**I. What Actions Are EPA Taking Today?**

The EPA is proposing to approve a negative declaration submitted by the State of Ohio which indicates there is no need for regulations to control emissions from small Minicipal Waste Combustors in the State. The State performed an analysis which shows that there are no small MWCs in Ohio.

**II. Where Can I Find More Information About This Proposal and Corresponding Direct Final Rule?**

For additional information see the direct final rule published in the rules section of this **Federal Register**.

**Authority:** 42 U.S.C. 4201 *et seq.*

Dated: September 18, 2002.

**Steve Rothblatt,**

*Acting Regional Administrator, Region 5.*

[FR Doc. 02–24768 Filed 9–27–02; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### 49 CFR Part 40

**[Docket OST–2002–13435]**

**RIN 2015–AD14**

## Drug and Alcohol Management Information System Reporting

**AGENCY:** Office of the Secretary, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Department of Transportation's Office of Drug and Alcohol Policy and Compliance (ODAPC) proposes to revise the Management Information System (MIS) forms currently used within six U.S. Department of Transportation (DOT) operating administrations (OA) for submission of annual drug and alcohol program data. These OAs are: Federal Motor Carrier Safety Administration (FMCSA); Federal Aviation Administration (FAA); Federal Transit Administration (FTA); Federal Railroad Administration (FRA); Research and Special Programs Administration (RSPA); and the United States Coast Guard (USCG). The Department proposes to streamline the annual reporting of drug and alcohol program data to OAs through use of a one-page MIS data collection form. The Department desires to standardize across the OAs the information collected and to reduce the amount of data reported by transportation employers. If an OA intends to require supplemental data, the OA will address those issues separately.

**DATES:** The Docket Office must receive comments by November 14, 2002. We will consider late-filed documents to the extent practicable.

**ADDRESSES:** To ensure that you do not duplicate your docket submissions, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (*SVC–124*), U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. [It is important to note that because of current security procedures affecting the U.S. Mail, other means (*e.g.,* FedEx, UPS) may be faster];

(2) By delivery to room PL–401 on the Plaza Level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329;

(3) By fax to the Docket Management Facility at 202–493–2251; or,

(4) By electronic means through the Web site for the Docket Management System at: *http://dms.dot.gov.*

The Docket Management Facility maintains the public docket for this rulemaking. Comments to the docket will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The public may also review docketed comments electronically at: *http://dms.dot.gov.*

**FOR FURTHER INFORMATION CONTACT:** Jim L. Swart, Drug and Alcohol Policy Advisor at 202–366–3784 (voice) 202–366–3897 (fax) or at: *jim.swart@ost.dot.gov* (e-mail).

**SUPPLEMENTARY INFORMATION:**

### Background and Purpose

Six OAs collect drug and alcohol program data from their regulated employers on an annual basis. Employers compile this data on MIS forms and each form is OA specific. In fact, more than twelve MIS data collection forms currently exist within the OAs. The Department believes that data collection and entry will be greatly simplified for transportation employers and the Department if a single form is utilized throughout the transportation industries and the OAs.

All drug and alcohol testing conducted under DOT authority uses a standard form for drug testing—Federal Drug Testing Custody and Control Form—and a standard form for alcohol testing—DOT Alcohol Testing Form. In essence, use of standard testing forms should limit MIS reporting to a finite number of data elements. Therefore, a core set of data elements will make up the new MIS form—a ONE-DOT MIS form—which all transportation employers will complete, as appropriate, for their company and the OA regulating them.

This MIS form will simplify and streamline data recording for transportation employers and will require employers to enter less data. In addition, because the proposed form contains fewer data elements and is on a one-page format, it can be more easily entered and processed via electronically based systems. As an added benefit, there will be a single set of MIS instructions for all transportation employers, regardless of OA.

However, not every OA expects information for all potential data elements (*e.g.,* RSPA does not conduct random alcohol testing), and some data elements may be collected through some means other than MIS (*e.g.,* USCG receives alcohol data immediately following each post-accident testing event). The form's instructions will highlight some of those peculiar testing differences, and companies not required to conduct or report certain types of tests will simply leave those sections blank. For instance, because USCG wants no alcohol testing data on the MIS form, USCG-regulated employers will leave blank Section IV of the form. In addition, when no testing was done or no results were received for particular data elements, employers will leave those items blank rather than inserting zeros (as is now required).

On June 6, 2002, President Bush announced his proposal to create a Cabinet-level homeland security department. Inside this new department, the President proposes to put several agencies, including the USCG. The President urged Congress to pass legislation to create the new Department of Homeland Security. This process may take some time. As a result, if you have USCG ties and MIS interests, please submit your comments to this NPRM. We will consider congressional and presidential action regarding the USCG and homeland security in the final rule.

### Discussion of Proposed Rule

The ODAPC and the OAs propose to revise the MIS reporting requirements to standardize the collection of data for the OAs. The proposed rulemaking would impose a few new requirements for data collection; specifically, data related to information associated with the revised

Federal Drug Testing Custody and Control Form developed by the Department of Health and Human Services (65 FR 39155, June 23, 2000). However, the overall amount of required data will be less than that required currently. The Department also intends to place the MIS form and instructions for completing it into Part 40. We propose to have the forms and instructions removed from all OA regulations.

