



**U.S. Department of Transportation
Privacy Impact Assessment
Federal Motor Carrier Administration (FMCSA)
Drug and Alcohol Clearinghouse
Final Rule**

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Executive Summary

The Federal Motor Carrier Safety Administration (FMCSA) issued a final rule revising 49 CFR part 382, Controlled Substances and Alcohol Use and Testing, 383 Commercial Driver's License Standards; Requirements and Penalties ; 384 State Compliance With Commercial Driver's License Program, and 391 Qualifications of Drivers and Longer Combination Vehicle Driver Instructors, to establish the Drug and Alcohol Clearinghouse.¹ The Rule will allow the Federal Motor Carrier Safety Administration (FMCSA) and regulated motor carrier employers to more easily identify unsafe drivers based on U.S. Department of Transportation (DOT or Department) drug and alcohol testing program violations and to ensure that such drivers receive evaluation and treatment before resuming safety-sensitive duties. In addition, it will require employers and service agents to report information about current and prospective employees' positive drug and alcohol test results, as well as refusals to submit to testing, to the Clearinghouse. Employers will also be required to search the Clearinghouse annually for positive drug and alcohol test results and refusals to submit to testing for current employees, and as part of the pre-employment screening process for prospective employees.

The reporting and verification requirements will improve employers' ability to determine whether current or prospective employees are prohibited from operating CMVs under the DOT drug and alcohol program. These requirements will address the situation in which drivers who are employed by multiple operators fail to report drug and alcohol testing violations to all of their employers, thus enabling them to continue operating CMVs without completing the requisite return-to-duty process. For example, this could occur if a driver is fired for a positive test but does not inform prospective or future employers about the previous positive test result. This could also occur if a driver tests positive for drugs or alcohol during a pre-employment test, waits for the drugs to leave his/her system, then takes and passes another pre-employment test with a different employer and gets hired without that employer having any knowledge of the previously failed pre-employment test. This PIA is being issued to address updates to the program included in the Final Rule.

What is a Privacy Impact Assessment?

The Privacy Act of 1974 articulates concepts for how the federal government should treat individuals and their information and imposes duties upon federal agencies regarding the collection, use, dissemination, and maintenance of personally identifiable information (PII). The E-Government Act of 2002, Section 208, establishes the requirement for agencies to conduct privacy impact assessments (PIAs) for electronic information systems and collections. The assessment is a practical method for evaluating privacy in information systems and collections, and documented assurance that privacy issues have been identified and adequately addressed. The PIA is an analysis of how information is handled to—i) ensure handling conforms to applicable legal, regulatory, and policy requirements regarding privacy; ii) determine the risks and effects of collecting, maintaining and disseminating information in identifiable form in an electronic information system; and iii) examine and evaluate protections and alternative processes for handling information to mitigate potential privacy risks.²

Conducting a PIA ensures compliance with laws and regulations governing privacy and demonstrates the DOT's commitment to protect the privacy of any personal information we collect, store, retrieve, use and share. It is a comprehensive analysis of how the DOT's electronic information systems and collections handle personally identifiable information (PII). The goals accomplished in completing a PIA include:

- *Making informed policy and system design or procurement decisions. These decisions must be based on an understanding of privacy risk, and of options available for mitigating that risk;*

¹ Commercial Driver's License Drug and Alcohol Clearing House, Final Rule December 5, 2016 (81 FR 233)

² Office of Management and Budget's (OMB) definition of the PIA taken from guidance on implementing the privacy provisions of the E-Government Act of 2002 (see OMB memo of M-03-22 dated September 26, 2003).

- *Accountability for privacy issues;*
- *Analyzing both technical and legal compliance with applicable privacy law and regulations, as well as accepted privacy policy; and*
- *Providing documentation on the flow of personal information and information requirements within DOT systems.*

Upon reviewing the PIA, you should have a broad understanding of the risks and potential effects associated with the Department activities, processes, and systems described and approaches taken to mitigate any potential privacy risks.

