

**Department of Transportation
Office of the Chief Information Officer**

**SUPPORTING STATEMENT
COMMERCIAL DRIVER'S LICENSE
DRUG AND ALCOHOL CLEARINGHOUSE**

December 2016

INTRODUCTION

This is to request the Office of Management and Budget's (OMB) approval of a new information collection request (ICR) contained in the final rule entitled, "Commercial Driver's License (CDL) Drug and Alcohol Clearinghouse." (Clearinghouse) (See Attachment A)

Part A. Justification

1. Circumstances that make the collection of information necessary.

In 1999, a New Orleans bus crash resulted in 22 passenger fatalities. The motor coach driver's post-accident drug test showed use of marijuana and a sedating antihistamine prior to going on duty. The driver had also failed pre-employment drug testing when applying for previous positions, a fact not revealed or known to the current employer. The driver also failed to disclose on his employment application a previous employer who fired him after a positive drug test.

As a result, the National Transportation Safety Board (NTSB) made recommendations to the Agency pertaining to the reporting of CDL driver drug- and alcohol-testing results. Specifically, the NTSB recommended that the Federal Motor Carrier Safety Administration (FMCSA) "develop a system that records all positive drug and alcohol test results and refusal determinations that are conducted under the U.S. Department of Transportation (DOT) testing requirements and require prospective employers to query the system before making a hiring decision." This rule addresses the NTSB's recommendation and also responds to the Moving Ahead for Progress in the 21st Century Act (MAP-21) provision mandating the establishment of the Clearinghouse.

This information collection supports the DOT Strategic Goal of Safety by ensuring that drivers are qualified to operate trucks and buses on our nation's highways. The final rule (81 FR 87686) was published on December 5, 2016, the effective date of the final rule is January 4, 2017, and the compliance date is January 6, 2020. No burden hours or annual costs are being requested for the first three years, between 2017 and 2020, for this ICR. An ICR renewal for the estimated burden hours and costs, presented in question 12, will be submitted by the Agency to OMB for approval in the year 2019, on time for the compliance date on January 6, 2020.

2. How, by whom, how frequently, and for what purpose the information will be used.

The information will be used by employers and SDLAs to identify drivers who have violated the Agency's drug and alcohol rules, and are prohibited from operating commercial motor vehicles (CMVs). The information will also be used by FMCSA for research and enforcement purposes. The NTSB will use information about drivers involved in specific crash investigations.

The purpose of this rule is to mandate querying and reporting requirements in order to diminish or eliminate the problem of CDL holders testing positive for drugs or alcohol, and then continuing to operate CMVs without participating in the required return-to-duty process.

The FMCSA revises the following:

49 CFR part 382, Controlled Substances and Alcohol Use and Testing

49 CFR part 383, Commercial Driver's License Standards; Requirements and Penalties

49 CFR part 384, State Compliance with Commercial Driver's License Program

49 CFR part 391, Qualifications of Drivers and Longer Combination Vehicle (LCV) Driver Instructors

3. Extent of automated information collection.

FMCSA estimates that all of the information will be disseminated by logging into a secure web site; with the exception of the notification to drivers, (FMCSA will notify each driver via U.S. Mail that information about them has been reported to, revised or removed from the database unless the driver provides an alternative method of notification, such as email). Thus, of the six stated requirements of the rule, all will be electronic except for the number six below:

1. Medical Review Officers (MROs) will submit verified positive controlled substances test results and medical refusals to the Agency.
2. Substance Abuse Professionals (SAPs) will report driver information upon completing an initial assessment and the completion date of the return to duty process.
3. Employers or designated service agents (C/TPAs) will report verified alcohol test results at or above 0.04 alcohol-concentration for drivers to the Agency.
4. Employers or C/TPAs acting on the employer's behalf will submit information on refusals to test.
5. Employers would report any violation of part 382 subpart B, including violations based on actual knowledge of drug or alcohol use, as defined in § 382.107.
6. The Clearinghouse will provide notice to the driver each time his or her information is released in connection with a full query. In addition, a driver will be given the option to receive electronic notification each time someone conducts a limited query on that driver. The driver will be given the opportunity to opt in and provide electronic contact information when he or she registers with the Clearinghouse; otherwise the default method of notification will be U.S. mail.

