

In-House DOT Testing: Benefits, Challenges, and Compliance

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Introduction & Background

The Foundation of USDOT Testing



U.S. Department of Transportation
Federal Transit Administration

Regulatory Authority

USDOT – 49 CFR Part 40

- The “how” regulation
- Addresses many of your questions on HOW a test is done
- 49 CFR Part 40
 - <https://www.ecfr.gov/current/title-49/subtitle-A/part-40>
- Part 40 “Q & A”s
 - <https://www.transportation.gov/odapc/part40>

DOT Agency Regulations

- The “who” and “when” regulations
- FTA – 49 CFR Part 655
 - eCFR:
<https://www.ecfr.gov/current/title-49/subtitle-B/chapter-VI/part-655>
 - Part 655 “Q & A”s: https://transit-safety.fta.dot.gov/DrugAndAlcohol/TechnicalAssistance/655QandA_508.pdf
- FMCSA – 49 CFR Part 382
- FRA – 49 CFR Part 219
- FAA – 14 CFR Part 120
- PHMSA – 49 CFR Part 199

Roles & Responsibilities

DER

- Designated Employer Representative
- Primary contact for all things testing
- Liaison between employees and the transit system, as well as service agents
- Removes employee from safety-sensitive functions after violation

BAT

- Breath Alcohol Technician
- Maintains integrity and confidentiality
- Administers the breath alcohol test
- Operates EBT device
- Completes / Distributes Alcohol Testing Form (ATF)

Urine Collector

- Maintains integrity and confidentiality of collection process
- Administers collection of urine specimen
- Secures site
- Handles “problem scenarios” to ensure valid specimen is collected
- Completes/Distributes Custody and Control Form (CCF)

Roles & Responsibilities (continued)

Oral Fluid Collector

- Maintains integrity and confidentiality of collection process
- Administers collection of oral fluid specimen
- Secures site
- Handles “problem scenarios” to ensure valid specimen is collected
- Completes/Distributes Custody and Control Form (CCF)

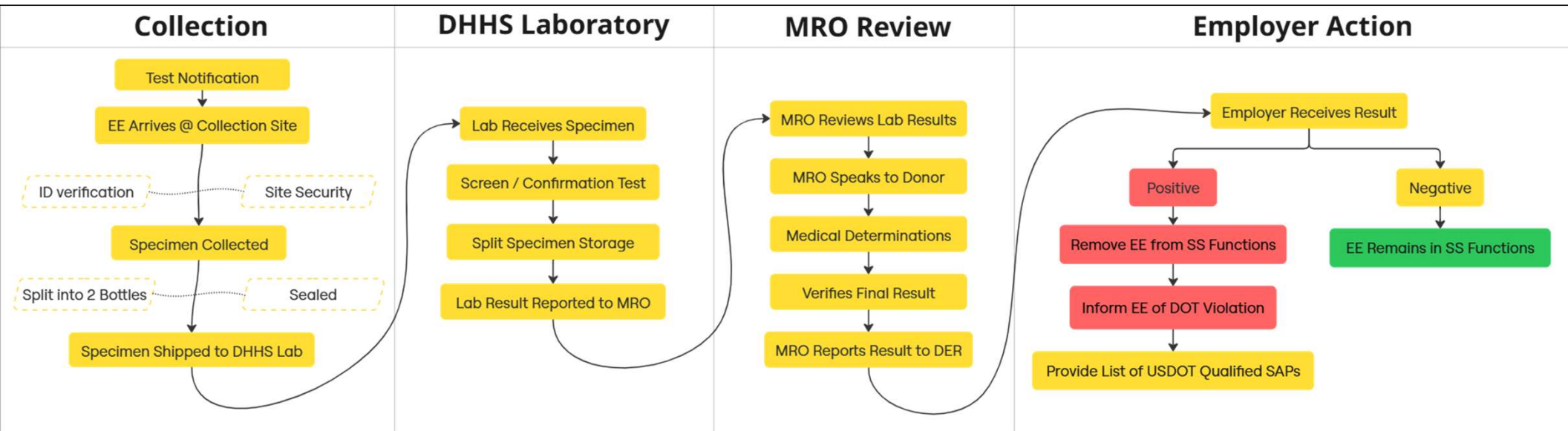
Laboratory

- Certified by HHS
- Receives and Tests the urine / oral fluid*
- Performs “validity” testing
- Reports to MRO