Introduction & System Overview

The Omnibus Transportation Employee Testing Act (OTETA) of 1991 [Pub. L. 102-143, 105 Stat. 952, October 28, 1991], as codified in 49 U.S.C. 31306, mandates the alcohol and controlled substances testing program for the DOT. To address this mandate, the USDOT adopted the "Procedures for Transportation Workplace Drug and Alcohol Testing Programs" [49 CFR Part 40]. This part establishes requirements for all DOT-regulated parties, including employers of drivers with CDLs subject to FMCSA's drug and alcohol testing requirements, 49 CFR Part 382. To implement the requirements of OTETA and Part 40, the Federal Highway Administration, an FMCSA predecessor agency, published a final rule in 1994 establishing the drug and alcohol testing program in 49 CFR Part 382.

To further improve the regulatory testing process and ensure that employers are able to identify current and prospective employees who are not qualified to drive CMVs because of outstanding drug and alcohol test violations, on July 6, 2012, Congress enacted The Moving Ahead for Progress in the 21st Century Act (MAP-21), mandating that the Secretary of Transportation (Secretary) establish a national clearinghouse for controlled substance and alcohol test results of CMV drivers.

This statutory mandate follows the investigation of a bus crash in New Orleans, Louisiana in 1999 that resulted in the National Transportation Safety Board (NTSB) recommending that FMCSA "develop a system that records all positive drug and alcohol test results and refusal determinations resulting from the DOT 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." In addition, the Government Accountability Office (GAO) identified 43 cases where drivers tested positive for illegal drugs (e.g., cocaine, marijuana, and amphetamines) with one employer and subsequently tested negative with another employer who was unaware of the prior positive tests. In its recommendations to Congress, GAO proposed the establishment of a national database and this rulemaking as possible solutions to these job-hopping problems (See GAO-08-600 "Improvements to Drug Testing Programs Could Better Identify Illegal Drug Users and Keep them off the Road" and GAO-08-0829R "Examples of Job Hopping by Commercial Drivers after Failing Drug Tests"³).

Thus, in response to the Congressional mandate and NTSB and GAO recommendations, the final rule establishes a database administered by FMCSA, known as the Commercial Driver's License Drug and Alcohol Clearinghouse (Clearinghouse), that will require FMCSA-regulated motor carrier employers, and service agents such as Medical Review Officers (MROs), Substance Abuse Professionals (SAPs), and consortia/third party administrators (C/TPAs) supporting U.S. Department of Transportation (DOT) testing programs, to report verified positive, adulterated, and substituted drug test results, positive alcohol test results, test refusals, negative return-to-duty test results, and information on the frequency, number and type of follow-up tests required. The final rule will also require motor

³ See GAO-08-600 "Improvements to Drug Testing Programs Could Better Identify Illegal Drug Users and Keep Them Off the Road," May 15, 2008, and GAO-08-829R, "Examples of Job Hopping by Commercial Drivers After Failing Drug Tests," June 30, 2008. Accessed at <http://www.gao.gov/assets/280/275382.pdf> and <http://www.gao.gov/new.items/d08829r.pdf> on 23-April-2012.

carrier employers to report actual knowledge of all violations of part 382 in the Clearinghouse to obtain a complete picture of a driver's drug and alcohol violations history. Any violation based on an employer's actual knowledge of a driver's drug or alcohol use, or a driver's failure to appear for a drug or alcohol test after receiving proper notification, will require detailed, contemporaneous documentation in the Clearinghouse. The final rule establishes the terms of access to the database, including the conditions under which information is submitted, accessed, maintained, updated, removed, and released to current and prospective employers (including service agents acting on the employer's behalf), State Drivers Licensing Authorities (SDLAs), and drivers. (See *Appendix A, Summary of Responsibilities and Data Access to the Clearinghouse found at the end of this document.*) Overall, motor carrier employers, or service agents acting on their behalf, will be required to query the Clearinghouse to determine whether current or prospective employees tested positive for drugs or alcohol in violation of FMCSA's drug and alcohol testing program. The final rule requires an employer motor carrier to obtain written or electronic consent from a driver before querying the Clearinghouse to determine if the Clearinghouse contains information concerning that driver. The final rule prohibits disclosure of information in the Clearinghouse to an employer motor carrier without prior driver consent. No employer motor carrier will not be allowed to employ a driver to perform safety sensitive functions if that driver refuses to grant consent.

