

updated rules and procedures, if implemented. In addition, this safety advisory recommends that railroads and contractors conduct additional safety briefings to raise workers' awareness of the hazards associated with operating and working around RMMs.

**FOR FURTHER INFORMATION CONTACT:** Yu-Jiang Zhang, Staff Director, Track and Structures Division, Office of Railroad Safety, FRA, 1200 New Jersey Avenue SE, Washington, DC 20590, telephone (202) 493-6460.

*Disclaimer:* This Safety Advisory is considered guidance pursuant to DOT Order 2100.6A (June 7, 2021). Except when referencing laws, regulations, policies, or orders, the information in this Safety Advisory does not have the force and effect of law and is not meant to bind the public in any way. This document does not revise or replace any previously issued guidance.

**SUPPLEMENTARY INFORMATION:**

**Background**

FRA is concerned about the incidents in the past few years resulting in fatalities of two roadway workers struck by RMMs on main line track.

Information regarding these incidents, discussed below, is based on FRA's preliminary findings and the respective railroad's latest reporting. This safety advisory is not intended to attribute a cause to these incidents or place responsibility for these incidents on the acts or omissions of any person or entity.

The following is a summary of the circumstances involved in the incidents:

In August 2023, an RMM struck and fatally injured a contractor working on the Housatonic Railroad Company's main line. FRA's preliminary investigation shows that at the time of his injury, the contractor was part of a four-person work group. The work group consisted of two machine operators (each operating an RMM) and two roadway workers (each working on one of the RMMs). Before the incident, one of the RMMs (RMM-1) left the work area and traveled south to conduct repairs.

While waiting for RMM-1 to return, the remaining two roadway workers on the other RMM (RMM-2), including the worker who was subsequently fatally injured, dismounted RMM-2 to clear ballast away from the tie plates in preparation for the drilling and lag screw installation. One roadway worker used his hands to remove the ballast, while the other used a backpack blower. When RMM-1 returned to the work site, the worker using the backpack blower did not clear the track and was struck

by RMM-1 when he did not respond to its approach.

In December 2021, a contractor working on the Norfolk Southern (NS) was fatally injured when struck by an RMM while working on the main line. The contractor was working with an NS rail gang and was marking rail for pickup and had started walking in the gauge of the track when the machine operator of the RMM made a backup move. The machine operator did not see the contractor walking in the gauge of the track and struck the contractor.

These incidents represent the worst-case scenario that can occur when roadway workers are working on or near RMMs. These incidents highlight the need for railroads to examine their rules and procedures for protecting roadway workers who operate or work near RMMs.

**Recommendations**

In light of the above discussion, FRA recommends that railroads and railroad contractors:

1. Review, update, and communicate applicable rules and procedures related to the operation of RMMs to ensure the safety of roadway workers who operate and work with or around the machines.

2. Increase monitoring of roadway workers, railroad employees, and contractors for compliance with all existing applicable rules and procedures (and any updated rules and procedures to result from paragraph (1)), particularly those involving the operation of RMMs and roadway workers working on and in the vicinity of RMMs.

3. Conduct additional safety briefings to raise workers' awareness of the hazards associated with operating and working around RMMs.

FRA encourages all railroad industry members to take actions consistent with the recommendations of this Safety Advisory. FRA may modify this Safety Advisory, issue additional safety advisories, or take other appropriate action necessary to ensure the highest level of safety on the Nation's railroads, including pursuing other corrective measures under its rail safety authority.

Issued in Washington, DC.

**Amitabha Bose,**

*Administrator.*

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**DEPARTMENT OF TRANSPORTATION**

**Office of the Secretary**

[Docket No. DOT-OST-2023-0143]

**Agency Information Collection Activities: Requests for Comments; Clearance of a Renewed Approval of Information Collection(s): Procedures for Transportation Workplace Drug and Alcohol Testing Programs (ICR 2105-0529)**

**AGENCY:** Office of the Secretary (OST), DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of Transportation (DOT) invites public comments about our intention to request Office of Management and Budget (OMB) approval to renew information collection 2105-0529, Procedures for Transportation Drug and Alcohol Testing Program (ICR 2105-0529). The information to be collected will be used to document tests conducted and actions taken to ensure safety in the workplace and/or are necessary under the Omnibus Transportation Employee Testing Act of 1991, which requires DOT to implement a drug and alcohol testing program in various transportation-related industries. DOT is required to publish this notice in the **Federal Register** in accordance with the Paperwork Reduction Act of 1995.

