

Additional Resources

Email Addresses

Office of Drug and Alcohol Policy and Compliance e-mail address: ODAPCWebMail@dot.gov

Websites

Resources for Oral Fluid
Collectors:



Office of Drug and Alcohol
Policy and Compliance:



Download up-to-date PDF of 49
CFR Part 40 (see menu):



Online 49 CFR Part 40:



DOT Random Testing Rates:



ODAPC's List Serve Notices:



Final Rule and links to
Summary of Changes:



DOT – Office of the General
Counsel:



Substance Abuse & Mental
Health Svs Administration:



Preparing for the CDL Drug and Alcohol Clearinghouse

The CDL Drug and Alcohol Clearinghouse will be operational on January 6, 2020. The clearinghouse will be a database of positive drug and alcohol test results for Commercial Driver License (CDL) holders that employers will be required to check prior to putting a new employee to work. Employers will also be required to annually query the Clearinghouse for each driver they currently employ. Designed to improve highway and public safety, the Clearinghouse will allow employers and FMCSA to identify drivers with a prohibited DOT drug and alcohol program violation and ensure said drivers take the required steps to return to work. Additionally, employers will be able to query the database to identify drivers who may have committed a drug or alcohol program violation while working for one employer, but who fail to subsequently inform another employer.

Effective January 6, 2020, FMCSA will require that the Commercial Driver License number and state of issuance be used when reporting positive drug and alcohol test results to the clearinghouse.

CDL Clearinghouse Required Actions

Therefore, as of January 6, 2020, when completing the Federal CCF or the Alcohol Test Form for a **CDL holder covered by FMCSA**:

- Collectors and BATs will no longer use the employee's social security number or other identification number when completing the forms, but will instead use the employee's CDL number and state of issuance.
- Employers are to provide the collector and/or BAT with the employee's CDL number and state of issuance.
- If the employer does not provide the employee's CDL number and state of issuance, the collector and/or BAT should ask the driver for this information.
- If the CDL number and state of issuance is not included on the form, the collector will still send the specimen to the lab for testing.
- If the laboratory receives a specimen without the CDL number and state of issuance, the lab will process the specimen without delay and send confirmed positive results to the MRO.
- If the MRO receives a confirmed drug test result without the CDL number and state of issuance, the MRO should contact the employee or the employer to get that information.
- The MRO is responsible for reporting positive drug test results to the clearinghouse database, and the CDL number and state of issuance is necessary in order to report the results.
- The BAT reports positive alcohol test results to the employer, who is then responsible for reporting positive alcohol test results to the clearinghouse.

Updated content 9/25/2019

Very recently the FMCSA proposed to extend the January 6, 2020 compliance date to January 6, 2023 for the State query requirement only. Under the proposed January 2023 extension, States are not required to query the Clearinghouse to request information before completing certain commercial driver's license (CDL) transactions. States may still voluntarily request Clearinghouse information beginning on January 6, 2020. The January 2020 compliance date for all other reporting requirements remains in place.

Part 40 DOT – Summary of Changes

On May 02, 2023, the Department of Transportation (DOT) published a final rule in the Federal Register ([88 FR 27596](#)). This final rule, among other items, amends the DOT's regulated industry drug testing program to include oral fluid testing.

When is the final rule effective?

The final rule is effective June 1, 2023.

Can anyone implement DOT-regulated oral fluid testing on the effective date?

- Not yet!
- DOT oral fluid testing cannot be implemented until the Department of Health and Human Services (HHS) certifies at least two laboratories (one to serve as a primary laboratory, and a second to serve as a split specimen laboratory).
- Check here for the listing of HHS certified laboratories <https://www.transportation.gov/odapc/labs>

What does this mean for employees?

- You could be subject to either an oral fluid collection or a urine collection for any DOT-regulated test [i.e., pre-employment, random, reasonable suspicion/ cause, post-accident (other than FRA [\[1\]](#)), return-to-duty, or follow-up].
 - If there is a reason a second collection is needed during the testing event, (e.g., initial temperature out-of-range urine specimen, or insufficient quantity for either an oral fluid or a urine specimen), the employer may choose to change to the other type of collection to finish the testing event.
- The choice of whether to conduct an oral fluid or a urine test is up to the employer.
- Substance Abuse Professional (SAP) evaluations may be conducted remotely (additional detail under the SAP section below).

What does this mean for Consortium/Third Party Administrators (C/TPAs)?

- If you are administering a program for an employer (to include C/TPAs administering a program for FMCSA-regulated owner operators) in accordance with the employer's decision about the testing methodologies to be used, you need to make sure there are agreements in place for both oral fluid and urine collections and laboratory testing.
 - While the employer may opt for only one methodology, oral fluid testing must be available for directly observed collections for transgender and nonbinary individuals.
- Ideally, ensure there are standing orders from the employer and that the collectors know what specimen they need to collect for regular collections and for direct observation, shy bladder, and dry mouth collections.

