



# What's the Buzz



DOT EDITION

DOT'S NEW  
ORAL FLUID FINAL RULE:

# WHAT DOES IT MEAN?



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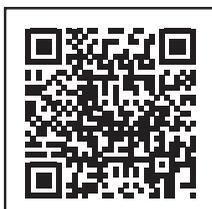
## DOT'S NEW ORAL FLUID DRUG TESTING FINAL RULE:

# WHAT DOES IT MEAN?

BY BILL CURRENT



The DOT rule will have a profound impact on every aspect of how drug testing is sold and bought.



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Interest in lab-based oral fluid drug testing has been increasing over the past several years especially since October 25, 2019, when the Substance Abuse and Mental Health Services Administration (SAMHSA) issued final guidelines for lab-based oral fluid testing in federal agencies. Now, less than three years later, the U.S. Department of Transportation (DOT) has released its own final rule that will permit regulated employers to use lab-based oral fluid testing in place of or in combination with lab-based urine testing.

### What does it all mean for the drug testing industry and employers? A lot!

When SAMHSA issued the Mandatory Guidelines for Federal Workplace Drug Testing Programs using Oral Fluid (OFMG) in 2019 it was considered by many experts to be the most significant development in drug testing since SAMHSA issued the original urine guidelines in 1988. That said, the recent issuance of the new DOT oral fluid rule is something many of those same experts never thought would happen.

Although the SAMHSA guidelines only apply to federal workplace drug testing programs, they are the basis for much of the new DOT rule, though there are some significant differences, which we will cover later in this article. The DOT rule will have a profound impact on every aspect of how drug testing is sold and bought, how testing is conducted, and how results are used to maintain safe and drug-free workplaces, even among non-DOT-covered employers.

So, why did DOT develop these new regulations? DOT highlighted the following benefits of oral fluid testing:

- Combating adulteration/substitution
- All collections are directly observed
- Potential cost savings
- Quick and easy specimen collections
- Fewer collection facility requirements
- Tighter window of detection
- Recent-use detection

The science of lab-based oral fluid drug testing is sound, credible, legally defensible and can practically be applied to a typical workplace drug testing program. However, the issuance of new federal regulations is bound to have a broad impact on a diverse and complicated field such as

# The science of lab-based oral fluid drug testing is sound, credible, legally defensible and can practically be applied to a typical workplace drug testing program.

the drug testing industry. Let's briefly review how the regulations will impact the four key players involved in a drug test: the buyer/ employer, the collector, the laboratory and the Medical Review Officer (MRO).

## What does the DOT rule mean for employers/buyers?

The issuance of the OFMG by SAMHSA in 2019 served as an official endorsement of lab-based oral fluid testing by the federal government, and the guidelines provided a new "gold" standard for how to best utilize the technology. This gave many employers a green light to begin implementing oral fluid testing either in place of, or in combination with, urine drug testing in the most legally defensible way possible. The new DOT rule will only further interest and the switch to oral fluids in the industry.

Additionally, while lab-based oral fluid testing has historically been legally permitted in 47 states, there are several states with general laws, industry-specific laws, or workers' and/or unemployment compensation laws that defer to the federal guidelines, and in some cases the DOT regulations specifically. This means that historically, employers covered by those state laws have only been permitted to utilize urine testing. With the issuance of the DOT final rule, employers in those jurisdictions now have the option of taking advantage of the many benefits of oral fluid testing.

## What does DOT final rule mean for collectors?

Just as has been the case with urine collections, the person who collects an oral fluid sample will continue to be a key part of the drug testing process. Oral fluid collector training following the DOT rule will cover two key parts—the regulations and the specific collection device being used.

Under the newly released DOT final rule, collectors may be employers or employees of the employer's company as an alternative to professional technicians. The person being tested cannot conduct their own test nor can a direct supervisor or relative of the person being tested, though some exceptions may be applicable under certain circumstances.

The DOT rule defers to the OFMG regarding many collection device requirements. Collectors may only use an FDA-cleared collection device. Among the requirements, a device must have a built-in volume indicator and be capable of collecting a least 1 mL of "undiluted (neat) oral fluid" OR "an otherwise sufficient amount of oral fluid...to permit an HHS-certified laboratory to analyze the specimen(s)." DOT outlined strict requirements around some device specifications, including the ability for a device to be broken into two/ separated into two collection bottles. DOT collections may not occur on two separate devices, even if done concurrently.

