



DEPARTMENT OF TRANSPORTATION

4910-9X

Office of the Secretary

[Docket No. DOT-OST-2013-0131]

Agency Information Collection Activities: Request for Comments of a Previously Approved Information Collection: Procedures for Transportation Drug and Alcohol Testing Programs

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request abstracted below is being forwarded to the Office of Management and Budget for review and comments. A Federal Register Notice with a 60-day comment period soliciting comments on renewing the same information collection was published on July 12, 2013 [78 FR 41974]. There were three responses to the docket with a total of seven comments. Two of the respondents were consortium/third party administrators from the trucking and pipeline industries, and one respondent represented a collection site that performs DOT urine collections and pre-employment medical exams. Our responses to the respondents' comments are explained in this notice and the supporting statement to OMB.

DATES: Comments must be submitted on or before [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Send comments regarding the proposed information collection, including burden estimate, and suggestions for reducing the burden, to the Office of Management and Budget, Attention: Desk Officer for the Office of the Secretary of the U.S. Department of Transportation, 725 17th Street, NW, Washington, DC 20503; fax: 202-395-5806, or via electronic mail to OIRA_Submission@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT: Bohdan Baczara, Office of Drug and Alcohol Policy and Compliance, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room W62-317, Washington, DC 20590; 202-366-3784 (voice), 202-366-3897 (fax), or bohdan.baczara@dot.gov (e-mail).

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2105-0529.

Title: Procedures for Transportation Drug and Alcohol Testing Programs.

Type of Request: Renewal of a Previously Approved Information Collection.

Background: Under the Omnibus Transportation Employee Testing Act of 1991, DOT is required to implement a drug and alcohol testing program in various transportation-related industries. This specific requirement is elaborated in 49 CFR Part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs. This request for a renewal of the information collection for the program includes 43 burden items among which are the U.S. Department of Transportation Alcohol Testing Form (ATF) and the DOT Drug and Alcohol Testing Management Information System (MIS) Data Collection Form.

The ATF includes the employee's name, the type of test taken, the date of the test, and the name of the employer. The ATF is essential to the alcohol testing program. Data on each test conducted, including test results, are necessary to document tests conducted and actions taken to ensure safety in the workplace.

The MIS form includes employer specific drug and alcohol testing information such as the reason for the test and the cumulative number of positive, negative and refusal test results. The MIS data is used by each of the affected DOT Agencies (i.e., Federal Aviation

Administration, Federal Transit Administration, Federal Railroad Administration, Federal Motor Carrier Safety Administration, and the Pipeline and Hazardous Materials Safety Administration) and the United States Coast Guard when calculating their random testing rates.

Estimated Number of Respondents: The information will be used by transportation employers, Department representatives, and a variety of service agents. Estimated total number of respondents is 2,639,331.

Estimated Number of Responses: 6,548,043.

Frequency: The information will be collected annually.

Annual Estimated Total Number Burden Hours: 678,986

Discussion of Comments to the Docket

There were three respondents to the docket with a total of seven comments. Two of the respondents are consortium/third party administrators from the trucking and pipeline industries, and one respondent represented a collection site that performs pre-employment medical exams and DOT urine collections. Below are our responses to the respondents' comments.

Comment:

Most of the respondents expressed support for the Department's use of the Alcohol Testing Form (ATF) to be the record of an alcohol test and the Management Information System (MIS) form to document an employer's DOT testing data. They also supported the Department's estimate of burden hours associated with collection and handling each of the forms.

DOT Response:

The Department agrees with the commenters' supportive statements regarding use of the forms and the calculation of burden hours.

Comment:

Two of the respondents wondered if the DOT was contemplating an electronic ATF in the future and suggested moving away from a paper-based system.

DOT Response:

The Department has no objection to pursuing establishing the framework for an electronic ATF. We are interested in and currently working with the Department of Health and Human Services on issues related to implementing an electronic Federal Drug Testing Custody and Control Form (CCF). We believe that issues associated with the electronic CCF will be similar to issues associated with the electronic ATF. For these reasons, the Department will explore implementing an electronic ATF after an electronic CCF has been implemented.

Comment:

One respondent suggested that we modify the urine collection process to permit a portion of the DOT urine sample to also be used for other tests.

DOT Response:

Because the comment is not germane to the ATF or MIS form, the Department has no response other than to welcome the respondent to submit comments on this issue during any future rulemaking involving Part 40's urine collections.

Comment:

One respondent, a large C/TPA providing services to the trucking industry, recommended allowing "...third-party administrators to be part of the remediation process for alcohol tests as is the case with controlled substances tests." The C/TPA went on to say that the current three-part ATF does not provide for the capability for employers to rapidly share information leading to a hole in recordkeeping and making wrong choices regarding drivers with positive test results.

DOT Response:

The ATF is a 3-page form and the drug test CCF is a 5-page form. The difference in who ultimately gets certain pages of the form is based upon the fact that drug testing utilizes

laboratories and Medical Review Officers, and alcohol testing does not. Hence, the ATF is 3 pages, not 5. As in drug testing, copies of the ATF go to the employee, the employer, and the BAT [in drug testing, the collector]. It is unclear as to what remediation process the respondent is referring. If the issue is that of permitting C/TPAs to transmit positive alcohol test results to employer, the Department has already an established position. The immediate transmission of positive alcohol test result to the employer is a safety matter. Because time is of the essence, the Breath Alcohol Technician (BAT) is required to immediately transmit the result of the confirmation test result (i.e. .020 or greater) to the Designated Employer Representative (DER) so the DER can take the appropriate action. For these reasons, C/TPAs are not permitted to act as intermediaries in transmitting this information to the DER. The Department has no reason to believe that BATs have not been transmitting or cannot immediately transmit this information to the DER.

