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This is to submit comments in reference to the September 30, 2002 Notice of Proposed Rulemaking concerning the Department of Transportation (DOT) drug and alcohol management information system reporting for all operating agencies (OA).

The Drug & Alcohol Testing Industry Association (DATIA) is a 1,100-member national trade association representing the full spectrum of drug and alcohol testing service agents including laboratories, collection sites, C/TPAs, BATs, MROs, SAPs, and on-site testing device manufacturers. DATIA appreciates the opportunity to provide comments on this proposed rulemaking on behalf of our members. Our comments are as follows.

General Comments

1. DATIA supports the department's efforts to streamline the reporting process for employers, which will in turn streamline the process for service providers to report information contained in the MIS reports to their clients. Many C/TPAs and employers must submit MIS reports to multiple OAs, and the ability to use a standard form will greatly improve the accuracy of the information reported as well as reduce the time in which it takes to prepare the data and submit it to the appropriate OAs.

2. While not included in the NPRM, DATIA has learned that the DOT would like to use the proposed MIS form for the current year's MIS reports. DATIA feels that employers and service agents must be given ample time to modify their current computer systems to start tracking the data in the manner requested. Current databases are configured around the current MIS form and any changes to the data elements, no matter how minor, impact how the data is stored and ultimately reported. The DOT indicated in the NPRM that they prefer the data to be accumulated and stored electronically throughout the year rather than employers making a "mad scramble" at the end of the year to get the data for the MIS report. If the proposed MIS form is used before 2004, however, every service agent and employer will be forced to make a "mad scramble" to prepare their MIS reports using the required data for the proposed form and its accompanying instructions (i.e. calculating number of employees, refusal to tests, etc.).

3. In moving the instructions for completing the MIS form into Part 40, DATIA would like to stress that Part 40 needs to include regulatory text directing employers to their appropriate OA regulations for requirements concerning dates for submission, selection of companies required to

submit, how to submit the reports (mail, electronic, etc), and where to submit the report. This could be added into §40.26. Also, these requirements need to be very clear in each OA regulation. In addition, since large portions of information previously included on MIS reports is no longer included (supervisory training information, return to duty information, etc.), DATIA suggests that strong wording be included in all OA regulations stating that such information remains important to the OAs and must be readily available during inspections, reviews, and audits. DATIA also suggests that any forms utilized during inspections, reviews, and audits place a high priority on the review of this information.

4. DATIA also fully supports the DOT's intended move to make the MIS forms electronic. Rather than just an internet submission form where data still needs to be hand-entered, DATIA encourages the DOT to consider allowing the submission of data files generated from employer or C/TPA databases. Most C/TPAs utilize computer programs to generate the data for the MIS forms, and the ability to submit a data file generated from their database would eliminate the errors associated with entering the data onto the MIS form by hand. To do this, however, the DOT will need to provide clear instructions in the regulations regarding the format and methods allowed for submission. The DOT would also have to consider how to verify the identity of the certifying official. Since many C/TPAs prepare the MIS reports for employers and then submit them to the employer for review and signature, this would need to be taken into consideration when developing procedures for internet submission or data file submission of the MIS forms.

5. Finally, one item missing from the instructions for the proposed MIS form is a discussion of the requirements for employers with multi-modal employees. The final rule should spell out exactly what will be required of employers with employees that are covered by more than one operating agency in regards to their MIS reports.

Comments on Appendix H: Section II. Covered Employees

1. The example for completing II-B should be changed to indicate that the employer enters the number of employee categories employed by the particular employer and not the total number of employee categories for the OA. The example reads that an FRA covered employer would enter "5 in the second box (II-B) because FRA has five safety-sensitive employee categories". Not all employers have employees in all safety-sensitive categories, however, so the example should indicate that the employer should only indicate in box II-B the number of safety-sensitive categories for which it has employees.

2. The tip on how to calculate the number of covered employees will greatly alleviate much confusion surrounding this issue. A problem arises, however, for those very large companies that do random selections daily or weekly. Many transit agencies (LA and NY) are known to do this, and such a calculation would not work well due to the large number of selection periods. Perhaps employers that do very frequent random selections, could take the number of employees on the first pull of each quarter and use these numbers to calculate their number of covered employees for the year. For example, a company that perform random selections every week, would use the number of employees on their pulls for the first weeks of January, April, July, and October to plug into the calculation provided in the NPRM to determine their number of covered employees.

3. The NPRM and new MIS form mandate that a separate MIS form be submitted for each category of safety-sensitive employee an employer employs. Currently, all categories of employees are included on one form. By forcing employers to use a separate form for each category, many employers will need to greatly increase the number of forms that must be completed. For example, an FAA employer who has employees in all safety-sensitive categories will now have to submit eight forms rather than one. In addition, the need to generate separate reports for each employee category will only lead to additional opportunities for error. DATIA suggests that the DOT consider this situation and take the necessary steps to reduce the number of forms that need to be submitted by an employer.

4. The full listing of OA categories indicates that FTA has six categories, however, there are only five listed. The text should read, "FTA (five categories)",

Comments on Appendix H: Section III. Drug Testing Data

1. DATIA feels that the instructions to leave spaces blank rather than entering a "0" if no results were reported may lead to increased problems. A blank space can also mean that the employer simply forgot or missed the entry. Since the columns should add up, if the DOT feels strongly that "0" should not be entered, perhaps including a space where employers could indicate that the columns do add up would ensure that data is not inadvertently omitted.

2. Since some OA regulations state that pre-employment tests must be performed on employees that have been away from duty for more than 90 calendar days, DATIA suggests that the instructions for completing the MIS form include information stating that these pre-employment tests are to be included in the section for pre-employment testing.

We thank you for the opportunity to provide these comments. Overall, we feel that the intent of the DOT's proposal will greatly benefit both employers and service agents working on their behalf, however, further clarifications and changes are needed to ensure that rhe proposed One-DOT MIS form does not create more problems than it fixes. Please feel free to contact me should you have any questions on DATIA's comments or seek further information.

Sincerely,

Laura E. Shelton

Laura E. Shelton
Executive Director