



PROTOCOL UPON RECEIPT OF DOT (FMCSA)

DRUG AND ALCOHOL PROGRAM/POLICY VIOLATION

1. Ensure that the employee is removed from all safety sensitive functions immediately.
2. Contact your C-TPA to make them aware of the violation and assist in making the determination on next steps accordingly with regard to the nature of the violation.
3. As the employer there are some types of violations that make it your responsibility to report the violation into the Clearinghouse within 72 hours of obtaining documentation and/or constituting a Federal D&A program/policy violation. (See Attachments 1. & 1.1 For Guidance).
4. When you have the employee in front of you or have arranged to have them meet with their direct supervisor / H.R. (whomever you want present) – you, as the D.E.R. are required to provide the following items (See attachments 2 the SAMPLE SAP List Acknowledgment & 3.) in addition to the Positive Results Report from MRO or any documentation that substantiates the violation to the employee within 72 hours or the close of the third business day from the time of its occurrence. Retain the original copy of the SAP referral acknowledgement with signatures for the case file.
5. It should be the responsibility of the employee to contact the SAP and keep you notified of their progress. When the SAP releases them – you’ll need to conduct a FULL QUERY into the CLEARINGHOUSE to confirm that the status and reporting both indicate that the SAP has the employee as ELIGIBLE FOR RTD TESTING. Confer with the employee to determine if they are indeed ready to submit to the RTD testing – (if they fail it – they start all over in the RTD process with the SAP). If the period of time from an initial positive result to the time of the RTD test presents the possibility of a second positive result – a NON-DOT drug screen can be completed to verify a Negative Result or alleviate the 2nd violation from being reported into the Clearinghouse. Once the Negative Results are posted for the RTD test – report them into the Clearinghouse by the close of the third business day following the date on which you obtained the information. Conduct a final FULL QUERY for that employee. Once they’ve provided their consent to release the record to you and you verify that the Negative RTD test result is reported and their status has returned to DRIVER NOT PROHIBITED. The FOLLOW UP testing schedule will commence on the date the negative RTD is achieved.



How to Report a Violation: Employers

Violation Reporting Requirements

Employers are required to report driver drug and alcohol program violations in the FMCSA Commercial Driver’s License Drug and Alcohol Clearinghouse. An employer may designate a consortium/third-party administrator (C/TPA) in the Clearinghouse to assist with meeting these reporting requirements; however, the employer retains ultimate responsibility for compliance. See the [Reporting Violations for C/TPAs Job Aid](#) for instructions.

Owner-operators—that is, employers who employ themselves as CDL drivers, typically a single-driver operation—are required to designate a C/TPA in the Clearinghouse. Owner-operators may choose to report drug and alcohol program violations for any other drivers they employ, however, the C/TPA has the responsibility to report any drug and alcohol program violation incurred by the owner-operator.

Which violations are employers responsible for reporting?

Both employers and medical review officers (MROs) are required to report drug and alcohol program violations in the Clearinghouse per § [382.705](#). The table below identifies who is responsible for reporting each type of violation.

Employers also have reporting requirements regarding any drivers they employ who are undergoing a return-to-duty (RTD) process. [Learn more about the RTD process.](#)

Reporting Entity	Violations Reported to the Clearinghouse	Timeframe for Reporting
Prospective/Current Employer of CDL Driver	An alcohol confirmation test with a concentration of 0.04 or higher	Employers must report any drug and alcohol program violation information by the close of the third business day following the date on which the employer obtained the information.
	Refusal to test (alcohol) as specified in 49 CFR § 40.261	
	Refusal to test (drug) not requiring a determination by the MRO as specified in 49 CFR § 40.191	
	Actual knowledge of a drug or alcohol violation, as defined in 49 CFR § 382.107	
MRO	Verified positive, adulterated, or substituted drug test result	MROs must report results within two business days of making a determination or verification of a Department of Transportation (DOT)-required drug test. Any changes to the results report of a verified drug test must be reported to the Clearinghouse within one business day of making the changes.
	Refusal to test (drug) requiring a determination by the MRO as specified in 49 CFR § 40.191	



How to Report a Violation

The instructions below will walk through how to report a drug and alcohol program violation as an employer.