With respect to employers making incorrect choices regarding what to do with employees who have positive alcohol test results, as a service agent, a C/TPA can advise an employer on the regulation. For example, a C/TPA can explain that an employer's responsibility is to permanently remove an employee from safety sensitive duties when the employee has an alcohol test result of .040 or greater. They can also advise the employer about actions for results 0.02 through 0.039.

Comment:

One respondent, a C/TPA servicing the pipeline industry, did not have any concern over the Department's estimated burden hours for either form. That same respondent went on to say that the burden hours should include an estimate for data entry into the Drug and Alcohol Management Information System (DAMIS) as the DAMIS procedures vary by Agency.

DOT Response:

DAMIS is an on-line portal to the electronic MIS form. Because of the nature of each transportation industry, each DOT Agency may require different log-in and setup procedures to ensure the accountability by those entities required to submit MIS information. These administrative procedures are external to the actual completion of the MIS form and are independent of the estimated time to actually enter the MIS data once in DAMIS.

Comment:

One respondent, a C/TPA servicing the pipeline industry, wanted to know "...what other uses the Department makes of this data in the aggregate and by agency."

DOT Response:

As the respondent noted, the MIS data is primarily used by the DOT Agencies to determine their respective industry's random testing rate for the next calendar year. We would like to add that the DOT Agencies often use the MIS data for planning audit/inspection strategy as well.

Comment:

One respondent, a C/TPA servicing the pipeline industry, made several comments related to minimizing the burden of the collection of information on respondents. Their comments focused on the pipeline industry and were on issues leading up to the submission of the MIS data, such as: (1) The varying request dates for submitting the MIS data; (2) the standardization of data entry into DAMIS, as well as permitting to upload a data file into DAMIS; (3) standardizing the input process for contractors in the pipeline industry; and (4) permitting an audit service to log into DAMIS as the employer in order to be able to enter contractor data into DAMIS.

DOT Response:

With respect to item 1, it is a well-known fact that the due-date for submitting MIS data is set in each of the Agency's regulations as March 15 of the following year. A DOT Agency may see the need to extend that date to accommodate the stakeholders' request for an extension or the DOT Agency may have identified issues that have prevented their efforts to provide notice to

employers in a timely manner so that employers could enter information by the March 15 due-date. In either scenario, extending the due-date would not add a paperwork burden to employers.

With respect to item 2, the one DOT Agency referenced in this comment as a potential beneficiary of “data entry standardization” is PHMSA. In particular, it appears the login process for this agency was the commenter’s primary issue and was characterized as, “complicated.” According to PHMSA, the suggestion to change this process for the sake of “standardization” may result in unintended consequences when there is a misunderstanding of the overarching intent of the login process. For PHMSA, each transportation employer – designated as either an “operator” or “contractor” – is issued a unique “user name” and “password” for purposes of data integrity and security. It is important to understand that operators are solely accountable for their contractors’ “covered employees” during the MIS reporting year. This means that contractors must provide MIS testing data under the banner of each operator for their contractor’s covered employees when they have performed covered functions, at any time and duration, on the operator’s jurisdictional pipeline facilities. With this operator-contractor association rule lodged in the programming, DAMIS designates contractor login information that is solely and directly associated with the operator who has listed them as a “covered function performing” contractor. DAMIS also captures one contractor employer entry as a “data of record” for accounting purposes and avoiding duplication of data. Eliminating these processes has the possible unintended consequence of degrading data security or forcing the agency to create a login process that is complicated, requiring additional processes such as contractor registration, to assure data integrity.

The suggestion for developing a process for downloading a DAMIS file onto a transportation employer’s computer server and then uploading it back to DAMIS while laudable is replete with

potential IT security challenges. Among them are: Providing prescriptive stakeholder data entry procedures (especially those with limited computer skills); programing challenges associated with each DOT Agency; and agency budgetary considerations for developing such programming.

With respect to item 3, we mentioned earlier DAMIS is an on-line portal to the electronic MIS form. Because of the nature of the each transportation industry, each DOT Agency may require different log-in and setup procedures to ensure the accountability by those entities required to submit MIS information. These administrative procedures are external to the actual completion of the MIS form and are independent of the estimated time to actually enter the MIS data once in DAMIS.

In the DOT Agency example, PHMSA is being cited as duplicating the reporting requirements for contractor employers. Each contractor login designation is uniquely associated with the operator employer who has identified them in the DAMIS electronic reporting system. This reporting association is consistent with PHMSA regulatory mandate regarding operator monitoring and reporting requirements under Title 49 CFR Part 199, 199.115 and 245, which address contractor covered employees.

With respect to item 4, while we recognized the value of MIS provider service performed by C/TPAs, accommodating them for business process efficiency, with a single login, presents significant potential risk to maintaining data integrity and security. Moreover, current regulations assign accountability and responsibility on the employer for MIS reporting.

With regard to entering multiple contractor MIS data under the PHMSA regulation, operator employers, or their designated C/TPAs, always had the option of issuing the DAMIS unique user

name and password to these contractors, and then allowing them to enter their data directly into DAMIS. This option is utilized effectively with DOT/FTA grantees/grantors, which allows for shared responsibility for this MIS information. In similar fashion, the pipeline safety operator employer, or their designated C/TPA, can monitor contractor employers' submissions for data review and approval. Utilizing this process could alleviate the number of contractor MIS data has to be physically entered by operator employers or their C/TPA.

PUBLIC COMMENTS INVITED: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1:48.

Issued in Washington, DC on October 1, 2013.

Authority and Issuance

Patricia Lawton,
DOT PRA Clearance Officer.

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