

U.S. DOT Publishes Final Rule on Drug and Alcohol Testing Procedures

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Firm Alert

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On May 11, 2026, the U.S. Department of Transportation (DOT) **published** a final rule amending its drug and alcohol procedures under 49 CFR Part 40. DOT addresses implementation issues associated with oral fluid drug testing and updates terminology to align with Executive Order (E.O.) 14168, [Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government](#). The rule becomes effective June 10, 2026.

Background:

On May 2, 2023, DOT **amended** Part 40 to add oral fluid testing as an additional drug testing method and, in certain situations, to require a directly observed collection to be an oral fluid test as opposed to a urine test. However, because there are currently no U.S. Department of Health and Human Services (HHS)-certified laboratories available to perform oral fluid testing, employers cannot yet utilize this testing method under Part 40.

To correct this practical impossibility, DOT published a **notice of proposed rulemaking** (NPRM) on December 9, 2024, proposing to amend Part 40 for an interim period to permit directly observed urine collections in certain situations where oral fluid collection is not yet available. Additionally, on October 1, 2025, DOT published a **supplemental NPRM** proposing to replace the word “gender” with “sex” in Part 40 to be consistent with E.O. 14168.

Key Highlights of the Final Rule:

- **Directly Observed Urine Collections:** DOT amends Part 40 to allow employers to use directly observed urine collections in situations where oral fluid testing would otherwise be required, so long as oral fluid testing is not available. DOT characterizes this amendment as an interim measure intended to preserve existing testing and deter illicit drug use pending implementation of oral fluid testing.
- **Oral Fluid Testing Prerequisites and Requirements:** The Final Rule clarifies that oral fluid testing will be considered “available” only if at least two HHS-certified oral fluid laboratories are available, a qualified oral fluid collector is available, and a conforming oral fluid collection device is available at the collection site. For FAA-regulated employers subject to 14 CFR § 120.123(a), both certified laboratories must be located in the United States. Once oral fluid testing becomes available, employers will be required to use oral fluid collections in specified circumstances where a same-sex observer is unavailable for a directly observed urine collection.
- **18-Month Grace Period:** DOT expands the proposed transition period and adopts an 18-month grace period following HHS’s announcement of a second certified oral fluid drug testing laboratory. During this period, employers may continue to conduct directly observed urine collections until they are set up to conduct oral fluid testing. However, if an employer becomes capable of conducting oral fluid testing during the grace period, the employer must use oral fluid testing. The Office of Drug and Alcohol Policy and Compliance (ODAPC) will publish a *Federal Register* notice stating when the 18-month period begins and ends.
- **Terminology Changes:** DOT replaces “gender” with “sex” in certain provisions of Part 40 to conform with E.O. 14168 and corrects a prior drafting error referencing “observer” versus “collector” in § 40.67(g). ODAPC will

determine whether guidance to employers and service agents on how to identify an employee's sex for directly observed urine collection is necessary.

- **Additional Collector Instructions:** DOT adds language reminding collectors to consult the employer's standing orders or contact the Designated Employer Representative for directions in specified collection scenarios under § 40.65.

Practical Implications and Takeaways:

- For now, no immediate operational overhaul is required for most DOT-regulated employers because directly observed urine testing largely reflects the current status quo. DOT does not anticipate significant compliance costs resulting from the Final Rule.
- Employers should nevertheless monitor developments related to HHS certification of oral fluid laboratories and begin preparing policies and assessing future operational needs.
- The Final Rule signals DOT's continued commitment to integrating oral fluid testing into DOT's Part 40 procedures.

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