As stated earlier, many data elements will no longer be part of the MIS form. OAs have decided that some information items required on previous MIS forms were available in other formats, had become superfluous, or were items obtainable during inspections, reviews and audits. The following represents a listing for each OA of most of the data elements we are proposing to eliminate:

FMCSA

1. Number of persons denied a position following a positive drug test.
2. Number of employees returned to duty following a refusal or positive drug test.
3. Supervisor initial drug training data.
4. Number of employees denied a position following an alcohol test of 0.04 or greater.
5. Number of employees returned to duty after engaging in alcohol misuse.
6. Number of employees having both a positive drug test and an alcohol test of 0.04 or greater when both tests were administered at the same time.
7. Actions taken for alcohol violations other than alcohol testing.
8. Supervisor initial alcohol training data.

FAA

1. Number of employees returned to duty after having failed or refused a drug test.
2. Actions taken for drug test refusals.
3. Number of persons denied employment for a positive drug test.
4. Actions taken for positive drug results.
5. Employee initial drug training data.
6. Supervisor initial drug training data.
7. Supervisor recurrent drug training data.
8. Number of persons denied a position for an alcohol test 0.04 or greater.
9. Number of employees returned to duty after engaging in alcohol misuse.
10. Actions taken for alcohol regulation violations.
11. Number of employees having both a positive drug test and an alcohol test of 0.04 or greater when both tests were administered at the same time.
12. Number of other violations of the alcohol regulation.
13. Actions taken for refusals to take an alcohol test.
14. Supervisor alcohol training data.

FTA

1. Number of persons denied a position for alcohol results 0.04 or greater.
2. Number of accidents (noted as fatal and non-fatal) with alcohol results 0.04 or greater.
3. Number of fatalities from accidents resulting in alcohol results 0.04 or greater.
4. Number of employees returned to duty following an alcohol violation.
5. Number of employees having both a positive drug test and an alcohol test of 0.04 or greater when both tests were administered at the same time.
6. Actions taken for other alcohol rule violations.
7. Supervisor alcohol training data.
8. Number of persons denied a position for positive drug test results.
9. Number of accidents (noted as fatal and non-fatal) with positive drug test results.
10. Number of fatalities from accidents resulting in positive drug tests results.
11. Number of persons returned to duty following a positive drug test or refusal result.
12. Employee drug education data.
13. Supervisor drug training data.
14. Funding source information.

FRA

1. Number of applicants/transfers denied employment/transfer for a positive drug test.
2. Number of employees returned to duty after having failed or refused a drug test.
3. Detailed breakouts of for-cause drug and alcohol testing.
4. Non-qualifying accident drug testing data.
5. Supervisor drug training data.
6. Number of applicants/transfers denied employment/transfer for alcohol results 0.04 or greater.
7. Number of employees returned to duty after engaging in alcohol misuse.
8. Supervisor alcohol training data.

USCG

1. Number of persons denied a position for a positive drug test.
2. Number of employees returned to duty following a drug violation.
3. Employee drug and alcohol training data.
4. Supervisor drug and alcohol training data.
5. Post-accident alcohol testing data.
6. Reasonable cause alcohol testing data.

RSPA

1. Number of employees returned to duty after engaging in alcohol misuse.
2. Actions taken for alcohol test results equal to or greater than 0.04.
3. Number of other alcohol rule violations and actions taken for them.
4. Actions taken for alcohol test refusals.
5. Supervisor initial alcohol training data.
6. Number of persons denied a position following a positive drug test.
7. Number of employees returned to duty following a positive or refusal drug test.
8. Actions taken for positive drug tests.
9. Actions taken for drug test refusals.
10. Supervisor initial drug training data.

The Department proposes also to count collections differently than under the old MIS regimen. Under the old MIS counting method a drug collection was considered to be a testing event that resulted in a negative, positive, or cancellation. Refusals to test—no matter the reason for the refusal—were not considered appropriate for inclusion. Despite the instruction to include no refusals, we know that many companies included those that were the result of adulterated or substituted results that were verified by the MRO as refusals. Still other companies counted these types of refusals as well as refusal events for which no urine was sent to laboratories for testing (e.g., employee failed to show-up at the collection site; employee left the collection site before urine had been collected).

Similarly, in determining if companies were conducting random testing at the appropriate established annual rates, some OAs did not count refusals; some counted all refusals; and still others counted only refusals reported by the MRO (as a result of adulteration or substitution) toward satisfaction of the random rate requirement. Furthermore, in calculating the annual random rates for testing, all OA rules say the following will be factored for the positive rate: number of random positives plus number of random refusals divided by number of random tests plus number of random refusals. This means that some cancelled random tests and random refusals were already in the random test numbers before the number of random refusals was added to the total.

To clear up these discrepancies, the Department proposes to count the

number of specimens collected as the number of testing events resulting in negative, positive, and refusal to test results no matter the reason for the refusal. We will add all refusals because the OAs factor refusals into the annual random testing rates. We will not add cancelled test results to the mix because § 40.207(b) says, ''* * * a cancelled test does not count toward compliance with DOT requirements (e.g., being applied toward the number of tests needed to meet the employer's minimum random testing rate).'' Counting in this manner will enable many of the columns and rows of the MIS form to add-up.

In short, we would have employers continue to exclude cancelled tests and blind tests as testing events. We propose to instruct employers to include all refusals as testing events. After all, no matter how the refusal occurred, a refusal is a valid and final result. A quiet benefit would be that MIS blocks could add up: The number of testing events will equal the number of negatives plus positives for one or more drugs plus refusals (with types of refusals broken out). Invalid test results are always cancelled and would not be included. However, those invalid results requiring a subsequent directly observed collection would simply be considered another collection that will have a final result.

