action must be filed in the United States Court of Appeals for the appropriate circuit by September 16, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see Section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: June 17, 1996.

David A. Ullrich,

Acting Regional Administrator.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart YY—Wisconsin

2. Section 52.2570 is amended by adding paragraph (c)(95) to read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(95) On March 15, 1996, Wisconsin submitted a site-specific SIP revision in the form of a consent order for incorporation into the federally enforceable ozone SIP. This consent order establishes an alternate volatile organic compound control system for a cold cleaning operation at the General Electric Medical Systems facility located at 4855 West Electric Avenue in Milwaukee.

(i) *Incorporation by reference.* The following items are incorporated by reference.

(A) State of Wisconsin Consent Order AM–96–200, dated February 20, 1996.

(B) September 15, 1995 letter from Michael S. Davis, Manager—Air and Chemical Management Programs, General Electric Medical Systems to Denese Helgeland, Wisconsin Department of Natural Resources, along with the enclosed system diagram. (This letter is referenced in Consent Order AM–96–200.)

[FR Doc. 96–17990 Filed 7–16–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 180

[OPP–300363B; FRL–5382–1]

RIN 2070–AC18

Folpet; Revocation of Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: This rule revokes tolerances for folpet residues in or on the following commodities: celery, cherries, leeks, onions (green), shallots, blackberries, blueberries, boysenberries, crabapples, currants, dewberries, gooseberries, huckleberries, loganberries, raspberries, citrus fruits, garlic, pumpkins, summer squash, and winter squash. This revocation is necessary because the registrant has voluntarily canceled use of this fungicide on these commodities.

EFFECTIVE DATE: This final rule becomes effective September 16, 1996.

ADDRESSES: Written objections and hearing requests, identified by the docket, [OPP–300363B], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the docket number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [OPP–300363B]. No ''Confidential Business Information'' (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail, Jeff Morris, Review Manager, Special Review Branch (7508W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 3rd floor, Crystal Station, 2800 Crystal Drive, Arlington, VA 22202, (703) 308–8029; e-mail: morris.jeffrey@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Following issuance of a proposed rule to revoke folpet tolerances (59 FR 61859, December 2, 1994)(FRL–4912–6) and considering comments that EPA received in response to the proposed rule, this rule serves as a final order to revoke tolerances for folpet residues in or on the following commodities: celery, cherries, leeks, onions (green), shallots, blackberries, blueberries, boysenberries, crabapples, currants, dewberries, gooseberries, huckleberries, loganberries, raspberries, citrus fruits, garlic, pumpkins, summer squash, and winter squash. The tolerance for folpet residues in or on avocados will remain as currently listed in 40 CFR 180.191, and will be addressed through the reregistration process (the avocado tolerance was not subject to the December 2, 1994 proposed rule). In a separate notice, EPA will address the remaining tolerances that were subject to the proposed rule; the registrant is currently generating data to support those tolerances.

I. Legal Authorization

The Federal Food, Drug, and Cosmetic Act (FFDCA, 21 U.S.C. 301 et seq.) authorizes the establishment of tolerances (maximum legal residue levels) and exemptions from the requirement of a tolerance for residues of pesticide chemicals in or on raw agricultural commodities pursuant to section 408 [21 U.S.C. 346(a)]. Without such tolerances or exemptions, a food containing pesticide residues is considered to be ''adulterated'' under section 402 of FFDCA, and hence may not legally be moved in interstate commerce [21 U.S.C. 342]. To establish a tolerance or an exemption under section 408 of FFDCA, EPA must make a finding that the promulgation of the rule would ''protect the public health'' [21 U.S.C. 346a(b)]. For a pesticide to be sold and distributed, the pesticide must not only have appropriate tolerances under FFDCA, but also must be registered under the Federal Insecticide,

Fungicide, and Rodenticide Act (FIFRA, 7 U.S.C. 136 et seq.).

In 1988, Congress amended FIFRA and required EPA to review and reassess the potential hazards arising from currently registered uses of pesticides registered prior to November 1, 1984. As part of this process, EPA must determine whether a pesticide is eligible for reregistration or whether any subsequent actions are required to fully attain reregistration status. EPA has chosen to include in the reregistration process a reassessment of existing tolerances or exemptions from the need for a tolerance. Through this reassessment process, based on more recent data, EPA can determine whether a tolerance must be amended, revoked, or established, or whether an exemption from the requirement of one or more tolerances must be amended or is necessary.