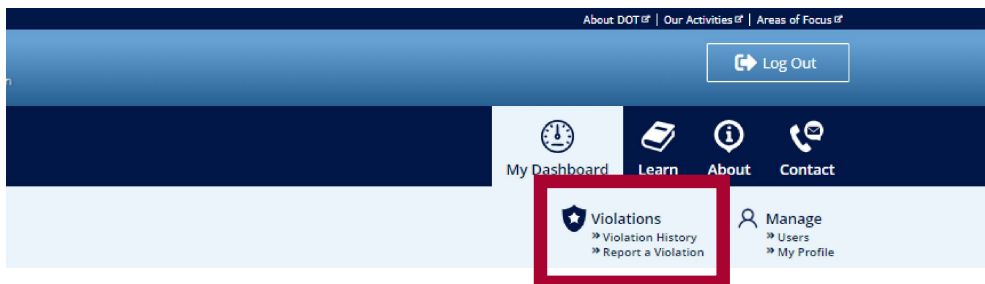
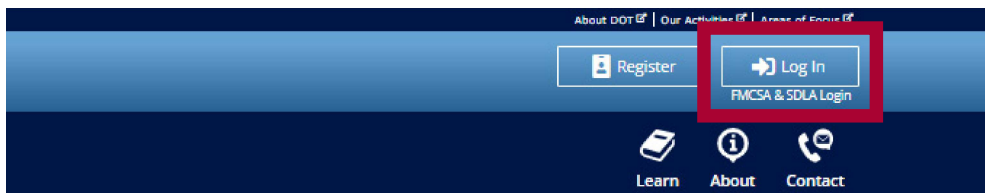
If you are a C/TPA, see the [Reporting Violations for C/TPAs Job Aid](#) for instructions.

If you are an MRO, see the [Reporting Violations for MROs Job Aid](#) for instructions.

1 Log In and Access the Dashboard

Visit <https://clearinghouse.fmcsa.dot.gov>. Click **Log In** and access the Clearinghouse using your login.gov username and password.

Under **My Dashboard**, go to **Violations** and click **Report a Violation**.





2

Enter and Verify the Driver Information

Enter the information of the driver who incurred the violation and click **Verify Driver Information**.

You will need to provide the following driver information:

- Driver first and last name
- Driver date of birth
- Driver commercial driver's license (CDL) number, and the country and state of issuance

Driver Information

Enter the information of the driver who committed the violation. All fields are required unless otherwise noted.

First Name	Last Name	
<input type="text"/>	<input type="text"/>	
Date of Birth		
month	day	year
<input type="text"/>	<input type="text"/>	<input type="text"/>
Driver CDL Number ⓘ	Country of Issuance	State of Issuance
number	country	state
<input type="text"/>	<input type="text"/>	<input type="text"/>


✘ VERIFYING ERRORS

If there is an issue verifying the driver CDL information, please check that you have entered all the information correctly. The information should match the information on the driver's CDL.

If the CDL number has special characters (such as spaces or hyphens), try entering the number with or without those characters, as requirements vary by State.

If the driver CDL information cannot be verified, the Clearinghouse will flag the record for FMCSA's review. However, the violation will be recorded in the Clearinghouse and the driver information will be reconciled at a later date. You will still be able to continue reporting the violation.

Once a driver's CDL information has been verified, you will not be able to edit it. If you entered the driver's information in error, click **Cancel** and begin again with a new violation. When you are ready to continue, click **Next**.



This driver information has been verified and cannot be changed. If you entered this in error, click "Cancel" and begin a new violation entry.

Driver Information

Enter the information of the driver who committed the violation. All fields are required unless otherwise noted.



3

Enter the Violation Information

Select the type of violation you are reporting and click **Next**. Each violation must be entered separately.

The amount of violation information you will need to enter will depend on the type of violation you select. See below for an overview of the types of information you will need to enter for each violation type. Prompts will also appear on the screen to guide you through each process.