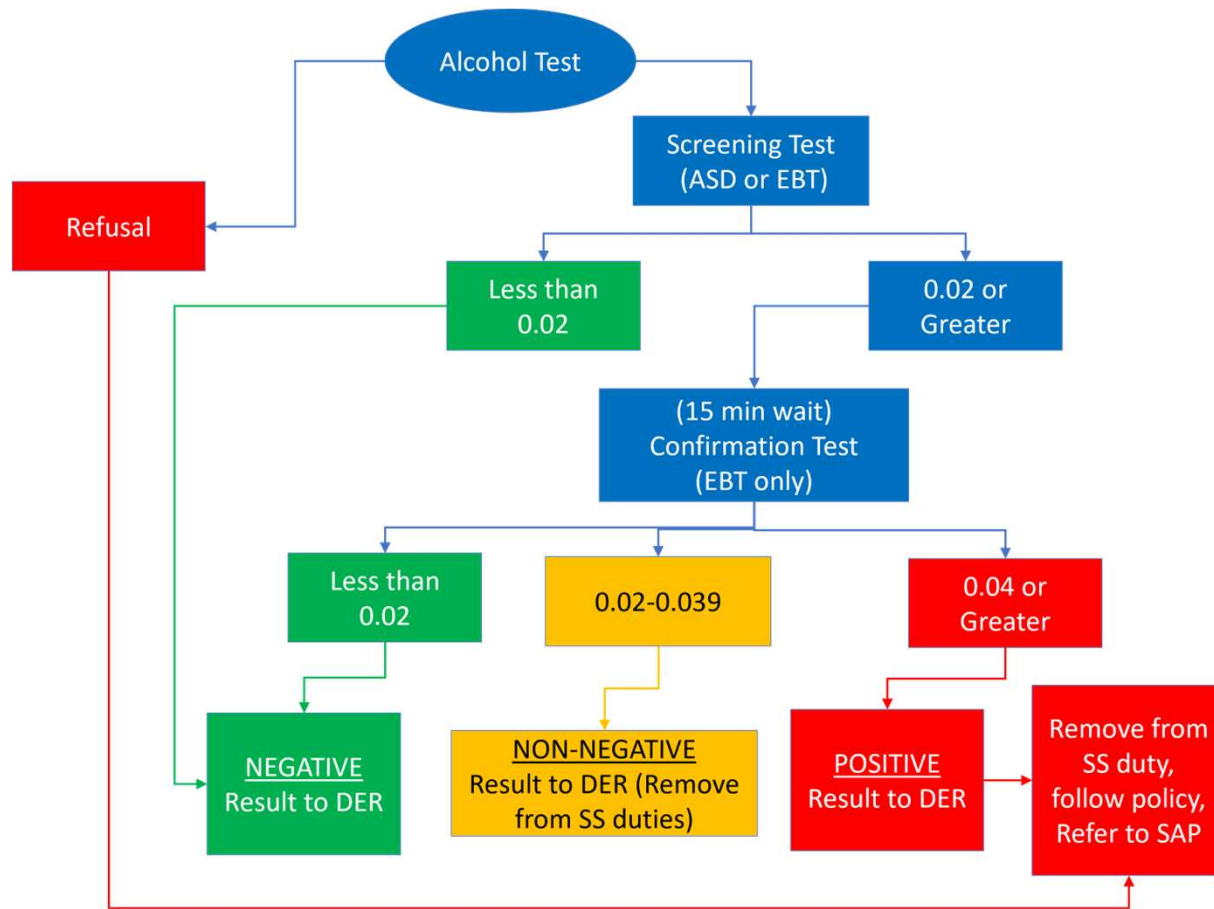
MRO

- Medical Review Officer (MRO)
- “Gatekeeper” of drug test
- Licensed Physician
- Receives / reviews lab results
- Contacts donors for medical explanations
- Reports final VERIFIED results to DER
- Protects Medical info

“Typical” Drug Test Procedure



“Typical” Alcohol Test Procedure



Oral Fluid Drug Testing

Where Do We Stand?