FMCSA will notify drivers, via U.S. mail sent to the address on record with the SDLA that issued the CDL held by the driver, whenever information concerning that driver has been added to, revised, or removed from the Clearinghouse. The final rule also permits a driver to provide the Clearinghouse with an alternative means or address for notification, including electronic mail. In addition, employers who previously received Clearinghouse information that was subsequently revised or removed will be notified of those changes.

In light of the PII that must be captured, maintained, and accessed in this database, FMCSA published the NPRM and the previous version of this Privacy Impact Assessment for public comment. This revised PIA and a Privacy Act system of records notice (SORN) have been issued in conjunction with the Final Rule for the Drug and Alcohol Clearinghouse.

Personally Identifiable Information and the Drug and Alcohol Clearinghouse

The final rule is applicable to drivers and employers of drivers who operate CMVs in interstate and intrastate commerce in the United States and are subject to the CDL requirements in 49 CFR part 383 or the equivalent CDL requirements for Canadian and Mexican drivers. The final rule is also applicable to SDLAs.

The final rule will require motor carrier employers and service agents to report information about current and prospective employees' drug and alcohol test results, test refusals, and actual knowledge violations to the Clearinghouse and will require motor carrier employers and certain service agents to check current and prospective employees against the database. SDLAs will be required to query the Clearinghouse before issuing, renewing or upgrading a CDL in order to determine whether the applicant is qualified to operate a CMV. The rule will thus provide FMCSA, SDLAs and regulated motor carrier employers the necessary tools to identify drivers who are prohibited from operating a CMV based on DOT drug and alcohol program violations and ensure that such drivers receive the required evaluation and treatment before resuming safety-sensitive functions.

FMCSA is responsible for ensuring that appropriate protections and controls governing the collection, use, sharing, storage, and retention of driver information under its control. The rule will require use of CMV driver information in order to ensure that positive drug and alcohol testing results, refusals, and employer reports of actual knowledge that a driver has violated any of the applicable prohibitions from part 382, are accurately reported and are correctly attributed to the driver.

FMCSA's drug and alcohol testing program requires specimen collectors from laboratories working for motor carrier employers to use the Federal Drug Testing Custody and Control Form (OMB Control Number 0930-0158) when collecting specimens from drivers, laboratories can use the Department of Health and Human Services' electronic

Custody and Control form (eCCF). Collectors use the U.S. Department of Transportation (DOT) Alcohol Testing Form (ATF) (OMB Control Number 2105-0529) to perform alcohol testing on drivers. Under this requirement, specimen collectors will not be permitted to record drivers' Social Security numbers, and the only permitted employee ID will be the driver's CDL number and State of issuance.

C/TPAs are consortia and third party administrators who coordinate testing services for regulated motor carrier employers. FMCSA regulations require any employer who employs only himself/herself as a driver to join a random test selection pool. Consortia are the entities that manage these pools (49 CFR 382.103(b)). Third party administrators, which often include consortia, are entities that regulated motor carrier employers contract with to implement drug and alcohol testing programs. Under this rule, C/TPAs will be subject to the same reporting requirements as employers when they assume a regulated employer's drug and alcohol testing functions. C/TPAs that are required by the final rule to perform employer functions (i.e., for self-employed drivers) will be required to report positive alcohol tests, drug or alcohol test refusals, negative return-to-duty tests, and successful completion of all follow-up tests. Employers may contract with C/TPAs to perform reporting functions, but employers, in addition to their C/TPAs, remain responsible for meeting the reporting requirements.

SAPs evaluate, assess and refer drivers for education and/or treatment after a positive test or refusal as a part of the return-to-duty process (49 CFR part 40, subpart O). Under the final rule, SAPs will be required to report to the Clearinghouse the dates that a driver began and successfully completed the return to duty process specified in 49 CFR part 40, subpart O, indicating driver eligibility for return-to-duty testing. SAPs will provide the follow-up testing information directly to the employer as part of the follow-up evaluation report required by 49 CFR part 40. Follow-up testing plans will not be included in a driver's Clearinghouse record.

The requirements of this rule will also affect motor carriers employing owner-operators. The drug and alcohol testing regulations in part 382 impose requirements upon employers and drivers; owner-operators can function as both. Currently, when an owner-operator acts as a driver for another employer, FMCSA requires that the employer treat the owner-operator as if he or she were an employee for the purposes of the employer's DOT drug and alcohol testing program. As a result, the final rule will require motor carriers employing owner-operators to treat those drivers as employees for purposes of querying and reporting to the database.