In addition, annual random testing rates would be determined using more accurate counts because no cancelled test would be mistakenly included and no refusals would be factored twice in the total. OA inspectors and auditors would count all refusals (e.g., be they from an adulterated specimen result or from shy bladder evaluation with no medical condition) as satisfying a company's meeting their random testing rate. After all, the testing event had a valid result (e.g., it was not from a blind specimen; it was not a cancelled result). In short, the employee was selected for testing and the test result was negative, positive, or refusal to test.

For cancellations requiring the employee to go in for a second test, the test that is cancelled will not count. However, the result of the subsequent recollection will count, provided that it too is not cancelled. These include: Invalid test cancellations requiring the employee to go in for an observed collection; split specimen cancellations requiring the employee to go in for an observed collection; and cancellations requiring the employee to go in for another collection because a negative result is needed (for pre-employment; return to duty; and follow-up).

In addition, if more than one collection is sent to the lab during one testing event, both will count as one collection: These include: Negative dilute specimens when the employee goes in for a second collection per employee policy [the result of the second test is the result of record]; and observed collections requiring both the original collection and the observed collection be sent to the laboratory (e.g., specimen out of temperature range) (the result requiring the most stringent consequence will ultimately be the result of record).

The Department is also seeking to clear up the discrepancies between OAs regarding how their regulated companies are to determine the total number of employees against which the annual random rate applies. Some OAs tell employers to count the number of covered employees working at the start of the calendar year; some OAs direct employers to count the total number of covered employees that worked for the company within the year; and still others advise employers to count the average number of employees on a monthly or quarterly basis.

We propose to have employers add the total number of covered employees eligible for random testing in each random testing selection period for the year and dividing that total by the number of random testing periods. For instance, a company conducting random testing quarterly would need to add the total of covered employees they had in the random pool when each selection was made; then divide this number by 4 to obtain the yearly average number of covered employees. (As an example, if Company A had 1500 employees in the first quarter random pool, 2250 in the second quarter, 2750 in the third quarter; and 1500 in the fourth quarter; 1500 + 2250 + 2750 + 1500 = 8000; 8000/4 = 2000; the total number of covered employees for the year would be reported as, ''2000''.)

Companies (and their contractors, as applicable) will continue to submit the MIS reports in accordance with requirements (*e.g.*, dates for submission; selection of companies required to submit, etc.) that will continue to be in each OA rule. Likewise, OA rules will continue to address the manner (*e.g.*, mail; CD; electronic transmission) and locations they wish the completed forms sent.

It is important to note that MIS alcohol testing data would reflect all these proposals made for drug testing data. Refusals will count as testing events; cancelled tests will not; and random pool averages will determine the number of employees against which the annual testing rate applies.

The Department is currently working toward an electronic MIS form capable of Internet submission. Each form would be OA specific and would not have extraneous items showing (for example, the USCG-specific form would not include an alcohol testing section; the RSPA-specific form would not show an alcohol random testing category). Additionally, the system would bring to the attention of the person completing the form any items that did not accurately compute mathematically. Finally, employee categories would only be those for the specific employer. We seek comment about this type of system, suggestions for how it might work, and concerns for problems in implementing such a system.

**Regulatory Analyses and Notices**

This rule is not a significant rule for purposes of Executive Order 12866 or the DOT's regulatory policies and procedures. Nor is the rule an economically significant regulation. It is a reworking of existing requirements; it imposes no new mandates; and it will not create any new costs. In fact, the proposed rule will serve to reduce requirements and costs.

This NPRM does not have sufficient Federalism impact to warrant a Federalism assessment under Executive Order 13132. With respect to the Regulatory Flexibility Act, the certifies that, if adopted, this rule would not have a significant economic impact on a substantial number of small entities, so a Regulatory Flexibility analysis has not been prepared. Even though this rule might affect a large number of small entities, we do not expect the new MIS requirements to have a significant economic impact on anyone.

This rulemaking involves a ''610 Review'' under the Small Business Regulatory Enforcement Fairness Act. We believe the changes recommended by the rulemaking should be particularly helpful to small, regulated employers.

The proposed rule also contains information collection requirements. As required by the Paperwork Reduction Act of 1995, (the PRA, 44 U.S.C. 3507(d)), the Department will submit these requirements to the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB) for review, as required under the Paperwork Reduction Act.

As noted elsewhere in this preamble, the proposal would amend Part 40 to include a new format and a new set of instructions for the MIS form. This single form would be used across six DOT OAs rather than the multiple forms with multiple instructions currently in

use. The form's data elements would be reduced significantly as well.

Completing an MIS report requires a company to collect and compile drug and alcohol testing data generated throughout the year by that company's drug and alcohol testing program and placing some of that data onto the form. Certainly, the more complex a company's testing program set-up, the more complex assembling needed data becomes. Companies having decentralized program locations may have to draw information from a variety of localized programs. Companies with a number of subsidiaries may have large amounts of data to compile and authenticate. In addition, companies failing to regularly update and bring together their testing data may find themselves in positions of having to do so in a hurried manner at the end of the year. Also, companies lacking computerization of data capabilities may have to use the ''stubby pencil-method'' of data entry.

Because MIS reporting has been part of the DOT testing equation for more than half a decade, many companies have become experienced in and have applied sound business sense to putting the report together. Many companies update their drug and alcohol program data on a regular, throughout-the-year basis rather than doing so at the last minute. Most companies require their localized programs, subsidiaries, and contractors to regularly provide program updates rather than authenticate data at the end of the year. Many companies utilize computer databases rather than ''pen-and-ink'' data entries. Still other companies prefer to have data entry provided as part of their TPA's contracted services.