4. Efforts to identify duplication.

The FMCSA is not aware of any other efforts that conflict with this action.

5. Efforts to minimize the burden on small businesses or other small entities.

The FMCSA drug and alcohol testing regulations apply to more than an estimated 520,000 carriers consisting of about 4 million drivers. An estimated 99 percent or 515,000 of these motor carriers are considered small entities. In addition, an estimated 11,000 MROs, 5000 C/TPAs, and 15,000 SAPs would verify and report positive drug and alcohol test results, test refusals, or information about the return to duty processes. MROs, C/TPAs, and SAPs are most likely small entities.

The requirement to submit drug and alcohol test information pertaining to CDL holders applies to all motor carriers conducting operations regardless of size. The FMCSA is requesting no more information than is absolutely necessary to ensure compliance with the MAP-21 requirements and applicable safety regulations.

Under current FMCSA regulations, as part of the pre-employment screening, prospective employers are required to contact a potential hire's previous employers dating back three years. After three years of entities reporting violations to the Clearinghouse, prospective employers, for a fee, generally will be able to make pre-employment queries to the Clearinghouse in lieu of contacting a driver's previous employers. This will reduce the time required by prospective employers to complete the pre-employment screening.

6. Impact of less frequent collection of information.

Frequency is based on the number of positive drug and alcohol tests. With fewer positive tests, there will be less frequent collection of information. All information (except driver-notifications by FMCSA) will be transmitted electronically.

7. Special circumstances.

Information collected occurs more frequently than on a quarterly basis as the database is updated with each additional positive test (or other violation) that occurs. This is to provide employers with the most current information possible to keep unqualified drivers from being re-employed by other motor carriers.

8. Compliance with 5 CFR § 1320.8.

The NTSB made recommendations to the Agency pertaining to the reporting of CMV driver drug and alcohol testing results. Specifically, the NTSB recommended that the FMCSA "develop a system that records all positive drug and alcohol test results and refusal determinations that are conducted under the USDOT testing requirements, require prospective employers to query the system before making a hiring decision, and require certifying authorities to query the system

before making a certification decision.” This requirement addresses the NTSB’s recommendation.

Two Government Accountability Office (GAO) reports discussed “job hopping” by drivers after failing, or refusing to submit to, drug or alcohol tests (see: GAO-08-600 (Attachment B) and GAO-08-0829R (Attachment C)). The GAO identified and verified 43 cases (based on insider information supplied by a third party to a Congressman) where drivers had tested positive for illegal drugs (such as cocaine, marijuana, and amphetamines) with one employer—and within one month tested negative with another employer. In its recommendations to Congress, the GAO advocated a national database and this rule requirement as possible methods to eliminate the job-hopping problems it verified. Also, section 32402 of the MAP-21 (Pub. L. 112-141, 126 Stat. 405), codified at 49 U.S.C. 31306a, directs the Secretary of Transportation (Secretary) to establish a national Clearinghouse containing CMV operators’ violations of FMCSA’s drug and alcohol testing program. The final rule implements that mandate.

9. Payments or gifts to respondents.

There are no payments or gifts provided to respondents for this information collection.

10. Assurances of Confidentiality.

There is assurance of confidentiality for items included in this information collection. They are addressed in detail in the Privacy Impact Analysis (see FMCSA-2011-0031) prepared for this rulemaking.

11. Justification for Sensitive Information.

This information collection includes Personally Identifiable Information, which is considered sensitive information. This is addressed in detail in the Privacy Impact Analysis (see FMCSA-2011-0031) prepared for this rulemaking.

12. Estimates of Burden Hours and Cost for Information Requested.

During the first three years of implementation of the final rule, from January 2017 to January 2020, the burden hours and costs imposed on the industry are minimal. The annual burden hours for this rule requirement at the time of compliance and beyond is a total of 1,864,251 and can be separated into 10 parts. The estimated cost associated with these burden hours is \$61.3 million. The burden hours for specific tasks performed by entities that, report to, or make queries of the Clearinghouse are described below.

