

Source of flooding	Location	#Depth in feet above ground.		Communities affected
		Existing	Modified	
Tributary 1	Approximately 0.7 mile upstream of Askew Lane	None	•31	Unincorporated Areas of Washington County, Town of Plymouth.
	Approximately 400 feet downstream of Shelly Drive	None	•10	
Tributary 1A	Approximately 0.8 mile upstream of Roxie Reese Road	None	•18	Unincorporated Areas of Washington County, Town of Plymouth.
	Approximately 850 feet upstream of the confluence with Conaby Creek Tributary 1.	None	•10	
Tributary to Conaby Creek Tributary.	Approximately 1.4 miles upstream of the confluence with Conaby Creek Tributary 1.	None	•11	Unincorporated Areas of Washington County, Town of Plymouth.
	Just upstream of Garrett Island Road	None	•14	
Welch Creek	Approximately 0.5 mile upstream of Garrett Island Road.	None	•14	Unincorporated Areas of Washington County.
	Approximately 4.7 miles upstream of the confluence with Roanoke River.	None	•8	
Welch Creek Tributary	Approximately 2.3 miles upstream of the confluence with Welch Creek Tributary 2.	None	•13	Unincorporated Areas of Washington County.
	At the upstream of Long Ridge Road	None	•20	
Tributary 2	Approximately 0.4 mile upstream of Long Ridge Road	None	•22	Unincorporated Areas of Washington County.
	At the confluence with Welch Creek	None	•8	
	Approximately 0.8 mile upstream of the confluence with Welch Creek.	None	•34	

Town of Plymouth

Maps are available for inspection at the Plymouth Town Hall, 205 East Main Street, Plymouth, North Carolina. Send comments to Mr. James Tripp, Plymouth Town Manager, P.O. Box 806, Plymouth, North Carolina 27962.

Unincorporated Areas of Washington County

Maps are available for inspection at the Washington County Permits, Inspections and Emergency Management, 120 Adams Street, Plymouth, North Carolina. Send comments to Mr. David Peoples, Washington County Manager, P.O. Box 1007, Plymouth, North Carolina 27962.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

David I. Maurstad,
Acting Director, Mitigation Division, Federal Emergency Management Agency.
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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 40

[Docket OST-2006-24112]

RIN 2105-AD57

Procedures for Transportation Workplace Drug and Alcohol Testing Programs: Revision of Substance Abuse Professional Credential Requirement

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of proposed rulemaking

SUMMARY: The Department of Transportation is proposing to add state

licensed and certified marriage and family therapists to the list of credentialed professions eligible to serve as substance abuse professionals under subpart O of 49 CFR part 40.

DATES: Comments to the NPRM should be submitted by April 10, 2006. Late-filed comments will be considered to the extent practicable.

ADDRESSES: You may submit comments identified by the docket number [OST-2006-24112] by any of the following methods:

- Web site: <http://www.dms.dot.gov>
- Follow the instructions for submitting comments on the DOT electronic docket site.
- Federal eRulemaking Portal: <http://www.regulations.gov> Follow the instructions for submitting comments.
- Fax: 1-202-493-2251.
- Mail: Docket Management System; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-001.
- Hand Delivery: To the Docket Management System; Room PL-401 on

the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Instructions: You must include the agency name and docket number [OST-2006-24112] or the Regulatory Identification Number (RIN) for this notice at the beginning of your comment. Note that all comments received will be posted without change to <http://www.dms.dot.gov> including any personal information provided. Please see the Privacy Act section of this document.

Docket: You may view the public docket through the Internet at <http://www.dms.dot.gov> or in person at the Docket Management System office at the above address.

FOR FURTHER INFORMATION CONTACT: Bohdan Baczara, Office of Drug and Alcohol Policy and Compliance, 400 Seventh Street, SW., Washington, DC 20590; 202-366-3784 (voice), 202-366-3897 (fax), or bohdan.baczara@dot.gov (e-mail).

SUPPLEMENTARY INFORMATION:

Background

The Omnibus Transportation Employee 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 (DOT) established the role of the "substance abuse professional" (SAP). The Department's regulation—49 CFR part 40—requires an employer to provide a covered employee, who engages in conduct prohibited by DOT agency drug and alcohol regulations, a listing of qualified SAPs. In addition, the regulation requires the employee to be evaluated by a SAP and to demonstrate successful compliance with the SAP's evaluation recommendations for education and/or treatment prior to being considered for returning to any DOT safety-sensitive position.

