



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2019-0108]

Agency Information Collection Activities; Approval of a Renewal Information

Collection Request: Commercial Driver's License Drug and Alcohol Clearinghouse

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for review and approval. The FMCSA requests to renew an ICR titled, "Commercial Driver's License Drug and Alcohol Clearinghouse." The Agency's final rule, published December 5, 2016, titled "Commercial Driver's License Drug and Alcohol Clearinghouse" (Clearinghouse) established the regulatory requirements for the Clearinghouse. The compliance date of the final rule is January 6, 2020. Since the original ICR was approved, FMCSA has opened the Clearinghouse to user registration, resulting in the collection of user contact information. With the upcoming compliance date, this ICR is needed to ensure that Clearinghouse querying and reporting requirements are met to improve compliance with the existing requirement that Commercial Driver's License (CDL) or Commercial Learner's Permit (CLP) holders who have drug or alcohol testing violations cannot perform safety-sensitive functions, including driving a commercial motor vehicle (CMV), without participating in the required return-to-duty process.

DATES: Please send your comments by **[INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION OF THIS NOTICE IN THE FEDERAL REGISTER]**.

OMB must receive your comments by this date.

ADDRESSES: All comments should reference Federal Docket Management System (FDMS) Docket Number FMCSA-2019-0108. Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/Federal Motor Carrier Safety Administration, and sent via electronic mail to oir_submission@omb.eop.gov, or faxed to (202) 395-6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, N.W., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Juan Moya, Compliance Division, Department of Transportation, Federal Motor Carrier Safety Administration, 6th Floor, West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001. Telephone: 202-366-4844; E-mail Address: clearinghouse@dot.gov. Office hours are from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

SUPPLEMENTARY INFORMATION:

Title: Commercial Driver's License Drug and Alcohol Clearinghouse.

OMB Control Number: 2126-0057.

Type of Request: Renewal

Respondents: Motor carriers (employers), drivers, medical review officers (MRO), substance abuse professionals (SAP), consortia/third-party administrators (C/TPAs), and State Drivers Licensing Agencies (SDLAs).

Estimated Number of Respondents: 11,038,986

Estimated Time per Response: 20 minutes.

Expiration Date: January 31, 2020.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 1,864,251

An authorized user's role will determine the frequency of the response in the Clearinghouse.

- Employers, or C/TPAs acting on behalf of an employer: at a minimum, employers are required to query the Clearinghouse for each driver they currently employ at least once a year. Employers must query the Clearinghouse for all prospective employees. In addition, employers report to the Clearinghouse alcohol confirmation test, with a concentration of 0.04 or higher, refusal to test (alcohol), refusal to test (drug) that is not determined by an MRO, actual knowledge of a driver's conduct prohibited by 49 CFR part 382, subpart B, negative return-to-duty (RTD) test results, and the driver's completion of follow-up testing. Employer reporting must be completed by the close of the third business day following the date they obtained the information.
- MROs: verified positive, adulterated or substituted drug test result and refusals to tests (drug) must be entered to the Clearinghouse no later than two business days of making a determination or verification.

- SAPs: must enter the initial assessment date and the date the driver successfully complied with return-to-duty (RTD) requirements. SAPs are required to enter this information on occasion by the close of business day following the date of the initial assessment or compliance with the RTD process.
- SDLAs will be required to query the Clearinghouse prior to specified licensing transactions to determine if there are existing drug or alcohol violations¹.
- Drivers must provide their specific consent to pre-employment queries electronically through the Clearinghouse.

Background:

Agency regulations at 49 CFR part 382 apply to persons and employers of such persons who operate CMVs in commerce in the United States and who are subject to the CDL requirements in 49 CFR part 383 or the equivalent CDL requirements for Canadian and Mexican drivers (49 CFR 382.103(a)). Part 382 requires that employers conduct pre-employment drug testing, post-accident testing, random drug and alcohol testing, and reasonable suspicion testing, as well as RTD testing and follow-up testing for those drivers who test positive or otherwise violate DOT drug and alcohol program requirements. Motor carrier employers are prohibited from allowing an employee to perform safety-sensitive functions, which include operating a CMV, if the employee tests positive on a DOT drug or alcohol test, refuses to take a required test, or otherwise violates the DOT or FMCSA drug and alcohol testing regulations.

¹ On September 6, 2019, FMCSA published a Notice of Proposed Rulemaking (NPRM) to extend the compliance date for the States' mandatory query of the Clearinghouse, as set forth in the Clearinghouse final rule, from January 6, 2020 to January 6, 2023. (84 FR 46923 (Sept. 6, 2019)) The NPRM proposed that, in the interim, States be permitted to voluntarily query the Clearinghouse beginning January 6, 2020. The Agency expects that a final rule will be published before the end of 2019.

