and address). Interested persons are not required to submit their PII in order to comment on this rule. However, any PII that is submitted is subject to being posted to the publicly accessible *https://www.regulations.gov* site without redaction.

Confidential business information clearly identified in the first paragraph of the comment as such will not be placed in the public docket file.

The Department may withhold from public viewing information provided in comments that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *https://www.regulations.gov.* To inspect the agency's public docket file in person, you must make an appointment with the agency. Please see the **FOR FURTHER INFORMATION CONTACT** paragraph above for agency contact information.

List of Subjects for 45 CFR Part 84

Administrative practice and procedure, Civil rights, Colleges and universities, Communications, Disabled, Discrimination, Equal access to justice, Federal financial assistance, Health, Health care access, Health programs and activities, Individuals with disabilities, Medical care, Nondiscrimination, Public health, State and local requirements.

For the reasons stated above, the Department of Health and Human Services amends 45 CFR subtitle A, subchapter A, part 84 as set forth below:

PART 84—NONDISCRIMINATION ON THE BASIS OF DISABILITY IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

■ 1. The authority citation for part 84 continues to read as follows:

Authority: 29 U.S.C. 794.

Subpart I—Web, Mobile, and Kiosk Accessibility

§ 84.84 [Amended]

■ 2. Section 84.84 is amended by:

■ a. In paragraph (b)(1), removing the text ''May 11, 2026'' and adding in its place the text ''May 11, 2027''; and

■ b. In paragraph (b)(2), removing the text ''May 10, 2027'' and adding in its place the text ''May 10, 2028''.

Robert F. Kennedy, Jr.,

Secretary, Department of Health and Human Services.

[FR Doc. 2026–09266 Filed 5–7–26; 4:15 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 40

[Docket DOT–OST–2021–0093]

RIN 2105–AF28

Procedures for Transportation Workplace Drug and Alcohol Testing Programs

AGENCY: Office of the Secretary, Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The U.S. Department of Transportation revises its drug and alcohol testing procedures to require a directly observed urine collection in situations where oral fluid tests are currently required but cannot be conducted because oral fluid testing is not yet available. The rule also updates terminology in these procedures consistent with Executive Order (E.O.) 14168, *Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government.*

DATES: This rule is effective on June 10, 2026.

FOR FURTHER INFORMATION CONTACT: Bohdan Baczara, Deputy Director, Office of Drug and Alcohol Policy and Compliance, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone number 202–366–3784; *ODAPCwebmail@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Authority for This Rulemaking

This rulemaking is promulgated pursuant to the Omnibus Transportation Employee Testing Act of 1991 (OTETA) (Pub. L. 102–143, Tit. V, 105 Stat. 952). DOT requires urine drug testing and authorizes oral fluid drug testing as an alternative methodology for the testing of safety-sensitive transportation industry employees subject to drug testing under 49 CFR part 40. DOT's part 40 regulation is adopted by reference in the drug and alcohol testing requirements of each of its operating administrations.[1]

II. Background

DOT published a final rule amending the procedures for its drug testing program (49 CFR part 40) on May 2, 2023 (88 FR 27596) (May 2023 Final Rule). The May 2023 Final Rule went into effect on June 1, 2023. The May 2023 Final Rule authorized oral fluid drug testing as an additional methodology for employers to use as a means of achieving the safety goals of the program. Because the Department of Health and Human Services (HHS) had determined that oral fluid drug testing, like urine drug testing, is both scientifically accurate and forensically defensible, DOT saw no reason to either eliminate or mandate either methodology. As such, in the vast majority of collection scenarios, oral fluid testing is available to employers as an alternate methodology, not as a replacement for urine drug testing. Importantly, for an employer to implement oral fluid testing, there must be at least two HHS-certified laboratories for oral fluid testing. There must be one HHS-certified laboratory to conduct the screening and confirmation drug testing on the primary specimen. There must be a different HHS-certified laboratory to conduct the split specimen drug testing on the secondary specimen if the employee requests split specimen testing for a Medical Review Officer (MRO) verified positive, adulterated, or substituted result. However, as of the date of the publication of this rule, there are no HHS-certified laboratories to conduct oral fluid testing.[2]

DOT regulations at 49 CFR 40.67 require that a collection be observed directly in certain circumstances, *e.g.,* if the original sample was invalid without an adequate medical explanation or the test is for a return to duty. In the May 2023 Final Rule, and in response to comments received to the notice of proposed rulemaking (NPRM) that preceded that rule, the Department added a provision at paragraph 40.67(g)(3) to require a directly observed collection to be an oral fluid test[3] (as opposed to a urine test) in situations where an observer, as required by the regulations, cannot be easily provided, and in certain other situations. These limited situations are the only ones in which part 40 expressly requires an oral fluid test rather than a urine test; in all other situations, an employer may choose whether to conduct a urine or an oral fluid test, including those

[1] *See* § 40.3 (defining ''DOT, The Department, DOT Agency'' to include each of the DOT operating administrations).

