

annual basis. Employers compile this data on MIS forms and each form is DOT-agency specific. In fact, twenty-one MIS data collection forms will be replaced within the DOT agencies by the new single-format form. 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 DOT agencies.

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 serves to limit MIS reporting to a finite number of data elements. Therefore, a core set of data elements will make up the new MIS form which all transportation employers will complete, as appropriate, for their companies and the DOT agencies 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 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 is a single set of MIS instructions for all transportation employers, regardless of DOT agency.

However, not every DOT agency 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 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 or may enter zeros. For instance, because USCG wants no alcohol testing data on the MIS form, USCG-regulated employers will leave blank (or enter zeros in) Section IV of the form. In addition, when no testing was done or no results were received for particular data elements, employers may leave those items blank or insert zeros.

The Department issued a notice of proposed rulemaking (NPRM) on September 30, 2002 (67 FR 61306), asking for comments and suggestions for changes to the MIS form and process. In response to the NPRM, we received a modest amount of comments from a dozen or so individuals, groups, and

associations. The final rule responds to all those comments. The final rule also makes significant modifications to the previous DOT agency MIS forms.

Additional Background Issue

In the NPRM we said, "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."

The Department of Homeland Security (DHS) has been established and the USCG's being part of that cabinet agency is reality. However, the USCG intends to keep 49 CFR part 40 as an incorporated part of its regulated industry testing rules—46 CFR part 16. Consequently, the USCG intends to follow part 40 regulations applicable (e.g., part 40 alcohol rules do not apply) to the marine industry until such time as resources permit them to create their own rules, should that become necessary in the future. The USCG intends to rely upon 49 CFR part 40 for testing procedures, guidance, and interpretations. They also intend to remain a part of the MIS form, its process, and its related regulation section in part 40. Therefore, USCG-regulated employers will continue to report on this MIS form until further notice.

ODAPC desires to support the USCG efforts to facilitate a seamless transition from DOT to DHS. In this light, we will support the USCG's use of 49 CFR part 40 in their regulated industry testing program. [We view USCG's use of part 40 as being similar to DOT's required incorporation of Department of Health and Human Services (HHS) laboratory regulations and guidance into part 40.] In this light, the MIS regulation, form, and instructions will continue to reference the USCG as a DOT agency even though it became part of DHS on March 1, 2003.

Effective Dates

The Department has decided that use of the new MIS form will be required for employer MIS submissions in CY 2004 documenting CY 2003 data. Therefore, employers must immediately adopt provisions in the rule which will permit them to start, as appropriate, collection

of the required data and which establish how companies are to determine the number of employees upon which 2003 random testing is based.

Discussion of Significant Comments to the Docket

Comment: The vast majority of commenters supported the Department's decision to streamline and simplify the various MIS forms currently in use into one form that will be used across all DOT agencies. Most expressed the belief that doing so will enhance accuracy of data being reported and the efficiency of those employers and service agents who will be tasked with providing the reports. A few commenters suggested that the new form will also be more easily processed through electronic means (when those are up and running) than would the variety of past MIS iterations.

Two commenters believed the new form did not effectively address the needs of data collection. One of these commenters expressed the belief that much more information needed to be collected and needed to be collected on a more frequent than once per year basis. The other commenter indicated that use of one specific DOT agency's MIS forms should not be changed because those forms best fit, the commenter asserts, the needs of a particular industry which the commenter represents (and because companies do not wish to change established reporting programs which are geared to provide the information required on current forms).

DOT Response: We agree with the preponderance of commenters who supported use of a single form across all modes of transportation. We agree with the majority of commenters who supported use of a trimmed-down version of the form. We agree with commenters who believed the new form readily lends itself to electronic transfer of items and data. In this light, it is important to note that the new form represents an all important first step in the Department's desire to have this form on-line and to permit electronic transmission of data. The fact that one form will be used throughout the transportation industry makes the difficult task of designing the system much simpler (to say nothing of our being able to obtain accurate data in consistent fields across all DOT agencies).

The Department, after reaching a self-imposed deadline date for the publication of the NPRM, did not intend for the new form to be used to collect 2002 MIS information. To do so would have meant a change in the way