■ 3. Section 25.146 is amended by redesignating paragraphs (g) through (m) as paragraphs (h) through (n) and by adding a new paragraph (g) to read as follows.

§ 25.146 Licensing and operating authorization provisions for the non-geostationary satellite orbit fixed-satellite service (NGSO FSS) in the bands 10.7 GHz to 14.5 GHz.

* * * * *

(g) *Operational power flux density, space-to-Earth direction, limits.* Ninety days prior to the initiation of service to the public, the NGSO FSS system licensee shall submit a technical showing for the NGSO FSS system in the band 12.2–12.7 GHz. The technical information shall demonstrate that the NGSO FSS system is capable of meeting the limits as specified in § 25.208(o). Licensees may not provide service to the public if they fail to demonstrate compliance with the PFD limits.

* * * * *

■ 4. In § 25.208, paragraph (n), which was added at 67 FR 43037, June 26, 2002, is correctly designated as paragraph (o) and revised to read as follows:

§ 25.208 Power flux density limits.

* * * * *

(o) In the band 12.2–12.7 GHz, for NGSO FSS space stations, the specified low-angle power flux-density at the Earth's surface produced by emissions from a space station shall not be exceeded into an operational MVDDS receiver:

(1) 158 dB(W/m^2) in any 4 kHz band for angles of arrival between 0 and 2 degrees above the horizontal plane; and

(2) 158 + 3.33(δ − 2) dB(W/m^2) in any 4 kHz band for angles of arrival (δ) (in degrees) between 2 and 5 degrees above the horizontal plane.

Note to paragraph (o):

These limits relate to the power flux density, which would be obtained under assumed free-space propagation conditions.

PART 101—FIXED MICROWAVE SERVICES

■ 5. The authority citation for part 101 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

■ 6. Section 101.111 is amended by revising paragraph (a)(2)(i) to read as follows:

§ 101.111 Emission limitations.

(a) * * *

(2) * * *

(i) For operating frequencies below 15 GHz, in any 4 KHz band, the center frequency of which is removed from the assigned frequency by more than 50 percent up to and including 250 percent of the authorized bandwidth: As specified by the following equation but in no event less than 50 decibels:

$A = 35 + 0.8(P - 50) + 10 \text{ Log}_{10} B.$

(Attenuation greater than 80 decibels is not required.)

where:

A = Attenuation (in decibels) below the mean output power level.

P = Percent removed from the carrier frequency.

B = Authorized bandwidth in MHz. MVDDS operations in the 12.2–12.7 GHz band shall use 24 megahertz for the value of B in the emission mask equation set forth in this section. MVDDS operations in the 12.2–12.7 GHz bands shall use 24 megahertz for the value of B in the emission mask equation set forth in this section. The emission mask limitation shall only apply at the 12.2–12.7 GHz band edges and does not restrict MVDDS channelization bandwidth within the band.

* * * * *

■ 8. Section 101.1440 is amended by revising paragraph (d)(2) and (e) to read as follows.

§ 101.1440 MVDDS protection of DBS.

* * * * *

(d) * * *

(2) No later than forty-five days after receipt of the MVDDS system information in paragraph (d)(1) of this section, the DBS licensee(s) shall provide the MVDDS licensee with a list of only those new DBS customer locations that have been installed in the 30-day period following the MVDDS notification and that the DBS licensee believes may receive harmful interference or where the prescribed EPFD limits may be exceeded. In addition, the DBS licensee(s) could indicate agreement with the MVDDS licensee's technical assessment, or identify DBS customer locations that the MVDDS licensee failed to consider or DBS customer locations where they believe the MVDDS licensee erred in its analysis and could exceed the prescribed EPFD limit.

* * * * *

(e) Beginning thirty days after the DBS licensees are notified of a potential MVDDS site in paragraph (d)(1) of this section, the DBS licensees are responsible for providing information they deem necessary for those entities who install all future DBS receive antennas on its system to take into account the presence of MVDDS operations so that these DBS receive antennas can be located in such a way as to avoid the MVDDS signal. These later installed DBS receive antennas shall have no further rights of complaint against the notified MVDDS transmitting antenna(s).

