

concept while recognizing that some companies may have to enter data on additional sheets.

DOT Response: The Department gave a lot of thought to this issue, but did not see a valid way around separate pages for different employee categories, at least in the short term. Again, it is important to note that the Department views the use of this standard format, one-page MIS form to be a logical first step in providing an automated system for future MIS data entry. A "must" for the automated system will be the ability of the employer to view entry options only for eligible categories of employees. For instance, an employer entering MIS data online for the FTA will see only employee categories corresponding to the FTA rules. For an employer entering MIS data for the FAA, only those FAA employee categories will appear.

Interestingly, even if an employer has multiple employee categories, the amount of information collected equates to far less than if the employer used the old forms. There is no more actual work involved in entering the employee testing data even if using separate sheets. In fact, our test runs of the form (e.g., to obtain industry estimates on the amount of time to fully complete the form) with companies having multiple employee categories were met with positive feedback. From those estimates, we concluded that completion of the form—even with multiple sheets—will take between 45 minutes and 1.5 hours. For the old MIS forms, estimates showed that the "EZ" forms took between 30 minutes and 1 hour to complete; and the long forms took 2.5 hours each (alcohol and drug) to complete. Again, we hold that the time savings is substantial using the new form rather than the multitude of old forms.

Comment: Two commenters asked us to clarify MIS requirements for companies reporting MIS data to more than one DOT agency—companies that, for instance, may have full-time drivers and full-time pipeline workers. In addition, they asked us to resolve confusion over how to record testing data for employees who perform duties that are regulated by more than one DOT agency—for example, a company's employees drive trucks sometimes and perform safety-sensitive railroad duties at other times.

DOT response: In its first paragraph, the NPRM's MIS instruction form provided guidance for companies regulated by more than one DOT agency. It said, "If you are preparing reports for more than one DOT Operating Administration (OA), then

you must submit OA-specific forms."

We have maintained that text requirement intact. Therefore, if a company has drivers and pipeline workers covered under FMCSA and RSPA regulations respectively, and the company is asked by FMCSA and by RSPA to submit MIS data, the company should send an MIS report on its drivers to the FMCSA and an MIS report on its pipeline workers to RSPA.

The second scenario the commenters brought up, how to record MIS data for employees who perform cross-modal safety sensitive duties where an employee performs duties regulated by two or more DOT agencies (e.g., the employee is a truck driver and a pipeline maintenance worker), is more complex. For a number of years, DOT agency rules have stipulated that a covered employee, subject to testing under more than one DOT agency rule for the same employer, would be subject to random testing at the percentage rate established for the calendar year by the DOT agency regulating more than 50 percent of the employee's safety-sensitive duties.

Further complicating the issue becomes the fact that some DOT agencies (i.e., RSPA and USCG) do not authorize random alcohol testing for employees. So while an employee who drives a truck and performs pipeline maintenance for a company may carry out more than 50% of his or her duties under RSPA rules and be in a RSPA random pool for drug testing, that employee must still be in an FMCSA pool for random alcohol testing. Or, the company can choose to place all these employees in the same random drug testing pool if they test at or above the highest random rates established by the DOT agency under whose jurisdiction they fall.

The Department is settling the issue by stating that for purposes of the MIS form, employees covered under more than one DOT agency rule need only be reported on the MIS form for the DOT agency under which they are randomly tested.

For example, an employee conducting 51% of her safety-sensitive work under FMCSA rules will be randomly tested under those rules rather than under the rules of another DOT agency under which she performs the other 49% of her DOT safety sensitive duties. For MIS purposes, therefore, she will be counted and her tests reported only under the MIS submission to the FMCSA. If 49% of her duties are under FTA, for instance, she will not appear on the FTA MIS submission even though she would continue to be eligible for testing under the FTA rule for post accident

and reasonable suspicion, and perhaps for return-to-duty and follow-up testing. Employers may have to explain her testing data to FMCSA and FTA agency representatives during an inspection or audit.

Additional Discussion of Rule

The ODAPC and the DOT agencies have revised the MIS reporting requirements to standardize the collection of data for the agencies. The proposed rulemaking will impose a few new requirements for data collection; specifically, data related to information associated with the revised (65 FR 122, June 23, 2000) Federal Drug Testing Custody and Control Form. However, the overall amount of required data is less than that required currently. The Department has also placed the MIS form and instructions for completing it into part 40. The forms and instructions will be removed from all DOT agency regulations.

As stated earlier, many data elements are no longer part of the MIS form. DOT agencies have decided that some information items required on previous MIS forms are available in other formats or are items obtainable during inspections, reviews and audits. The following represents a listing for each DOT agency of most of the data elements we are eliminating from reporting on the MIS form:

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.