**DATES:** Comments to this notice must be received by November 28, 2023.

**ADDRESSES:** You may submit comments by any of the following methods:

- *Website:* <http://www.regulations.gov>. Follow the instructions for submitting comments on the DOT electronic docket site.
- *Federal eRulemaking Portal:* <http://www.regulations.gov> Follow the instructions for submitting comments.
- *Fax:* 1-202-493-2251.
- *Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

*Instructions:* You must include the agency name and docket number [DOT-OST-2023-0143] of this notice at the beginning of your comment. Note that all comments received will be posted without change to <http://www.regulations.gov> including any personal information provided. Please see the Privacy Act section of this document.

*Docket:* You may view the public docket through the internet at <http://www.regulations.gov>

www.regulations.gov or in person at the Docket Management System office at the above address.

*Privacy Act:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

**FOR FURTHER INFORMATION CONTACT:** Mike Huntley, Office of Drug and Alcohol Policy and Compliance, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590; 202-366-3784 (voice), 202-366-3897 (fax), or ODAPCWebmail@dot.gov (email).

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 2105-0529.  
*Title:* Procedures for Transportation Workplace Drug and Alcohol Testing Programs.  
*Form Numbers:* DOT F 1385; DOT F 1380.

*Type of Review:* Clearance of a renewal of an 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 (part 40). This request for a

renewal of the information collection for the program includes 45 burden items related to the overall program and 2 official DOT forms: the U.S. Department of Transportation Alcohol Testing Form (ATF) [DOT F 1380] and the DOT Drug and Alcohol Testing Management Information System (MIS) Data Collection Form [DOT F 1385].

The ATF includes the employee's name, the type of test taken, the date of the test, and the name of the employer. Data on each test conducted, including test results, is necessary to document that the tests were conducted and is used to take action, when required, 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 test results for the negative, positive, and refusal tests. No employee specific data is collected. 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 industry's annual random drug and/or alcohol testing rate.

On May 2, 2023, Part 40 was amended to include oral fluid testing as an additional methodology for drug testing that gives employers a choice that will help combat employee cheating on urine drug tests and provide a less intrusive means of achieving the safety

goals of the program [88 FR 27596]. As a result of the rule to include oral fluid testing as an additional methodology for drug testing, two new burden items have been added to this collection: (1) Oral Fluid Collector (Qualification and Refresher) Training Documentation [§ 40.35(b) & (e)]; and (2) Oral Fluid Collector Error Correction Training Documentation [§ 40.35(f)]. These new burden items are analogous to the existing burden items for urine collectors and screening test technicians and breath alcohol technicians.

Also as a result of the May 2023 rule to include oral fluid as an additional methodology for drug testing, DOT will request OMB approval for a revision of the MIS Data Collection Form to facilitate the collection of oral fluid testing data from employers. Specifically, in Section III of the form, "Drug Testing Data," DOT will add additional rows under each "Type of Test" (e.g., Pre-Employment, Random, Post-Accident, Reasonable Suspicion/Cause, Return-to-Duty, Follow-Up, and Total) for employers to enter the number of urine tests, the number of oral fluid tests, and the number of total tests conducted.

*Respondents:* The information will be collected from transportation employers, Department representatives, and a variety of service agents. Estimated total number of respondents is 1,426,662.

*Frequency:* The information will be collected annually.

*Estimated Total Number Burden Hours:* 1,469,136.

PRA item	Number of respondents	Number of responses	Burden per response (minutes)	Total burden (hours)	Total salary costs (\$) <sup>1</sup>
Exemptions from Regulation Provisions Requests [40.7(a)]	1	1	180	3	122
Employer Stand-down Waiver Requests [40.21(b)]	0	0	480	0	0
Employee Testing Records from Previous Employers [40.25(a)]	549,029	990,596	8	132,079	5,387,502
Employee Release of Information [40.25(f)]	549,029	990,596	8	132,079	5,387,502
MIS Form Submission [40.26]	19,699	19,699	90	29,549	1,205,304
Urine Collector (Qualification and Refresher) Training Documentation [(40.33(b) & (e))]	5,000	5,000	4	333	13,583
Urine Collector Error Correction Training Documentation [40.33(f)]	17,980	17,980	4	1,199	48,907
Oral Fluid Collector (Qualification and Refresher) Training Documentation [(40.35(b) & (e))]	5,000	5,000	4	333	13,583
Oral Fluid Collector Error Correction Training Documentation [40.35(f)]	17,980	17,980	4	1,199	48,907
Laboratory Reports to DOT Regarding Unlisted Adulterant [40.87(e)]	0	0	30	0	0
Semi-Annual Laboratory Reports to Employers [40.111(a)]	19	365,983	4	24,399	995,235
Semi-Annual Laboratory Reports to DOT [40.111(d)]	19	456	4	30	1,224
Medical Review Officer (MRO) (Qualifications and Continuing Education) Training Documentation [40.121(c) & (d)]	1,000	1,000	4	67	2,733
MRO Review of Negative Results Documentation [40.127(b)(2)(ii)]	5,000	351,135	4	23,409	954,853
MRO Failure to Contact Donor Documentation [40.131(c)(1)]	5,000	50,787	4	3,386	138,115