Section 32402 of the Moving Ahead for Progress in the 21st Century Act (MAP-21) requires that the Secretary of Transportation establish, operate, and maintain a national clearinghouse for records relating to alcohol and controlled substances testing of CMV operators to improve compliance with the Department of Transportation's (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 operators of CMVs. As noted above, FMCSA published a final rule on December 5, 2016, with an effective date of January 4, 2017, and a compliance date of January 6, 2020, to implement these statutory requirements.

On June 20, 2019, the FMCSA published a 60-day ICR notice (84 FR 28882). The Agency received 24 comments in response to the ICR notice. These comments are summarized below. Thirteen commenters recommended an application programming interface (API) to reduce the burden of manual entries by employers or their designated C/TPAs, MROs, and employee-designated SAPs. In addition, several commenters stated an API would increase efficiency when querying the Clearinghouse for current and prospective employees. Some commenters suggested that the API would reduce errors in reporting of information, as well as reduce cost to employers and service agents. One commenter recommended delaying the implementation of the Clearinghouse until the development of an API has been completed.

FMCSA Response: The Agency believes that conducting mandatory pre-employment and annual Clearinghouse queries will impose the most significant burden on employers or their designated C/TPAs. In order to alleviate this burden, FMCSA developed a bulk query template allowing employers or their designated C/TPAs to submit multiple

queries at one time rather than querying each individual driver. FMCSA will consider the development of an API as a future enhancement to the system.

One commenter noted increased burden during registration due to the establishment of two-factor authentication methods through *login.gov*. *Login.gov* is a shared service which provides the public secure and private online access to participating Federal government programs, such as the Clearinghouse.

FMCSA Response: A two-factor authentication for all Clearinghouse users is necessary to ensure the security of sensitive driver-specific information. Once the *login.gov* account has been created, there is no additional burden to authorized users during the registration.

One commenter recommended that the comment period for the ICR be extended until after implementation of the Clearinghouse.

FMCSA Response: In accordance with information collection requirements established by the Paperwork Reduction Act of 1995 and related regulations, the public is invited to respond to this Federal Register Notice (FRN) during the 30-day comment period. All comments will be considered before publishing the final FRN for the ICR.

The remaining comments were not relevant to the subject matter of the ICR.

FMCSA opened the Clearinghouse to user registration on October 1, 2019.

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). This information collected is covered under the existing Clearinghouse ICR (2126-0057).

The Clearinghouse will function as a repository for records relating to the positive test results and test refusals of CMV operators and other violations by such operators of

prohibitions set forth in part 382, subpart B, of title 49, Code of Federal Regulations. An employer will utilize the Clearinghouse to determine whether current and prospective employees have incurred a drug or alcohol violation that would prohibit them from performing safety-sensitive functions, including operating a CMV.

The Clearinghouse will provide FMCSA and employers the necessary tools to identify drivers who are prohibited from operating a CMV and ensure that such drivers receive the required evaluation and treatment before resuming safety-sensitive functions. Specifically, information maintained in the Clearinghouse will ensure that drivers who commit a drug or alcohol violation while working for one employer and attempt to find work with another employer, can no longer conceal their drug and alcohol violations merely by moving on to the next job or the next state. Drug and alcohol violation records maintained in the Clearinghouse will follow the driver regardless of how many times he or she changes employers, seeks employment or applies for a CDL in a different State.

The information in the Clearinghouse will be used by FMCSA and its State partners for enforcement purposes:

- Ensure employers are meeting their pre-employment investigation and reporting requirements.
- Place drivers out of service if drivers are found to be operating a CMV without completing the RTD process.
- Ensure medical review officers (MROs) and substance abuse professionals (SAPs) meet their reporting requirements.

Only authorized users, including employers and their service agents, and highway safety personnel, and State Driver Licensing Agencies (SDLAs), will be able to register

and access the Clearinghouse for designated purposes. State enforcement personnel will receive the driver's eligibility status to operate a CMV, based on Clearinghouse information, when they check Query Central or NLETS for driver information. FMCSA will share a driver's drug and alcohol violation information with the National Transportation Safety Board when it is investigating a crash involving that driver.

Drivers will be able to access their own information, but not information of other drivers. The Clearinghouse will meet all relevant federal security standards and FMCSA will continuously monitor compliance with applicable security regulations.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) whether the proposed collection is necessary for the FMCSA to perform its functions; (2) the accuracy of the estimated burden; (3) ways for the FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information.

Issued under the authority delegated in 49 CFR 1.87 on: December 17, 2019

G. Kelly Regal,

Associate Administrator for Office of

Research and Information Technology.

[FR Doc. 2019-27635 Filed: 12/20/2019 8:45 am; Publication Date: 12/23/2019]