REPORTING POSITIVES TEST RESULTS AND TEST REFUSALS

If you select **alcohol concentration of 0.04 or greater**, **refusal to take an alcohol test**, or **refusal to take a drug test**, you will be required to provide the following information:

Type of Violation	Information to Enter	Additional Information to Enter
Alcohol concentration of 0.04 or greater	<ul style="list-style-type: none"> Reason for the test Date of test 	No additional information required
Refusal to take an alcohol OR drug test	<ul style="list-style-type: none"> Reason for the test Type of test refusal Date of test (all refusals except “failed to appear for any test”) <p><i>Note: See “Uploading Documentation” on the next page for instructions on using the file upload feature.</i></p>	<p>Failed to cooperate with any of the testing process</p> <ul style="list-style-type: none"> Remarks/Additional Information (optional) <p>Failed to appear for any test</p> <ul style="list-style-type: none"> When the driver was notified to appear The address and time at which they were directed to appear Documentation that the driver was notified to appear for testing Driver employment status and documentation of date of termination or resignation, if applicable Evidence that the driver was provided with all documents submitted with the violation report



3 Enter the Violation Information (Continued)

REPORTING ACTUAL KNOWLEDGE

If you select **actual knowledge of an alcohol violation** or **actual knowledge of a drug violation**, you will be required to provide the following information (for a definition of actual knowledge, see § [382.107](#)):

- Whether the use was on-duty, pre-duty, or post-duty (alcohol only)
- The type of actual knowledge
- Date you obtained actual knowledge of the violation
- Date the violation occurred, if known
- Detailed description of the violation
- Name and at least one form of contact information for each witness, if any
- Evidence supporting each fact alleged in the violation description
- Acceptable evidence includes, but is not limited to, affidavits, photographs, video or audio recordings, employee statements (other than those admissions pursuant to § [382.121](#)), correspondence, electronic copies of any enforcement citations, or other documentation.
- Evidence that the driver was provided with all documents submitted with this violation report

UPLOADING DOCUMENTATION

At certain points in the violation reporting process, you may be required to submit files to serve as evidence. To do so, you will use the Upload Documentation tool.

To begin, select **Upload Files** to open a file directory. Choose the file you need to upload and click **Open** (files may not exceed 50MB). This will start a list of files that will be uploaded with your report

Upload Documentation
Upload the email message, affidavit, or other documentation providing evidence that the driver was notified to appear for testing. The document(s) must show that the driver received notification of all the information listed above. Files must not be larger than 50MB.

Upload Files

File	Category Type	Description (optional)
SampleFile.docx	type	description

Previous Next Cancel

Select the **category type** (this is required). You also have the option to enter a description of the file.

Repeat this process to upload any additional files. Once all files have been uploaded, click **Next**.



4 Review and Submit the Violation

Review the information you have entered. The categories of information displayed will vary depending on the type of violation selected.

If the violation information needs corrections, click the **Previous** button until you reach the relevant screen. You can also click the edit icon (✎) of the appropriate section to return to that screen. Once you have finished making corrections, click the **Next** button to navigate through the following screens until you return to the Review and Submit the Violation screen.

Review and Submit the Violation

Review the information you provided below. If you need to make changes, click the edit icon to return to the section requiring correction. Once all the information is correct, submit the violation.

Employer Information

[Redacted]

Driver Information

Once a driver's CDL/CLP information is verified, it cannot be edited. If the driver information was entered in error, delete this violation and enter a new one.

DOB: [Redacted] | CDL/CLP#: [Redacted]
Country: [Redacted] | State: [Redacted]

Violation Information

Type of Violation: Alcohol test refusal
Reason for Test: Random
Type of Test Refusal: Failed to appear for any test

Notice to Appear

Driver Notified: [Redacted]
Testing Site Location: [Redacted]
Date and Time to Appear: [Redacted]
Documentation
SampleFile.docx
Document Type: Email Message

Driver Employment Status

Separation due to: Terminated
Documentation
SampleFile.docx
Document Type: Affidavit

Driver Provided with Documentation

SampleFile.docx
Document Type: Other

I certify that the violation information that I am reporting to the Clearinghouse is accurate and complete. I understand that reporting false, inaccurate, or misleading information to the Clearinghouse may subject me to civil and/or criminal penalties in accordance with applicable law, including 49 USC 521. I further understand that I am participating in a covered transaction and that reporting false information may subject me to government-wide suspension or debarment under 2 C.F.R. Part 180.

Previous **Submit Violation** Cancel

*Note: Once a driver's CDL information is verified, you will not be able to edit it. If you entered the driver's information in error, click **Cancel** and begin again with a new violation.*

Once all the information is accurate, **check the box** to accept the Clearinghouse certification statement and click **Submit Violation**.



4 Enter the Violation Information (Continued)

THE VIOLATION HAS BEEN REPORTED.

Once the violation has been reported, you will be given the option to enter another violation.

