

MRO shall request from the HHS-certified laboratory, and the laboratory shall provide, quantitation of the test results and other information necessary to make the determination. If the drug for which the individual first tested positive was marijuana and the confirmatory assay for delta-9-tetrahydrocannabinol-9-carboxylic acid yields a positive result, the MRO shall determine whether the confirmatory test result indicates further marijuana use since the first positive test result, or whether the test result is consistent with the level of delta-9-tetrahydrocannabinol-9-carboxylic acid that would be expected if no further marijuana use had occurred. If the test result indicates that no further marijuana use has occurred since the first positive test result, then the MRO shall declare the drug test result as negative.

(p) *Time to complete MRO review.* The MRO shall complete his or her review of positive, adulterated, substituted, and invalid test results and, in instances when the MRO determines that there is no legitimate medical explanation for the test result(s), notify the licensee's or other entity's designated representative within 10 business days of an initial positive, adulterated, substituted, or invalid test result. The MRO shall notify the licensee or other entity of the results of his or her review in writing and in a manner designed to ensure the confidentiality of the information.

**§ 26.187 Substance abuse expert.**

(a) *Implementation.* By March 31, 2010, any SAEs on whom licensees and other entities rely to make determinations of fitness under this part shall meet the requirements of this section. An MRO who meets the requirements of this section may serve as both an MRO and as an SAE.

(b) *Credentials.* An SAE shall have at least one of the following credentials:

- (1) A licensed physician;
- (2) A licensed or certified social worker;
- (3) A licensed or certified psychologist;
- (4) A licensed or certified employee assistance professional; or

(5) An alcohol and drug abuse counselor certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission or by the International Certification Reciprocity Consortium/Alcohol and Other Drug Abuse.

(c) *Basic knowledge.* An SAE shall be knowledgeable in the following areas:

- (1) Demonstrated knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled-substance abuse disorders;
- (2) Knowledge of the SAE function as it relates to the public's interests in the duties performed by the individuals who are subject to this subpart; and
- (3) Knowledge of this part and any changes thereto.

(d) *Qualification training.* SAEs shall receive qualification training on the following subjects:

- (1) Background, rationale, and scope of this part;
  - (2) Key drug testing requirements of this part, including specimen collection, laboratory testing, MRO review, and problems in drug testing;
  - (3) Key alcohol testing requirements of this part, including specimen collection, the testing process, and problems in alcohol tests;
  - (4) SAE qualifications and prohibitions;
  - (5) The role of the SAE in making determinations of fitness and the return-to-duty process, including the initial evaluation, referrals for education and/or treatment, the followup evaluation, continuing treatment recommendations, and the followup testing plan;
  - (6) Procedures for SAE consultation and communication with licensees or other entities, MROs, and treatment providers;
  - (7) Reporting and recordkeeping requirements of this part; and
  - (8) Issues that SAEs confront in carrying out their duties under this part.
- (e) *Continuing education.* During each 3-year period following completion of initial qualification training, the SAE shall complete continuing education consisting of at least 12 continuing professional education hours relevant to performing SAE functions.

(1) This continuing education must include material concerning new technologies, interpretations, recent guidance, rule changes, and other information about developments in SAE practice pertaining to this part, since the time the SAE met the qualification training requirements of this section.

(2) Continuing education activities must include documented assessment tools to assist in determining that the SAE has learned the material.

(f) *Documentation.* The SAE shall maintain documentation showing that he or she currently meets all requirements of this section. The SAE shall provide this documentation on request to NRC representatives, licensees, or other entities who are relying on or contemplating relying on the SAE's services, and to other individuals and entities, as required by § 26.37.

(g) *Responsibilities and prohibitions.* The SAE shall evaluate individuals who have violated the substance abuse provisions of an FFD policy and make recommendations concerning education, treatment, return to duty, followup drug and alcohol testing, and aftercare. The SAE is not an advocate for the licensee or other entity, or the individual. The SAE's function is to protect public health and safety and the common defense and security by professionally evaluating the individual and recommending appropriate education/treatment, follow-up tests, and aftercare.

(1) The SAE is authorized to make determinations of fitness in at least the following three circumstances:

(i) When potentially disqualifying FFD information has been identified regarding an individual who has applied for authorization under this part;

(ii) When an individual has violated the substance abuse provisions of a licensee's or other entity's FFD policy; and

(iii) When an individual may be impaired by alcohol, prescription or over-the-counter medications, or illegal drugs.

(2) After determining the best recommendation for assisting the individual, the SAE shall serve as a referral source to assist the individual's entry into an education and/or treatment program.

(i) To prevent the appearance of a conflict of interest, the SAE may not refer an individual requiring assistance to his or her private practice or to a person or organization from whom the SAE receives payment or in which the SAE has a financial interest. The SAE is precluded from making referrals to entities with whom the SAE is financially associated.

(ii) There are four exceptions to the prohibitions contained in the preceding paragraph. The SAE may refer an individual to any of the following providers of assistance, regardless of his or her relationship with them:

(A) A public agency (e.g., treatment facility) operated by a state, county, or municipality;

(B) A person or organization under contract to the licensee or other entity to provide alcohol or drug treatment and/or education services (e.g., the licensee's or other entity's contracted treatment provider);

(C) The sole source of therapeutically appropriate treatment under the individual's health insurance program (e.g., the single substance abuse in-patient treatment program made available by the individual's insurance coverage plan); or

(D) The sole source of therapeutically appropriate treatment reasonably available to the individual (e.g., the only treatment facility or education program reasonably located within the general commuting area).

#### § 26.189 Determination of fitness.

(a) A determination of fitness is the process entered when there are indications that an individual specified in § 26.4(a) through (e), and at the licensee's or other entity's discretion as specified in § 26.4(f) and (g), may be in violation of the licensee's or other entity's FFD policy or is otherwise unable to safely and competently perform his or her duties. A determination of fitness must be made by a licensed or certified professional who is appropriately qualified and has the necessary clinical expertise, as verified by the licensee or other entity, to evaluate the specific fitness issues presented by the individual. A professional called on by the licensee or other entity may not perform a determination of fitness