

# DOT'S NEW ORAL FLUID FINAL RULE UPDATES MORE THAN JUST FEDERAL TESTING

# STATE LAW IMPACTS

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The addition of oral fluid as an approved specimen for Department of Transportation (DOT) testing has changed more than the specimens that will be available for federal drug testing purposes. While many states have drug and alcohol testing laws that are state-specific, some states require compliance with Substance Abuse and Mental Health Services Administration (SAMHSA) and/or DOT regulations. This article will give an overview of states that are impacted by DOT's final rule on oral fluid testing.

## What states are impacted by DOT's new final rule?

Although the number of states that do not require compliance with DOT's regulations far outweighs the number that do, it is still essential for employers to understand if they are impacted by the addition of oral fluid to DOT's specimen options. Employers in Arkansas, Montana, New Jersey and Tennessee are impacted by DOT's recent changes. So, what does this mean?



Learn more  
about oral fluid  
and state laws.



# Employers in Arkansas, Montana, New Jersey and Tennessee are impacted by DOT's recent changes.



## Arkansas

Arkansas has two voluntary drug and alcohol testing laws, meaning that employers can comply, but are not required to do so. Employers who choose to comply must comply with both laws in their entirety and are then eligible for at least a 5% discount on their workers' compensation insurance premium. Employers in Arkansas have historically been able to use oral fluid regardless of whether or not they comply with the voluntary laws; however, DOT compliance is required in several other areas of the law.

Employers in the state are permitted to alcohol test via breath, blood or any other analysis that determines the presence/absence of alcohol as authorized by DOT. Additionally, alcohol tests performed using DOT approved specimens must comply with DOT cut-off levels. For drug tests, employers must comply with the DOT panel, cut-off levels, split specimen requirements and chain of custody procedures.



## Montana

Montana has a mandatory law, meaning that employers with business operations in the state are required to comply unless they are federally regulated. DOT compliance is required in several areas of the law, including for samples that are permitted by DOT regulations.

The law states:

"Controlled substance and alcohol testing procedures for samples that are covered by 49 CFR, part 40, must conform to 49 CFR, part 40."<sup>1</sup>

Prior to DOT's oral fluid guidelines, employers in the state were able to use oral fluid following "procedures as stringent as 49 CFR, part 40." Following DOT's implementation period, employers in the state who choose to test using oral fluid must comply with DOT regulations.

1. *Montana Code Ann. 39-2-207(1).*

*This information is provided for educational purposes only. Reader retains full responsibility for the use of the information contained herein.*



### **New Jersey (school bus drivers)**

Separate from New Jersey's regulations for private employers there exists a law specifically pertaining to public school bus drivers in the state. Under the law, DOT regulations found in 49 CFR Part 40 apply to school bus operations in the state. This means that employers in the state who employ school bus drivers will be able to test using oral fluid when it is available to DOT employers.



### **Tennessee**

Tennessee has two voluntary drug and alcohol testing laws, meaning that employers can comply, but are not required to do so. Employers that choose to comply must comply with both laws in their entirety and are then eligible for a 5% discount on their workers' compensation insurance premium unless the Commissioner of Commerce and Insurance deems it actuarially unsound.

Throughout both of Tennessee's voluntary laws, compliance with DOT regulations is mentioned. For example, employers are permitted to use blood, breath or another specimen approved by DOT for alcohol testing purposes. Additionally, the law stipulates that an initial drug or alcohol test is to be performed "pursuant to regulations governing drug or alcohol testing adopted by the U.S. DOT,"<sup>2</sup> which means that initial tests may be able to be performed via oral fluid once the two labs are HHS-certified, meaning oral fluid for DOT testing is permitted. Prior to this, employers in the state were only able to perform oral fluid testing following SAMHSA's guidelines if an individual was unable to provide a urine sample. Now employers will be able to perform oral fluid across the board following DOT's regulations.

Have questions about adding oral fluid to your test program? Reach out to your OraSure representative at 1-800-672-7873.

### **Moving forward**

For the moment, four states are impacted by the updates to DOT's mandatory guidelines, and each state is impacted differently. Some are only impacted in certain industries while others are impacted in specific areas of testing. Consult state laws carefully to ensure that your policy is in compliance.

2. Tennessee Comp. Rules & Reg. 0800-02-12-.03(16).