

Because MIS reporting has been part of the DOT testing equation for several years, 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 C/TPA's contracted services.

Whatever the case, the Department does not require any particular management approach to compiling 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 DOT agencies. 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 "EZ" drug form, the "EZ" alcohol form, the long drug form, and the long alcohol form, the formats of which were different for each DOT agency. Therefore, employers subject to more than one DOT agency 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 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.

DOT agency MIS PRA submissions for the old MIS forms reveal that nearly 6,800 companies submit 13,541 MIS forms annually to DOT; and the time it takes to fill out the forms is 18,406 hours. Estimates for the new MIS form indicate that these companies will send 7,186 MIS reports to DOT and the time to complete them will be 10,779 hours. Therefore, we foresee over 7,500 hours saved per year in filling out the new MIS form as opposed to completing the old multiple MIS forms. [Based upon industry and DOT agency 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 and for our OMB PRA submission, to use the highest industry and DOT agency estimate—1.5 hours. We estimate that slightly over 300 companies report to more than one DOT agency.]

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 12889 (Implementation of North American Free Trade Agreement). We have

considered these Executive Orders in the context of this rule, and we believe that the 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 9th day of July, 2003, at Washington, DC.

Norman Y. Mineta,

Secretary of Transportation.

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

■ For reasons set forth in the preamble, the Department of Transportation amends 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. You must submit the MIS report in accordance with rule requirements (*e.g.*, dates for submission; selection of companies required to submit, and method of reporting) established by the DOT agency regulating your operation.

■ 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.

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