The screenshot shows a confirmation message: "Violation Reported". On the left is a green checkmark icon. The main text says "The violation has been recorded in the Clearinghouse." Below this is the question "Do you have another violation to enter?" with two buttons: "Yes" and "No".

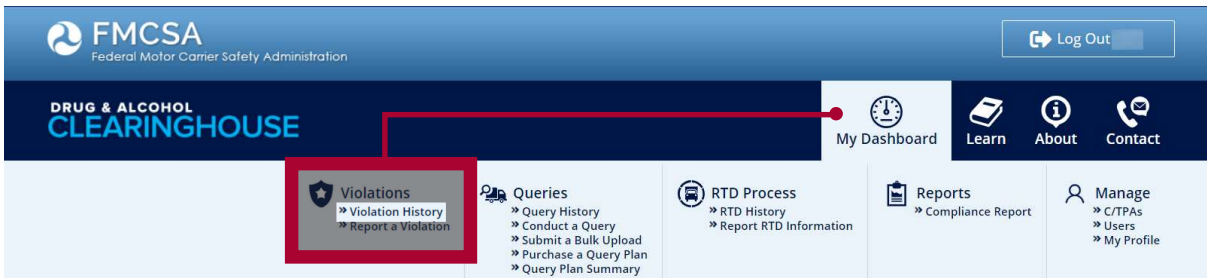
If you select **Yes**, you will be taken back to the Driver Information screen.

If you select **No**, you will be directed to your Violations History page.

How to Edit a Reported Violation

If you have entered a violation in error, you can submit a request to have the violation removed.

Under **My Dashboard**, go to **Violations** and access your **Violation History**.



Locate the violation and click **View Violation Details**.

The screenshot shows a list of reported violations. The first violation is for "Sample Driver1" reported on 6/24/2020 at 11:49:59 AM. The reason for the test is "Pre-employment". The violation type is "Concentration of 0.04 or greater (134)". A red box highlights the "View Violation Details" button for this violation. The second violation is for "Sample Driver2" reported on 6/24/2020 at 11:49:40 AM, also for "Pre-employment" with the same violation type. It also has a "View Violation Details" button.



Click **Request to Remove Violation**

Violation Details

Subscribe

Request to Remove Violation

LEARN MORE

- The Return-to-Duty Process

Driver Information

Once a driver's CDL/CLP information is verified, it cannot be edited. If the driver information was entered in error, delete this violation and enter a new one.

Sample Driver 1

DOB: [redacted] CDL/CLP#: [redacted]
Country: [redacted] State: [redacted]

Violation Information

Record ID: [redacted]
Type of Violation: Concentration of 0.04 or greater
Test Date: 6/26/2020
Reason for Test: Pre-employment

Test Results Entered By

Sample-Employer@example.com, Sample-CTPA

In the pop up window, **enter the reason** the violation needs to be removed and click **Request to Remove Violation**.

DRUG & ALCOHOL CLEARINGHOUSE

Request for Violation Removal

Enter the reason why you need this violation removed in the box below. This will send a request to FMCSA. If approved, FMCSA will remove the violation from the Clearinghouse.

Reason for violation removal:

Request to Remove Violation Cancel

FMCSA will review the request and, if approved, remove the violation from the Clearinghouse.

FAQS FOR EMPLOYERS

If I am terminating an employee, do I still need to provide a list of SAPs?

Yes. DOT requires the employer to provide SAP names and contact information, regardless of whether the employee is returning to safety-sensitive functions for you or not. If you are terminating the employee, but the employee intends to apply for another job in the transportation industry, successful completion of the DOT return-to-duty process is still required. The employee must receive SAP information from you, the employer that he/she was working for when the violation occurred.

DOT regulation 40.287 prohibits employers from charging an employee for a list of SAPs.

As an employer, do I have to pay for an employee's SAP services?

DOT doesn't specify who must pay for SAP services. As an employer, you can decide if you will pay for these services or not. If you plan to make employees responsible for paying for SAP services, it's advisable to include this in your written employee policy.

I need my employee back as soon as possible. How long will this SAP process take?

The process can take several weeks or even months. The SAP must conduct an extensive evaluation, which may require several visits with the employee. The SAP must then develop a plan for treatment and education, and do follow-up visits to verify that the employee is complying with the plan.

What happens if my employee doesn't need treatment?