The rule requires medical review officers (MROs) to report to the Clearinghouse within two business days the following driver information to the Clearinghouse for verified positive, adulterated or substituted test results and refusals (as provided in 49 CFR § 40.191):

1. Reason for test (e.g., pre-employment, post-accident, random, reasonable suspicion, return-to-duty, or follow-up);
2. Federal Drug Testing Custody and Control Form specimen ID number;
3. Collection site name and address;
4. Driver name, date of birth, and CDL/CLP number and state of issuance;
5. Date of test;
6. Date of the verified result; and
7. Specimen test result.

The rule requires employers, or C/TPAs acting on behalf of an employer, including a driver who employs himself or herself, to report the following information to the Clearinghouse for: (i) an alcohol test result with an alcohol concentration of 0.04 or greater; (ii) a negative return-to-duty alcohol and/or controlled substances test result; (iii) a refusal to take an alcohol test pursuant to 49 CFR 40.261; and (iv) a refusal to provide a specimen for controlled substances testing pursuant to 49 CFR 40.191:

1. Reason for the test;
2. Driver's name, date of birth, and CDL/CLP number and state of issuance;
3. Employer name, address, and USDOT number;
4. Date of the test;
5. Date the result was reported; and
6. Test result.

Motor carrier employers will also be required to report each instance in which they have actual knowledge of any of the prohibitions a driver would be subject to in part 382. The report submitted to the Clearinghouse must include the following information:

1. CMV driver name, date of birth, and CDL/CLP number and state of issuance;
2. Employer name, address, and USDOT Number if applicable;
3. Date employer obtained actual knowledge of violation;
4. Witnesses to the violation, if any, including contact information;
5. Description of violation;
6. Evidence supporting each fact alleged in the description of the violation, which may included, but is not limited to, affidavits, photographs, video or audio recordings, employee statements (other than admissions) correspondence, or other documentation; and
7. A certificate of service or other evidence showing that the employer provided the employee with all information that had been reported as listed above.

In addition, motor carrier employers reporting "failure to appear" drug or alcohol test refusals will be required to provide contemporaneous documentation that the driver was notified to appear at the testing site and that the driver had not resigned or been terminated by the motor carrier at the time the notification occurred. The purpose of the reporting requirements for actual knowledge violations and "failure to appear" test refusals is to ensure that drivers are not subject to harassment or coercion in connection with an employer's use of the Clearinghouse.

For drivers participating in the return-to-duty process set forth in 49 CFR Part 40 Subpart O (Substance Abuse Professionals and the Return-to-Duty Process), the rule requires SAPs to report the following information to the Clearinghouse:

1. SAP name, address, and telephone numbers;
2. Driver's name, date of birth, and CDL number and state of issuance;
3. Date of the initial SAP assessment; and
4. Date when driver has successfully completed education and /or treatment process and was eligible for return-to-duty testing.

Appendix A summarizes the requirements for each entity responsible for reporting information to the Clearinghouse.

Fair Information Practice Principles (FIPPs) Analysis

The DOT PIA template based on the fair information practice principles (FIPPs). The FIPPs, rooted in the tenets of the Privacy Act, are mirrored in the laws of many U.S. states, as well as many foreign nations and international organizations. The FIPPs provide a framework that will support DOT efforts to appropriately identify and mitigate privacy risk. The FIPPs-based analysis conducted by DOT is predicated on the privacy control families articulated in the Federal Enterprise Architecture Security and Privacy Profile (FEA-SPP) v3⁴, sponsored by the National Institute of Standards and Technology (NIST), the Office of Management and Budget (OMB), and the Federal Chief Information Officers Council and the Privacy Controls articulated in Appendix J of the NIST Special Publication 800-53 Security and Privacy Controls for Federal Information Systems and Organizations⁵.

Transparency

Sections 522a(e)(3) and (e)(4) of the Privacy Act and Section 208 of the E-Government Act require public notice of an organization's information practices and the privacy impact of government programs and activities. Accordingly, DOT is open and transparent about policies, procedures, and technologies that directly affect individuals and/or their personally identifiable information (PII). Additionally, the Department should not maintain any system of records the existence of which is not known to the public.

