

49007

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 16

[USCG-1998-4469]- 2

RIN 2115-AF67

Management Information System (MIS)
Requirements

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the Management Information System (MIS) annual reporting requirements for chemical drug testing. The Office of Management and Budget (OMB) has requested that the Coast Guard reduce its collection of information effort. The proposed rule would exempt certain marine employers from submitting the annual MIS report and would eliminate the requirement for all marine employers to notify the Coast Guard when a consortium or other party submits the employer's annual report.

DATES: Comments must reach the Docket Management Facility by February 22, 1999. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB by February 22, 1999.

ADDRESSES: You may mail your comments to the Docket Management Facility, (USCG- 1998-4469), U.S. Department of Transportation, room PL-401, 400 Seventh Street SW., Washington DC 20590-0001, or deliver them to room PL-401 on the Plaza level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329. You must also mail comments on collection of information to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attn: Desk Officer, U.S. Coast Guard.

The Docket Management Facility maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble will become part of this docket and will be available for inspection or copying at room PL-401 on the Plaza level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access this docket on the Internet at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: For questions on this proposed rule, contact Lieutenant Jennifer Ledbetter, Coast Guard, telephone 202-267-0684. For questions on viewing, or submitting material to, the docket, contact Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202-366-9329.

SUPPLEMENTARY INFORMATION:**Request for Comments**

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data,

views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (USCG- 1998-4469) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing to the Docket Management Facility at the address under **ADDRESSES**. If you want acknowledgment of receipt of your comments, please enclose a stamped self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. We may change this proposed rule in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Docket Management Facility at the address under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If we determine that the opportunity for oral presentations will aid this rulemaking, we will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Office of Management and Budget (OMB) requested that the Coast Guard reduce the amount of information collected under the Management Information System (MIS) annual reporting requirements for chemical testing data. The required reports provide drug and alcohol testing information from marine employer chemical testing programs. The Coast Guard and OMB discussed how to reduce the annual reporting requirements for chemical drug testing information. The reductions discussed with OMB are set out in this proposed rule.

Discussion of Proposed Rule

Part 16 of Title 46, Code of Federal Regulations, requires all marine employers to collect chemical drug and alcohol testing data from their programs. It also requires marine employers to submit this data to the Coast Guard in an annual MIS report. Specific requirements for collecting and submitting this data are listed in § 16.500. Marine employers must submit all chemical drug and alcohol testing data on Form CG-5573 found in Appendix B of 46 CFR part 16.

Section 16.500 allows a consortium or other employer representative to submit the chemical drug and alcohol testing data for a marine employer. Unless

submitting their own report, marine employers must notify us in writing each year naming the consortium or other employer representative submitting the report.

We propose the following changes to our MIS reporting requirements:

- Remove the requirement for marine employers to notify the Coast Guard in writing each year that a consortium or other employer representative will submit the annual MIS report.
- Remove the annual MIS report submission requirement for marine employers with 10 or fewer employees subject to testing by Part 16 (covered employees) after submission of the third annual MIS report.
- Reorganize § 16.500, incorporating these changes and revising the language for clarity.

Written Notification Requirement

We propose removing the written notification requirement in § 16.500(c) for marine employers included in a consolidated annual MIS report to inform the Coast Guard of the name of the consortium or other representative submitting the annual MIS report. Since consortiums must submit a list of employers included in their annual MIS report, the individual written notifications are no longer needed. We can use the consortium lists to determine employer compliance with the reporting requirements. This change would apply to all marine employers.

Annual MIS Report Submission

We also propose removing the annual MIS report submission requirement for marine employers with 10 or fewer covered employees after they have submitted the annual MIS report (Form CC-5573) for three consecutive years since January 1, 1996. Marine employers who have met the submission requirement for the three preceding years could apply this new provision to their 1998 report and each following year during which they have no more than 10 covered employees.

This proposal would not change the recordkeeping requirement for marine employers. All marine employers must continue collecting and keeping the required drug testing data, making it available to the Coast Guard if requested.

Editorial Changes

We would also make several editorial changes and clarify the language in § 16.500. We would reorganize and shorten the paragraphs and simplify the regulatory language. None of these editorial changes would substantively change existing requirements.

These two proposed changes to the MIS reporting requirements would reduce the reporting burden on marine employers but would still ensure that we receive adequate chemical testing data for analysis and program management.

Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a) (3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

Written Notification Requirement

This rulemaking would remove the written notification requirement for marine employers using a consortium or other party to submit their annual MIS reports. Marine employers using a consortium or other representative to file annual MIS reports would no longer need to submit written notification to the Coast Guard.