[2] For a list of HHS-certified laboratories, please see *https://www.samhsa.gov/substance-use/drug-free-workplace/drug-testing-resources/lab-list.*

[3] All oral fluid collections are directly observed because they are always conducted in front of the collector. See also the definition of ''oral fluid specimen'' in section 40.3: ''A specimen that is collected from an employee's oral cavity and is a combination of physiological fluids produced primarily by the salivary glands. *An oral fluid specimen is considered to be a direct observation collection for all purposes of this part.*'' [Emphasis added.]

conducted as directly observed collections.

Because there are no HHS-certified oral fluid laboratories, it is not yet possible to comply with the requirement in paragraph 40.67(g)(3) that requires the directly observed collection to be an oral fluid test in the situations specified in that section. In the interim, to preserve transportation safety and deter illicit drug use, it is necessary to ensure that directly observed collections can still be conducted when required.

To correct the inadvertent factual impossibility created by the fact there are currently no HHS-certified oral fluid laboratories, DOT published an NPRM on December 9, 2024 proposing to amend part 40, for an interim period, to require directly observed urine collections in the situations specified in paragraph 40.67(g)(3) if an oral fluid collection is not yet available (89 FR 97579). The proposed amendment would simply maintain the ''status quo'' wherein all directly observed collections are currently conducted as urine tests because oral fluid testing is not yet available.

DOT stated that the amendment to require directly observed urine tests in situations where an oral fluid collection is required, but is not yet available, is intended to be a temporary, short-term solution, because there are currently no HHS-certified oral fluid laboratories. DOT proposed that the provision would sunset one year after HHS publishes a **Federal Register** notice that it certified the second oral fluid drug testing laboratory. To ensure all are aware of the date when this provision will sunset, DOT stated it would publish a **Federal Register** document specifying the date the second oral fluid laboratory is certified by HHS and the corresponding sunset date. Importantly, DOT was clear that if, during the interim period, a collection site is able to conduct an oral fluid collection (HHS has certified at least two oral fluid drug testing laboratories, and both a qualified oral fluid collector and a conforming oral fluid collection device are available at the collection site), an oral fluid collection would be required to be conducted as specified in paragraph 40.67(g)(3).

On October 1, 2025, DOT published a supplemental notice of proposed rulemaking (SNPRM) (90 FR 47286) proposing to (1) replace the word 'gender' with the word 'sex' in sections 40.67, 40.69, and 40.145 to be consistent with E.O. 14168, *Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government;* (2) add a new paragraph (d) in section 40.65 to remind collectors to check if the employer has a standing order or contact the Designated Employer Representative (DER) to receive instructions on how to proceed in the scenarios in paragraphs 40.65(b)(5) and (c)(1); and (3) amend paragraph 40.67(g)(3) to require an oral fluid collection when a same sex observer cannot be found with a slight modification to paragraph (g)(3)(ii) to say that the DER is to direct the collector to perform an oral fluid test if they have the capability to do so, or send the employee to a collection site acceptable to the employer for the oral fluid test.

III. Comments to the SNPRM

For responses to comments on the December 2024 NPRM, please see discussion in the October 2025 SNPRM.

The majority of the commenters responding to the SNPRM supported the proposal to require a directly observed urine collection pursuant to paragraph 40.67(g)(3) until oral fluid testing is available. These commenters said that this approach keeps safety standards in place, is a practical solution that ensures safety and compliance, and does not take away from the original rule's purpose of keeping its deterrent effect in place. These commenters also stated that it seems reasonable and necessary while waiting for oral fluid to become viable and that ''. . . DOT should continue to rely on urine drug testing, as it has been deemed effective and does not require any additional certification, until the agency can effectively support oral fluid testing.''