* * * * *

[FR Doc. 03–19090 Filed 7–24–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 40

[Docket OST–2003–15676]

RIN 2105–AD14

Procedures for Transportation Workplace Drug and Alcohol Testing Programs: Drug and Alcohol Management Information System Reporting

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Department of Transportation's Office of Drug and Alcohol Policy and Compliance (ODAPC) is revising the Management Information System (MIS) forms currently used within five U.S. Department of Transportation (DOT) agencies and the United States Coast Guard (USCG) for submission of annual drug and alcohol program data. The DOT agencies are: Federal Motor Carrier Safety Administration (FMCSA); Federal Aviation Administration (FAA); Federal Transit Administration (FTA); Federal Railroad Administration (FRA); and Research and Special Programs Administration (RSPA). The Department is streamlining the annual reporting of drug and alcohol program data to DOT agencies through use of a one-page MIS data collection form. The Department is standardizing across the DOT agencies the information collected and reducing the amount of data reported by transportation employers. If a DOT agency requires supplemental data, the DOT agency will address those issues separately.

DATES: Effective July 25, 2003.

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

Five DOT agencies and the USCG 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 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

companies that had already collected 2002 data would have had to download that information. In addition, many companies had not been collecting vital data regarding refusals to test. Therefore, use of the new form will be required in CY 2004 for collecting data representing CY 2003 testing.

During 2003, the Federal Transit Administration (FTA) has agreed to field-test an electronic data collection system using data elements of the new form. The FTA will select transit systems for reporting MIS data as part of this field-test. FTA's Volpe Center resources will coordinate the data collection. Through field-testing we can expose the Volpe-developed system software to a wide range of equipment and real-world usage. This field test will be accomplished with an eye toward full implementation across all DOT agencies as soon as possible. We believe the revised MIS form and its data format represent the best way to accomplish the Department's ultimate goal of having full automation for MIS submissions. Early demonstrations of FTA's system have shown the design to be very user-friendly and uncomplicated for the input required data.

Comment: Several commenters expressed the concern that employers could believe the data requirements no longer reflected on MIS forms are being de-emphasized by the DOT agencies. Most of these commenters wished us to reiterate the importance of training information that will no longer be asked for on the MIS form.

DOT Response: As we stated in the NPRM, the items for which we are no longer asking are items that DOT agencies can obtain in a variety of other ways and in other venues and formats. It is worth reiterating that the vast majority of items removed from the MIS form remain important. Employers would be remiss, to say nothing about being in violation of part 40 and DOT agency regulations, if they chose not to obtain, maintain, and furnish information required by regulations. Employers and service agents will be in clear violation of regulations and subject to sanctions if the DOT agency requirements (*e.g.*, for supervisory training, for recordkeeping) are now ignored simply because the data generated by those requirements are no longer being recorded on the MIS form.

Comment: The bulk of commenters supported how the Department proposed to count the number of covered employees (*i.e.*, employees subject to testing because they perform DOT safety-sensitive duties) using the averaging formula. Some commenters, while supporting the averaging formula method, expressed concern for companies that make random selections on a daily or weekly basis (as opposed to those selecting monthly or quarterly). Only one commenter expressed the desire to use a number determined at the start of the year believing it simpler than factoring-in employee census fluctuations. This commenter believed that doing so would be better than having an employer determine the average number of employees at year's end—which was not an idea proposed by the Department in the NPRM. In addition, this commenter indicated that employers represented by the commenter did not know how many safety-sensitive employees they actually employ throughout the year.

DOT Response: The Department believes the calculation of the employee average will be the best way for employers to determine the number of covered employees eligible for DOT testing throughout the year. This process will more readily enable employers to take into account employment of seasonal workers; periods of downsizing; and business start-ups and other increases in employee numbers. To fix the number of covered employees at the start of a year does not take those important factors into consideration. For some employers, establishing the number at the start of the year may lead to their conducting much more random testing than required, and for others, far too little random testing.

Companies that do not know how many employees they employ and release from employment; do not know how many eligible employees are in each random selection pool; and do not know if eligible employees are placed into and taken out of random selection pools have problems irrespective of how the MIS form is completed.

In any case, the Department believes the best way for the random testing pools to be kept current and for the random testing rate to reflect the number of employees actually performing safety sensitive duties is the proposed averaging formula, and we have adopted it in this regulation. It is imperative that companies not wait until the end of the year to make this calculation. Companies must place all covered employees into the pool, know how many are in the pool, and select and test the appropriate percentages.

While we believe that companies conducting their random testing draws on a daily or weekly basis have computer systems sophisticated enough to factor the average on a daily or weekly basis, the Department will not require those companies to do so. However, those companies conducting random draws more frequently than monthly (*e.g.*, daily, weekly, bi-weekly) will not be required to do the averaging more than once each month. And, for example, companies selecting monthly, must calculate monthly; and companies selecting quarterly, must calculate quarterly.