According to current MIS data, 7,150 marine employers are members of consortiums. The cost of each written notification is approximately \$12 (15 minutes of administrative time at \$45 per hour to draft the written notification). This change would reduce the employer reporting burden by a total of 5,361 hours and \$241,313 for 3 years.

Annual MIS Report Submission

This rulemaking would also remove the annual MIS report (Form CG-5573) submission requirement for marine employers with 10 or fewer covered employees who submit an individual annual MIS report, and who have submitted the required MIS reports for three consecutive years since January 1, 1996. The estimated response burden for each MIS form submitted is calculated at \$45 per hour, with each form averaging about one hour to complete. The MIS data from 1994 through 1997 indicated an average of 885 forms submitted annually to the Coast Guard. The forms represent 860 individual employer submissions and 25 consortium submissions consolidating data for 7,150 employers. At this time, we are seeking comment from employers and consortiums about the current actual time and administrative costs spent filling out and submitting the annual MIS report.

The 1997 MIS data indicated that 354 of the 885 forms received were submitted by employers with 10 or fewer covered employees. We propose removing the annual MIS report submission requirement for marine employers with 10 or fewer covered employees who have filed the report for three consecutive years since January 1, 1996. Of the 354 employers, 82 have filed three consecutive annual MIS reports since January 1, 1996, and would not need to submit an annual MIS report for 1998. These marine

employers would also be exempt from submitting the annual MIS report each following year during which they have no more than 10 covered employees. An additional 92 marine employers would qualify for the exemption for 1999 and the remaining 180 would qualify for exemption for 2000.

This exemption would result in the following costs during the first three years for the MIS form submission for employers with 10 or fewer covered employees: Initial year, 272 forms $(354 - 82) \times \$45 = \$12,240$, the second reporting year, 180 forms $(272 - 92) \times \$45 = \$8,100$, and the final reporting year would have no costs.

The total reporting burden for the remaining 531 forms from consortiums (25 forms) and employers (506 forms) with 11 or more covered employees would cost \$23,895 annually. The three-year cost would be \$71,685 $(\$23,895 \times 3 \text{ years})$. Combined with the costs for 10 or fewer covered employees of \$20,340, results in a cost of \$92,025 $(\$20,340 + \$71,685)$.

The total recordkeeping costs for MIS requirements would not change and would remain at \$39,825 annually. The three-year cost would be \$119,475 $(\$39,825 \times 3 \text{ years})$. The total costs to the marine industry for the three year period would be \$211,500 $[\$92,025 \text{ (reporting)} + \$119,475 \text{ (recordkeeping)}]$.

The following table summarizes the reporting and recordkeeping burden for Subcategory III by the end of 3 years.

MIS BURDEN SUMMARY

Year	Employer category	Annual MIS report	Notification letter	Recordkeeping	Total burden hours & costs
Year 1	..... ≤10 employees ≥11 employees Consortiums	Hours: 803 hrs Costs: \$36,135 272 forms x \$45/hour. 506 forms x \$45/hour. 25 forms x \$45/hour.	Letters: 0, Requirement Removed.	Hours: 885 hrs Costs: \$39,825	Burden Hours: 1,688 hrs. Costs: \$75,960.
Year 2	..... ≤10 employees 211 employees Consortiums	Hours: 711 hrs costs: \$31,995 180 forms x \$45/hour. 506 forms x \$45/hour. 25 forms x \$45/hour.	Letters: 0, Requirement Removed.	Hours: 885 hrs Costs: \$39,825 No Change	Burden Hours: 1,596 hrs. Costs: \$71,820.
Year 3	..... ≤10 employees 211 employees Consortiums	Hours: 531 hrs Costs: \$23,895 0 forms x \$45/hour. 506 forms x \$45/hour. 25 forms x \$45/hour.	Letters: 0, Requirement Removed.	Hours: 885 hrs Costs: \$39,825 No Change	Burden Hours: 1,416 hrs. Costs: \$63,720.
3-Year Total	.....	.....	.....	.....	Burden Hours: 4,700 hrs. costs: \$211,500.

The cost to the Coast Guard for each MIS report submitted is calculated at

approximately \$15 per report. Each report averages about \$15 to review,

collate, and file this information with the responsible research center. This

costs the Coast Guard about \$30,675 (2,045 reports submitted x \$15) for the 3-year period.