FMCSA does not secretly collect or store PII and clearly discloses its' policies and practices concerning the PII collected and held associated with the implementation of all rules discussed in this PIA. FMCSA provides notice to individuals through several different ways including the publication of the Drug and Alcohol Clearinghouse NPRM and Final Rule the privacy policy on the FMCSA website (www.fmcsa.dot.gov), and the SORN that will be published on the DOT Privacy Program website and in the Federal Register for public comment. The SORN will provide notice as to the conditions of disclosure and FMCSA's routine uses for the information collected in the system. The SORN will also provide that any dissemination of information maintained with the system be compatible with the purpose for which the information was originally collected.

The publication of this PIA further demonstrates FMCSA's commitment to provide appropriate transparency into the Drug and Alcohol rulemaking. This PIA is available to the general public on the DOT Web site at <http://www.dot.gov/privacy>.

This final rule will require employers to report information about a driver's verified positive, adulterated, or substituted drug test results; positive alcohol test results; refusals to submit to any test required by subpart C of 49 CFR Part 382; employers' reports of actual knowledge of violation of any of the prohibitions that a driver would be subject to from part 382; negative return-to-duty tests; and employers' reports of completion of follow-up testing. Employers will inform employees, through educational materials, what information will be reported to the Clearinghouse. Employees will also be notified each time a record pertaining to the employee is reported to, revised or removed from the Clearinghouse. The driver will be able to access the Clearinghouse to review the new or revised data.

The final rule requires that employers query the Clearinghouse as part of the pre-employment screening process and that employers conduct annual queries for all drivers they currently employ. The final rule permits two types of queries, limited and full. For a limited query, employers, after receiving the employee's consent, will query the database using the driver's name, CDL number and state of issuance. The limited query indicates whether there is information in the Clearinghouse pertaining to the employee. If the limited query results indicate that Clearinghouse

⁴ <https://cio.gov/wp-content/uploads/downloads/2012/09/FEA-Security-Privacy-Profile-v3-09-30-2010.pdf>

⁵ <http://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-53r4.pdf>

contains employee-specific information, the employer must conduct a full query after receiving specific consent from the employee. The full query will allow an employer to access information in the employee's Clearinghouse record. FMCSA will verify the driver's consent before releasing that information to an employer.

Employees who refuse to provide consent for either limited or full queries will not be permitted to perform any safety-sensitive functions, including driving a CMV. Drivers who have unresolved drug and alcohol program violations may not perform safety-sensitive functions until they complete the return-to-duty process. Clearinghouse records are available to employers for up to five years from the date the drug or alcohol violation was reported to the Clearinghouse.

Individual Participation and Redress

DOT should provide a reasonable opportunity and capability for individuals to make informed decisions about the collection, use, and disclosure of their PII. As required by the Privacy Act, individuals should be active participants in the decision making process regarding the collection and use of their PII and be provided reasonable access to their PII and the opportunity to have their PII corrected, amended, or deleted, as appropriate.

FMCSA ensures that an individual has the right to (a) obtain confirmation of whether or not FMCSA has PII relating to him or her; (b) access the PII related to him or her within a reasonable time, cost, and manner and in a form that is readily intelligible to the individual; (c) obtain an explanation if a request made under (a) and (b) is denied and challenge such denial; and (d) challenge PII relating to him or her and, if the challenge is successful, have the data erased, rectified, completed, or amended.

Drivers who register with the Clearinghouse will have access to review their own information upon electronic request. Drivers can view their Clearinghouse record as often as they wish at no charge.

Under this rule, FMCSA will notify a driver when information concerning that driver has been entered into, revised, or removed from the Clearinghouse. FMCSA will notify drivers by sending a letter via U.S. mail to the address on record with the State Driver Licensing Agency that issued the CDL held by the driver or a driver may provide the Clearinghouse with an alternative means or address for notification, including electronic mail. The driver will be alerted each time a change occurs to his or her record in the Clearinghouse.