One commentor encouraged DOT to provide guidance on how to determine when oral fluid testing is available at a site. In response to this comment, DOT notes that when a laboratory is HHS-certified to conduct oral fluid drug testing, DOT intends to include that laboratory on its web page, *https://www.transportation.gov/odapc/HHS_Certified_Oral_Fluid_Laboratories.* Similarly, DOT expects that certified laboratories will let their customers know when they are offering DOT oral fluid drug testing services. Individual collection sites will most likely need to make a business decision on whether they want to provide oral fluid drug testing specimen collection services to DOT-regulated employers. If they choose to provide that service, it would make good business sense to let their DOT-regulated clients know that they are providing oral fluid drug testing specimen collections.

Two commenters urged DOT to work with HHS to advance the availability of oral fluid testing. DOT and HHS continue to work together to support making oral fluid testing available.

Regarding the proposal to add a new paragraph (d) in section 40.65, DOT received general support and no opposition to the proposal. As such, the change is adopted as proposed.

Some commenters expressed concerns related to costs, accuracy of the detection of drugs, and the timeline for staffing facilities, while another commentor requested guidance on conducting direct observation urine collections.

Specifically, one commentor expressed a concern about the impact on small businesses. Given the time and money spent on updating policies, it would result in an administrative burden to revise them again in the interim. This comment is identical to a comment made to the NPRM. See the comment and our response in the SNPRM.

One commentor had concerns that there were no projected costs for the rule and asked about a projected timeline for getting facilities staffed to comply with this rule.

In response to these comments, DOT notes that the requirement of a directly observed urine collection existed before issuance of the May 2023 Final rule. As explained in the SNPRM, this rulemaking would require directly observed urine tests be conducted in those very rare cases where oral fluid was required by the May 2023 final rule. In addition, oral fluid testing has not yet been available as an alternative test method for DOT-regulated employers because there are not yet two HHS-certified laboratories to conduct oral fluid testing. As a result, DOT does not expect an increase in testing costs as a result of this rule. And as explained in the SNPRM, DOT does not expect widespread changes will be needed for company policies to be developed to facilitate the implementation of oral fluid testing. Similarly, regarding the concern about getting facilities staffed to comply with this rule, DOT reiterates that the requirement of a directly observed urine collection existed before the issuance of the May 2023 Final rule. In addition, this rulemaking would require directly observed urine tests to be conducted only in the small number of cases where oral fluid was required by the May 2023 Final Rule, and there is no training requirement to be an observer. As a result, the Department would expect collection sites to be ready to perform this important function without delay.

Three commenters expressed concern over the accuracy of the detection of drugs in oral fluid, given its shorter

window of detection. This comment is outside the scope of this rulemaking to ensure that directly observed testing can be conducted when necessary. DOT notes, however, that windows of detection were discussed in both the oral fluid NPRM (87 FR 11156, February 28, 2022) and final rule (88 FR 27596, May 2, 2023). Given the different windows of detection in urine and oral fluid drug testing, DOT left the decision to the employer on which type of specimen the employer wants to use except in the specific circumstances specified in paragraph 40.67(g)(3).

One commentor neither supported nor opposed the proposal to require a directly observed urine collection in paragraph 40.67(g)(3) but suggested that DOT provide guidance to employers and service agents on how to identify the employee's sex for a directly observed urine collection. The Office of Drug and Alcohol Policy and Compliance (ODAPC) will determine whether guidance is necessary and consider developing any guidance separate from this rulemaking.

One commentor, Airlines for America (A4A), thought DOT proposed to delay oral fluid testing for one year until after HHS published in the **Federal Register** a notification of a second HHS-certified oral fluid laboratory, after which time oral fluid testing requirements would be ''reinstated.'' To clarify, DOT did not propose to delay oral fluid testing as mentioned by A4A. DOT proposed, in the scenario where a directly observed urine collection is required and the same sex observer was not available, to provide a grace period of up to one year past the HHS **Federal Register** notice to continue to allow employers to conduct directly observed urine collections in the event the employer was not set up to conduct oral fluid testing as required in paragraph 40.67(g). If during the grace period, the employer is set up to conduct oral fluid testing, the employer must do so. As a reminder, with respect to urine collections that are observed directly, as long as there is a same-sex observer, there is no requirement to conduct an oral fluid collection.

