Adjustments to the interest rate over the entire term of the loan is limited to a maximum increase of 5 percentage points from the initial interest rate.

(iii) For hybrid adjustable rate mortgage loans that have an initial interest rate fixed for 5 or more years, no single annual adjustment to the interest rate will result in a change in either direction of more than 2 percentage points from the interest rate in effect for the period immediately preceding that adjustment. Index rate changes in excess of 2 percentage points will not be carried over for inclusion in an adjustment in a subsequent year. Adjustments to the interest rate over the entire term of the loan is limited to a maximum increase of 6 percentage points from the initial interest rate.

(iv) At each interest rate adjustment date, changes in the interest rate index, whether increases or decreases, must be translated into the adjusted mortgage interest rate, rounded to the nearest one-eighth of one percent, up or down. For example, if the margin is 2 percent and the new index figure is 6.06 percent, the adjusted mortgage interest rate will be 8 percent. If the margin is 2 percent and the new index figure is 6.07 percent, the adjusted mortgage interest rate will be 8⅛ percent.

(5) *Interest rate for underwriting purposes.* In cases where a lender must evaluate a veteran's loan application pursuant to the underwriting standards at § 36.4340, for adjustable rate mortgage loans, lenders must use an interest rate not lower than 1 percentage point above the initial interest rate. For hybrid adjustable rate mortgage loans, lenders must use an interest rate not lower than the initial interest rate. When underwriting adjustable rate mortgage loans and hybrid adjustable rate mortgage loans, lenders may adjust the initial interest rate higher for other applicable credit and risk factors.

(6) *Pre-loan disclosure.* The lender must provide the veteran with disclosures in accordance with the timing, content, and format required by the regulations implementing the Truth in Lending Act (15 U.S.C. 1601 *et seq.*) at 12 CFR 1026.37(b)(6)(ii) and (j). The lender must make a copy of this disclosure, signed by the veteran acknowledging the receipt of the disclosure, a part of the lender's permanent record on the loan.

(7) *Post-closing disclosures.* The lender must provide the veteran with disclosures in accordance with the timing, content, and format required by the regulations implementing the Truth in Lending Act (15 U.S.C. 1601 *et seq.*) at 12 CFR 1026.20(c) and (d). The lender must make a copy of these disclosures a part of the lender's permanent record on the loan.

(e) *Temporary buydowns.* Temporary buydown agreements that comply with the requirements of this paragraph (e) may be established to temporarily reduce loan payments for up to the first 36 monthly payments of the loan.

(1) *General terms and conditions.* (A) Lenders are prohibited from using temporary buydown agreements as a cash-advance on principal, such as through subsidizing payments through an above market interest rate, discount points, or a combination of discount points and above market interest rate.

(B) Any temporary buydown funds provided by the veteran must not be included in the loan amount.

(2) *Documenting the agreement.* Lenders must provide veterans with a clear, written explanation of the temporary buydown agreement, including a description of the number of monthly payments for which the assistance will run, the total payment assistance amount, and the monthly payment schedule reflecting the amount of each monthly buydown payment and the veteran's monthly payment. The lender must make a copy of the buydown agreement, signed by the veteran, a part of the lender's permanent record on the loan.

(3) *Acceptable loan types.* Temporary buydown agreements are only permitted for fixed rate mortgage loans.

(4) *Interest rate for underwriting purposes.* Lenders must underwrite the loan at the interest rate stated on the mortgage note. Temporary buydown agreements may be treated as a compensating factor when underwriting a loan pursuant to § 36.4340, if there are indications that the veteran's income used to support the loan application will increase to cover the yearly increases in loan payments or that the buydown plan may be used to offset a short-term debt.

(5) *Escrow account.* Holders must secure temporary buydown funds in a separate escrow account. Such funds must be used only to pay the monthly buydown payments in accordance with the temporary buydown agreement. If the loan is terminated during the agreement period, for example due to a foreclosure or prepayment, the funds must be credited against any outstanding indebtedness. If the loan is assumed during the agreement period, the holder must continue to pay out the monthly buydown payments on behalf of the new borrower in accordance with the temporary buydown agreement.