Summary of Benefits

This proposed rule would remove the written notification requirement in 16.500 for marine employers who do not submit their own annual MIS report to inform the Coast Guard in writing the name of the consortium or other representative submitting their annual MIS report. The rule would also reduce the reporting requirement for all marine employers of 10 or fewer covered employees to submit the annual MIS form for chemical and drug testing data. Marine employers using a consortium or other representative to file annual MIS reports would no longer need to submit written notification to the Coast Guard. According to current MIS data, 7,150 marine employers are members of consortiums. This change would reduce the employer reporting burden by a total of 5,361 hours (1,787 hours per year) and \$241,313 (\$80,438 per year).

This proposed rule would remove the annual reporting requirement for all marine employers who report through their respective consortium. This proposed rule would reduce the employer reporting burden hours by a total of 5,715 hours (5,361 Notification Letter + 354 MIS Report) at \$257,243 (\$241,313 Notification Letter + \$15,930 MIS Report) by the end of 3 years.

This proposed rule would also benefit the marine industry by reducing the reporting requirements for certain marine employers by 40%. By exempting those employers with 10 or fewer covered employees who have provided the required MIS reports for three consecutive years since January 1, 1996, industry would save \$15,930 in reporting costs for the three-year period.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard considers whether this proposed rule, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This rule would only affect small entities by reducing their annual reporting burden. The MIS data indicates how many employees are subject to chemical drug testing, not the total number of employees. However, those marine employers with 10 or fewer employees are most likely

considered small entities. This rule would reduce the reporting burden and would not create an additional burden for this group or any other marine employers. This proposed rule would reduce the employer reporting burden hours by a total of 5,715 hours (5,361 Notification Letter + 354 MIS Report) at \$257,243 (\$241,313 Notification Letter + \$15,930 MIS Report) by the end of 3 years.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this proposed rule will have a significant economic impact on your business or organization, please submit a comment to the Docket Management Facility at the address under **ADDRESSES** explaining why you think it qualifies and in what way and to what degree this proposed rule will economically affect it.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), the Coast Guard wants to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact Lieutenant Jennifer Ledbetter, Coast Guard, at 202-267-0684. Copies of this NPRM will also be mailed to local Small Business Development Centers.

The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

Collection of Information

This proposed rule provides for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). As defined in 5 CFR 1320.3(c), "collection of information" includes reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of the information collections, a description of the

respondents, and an estimate of the total annual burden follow. Included in the estimate is the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

Title: Collection of Commercial Vessel and Personnel Accident (Marine Casualty) Information and Programs for Chemical Drug & Alcohol Testing of Commercial Vessel Personnel, including Required Drug and Alcohol Testing following a Serious Marine Accident.

Summary of the Collection of Information: 46 U.S.C. 6101 authorizes the Coast Guard to prescribe regulations for the annual MIS reporting requirements for chemical drug testing. Section 16.500 contains the requirement for all marine employers to collect chemical drug and alcohol testing data for their employees. All marine employers must submit this data to the Coast Guard in an annual MIS report. Marine employers must submit all chemical drug and alcohol testing data on Form CG-5573 found in Appendix B of 46 CFR Part 16. This proposed rule would eliminate the annual MIS report submission requirement for employers with 10 or fewer covered employees who have provided the required MIS reports for three consecutive years since January 1, 1996.

The annual average burden of the MIS reporting requirements to industry was developed from employer size, employer reports, and type of submitter. The annual average burden estimates reflect data from 1994 through 1997, showing that the Coast Guard receives an average of 354 reports from 354 employers with 10 or fewer covered employees who have provided the required MIS reports for three consecutive years since January 1, 1996. This rule would exempt these marine employers from submitting the annual MIS report each following year during which they have no more than 10 covered employees. This would result in a total annual reporting burden reduction of 354 hours with a 40% reduction in the number of forms submitted to the Coast Guard with only a 4% reduction in data.

The annual average reporting burden would be 531 reports representing 7,656 employers. This consists of 506 reports from approximately 506 employers with 11 or more employees and 25 reports from 25 consortiums representing approximately 7,150 employers.

Need for Information: The requirement to submit MIS information would help meet the goal of knowing the location of all marine employers and

ensuring complete compliance with drug testing regulations.

Proposed Use of Information: The Coast Guard would utilize this information to identify significant trends of drug abuse in the marine industry through program implementation.

Description of the Respondents: Consortia and independent marine employers who collect and submit chemical and drug testing data for their employees.

Number of Respondents: 7,656 marine employers who collect and submit chemical and drug testing data for their employees.

Frequency of Response: Affected marine employers are required to submit anti-drug program reports on an annual basis.

