

safety-sensitive duty, and Employer B is responsible for ensuring that the employee does so. Employer B learns of this obligation through the inquiry it makes under § 40.25.

Example 2 to paragraph (e): The employee returns to duty with Employer A. Three months later, after the employee completes the first two of six follow-up tests required by the SAP's plan, Employer A lays the employee off for economic or seasonal employment reasons. Four months later, Employer A recalls the employee. Employer A must ensure that the employee completes the remaining four follow-up tests during the next nine months.

(f) As the SAP, you may modify the determinations you have made concerning follow-up tests. For example, even if you recommended follow-up testing beyond the first 12-months, you can terminate the testing requirement at any time after the first year of testing. You must not, however, modify the requirement that the employee take at least six follow-up tests within the first 12 months after returning to the performance of safety-sensitive functions.

§ 40.309 What are the employer's responsibilities with respect to the SAP's directions for follow-up tests?

(a) As the employer, you must carry out the SAP's follow-up testing requirements. You may not allow the employee to continue to perform safety-sensitive functions unless follow-up testing is conducted as directed by the SAP.

(b) You should schedule follow-up tests on dates of your own choosing, but you must ensure that the tests are unannounced with no discernable pattern as to their timing, and that the employee is given no advance notice.

(c) You cannot substitute any other tests (*e.g.*, those carried out under the random testing program) conducted on the employee for this follow-up testing requirement.

(d) You cannot count a follow-up test that has been cancelled as a completed test. A cancelled follow-up test must be recollected.

§ 40.311 What are the requirements concerning SAP reports?

(a) As the SAP conducting the required evaluations, you must send the written reports required by this section in writing directly to the DER and not

to a third party or entity for forwarding to the DER (except as provided in § 40.355(e)). You may, however, forward the document simultaneously to the DER and to a C/TPA.

(b) As an employer, you must ensure that you receive SAP written reports directly from the SAP performing the evaluation and that no third party or entity changed the SAP's report in any way.

(c) The SAP's written report, following an initial evaluation that determines what level of assistance is needed to address the employee's drug and/or alcohol problems, must be on the SAP's own letterhead (and not the letterhead of another service agent) signed and dated by the SAP, and must contain the following delineated items:

- (1) Employee's name and SSN;
- (2) Employer's name and address;
- (3) Reason for the assessment (specific violation of DOT regulations and violation date);
- (4) Date(s) of the assessment;
- (5) SAP's education and/or treatment recommendation; and
- (6) SAP's telephone number.

(d) The SAP's written report concerning a follow-up evaluation that determines the employee has demonstrated successful compliance must be on the SAP's own letterhead (and not the letterhead of another service agent), signed by the SAP and dated, and must contain the following items:

- (1) Employee's name and SSN;
- (2) Employer's name and address;
- (3) Reason for the initial assessment (specific violation of DOT regulations and violation date);
- (4) Date(s) of the initial assessment and synopsis of the treatment plan;
- (5) Name of practice(s) or service(s) providing the recommended education and/or treatment;
- (6) Inclusive dates of employee's program participation;
- (7) Clinical characterization of employee's program participation;
- (8) SAP's clinical determination as to 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