

DOT ORAL FLUID FINAL RULE

FAQs

THE LONG-AWAITED release of the Department of Transportation (DOT) final rule for lab-based oral fluid drug testing has finally arrived. The Federal Register announced the new regulations via the reading room on Monday, May 1, 2023 and published the regulations the following day. Of course, with the release of these new regulations, there are many questions. What follows are some of the most frequently asked questions so far.

Q. What is included in DOT's new oral fluid rule?

This quote is taken from the final rule published by the DOT:

"This final rule amends the U.S. Department of Transportation's regulated industry drug testing program to include oral fluid testing. This additional methodology for drug testing will give employers a choice that will help combat employee cheating on urine drug tests and provide a less intrusive means of achieving the safety goals of the program."

The rule includes final guidance for oral fluid collections, collector requirements, collection site requirements, device requirements, and updates for labs, Medical Review Officers (MROs) and Substance Abuse Professionals (SAPs). Additionally, there are some technical updates to the urine testing guidelines.

Q. Is it really that simple?

Yes and no. Drug testing is a science and science can be complicated. The new rule for oral fluid testing states that in order for an employer to implement oral fluid testing there must be at least two HHS-certified

laboratories for oral fluid testing, which has not yet been done. Part of this process will require labs to identify which collection device they will authorize for use. In turn, this will help establish the training process for collectors who will need DOT-approved certification as with urine collections.

Q. When will the new rule go into effect?

This final rule is effective on June 1, 2023. However, oral fluid collections will not be available for DOT-regulated employers until such a time as the Department of Health and Human Services (DHHS) approves two laboratories for oral fluid.

Q. Who does the new rule apply to?

The new rule applies to safety-sensitive employees in the transportation industry. This includes all agencies covered by DOT regulations, including the Federal Aviation Administration (FAA), the Federal Motor Carrier Safety Administration (FMCSA), the Federal Railroad Administration (FRA) and the Federal Transit Administration (FTA).

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Q. Does the new rule replace lab-based urine drug testing?

No. Employers will have the option to use either urine or oral fluid testing with one exception (FRA post-accident toxicological testing). By providing the option for an employer to choose either collecting an oral fluid specimen or a urine specimen, DOT is broadening options for the testing of safety-sensitive employees in the transportation industry. Under the regulations, either testing method may be used to detect the same drugs under the same circumstances as before. The drugs that can be tested for are marijuana/THC, cocaine, heroin, amphetamines, PCP, oxycodone, hydrocodone, oxymorphone and hydromorphone. These drugs can be tested for under the following circumstances: pre-employment, reasonable suspicion, post-accident, random, return-to-duty and follow-up. Additionally, it should be noted that lab-based oral fluid is mandated in one DOT situation – when a transgender or nonbinary individual must undergo a directly observed collection.

Q. Do the guidelines allow for testing with rapid or point-of-care (POCT) oral fluid tests?

No. The new DOT rule only permits laboratory-based oral fluid drug testing.

Q. Does the new rule permit on-site collections?

Yes. Per the new rule, employers will have the option of using trained employees and/or professional collectors to conduct oral fluid collections. These collections may take place at the workplace or in other locations that meet DOT requirements for a collection site.

Acceptable collection sites must permit observed collections, collector control of the device(s) throughout the collection process, record storage and protect donor privacy.

Q. Will split specimens be required?

Yes, and the regulations make this requirement very easy to understand. For DOT-regulated collections, all devices must be capable of collecting both a primary and split specimen. A single specimen will be collected, then subdivided in the presence of the donor.

Q. How does the new rule affect state drug testing laws?

It is important to remember three key points relative to state drug testing laws:

1. If you are federally mandated to drug test, federal drug testing regulations always trump state drug testing laws. For example, regardless of what type of drug testing a state law may or may not permit, once the DOT approves lab-based oral fluid testing, covered employers will have the option of using both urine and oral fluid testing to comply with that agency's regulations.
2. Historically, only three states have prohibited lab-based oral fluid collections, although there is some impact based on the release of the new DOT rule. The other 47 states have historically

permitted lab-based oral fluid to some extent, though some states have industry-specific regulations and/or workers' or unemployment compensation denial laws that specify how to conduct drug testing.

3. To an extent, some states require employers to follow the SAMHSA guidelines or the DOT rule. We can assume that lab-based oral fluid testing will be permitted in these states once HHS laboratories have been certified, and proper training and certification for collectors has been outlined. The best advice is to always check local legal requirements to ensure compliance.

Q. Why did the DOT issue the new rule for lab-based oral fluid testing?

In the Federal Register, the DOT articulated the reasons why the agency decided to add lab-based oral fluid testing. These reasons include:

- **Enhanced flexibility**— Oral fluid collections provide flexibility to address workplace drug testing needs by permitting the use of either urine or oral fluid, whichever specimen is best suited to the situation.
- **Enhanced versatility**— Oral fluid collections can occur in a variety of locations and eliminate many collection issues found with urine.
- **Decreased invalid tests**— Oral fluid collections, by nature, are observed, which lessens the risks of substitution or adulteration.
- **Saves time**— Oral fluid collections likely occur at or near the place of work, reducing the time needed away from work.
- **Versatility in detection**— Oral fluid testing permits "more interpretive insight into recent drug use" due to drug detection immediately upon absorption into the body.

Q. As an employer, what can I do to implement oral fluid testing?

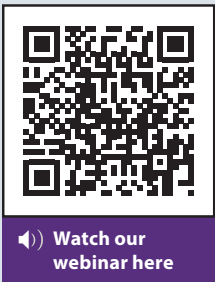
If you are a non-regulated company that would like to begin conducting lab-based oral fluid testing now, speak with your OraSure account manager to help with the following:

- Identify your drug-testing objectives.
- Update your policy with specific lab-based oral fluid testing language.
- Determine how you will collect oral fluid samples (on-site with trained employees and/or professional technicians or at off-site collection facility).
- Prepare supervisors/managers.
- Ensure all vendors are ready to provide their services.
- Announce the program to your employees.

If you are a DOT-regulated company, please note that oral fluid testing is not yet available for safety-sensitive employees. Although the final rule approves oral fluid testing for DOT-covered individuals, the necessary steps of certifying laboratories, establishing training curriculum for collectors, and identifying approved collection devices must be completed.

Have more questions? Get the answers you need by contacting an OraSure customer service representative today at 1-800-672-7873.

By providing the option for an employer to choose either an oral fluid or a urine specimen, DOT is broadening options for the testing of safety-sensitive employees.



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