(6) *Frequency and magnitude of buydown payment changes.* Any reduction in the amount of the monthly buydown payment must be reflected in the temporary buydown agreement and will occur only on an annual basis following the date of the first monthly mortgage payment due date. No reduction will result in an increase of the veteran's monthly payment that corresponds to an increase of more than 1 percentage point in the interest rate of the loan.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0515 and XXXX–XXXX)

(Authority: 38 U.S.C. 3703(c), 3707, 3707A, 3710(g), and 3720)

§ 36.4340 [Amended]

■ 6. Amend § 36.4340(b)(2)(iv) by adding ''or hybrid adjustable rate'' after ''adjustable rate''.

[FR Doc. 2024–13389 Filed 6–20–24; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 40

[Docket DOT–OST–2021–0093]

RIN 2105–AE94

Procedures for Transportation Workplace Drug and Alcohol Testing Programs

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

ACTION: Proposed rule.

SUMMARY: The U.S. Department of Transportation (DOT) is proposing to revise its drug and alcohol testing procedures final rule published on May 2, 2023, to provide temporary qualification requirements for mock oral fluid monitors, provide for consistent privacy requirements by identifying which individuals may be present during an oral fluid collection, and clarify how collectors are to specify that a sufficient volume of oral fluid was collected. In the ''Rules and Regulations'' section of this issue of the **Federal Register**, DOT is simultaneously publishing the revision of DOT's drug testing regulation as a direct final rule without a prior proposed rule. If DOT receives no adverse comment, it will not take further action on this proposed rule.

DATES: Comments must be received on or before July 22, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. DOT–OST–2021–0093, at *https://www.regulations.gov/.* Follow the online

instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. DOT may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. For additional submission methods and general guidance on making effective comments, please visit *https://www.transportation.gov/regulations/rulemaking-process.*

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. Why is DOT using this proposed rule?

DOT proposes to revise DOT's drug testing regulation, Procedures for Transportation Workplace Drug and Alcohol Testing Programs (49 CFR part 40) to amend unforeseen circumstances rendering it impossible to comply with requirements in the final rule, address privacy concerns, and clarify how collectors are to specify that sufficient volume of oral fluid was collected. DOT also published a direct final rule in this issue of the **Federal Register** because it views this revision as a noncontroversial action and anticipates no adverse comment. DOT explains its reasons for the direct final rule in the preamble to that rule. If DOT receives no adverse comment, it will not take further action on this proposed rule. If DOT receives adverse comment on any of the provisions of the proposed rule, DOT will withdraw those provision(s) of the direct final rule and those provision(s) of the rule will not take effect. DOT will address public comments in any subsequent final rule to finalize those provisions based on this proposed rule. DOT does not intend to institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section.

II. General Information

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 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. We have determined instances in which the text of various aspects of the procedures as amended by the final rule need to be further amended due to unforeseen circumstances that have rendered it impossible to comply with requirements for mock oral fluid collection observers, consistency with regard to privacy during testing, and a need to clarify the means by which collectors specify that a sufficient volume of oral fluid was collected.

Section 40.35 What training requirements must a collector meet for oral fluid collection?

The May 2023 final rule established qualification requirements for oral fluid collector qualifications in § 40.35 that mirrored as closely as possible existing urine collector qualifications in § 40.33. All the qualification training requirements (*i.e.,* basic information, qualification training, initial proficiency demonstration, refresher training, error correction training, and documentation) are identical. Regarding the mock collections specified in § 40.35(c), we required oral fluid collectors to demonstrate proficiency in collections by completing five consecutive error-free mock collections for each device they will use. These mock collections must be monitored and evaluated by a 'qualified collector' who has demonstrated the necessary knowledge, skills, and abilities by—(i) regularly conducting DOT drug test collections for a period of at least one year; (ii) conducting collector training under this part for at least one year; or (iii) successfully completing a ''train the trainer'' course.

Once the Department of Human and Health Services (HHS) certifies its first oral fluid laboratory, oral fluid testing devices will be available. At this time, however, individuals wanting to be oral fluid collectors are not able to be qualified because there are no currently qualified oral fluid collectors per § 40.35(c)(2) with the additional qualifications at § 40.35(c)(2)(i), (ii), or (iii) to monitor and evaluate the trainee's mock collections. We did not intend to create a factual impossibility. We meant for the oral fluid monitors for the mock proficiency demonstrations to be proficient as oral fluid collectors.