- a. Employers will make 5,200,000 limited queries annually (4,000,000 drivers plus an estimated 1,200,000 drivers with multiple employers) to the Clearinghouse for each of their drivers. A limited query informs the employer that test information exists in a driver’s record. Drivers are required to provide consent for a limited query. FMCSA envisions that employers will obtain a general consent from drivers when they are hired to conduct a limited query (or queries) from drivers. Therefore, drivers are not required

to provide consent to a limited query through the Clearinghouse. The Agency estimates that a “bookkeeping, accounting, or auditing” clerk will spend ten minutes (1/6th of an hour) to conduct a limited query on a single driver. Given 5,200,000 limited queries, the total number of hours spent to complete them is estimated at 867,000 (5,200,000 queries x 1/6 hours per query = 866,667 hours, rounded to the nearest thousand). FMCSA assumes that this task will be performed by a bookkeeping clerk. The Bureau of Labor Statistics (BLS) estimates the hourly wage (including fringe benefits and overhead) for an individual employed in this capacity is \$34.02 per hour.¹ Therefore the estimated total cost of this task is \$29 million (\$29 million = 867,000 hours x \$34.02, rounded to the nearest million)

- b. Employers will make full queries to the Clearinghouse as part of the pre-employment screening process of potential hires. FMCSA estimates employers will perform a total of 1,996,328 pre-employment full queries per year. The Agency estimates that a bookkeeping clerk will spend ten minutes (1/6th of an hour) to conduct a full query on a single driver. Given 1,996,328 queries, the total number of hours spent to complete them is estimated at 333,000 (332,751 = 1,996,328 queries x 1/6 hours per query, rounded to the nearest thousand). Based on the BLS \$34.02 per hour wage for a bookkeeping clerk, the estimated cost of performing this task is \$11 million (\$11,328,660 million = 333,000 hours x \$34.02, round to the nearest million).
- c. Employers may designate C/TPAs to query and/or report to the Clearinghouse on their behalf. FMCSA estimates that a bookkeeping clerk will spend ten minutes (1/6th of an hour) to designate a C/TPA. If each of the 520,000 motor carriers designate a C/TPA, then the total number of hours spent to fulfill this requirement is estimated to be 87,000 (520,000 designations x 1/6 hours per designation = 86,667 hours, rounded to the nearest thousand). Based on the BLS \$34.02 per hour wage for a bookkeeping clerk, the estimated cost of performing this task is \$3 million (\$2,948,411 million = 86,667 hours x \$34.02, round to the nearest million).
- d. SAPs will be required to input information to the Clearinghouse about drivers initiating and completing the return-to-duty process. FMCSA estimates that 55,580 drivers will be required to have their information input by an SAP. The Agency estimates that SAPs will spend a total of ten minutes (1/6th of an hour) entering driver information upon completion of an initial assessment. Therefore, the total number of hours spent to fulfill this requirement is estimated at 9,000 (9,263 = 55,580 designations x 1/6 hours per designation, rounded to the nearest thousand). FMCSA assumes that this task will be performed by an Occupational Health and Safety Specialist. The BLS estimated hourly wage with fringe benefits and overhead for this occupation is \$64.65 per hour. The estimated cost for SAPs to complete this task is \$600,000 (\$599,000 = 9,000 hours x \$64.65, rounded to the near hundred thousand)

¹ All Bureau of Labor Statistics (BLS) hourly wage rates excluding fringe benefits and employer overhead are from the May 2014 Occupational Employment Statistics at http://www.bls.gov/oes/2014/may/oes_stru.htm#53-0000. The fringe benefit rate (53 percent) is from the BLS Employer Costs for Employee Compensation—December 2014.” at <http://www.bls.gov/news.release/pdf/ecec.pdf>. The overhead rate (27 percent of labor costs) is from “Truck Costing Model for Transportation Managers,” Upper Great Plains Transportation Institute,” North Dakota State University (2003) at <http://ntl.bts.gov/lib/24000/24200/24223/24223.pdf>. Accessed December 21, 2015.

