

**Department of Transportation  
Federal Motor Carrier Safety Administration**

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

**INTRODUCTION**

This is to request OMB's renewal for 3 years of the information collection titled, "Commercial Driver's License Drug and Alcohol Clearinghouse (OMB Control No. 2126-0057)", which is currently due to expire on January 31, 2020.

**Part A. Justification**

**1. Circumstances that make the collection of information necessary.**

Section 32402 of the Moving Ahead for Progress in the 21st Century Act (MAP-21), codified at 49 U.S.C. 31306a, requires the Secretary of Transportation to establish, operate, and maintain a national clearinghouse for records relating to alcohol and controlled substances testing of commercial motor vehicle (CMV) operators. The purpose of the Clearinghouse is to improve compliance with the U.S. Department of Transportation (DOT) alcohol and controlled substances testing program, and to enhance the safety of our roadways by reducing crashes and injuries involving the misuse of alcohol or use of controlled substances by CMV drivers.

The final rule (81 FR 87686) was published on December 5, 2016 (Attachment A); the effective date of the final rule is January 4, 2017, and the compliance date is January 6, 2020. Information stored in the Clearinghouse includes the user name, point of contact information, email address, system role, CDL information (as applicable), credential information (as applicable) and company information (as applicable).

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

Motor carrier employers will use driver-specific information from the Clearinghouse to determine whether any driver they employ, or seek to employ, is prohibited from operating a CMV due to a drug or alcohol testing violation. State Driver's Licensing Agencies (SDLAs) will use Clearinghouse information to identify drivers who have violated the Agency's drug and alcohol rules, and are prohibited from operating CMVs. The Federal Motor Carrier Safety Administration (FMCSA) will use the information for research and enforcement purposes. The National Transportation Safety Board (NTSB) will use information about drivers involved in crashes under NTSB investigation.

### **3. Extent of automated information collection.**

All information will be entered into the Clearinghouse by logging into a secure web site. Of the six stated requirements of the rule, all will be electronic except for number six below:

1. Medical Review Officers (MROs) will submit verified positive controlled substances test results and test refusals to the Agency.
2. Substance Abuse Professionals (SAPs) will report the date of the driver's initial assessment and the completion date of the return to duty (RTD) process.
3. Employers, or their designated service agents, Consortia/Third-party Administrators (C/TPAs), will report verified alcohol test results at or above 0.04 alcohol-concentration.
4. Employers, or C/TPAs acting on the employer's behalf, will submit information on refusals to test.
5. Employers will report 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, or when new information about the driver is recorded in the Clearinghouse. In addition, a driver will be given the option to receive electronic notification each time someone conducts a limited or full query on that driver. The driver will be able to opt in to electronic notification and provide an email address 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.**

All the counts, quantities, and calculations in the supporting statement, unless otherwise noted, come from the final rule. The FMCSA drug and alcohol testing regulations apply to an estimated 520,000 carriers employing about 4 million commercial driver's license (CDL) drivers. An estimated 515,000 of these motor carriers are considered small entities. In addition, an estimated 11,000 MROs, 5,000 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 related safety regulations.

Under current FMCSA regulations, as part of required pre-employment screening, prospective employers are required to contact a potential hire's previous employers dating back three years to inquire whether the individual committed drug or alcohol testing violations during their previous employment. After 3 years of entities reporting violations to the Clearinghouse, prospective employers, must only make pre-employment queries to the Clearinghouse and will no longer be

required to contact a driver's previous employers. This will reduce the time required by prospective employers to complete the pre-employment screening, and will also eliminate the burden currently imposed on prior employers, who are required to respond to the pre-employment inquiry.

## **6. Impact of less frequent collection of information.**

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

## **7. Special circumstances.**

Information is collected as the database is updated with each additional positive test (or other violation) that occurs. Employers will also report the RTD negative test results and the date the driver's follow-up testing plan has been completed. SAPs will report the date of initial assessment and the date that the driver is eligible for the RTD test. This is to provide employers with the most current information possible to keep unqualified drivers from being employed by other motor carriers who may otherwise be unaware of the driver's drug or alcohol violation.

## **8. Compliance with 5 CFR § 1320.8.**

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 (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. This final rule implemented the MAP-21 mandate.

Also, 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.

On June 20, 2019, the 60-day Federal Register notice (84 FR 28882), was published announcing FMCSA's intent to submit the Commercial Driver's License Drug and Alcohol Clearinghouse ICR to OMB for review and approval.