U.S. Department of Transportation
Federal Transit Administration

Oral Fluid Drug Testing: Part 40 Update (2023)

The What

- 49 CFR Part 40 is USDOT's D&A regulation covering testing procedures

The Why

- "OTETA" requires DOT is to align with HHS drug testing rules
- HHS published updated final rule for oral fluid testing in 2019
- Part 40 had to be updated to align with HHS changes

The When

- Feb 2022 – USDOT issued NPRM
- May 02, 2023 – Final rule (Part 40) published in Federal Register
- June 1, 2023 – Effective date for all changes
- Currently there are no HHS certified oral fluid drug testing laboratories

Oral Fluid Drug Testing: Part 40 Update (2023), cont.

The Headline

- Permitted as alternative* to urine drug testing
- Time to result likely won't be much different than urine tests

Can You Start Oral Fluid Testing?

- NO!
- HHS must first approve 2 labs
- Why 2 labs?

Highlights

- Employer chooses test specimen type
- Employers will want to establish a “standing order”
- All oral fluid collections are considered “directly observed”

Urine vs Oral Fluid Testing

	Historical Standard	Speed of “use to detection”	Detection Window	Time Employee is Out of Operations	Ability to “Cheat”	Time to Result	Intrusiveness
Urine	Long-standing standard	<ul style="list-style-type: none"> Hours after use 5-12 hours or longer 	<ul style="list-style-type: none"> 1-4 Days Longer for THC 	<ul style="list-style-type: none"> Out of ops. for longer Shy-bladder = 3 hrs. 	<ul style="list-style-type: none"> Easier to “beat” or “cheat” Employee in bathroom alone 	Urine/Oral Fluid is similar	<ul style="list-style-type: none"> More intrusive D.O. collections require removal of clothing
Oral Fluid	Newly Authorized for DOT	~ 30 minutes after use	5-48 Hours	<ul style="list-style-type: none"> Quick return to ops. Dry-mouth = 1 hr. 	<ul style="list-style-type: none"> Difficult to beat/cheat Employee is not alone during collection 	<ul style="list-style-type: none"> Urine/Oral Fluid is similar Potentially longer when only 2 labs available 	<ul style="list-style-type: none"> Perceived as less intrusive No clothing removal

Urine vs Oral Fluid – Anecdotal Industry Insights

Urine

- Return to Duty / Follow Up
- Pre-Employment*
- Random Testing
- When collection site is unable to do oral fluid testing
- “Wet Monkey” Theory

Oral Fluid

- Post-Accident / Reasonable Suspicion
- Pre-Employment*
- States with “parent THC” laws
- If initial urine collection is “shy-bladder”
- Directly Observed Scenarios
- Remote locations / No Toilet

Be Your Own Collection Site?

Benefits, Challenges, Compliance



U.S. Department of Transportation
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Internal vs External Collections / Alcohol Testing

Who Can Be a BAT or Collector?

- Urine Collectors must be trained per [40.33](#)
- Oral Fluid Collectors must be trained per [40.35](#)
- Alcohol Test Technicians must be trained per [40.213](#)
- Alcohol Screening Test Technicians (STTs) only permitted to do SCREENING Test
- BATs permitted to do both SCREENING test and CONFIRMATION TEST

Who IS NOT permitted to be a BAT or Collector (or Observer)?

- Immediate supervisor of donor, unless NO OTHER technician is available ([40.31\(d\)](#))
- Relative or close personal friend of donor ([40.31\(f\)\(2\)](#))
- You can't be a collector if you also work for an HHS-certified lab ([40.31\(e\)](#))
- Employees can't be their own collector / BAT ([40.31\(f\)](#))

Internal Collections: Benefits & Advantages

Cost

- No “per-test” fees.
- Reduced vendor management fees (TPA).
- Potential for reduced costs if large volume of tests conducted.