Whatever the case, the Department does not require any particular management style of program data: We simply require that the data be accurate; that it be in a system that has controlled access; that it be readily auditable; and that specific data be included in MIS reports when they are required or requested by the OAs. The Department would prefer that companies update their drug and alcohol program data throughout the year; require their divisions, subsidiaries, and contractors to report their data regularly to them; and computerize their data-entry methodologies. However, we do not mandate these actions even though we think they are all preferable to end-of-the-year company scrambles to complete MIS forms.

The Department believes that requiring less data entry on MIS forms and having only one form throughout the transportation industries will make data gathering and compilation simpler. For instance, no longer will employers need to provide employee and supervisor training data, violation consequence data, and non-Part 40 violation data (among other entries). Furthermore, the single-format MIS form replaces the E–Z Drug form, the E–Z Alcohol form, the Long-Drug form, and the Long-Alcohol form, the format of which were different for each OA. Therefore, employers subject to more than one OA rule will not have to navigate their ways through multiple MIS formats.

These represent important steps in reducing the amount of time needed to compile data for MIS purposes—no matter of how a company chooses to manage their drug and alcohol testing data. The Department believes the simplicity of the form will result in another significant time saving action for employers.

OA estimates show that 5,948 companies submitted to DOT 13,542 MIS forms during one recent data-reporting year; and the time it took to fill out the forms was 18,411 hours. For that same data year, companies submitted an estimated 7,921 E–Z forms and 5,621 Long forms. (Based upon OA estimates, the old E–Z forms took 30 minutes (FMCSA, FTA, FRA, and RSPA) to 1 hour (FAA) to complete; the long forms, 2.5 hours each to complete. USCG did not authorize use of an E–Z form.)

Estimates for the new MIS form indicate that, if the new form had been operational, these 5,948 companies would have sent 6,300 MIS reports to DOT and the time to complete them would have been 9,450 hours. Therefore, we foresee nearly 9,000 hours saved per year in filling out the new MIS form as opposed to completing the old multiple MIS forms. (Based upon industry and OA estimates, we have concluded that the new MIS report will take between 45 minutes and 1.5 hours to complete. We have chosen, for this paragraph, to use the highest industry and OA estimate—1.5 hours. We estimate that slightly over 300 companies report to more than one OA.)

Individuals and organizations may submit comments on the information collection elements of the NPRM by November 14, 2002 and should submit them to the DOT docket specified at the beginning of the NPRM. According to OMB's regulations implementing the PRA (5 CFR 1320.8(b)(2)(vi)), an agency may not conduct or sponsor, and a person need not respond to a collection of information unless it displays a currently valid OMB control number. The OMB control number for this information will be published in the **Federal Register** after OMB approves it.

A number of other Executive Orders can affect rulemakings. These include Executive Orders 13084 (Consultation and Coordination with Indian Tribal Governments), 12988 (Civil Justice Reform), 12875 (Enhancing the Intergovernmental Partnership), 12630 (Governmental Actions and Interference with Constitutionally Protected Property Rights), 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations), 13045 (Protection of Children from Environmental Health Risks and Safety Risks), and 12880 (Implementation of North American Free Trade Agreement). We have considered these Executive Orders in the context of this NPRM, and we believe that the proposed rule does not directly affect matters that the Executive Orders cover.

We have prepared this rulemaking in accordance with the Presidential Directive on Plain Language.

**List of Subjects in 49 CFR Part 40**

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

Issued this 20th day of September, 2002, at Washington, DC.

**Norman Y. Mineta,**

*Secretary of Transportation.*

For reasons set forth in the preamble, the Department of Transportation proposes to amend part 40 of Title 49, Code of Federal Regulations, as follows:

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

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

2. Add a new § 40.26 to read as follows:

**§ 40.26 What form must an employer use to report Management Information System (MIS) data to a DOT agency?**

As an employer, when you are required to report MIS data to a DOT agency, you must use the form and instructions at Appendix H to Part 40.

3. Add a new Appendix H to read as follows:

**Appendix H to Part 40—DOT Drug and Alcohol Testing Management Information System (MIS) Data Collection Form**

The following form and instructions must be used when an employer is required to report MIS data to a DOT agency.

BILLING CODE 4910–62–P

19

**U.S. DEPARTMENT OF TRANSPORTATION DRUG AND ALCOHOL TESTING MIS DATA COLLECTION FORM**

Calendar Year Covered by this Report: _____

**I. Employer:**

Company Name: _____

Doing Business As (DBA) Name (if applicable): _____

Address: _____ E-mail: _____

Certifying Official: _____ Signature: _____

Telephone: (___) _____ Date: _____ Prepared by (if different): _____

**Check the Operating Administration for which you are reporting MIS data:**

☐ FAA – Aviation ☐ FMSCA – Motor Carrier ☐ USCG – Maritime ☐ FTA – Transit

☐ RSPA – Pipeline ☐ Gas Gathering ☐ Gas Transmission ☐ Gas Distribution ☐ Transport Hazardous Liquids ☐ Transport Carbon Dioxide

☐ FRA – Railroad Total Number of observed/documented Part 219 "Rule G" Observations for covered employees: _____

FAA Certificate # (if applicable): _____ FAA Plan / Registration # (if applicable): _____

FMCSA DOT #: _____ FMCSA Owner-operator: (circle one) YES or NO

USCG Vessel ID # (USCG- or State-Issued): _____ (If more than one vessel, list separately.)