The Agency received 24 comments on the 60-day Federal Register notice (84 FR 28882), published on June 20, 2019, announcing FMCSA's intent to submit the Commercial Driver's License Drug and Alcohol Clearinghouse ICR to OMB for review and approval. Comments included:

- o Thirteen commenters recommended an application programming interface (API) to reduce the burden for manual entries by employers or their designated consortium/third-party providers, medical review officers, and substance abuse professionals. In addition, several commenters stated an API will increase efficiency when querying the Clearinghouse on current and prospective employees. It was suggested that the API will reduce errors in reporting of information as well as reduce cost to employers and service providers. One commenter recommended delaying the implementation of the Clearinghouse until the development of an API has been completed. FMCSA anticipates the biggest impact on the burden is to employers or their designated C/TPAs for querying the Clearinghouse and therefore developed a bulk query template. This bulk query template will allow employers or their designated C/TPAs to submit multiple queries at one time instead of individually querying each driver. FMCSA is considering the development of an API as a future enhancement.
- o One commenter expressed concerns of increased burden during registration due to the establishment of 2-factor authentication methods through login.gov in addition to Clearinghouse registration. Login.gov is a shared service which provides the public secure and private online access to participating government programs, such as the Clearinghouse. To ensure the security of sensitive driver information, FMCSA incorporated 2-factor authentication for all Clearinghouse users through login.gov. Once the login.gov account has been created, there is no additional burden to the authorized users during registration.
- o One commenter recommended the comment period for the ICR to be extended until after implementation of the Clearinghouse. The public is invited to submit comment during the 30-day comment period for this FRN. All comments will be considered before publishing the final FRN for the ICR.

The remaining comments were not relevant to the ICR.

## **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, Attachment B) prepared for implementation of the Clearinghouse.

## **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, Attachment B) prepared for implementation of the Clearinghouse.

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

With the compliance date for the final rule of January 6, 2020, the annual burden hours after implementation is a total of 1,862,790 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.

IC1: 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 whether or not violation information exists in a driver's Clearinghouse record. Drivers are required to provide general consent for a limited query before the employer submits the query in the Clearinghouse. 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.<sup>1</sup> Therefore the estimated total cost of this task is \$29 million (\$29 million = 867,000 hours x \$34.02, rounded to the nearest million)

IC2: Employers will make full queries to the Clearinghouse as part of the pre-employment screening process. A full query will release detailed drug and alcohol violation information, if any, for the queried driver. FMCSA estimates employers will perform a total of 1,996,328 pre-employment full queries per year. All estimates and calculations, unless otherwise noted, come from the final rule, *see* Attachment A. 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 =

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<sup>1</sup> 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](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.

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).

IC3: 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, rounded to the nearest million).

IC4: SAPs will be required to input information to the Clearinghouse about drivers who initiate and complete the RTD 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 (1/6<sup>th</sup> of an hour) entering driver information. 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)

IC5: MROs, 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 RTD reports to the Clearinghouse by SAPs). The Agency estimates that a bookkeeping clerk will spend ten minutes to report positive test results, or report information on a driver's failure to appear for a test to the Clearinghouse. In sum, 20,000 hours will be spent on reporting test results to the Clearinghouse (19,500 hours = 117,000 reports x 1/6 hours per report, rounded to the nearest thousand). The estimated cost for this task is \$700,000 (\$663,390 = 19,500 hours x \$34.02, rounded to the nearest hundred thousand).

IC6: 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 5,000 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 registration-familiarizations x 1/3 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).

IC7: Employers and C/TPAs must annually 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 ( $520,000 + (520,000 \times \frac{1}{4}) = 520,000 + 130,000 = 650,000$ ). 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 ( $\frac{1}{6}$ th of an hour) to verify each person authorized. The total number of hours spent to fulfill this requirement is 109,167 ( $109,167 = 655,000 \times \frac{1}{6}$  hours per registration-familiarization). The estimated 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).

IC8: Item (a) above, describes how employers' cost of performing annual queries is estimated. Drivers will also incur time-related costs to provide their consent during the annual query process. 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 future limited annual query (or queries). 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. If the annual limited query results in a notification that information exists in the Clearinghouse for the queried driver, the employer must conduct a full query to obtain detailed drug and alcohol violation information for that driver. The driver must provide specific consent electronically, via the Clearinghouse, to an employer's request for a full query before the driver's information is made available to the employer. Therefore, drivers' time required to consent for performing a full query is treated as a cost of the rule. The Agency estimates that driver consents will be required for 361,000 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 queries ( $16,673 = 55,575 \times 30$  percent). Thus, the total number of 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 results in 361,000 additional full queries ( $361,240 = 72,248 \times 5$  years, rounded to the nearest thousand). Given ten minutes ( $\frac{1}{6}$ th 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 ( $60,167 = 361,000 \text{ queries} \times \frac{1}{6} \text{ hours per query}$ ). The estimated cost to drivers required to consent to 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 ( $\$1,749,054 \text{ million} = 60,167 \text{ hours} \times \$29.07 \text{ per hour}$ , rounded to the nearest million).