Tolerance procedures are discussed in 40 CFR parts 177 through 180. Part 177 establishes the procedures for establishing, amending, or revoking tolerances or exemptions from the requirement of tolerances; part 178 contains procedures for filing objections and requests for hearings; part 179 contains rules governing formal evidentiary hearings; and part 180 contains regulations establishing tolerances or exemptions from the requirements of a tolerance. The Administrator of EPA, or any person by petition, may initiate an action proposing to establish, amend, revoke, or exempt a tolerance for a pesticide registered for food uses. Each petition or request for a new tolerance, an amendment to an existing tolerance, or a new exemption from the requirement of a tolerance must be accompanied by a fee. Comments submitted in response to EPA's published proposals are reviewed; EPA then publishes its final determination regarding the specific tolerance actions. Monitoring and enforcement of pesticide tolerances are carried out by the U.S. Food and Drug Administration (FDA) and the U.S. Department of Agriculture (USDA). This includes monitoring for pesticide residues in or on commodities imported into the United States.

II. Background

Folpet is a broad-spectrum fungicide registered for industrial use in paints, stains, coatings, and plastics. In addition, two folpet products are registered for food use. One product is actively registered for use on avocados in Florida only; the other is a registration for all folpet food uses, including the food uses covered by the tolerances that are subject to this rule, that EPA suspended in 1987 for failure of the registrant to supply the data required by EPA to support the continued registration of these uses. EPA has classified folpet as a B2 (probable) human carcinogen.

A. Proposed Revocation of Tolerances and Comment Period Extension

At the time the proposed rule was published, with the exception of data to support the avocado use, the registrant had not submitted the following residue chemistry data, which, according to the June 1987 folpet registration standard, are needed to support registration of the commodities subject to this rule: nature of the residues (metabolism) studies (guideline no. 171–4a) for representative crops; analytical method validation (guideline no. 171–4c); storage stability studies (guideline no. 171–4e) for representative crops; crop field trials (guideline no. 171–4k) for the subject commodities; and processing studies (guideline no. 171–4l) for applicable commodities. These data are required under 40 CFR part 158, and are needed to allow EPA to determine whether a proposed tolerance level is practical and achievable. Because the establishment of a tolerance under section 408 of FFDCA requires a finding that a tolerance will protect the public health, and because EPA did not have adequate data to make such a finding, EPA issued a proposed rule to revoke all folpet tolerances, except the avocado tolerance. The proposed rule was published in the Federal Register on December 2, 1994 (59 FR 61859).

In a Federal Register notice dated January 3, 1995 (60 FR 89)(FRL–4982–3), EPA extended the end of the comment period for the proposed rule from January 3, 1995, to March 3, 1995. The January 3 notice also requested the following: (1) That interested parties identify which tolerances they were willing to support by providing the data necessary to maintain the tolerances, and (2) that interested parties identify specific existing data they were prepared to submit in support of the tolerances.

B. Registrant's Response to the Proposed Rule

1. *Commitment to support tolerances.* In its comments to the December 2, 1994 proposed rule, Makhteshim-Agan, the sole folpet registrant, committed to generate the data necessary to establish tolerances in or on the following nine commodities: apples, cranberries, cucumbers, grapes, lettuce, melons, onions, strawberries, and tomatoes. (Makhteshim-Agan had previously submitted the required data for the use of folpet on avocados.) Makhteshim-Agan also submitted use information on the other nine commodities and a summary of the residue chemistry data that had thus far been generated for those commodities.

2. *Request to delete uses.* In a letter to EPA dated June 11, 1995, Makhteshim-Agan requested that EPA delete the following uses from its folpet registration number 66222–8: blackberries, boysenberries, dewberries, loganberries, raspberries, blueberries, huckleberries, summer/winter squash, pumpkins, celery, cherries (red tart), citrus (oranges, grapefruit, lemons, limes, tangelos, and tangerines), gooseberries, currants, and garlic. EPA published a notice of receipt of this request in a Federal Register notice dated April 17, 1996 (61 FR 16779)(FRL–5360–5). Following the 90–day comment period for this notice, the deletion of the uses is expected to take effect on July 16, 1996.