A4A, given their understanding of the delayed testing for one year, suggested that DOT extend the compliance date to 18 months, six months past the 'one year delay,' after the HHS **Federal Register** notification, citing the need to understand the testing technology once oral fluid testing is available, develop and deploy nationwide training throughout the entire air carrier system, and work with suppliers to understand the availability of oral fluid collection supplies. After considering A4A's comment, DOT agrees with extending the 'grace period' following the HHS **Federal Register** notification that there are two HHS-certified oral fluid laboratories. To mitigate A4A's concerns over oral fluid logistics, the Department will permit an 18-month grace period and modify the rule text accordingly.

A4A's comment raises a question unique to FAA-regulated employers. Specifically, FAA's drug and alcohol testing regulation paragraph 120.123(a) states, ''[e]xcept for those testing processes applicable to persons testing pursuant to paragraph 120.1(d), no part of the testing process (including specimen collection, laboratory processing, and MRO actions) shall be conducted outside the territory of the United States.'' As a result, unless an FAA-regulated employer is subject to the ''Drug and Alcohol Testing of Certified Repair Stations Employees Located Outside the United States,'' effective January 17, 2025 (*see* 89 FR 103499), FAA-regulated employers are not permitted, among other things, to use a laboratory located outside the United States. ODAPC notes that if the first two oral fluid laboratories certified by HHS are based in Canada, FAA-regulated employers not subject to the aforementioned rule could not use the Canadian-based laboratories. ODAPC has determined that in those cases, the 18-month grace period should apply, but only when the two laboratories are based in the United States.

Based on the above and in consideration of the comment from A4A, the Department has modified the proposed rule text in paragraph 40.67(g) by re-writing (3) and (4) and adding a new (5) and (6). Paragraph (g)(3) now authorizes the conduct of a directly observed urine collection when oral fluid is not available, and (g)(4) requires an oral fluid collection (once oral fluid testing is available) when a same sex observer is not available. Paragraph (g)(5) describes what conditions need to be met for an employer to use oral fluid testing, including FAA's part 120.123(a) requirement that both laboratories be based in the United States. Paragraph (g)(6) authorizes the use of directly observed urine collections during an 18-month grace period that employers can use to get set up for oral fluid testing. It also requires that if during the 18-month grace period the employer is ready to conduct oral fluid drug testing, the employer must do so.

Regarding DOT's proposal to replace the word 'gender' with the word 'sex' in sections 40.67, 40.69, and 40.145 to be consistent with E.O. 14168, *Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government,* several commenters supported the proposal and three commenters opposed it. DOT appreciates and has considered the comments in developing this final rule. The Department is finalizing these changes as proposed in the SNPRM pursuant to E.O. 14168.

In the May 2023 Final Rule in § 40.67(g)(3), DOT included procedures on what to do when the required ''observer'' cannot be found but mistakenly used the term ''collector'' instead of ''observer'' in the regulatory text of that section. We proposed to correct the error in the NPRM and received no comments on this issue. We have adopted the change as proposed.

One commentor asked DOT and several other Federal departments to prioritize investigations and litigation to enforce violations of civil rights, among other things. This comment is outside the scope of this rulemaking.

V. Regulatory Notices and Analyses

Executive Orders 12866 and 14192

This rule is a non-significant rule for purposes of E.O. 12886 and was not reviewed by the Office of Management and Budget (OMB) pursuant to that E.O. The rule will not impose any significant costs or have any significant impacts. Given the uncertainty of testing costs and lack of data on other aspects of testing, DOT did not estimate cost savings or other benefits for the May 2023 Final Rule that permitted oral fluid testing as an alternative to urine testing in most scenarios. In the regulatory analyses for the May 2023 Final Rule, DOT stated that oral fluid testing is optional except in very rare cases. This rule amends the transportation industry drug testing program procedures regulation to comply with E.O. 14168 and requires a directly observed urine collection when an oral fluid test is required but cannot be conducted because there are not yet two HHS-certified oral fluid drug testing laboratories. This rule will not impose any significant costs or have any significant impacts on the DOT testing program because the requirement of a directly observed urine collection existed before issuance of the May 2023 Final Rule. This rule requires direct observation collections only in those very rare cases where oral fluid was required but cannot be conducted, and oral fluid testing has not yet been able to be conducted since the May 2023 Final Rule in the absence of at least two HHS-certified oral fluid laboratories.

This rule is not an E.O. 14192 regulatory action because this rule is not significant under E.O. 12866.

Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness Act (SBREFA)

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires Federal agencies to consider the effects of their regulatory actions on small businesses and other small entities and to minimize any significant economic impact. The term ''small entities'' comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with a population of less than 50,000. For this rulemaking, potentially affected small entities include drug testing companies (U.S. Small Business Administration (SBA) North American Industry Classification System (NAICS), Sector 54 (Professional, Scientific and Technical Services), Code 541380 (Testing Laboratories and Services), as well as DOT-regulated entities (SBA NAICS Sectors 48–49 (Transportation and Warehousing)).

The Department has concluded that the rule will not have a significant economic impact on a substantial number of small entities. This rule amends the transportation industry drug testing program procedures regulation to revise language consistent with E.O. 14168 and to require the conduct of directly observed urine collection when an oral fluid collection is required but not yet available. The requirement for directly observed urine collections existed before issuance of the May 2023 Final Rule, and regulated entities are therefore familiar with the procedure for directly observed urine collections. In addition, because oral fluid testing is not yet available, regulated entities are also likely to still have the collection devices and personnel to conduct urine testing. In addition, as explained in the SNPRM, this rulemaking would require directly observed urine collections to be conducted in those very rare cases where oral fluid was required by the May 2023 final rule. As noted earlier in this preamble, there is no training requirement to be an observer. Therefore, DOT does not expect an increase in testing or staff costs as a result of this rule. And as explained in the SNPRM, DOT does not expect widespread changes will be needed for company policies developed to facilitate the implementation of oral fluid testing. As a result, the rule will not impose significant costs. For these reasons, I certify that the rule does not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Unfunded Mandates

DOT has examined the impact of this rule under the Unfunded Mandates Reform Act (UMRA) of 1995 (Pub. L. 104–4). This rule does not trigger the requirement for a written statement under sec. 202(a) of the UMRA because this rulemaking does not impose a mandate that results in an expenditure of $206 million or more (in $2025) by either State, local, and Tribal governments in the aggregate or by the private sector in any one year.

Environmental Impact

The Department has analyzed the environmental impacts of this notice of proposed rulemaking pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*). The Department has determined that this rule is categorically excluded pursuant to DOT Order 5610.1D, ''DOT's Procedures for Considering Environmental Impacts'' (available at *https://www.transportation.gov/mission/dots-procedures-considering-environmental-impacts*). Categorical exclusions are categories of actions that the agency has determined normally do not significantly affect the quality of the human environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS). See DOT Order 5610.1D § 9. In analyzing the applicability of a categorical exclusion (CE), the agency must also consider whether extraordinary circumstances are present that would warrant the preparation of an EA or EIS. Id. § 9(b). This rulemaking, which amends the transportation industry drug testing program procedures regulation to comply with E.O. 14168 and requires a directly observed urine collection when required by part 40 because oral fluid testing is not yet available, is categorically excluded pursuant to 23 CFR 771.118(c)(4), ''[p]lanning and administrative activities that do not involve or lead directly to construction, such as: . . . promulgation of rules, regulations, directives . . .'' The Department does not anticipate any environmental impacts, and there are no extraordinary circumstances present in connection with this rulemaking.

Executive Order 13132, Federalism

DOT has analyzed the rule in accordance with E.O. 13132, *Federalism.* E.O. 13132 requires Federal agencies to examine actions carefully to determine if they contain policies that have federalism implications or that preempt State law. As defined in the order, ''policies that have federalism implications'' refer to regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Most of the regulated parties under the Department's drug testing program are private entities. Some regulated entities are public entities (*e.g.,* transit authorities and public works departments); however, DOT has determined that this rule, which amends the transportation industry drug testing program procedures regulation to comply with E.O. 14168 and require the conduct of directly observed urine testing where employers are required to conduct an oral fluid test but such testing is not available, does not contain policies that have federalism implications.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

E.O. 13175 (65 FR 67249, Nov. 6, 2000) requires Federal agencies to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' as defined in the E.O. 13175 include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.'' This rule does not have Tribal implications. The rule does not have substantial direct effects on Tribal governments, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes, as specified in E.O. 13175.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (PRA) requires that DOT consider the impact of paperwork and other information collection burdens imposed on the public. The information collection for DOT's drug and alcohol testing program is approved under OMB control number 2105–0529. This rule does not require any new collection of information under the PRA. Notwithstanding any other provision of law, no person shall be

subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a currently valid OMB control number.

Privacy Act

Anyone is able to search the electronic form of all comments received in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. NHTSA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule does not meet the criteria in 5 U.S.C. 804(2) to be considered a major rule.

