

Department of Transportation
Office of the Chief Information Officer

SUPPORTING STATEMENT

**COMMERCIAL DRIVER LICENSE
DRUG AND ALCOHOL CLEARINGHOUSE**

INTRODUCTION

This is to request the Office of Management and Budget's (OMB) approval of a new information collection request (ICR) contained in a Notice of Proposed Rulemaking (NPRM) entitled, "Commercial Driver License (CDL) Drug and Alcohol Clearinghouse," (79 FR 9703), February 20, 2014, (Attachment A).

Part A. Justification

1. Circumstances that make the collection of information necessary.

Section 31306a of The Moving Ahead for Progress in the 21st Century Act (MAP-21), Public Law 112-141, 126 stat.405 (July 6, 2012), (Attachment B) mandates that the Secretary of Transportation (Secretary) establish a national clearinghouse for controlled substance and alcohol test results of commercial motor vehicle (CMV) operators.

In 1999, a New Orleans bus crash resulted in 22 passenger fatalities. The motorcoach driver's post-accident drug test showed use of marijuana and a sedating anti-histamine 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 (USDOT) testing requirements and require prospective employers to query the system before making a hiring decision." This proposed rulemaking addresses the NTSB's recommendation.

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.

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

The information would be used by employers 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 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. An additional purpose is to identify employers that do not establish and maintain required drug and alcohol testing programs.

The FMCSA would revise 49 CFR part 382, *Controlled Substances and Alcohol Use and Testing* (Attachment C).

3. Extent of automated information collection.

FMCSA estimates that 95% of this information would be disseminated by logging into a secure website, with the exception of the notification to drivers (FMCSA would 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 seven stated requirements of the rule, all would be electronic except for the second below:

1. Medical Review Officers (MROs) would submit verified positive controlled substances test results and medical refusals to the Agency.
2. FMCSA would notify drivers testing positive that information about them has been reported to the database. The drivers would also have the opportunity to review the information reported.
3. Substance Abuse Professionals (SAPs) would report the completion date of the return to duty process, and the prescribed follow up testing.
4. Employers or designated service agents (C/TPAs) would report verified alcohol test results at or above 0.04 alcohol-concentration for drivers to the Agency.
5. Employers or C/TPAs acting on the employer's behalf would submit information on refusals to test.
6. All employers would report actual knowledge of drivers who received traffic citations for operating a CMV under the influence of drugs or alcohol.
7. All drug-testing laboratories would submit annual summaries of the results of their controlled substances and alcohol testing programs directly to FMCSA.

4. Efforts to identify duplication.

The FMCSA is not aware of any other rules that conflict with the proposed action. The proposed rule would require laboratories to report summary test information on each motor carrier covered

by FMCSA's drug and alcohol rules for which they perform tests. The purpose of this requirement is to help FMCSA identify motor carriers that do not comply with mandatory drug and alcohol testing requirements. Currently, there exists a DOT-wide requirement for laboratories to report summary information on testing services provided to DOT-regulated entities, but does not require the information to be broken down on a carrier-by-carrier basis. The DOT-wide report overlaps with the proposed rule in the sense that it contains some of the same aggregate information that would be required under the proposed rule. However, since the reports do not contain summary information specific to each motor carrier for which the laboratory provides services, FMCSA cannot use this information to identify non-compliant motor-carriers. In addition, the Agency requests drug and alcohol testing summary reports from approximately 3,000 employers per year through FMCSA's Drug and Alcohol Testing Survey. This information is not collected from every covered motor carrier. Instead, the purpose of the survey is to produce nationally representative estimates for drug and alcohol usage rates among CDL drivers, in order to determine whether to increase or decrease random testing rates in accordance with 49 CFR 382.305(c) (Attachment D).

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, and information about evaluation and treatment of return to duty processes. MROs, C/TPAs, and SAPs are most likely small entities.

The requirement to submit drug and alcohol test information of 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 applicable safety regulations. However, the burden of the proposed rule is likely to decrease as the deterrent effect of a more credible drug and alcohol testing program increases compliance.

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 would be less frequent collection of information. All information (except driver-notifications by FMCSA) will be transmitted electronically.

7. Special circumstances.

The frequency of information collection is done more often than quarterly, as it is done as the database is updated with each additional positive test 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 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 proposed rulemaking addresses the NTSB’s recommendation.