This isn't possible. DOT rules prohibit a SAP from determining that an employee needs no treatment or education. The SAP must make a recommendation for treatment or education or both.

How do I know that the SAP I am using knows the rules?

Only trained SAPs who have passed an exam can provide SAP services. You can verify that a SAP has completed qualification training and the exam by viewing his or her SAPlist profile.



However, as an employer, you are ultimately responsible for ensuring that a SAP is properly credentialed, trained, and has passed an exam. DOT regulations give you the authority to request this information from each SAP that you use. You can ask a SAP to fax or mail copies of his/her training documentation to you, for your files. If the documentation you receive is questionable, you may request additional information, or you may decide to look for a different SAP.

I've been told that SAPs need case managers to oversee what they are doing. Is this required by the DOT regulation?

The regulation does not mention the use of case managers. The practice of SAPs working under a case manager developed in the early days of this regulation, when some SAPs didn't understand the rules and there was no requirement that they had to be trained. The addition of a case manager was important for quality assurance.

Assuming a SAP's training met DOT's requirements, and the SAP has the requisite professional skills and qualifications, the SAP should be able to work independently. However, you may feel more comfortable using a SAP who provides services under a case manager. The choice is yours.

What if I think a SAP's recommendation is too harsh, or will take too long?

DOT gives full authority to a SAP to make decisions that are therapeutically appropriate. DOT also has made it very clear that a SAP's primary responsibility is not to get an employee back to work, but rather to protect the safety of the traveling public. A SAP's recommendation stands and no one can change it. Neither employers or employees are permitted to seek another assessment from a second SAP. (This is called "SAP shopping," and is specifically prohibited by the regulation. [40.295])

What if I can't wait for this employee any longer? Can I terminate him or her?

As the employer you may take whatever job action you want to take, considering, of course, any agreements or contracts that are relevant. If you terminate the employee, the employee will be free to seek employment with another DOT-covered employer, but only if he/she successfully completes the SAP's recommended plan.

I plan to take this employee back. When can I conduct a return-to-duty test?

The return-to-duty test cannot be conducted until you have received the SAP's follow-up evaluation report stating that the employee has complied with the recommendation. [40.305(a)] If you do conduct



the test in advance, DOT will require that the test must be conducted again, just before the employee returns to safety-sensitive duty.

I'm not sure I want to take this employee back. Can I ask the SAP for his/her opinion?

No, you can't ask the SAP to help you with this decision. As the employer, the decision about taking an employee back is yours alone. The SAP is required to report to you only that the employee has or has not complied with the recommendation. At that point, employment decisions are up to you.[40.305(c)]

The SAP reports I received don't offer much information. Can I get more info?

No. The regulations specify exactly what a SAP must put into a report. [40.311] You may be putting the SAP in a position of liability if you ask the SAP to provide more information than is permitted by the regulations.

Most of the information relates to the employee and where he/she works. But the Initial evaluation must include the SAP's recommended plan for treatment. The follow-up evaluation must include the SAP's clinical determinations related to compliance or non-compliance. If the employee complied, the SAP's report must also include a required follow-up testing plan.

Can I ask the SAP to provide specific dates when follow-up tests should be conducted?

No. The regulations state that the SAP cannot make those determinations. [40.307(d)(3)] As the employer, you know your employee's work schedule. You will be the first to observe "performance issues" that suggest an employee may have returned to using drugs. Therefore DOT considers that you, the employer, are in the best position to decide when to require an employee to submit to a follow-up test.

Who pays for follow-up drug tests?

DOT doesn't specify who pays for these tests. As an employer, this is a decision that you can make. It could also be affected by labor agreements that you may have. You can decide to pay for all of the follow-up tests, or you may split the cost with the employee, or you may pass the entire cost along to the employee. Whatever you decide to do, it's a good idea to include this information in your written employee policy.



Can I tell my employee what his entire follow-up testing plan will be?

No. DOT considers the follow-up testing plan to be confidential. Neither the SAP nor the employer can share that information with the employee. [40.329, Technical Amendment, 8-1-2001]

If I notify an employee of a follow-up test, and he/she claims to not have money to pay for it, can I postpone the test?

No. Reimbursement for follow-up tests (and for an employee's requested retest of a split specimen) cannot interfere with the tests being conducted. If you notify an employee of a follow-up test, the employee must immediately go to a collection site. Reimbursement is a separate issue, and you will have to address that later. If an employee tries to avoid a follow-up test by saying he has no money to pay for it, you can call this a refusal to be tested, which is a violation and now requires a new SAP assessment and return-to-duty process.