- e. MROs, SAPs, C/TPAs, and employers will be required to report information to the Clearinghouse. The number of reports total 117,000 (52,000 positive drug tests and failures to appear reported by MROs to the Clearinghouse, 6,500 alcohol test results and failures to appear reported by employers or C/TPAs to the Clearinghouse, and 55,800 return-to-duty reports to the Clearinghouse by SAPs). The Agency estimates that a bookkeeping clerk will spend ten minutes to report positive test results, report information on a driver's failure to appear for a test, or report information on treatment processes to the Clearinghouse. In sum, 20,000 hours will be spent on reporting test results to the Clearinghouse ($19,500 \text{ hours} = 117,000 \text{ reports} \times 1/6 \text{ hours per report}$, rounded to the nearest thousand). The estimated cost for this task is \$700,000 ($\$663,390 = 19,500 \text{ hours} \times \34.02 , rounded to the nearest hundred thousand).
- f. Employers, C/TPAs, MROs, and SAPs will be required to register and become familiar with the new processes and requirements of the Clearinghouse. Given 520,000 carriers, the Agency estimates there will be 5000 C/TPAs, 11,000 MROs, and 15,000 SAPs that will be required to fulfill these requirements. FMCSA estimates that it will take a bookkeeping clerk ten minutes (1/6th of an hour) to register and receive credentials and another ten minutes to become familiar with the new processes. Given 551,000 such instances of registration, reception of credentials, and familiarization, the total number of hours spent to fulfill this requirement is estimated at 183,667 ($183,667 = 551,000 \text{ registration-familiarizations} \times 1/3 \text{ hours per registration-familiarization}$). However, the Agency assumes that these entities do not have to register and become familiar with the rules annually, but instead only once every four years. The 183,667 hours dedicated to registration and familiarization every four years amounts to 45,917 hours annually ($45,917 = 183,667 / 4$). FMCSA assumes a \$34.02 per hour wage for a bookkeeper clerk assigned this task. The estimated cost of these tasks is \$1 million ($\$1,562,096 = 45,917 \text{ hours} \times \34.02 , rounded to the nearest million).
- g. Employers and C/TPAs must verify the names of persons authorized to report and obtain information from the Clearinghouse. If each employer authorizes one person, and one quarter of employers authorize an additional second person, then employers will verify 650,000 people ($520,000 + (520,000 \times 1/4) = 520,000 + 130,000 = 650,000$). If each C/TPA authorizes one person, then the total number of verifications is estimated to be 655,000 (650,000 for employers + 5,000 for C/TPAs). Further, the FMCSA estimates that it will take a bookkeeping clerk ten minutes (1/6th of an hour) to verify each person authorized. The total number of hours spent to fulfill this requirement is 109,167 ($109,167 = 655,000 \times 1/6 \text{ hours per registration-familiarization}$, rounded to nearest thousand). The estimate cost for these tasks performed by a bookkeeper clerk at \$34.02 per hour is \$4 million ($\$3,713,861$, rounded to the nearest million).
- h. Item (a) above, describes how employers' cost of performing annual queries is estimated. Drivers will also incur time-related costs to comply with the requirement of the annual query process for which they are responsible. FMCSA assumes that all employers will initially make limited queries to comply with the annual query requirement. FMCSA assumes that employers will obtain a general consent from drivers when they are hired