**II. Covered Employees: (A) Enter Total Number of Employees for All Employee Categories:** _____

**(B) Enter Total Number of Employee Categories:** _____

(C)

| Employee Category | Total Number of Employees in this Category |
|---|---|
| | |

**If you have multiple employee categories, complete Sections I and II (A) & (B). Make one copy for each employee category and complete Sections II (C), III, and IV for each separate employee category.**

**III. Drug Testing Data:**

| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | Refusal Results | | | | |
| Type of Test | Total Number Of Test Results [Should equal the sum of Columns 2, 3, 9, 10, 11, and 12] | Verified Negative Results | Verified Positive Results ~ For One Or More Drugs | Positive For Marijuana | Positive For Cocaine | Positive For PCP | Positive For Opiates | Positive For Amphetamines | Adulterated | Substituted | Shy Bladder ~ With No Medical Explanation | Other Refusals To Submit To Testing | Cancelled Results |
| Pre-Employment | | | | | | | | | | | | | |
| Random | | | | | | | | | | | | | |
| Post-Accident | | | | | | | | | | | | | |
| Reasonable Suspicion | | | | | | | | | | | | | |
| Reasonable Cause | | | | | | | | | | | | | |
| Return-to-Duty | | | | | | | | | | | | | |
| Follow-Up | | | | | | | | | | | | | |

**IV. Alcohol Testing Data:**

| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 |
|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | Refusal Results | | |
| Type of Test | Total Number Of Screening Test Results [Should equal the sum of Columns 2, 3, 7, and 8] | Screening Tests With Results Below 0.02 | Screening Tests With Results 0.02 Or Greater | Number Of Confirmation Tests Results | Confirmation Tests With Results 0.02 Through 0.039 | Confirmation Tests With Results 0.04 Or Greater | Shy Lung ~ With No Medical Explanation | Other Refusals To Submit To Testing | Cancelled Results |
| Pre-Employment | | | | | | | | | |
| Random | | | | | | | | | |
| Post-Accident | | | | | | | | | |
| Reasonable Suspicion | | | | | | | | | |
| Reasonable Cause | | | | | | | | | |
| Return-to-Duty | | | | | | | | | |
| Follow-Up | | | | | | | | | |

BILLING CODE 4910–62–C

**Department of Transportation Drug and Alcohol Testing MIS Data Collection Form Instruction Sheet**

This MIS form is made-up of four sections: employer information; covered employee information; drug testing data; and alcohol testing data. The employer information needs only to be provided once per submission. However, you must submit a separate page of data for each employee category for which you report testing data. If you are preparing reports for more than one DOT Operating Administration (OA), then you must submit OA-specific forms.

Please type or print entries legibly in black ink.

*TIP*—Read the entire instructions before starting. Please note that USCG-regulated employers do not report alcohol test results on the MIS form.

Calendar Year Covered by this Report: Enter the appropriate year.

*Section I. Employer*

1. Enter your company's name, to include when applicable, your ''doing business as'' name; current address, city, state, and zip code; and an e-mail address, if available.

2. Enter the printed name, signature, and complete telephone number of the company official certifying the accuracy of the report and the date that person certified the report as complete.

3. If someone other than the certifying official completed the MIS form, enter that person's name on the appropriate line provided.

4. Operating Administration Information:

a. Check the box next to the OA for which you are completing this MIS form. Again, if you are submitting to multiple OAs, you must use separate forms for each OA.

b. If you are submitting the form for RSPA, check the additional box(s) indicating your type of operation.

c. If you are completing the form for FRA, enter the number of observed/documented Part 219 ''Rule G'' Observations for covered employees.

d. If you are completing the form for FAA, enter your FAA Certificate Number and FAA Antidrug Plan/Registration Number, when applicable.

e. If you are submitting the form for FMCSA, enter your FMCSA DOT Number, as appropriate. In addition, you must indicate whether you are an owner-operator.

f. If you are submitting the form for USCG, enter the vessel ID number. If there is more than one number, enter the numbers separately.

*Section II. Covered Employees*

1. In Box II–A, enter the total number of covered employees who work for your company. Then enter, in Box II–B, the total number of employee categories that number represents.

[For instance, if you are submitting the information for the FRA and you have 20,000 covered employees performing duties in each of the FRA-covered service areas—you would enter ''20,000'' in the first box (II–A) and ''5'' in the second box (II–B), because FRA has five safety-sensitive employee categories.]

*TIP*—To calculate the total number of covered employees, add the total number of covered employees eligible for testing during each random testing selection period for the year and divide that total by the number of random testing periods. For instance, a company conducting random testing quarterly needs to add the total of covered employees they had in the random pool when each selection was made; then divide this number by 4 to obtain the yearly average number of covered employees. It is extremely important that you place all eligible employees into these random pools. [As an example, if Company A had 1500 employees in the first quarter random pool, 2250 in the second quarter, 2750 in the third quarter; and 1500 in the fourth quarter; 1500 + 2250 + 2750 + 1500 = 8000; 8000 / 4 = 2000; the total number of covered employees for the year would be reported as,'2000'.]

2. If you are reporting multiple employee categories, enter the specific employee category in box II–C; *and* provide the number of employees in that specific category.

[For example, you are submitting data to the FTA and you have 2000 covered employees. You have 1750 personnel performing revenue vehicle operation and the remaining 250 are performing revenue vehicle and equipment maintenance. When you provide vehicle operation information, you would enter ''Revenue Vehicle Operation'' in the first II–C box and ''1750'' in the second II–C box. When you provide data on the maintenance personnel, you would enter ''Revenue Vehicle and Equipment Maintenance'' in the first II–C box and ''250'' in the second II–C box.]