Comment: One commenter believed the requirement to capture ''refusal to test'' data would be too complex for employers. This commenter also stated that counting the number of cancelled tests would also add a burden to employers, although the commenter wished to have cancelled tests counted toward satisfaction of the random testing rate. In short, this commenter did not favor changes to the old single-industry-specific forms.

DOT Response: The Department believes that the testing panorama has changed considerably since the inception of the DOT testing program. Other program forms, such as the Breath Alcohol Testing Form and the Federal Drug Testing Custody and Control Form, have changed to reflect program changes. We believe it is important that the MIS form transform accordingly. At one time the Department did not envision that specific reasons for refusals would become important enough to track. However, a troubling industry has risen whose primary goal is to ''beat the drug test.'' Adulterated and substituted test results have increased considerably: when we speak of refusals, no longer are we simply talking about employees failing to appear for tests. Times change and this refusal delineation is now important for the Department, the DOT agencies, and employers to have.

As proposed in the NPRM, we have determined that refusals to test should count as a test result—one that goes toward satisfaction of a company's random testing rate. However, we do not believe that cancelled tests should count toward satisfaction of the rate. We continue to support part 40's contention that a cancelled test does not count toward compliance with DOT's testing requirements.

Again, we believe a single MIS format is the most appropriate approach. We believe that the many items we no longer desire to capture on the form more than offset the few new collection requirements for refusals and cancellations.

Comment: Two commenters believed the collection of data on separate sheets for each employee category would present too much work for those charged with completing the form. One commenter supported the one-page

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.

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 will also 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 DOT agencies 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 testing rate requirement. Furthermore, in calculating the annual random rates for testing, all DOT agency rules said the following will be factored for the positive rate: number of random positives plus number of random refusals divided by the number of random tests plus the 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 had been added to the total.

To clear up these discrepancies, the Department will 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 have added all refusals to the number of tests because DOT agencies factor refusals into determining whether or not employers have met annual random testing rate requirements. We will not add cancelled test results to the mix because part 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).''

Invalid test results are always cancelled and will not be included. However, those invalid results requiring a subsequent directly observed collection will simply be considered another collection that will have a final result. In addition, blind testing will not be counted as a testing event. Counting in this manner will enable many of the columns and rows of the MIS form to total up.

In addition, annual random testing rates will be determined using more accurate counts because no cancelled test will be mistakenly included and no refusals will be factored twice in the total. DOT agency inspectors, reviewers, and auditors will 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 its random testing rate.

For cancellations requiring the employee to take 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 situations 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 testing).

In addition, if more than one set of specimens is sent to the lab during one testing event, they will count together 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 clarifying and making uniform among DOT agencies how employers determine the total number of employees against which the annual random rate applies. Some DOT agencies have told employers to count the number of covered employees working at the start of the calendar year; some DOT agencies have directed employers to count the total number of covered employees that worked for the company within the year; and still others have advised employers to count the average number of employees on a monthly or quarterly basis.

This rule directs employers to add the total number of covered employees eligible for random testing in 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 will add the total of safety-sensitive 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 employees subject to testing for the year would be reported as ''2000''. (Note: This number, ''2000'', would also be the number on which an employer would base the random testing rate.)]

As stated earlier, no company will be required to factor the average number of employees more often than once per month: No more than 12 times per year.

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 DOT agency regulation. Likewise, DOT agency regulations will continue to address the manner (*e.g.*, mail; CD; electronic transmission) and locations for submitting the forms. Responding to a commenter, we have added a reference to this in rule text.

It is important to note that MIS alcohol testing data reflects all these proposals made for MIS 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 DOT agency 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 listed would only be those for the specific DOT agency.

The Department recognizes that Consortia/Third Party Administrators (C/TPAs) are responsible for administering a large number of transportation industry drug and alcohol testing programs. For this reason, the MIS form will contain a space for the employer to note the name of the C/TPA the company uses, if any. Finally, we have made some of the minor, but useful changes recommended by several commenters and DOT agency representatives. These include typographical, counting, and example errors; and the option to use zeros instead of leaving testing data items blank.

Finally, the Department wants reasonable suspicion and reasonable cause testing to be counted together on the MIS form with no differentiation between the two. The issue of how to count these two types of tests has been complicated by the fact that neither the CCF nor the BATF distinguish between the two even though the DOT agencies do. For instance, FMCSA and FTA authorize reasonable suspicion drug testing; FAA, RSPA, and USCG authorize reasonable cause drug testing; and FRA authorizes both. FMCSA, FAA, FTA, and RSPA authorize reasonable suspicion alcohol testing; and FRA authorizes both reasonable suspicion and reasonable cause alcohol testing. Sufficient documentation should exist with employers for DOT agency representatives to tell the difference between the two during inspections and audits.

