



HOW DO I CHANGE FROM URINE TO ORAL FLUID SCREENING?

+ STATE-BY-STATE GUIDE
TO DRUG TESTING LAWS

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WHY

ORAL FLUID



BY BILL CURRENT

Oral fluid collections can occur anytime, anywhere.



OraSure provides a state-by-state guide to drug testing laws that outlines what is required in order to conduct oral fluid testing.

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Oral fluid drug testing in the workplace is on the rise. A 2021 survey of drug testing providers revealed a dramatic increase in the percentage who now say they offer oral fluid testing—from just 17% in 2019 to 45% in 2020 and 63% in 2021.¹ Even at that, it may be surprising to some that when asked what drug testing method providers believe will be most used in the future, 50% said urine and 45% said oral fluid.

Oral fluid is legal in nearly all circumstances

This change in acceptance of an alternative to traditional lab-based urine testing likely has a lot to do with recent developments within the federal government. On February 28, 2022 the U.S. Department of Transportation (DOT) issued a Notice of Proposed Rulemaking (NPRM) for lab-based oral fluid testing.² Though some drug testing experts probably doubted DOT would ever make such a move, the NRPM had been anticipated since the Substance Abuse and Mental Health Services Administration (SAMHSA) issued final Oral Fluid Mandatory Guidelines (OFMG) in October 2019 to give federal agencies the option of oral fluid testing in addition to lab-based urine testing.³

The new SAMHSA guidelines have a direct impact on many state drug testing laws. Prior to SAMHSA's announcement, lab-based oral fluid testing was already permitted in 47 states with Vermont, Maine and Hawaii being the only exceptions. Yet other states, especially those with voluntary drug testing laws such as Tennessee or industry-specific laws like Illinois simply punted on the issue of how to conduct drug testing and deferred to SAMHSA's guidelines or DOT regulations as found in 49 CFR Part 40.

DOT's NPRM will likely have the greatest impact on the availability of lab-based oral fluid testing. In a 2020 survey of providers, 60% said they "will offer lab-based oral fluid drug testing when DOT adopts oral fluid guidelines"; only 9.5% said they would not, while 19% were undecided.⁴

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Benefits of oral fluid testing

While the legality of oral fluid testing is certainly important, if it didn't solve problems employers experience with urine testing it would not be growing in popularity. When SAMHSA issued its OFMG, it listed several reasons why the agency decided to endorse an alternative testing method after more than 30 years of only allowing lab-based urine testing. The reasons correlate directly to problems some employers experience with urine testing and extend beyond the SAMHSA/DOT sphere.

For instance:

- **Enhanced flexibility**
Employers can choose between urine or oral fluid; whichever specimen is best suited to a particular situation.
- **Enhanced versatility**
Oral fluid collections can occur anytime, anywhere, and most of the precautions needed for urine collections are unnecessary with oral fluid.
- **Decreased invalid tests**
Oral fluid collections are 100% observed, which substantially reduces the risks of substitution or adulteration.
- **Saves time**
Oral fluid collections can occur at or near the place of work, reducing the time needed away from work to void a urine sample at an off-site location.
- **Versatility in detection**
Oral fluid testing is capable of detecting drugs within minutes after ingestion.

SAMHSA also commented on the science of oral fluid testing:

“The scientific basis for the use of oral fluid as an alternative specimen for drug testing has now been broadly established and the advances in the use of oral fluid in detecting drugs have made it possible for this alternative specimen to be used in Federal programs with the same level of confidence that has been applied to the use of urine.”

When the DOT issued its NPRM, its list of oral fluid benefits checked many of the same boxes:

- Combating adulteration/substitution,
- Directly observed collections,
- Potential cost savings when collections take place at the workplace,
- Quick and easy specimen collections,
- Tighter window of detection, and
- Recent-use detection.

Lab-based oral fluid is now the only federal government-endorsed drug testing method capable of detecting recent drug use, including marijuana. Most testing methods only detect metabolites of drugs, which take several hours to become detectable in a urine sample and several days



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in a hair sample. But the actual drug, often referred to as the “parent drug,” is detectable in an oral fluid sample within about 10-15 minutes after usage. This is a critical advantage of oral fluid testing, especially in many states that have legalized marijuana and also require employers to show some evidence of impairment in addition to a positive drug test result before taking adverse employment action. While no drug testing method can prove, either scientifically or legally, that a person is impaired, the ability to detect recent drug use makes oral fluid testing a better match for post-accident and reasonable suspicion testing situations.

In a 2021 survey of employers, 43% said cited “recent-use detection” as a key reason for their interest in oral fluid testing; only 17% disagreed and 40% were undecided.⁵

Rapid testing vs. lab-based testing

Often cited as an advantage of oral fluid testing is the flexibility of being able to test a sample at a laboratory or via the use of a rapid-result device. Sometimes referred to as “point-of-care” or “instant” testing, rapid-result testing offers some unique advantages. For instance, in a tight hiring market, being able to complete a pre-employment drug test utilizing a rapid testing device in less than 30 minutes makes it possible to make same day hiring decisions without the risk of losing an ideal job candidate to a competitor.