List of Subjects in 49 CFR Part 40

Administrative practice and procedure, Alcohol abuse, Alcohol testing, Drug abuse, Drug testing, Laboratories, Reporting and recordkeeping requirements, Safety, Transportation.

For the reasons stated in the preamble, DOT amends 49 CFR part 40 as follows:

PART 40—PROCEDURES FOR TRANSPORTATION WORKPLACE DRUG AND ALCOHOL TESTING PROGRAMS

■ 1. The authority for 49 CFR part 40 continues to read as follows:

Authority: 49 U.S.C. 102, 301, 322, 5331, 20140, 31306, 45101 and 60102 *et seq.*

■ 2. In § 40.65, add paragraph (d) to read as follows:

§ 40.65 What does the collector check for when the employee presents a urine specimen?

* * * * *

(d) *Direct observations.* If a new urine collection using direct observation procedures or an oral fluid collection is required under § 40.65(b)(5) or (c)(1), you must check if the employer has a standing order on which specimen collection to perform. If there is no standing order, you must contact the DER on whether to continue with a directly observed urine collection or an oral fluid collection.

■ 3. In § 40.67

■ a. Revise paragraph g; and,

■ b. In paragraph (h), remove the word ''gender'' and add in its place ''sex.''

The revision reads as follows:

§ 40.67 When and how is a directly observed urine collection conducted?

* * * * *

(g) As the collector, you must ensure that the observer is the same sex (*i.e.,* male or female) as the employee.

(1) You must never permit a person of the opposite sex to act as the observer.

(2) The observer can be a different person from the collector and need not be a qualified collector.

(3) If oral fluid testing is not yet available (see paragraph (g)(5) of this section) and a same sex observer is not present at the collection site, the collector must contact the DER. The DER will either arrange for a same sex observer to be present at the time of the collection or send the employee to a collection site acceptable to the employer for a directly observed urine collection as required in this section.

(4) Once oral fluid testing is available (see paragraph (g)(5) of this section), and a same sex observer cannot be found for a directly observed urine collection:

(i) If the employer has a standing order to allow oral fluid testing in such situations, the collector will follow that order.

(ii) If there is no standing order from the employer, the collector must contact the DER, and the DER will direct the collector to 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.

(5) For an employer to use oral fluid testing, there must be at least two HHS-certified oral fluid drug testing laboratories. For employers subject to FAA regulations at 14 CFR 120.123(a), the two certified laboratories must be located in the United States. In addition, both a qualified oral fluid collector and a conforming oral fluid collection device are available at a collection site.

(6) Once HHS gives notification of a second HHS-certified oral fluid drug testing laboratory, there will be an 18-month grace period to allow employers to continue to conduct directly observed urine collections (see paragraph 3 of this section) until the employer is set up to conduct oral fluid testing (see paragraphs 4 and 5). If during the 18-month grace period the employer has decided to use oral fluid drug testing and the employer is ready to conduct oral fluid drug testing, the employer must do so. ODAPC will publish a **Federal Register** notice to let employers and collectors know when the 18-month period begins and ends.

* * * * *

§ 40.69 [Amended]

■ 4. In § 40.69:

■ a. In paragraph (c), remove the word ''gender'' and add in its place ''sex (*i.e.,* male or female),''; and

■ b. In paragraph (d), remove the term ''same-gender'' and add in its the term ''same-sex.''

§ 40.145 [Amended]

■ 5. In § 40.145 in paragraph (h)(1)(ii), remove the word ''gender'' and add in its place ''sex (*i.e.,* male or female).''

Issued in Washington, DC.

Sean P. Duffy,

Secretary of Transportation.

[FR Doc. 2026–09290 Filed 5–8–26; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 260504–0123]

RIN 0648–BO33

Magnuson-Stevens Act Provisions; Fisheries off West Coast States; Pacific Coast Groundfish Fishery; 2026 Pacific Whiting Harvest Specifications, 2026 Tribal Allocation, and 2026 Incidental Set-Aside

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: This final rule announces the 2026 U.S. total allowable catch (TAC) of Pacific whiting and implements the domestic 2026 harvest specifications for Pacific whiting fisheries off the coasts of Washington, Oregon, and California (collectively, the West Coast), including the 2026 Tribal allocation for the Pacific whiting fishery, the non-Tribal fishery Harvest Guideline and sector allocations, and a set-aside for research activities and incidental mortality in non-groundfish fisheries. These measures are intended to help prevent