Split specimen collections are required by DOT, which offers the following guidelines:

"The collector collects at least 1 mL of undiluted (neat) oral fluid in a collection device designated as 'A' (primary) and at least 1 mL of undiluted (neat) oral fluid in a collection device designated as 'B' (split) either simultaneously or serially (i.e., using two devices or using one device and subdividing the specimen)..."

Regarding collection sites, DOT dictates that collections sites can be permanent or temporary facilities located either at a work site or a remote location. DOT anticipates that some employers will choose to collect oral fluid samples at the work site in order to save time

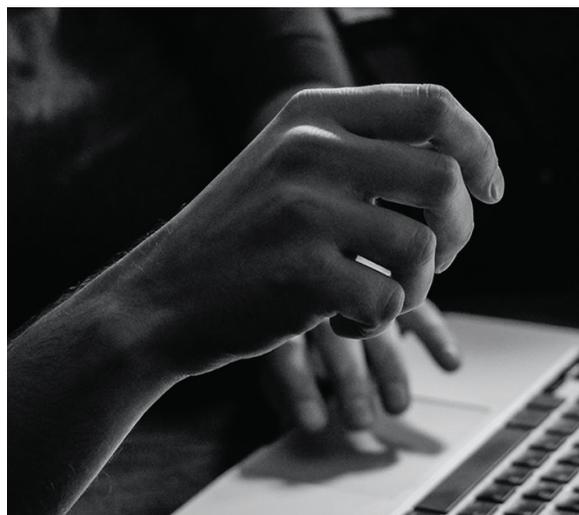
and boost productivity. Collectors must ensure that the work site being used for collections meets all the requirements of an approved collection site.

## What does the DOT final rule mean for laboratories?

Laboratories that wish to offer oral fluid analysis must become certified before being able to do so in accordance with the Department of Health and Human Services (DHHS)/SAMHSA. This is a rigorous process very similar to the one labs must go through in order to become certified to analyze urine specimens. Not all labs will choose to become certified for oral fluid testing. However, in the coming months and years, using a DHHS-certified laboratory will become the preferred way to conduct oral fluid testing, in much the same way that using a certified lab has been the preferred way to conduct urine testing for three decades.

It is important to note that the DOT oral fluid rule, which went into effect June 1, 2023, is not truly in effect until there are at least two laboratories certified by SAMSHA to conduct oral fluid testing, one to perform the initial and confirmation tests, and another to analyze split specimens in the event of a challenge to the initial test results. Oral fluid testing will not be available to DOT-regulated employers until such a time as this occurs.

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# 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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# URINE TESTING VS. ORAL FLUID: THE PROS AND CONS

BY YVETTE FARNSWORTH BAKER, ESQ.

When making decisions about workplace drug testing, one of the big choices is deciding what bodily fluid sample to test. One of the most longstanding test samples is the urine test. But, does longstanding always mean best? This article will explore the pros and cons of urine testing and compare those to the pros and cons of oral fluid testing.

## The CONS of urine testing

### Observed collections and cheating

One con to urine testing is the dilemma of the observed collection. Urinating is an extremely private matter and no one wants to be watched while doing it. However, total privacy during the collection of a urine sample opens the door to drug test cheating. When an individual has complete privacy to submit a urine sample, they can dilute the sample, add substances to it, use synthetic urine or use urine from another person. Collectors have methods to attempt to combat these tricks, but they are costly, time-consuming and are not fool proof. Employers also feel much more secure when acting on a positive drug test rather than on a diluted or potentially tampered test.

### Shy bladder

There are some individuals with a legitimate medical condition that makes it difficult for them to produce a urine sample on command, called "shy bladder" or paruresis. Paruresis affects about 7% of the population: about 20 million people in the United States, another 2 million in Canada, and countless other people, both men and women, worldwide. Additionally, there are some individuals seeking to skirt a urine test who claim the inability to urinate but have no medical reason for doing so. Handling such employee issues with respect is complicated, time-consuming and costly.

### Location of testing

Urine testing at the workplace is tricky, and more often than not, it is done at a collection site away from the workplace. While not impossible, organizing a location in the workplace where urine collection can be hygienic and free from tampering is complicated. Frequently, water sources are turned off, and dyes are used in toilets so that an employee cannot dilute their urine sample with outside water. Collectors need a place in close proximity to monitor for tampering and to collect the sample from the employee as quickly as possible.

At the same time, having employees travel to and from a collection site takes time and costs money, which can impact productivity.