Control / Flexibility

- Scheduling ease
 - Immediate/on-demand collections.
- Post-Accident / Reasonable Suspicion.
- Easier to conduct tests in early morning, late evening, weekends, holidays, etc.
- Direct quality control of collectors

Efficiency / Confidentiality

- Streamlined communication.
- Reduced risk of mishandling information.
- Sensitive data kept “in-house.”
- “Less links in the chain.”

Internal Collections: Challenges & Risks

Cost

- Significant upfront costs
- Ongoing retraining requirements
- Equipment costs
 - EBT
 - Urine/Oral Fluid Kits
- Equipment Expiration
- Oral fluid kits
- Staying abreast of DOT rules
- Insurance coverages?

Control / Liability

- Who performs collections?
 - Existing workloads
- More duties... more pay?
- Coverage if collector is out
- Need for increased internal audit/quality assurance
- Lack of professional/career technicians
- Union challenges

Efficiency / Confidentiality

- Need private/secure location meeting Part 40 standards
- Perceived privacy & bias issues
 - “co-worker” collecting my pee/oral fluid
 - RS/RTD/FU Tests
 - Refusals / non-negative results

Internal Collections: Pros/Cons Summary Chart

PROS	CONS
Ease of scheduling	Conflicts of interest
Gets EEs back to duty faster	Lack of interest/comfort from staff to be collectors
Quality control	Invasion of privacy
Ease of access	Lack of professional experience
Less wait time	EE turnover in collector position
Less predictable testing patterns	Staff burden / retention concerns
May be only option for remote areas	Insurance & other employment implications
	Union challenges

Internal Testing: Making an Informed Decision

What is the motivation? Avoid Common Pitfalls

- Shiny new object? / “keeping up with the Joneses”
- Lazy person lugs themselves to death

Agency Size & Resources

- Smaller agencies have limited staff/budget.
- Remote vs. Rural – It's not the same: Remote agencies may not have a choice.
- Larger agencies may see easier long-term cost savings.

Volume and Frequency of Tests

- High volume can increase justification of internal investment.
- Low volume may make outsourcing more practical overall.
- Higher cost/test, but lower administrative costs and waste.

Internal Testing: Develop an Implementation Plan

For example:

Phase 1:

Assessment/Planning

- Needs Assessment
 - Testing volumes
 - Staff availability
 - Facility assessments
- Develop budget.
- Timeline/Milestones
- I.D. Stakeholders / Implementation Team
 - Management
 - Employees
 - Union
- Review/update policies

Phase 2: Training/Quals

- Procure Training Materials.
- Identify Training Resource.
- Select and train staff.
- Train DER(s).
- Staffing plan for turnover/coverage.

Phase 3: Facility Setup

- Designate Collection. Locations
 - Privacy
 - Dedicated?
 - Appropriate / Secure
 - Procure Equipment.
 - EBT
 - Collection Kits
 - CCFs/ATFs
 - Security materials
 - Secure storage
 - Establish COC procedures
 - SOPs for Equipment Maintenance
 - EBT Accuracy Checks
 - Calibrations
 - Equipment Expiration
- Plan

Internal Testing: Develop an Implementation Plan

For example:

Phase 4: Operational Readiness / QA

- Develop SOPs
- Record/Data Management System
- QC / Audit Processes
- Communication Plan for Transition
- Mock Collections & “Stress Testing”

Phase 5: Going Live

- Launch Plan
- Monitoring / Adjusting
- Refresher / Error Correction Training
- Plan for Unexpected
 - Equipment failure
 - Staff absences, etc.

Conclusions

Key Takeaways

- No “one-size-fits-all”
- Make an informed decision...not the easy decision
- Decision is strategic
 - Cost, control, compliance, safety, employee relations

Resources

- [FTA D&A Office](#)
- [USDOT-ODAPC Website](#)
- Industry Associations
- Peer Networks
- Legal Counsel
- State DOT
- SMEs

Questions

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Thank you!

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