Burden of Response: All marine employers must submit data from their chemical testing program to the Coast Guard in the annual MIS report (Form CG-5573). A consortium or other employer representative may submit the data for a marine employer. After submission of the third annual MIS report, this rulemaking would reduce the reporting requirement for all marine employers with 10 or fewer covered employees by not requiring them to submit the annual MIS form for chemical drug and alcohol testing data for succeeding years during which they had no more than 10 covered employees.

Estimated Total Annual Burden: 7,656 marine employers.

As required by section 3507(d) of the Paperwork Reduction Act of 1995, the Coast Guard has submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of the collection of information.

The Coast Guard solicits public comment on the proposed collection of information to (1) evaluate whether the information is necessary for the proper performance of the functions of the Coast Guard, including whether the information would have practical utility; (2) evaluate the accuracy of the Coast Guard's estimate of the burden of the collection, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection on those who are to respond, as by allowing the submittal of responses by electronic means or the use of other forms of information technology.

Persons submitting comments on the collection of information should submit their comments both to OMB and to the Docket Management Facility where

indicated under **ADDRESSES** by the date under **DATES**.

Persons are not required to respond to a collection of information unless it displays a currently valid OMB control number. Before the requirements for this collection of information become effective, the Coast Guard will publish notice in the **Federal Register** of OMB's decision to approve, modify, or disapprove the collection.

Federalism

The Coast Guard has analyzed this proposed rule under the principles and criteria contained in Executive Order 12612 and has determined that this proposed rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that, under figure 2-1, paragraph (34) (a) of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation. The proposed rule would exempt certain marine employers from submitting the annual MIS report for chemical drug testing and would eliminate the requirement for written notification. The proposed regulation performs administrative changes to a currently approved information collection for the annual MIS report. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 46 CFR Part 16

Chemical testing, Data collection, Data reporting.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 46 CFR part 16 as follows:

PART 16-CHEMICAL TESTING

1. The authority citation for part 16 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 7101, 7301, and 7701; 49 CFR 1.46.

2. Revise § 16.500 to read as follows:

§ 16.500 Management Information System requirements.

(a) **Data collection.** All marine employers must collect the following drug and alcohol testing program data for each calendar year:

(1) Total number of employees during the calendar year that were subject to the drug testing rules in this part.

(2) Number of employees subject to testing under the anti-drug rules of both

the Coast Guard and another DOT agency based on the nature of their assigned duties as identified by each agency.

(3) Number of drug and alcohol tests conducted identified by test type. Drug test types are pre-employment, periodic, random, post-accident, and reasonable cause. Alcohol test types are post-accident and reasonable cause.

(4) Number of positive drug test results verified by a Medical Review Officer (MRO) by test type and types of drug(s). Number of alcohol tests resulting in a blood alcohol concentration weight of .04 percent or more by test type.

(5) Number of negative drug and alcohol test results reported by MRO by test type.

(6) Number of applicants denied employment based on a positive drug test result verified by an MRO.

(7) Number of marine employees with a MRO-verified positive test result who returned to duty in a safety-sensitive position subject to required chemical testing, after meeting the requirements of § 16.370(d) and part 5 of this chapter.

(8) Number of marine employees with positive drug test results verified by a MRO as positive for one drug or a combination of drugs.

(9) Number of employees required under this part to be tested who refused to submit to a drug test.

(10) Number of covered employees and supervisory personnel who received the required initial training.

(b) Data reporting.

(1) By March 15 of the year following the collection of the data in paragraph (a) of this section, marine employers must submit the data on Form CG-5573 to Commandant (G-MOA), 2100 Second Street, SW, Washington, DC, 20593-0001. Marine employers must complete all data fields on the form.

(2) Form CG-5573 is reproduced in Appendix B of this part and you may obtain the form from any Marine Inspection Office. You may also download a copy of Form CG-5573 from the U.S. Coast Guard Marine Safety and Environmental Protection web site at <http://www.uscg.mil/hq/g-m.html>.

(3) A consortium or other employer representative may submit data for a marine employer. Reports may contain data for more than one marine employer. Each report, however, must list the marine employers included in the report.

(4) Marine employers must ensure that data submitted by a consortium or other employer representative under paragraph (b) (3) of this section is correct.

(c) After filing 3 consecutive annual MIS reports since January 1, 1996, required by paragraph (b) of this section, marine employers with 10 or fewer covered employees may stop filing the annual report each succeeding year during which they have no more than 10 covered employees.

(d) Marine employers that conduct operations regulated by another Department of Transportation Operating Administration must submit appropriate data to that Operating Administration for employees subject to its regulations.

Dated: December 7, 1998.

J.P. High,

Acting Assistant Commandant for Marine Safety and Environmental Protection.

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