

# U.S. Department of Transportation Approves Mouth Swab Drug Testing

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On May 2, 2023, the U.S. Department of Transportation (DOT) announced its approval of oral fluid (mouth swab) drug testing, effective June 1, 2023. Testing, however, cannot occur until the Department of Health and Human Services (HHS) certifies at least two laboratories for primary and split specimen testing.

HHS-certified labs are listed at this link: <https://www.transportation.gov/odapc/labs>.

## **For Employees**

When the final rule is effective, employees subject to DOT drug testing are subject either to oral fluid testing (mouth swabbing) or urine collection. The choice of the test method is up to the employer. If a second collection is needed (due to sample temperature out of range or insufficient sample quantity), the employer may change the type of collection to finish the test.

## **For Employers**

For employers, it will be necessary to establish a business relationship with oral fluid collectors and labs. It is best practice to have a standing order in place with each collection site specifying the kind of collection required for each test reason and the order of testing. For example, an employer may specify oral testing for all post-accident tests, and urine testing for all others. Or, an employer may specify oral testing in all cases, with urine testing as a backup in the event of dry mouth.

A Designated Employer Representative (DER) must be available to collectors 24/7, which has always been the case. Equally important, the employer has a non-delegable duty to determine whether a refusal has occurred at the collection site.

## **For Collectors, Labs, and MROs**

Collectors must be trained in oral fluid collection. Laboratories must follow new rules for oral fluid collection. MROs (Medical Review Officers) are not required to be recertified, but they should familiarize themselves with the changed provisions of the Part 40 Final Rule: <https://www.transportation.gov/odapc/frpubs>.

## **Other Changes**

For directly observed collections, if the same gender collector cannot be found:

- If the employer has a standing order to allow oral fluid testing in such situations, the collector will follow that order.
- If there is no standing order from the employer, the collector must contact the DER and either (a) conduct an oral fluid test if the collection site is able to do so, or (b) send the employee to a collection site acceptable to the employer for the oral fluid test.

For direct observation collections involving transgender or nonbinary individuals, an oral fluid collection must be conducted.

Affected entities, including employers and service agents, are strongly encouraged to review the Final Rule highlighted above.

If you have any questions regarding this DOT Final Rule or the U.S. DOT's drug testing requirements, please contact [Dave Confer](#) or any member of the Barley Snyder [Transportation, Logistics & Trade Industry Group](#).

**DISCLAIMER:** The information in this alert should not be construed as legal advice to be relied upon nor to create an attorney/client relationship. Please note that the reader's or an industry's specific situation or circumstances will vary and, thus, for example, an approach that is advisable in one industry may not be appropriate in another industry. If you have questions about your situation or about how to apply information contained in this alert to your situation or industry, you should reach out to an attorney.

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