

to make the conforming regulation changes necessitated by use of the new form. The Department issued an NPRM in the **Federal Register** on September 30, 2002 (Vol. 67, No. 189) proposing use of a new MIS form and asking for comments and suggestions for changes to the old DOT agency MIS forms and the process for completing and submitting them. The final rule designating use and appearance of and instructions for the new MIS form was published in the **Federal Register** on July 25, 2003 (Vol. 68, No. 143). These DOT agency final rules are essentially administrative fix-ups to align DOT agency rules with part 40 on important MIS issues. Therefore, these DOT agency amendments are being issued as final rules.

Under the Administrative Procedure Act (APA), an agency may, for good cause, immediately promulgate a final rule if it finds that prior notice and opportunity for comment “are impracticable, unnecessary, or contrary to the public interest” [5 U.S.C. 553(b)(3)(B)]. There exists good cause for the final rules to be effective immediately rather than 30 days from today’s publication date. It is imperative that companies are prepared to implement the new MIS system and know the DOT agency requirements for form submission. That preparation should not be delayed for an additional 30 days. For these and the reasons highlighted in the previous paragraph, the rules are effective today.

These final rules do not have sufficient Federalism impact to warrant a Federalism assessment under Executive Order 13132. With respect to the Regulatory Flexibility Act, the DOT agencies certify that these rules 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 these rules might affect a large number of small entities, we do not expect the use of a single MIS form throughout all DOT-regulated industries to have a significant economic impact on anyone.

The Department’s final MIS rule contained information collection requirements that were submitted, as required by the Paperwork Reduction Act of 1995 (the PRA, 44 U.S.C. 3507(d)), to the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB) for review. Therefore, the DOT agencies will remove PRA requirements for the MIS form from their next PRA submission packages. In addition, the Department will place its entire PRA package for the MIS form on the Internet

when that submission is approved by OMB.

As stated in the Department’s final MIS rule, 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 number. As stated earlier, the OMB number issued to the form is 2105–0529.

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 these rules, and we believe that these rules do not directly affect matters that the Executive Orders cover.

We have prepared these rulemakings in accordance with the Presidential Directive on Plain Language.

Federal Motor Carrier Safety Administration

Summary of Changes in Part 382

FMCSA has made the following changes to the regulatory text in part 382:

Section 382.107 Definitions

We have revised the definitions for “positive rate” for random drug testing and “violation rate” for random alcohol testing, consistent with the definitions for those terms in part 40.

Section 382.305 Random Testing

We have revised § 382.305(j), concerning how employers determine the number of covered employees eligible for random testing, to conform with the methodology prescribed in part 40.

Section 382.401 Retention of Records

We have revised § 382.401(c)(1)(viii) to replace “Consolidated annual calendar year summaries” with “Each annual calendar year summary.”

Section 382.403 Reporting of results in a management information system

Section 382.403 was amended to require use of the new Management Information System (MIS) form in part 40, in place of the old FMCSA forms. In subparagraph (b), the requirement that the form should be in “the form and manner prescribed by the FMCSA” was deleted. We now require employers to use either the paper form in part 40 or an electronic version of the form through the FMCSA web site. We deleted former subparagraphs (c) and (d) specifying the data elements that were required to be reported because the instructions for the MIS form in part 40 specify new data elements to be reported. The former subparagraph (e), which addresses employers subject to more than one DOT agency, has been redesignated as paragraph (c), and was amended to conform with part 40 agencies. The former subparagraph (f), which addresses employers who use service agents (*e.g.*, a Consortia/third party administrator (C/TPA)), has been redesignated as paragraph (d) and was also amended.

List of Subjects in 49 CFR Part 382

Alcohol abuse, Drug abuse, Drug testing, Highway safety, Motor carriers, Penalties, Safety, Transportation.

49 CFR Chapter III

Authority and Issuance

■ For reasons discussed in the preamble, the Federal Motor Carrier Safety Administration amends part 382 of title 49, Code of Federal Regulations, as follows:

PART 382—CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING

■ 1. The authority citation for 49 CFR part 382 continues to read as follows:

Authority: 49 U.S.C. 31133, 31136, 31301 *et seq.*, 31502; and 49 CFR 1.73.

■ 2. Amend § 382.107 by removing the definitions of “positive rate” and “violation rate” and adding the following definitions in their place to read as follows:

§ 382.107 Definitions.

* * * * *

Positive rate for random drug testing means the number of verified positive results for random drug tests conducted under this part plus the number of refusals of random drug tests required by this part, divided by the total number of random drug tests results (*i.e.*,