III. Final Actions

In response to comments made to the December 2, 1994 proposed rule, through meetings and other communication with the folpet registrant, and in accord with EPA's policy regarding data requirements to support tolerances, EPA is issuing this final order to revoke the 20 tolerances that have received no commitment for support.

This final rule revokes the following folpet tolerances listed in 40 CFR 180.191: blackberries, blueberries, boysenberries, celery, cherries, citrus fruits, crabapples, currants, dewberries, garlic, gooseberries, huckleberries, leeks, loganberries, onions (green), pumpkins, raspberries, shallots, summer squash, and winter squash. EPA is revoking these tolerances for two reasons: (1) The registrant is no longer supporting the uses on its folpet registrations, and (2) EPA does not have the data necessary to make a finding that the tolerances are protective of the public health, as is required by section 408 of FFDCA and 40 CFR part 158. The 25 ppm avocado tolerance is being supported through the reregistration program for domestic registrations and is not subject to this rule, and therefore remains unchanged. The remaining nine supported tolerances will be the subject of a separate notice that EPA will issue in the future.

Because folpet food-use registrations have been suspended since 1987 and therefore commodities may not be legally treated with any existing folpet stocks, EPA expects no folpet residues to be in or on the commodities associated with the tolerances subject to

this rule; nor, for the same reason, are folpet residues expected to persist in the environment. Following revocation of the tolerances, any imported commodities containing folpet residues will be subject to seizure as a result of FDA and USDA monitoring; this should prohibit any treated imported commodities from entering domestic channels of trade. Therefore, final expiration of the tolerances will occur 60 days from the date of publication of this rule in the Federal Register, barring submission of a petition for a stay of the effective date of this rule, and EPA will not require action levels following expiration of the tolerances.

IV. Comments Received on Proposed Rule and Response to Comments

The following section summarizes the comments received to the December 2, 1994 proposed revocation of folpet tolerances, and EPA's response to those comments. The actual comments are in the folpet docket.

A. Revocation Will Negatively Impact Importation of Commodities

Many commentors stated that the revocation of the U.S. folpet tolerances may have a significant negative impact on the present and future importation of agricultural products into the United States. Commentors were particularly concerned that revocation of the grape tolerance would negatively affect wine imports.

EPA responds that the folpet registrant has committed to generate the necessary data for nine tolerances, including a grape tolerance. EPA will not revoke tolerances for those commodities if adequate data are submitted by the agreed-upon due date.

B. Need for an Import Tolerance Policy

Other commentors expressed concern regarding the lack of a policy outlining the data necessary to establish import tolerances, and that the approach taken in EPA's Federal Register notice of December 2, 1994 is not an efficient regulatory process. They stated that deciding complex issues, such as data requirements, on a case-by-case basis cannot be efficient and detracts from regulatory transparency; they added that an import tolerance policy presented for public comment would permit EPA to evaluate the appropriateness of the data required in the December 2, 1994 notice.

EPA's response is that it has an import tolerance policy. EPA's May 3, 1995 letter to Makhteshim-Agan states: ''EPA requires the same product chemistry and toxicology data for import tolerances as are required to support U.S. registrations of pesticide products and any resulting tolerances. In addition, EPA needs residue chemistry data that are representative of growing conditions in exporting countries.'' It is because EPA has received neither the data required in the 1987 Registration Standard nor a commitment to generate the data necessary to establish tolerances, that EPA is revoking the tolerances subject to this rule. EPA is currently reviewing its import tolerance policy to address issues raised by folpet and other similar cases. In application of its policy, EPA is committed to consistency and, when possible, harmonization with international standards.

C. Potential GATT and NAFTA Violations

Some commentors claimed that EPA's proposed action would violate international obligations of the United States. They stated that the World Trade Organizations's Sanitary and Phytosanitary (SPS) Agreement permits EPA to deviate from Codex in exceptional circumstances, but any higher level of sanitary or phytosanitary protection must have a scientific justification. Such justification requires a finding by EPA that the forthcoming Codex standard for folpet is not sufficient to achieve its appropriate level of protection.