*TIP*—A separate form for each employee category must be submitted. You may do this by filling out a single MIS form through Section II–B and then make one copy for each additional employee category you are reporting. [For instance, if you are submitting the MIS form for the FMCSA, you need only submit one form for all FMCSA covered employees working for you—your only category of employees is ''driver.'' If you are reporting testing data to the FAA and you employ *only* flight crewmembers, flight attendants, and aircraft maintenance workers, you need to complete one form each for category—three forms in all. If you are reporting to FAA and have all FAA categories of covered employees, you must submit eight forms.]

Here is a full listing of OA employee categories:

FMCSA (one category): Driver
FAA (eight categories): Flight Crewmember; Flight Attendant; Flight Instructor; Aircraft Dispatcher; Aircraft Maintenance; Ground Security Coordinator; Aviation Screener; Air Traffic Controller
FTA (six categories): Revenue Vehicle Operation; Revenue Vehicle and Equipment Maintenance; Revenue Vehicle Control/Dispatch; CDL/Non-Revenue Vehicle; Armed Security Personnel
FRA (five categories): Engine Service; Train Service; Dispatcher/Operation; Signal Service; Other [Includes yardmasters, hostlers (non-engineer craft), bridge tenders; switch tenders, and other miscellaneous employees performing 49 CFR 228.5(c) defined covered service.]
RSPA (one category): Operation/Maintenance/Emergency Response
USCG (one category): Crewmember

*Section III. Drug Testing Data*

This section summarizes the drug testing results for all covered employees (to include applicants). The table in this section requires drug test data by test type and by result. The categories of test types are: Pre-Employment; Random; Post-Accident; Reasonable Suspicion; Reasonable Cause; Return-to-Duty, and Follow-up.

The categories of type of results are: Total Number of Test Results [excluding cancelled tests and blind specimens]; Verified Negative; Verified Positive; Positive for Marijuana; Positive for Cocaine; Positive for PCP; Positive for Opiates; Positive for Amphetamines; Refusals due to Adulterated, Substituted, Shy Bladder with No Medical Explanation, and Other Refusals to Submit to Testing; and Cancelled Results.

*TIP*—Do not enter data on blind specimens submitted to laboratories. Be sure to enter all ''pre-employment'' testing data regardless of whether an applicant was hired or not. Make note of the fact that FMCSA and FTA do not authorize ''reasonable cause'' drug testing; that FAA, RSPA, and USCG do not authorize ''reasonable suspicion'' drug testing; but that FRA authorizes both. For USCG, enter any ''Serious Marine Incident'' testing in the ''Post-Accident'' row. For FRA, do not enter ''post accident'' data (the FRA does not collect this data on the MIS form). Finally, rather than enter ''0'' (zero) for any row or column in which there were no results, just leave that area blank.

Section III, Column 1. Total Number of Test Results—This column requires a count of the total number of test results in each testing category during the entire reporting year. Count the number of test results as the number of testing events resulting in negative, positive, and refusal results. Do not count cancelled tests and blind specimens in this total.

[For example, a company that conducted fifty pre-employment tests would enter ''50'' on the Pre-employment Row. If it conducted one hundred random tests, ''100'' would be entered on the Random Row. If that company did no post-accident, reasonable suspicion, reasonable cause, return-to-duty, or follow-up tests, those categories will be left blank.]

Section III, Column 2. Verified Negative Results—This column requires a count of the number of tests in each testing category that the Medical Review Officer (MRO) reported as negative. Do not count a negative-dilute result if, consequently, the employee underwent a second collection; the second test is the test of record.

[For example, if forty-seven of the company's fifty pre-employment tests were reported negative, ''47'' would be entered in Column 2 on the Pre-employment Row. If ninety of the company's one hundred random test results were reported negative, ''90'' would be entered in Column 2 on the Random Row. Because the company did no other testing, those other categories would be left blank.]

Section III, Column 3. Verified Positive Results—For One Or More Drugs—This column requires a count of the number of tests in each testing category that the MRO reported as positive for one or more drugs. When the MRO reports a test positive for two drugs, it would count as one positive test.

[For example, if one of the fifty pre-employment tests was positive for two drugs, ''1'' would be entered in Column 3 on the Pre-employment Row. If four of the company's one hundred random test results were reported positive (three for one drug and one for two drugs), ''4'' would be entered in Column 3 on the Random Row.]

Section III, Columns 4 through 8. Positive (for specific drugs)—These columns require entry of the by-drug data for which specimens were reported positive by the MRO.

[For example, if the pre-employment positive test reported by the MRO was positive for marijuana, ''1'' would be entered in Column 4 on the Pre-employment Row. If three of the four positive results for random testing were reported by the MRO to be positive for marijuana, ''3'' would be entered in Column 4 on the Random Row. If one of the four positive results for random testing was reported positive for both PCP and opiates, ''1'' would be entered in Column 6 on the Random Row and ''1'' would be entered in Column 7 of the Random Row.]

*TIP*—Column 1 should equal the sum of Columns 2, 3, 9, 10, 11, and 12. Remember you have not counted specimen results that were ultimately cancelled or were from blind specimens. So, Column 1 = Column 2 + Column 3 + Column 9 + Column 10 + Column 11 + Column 12. Certainly, double check your records to determine if your actual results count is reflective of all negative, positives, and refusal counts.

An MRO may report that a specimen is positive for more than one drug. When that happens, to use the company example above (*i.e.*, one random test was positive for both PCP and opiates), the positive results should be recorded in the appropriate columns—PCP and opiates in this case. There is no expectation for Columns 4 through 8 numbers to add up to the numbers in Column 3 when you report multiple positives.

Section III, Columns 9 through 12. Refusal Results The refusal section is divided into four refusal groups—they are: Adulterated; Substituted; Shy Bladder With No Medical Explanation; and Other Refusals To Submit to Testing. The MRO reports two of these refusal types—adulterated and substituted specimen results '' because of laboratory test findings.