that will serve as drivers' consent for the employer to make a be a limited annual query (or queries) from drivers at the time they submit an employment application. The Agency believes this is not a new requirement created by the rule. Normal hiring processes typically require job applicants to provide their employment history, including supervisors whom the employer may contact for history of job-performance and drug and alcohol violations. Driver must consent, via the Clearinghouse, to an employer's request for a full annual query before the driver's information is made available to the employer. Therefore, drivers' time required to consent for performing a full annual query is treated as a cost of the rule. The Agency estimates that driver consents will be required for 361,000 annual full queries. This number is derived from 95 percent of drivers who do not exit the industry after a positive drug or alcohol test, which is 95 percent of the 58,500 annual positive tests at full participation, or 55,575. Of these drivers, 30 percent are assumed to have multiple employers, which require an additional 16,673 full annual queries ($16,673 = 55,575 \times 30$ percent). Thus, the total number of annual full queries required by the rule is estimated at 72,248 ($72,248 = 55,575 + 16,673$). Driver information stored in the Clearinghouse will remain active and available for query for up to five years from the date that a drug or alcohol violation is reported to the Clearinghouse. Therefore, a limited query for a driver with a violation would continue to show up in response to a limited query for 5 years. This will then require an employer to make a full query. This result in 361,000 additional annual full queries ($361,240 = 72,248 \times 5$ years, rounded to the nearest thousand). Given ten minutes (1/6th of an hour) for a driver to consent to release of information, the number of hours spent on driver consent is estimated to be 60,167 ($60,167 = 361,000$ queries \times 1/6 hours per query). The estimated cost to drivers required to consent to annual full queries is \$2 million based on BLS estimated hourly wage for a truck driver of \$29.07 per hour including fringe benefits and overhead ($\$1,749,054$ million = $60,167$ hours \times \$29.07 per hour, rounded to the nearest million).

- i. As described in Item 2, pre-employment queries are full queries that require driver consent made through the Clearinghouse before the driver-specific information is made available to the employer. FMCSA estimates that it will take a driver ten minutes (1/6th of an hour) to provide driver consent to release information. Given 1,996,328 pre-employment queries that require driver consent, the number of hours spent on consent verification is estimated at 330,000 ($332,721 = 1,996,328$ queries \times 1/6 hours per query, rounded to the nearest thousand). At a drivers hourly wage of \$29.07, the estimated cost of this task is \$10 million ($\$9,672,199 = 332,721$ hours \times \$29.07 per hour, rounded to the nearest million).
- j. The final rule requires SDLAs to access a driver's information in the Clearinghouse prior to issuing, renewing, upgrading, or transferring a CDL to determine whether the driver is qualified to operate a CMV. FMCSA intends to integrate this function into the CDLIS pointer system, which connects the records of CDL-holders in all 50 States and the District of Columbia. FMCSA will work closely with AAMVA, which administers CDLIS, to provide for the most efficient and least burdensome method of granting SDLAs access to the Clearinghouse. The marginal costs associated with including the

additional functionality required to grant access to the Clearinghouse are negligible. Accordingly, FMCSA does not associate any specific cost to this final rule.

The table below summarizes the calculations described above.

Total Annual Number of Burden Hours and Associated Cost by Task ²							
Submissions	Responsible	Performed by	Instances	Minutes	Total Hours	Hourly Wage	Total Cost
Annual Queries	Employer	Bookkeeping Clerk	5,200,000	10	867,000	\$34.02	\$29,000,000
Pre-Employment Queries	Employer	Bookkeeping Clerk	1,996,328	10	333,000	\$34.02	\$11,000,000
Designate C/TPAs	Employer	Bookkeeping Clerk	520,000	10	87,000	\$34.02	\$3,000,000
SAPs Report Driver Information Following Initial Assessment	SAPs	Occupational Health Specialist	55,580	10	9,000	\$64.65	\$600,000
Report/Notify Positive Tests/Other Violations	Various	Bookkeeping Clerk	117,000	10	20,000	\$34.02	\$700,000
Register / Familiarize	Various	Bookkeeping Clerk	137,750	20	45,917	\$34.02	\$1,000,000
Authorization Verification	Various		655,000	10	109,167	\$34.02	\$4,000,000
Driver Consent Verification Full Annual Queries	Drivers	Drivers	361,000	10	60,167	\$29.07	\$2,000,000
Driver Consent Verifications for Pre-employment Queries	Drivers	Drivers	1,996,328	10	333,000	\$29.07	\$10,000,000
New-CDL and CDL-Renewal Queries	SDLAs	SDLAs	0	0	0	0	0
Total			11,038,986		1,864,251		\$61,300,000