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 rule will serve to reduce requirements and costs. The Department realizes that some companies maintain their current MIS data items on basic computer spreadsheets. However, we are requiring only a minimal number of additions to the format while removing a larger number of items.

This final rule 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.

The 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 is submitting these requirements to the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB) for review, as required under the PRA. For informational purposes, the Department will place its entire PRA package for the MIS form on the Internet when that submission is approved.

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 DOT agencies 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 rely on manual methods.

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.

BILLING CODE 4910–62–P

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: _____

Name of Certifying Official: _____ Signature: _____

Telephone: (____) _____ Date Certified: _____

Prepared by (if different): _____ Telephone: (____) _____

C/TPA Name and Telephone (if applicable): _____ (____) _____

Check the DOT agency for which you are reporting MIS data; and complete the information on that same line as appropriate:

___ FMSCA – Motor Carrier: DOT #: _____ Owner-operator: (circle one) YES or NO Exempt (Circle One) YES or NO

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

___ RSPA – Pipeline: (Check) 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: _____

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

___ FTA – Transit

II. Covered Employees: (A) Enter Total Number Safety-Sensitive Employees In 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). Take that filled-in form and 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 Susp./Cause													
Return-to-Duty													
Follow-Up													
TOTAL													

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 Susp./Cause									
Return-to-Duty									
Follow-Up									
TOTAL									

PAPERWORK REDUCTION ACT NOTICE (as required by 5 CFR 1320.21)

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 2105-0529. The Department of Transportation estimates that the average burden for this report form is 1.5 hours. You may send comments regarding this burden estimate or any suggestions for reducing the burden to: U.S. Department of Transportation, Office of Drug and Alcohol Policy and Compliance, Room 10403, 400 Seventh Street, SW, Washington, D.C. 20590; OR Office of Management and Budget, Paperwork Reduction Project, 725 Seventeenth Street, NW, Washington, D.C. 20503.

Title 18, USC Section 1001, makes it a criminal offense subject to a maximum fine of $10,000, or imprisonment for not more than 5 years, or both, to knowingly and willfully make or cause to be made any false or fraudulent statements of representations in any matter within the jurisdiction of any agency of the United States.

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

This Management Information System (MIS) form is made-up of four sections: employer information; covered employees (i.e., employees performing DOT regulated safety-sensitive duties) 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 agency then you must submit DOT agency-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 and phone number on the appropriate lines provided.
4. If a Consortium/Third Party Administrator (C/TPA) performs administrative services for your drug and alcohol program operation, enter its name and phone number on the appropriate lines provided.
5. DOT Agency Information: Check the box next to the DOT agency for which you are completing this MIS form. Again, if you are submitting to multiple DOT agencies, you must use separate forms for each DOT agency.

a. If you are completing the form for FMCSA, enter your FMCSA DOT Number, as appropriate. In addition, you must indicate whether you are an owner-operator (i.e., an employer who employs only himself or herself as a driver) and whether you are exempt from providing MIS data. Exemptions are noted in the FMCSA regulation at 382.103(d).

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

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

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

e. 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 (i.e., employees performing DOT regulated safety-sensitive duties) who work for your company. Then enter, in Box II-B, the total number of employee categories that number represents. If you have employees, some of whom perform duties under one DOT agency and others of whom perform duties under another DOT agency, enter only the number of those employees performing duties under the DOT agency for whom you are submitting the form. If you have covered employees who perform multi-DOT agency functions (e.g., an employee drives a commercial motor vehicle and performs pipeline maintenance duties for you), count the employee only on the MIS report for the DOT agency regulating more than 50 percent of the employee's safety sensitive function.

[Example: If you are submitting the information for the FRA and you have 2000 covered employees performing duties in all FRA-covered service categories – you would enter "2000" in the first box (II-A) and "5" in the second box (II-B), because FRA has five safety-sensitive employee categories and you have employees in all of these groups. If you have 1000 employees performing safety-sensitive duties in three FRA-covered service categories (e.g., engine service, train service, and dispatcher/operation), you would enter "1000" in the first box (II-A) and "3" in the second box (II-B).]

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. (However, no company will need to factor the average number of employees more often than once per month). 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".*

If you conduct random selections more often than once per month (e.g., you select daily, weekly, bi-weekly), you do not need to compute this total number of covered employees rate more than on a once per month basis. Therefore, employers need not compute the covered employees rate more than 12 times per year.]