A SAP recommended 10 follow-up tests in the first year, and 5 in the second year. I'd like to increase the number of tests, out of concern for public safety. Can I?

No. The regulations give the SAP complete authority over the follow-up testing plan. An employer cannot increase (or decrease) the SAP's recommended number of tests. [40.307(d)(4)]

The SAP's follow-up testing plan for my employee feels too frequent. Can I omit some of the tests?

No. DOT requires the employer to conduct all the tests that the SAP has required. [40.309] Auditors may decide to compare a SAP's report with the required plan, to the number of tests that were actually conducted. As the employer, you will be responsible for tests not conducted.

How should I track follow-up testing for an employee, so I can be certain that all the tests are conducted?

There's no easy answer to this question. Many of the follow-up tests will probably be spur-of-the-moment decisions. "Let's do a test today."...no particular reason. However, you should also look at follow-up testing as a tool to use when something "doesn't seem quite right", but there are no documentable symptoms for reasonable suspicion. Perhaps the employee has been absent a lot, but has no good excuse. Or you just suspect something strange is going on, or the employee "hasn't been



himself lately.” Using one of the follow-up tests will at least confirm or disprove your suspicions. And you don’t have to explain anything. It’s just a follow-up test.

Just be careful to not order more (or fewer) follow-up tests than the SAP ordered. Auditors will want to see that you followed the SAP’s follow-up plan exactly.

I am hiring an employee who had a violation where he previously worked. He is under a follow-up testing plan. What is my responsibility?

If you hire an employee who hasn’t completed a follow-up testing plan, you are now responsible for having documentation of the employee’s negative return-to-duty test and all follow-up tests that were ordered by the SAP. Don’t trust an employer’s word for how many of these tests were already conducted. Ask the previous employer to forward copies of the employee’s return-to-duty test and all follow-up tests that have been conducted. You need to have them in your files. If the previous employer is unable to provide them to you, you should assume the tests were never conducted, and you’ll have to start at the beginning, maybe even with a return-to-duty test.

DOT requires an employer to keep all return-to-duty documentation for 5 years. Even though a return-to-duty test or follow-up tests are negative, an employer must still keep the paperwork for 5 years, as evidence that the tests were conducted. Auditors will expect to see this documentation in your file.

Where can I find a SAP who is certified/approved by DOT?

Some SAPs say that they are certified or approved. But the DOT does not have a certification or approval process for Substance Abuse Professionals (SAPs). The most a SAP can be is qualified under the DOT requirements [40.365(b)(10)], and have completed SAP qualification training and a SAP exam. That’s it. There is no certification or designation of approval by DOT.

When you search for SAPs in the [SAPlist directory](#), verify their qualifications by clicking to view their profiles.

COMPANY NAME

ACKNOWLEDGEMENT OF SAP REFERRAL

I, _____, the employee, acknowledge that I have tested positive for controlled substances for a pre-employment/**random**/reasonable suspicion/post-accident OR have been reported into the FMCSA Clearinghouse as Refusal to test. As part of this company's FEDERAL CONTROLLED SUBSTANCE & ALCOHOL Policy, the positive results or refusal to test constitutes that I am now disqualified as a driver to operate any Commercial Motor Vehicle, and I am required to complete an evaluation with a Substance Abuse Professional (**SAP**) and complete the Return to Duty Requirements set forth by the **FMCSA** Regulations (CFR 49 PART 40 §382.605) before I can return to driving duties or any other safety sensitive function with this employer or any other employer.

I also acknowledge that I have received from this employer, **COMPANY NAME**, the following DOT Employee Assistance Programs required; Substance Abuse Professionals List (SAP List) information given to me this **date** _____ by the **COMPANY NAME**.

By signing below, I, the employee, acknowledge the above and I voluntarily signed this Referral Record.

Employee PRINT NAME: _____

Employee SIGNATURE: _____ DATE _____

D.E.R. SIGNATURE: _____ DATE _____

ATTACHMENT 3.

If a prepared SAPLIST was prepared for you – please use it to contact a SAP to begin your RTD process. If not, you can follow the link or scan the QR CODE provided to find the SAPS in your preferred area to choose from.

<https://www.saplist.com/find-a-sap/>