EPA responds that Codex has proposed to revoke most of the folpet Maximum Residue Limits (MRLs), including the grape MRL, because the data submitted to Codex are inadequate. The crop field trial program for the supported import-only tolerances initiated by the folpet registrant is expected to provide data adequate for setting U.S. and international residue levels for folpet. Since no data are available for the remaining tolerances subject to this rule, EPA is revoking those tolerances.

D. U.S. Standards Must Not Be Compromised

One commentor argued that EPA should revoke folpet tolerances unless the existing data enable EPA to make the FFDCA public health finding, and that the unsupported tolerances should not remain in effect while the data are being developed and submitted. The commentor also stated that nothing in international trade agreements requires any deviation from FFDCA's public health mandate.

EPA agrees that its mandate to protect the public health must not be compromised. All remaining permanent folpet tolerances will be based on adequate data that demonstrate that such tolerances are protective of the public health.

V. Effective Date and Stays of Effective Date

This final rule shall become effective September 16, 1996. A person filing objections to this Order may submit with the objections a petition to stay the effective date of this Order. Such stay petitions must be submitted to the Hearing Clerk on or before August 16, 1996. A copy of the stay request filed with the Hearing Clerk shall be submitted to the Office of Pesticide Programs Public Docket. A stay may be requested for a specific time period or for an indefinite time period. The stay petition must include a citation to this Order and the specific food additive regulation(s) as to which the stay is sought, the length of time for which the stay is requested, and a full statement of the factual and legal grounds upon which the petitioner relies for the stay. If a petition for a stay is submitted, EPA will automatically stay the effective date of the Order as to the particular regulation(s) for which the stay is sought for such time as is required to review the stay petition, if necessary. In determining whether to grant a stay, EPA will consider the criteria set out in FDA's regulations regarding stays of administrative proceedings at 21 CFR 10.35. Under those rules, a stay will be granted if it is determined that: (1) The petitioner will otherwise suffer irreparable injury; (2) the petitioner's case is not frivolous and is being pursued in good faith; (3) the petitioner has demonstrated sound public policy grounds supporting the stay; and (4) the delay resulting from the stay is not outweighed by public health or other public interests. Under FDA's criteria, EPA may also grant a stay if EPA finds that such action is in the public interest and in the interest of justice.

If a stay petition is submitted, EPA will publish a notice of receipt in the Federal Register, stating that the effective date of this Order is stayed as to the regulation(s) to which the stay is requested pending EPA consideration of the stay request. Any affected person may submit objections to a stay request to the Hearing Clerk on or before 15 days after the date of publication in the Federal Register of the notice of receipt. Any decision lifting the stay will be published in the Federal Register.

VI. Hearing Request

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections to the regulation and may also request

a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Public Docket

A record has been established for this rulemaking under docket number [OPP–300363A] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:
opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

VIII. Regulatory Assessment Requirements

To satisfy the requirements for analysis specified by Executive Order 12866, the Regulatory Flexibility Act, the Paperwork Reduction Act, the Unfunded Mandates Reform Act, and the Small Business Regulatory Enforcement Fairness Act, EPA has considered the impacts of this final rule.

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines ''significant'' as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not ''significant'' and is therefore not subject to OMB review.

B. Regulatory Flexibility Act

EPA has reviewed this final rule under the Regulatory Flexibility Act of 1980 [5 U.S.C. 601 et seq.], and has determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations. Accordingly, I certify that this final rule does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

C. Paperwork Reduction Act

This regulatory action does not contain any information collection requirements subject to review by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

D. Unfunded Mandates Reform Act

This final rule contains no Federal mandates under Title II of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 for State, local, or tribal governments or the private sector, because it would not impose enforceable duties on them.

E. Small Business Regulatory Enforcement Fairness Act

Under 5 U.S.C. 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Title II of Pub. L. 104–121, 110 Stat. 847), EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2) of the APA as amended.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 24, 1996.

Lois A. Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

Therefore, 40 CFR, chapter I, part 180 is amended as follows:

PART 180—[AMENDED]

The authority citation for part 180 would continue to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.191 is revised to read as follows:

§ 180.191 Folpet; tolerances for residues.