The final rule will grant drivers the right to review information in the Clearinghouse about themselves except as otherwise restricted by law, and establishes procedures for drivers to petition FMCSA to correct inaccurate information in the Clearinghouse. Drivers may request that inaccurate information be corrected for as long as the allegedly erroneous record is retained in the Clearinghouse. Drivers will need to include information identifying themselves and the information they want to be corrected, the reasons they believe the information is inaccurate, and evidence supporting their challenge. Drivers will not be able to challenge the accuracy or validity of the alcohol or controlled substance test results under the final rule. Procedures established under this rule will be used to correct clerical errors, such as attributing drug or alcohol testing results to the wrong driver, reporting an incorrect driver name or CDL number, misidentifying the type of test performed (i.e., pre-employment screening versus random testing), and correcting other such inaccuracies in the Clearinghouse. These procedures can also be used to request that an employer's report of actual knowledge of a driver's traffic citation for operating a CMV under the influence of drugs or alcohol be removed from the Clearinghouse if the citation did not result in a conviction. In addition, drivers can request that other reports of actual knowledge violations, as well as "failure to appear" test refusals, be removed from the Clearinghouse if they were not reported in accordance with the procedures established in the final rule. FMCSA will resolve petitions and notify drivers of its decisions within 45 days of receiving a complete petition. If the resolution of a petition will affect a driver's ability to perform safety-sensitive functions, he or she may request an expedited review. If FMCSA grants an expedited review, the Agency will inform the driver of its decision within 14 days of receiving a completed petition.

Under this rule drivers may request that FMCSA conduct an administrative review if they believe that a decision was made in error. The driver will submit his or her request electronically or in writing to the Associate Administrator for

Enforcement and Program Delivery (MC-E), Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590. The request must explain the error the driver believes that FMCSA has made and provide information and/or documents to support the driver's argument. FMCSA will complete its administrative review no later than 30 days after receiving the driver's request for review and this will constitute final Agency action.

Independent of the provisions provided by the final rule, individuals may request access to their own records that are maintained in a system of records in the possession or under the control of DOT by complying with DOT Privacy Act regulations found in 49 C.F.R. Part 10. Privacy Act requests for access to an individual's record must be in writing (either handwritten or typed), and may be mailed, faxed or emailed. DOT regulations require that the request include a description of the records sought, the requester's full name, current address, and date and place of birth. The request must be signed and either notarized or submitted under penalty of perjury. Additional information and guidance regarding DOT's FOIA/PA program may be found on the DOT website. Privacy Act requests concerning information in the Clearinghouse may be addressed to:

Federal Motor Carrier Safety Administration
Attn: FOIA Team MC-MMI
1200 New Jersey Avenue SE
Washington, DC 20590

In addition, under 49 C.F.R. Part 10, subpart E, individuals may request that their records be corrected by submitting a written request detailing the the correction requested and the reasons the correction should be made. If FMCSA does not make the requested correction to the individual's record, the individual may file a concise statement of disagreement setting forth the reason for disagreement with the Agency's refusal to amend the record. 49 C.F.R. Part 10, subpart F explains the individual's right to appeal the Agency's initial determination not to amend the record.

Statutory Authority and Purpose Specification

DOT should (i) identify the legal bases that authorize a particular PII collection, activity, or technology that impacts privacy; and (ii) specify the purpose(s) for which its collects, uses, maintains, or disseminates PII.

The Moving Ahead for Progress in the 21st Century Act (MAP-21), enacted on July 6, 2012,⁶ mandates that the Secretary of Transportation (Secretary) establish a national clearinghouse for controlled substance and alcohol test results of commercial motor vehicle operators. The FMCSA also has authority to promulgate safety standards under the Motor Carrier Safety Act of 1984 (Pub. L. 98-554, Title II, 98 Stat. 2832, October 30, 1984) (the 1984 Act), which provides authority to regulate drivers, motor carriers, and vehicle equipment and requires the Secretary to prescribe minimum safety standards for CMVs. The Omnibus Transportation Employee Testing Act (OTETA) of 1991 [Pub. L. 102-143, 105 Stat. 952, October 28, 1991], as codified in 49 U.S.C. 31306, mandates the alcohol and controlled substances testing program for the Department of Transportation (USDOT). An FMCSA predecessor agency published a final rule in 1994 that implemented the OTETA [49 CFR Part 382]. In addition, the "Procedures for Transportation Workplace Drug and Alcohol Testing Programs" [49 CFR Part 40] establishes requirements for all USDOT-regulated parties, including employers of drivers with CDLs subject to FMCSA testing requirements. In 2001, FMCSA revised 49 CFR Part 382 ("Controlled Substances and Alcohol Use and Testing") to make FMCSA controlled substances and alcohol testing procedures consistent and non-duplicative with 49 CFR Part 40.