When an individual does not provide enough urine at the collection site, the MRO conducts or causes to have conducted a medical evaluation to determine if there exists a medical reason for the person's inability to provide the appropriate amount of urine. If there is no medical reason to support the inability, the MRO reports the result to the employer as a refusal to test: Refusals of this type are reported in the ''Shy Bladder—With No Medical Explanation'' category.

Finally, additional reasons exist for a test to be considered a refusal. Some examples are: the employee fails to report to the collection site as directed by the employer; the employee leaves the collection site without permission; the employee fails to empty his or her pockets at the collection site; the employee refuses to have a required shy bladder evaluation. Again, these are only four examples; there are more.

Section III, Column 9. Adulterated—This column requires the count of the number of tests reported by the MRO as refusals because the specimens were adulterated.

[For example, if one of the fifty pre-employment tests was adulterated, ''1'' would be entered in Column 9 of the Pre-employment Row.]

Section III, Column 10. Substituted—This column requires the count of the number of tests reported by the MRO as refusals because the specimens were substituted.

[For example, if one of the 100 random tests was substituted, ''1'' would be entered in Column 10 of the Random Row.]

Section III, Column 11. Shy Bladder—With No Medical Explanation—This column requires the count of the number of tests reported by the MRO as being a refusal because there was no legitimate medical reason for an insufficient amount of urine.

[For example, if one of the 100 random tests was a refusal because of shy bladder, ''1'' would be entered in Column 11 of the Random Row.]

Section III, Column 12. Other Refusals To Submit To Testing—This column requires the count of refusals other than those already entered in Columns 9 through 11.

[For example, the company entered ''100'' as the number of random specimens collected, however it had five employees who refused to be tested without submitting specimens: two did not show up at the collection site as directed; one refused to empty his pockets at the collection site; and two left the collection site rather than submit to a required directly observed collection. Because of these five refusal events, ''5'' would be entered in Column 11 of the Random Row.]

*TIP*—Even though some testing events result in a refusal in which no urine was collected and sent to the laboratory, a ''refusal'' is still a final test result. Therefore, your overall numbers for test results (in Column 1) will equal the total number of negative tests (Column 2); positives (Column 3); and refusals (Columns 9, 10, 11, and 12). Do not worry that no urine was processed at the laboratory for some refusals; all refusals are counted as a testing event for MIS purposes and for establishing random rates.

Section III, Column 13. Cancelled Tests—This column requires a count of the number of tests in each testing category that the MRO reported as cancelled. You must not count any cancelled tests in Column 1 or in any other column. For instance, you must not count a positive result (in Column 3) if it had ultimately been cancelled for any reason (*e.g.*, specimen was initially reported positive, but the split failed to reconfirm).

[For example, if a pre-employment test was reported cancelled, ''1'' would be entered in Column 13 on the Pre-employment Row. If three of the company's random test results were reported cancelled, ''3'' would be entered in Column 13 on the Random Row.]

*Section IV. Alcohol Testing Data*

This section summarizes the alcohol testing conducted for all covered employees (to include applicants). The table in this section requires alcohol test data by test type and by result. The categories of test types are: Pre-Employment; Random; Post-Accident; Reasonable Suspicion; Reasonable Cause; Return-to-Duty, and Follow-up.

The categories of results are: Number of Screening Test Results; Screening Tests with Results Below 0.02; Screening Tests with Results 0.02 Or Greater; Number of Confirmation Test Results; Confirmation Tests with Results 0.02 through 0.039; Confirmation Tests with Results 0.04 Or Greater; Refusals due to Shy Lung with No Medical Explanation, and Other Refusals to Submit to Testing; and Cancelled Results.

*TIP*—Be sure to enter all ''pre-employment'' testing data regardless of whether an applicant was hired or not. Of course, for most employers pre-employment alcohol testing is optional, so you may not have conducted this type of testing. Make note of the fact that FMCSA, FAA, FTA, and RSPA authorize ''reasonable suspicion'' but not ''reasonable cause'' alcohol testing; but FRA authorizes both ''reasonable cause'' and ''reasonable suspicion'' alcohol testing. RSPA does not authorize ''random'' testing for alcohol. Finally, rather than enter ''0'' (zero) for any row or column in which there were no results, just leave that area blank. Please note that USCG-regulated employers do not report alcohol test results on the MIS form: Do not fill-out Section IV if you are a USCG-regulated employer.

Section IV, Column 1. Total Number of Screening Test Results—This column requires a count of the total number of screening test results in each testing category during the entire reporting year. Count the number of screening tests as the number of screening test events with final screening results of below 0.02, of 0.02 through 0.039, of 0.04 or greater, and all refusals. Do not count cancelled tests in this total.

[For example, a company that conducted twenty pre-employment tests would enter ''20'' on the Pre-employment Row. If it conducted fifty random tests, ''50'' would be entered. If that company did no post-accident, reasonable suspicion, reasonable cause, return-to-duty, or follow-up tests, those categories will be left blank.]

Section IV, Column 2. Screening Tests With Results Below 0.02—This column requires a count of the number of tests in each testing category that the BAT or STT reported as being below 0.02 on the screening test.

[For example, if seventeen of the company's twenty pre-employment screening tests were reported as being below 0.02, ''17'' would be entered in Column 2 on the Pre-employment Row. If forty-four of the company's fifty random screening test results were reported as being below 0.02, ''44'' would be entered in Column 2 on the Random Row. Because the company did no other testing, those other categories would be left blank.]