Tolerances are established for the fungicide folpet (*N*-(trichloromethylthio)pthalimide) in or on raw agricultural commodities as follows:

Commodity	Parts per million
Apples	25
Avocados	25
Cranberries	25
Cucumbers	15
Grapes	25
Lettuce	50
Melons	15
Onion (dry bulb)	15
Strawberries	25
Tomatoes	25

[FR Doc. 96–16588 Filed 7–16–96; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

49 CFR Part 40

Federal Aviation Administration

14 CFR Part 121

Research and Special Programs Administration

49 CFR Part 199

Federal Railroad Administration

49 CFR Part 219

Federal Highway Administration

49 CFR Part 382

Federal Transit Administration

49 CFR Parts 653 and 654

[OST Docket No. OST–96–1533]

RIN 2105–AC33

Amendment to Definition of ''Substance Abuse Professional''

AGENCIES: Office of the Secretary, Federal Aviation Administration, Research and Special Programs Administration, Federal Highway Administration, Federal Railroad Administration, Federal Transit Administration, DOT.

ACTION: Final rule.

SUMMARY: Each of the Department's alcohol testing rules include a definition of a substance abuse professional. By this action, the Department is consolidating these definitions into its Department-wide testing procedures rule and adding to the definition substance abuse professionals certified by the International Certification Reciprocity Consortium.

EFFECTIVE DATE: This rule is effective July 17, 1996.

FOR FURTHER INFORMATION CONTACT: Jim Swart, Program Analyst, Office of Drug Enforcement and Program Compliance, Room 10317 (202–366–3784); or Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Room 10424, (202–366–9306); 400 7th Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background

The Omnibus Transportation Employees Testing Act of 1991 required that an opportunity for treatment be made available to covered employees. To implement this requirement in its alcohol and drug testing rules issued in February 1994, the Department of Transportation established the role of the ''substance abuse professional'' (SAP). The DOT rules require an employer to advise a covered employee, who engages in conduct prohibited under these rules, of the resources available for evaluation and treatment of substance abuse problems, including the names, addresses, and telephone numbers of SAPs and counseling and treatment programs. The rules also provide for SAP evaluation to identify the assistance needed by employees with substance abuse problems. In many cases (e.g., the Federal Highway Administration and Federal Transit Administration rules), this process and the role of the SAP apply to drug testing as well as alcohol testing.

The primary safety objective of the DOT rules is to prevent, through deterrence and detection, alcohol and controlled substance users from performing transportation safety-sensitive functions. The SAP is responsible for several duties important to the evaluation, referral, and treatment of employees identified through breath and urinalysis testing as being positive for alcohol and/or controlled substance use, or who refuse to be tested, or who have violated other provisions of the DOT rules.

The SAP's fundamental responsibility is to provide a comprehensive face-to-face assessment and clinical evaluation to determine if the employee needs assistance resolving problems associated with alcohol use or prohibited drug use. If the employee is found to need assistance as a result of this evaluation, the SAP recommends a course of treatment with which the employee must demonstrate successful compliance prior to returning to DOT safety-sensitive duty. Assistance recommendations can include, but are not limited to: In-patient treatment, partial in-patient treatment, out-patient treatment, education programs, and aftercare. Upon the determination of the best recommendation for assistance, the SAP will serve as a referral source to assist the employee's entry into an acceptable treatment or education program.

In general, the DOT rules prohibit a covered employee who has engaged in conduct prohibited by the rules from performing any safety-sensitive functions until meeting the conditions for returning to work, which include a SAP evaluation, demonstration of successful compliance with any required assistance program, and a successful return-to-duty test result (below 0.02 for alcohol test and/or a negative drug test). Therefore, the SAP follow-up evaluation is needed to determine if the employee demonstrates successful compliance with the original treatment recommendation. In addition, the SAP directs the employee's follow-up testing program.

The DOT rules define the SAP to be a licensed physician (Medical Doctor or Doctor of Osteopathy), a licensed or certified psychologist, a licensed or certified social worker, or a licensed or certified employee assistance professional. In addition, alcohol and drug abuse counselors certified by the National Association of Alcoholism and Drug Abuse Counselors (NAADAC) Certification Commission, a national organization that imposes qualification standards for treatment of alcohol and drug related disorders, are included in the SAP definition. All must have knowledge of and clinical experience in the diagnosis and treatment of substance abuse-related disorders (the degrees and certificates alone do not confer this knowledge). The rules do not authorize individuals to be SAPs who meet only state certification criteria because qualifications vary greatly by state. In some states, certified counselors do not have the experience or training deemed