FMCSA will use the information reported to the Clearinghouse to combat the problem of CDL holders testing positive for drugs or alcohol, or committing other drug or alcohol violations, and continuing to operate CMVs without participating in the required return-to-duty process.

⁶ Pub. L. 112-141, 126 Stat. 405 (July 6, 2012).

As previously explained, the reporting of positive test results and other drug and alcohol program violations will create a database employers must check to determine whether current or prospective employees are prohibited from operating CMVs under the DOT drug and alcohol testing program. This requirement will address the problem of a currently-employed CDL holder testing positive for illegal drug or alcohol use with a second employer or another potential employer while continuing to operate a commercial motor vehicles (CMV) under his or her current employment without the current employer knowing and acting on the positive test.

The Clearinghouse will also address the problem of a driver who previously tested positive from seeking and obtaining work without prospective employers knowing and acting on that information. This could occur if a driver is fired for a positive test but does not inform prospective or future employers about the previous positive test result. This could also occur if a new driver entering the workforce tests positive for drugs or alcohol during a pre-employment test, waits for the drugs to leave his/her system, then takes and passes another pre-employment test and gets hired without the hiring employer having any knowledge of the previously failed pre-employment test.

In order to determine whether the driver is qualified to operate a CMV, SDLAs will be required to query the Clearinghouse any time a driver seeks to obtain, renew or upgrade a CDL.

NTSB accident investigators will have limited access to the CDL driver's records in the Clearinghouse to determine if CDL holders involved in crashes under investigation have drug or alcohol program violations .

Data Minimization & Retention

DOT should collect, use, and retain only PII that is relevant and necessary for the specified purpose for which it was originally collected. DOT should retain PII for only as long as necessary to fulfill the specified purpose(s) and in accordance with a National Archives and Records Administration (NARA)-approved record disposition schedule.

This rule will also change the current requirement that permits specimen collectors to use Social Security numbers or employee ID numbers for the purposes of uniquely identifying individual drivers. Under this requirement, specimen collectors will not be permitted to record drivers' Social Security numbers, and the only permitted employee ID will be the driver's CDL number and State of issuance.

This rule provides that the information remain in the Clearinghouse indefinitely if a driver failed to complete the return-to-duty process. If certain conditions are met, employers will have access to this information for a five-year period. Those conditions are: (1) the SAP reports that the driver has successfully completed the prescribed education and/or treatment as required by 49 CFR 40.305 and is eligible for return-to-duty testing; (2) the employer or C/TPA reports that the driver has received negative return-to-duty test results; (3) the driver's present employer or a service agent acting on the employer's behalf reports that the driver has successfully completed all follow-up tests as prescribed in the SAP's report in accordance with §§40.307, 40.309, and 40.311; and (4) five years have passed since the date of the violation determination. Clearinghouse records may be removed earlier than five years under procedures pertaining to the correction or removal of inaccurate information established in the final rule and in 49 CFR part 10.

A record control schedule for records contained in the Clearinghouse will be submitted to the National Archives and Records Administration (NARA) for approval.

Use Limitation

DOT shall limit the scope of its PII use to ensure that the Department does not use PII in any manner that is not specified in notices, incompatible with the specified purposes for which the information was collected, or for any purpose not otherwise permitted by law.

FMCSA will use drug and alcohol testing results for the purposes and uses specified in the Clearinghouse final rule, except as otherwise authorized by law. FMCSA may use the information in the Clearinghouse to identify and take enforcement action against motor carriers and CDL drivers that are not in compliance with the Agency's regulations.

In accordance with 49 U.S.C. 31306a(i), FMCSA will grant the NTSB access to a driver's information in the Clearinghouse when that driver is involved in a crash under investigation by the NTSB.