The Department considers the SAP to be the "Gatekeeper" for the return-to-duty process. The SAP represents the major decision point an employer may have in choosing whether or not to place an employee back to safety-sensitive duties following a DOT regulation violation. The SAP is responsible for several duties important to the evaluation, referral, and treatment of employees who have engaged in prohibited drug and alcohol related conduct. The job a SAP accomplishes provides vital help to the employee, the employer, and to the traveling public. In order to be permitted to act as a SAP in the DOT drug and alcohol testing program, in addition to meeting basic knowledge, training and examination, and continuing education requirements, a person must have one of the following credentials:

- (1) Licensed physician;
- (2) Licensed or certified social worker;
- (3) Licensed or certified psychologist;
- (4) Licensed or certified employee assistance professional; or
- (5) Drug and alcohol counselor certified by the National Association of Drug Abuse Counselors Certification Commission (NAADAC); or by the International Certification Reciprocity Consortium/Alcohol and Other Drug Abuse (ICRC); or by the National Board for Certified Counselors, Inc. and Affiliates/Master Addiction Counselor (NBCC).

Recently, President Bush signed the Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) [August 10, 2005, PL 109-59]. That law required, among many things, that the

Secretary conduct a rulemaking that would make state certified or licensed marriage and family therapists (MFTs) eligible to become SAPs. Because of the law and our on-going discussions with the American Association of Marriage and Family Therapists (AAMFT), the Department is proposing to add state certified or licensed MFTs to those professions already eligible to be SAPs in the Department's drug and alcohol testing program.

Over the years, the Department has had numerous contacts with AAMFT but had not considered MFTs to be an acceptable professional credential for SAPs because MFTs were not licensed or certified to practice in all fifty states.

Because of the MFT education requirements, the significant strides MFTs have made in obtaining state licensure and certification recognition, and because of the SAFETEA-LU legislation, the Department would include MFTs as being eligible to become SAPs in the Department's regulated transportation drug and alcohol testing programs. Because of the SAFETEA-LU legislation, the Department is proposing not wait until MFTs are licensed or certified to practice in all 50 states the way we have for all other professions (*i.e.*, physicians, social workers, and psychologists). According to AAMFT, currently all states except Montana and West Virginia provide licensure or certification for MFTs. Therefore, MFTs in states that provide them licensure or certification would become eligible. As soon as Montana and West Virginia license or certify them, MFTs in those states would become eligible, too.

Regulatory Analyses and Notices

The statutory authority for this rule derives from the Omnibus Transportation Employee Testing Act of 1991 (49 U.S.C. 102, 301, 322, 5331, 20140, 31306, and 45101 *et seq.*) and the Department of Transportation Act (49 U.S.C. 322).

This proposed rule is not significant for purposes of Executive Order 12866 or the DOT's regulatory policies and procedures. It makes minor modifications to our procedures to increase the number of qualified SAPs available to employees and employers. Except for providing some additional potential sources of income to some MFTs, it should not have an economic impact, let alone a significant one, on anyone. Consequently, the Department certifies, under the Regulatory Flexibility Act, that this proposed rule will not, if adopted, not have a significant economic impact on a substantial number of small entities.

Because of the work that the Department has done concerning marriage and family therapists, and the evident intent of Congress that they be included in the drug and alcohol testing program, we believe that a 30-day comment period will be sufficient for this NPRM.

List of Subjects in 49 CFR Part 40

Administrative practice and procedures, Alcohol abuse, Alcohol testing, Drug abuse, Drug testing, Laboratories, Reporting and recordkeeping requirements, Safety, Transportation.

49 CFR Subtitle A

Authority and Issuance.

Dated: March 2, 2006.

Norman Y. Mineta,
Secretary of Transportation.

For reasons discussed in the preamble, the Department of Transportation proposes to amend part 40 of Title 49, Code of Federal Regulations, as follows:

PART 40—PROCEDURES FOR TRANSPORTATION WORKPLACE DRUG AND ALCOHOL TESTING PROGRAMS

1. The authority citation for 49 CFR part 40 is revised to read as follows:

Authority: 49 U.S.C. 102, 301, 322, 5331, 20140, 31306, and 45101 *et seq.*; 49 U.S.C. 322.

2. Section 40.281 is proposed to be amended by re-designating paragraph (a) (5) as (a) (6), by removing the word "or" at the end of (a) (4) and by adding a new (a) (5) to read as follows:

§ 40.281 Who is qualified to act as a SAP?

(a) * * *

(5) You are a state licensed or certified marriage and family therapist; or
* * * * *

3. Section 40.283(a) is revised to read as follows:

§ 40.283 How does a certification organization obtain recognition for its members as SAPs?

(a) If you represent a certification organization that wants DOT to authorize its certified drug and alcohol counselors to be added to § 40.281(a)(6), you may submit a written petition to DOT requesting a review of your petition for inclusion.

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