What does this mean for employers?[2]

- You, not the employee, choose the collection methodology for the test reason (e.g., randoms will start with urine; follow-ups will use oral fluid).
- You, not the employee, choose the collection methodology for the subsequent collection following a shy bladder, dry mouth, or other test that requires a directly observed collection.
- Ensure you have business relationships with the oral fluid collectors and labs, whether directly or through your service agents.
- It is a best business practice to have a standing order in place with each of your collection sites, so they know what kind of collection you want performed (i.e., urine or oral fluid) and when.
- Designated Employer Representatives have always been required to be available to the collectors 24-7, but that is even more important now.
 - Ensure your phone number is correct on the CCF so the collector can reach you.
 - You need to be available to the collector to discuss if there are problem collections.
 - You should always be available to discuss standing orders on what type of test you want administered if problem collection scenarios arise (e.g., if an employee does not provide a sufficient urine specimen, do you want the collector to switch to an oral fluid collection?).
- It is the employer's duty to determine whether a refusal has occurred at the collection site. Employers have never been able to delegate this duty. So, a collector can tell you something appears to be a refusal, but the final determination is yours.
 - Remember, if an employee does not appear for a pre-employment drug test or leaves the collection site before receiving a cup (for a urine collection) or unwrapping the device (for an oral fluid collection) it is not a refusal.

What does this mean for collectors?

- Ensure you know the employer's preferences and standing orders for regular and problem collections.
- Ensure that the collector's phone number provided on the Federal Drug Testing Custody Control Form (CCF) in Step 1.G. connects directly to the collector and/or the collector's supervisor, and not a general call center.
- Employee ID on the CCF can be the individual's actual Social Security Number, a unique identifier issued by the employer, a State-issued identification card number, a State-issued driver's license number (including a CDL number) or any other State-issued or federally-issued identification number (must be CDL number and State for drivers regulated by FMCSA).
- Since either a urine or an oral fluid collection may be required, ensure that either you or a coworker is qualified to collect either specimen type. If no one is qualified to conduct the alternate collection, contact the employer so the employer can make arrangements to have the employee tested at another collection site.

What should oral fluid collectors know?

- You must obtain training to proficiency in the operation of the particular oral fluid collection device you will be using; if you will be using more than one device, then you need to prove initial proficiency on each device.
- Ensure that you complete the correct line on Step 2 of the CCF – ORAL FLUID.
- You must:
 - check the expiration date on the device or on the package containing the device and show it to the employee,
 - not use the device after its expiration date (this would be a “fatal flaw” and you will need to complete error correction training),
 - check “Each Device Within Expiration Date?” in Step 2 of the CCF after ensuring the device is within its expiration date, and
 - enter the Split Specimen Device Expiration Date in Step 4 of the CCF.

What are some of the other changes to Part 40?

- 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 conduct an oral fluid test if the collection site is able to do so or 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.
- Beginning with Subpart C of Part 40, new sections have been added and numerous sections have been redesignated (i.e., renumbered and reordered), including the Appendices, to provide a more easily followed flow for users of the regulatory provisions specific to oral fluid drug testing (see the Table provided in the “Background” section of the final rule).

Where can I find a copy of the final rule?

You can view the final rule on ODAPC’s website (<https://www.transportation.gov/odapc/frpubs>).

NOTE: This document informally summarizes some of the important effects of the rule, but it is not a substitute for the rule and should not be relied upon to determine legal compliance with the rule. ODAPC encourages affected entities, including employers and service agents, to review the final rule.

Notice: Federal Drug Testing Custody and Control Form (CCF)

On May 2, 2023, the Department of Transportation (DOT) published a final rule in the Federal Register ([88 FR 27596](#)). This final rule, among other items, amends the DOT's regulated industry drug testing program to include oral fluid testing.

When is the final rule effective?

- The final rule is effective June 1, 2023.
- Remember: DOT oral fluid testing cannot be implemented until HHS certifies two laboratories (one to serve as a primary laboratory and a second to serve as a split-specimen laboratory).

Can the 2017 version of the CCF still be used only for urine collections?

- Yes, DOT-regulated employers and their service agents (collectors, laboratories, Medical Review Officers (MRO)) are authorized to use the 2017 version of the CCF only for urine collections until August 31, 2023.
- If you use the 2017 version of the CCF a Memorandum for the Record (MFR) is not required through August 31, 2023. A MFR will be required after August 31, 2023
- The 2017 version of the CCF must not be used for oral fluid collections.

Is there a new CCF because oral fluid testing is being added?

- No. The current (2020) version of the CCF includes the option to collect and test either a urine or an oral fluid specimen, so no new CCF is needed.
- Become familiar with the 2020 version of the CCF so you know what sections are always filled out and what sections are only filled out for urine testing or only filled out for oral fluid testing. (e.g., In Step 2 check whether it is an oral or urine collection.)

What should a laboratory do about collector errors related to oral fluid device expiration dates?

- If you receive an expired device, you must reject the specimen for testing.
- If the collector failed to enter the expiration date or was entered incorrectly in Step 4 of the CCF, the laboratory must reject the specimen unless the laboratory is able to determine the expiration date by inspecting Bottles A and B. The laboratory will note the correct date and proceed with the testing process.

What contact numbers does the collector enter on the CCF?

- You must ensure the phone number in Step 1.G., connects directly to you and/or your supervisor, and not a general call center.
- Fax numbers may be included, but are not required, on the CCF.

Can I use the same CCF if I switch to a different collection methodology?

- No, you must use a new CCF and document the reason for the change in the Remarks section.

NOTE: This document informally summarizes some of the important effects of the rule, but it is not a substitute for the rule and should not be relied upon to determine legal compliance with the rule. ODAPC encourages affected entities, including employers and service agents, to review the final rule.

Last updated: Tuesday, May 2, 2023