### Historical drug use

Another con to urine testing is that, for some drugs, historical drug use is captured much more reliably than recent use. Marijuana is an example of one such substance. Marijuana use can show up on a urine screen for as long as 30 days after use. At the same time, urine screens can often miss marijuana that has been in the system for less than several hours. Due to the way that marijuana is metabolized, urine tests cannot accurately assess when a person last used marijuana. Thus, a positive marijuana test taken from a urine sample cannot tell an employer whether the individual used marijuana that morning or a week earlier. Additionally, a urine-based test can miss the most significant marijuana use: that of someone who used thirty minutes ago and is currently impaired.

## The PROS of urine testing

### Historical use

While historical use can often be a con to urine testing, it can also be a pro of this testing. If employers want to know if an individual has used drugs but are not concerned about when that use took place, urine is a great option. This is often the case with pre-employment testing, when employers are less worried about impairment on the job and more interested in the individual's background and lifestyle.

### Well-known, well-understood and widely available

Another big pro to urine testing is that it is well-known and well-understood by the public. People feel secure in the testing results and are familiar with the procedures. As a result, urine testing is more widely used and more widely available than oral fluid testing.

### Endorsed by DOT and SAMHSA

Since the beginning of federal government regulations on drug testing, urine testing has been authorized for use by the Department of Transportation (DOT) and the Substance Abuse and Mental Health Services Administration (SAMHSA). Only very recently have any other samples been permitted for DOT-regulated employers or federal employees tested pursuant to SAMHSA guidelines. Even as oral fluid testing has been added to these regulations, urine testing remains and will likely always remain an authorized sample for federally-regulated employees.



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Oral fluid can often detect substances nearly immediately post-use



### The CONS of oral fluid testing

#### Not permitted in all states

Oral fluid testing has its own downsides as well. One con to oral fluid testing is that it is not currently permitted in all states. Maine, Vermont and Hawaii historically have not allowed oral fluid samples to be used in workplace drug testing, which leads us into our second con to oral fluid testing.

#### Newer methodology, not widely understood

Oral fluid testing is a newer methodology and uses newer technology than urine testing. This means that some individuals are not familiar with it and do not understand the procedures and science. Often, people may choose to stay with what they know rather than adopting new systems.

### The PROS of oral fluid testing

#### Ease and security of collection

A big pro to oral fluid testing is how easy it is to collect. Oral fluid testing utilizes a quick collection from the inside of the mouth. The privacy dilemma of urine collection is not an issue with oral fluid. Collectors do not need special accommodations to take samples on site as they do with urine collections, and employees do not need to travel to a special collection site. Additionally, because direct observation of the individual during the collection is simple and nonintrusive, it is nearly impossible to cheat an oral fluid test.

#### Short detection window

Another pro to oral fluid testing is that oral fluid testing has a quick detection window. Oral fluid can often detect substances nearly immediately post-use. In addition to this, oral fluid testing



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does not return a positive test for use that happened weeks before the test. Oral fluid testing will usually only return positive results for up to 2–3 days after use.

This short detection window can be very important when it comes to marijuana testing. As marijuana use, both medical and recreational, becomes more widespread, employers are increasingly pressed to identify only recent use of marijuana and not historical use. Some states even require employers to have a good faith belief that an employee has used marijuana recently before imposing workplace discipline. Oral fluid testing not only captures some recent use that urine tests cannot capture, such as use that occurs less than an hour before testing, but also eliminates the possibility that use occurred many days in the past. Thus, oral fluid testing gives an employer more accurate information about a time frame for marijuana use than does a urine test.

### Overall positivity rates

Additionally, lab-based oral fluid testing returns high rates of positive drug screens. Almost without exception, lab-based oral fluid reported higher positivity rates than lab-based urine testing<sup>1</sup>. Lab-based oral fluid tests seem to be catching positives that urine screens have missed.

### Endorsed by DOT and SAMHSA

Recently, both DOT and SAMHSA have endorsed lab-based oral fluid testing as a reliable form of workplace drug testing. Historically, only urine testing was permitted under federal testing programs, as mentioned above. However, in recent years lab-based oral fluid testing has been approved by the federal government as the only other federally endorsed method of workplace screening. This opens up the availability of lab-based oral fluid testing to millions of federally regulated employers, and also demonstrates how trusted and effective oral fluid testing truly is.