Rapid-result testing also makes it possible for employers at job fairs to hire candidates on the spot rather than asking them to travel to an off-site collection facility and waiting 24 hours or longer to get a result back from a lab.

To ensure the highest possible level of legal defensibility when using rapid testing devices, employers should use devices that have been cleared by the Food & Drug Administration (FDA), always confirm non-negative results at a laboratory, and have a Medical Review Officer (MRO) verify lab-confirmed positive results.

Conclusion

Many companies may choose to maximize their return on investment from drug testing by using both lab-based and rapid-result oral fluid tests depending on the situation. And that type of flexibility and the ever-pressing need to be able to detect recent drug use, have put oral fluid testing on the verge of a significant break-through in market share.

1. “The 2022 Drug Testing Industry Survey.” *The Current Consulting Group*.
2. *Procedures for Transportation Workplace Drug and Alcohol Testing Programs: Addition of Oral Fluid Specimen Testing for Drugs*. *Federal Register*. Feb. 28, 2022. <https://www.federalregister.gov/documents/2022/02/28/2022-02364/procedures-for-transportation-workplace-drug-and-alcohol-testing-programs-addition-of-oral-fluid>
3. *Mandatory Guidelines for Federal Workplace Drug Testing Programs—Oral/Fluid*. *Federal Register*. Oct. 25, 2019. https://www.samhsa.gov/sites/default/files/programs_campaigns/division_workplace_programs/final-mg-oral-fluid.pdf
4. “The 2020 Drug Testing Industry Survey.” *The Current Consulting Group*.
5. “The 2021 Employer Drug Testing Survey.” *The Current Consulting Group*.

SAY GOODBYE TO THESE

TOP 5 WORRIES

OF URINE DRUG TESTING

1

Too hot or too cold?

Only urine needs its temperature taken.



2

Is something hidden on them to cheat the urine test?

It's nearly impossible to hide something in your mouth.



3

Did you seal the toilet? Add the blue dye?

Check for hidden adulteration tools? These special and time consuming preparations are not required with an oral fluid test.



4

Shy bladder?

Have to drink and wait? Not the case with oral fluid.




5

Is there a same sex collector available for the urine test?

Guess what, not a problem for oral fluid tests.





HOW DO I CHANGE FROM URINE TO ORAL FLUID SCREENING?

BY SHARON BOTTCHER AND KATHERINE MILLER

Oral fluid testing is permitted in nearly all 50 states and by the federal government.

Making a change can seem overwhelming at first but is often beneficial in the long run. In terms of the drug and alcohol testing industry, things have been static since nearly its inception. In 1988 the federal government enacted the Drug-Free Workplace Act, requiring federal contractors and grantees to certify that they provide a drug-free workplace. Many states followed suit, with urine testing being the only approved specimen at that time by the federal government. Recent times have brought about many changes, including the approval of oral fluid by the federal government and the proposed addition of oral fluid by the Department of Transportation (DOT). Now that oral fluid testing is permitted in nearly all 50 states and by the federal government, many employers want to either add oral fluid to their testing program or switch entirely from urine to oral fluid. This article will give an overview of best practices when switching to oral fluid.

Determine your needs

Prior to making the switch from urine to oral fluid, it's important to lay the groundwork. Look at your current drug and alcohol testing program with a critical eye and determine the issues. Is getting employees off-site for collections a difficulty? Are you concerned about your program's lack of focus on recent use rather than historic use? Make a list of pain points that you will refer to throughout the policy process. Use these pain points to determine the goals of your new program.

Next, look at your lists of pain points and goals — how does oral fluid meet or help accomplish these goals? Does oral fluid accomplish all the goals or only some? This will help you determine whether oral fluid should become your primary testing specimen, or if it should be complimentary to another specimen.

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Updating your policy

The most important thing you can do when updating your policy is to meet with a policy expert to ensure that all your bases are covered. Navigating state laws, federal regulations and case law can be extremely complex, and it's best to have an drug testing policy expert at your side to ensure you understand and address the complexities to provide yourself with legal protection.

Updating your policy can be summed up in four easy steps:

- 1. Determine which states you would like to operate in.** Are you a large, multi-state employer? A single state employer? Looking to expand into new states? Whatever your situation, the first step to updating your policy is to determine the laws, you need to comply with.
- 2. Review all applicable state laws.** Look at your state laws—are they voluntary (meaning you choose if you want to comply and receive a benefit from the state), mandatory (meaning you have to apply) or laboratory licensing laws? Are there industry specific laws that you are required to comply with based on your workplace? Is there applicable case law that you should review to ensure compliance? Do you want to comply with any additional requirements that are required to deny workers and/or unemployment compensation claims? Some states are straight forward, while some are complex with many sometimes conflicting laws employers are required to comply with. Having a good idea of what is required will let you know how much policy customization you'll need to do.
- 3. Work with an expert to create a policy.** Either reach out to an oral fluid expert, such as your OraSure sales rep. or a dedicated policy expert who is familiar with oral fluid. Work together to determine when testing will occur, where collections will take place and more. Make sure your policy covers all legal situations that are likely to arise in each state of operation and how the company will respond.
- 4. Define additional company policies.** In addition to your company policy, you need to define laboratory, Medical Review Officer (MRO) and Third-Party Administrator (TPA) policies if applicable. Having these policies and procedures ready and on hand means that you will be prepared for all situations that arise along all levels of the testing process.