Section IV, Column 3. Screening Tests With Results 0.02 Or Greater—This column requires a count of the number of screening tests in each testing category that BAT or STT reported as being 0.02 or greater on the screening test.

[For example, if one of the twenty pre-employment tests was reported as being 0.02 or greater, ''1'' would be entered in Column 3 on the Pre-employment Row. If four of the company's fifty random test results were reported as being 0.02 or greater, ''4'' would be entered in Column 3 on the Random Row.]

Section IV, Column 4. Number of Confirmation Test Results—This column requires entry of the number of confirmation tests that were conducted by a BAT as a result of the screening tests that were found to be 0.02 or greater. In effect, all screening tests of 0.02 or greater should have resulted in confirmation tests. Ideally the number of tests in Column 3 and Column 4 should be the same. However, we know that this required confirmation test sometimes does not occur. In any case, the number of confirmation tests that were actually performed should be entered in Column 4.

[For example, if the one pre-employment screening test reported as 0.02 or greater had a subsequent confirmation test performed by a BAT, ''1'' would be entered in Column 4 on the Pre-employment Row. If three of the four random screening tests that were found to be 0.02 or greater had a subsequent confirmation test performed by a BAT, ''3'' would be entered in Column 4 on the Random Row.]

Section IV, Column 5. Confirmation Tests With Results 0.02 Through 0.039 ~ This column requires entry of the number of confirmation tests that were conducted by a BAT that led to results that were 0.02 through 0.039.

[For example, if the one pre-employment confirmation test yielded a result of 0.042, Column 5 of the Pre-employment Row would be left blank. If two of the random confirmation tests yielded results of 0.03 and 0.032, ''2'' would be entered in Column 5 of the Random Row.]

Section IV, Column 6. Confirmation Tests With Results 0.04 Or Greater ~ This column requires entry of the number of confirmation tests that were conducted by a BAT that led to results that were 0.04 or greater.

[For example, because the one pre-employment confirmation test yielded a result of 0.042, ''1'' would be entered in Column 6 of the Pre-employment Row. If one of the random confirmation tests yielded a result of 0.04, ''1'' would be entered in Column 6 of the Random Row.]

*TIP*—Column 1 should equal the sum of Columns 2, 3, 7, and 8. The number of screening tests results should reflect the number of screening tests you have no matter the result (below 0.02 or at or above 0.02, plus refusals to test), unless of course, the tests were ultimately cancelled. So, Column 1 = Column 2 + Column 3 + Column 7 + Column 8. Certainly, double check your records to determine if your actual screening results count is reflective of all these counts.

There is no need to record MIS confirmation tests results below 0.02: That is why we have no column for it on the form. [If the one of the random test that screened 0.02 went to a confirmation test; and that confirmation test yielded a result below 0.02, there is no place for that confirmed result to be entered.] We assume that if a confirmation test was completed but not listed in either Column 5 or Column 6, the result was below 0.02. In addition, if the confirmation test ended up being cancelled, it should not have been included in Columns 1, 3, or 4 in the first place.

Section IV, Columns 7 and 8. Refusal Results—The refusal section is divided into two refusal groups—they are: Shy Lung—With No Medical Explanation; and Other Refusals To Submit to Testing. When an individual does not provide enough breath at the test site, the company requires the employee to have a medical evaluation to determine if there exists a medical reason for the person's inability to provide the appropriate amount of breath. If there is no medical reason to support the inability as reported by the examining physician, the employer calls the result a refusal to test: Refusals of this type are reported in the ''Shy Lung—With No Medical Explanation'' category.

Finally, additional reasons exist for a test to be considered a refusal. Some examples are: the employee fails to report to the test site as directed by the employer; the employee leaves the test site without permission; the employee fails to sign the certification at Step 2 of the ATF; the employee refuses to have a required shy lung evaluation. Again, these are only four examples; there are more.

Section IV, Column 7. Shy Lung—With No Medical Explanation—This column requires the count of the number of tests in which there is no medical reason to support the employee's inability to provide an adequate breath as reported by the examining physician; subsequently, the employer called the result a refusal to test.

[For example, if one of the 50 random tests was a refusal because of shy lung, ''1'' would be entered in Column 7 of the Random Row.]

Section IV, Column 8. Other Refusals To Submit To Testing—This column requires the count of refusals other than those already entered in Columns 7.

[For example, the company entered ''50'' as the number of random specimens collected, however it had one employee who did not show up at the testing site as directed. Because of this one refusal event, ''1'' would be entered in Column 8 of the Random Row.]

*TIP*—Even though some testing events result in a refusal in which no breath (or saliva) was tested, there is an expectation that your overall numbers for screening tests (in Column 1) will equal the total number of screening tests with results below 0.02 (Column 2); screening tests with results 0.02 or greater (Column 3); and refusals (Columns 7 and 8). Do not worry that no breath (or saliva) was tested for some refusals; all refusals are counted as a screening test event for MIS purposes and for establishing random rates.

Section IV, Column 9. Cancelled Tests—This column requires a count of the number of tests in each testing category that the BAT or STT reported as cancelled. Do not count any cancelled tests in Column 1 or in any other column other than Column 9. For instance, you must not count a 0.04 screening result or confirmation result in any column, other than Column 9, if the test was ultimately cancelled for some reason (*e.g.*, a required air blank was not performed).

[For example, if a pre-employment test was reported cancelled, ''1'' would be entered in Column 9 on the Pre-Employment Row. If three of the company's random test results were reported cancelled, ''3'' would be entered in Column 13 on the Random Row.]

[FR Doc. 02–24718 Filed 9–27–02; 8:45 am]

BILLING CODE 4910–62–P