2. If you are reporting multiple employee categories, enter the specific employee category in box II-C; and provide the number of employees performing safety-sensitive duties in that specific category.

[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 covered-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*
RSPA *(one category): Operation/Maintenance/Emergency Response*
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.]*
USCG *(one category): Crewmember*
FTA *(five categories): Revenue Vehicle Operation; Revenue Vehicle and Equipment Maintenance; Revenue Vehicle Control/Dispatch; CDL/Non-Revenue Vehicle; Armed Security Personnel*

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. You do not need to separate reasonable suspicion and reasonable cause drug testing data on the MIS form. [Therefore, if you conducted only reasonable suspicion drug testing (i.e., FMCSA and FTA), enter that data; if you conducted only reasonable cause drug testing (i.e., FAA, RSPA, and USCG); or if you conducted both under FRA drug testing rules, simply enter the data with no differentiation.] 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, you may leave blank any row or column in which there were no results, or you may enter "0" (zero) instead. Please note that cancelled tests are not included in the "total number of test results" column.*

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.

[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 or zeros entered.]

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, subsequently, the employee underwent a second collection; the second test is the test of record.

[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 or zeros entered.]

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.

[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.

[Example: 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, positive, 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.

[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.

[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.

[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.

[Example: If 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).

[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.]

TOTAL Line. Columns 1 through 13 ~ This line requires you to add the numbers in each column and provide the totals.

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. You do not need to separate "reasonable suspicion" and "reasonable cause" alcohol testing data on the MIS form. [Therefore, if you conducted only reasonable suspicion alcohol testing (i.e., FMCSA, FAA, FTA, and RSPA), enter that data; if you conducted both reasonable suspicion and reasonable cause alcohol testing (i.e.., FRA), simply enter the data with no differentiation.] RSPA does not authorize "random" testing for alcohol. Finally, you may leave blank any row or column in which there were no results, or you may enter "0" (zero) instead. 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.

[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 or zeros entered.]

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.

[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 or zeros entered.]

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.

[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.

[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.

[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 or zeros entered. 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.

[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 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.

[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.

[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).

[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.]

TOTAL Line. Columns 1 through 9 ~ This line requires you to add the numbers in each column and provide the totals.

[FR Doc. 03–18378 Filed 7–24–03; 8:45 am]
BILLING CODE 4910–62–C

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–03–15712]

RIN 2127–AH08

Federal Motor Vehicle Safety Standards; Glazing Materials; Low Speed Vehicles

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This rule updates the Federal motor vehicle safety standard on glazing materials so that it incorporates by reference the 1996 version of the industry standard on motor vehicle glazing. Currently, the Federal standard references the 1977 version of the industry standard and the 1980 supplement to that standard.

Today's final rule also simplifies understanding the Federal glazing performance requirements. The amendments of the past 20 years have resulted in a patchwork of requirements in the Federal standard that must be read alongside the industry standard in order to gain a comprehensive understanding of the overall requirements of the Federal standard. The incorporation by reference of the 1996 version of the industry standard permits the deletion of most of the existing text of the Federal standard. This change to the Federal standard means that the industry standard will henceforth provide a single source of Federal glazing performance requirements for most purposes.

In addition, this final rule addresses several issues not covered by the 1996 American National Standards Institute (ANSI) standard. For example, this action limits the size of the shade band that glazing manufacturers place at the top of windshields and clarifies the meaning of the phrase ''the most difficult part or pattern'' for the fracture test in the 1996 ANSI standard. This action also makes minor conforming amendments to the standard on low speed vehicles.

DATES: Effective date: This final rule is effective September 23, 2003. The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of September 23, 2003. If you wish to submit a petition for reconsideration of this rule, your petition must be received by September 8, 2003.

ADDRESSES: Petitions for reconsideration should refer to the docket number and be submitted to: Administrator, Room 5220, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For technical and policy issues: Mr. John Lee, Office of Crashworthiness Standards, NVS–112, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–4924. Fax: (202) 366–4329.

For legal issues: Nancy Bell, Attorney Advisor, Office of the Chief Counsel, NCC–112, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–2992. Fax: (202) 366–3820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

By letter dated August 12, 1997, the American Automobile Manufacturers Association (AAMA) (which has since evolved into the Alliance of Automobile Manufacturers) petitioned us to amend Federal Motor Vehicle Safety Standard (FMVSS) No. 205, ''Glazing Materials'' (49 CFR 571.205), to incorporate the most recent update of the American National Standards Institute (ANSI)