Two recent Government Accountability Office (GAO) reports discuss “job hopping” by drivers after failing, or refusing to submit to, drug or alcohol tests (see: GAO-08-600 (Attachment E) and GAO-08-0829R (Attachment F)). 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 rulemaking as possible methods to eliminate the job-hopping problems it verified.

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 Assessment (Attachment G) 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 Assessment (Attachment G) prepared for this rulemaking.

12. Estimates of Burden Hours for Information Requested.

Annual burden hours for the proposed rule can be separated into eight parts:

1. Employers would query the Clearinghouse annually for each of their drivers. FMCSA estimates employers would perform a total of 5,200,000 annual queries per year. The Agency estimates that a “bookkeeping, accounting, or auditing” clerk would spend ten minutes (1/6th of an hour) to conduct a query on a single driver. Given 5,200,000 queries, the total number of hours spent to complete them is estimated at 866,667 (5,200,000 queries x 1/6 hours per query = 866,667 hours).

2. Employers would query the Clearinghouse as part of their pre-employment screening process of potential hires. FMCSA estimates employers would perform a total of 1,876,000 pre-employment queries per year. As mentioned previously, the Agency estimates that a bookkeeping clerk would spend ten minutes (1/6th of an hour) to conduct a query on a single driver. Given 1,876,000 queries, the total number of hours spent to complete them is estimated at 312,667 (1,876,000 queries x 1/6 hours per query = 312,667 hours).
3. Employers would be required to designate their C/TPAs with the Clearinghouse. FMCSA estimates that a bookkeeping clerk would 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 86,667 (520,000 designations x 1/6 hours per designation = 86,667 hours).
4. SAPs would be required to input information to the Clearinghouse about drivers initiating and completing the return-to-duty process. FMCSA estimates that 82,900 drivers would be required to have their information input by an SAP. The Agency estimates that SAPs would spend a total of ten minutes (1/6th of an hour) entering driver information at the beginning and completion of the return-to-duty process. Therefore, the total number of hours spent to fulfill this requirement is estimated at 13,817 (82,900 designations x 1/6 hours per designation).
5. MROs, SAPs, C/TPAs, and employers would be required to report information to the Clearinghouse. The number of reports totals 165,800 (75,800 positive test results and refusals reported by MROs to the Clearinghouse, 7,100 alcohol test results and refusals reported by employers or C/TPAs to the Clearinghouse, and 82,900 return-to-duty reports to the Clearinghouse by SAPs). The Agency estimates that a bookkeeping clerk would spend ten minutes to report positive test results, report information on test refusals, or report information on treatment processes to the Clearinghouse. In sum, 27,633 hours would be spent on reporting test results to the Clearinghouse (165,800 reports x 1/6 hours per report).
6. Employers, C/TPAs, MROs, and SAPs would be required to register and become familiar with the new processes and requirements of the Clearinghouse. Given 520,000 carriers, the Agency estimates there would be 5000 C/TPAs, 11,000 MROs, and 15,000 SAPs that would be required to fulfill these requirements. FMCSA estimates that it would 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 (551,000 registration-familiarizations x 1/3 hours per registration-familiarization = 183,667 hours). 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).

In addition, both employers and C/TPAs must verify the names of persons authorized to report and obtain information from the Clearinghouse. If each C/TPA or employer authorizes one person, then the number of necessary verifications is estimated to be 655,000. Further, the FMCSA estimates that it would take a bookkeeping clerk ten minutes (1/6th of an hour) to verify each person authorized; therefore, the total number of hours spent to fulfill this requirement is would be 109,167 (655,000 registration-familiarizations x 1/6 hours per registration-familiarization = 109,167 hours).

The total amount of hours required for employers, C/TPAs, MROs, and SAPs to register and become familiar with the new processes and requirements, as well as verify persons authorized to access the Clearinghouse would be 155,084 hours (45,917 hours + 109,167 hours).

7. Drivers must consent to the release of their records from the Clearinghouse. FMCSA estimates that it takes a driver ten minutes (1/6th of an hour) to provide driver consent to release information. Given 1,876,000 pre-employment queries that require driver consent, the number of hours spent on consent verification is estimated at 312,667 (1,876,000 queries x 1/6 hours per query = 312,667 hours).

In addition, the Agency estimates that 512,000 annual queries would necessitate driver consent. 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 85,333 (512,000 queries x 1/6 hours per query = 85,333 hours).