### Conclusion

Any sample choice for drug testing will have its strengths and its weaknesses. A nimble workplace policy can even utilize both sample types for different testing circumstances to take full advantage of the whole range of benefits. Employers should take time to evaluate, or reevaluate, the needs of their workplace when choosing a drug testing method. The safety and security of their business could depend on it.

1. Quest Diagnostic Drug Testing Index, 2022

Because direct observation of the individual during the collection is simple, it is nearly impossible to cheat an oral fluid test.



# Oral fluid workplace drug testing: What the new Department of Transportation oral fluid drug testing final rule means for you

The Department of Transportation (DOT) has published its final rule permitting oral fluid (saliva) drug testing for DOT-regulated employers. This is the first time the DOT is supporting an alternative to urine testing. Let's review the highlights of this final rule.

## What does the DOT say about oral fluid testing?

Historically, only urine testing was allowed under the Substance Abuse and Mental Health Services Administration (SAMHSA)/Department of Transportation (DOT) guidelines. Laboratory-based oral fluid drug testing will become a viable option for DOT-regulated employees, once at least two laboratories become Department of Health and Human Services (HHS) certified for oral fluid testing. This means DOT employers will soon be able to take advantage of the many benefits laboratory-based oral fluid drug testing has provided to non-regulated employers for nearly 20 years.

It is important to note that the final rule states, **should an employee identify as non-binary or transgender and they require a direct observed collection, they must use an oral fluid drug test.**

## Why is this change so significant?

With the opioid epidemic plaguing many cities and towns — along with the legalization of marijuana in some states — reliable workplace drug testing is more essential than ever.

The inclusion of oral fluid drug testing for DOT presents employers with the ability to conveniently perform collections while maintaining the accuracy of a laboratory-based test. Additionally, oral fluid offers many benefits, including increased positivity rates due to its ability to naturally thwart cheat attempts. According to the 2019 Quest Index,<sup>1</sup> overall positivity rates in the general workforce are 10.2% for oral fluid, compared to 5.1% for urine.



**“Oral fluid testing offers a completely appropriate solution for all of these scenarios because every oral fluid collection is a directly observed collection”**  
*U.S. Department of Transportation*



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# The benefits of oral fluid testing vs. urine testing

## The key advantages of oral fluid drug testing include:

- **Better recent-use detection** – deal with on-the-job risks and concerns related to marijuana more effectively.
- **Easy to administer** – collect samples anytime, anywhere — reducing costs.
- **Faster processing** – improve productivity with less time away from work than with urine collection.
- **Virtually tamper-proof and cannot be diluted** – reduce risk of missing positives, increasing safety in the workplace.
- **Accurate and legally defensible** – have confidence in your results.
- **Eliminates privacy and gender issues** – improves attitudes about testing and streamlines collection.

## What are your choices now?

If you are a non-regulated employer, or have a portion of non-regulated employees, there is nothing to wait for — you can start using oral fluid now! Simply consult with your provider on how to make laboratory-based oral fluid drug testing part of your policy/program. If your provider or laboratory does not currently offer oral fluid testing as a service, just let us know and we can help you.

If you are a DOT-regulated employer, it is important to learn about these changes, what the certification process for labs will be and to understand when to use urine and/or oral fluid testing.

OraSure can help with these steps and answer any questions you may have about oral fluid testing.

**To learn more, contact us at:**  
**1-800-672-7873 or**  
**testingsolutions@orasure.com**



## About OraSure

OraSure Technologies is a leader in the development, manufacture and distribution of oral fluid diagnostics and collection devices, and other technologies designed to detect and/or diagnose critical medical conditions.



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1 Quest Diagnostics™. Drug Testing Index™. (2019). A comprehensive analysis of workplace drug use trends. <https://www.questdiagnostics.com/content/dam/corporate/restricted/documents/employer-solutions/Drug-Testing-Index-2019---web.pdf>  
<https://www.transportation.gov/odapc/frpubs> U.S. Department of Transportation  
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# DOT'S NEW ORAL FLUID FINAL RULE UPDATES MORE THAN JUST FEDERAL TESTING

# STATE LAW IMPACTS

KATHERINE MILLER

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).*

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### **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**

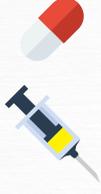
For the moment, four states are impacted by the updates to DOT's mandatory guidelines, and each state is impacted differently. Some are only impacted in certain industries while others are impacted in specific areas of testing. Consult state laws carefully to ensure that your policy is in compliance.