The regulatory flexibility we propose to provide in this action will allow individuals sufficiently knowledgeable in part 40's oral fluid collection requirements and familiar with an oral fluid testing device of their choosing to observe the mock collections and attest in writing that the mock collections are 'error free'. As a reminder, individuals meeting the criteria in § 40.35(c)(2)(ii) or (iii) should be prepared to provide any course material and/or certificates of successful completion to an employer or DOT representative upon request.

To facilitate the training of oral fluid collectors, we propose to amend the regulation to authorize individuals to monitor mock oral fluid collections without meeting the requirement of being a qualified oral fluid collector specified in § 40.35. To ensure the proficiency of the collection monitor, however, this regulatory flexibility would apply only to those individuals meeting the knowledge, skills, and abilities in § 40.35(c)(2)(ii) or (iii).[1] With regard to the knowledge, skills, and abilities in § 40.35(c)(2)(ii), we propose to waive the requirement that individuals conducting oral fluid collector training have at least one year of experience conducting collector training, but we expect those individuals to have a thorough understanding of part 40 and to be well versed in the course content they are teaching. The course content must meet the requirements in § 40.35(b), and individuals conducting training should maintain good records (for example, the course content for the instructor and student, the duration of the training, the dates the course was taught, who attended the course and any certificate of successful completion you may have provided students, etc.) to demonstrate that they conducted the training. This is no different than what would be expected of those conducting urine collection training today. Individuals conducting this training would be eligible to observe oral fluid mock collections during the period of regulatory relief.

This proposed regulatory flexibility would sunset one year after HHS publishes a **Federal Register** notice that it certified the first oral fluid drug testing laboratory. So that all are aware of the effective date of the regulatory flexibility, we would publish a **Federal Register** document specifying the date the first oral fluid laboratory is certified

[1] We note that the knowledge, skills, and abilities in § 40.35(c)(i) require regularly conducting DOT drug test collections (in this case, for oral fluids) for at least one year. This is not possible because until HHS certifies an oral fluid laboratory(ies), oral fluid is not a permissible means of collection. We have determined that, in contrast to paragraphs (c)(ii) and (c)(iii), there is no way for an individual to otherwise possess the knowledge, skills, and abilities in paragraph (c)(i) such that the individual could competently observe mock collections. As a result, those who want to act as monitors specified in subparagraph (c)(2)(i) must still become qualified collectors and meet the one-year requirement of regularly conducting DOT oral fluid drug test collections before they can act as monitors.

by HHS and the effective date that individuals observing mock collections (*i.e.,* monitors) would need to comply with the qualified collector requirements in § 40.35(c)(2) established in the May 2023 final rule.

We want to emphasize that while individuals may become qualified as oral fluid collectors after the first laboratory is HHS certified for oral fluid drug testing, oral fluid specimens cannot be collected and DOT oral fluid testing cannot be implemented until HHS certifies at least two laboratories (one to serve as a primary laboratory, and a second to serve as a split specimen laboratory). As of the publication of this action, HHS has not yet certified any laboratories for oral fluid drug testing. Upon certification, oral fluid laboratories currently will be added to the list of HHS-certified laboratories at *https://www.samhsa.gov/workplace/drug-testing-resources/certified-lab-list.*

Section 40.73 How is an oral fluid specimen collected? (persons allowed in testing room)

DOT intended in the May 2023 final rule that the procedures for oral fluid testing parallel the alcohol testing procedure found in § 40.223(b), which requires the breath alcohol technician (BAT) or screening test technician (STT) to prohibit anyone other than the BAT or STT, the employee, or a DOT representative to witness the testing process. Such a provision also affords privacy to the employee being tested. In this action, DOT is correcting the inadvertent omission of this provision from its oral fluid testing requirements.

Thus, we propose to add a new paragraph to the regulation instructing the oral fluid collector not to allow anyone other than the collector, the employee being tested, or a DOT agency representative to witness the testing process. This instruction would afford the employee privacy during testing and parallels the alcohol testing procedure found in § 40.223(b).