The total amount of hours that would require drivers to consent to release of information is estimated at 398,000 (312,667 hours for pre-employment queries + 85,333 hours for annual queries).

8. All 32 drug-testing laboratories must submit an annual summary report of test-results directly to FMCSA every year. If this takes a conservatively high estimate of 1.5 hours to complete, then an additional 48 hours are spent on information requests.

The table below presents calculations for the discussion above.

Total Annual Number of Burden Hours					
Submissions	Responsible	Performed by	Instances	Minutes	Total Hours
Annual Queries	Carriers	Bookkeeping Clerk	5,200,000	10	866,667
Pre-Employment Queries	Carriers	Bookkeeping Clerk	1,876,000	10	312,667
Designate C/TPAs	Carriers	Bookkeeping Clerk	520,000	10	86,667
SAPs Inputting Driver Information	SAPs	SAPs	82,900	10	13,817
Report/Notify Positive Tests	Various	Bookkeeping Clerk	165,800	10	27,633
Register / Familiarize / Verify	Various	Bookkeeping Clerk	792,750	20. 10	155,083
Driver Consent Verifications	Drivers	Drivers	2,388,000	10	398,000
Annual Summaries	Laboratories	Bookkeeping Clerk	32	90	48
Total Instances/Hours			11,025,482		1,860,581

Estimated Annual Burden Hours: 1,860,581

Estimated Annual Number Respondents: 11,025,482

13. Estimates of Total Annual Costs to Respondents.

With the Clearinghouse in place, many more drivers are expected to undergo and complete the return-to-duty process in order to continue driving in the trucking industry. There are an estimated 35,500 additional drivers expected to be caught by the proposed rule and therefore will enroll in the return-to-duty process. The cost of this process includes an SAP assessment, treatment or education, and follow-up testing. The total annual costs to these 35,500 drivers/respondents would be approximately \$101 million. It should be noted that not all respondents will undergo the return-to-duty process.

FMCSA incurs a cost to process an employer's request to access information in the Clearinghouse on a particular driver. However, this cost is offset by a per request access fee that FMCSA charges employers. FMCSA estimates no other costs to respondents other than the costs associated with the burden hours shown in item 12 above (which are not to be included in item 13).

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

Annual costs to the Federal Government include the process of mailing notifications to drivers when information about him or her is added, modified, or removed from the Clearinghouse. The Agency assumes this task will take 10 minutes to complete and will be performed by a grade 9 Transportation Specialist at FMCSA at a cost of \$34 per hour.¹ The expected cost to the Federal

¹ Based on the 2011 wage (2012 rates frozen at 2010 levels) for GS 9 step 5 of \$22.57 per hour (see http://www.opm.gov/oca/11tables/pdf/gs_h.pdf), plus 36.25 percent of that base wage for fringe benefits, plus 12

Government for annual notifications would be about \$1,105,333 annually (\$704,650 in labor costs to create and mail out the notifications (165,800 notifications x \$34.00 for 1/6th hour), and \$165,800 for envelopes, letters and postage (\$1.00 for each of the 165,800 notifications). In addition, development of the clearinghouse and management of driver records would be administered by FMCSA. The federal government would incur these costs, which are estimated to be no more than \$2.2 million per year.² The total cost for annual notifications and development of the Drug and Alcohol Clearinghouse would be approximately \$3 million (\$3,305,533 = \$2,200,000 + \$1,105,333, rounded to the nearest million).

The annual costs to the Federal Government (FMCSA) are presented in the table below.

Annual Notification Costs of the Federal Government				
Notifications	Instances	Minutes	Hourly Wage	Cost
Positive Drug Test Results and Refusals	75,800	10	\$34.00	\$429,533
Verified Alcohol Test Results and Refusals	7,100	10	\$34.00	\$40,233
Reports on Treatment Process	82,900	10	\$34.00	\$469,767
Total Notifications to Mail	165,800		\$1.00	\$165,800
Development & Records Management	-	-	-	\$2,200,000
Total Costs				\$3,305,533

15. Explanation of Program Changes or Adjustments.

This program increase is due to a new ICR requirement in an NPRM. From item 12 above, the additional burden-hours of this rule are 1,860,581 annually.

16. Publication of Results of Data Collection.

FMCSA does not plan to publish any results.

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.

percent of wages and fringe benefits to account for overhead (see http://www.whitehouse.gov/omb/circulars_a076_a76_incl_tech_correction).

² 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.