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

# ORAL FLUID INITIAL & CONFIRMATORY TEST REQUIREMENTS

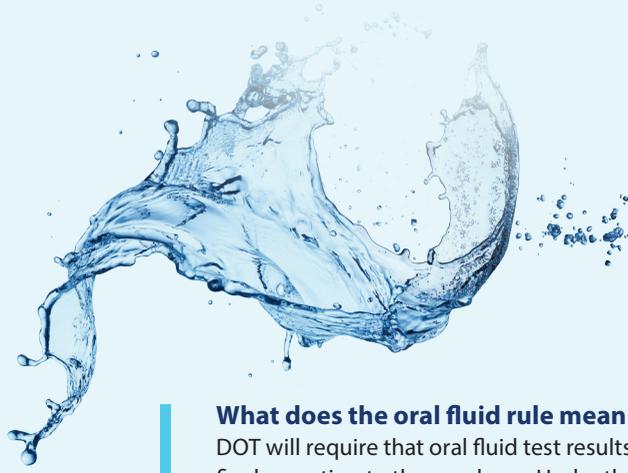
With the addition of lab-based oral fluid to the Department of Transportation (DOT) regulated testing comes a new era for the industry. Although much of the DOT's final oral fluid rule has aligned with pre-existing urine guidelines, some things must change, such as initial and confirmatory test requirements.

*The information below details initial and confirmatory test requirements for lab-based oral fluid testing.*

	Initial Test Analyte	Initial Test Cutoff	Confirmatory Test Analyte	Confirmatory Test Cutoff Concentration
	Marijuana (THC)	4 ng/mL	THC	2 ng/mL
	Cocaine/ Benzoyllecgonine	15 ng/mL	Cocaine Benzoyllecgonine	8 ng/mL
	Codeine/ Morphine	30 ng/mL	Codeine Morphine	15 ng/mL
	Hydrocodone/ Hydromorphone	30 ng/mL	Hydrocodone Hydromorphone	15 ng/mL
	Oxycodone/ Oxymorphone	30 ng/mL	Oxycodone Oxymorphone	15 ng/mL
	6-Acetylmorphine	4 ng/mL	6-Acetylmorphine	2 ng/mL
	Phencyclidine	10 ng/mL	Phencyclidine	10 ng/mL
	Amphetamine/ Methamphetamine	50 ng/mL	Amphetamine Methamphetamine	25 ng/mL
	MDMA/MDA	50 ng/mL	MDMA MDA	25 ng/mL

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The new DOT rule will only further interest and the switch to oral fluid in the industry.

### What does the oral fluid rule mean for MROs?

DOT will require that oral fluid test results be reported to a qualified MRO for interpretation and final reporting to the employer. Under the final rule, MRO requirements and procedures parallel those in place for federal urine drug testing programs.

### Transition to oral fluid

At the time, SAMHSA projected that in four years approximately 25-30% of all federal employee drug tests, and eventually 25-30% of all DOT- and Nuclear Regulatory Commission (NRC)-mandated drug tests would be conducted using lab-based oral fluid. DOT did not project how many employers they are anticipating will make the switch, but it is likely that the SAMHSA estimate likely still stands and may in fact be low.

In a 2022 survey of drug testing providers conducted by the Current Consulting Group (CCG), when asked which drug testing method will be most used in the future, about 50% said urine and 44% said oral fluid. That represents a significant paradigm shift among those who sell drug testing.

That said, if the predicted transition rate of 25-30% is applied to the nearly 40 million non-mandated workplace drug tests conducted annually, it is easy to see how lab-based oral fluid testing is on its way to becoming a very commonly utilized drug testing method in the workplace market. It also likely means that many employers who may have been conflicted about continuing their drug testing programs due to budgetary concerns, the legalization of marijuana or a reluctance to rely on urine testing, when given the alternative of oral fluid testing, will choose to keep their drug screening policies in place.

### Conclusion

For the professionals who ensure the integrity of each drug test, such as collectors, labs and MROs, the OFMG guidelines and the new DOT final rule will become the “bible” for oral fluid drug testing. For employers, these guidelines will serve as the most legally defensible standard for lab-based oral fluid drug testing. For both groups, service providers and end users of their services, now is the time to consider how to take advantage of this exciting new development.

1. <https://www.federalregister.gov/documents/2019/10/25/2019-22684/mandatory-guidelines-for-federal-workplace-drug-testing-programs-oralfluid>

2. “The 2022 Drug Testing Industry Survey.” Conducted by the Current Consulting Group.

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