Section 40.73 How is an oral fluid specimen collected? (specification of the collection of a sufficient amount of oral fluid)

The current § 40.73(c)(2) requires the oral fluid collector to ensure that a sufficient specimen volume is collected. To be more specific and provide our interpretation of how collectors ensure that a sufficient volume is collected, we propose to require the collector to also check the 'volume indicator(s) observed' box in Step 2 of the CCF. To do so, in this action we propose to add language to § 40.73(c)(2) to instruct the collector to document in Step 2 of the CCF that they observed the volume indicator(s) during the collection.

III. Regulatory Notices and Analyses

This rule is a non-significant rule for purposes of Executive Order (E.O.) 12886, as supplemented by E.O. 13563 and amended by E.O. 14094 and will not impose any significant costs or have impacts beyond those analyzed in the May 2, 2023, final rule. DOT has determined that the regulatory analyses conducted for the May 2, 2023, final rule remain applicable to this action. DOT makes these statements on the basis that, as a series of technical amendments that correct or clarify existing regulatory provisions, specifically to establish temporary requirements to qualify an initial group of mock oral fluid collection observers, establish privacy requirements during an oral fluid collection, and clarify how collectors are to specify that a sufficient volume of oral fluid was collected, this action will not impose any significant costs or have impacts beyond those analyzed in the May 2, 2023, final rule.

As required by 5 U.S.C. 553(b)(4), a summary of this rule can be found at the entry for RIN 2105–AE94 in the Department's significant rulemaking report, available at *https://www.transportation.gov/regulations/report-on-significant-rulemakings.*

List of Subjects in 49 CFR Part 40

Administrative practice and procedures, 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 citation for part 40 continues to read as follows:

Authority: 49 U.S.C. 102, 301, 322, 5331, 20140, 31306, and 54101 *et seq.*

■ 2. In § 40.35, revise paragraph (c)(2) and add paragraph (c)(3) to read as follows:

§ 40.35 What training requirements must a collector meet for oral fluid collection?

* * * * *

(c) * * *

(2) Another person must monitor and evaluate your performance, in person or by a means that provides real-time observation and interaction between you and the qualified collector, who must attest in writing that the mock collections are ''error-free.'' Except as provided in paragraph (c)(3) of this section, this person must be a qualified collector who has demonstrated necessary knowledge, skills, and abilities by—

(i) Regularly conducting DOT drug test collections for a period of at least one year;

(ii) Conducting collector training under this part for at least one year; or

(iii) Successfully completing a ''train the trainer'' course.

(3) As the person monitoring and evaluating the collector's five mock collections pursuant to paragraphs (c)(1) and (2) of this section, you need not be a qualified oral fluid collector to do so if you meet the necessary knowledge, skills, and abilities in paragraph (c)(2)(ii) or (iii) until otherwise specified (one year after HHS publishes a **Federal Register** notification of the first certified oral fluid drug testing laboratory (HHS notification)). Furthermore, the one-year requirement in (c)(2)(ii) is not applicable until otherwise specified (one year after the HHS notification).

* * * * *

■ 3. In § 40.73, add paragraph (a)(1) and a reserved paragraph (a)(2) and revise paragraph (c)(2) to read as follows:

§ 40.73 How is an oral fluid specimen collected?

* * * * *

(a) * * *

(1) As the oral fluid collector, you must not allow any person other than you, the employee, or a DOT agency representative to actually witness the testing process.

(2) [Reserved]

* * * * *

(c) * * *

(2) The collector must ensure the collection is performed correctly (*i.e.,* using the oral fluid device in the manner described by its manufacturer), that the collection device is working properly, and that a sufficient specimen volume is collected. Check the ''Volume indictor(s) Observed'' box in Step 2 of the Federal CCF to document that you observed the volume indicator(s) during the collection.

* * * * *

Signed pursuant to authority delegated at 49 CFR 1.27(c) in Washington, DC.

Subash Iyer,

Acting General Counsel.

[FR Doc. 2024–12748 Filed 6–20–24; 8:45 am]

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