Estimated Annual Burden Hours: 1,864,251
Estimated Annual Number Respondents: 11,038,986

13. Estimates of Costs to Respondents other than Reporting Burden Costs

Item 12 contains the monetized cost of time of respondents to make queries of, and report information to, the Clearinghouse. As shown in the table below, in addition to the costs in Item 12, employers will be charged Clearinghouse access fees estimated at \$23.9 million. FMCSA intends to retain the services of a contractor to operate and maintain the Clearinghouse. The contractor will recover these costs through access fees. For purpose of estimating access fees paid by employers, FMCSA assumed per query rates of \$5 for full queries and \$2.50 for limited queries. FMCSA will issue a request for proposal (RFP) for a contractor to develop, operate and maintain the Clearinghouse. The RFP will require the contractor to develop an internet data collection system that will permit batch processing of queries and test results, pre-population of recurring data items (e.g., contact information after entities complete the registration process)

² There is no reporting burden hours associated with the return to duty process. Therefore, the \$56 million of estimated annual return-to duty- costs are excluded from the estimated annual burden costs. The annual cost of the Clearinghouse incurred by the government is identified in Item 14.

and a fee structure that must include transaction-specific fees and subscription rates. FMCSA’s reliance on the competitive bidding process for a contractor will result in an internet data collection and dissemination system that will minimize transaction costs to all entities required to interact with the Clearinghouse. As a result, FMCSA believes its estimate of fees for pre-employment queries, limited annual and full annual queries, and labor-related costs associated with the activities of all entities using the Clearinghouse are conservatively high. Other non-reporting related costs borne by respondents include \$56 million in return-to-duty costs, \$11.5 million in opportunity costs that are estimated to be incurred by employers for drivers’ on-duty hours forgone for those drivers barred from performing safety-sensitive functions after drug and alcohol violations are detected as a result of the rule.

Employer Clearinghouse Access Fees			
Query Type	Estimated Number of Queries	Cost per Query	Cost
Pre-employment Query	1,996,328	\$5.00	\$9,981,638
Annual Query-Limited	4,839,000	\$2.50	\$12,097,500
Annual Query-Full	361,000	\$5.00	\$1,805,000
Total	\$23,884,138		\$23,884,138

14. Estimate of Total Annual Costs to the Federal Government.

FMCSA will incur costs to develop the Clearinghouse, continuously manage driver records and provide through the Clearinghouse notification to drivers of requests for full queries. FMCSA estimates that the Agency’s IT costs will be \$ 2.2 million annually.³

15. Explanation of Program Changes or Adjustments.

This program increase is due to the ICR requirement in the rule. From item 12 above, the additional burden-hours of this rule are 1,864,251 annually.

16. Publication of Results of Data Collection.

FMCSA will not publish any individual driver’s test results or any other information containing personally identifiable information.

17. Approval for Exemption of Display of the Expiration Date of OMB Approval.

The FMCSA is not seeking approval to exempt display of the expiration date of OMB approval of the information collection.

³ This is the value of the contract to develop and administer the FMCSA National Registry of Certified Medical Examiners (NRCME), a similar database used to store and retrieve driver medical records. However, the Agency believes this estimate is conservative for the Drug & Alcohol Clearinghouse because it has many less records to store and manage than NRCME, “National Registry of Certified Medical Examiners,” Final Rule (77 FR 24104, April 20, 2012).

18. Exceptions to Certification Statement.

There are no exceptions to the certification statement.

Attachments

- A. Final rule entitled, “Commercial Driver License Drug and Alcohol Clearinghouse,” 81 FR 87686, December 5, 2016.
- B. GAO-08-600 Report. “Improvements to Drug Testing Programs Could Better Identify Illegal Drug Users and Keep them off the Road”
- C. GAO-08-0829R Report. “Examples of Job Hopping by Commercial Drivers after Failing Drug Tests”

Part B. Collections of Information Employing Statistical Methods.

This ICR does not employ statistical methodologies.