Want more information about oral fluid collections?

[Click here](#)

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 OraSure Technologies

Intercept voted #1 in lab-based oral fluid testing

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Intercept
Oral Fluid Drug Test

Communicate policy and program changes

Unfortunately, you're not immediately ready to go after you review and/or update your policy. The process continues as you determine who needs to be informed of policy changes, as well as what they need to know. The groups that need to be informed of policy updates/changes are your laboratory, your Medical Review Officer (MRO), your Designated Employee Representative (DER), and finally, your employees.

While it's essential to provide each of the above parties with a copy of your final updated policy, it's also a good idea to pull out pertinent information in an easy to access format so that everyone is aware of the changes implemented and how they impact their group. For example, highlight who performs collections, where they will be performed, what counts as a non-negative, specimens you will use, and more.

Once you've provided the pertinent individuals with a copy of your new policy and pulled out any relevant information for them, allow them a review period where they can read the new policy. Following the review period, meet with each group individually to answer any questions that may have come up during their policy review period. It's best practice to make sure all the details are communicated correctly prior to implementing the new program. Don't forget to post a copy of the new policy around your work sites so that it is easily and readily available to employees.

How to manage your new program

Some employers may choose to utilize a Third-Party Administrator (TPA) to manage their drug and alcohol testing program from start to finish, while others may choose to manage the program entirely on their own. It's up to each employer to determine what works best for their individual company and workplace.

For employers that choose to work with a TPA, the first step is to provide a copy of your new policy and implementation plan to the TPA. From there, it's pretty much on auto pilot for you. Your TPA should manage all day-to-day and nitty gritty aspects of the program, allowing you to focus on other aspects of your business.

Employers that choose to manage their own program have a slightly more involved process



to implement their new drug and alcohol testing program. Once your new policy is created, determine who will be performing collections. When using traditional testing methods, such as urine, the collector must go through extensive training, as well as learn how to secure a bathroom for collections if there isn't a dedicated secure facility on site or within close distance. Oral fluid collections are different. Collectors can be trained quickly and easily online or in person, making it easy to train multiple collectors so as to always have one on-site or available. It is usually considered best practice to train supervisors and/or managers to act as collectors. One advantage to oral fluid testing is that both lab-based and rapid collections can be performed on site, meaning that collectors don't have to be trained on how to prepare a dedicated collection site. Collections can occur anytime, anywhere, meaning that management by employers is streamlined and simple.

Depending on what devices and/or labs that you use, your results and reports may be provided to you in a number of different ways. If a TPA manages your program, they will manage, receive and store results on your behalf. Employers that choose to manage their own testing program will need to determine the best way to manage, receive and store their results once the new program is implemented. Confer with your testing laboratory to determine how results will be sent to you—if they're electronic, considering securely storing them in your company server as well as storing physical copies for a set amount of time. Paper results can be digitized to offer two forms of storage as well. A solution that works for one employer may not work for your workplace—find a custom solution that works for you and stick with it.

Conclusion

Making the switch to oral fluid may seem like a lot of work up front but making a change often requires effort in order to reap the benefits. Oral fluid offers many benefits to employers such as customized panels, collections anytime, anywhere, cost savings, lab-based results, and available in nearly all states and in most industries, just to mention a few. Ready to make the switch? Contact your OraSure representative today to learn more about how you can switch to oral fluid.



Want to learn more about OraSure's online training options?

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YOU HAVE Choices

ORAL FLUID DRUG & ALCOHOL TESTING

Endorsed by the federal government,
oral fluid testing is used with the same
level of confidence as urine testing*.

REDUCE THE CHANCE OF ADULTERATION

INCREASE PROGRAM FLEXIBILITY

EASILY ADJUST PANELS

USE BOTH INSTANT & LAB TESTING

SIMPLIFY YOUR COLLECTION PROCESS



OraSure Technologies

**SEE YOUR
CHOICES**



How to Switch

Checklist

1

DETERMINE the goals of your drug-free workplace program and how oral fluid accomplishes them.

2

REVIEW the OraSure territory map to contact your OraSure rep for a free consultation on the best oral fluid screening solutions for you program.

3

REVIEW applicable state laws and update your drug-free workplace policy.

4

CHECK with your lab, MRO, or TPA to confirm their oral fluid offerings.

5

FINALIZE your policy and inform employees about the addition of oral fluid testing to your workplace.

6

TRAIN necessary employees and/or confirm your collection site personnel are trained on oral fluid collections.

7

START your new program, keep your employees safe, and watch the results roll in!



Wondering if oral fluid is permitted in your state? Check out OraSure's state-by-state guide.

[Learn more here](#)



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