru June 30, 2022. Effective July 1, 2022, ODAPC now extends the statement only for remote SAP evaluations, through December 31, 2022. Also, effective July 1, 2022, ODAPC will not extend the statement for the re-qualification timelines for service agents.

SAP Assessments and Evaluations

Under 49 CFR §§ 40.291, 40.293, and 40.301, the SAP must conduct a face-to-face assessment and evaluation of an employee who has violated DOT drug and alcohol regulations. DOT has always maintained that the “face-to-face” assessment and evaluation must be done “in person” and is essential to the SAP process. ODAPC recognizes that conducting face-to-face assessments and evaluations during the COVID-19 public health emergency may not be possible or advisable for certain individuals. ODAPC will allow SAPs to conduct a remote “face-to-face” evaluation and assessment while this policy 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. ODAPC recommends that, when a SAP conducts assessments and evaluations remotely, the format of the assessment be documented in the final report for reference.

¹ 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.

While ODAPC will 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.
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 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.

Termination of the Statement of Enforcement Discretion for the Re-qualification Timelines for Certain Service Agents

Under 49 CFR §§ 40.33(e), 40.121(d), 40.213(e), and 40.281(d), collectors, MROs, STT/BATs, and SAPs are required to maintain their DOT required qualifications to continue to act as service agents in the DOT drug and alcohol testing program. Specifically, collectors and STT/BATs must complete refresher training every five years, MROs must complete requalification training every five years, and SAPs must complete 12 professional development hours every three years.

Since the issuance of the last extension of the April 4, 2020 Notice, ODAPC is not aware of instances where a service agent has not been able to meet its re-qualification requirements due to COVID-19 related issues. To the contrary, ODAPC has heard that service agents have been able to re-qualify due to the availability of virtual courses, as well as in-person courses. Considering these factors, ODAPC concludes that extending the statement of enforcement discretion for service agent re-qualifications is no longer needed.

Accordingly, ODAPC advises service agents that beginning July 1, 2022, the service agent re-qualification portion of the April 4, 2020 notice and its extensions, is terminated.