PRA item	Number of respondents	Number of responses	Burden per response (minutes)	Total burden (hours)	Total salary costs (\$) <sup>1</sup>
MRO Effort to Contact DER Documentation [40.131(c)(2)(iii)]	5,000	57,624	4	3,842	156,715
DER Successful Contact Employee Documentation [40.131(d)]	46,099	46,099	4	3,073	125,348
DER Failure to Contact Employee Documentation [40.131(d)(2)(i)]	11,525	11,525	4	768	31,327
MRO Verification of Positive Result Without Interview Documentation [40.133]	5,000	11,525	4	768	31,327
Adulterant/Substitution Evaluation Physician Statements [40.145(g)(2)(ii)(d)]	0	0	30	0	0
MRO Cancellation of Adulterant/Substitution for Legitimate Reason Reports [40.145(g)(5)]	0	0	30	0	0
Employee Admission of Adulterating/Substituting Specimen MRO Determination [40.159(c)]	40	40	4	3	122
Split Specimen Requests by MRO [40.171(c)]	5,000	11,932	4	795	32,428
Split Failure to Reconfirm for Drugs Reports by MRO [40.187(b)]	70	70	4	5	204
Split Failure to Reconfirm for Adulterant/Substitution Reports by MRO [40.187(c)]	8	8	5	1	41
Shy Bladder Physician Statements [40.193(f)]	719	719	5	60	2,447
MRO Statements Regarding Physical Evidence of Drug Use [40.195(b) & (c)]	0	0	0	0	0
Drug Test Correction Statements [40.205(b)(1) & (2)]	25,000	143,840	8	19,179	782,311
Breath Alcohol Technician (BAT)/Screening Test Technician (STT) (Qualification and Refresher) Training Documentation [40.213(b)(c) & (e)]	2,000	2,000	4	133	5,425
BAT/STT Error Correction Training Documentation [40.213(f)]	401	401	4	27	1,101
Complete DOT Alcohol Testing Forms [40.225(a)]	10,000	8,025,159	8	1,070,021	43,646,157
Evidential Breath Testing Device Quality Assurance/Calibration Records [40.233(c)(4)]	10,000	10,000	4	667	27,166
Shy Lung Physician Statements [40.265(c)(2)]	401	401	4	27	1,101
Alcohol Test Correction Statements [40.271(b)(1) & (2)]	803	803	4	54	2,203
Substance Abuse Professional (SAP) (Qualification and Continuing Education) Training Documentation [40.281(c) & (d)]	3,334	3,334	4	222	9,055
Employer SAP Lists to Employees [40.287]	116,467	116,467	4	7,764	316,694
SAP Reports to Employers [40.311(c), (d) & (e)]	10,000	201,258	4	13,417	547,279
Correction Notices to Service Agents [40.373(a)]	25	25	60	25	1,020
Notice of Proposed Exclusion (NOPE) to Service Agents [40.375(a)]	5	5	600	50	2,040
Service Agent Requests to Contest Public Interest Exclusions (PIE) [40.379(b)]	2	2	60	2	82
Service Agent Information to Argue PIE [40.379(b)(2)]	2	2	240	8	326
Service Agent Information to Contest PIE [40.381(a) & (b)]	2	2	240	8	326
Notices of PIE to Service Agents [40.399]	1	1	60	1	41
Notices of PIE to Employer and Public [40.401(b) & (d)]	1	1	60	1	41
Service Agent PIE Notices to Employers [40.403(a)]	1	300	30	150	6,119
<b>Total New</b>	<b>1,426,662</b>	<b>11,459,756</b>	<b>2,328</b>	<b>1,469,136</b>	<b>59,926,016</b>

*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 DOT's performance; (b) The accuracy of the estimated burden that the collection would impose on respondents; (c) Ways for the DOT to enhance the quality, utility and clarity of the information to be collected; and (d) Ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize

and/or include your comments in the request for OMB's clearance of this information collection.

*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 September 26, 2023.

Authority and Issuance.

**Bohdan S. Baczara,**

*Deputy Director, DOT, Office of Drug and Alcohol Policy and Compliance.*

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<sup>1</sup> All salary costs are based upon the Department of Labor's bureau of Labor Statistics average employee compensation hourly cost in 2023.

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**Proposed Collection; Comment Request on Information Collection for Treasury Decision 9568, Methods To Determine Taxable Income in Connection With a Cost Sharing Arrangement—Internal Revenue Code (IRC) Section 482**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.