IC9: As described in Item 2, pre-employment queries are full queries that require the driver's specific consent, transmitted electronically 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 x 1/6 hours per query, rounded to the nearest thousand). At a driver’s hourly wage of \$29.07, the estimated cost of this task is \$10 million (\$9,672,199 = 332,721 hours x \$29.07 per hour, rounded to the nearest million).

The final rule requires SDLAs to request a driver’s information from the Clearinghouse prior to issuing, renewing, upgrading, or transferring a CDL to determine whether the driver is qualified to operate a CMV. However, the Agency has proposed a delay in the compliance date for the SDLAs’ query requirement, from January 6, 2020, to January 6, 2023 (84 FR 46923 (Sept. 6, 2019)).

The table below summarizes the calculations described above.

Total Annual Number of Burden Hours and Associated Cost by Task <sup>2</sup>								
IC No.	Submissions	Responsible	Performed by	Instances	Minutes	Total Hours	Hourly Wage	Total Cost
IC1	Annual Queries	Employer	Bookkeeping Clerk	5,200,000	10	866,667	\$34.02	\$29,000,000
IC2	Pre-Employment Queries	Employer	Bookkeeping Clerk	1,996,328	10	332,721	\$34.02	\$11,000,000
IC3	Designate C/TPAs	Employer	Bookkeeping Clerk	520,000	10	86,667	\$34.02	\$3,000,000
IC4	SAPs Report Driver Information Following Initial Assessment	SAPs	Occupational Health Specialist	55,580	10	9,263	\$64.65	\$600,000
IC5	Report/Notify Positive Tests/Other Violations	Various	Bookkeeping Clerk	117,000	10	19,500	\$34.02	\$700,000
IC6	Register / Familiarize	Various	Bookkeeping Clerk	137,750	20	45,917	\$34.02	\$1,000,000
IC7	Authorization Verification	Various		655,000	10	109,167	\$34.02	\$4,000,000
IC8	Driver Consent Verification Full Annual Queries	Drivers	Drivers	361,000	10	60,167	\$29.07	\$2,000,000
IC9	Driver Consent Verifications for Pre-employment Queries	Drivers	Drivers	1,996,328	10	332,721	\$29.07	\$10,000,000
	<b>Total</b>			<b>11,038,986</b>		<b>1,862,790</b>		<b>\$61,300,000</b>

**Estimated Annual Burden Hours: 1,862,790 (rounded up to 1,864,251 due to rounding up to the nearest thousands as shown above in section 12).**

**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 \$9 million. FMCSA will operate and maintain the Clearinghouse. FMCSA is charging \$1.25 per query, paid by the

<sup>2</sup> 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.



employers. In addition, FMCSA is offering an unlimited plan for high-volume Clearinghouse users at a cost of \$24,500 annually.

<b>Employer Clearinghouse Access Fees</b>			
<b>Query Type</b>	<b>Estimated Number of Queries</b>	<b>Cost per Query</b>	<b>Cost</b>
Pre-employment Query	1,996,328	\$1.25	\$2,495,410
Annual Query-Limited	4,839,000	\$1.25	\$6,048,750
Annual Query-Full	361,000	\$1.25	\$451,250
Estimated Unlimited Queries <sup>3</sup>	N/A	N/A	\$367,500
<b>Total</b>	7,196,328		\$9,362,910

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

FMCSA will incur costs to develop the Clearinghouse, continuously manage driver records and provide notification to drivers as required. FMCSA estimates that the Agency’s IT costs will be \$4.4 million annually.<sup>4</sup>

#### **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 1,862,790 annually. No burden hours or annual costs were being requested for the first three years, between 2017 and 2020, for this ICR. An ICR renewal for the estimated burden hours and costs is now being submitted by the Agency to OMB for approval on time for the compliance date on January 6, 2020.

#### **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.

#### **18. Exceptions to Certification Statement.**

There are no exceptions to the certification statement.

### **Part B. Collections of Information Employing Statistical Methods.**

This ICR does not employ statistical methodologies.

#### **Attachments**

<sup>3</sup> FMCSA is estimating that 15 carriers will purchase the unlimited query plan at \$24,500 annually.

<sup>4</sup> This is the value of the contract to perform operations and maintenance on the Drug and Alcohol Clearinghouse. This estimate is based on the original development of the database and ongoing operations and maintenance to similar IT systems.

- A. Final rule (81 FR 87686), December 5, 2016.
- B. Privacy Impact Assessment for the Clearinghouse Final Rule