In accordance with 49 U.S.C. 31306a(h)(2), SDLAs must use the information to evaluate whether an individual is qualified to operate a CMV. The final rule requires that SDLAs query the Clearinghouse any time a CDL is issued, renewed or upgraded. SDLAs are prohibited from making other use of the information or further disseminating the information obtained by conducting driver-specific queries.

In accordance with 49 U.S.C. 31306a(h)(1)(D), employers may only use information obtained from the Clearinghouse to determine whether a driver is prohibited from operating a CMV. Employers are strictly prohibited from making other use of the information or further disseminating the information. Unauthorized use of Clearinghouse data is subject to civil and criminal penalties.

Data Quality and Integrity

In accordance with Section 552a(e)(2) of the Privacy Act of 1974, DOT should ensure that any PII collected and maintained by the organization is accurate, relevant, timely, and complete for the purpose for which it is to be used, as specified in the Department's public notice(s).

In developing this rule, the agency will require a variety of protocols to validate and verify that the information collected in the database is associated with the correct person in order to ensure the accuracy and reliability and of the data collected. Those protocols include using a driver's CDL number and state of issuance as a unique identifier, as described above in the section entitled "Description of Commercial Driver's License Drug and Alcohol Clearinghouse Rulemaking on Personal Information of General Public." In addition, Section 382.717 of the rule establishes a administrative review process that will allow drivers to request that FMCSA investigate and correct inaccurately reported information.

FMCSA will ensure that the PII collected, used, and maintained in Clearinghouse is relevant to the purposes for which it is to be used and, to the extent necessary for those purposes, it is accurate, complete, and up-to-date. FMCSA also ensures that proper access controls, information input restrictions, data validity checks, error handling mechanisms, information output handling and audit logs, and accountability, are in place.

Security

DOT shall implement administrative, technical, and physical measures protect PII collected or maintained by the Department against loss, unauthorized access, or disclosure, as required by the Privacy Act, and to ensure that organizational planning and responses to privacy incidents comply with OMB policies and guidance.

PII is protected by reasonable security safeguards against loss or unauthorized access, destruction, misuse, modification, or disclosure. These safeguards incorporate standards and practices required for federal information systems under FISMA and the information security standards issued by NIST, including Federal Information Processing Standards (FIPS) Publication 200 and NIST SP 800-53 Revision.3, Recommended Security Controls for Federal Information Systems. FMCSA has a comprehensive information security and privacy program that contains administrative, technical, and physical safeguards that are appropriate for the protection of data. These safeguards are designed to achieve the following objectives:

- Ensure the security and confidentiality of PII
- Protect against any reasonably anticipated threats or hazards to the security or integrity of PII
- Protect against unauthorized access to or use of PII

The Clearinghouse will maintain an auditing function that tracks all user activities in relation to data including access and modification. Through technical controls including firewalls, intrusion detection, encryption, access control list, and other security methods, FMCSA will prevent unauthorized access to data stored in its Clearinghouse. These controls will meet Federally mandated information assurance and privacy requirements.

Except as summarized in Appendix A, no person or entity will be permitted to access the Clearinghouse. No person or entity will be able to share, distribute, publish, or otherwise release any information in the Clearinghouse except as specifically authorized by law. Reporting inaccurate or misleading information to the Clearinghouse will be expressly prohibited and subject to civil and criminal penalties. The Clearinghouse will have controls to limit access based on FMCSA-approved user roles and responsibilities, and need to know. The Clearinghouse personnel, including government personnel and contractors, are required to take annual security awareness and privacy training offered by FMCSA as well as role-specific training. This will allow individuals with varying roles to understand how privacy impacts their role and retain knowledge of how to properly and securely act in situations where they may use PII in the course of performing their duties.

The Clearinghouse will undergo the security authorization process under the National Institute of Standards and Technology prior to attaining full operational status.

Accountability and Auditing

DOT shall implement effective governance controls, monitoring controls, risk management, and assessment controls to demonstrate that the Department is complying with all applicable privacy protection requirements and minimizing the privacy risk to individuals.

As required by 49 USC 31306a(d), FMCSA will follow the Fair Information Practice Principles for the protection of PII associated with the implementation of the Clearinghouse. In addition to these practices, additional policies and procedures will be consistently applied, especially as they relate to protection, retention, and destruction of records.

As with any collection of PII, there is a risk of misuse of the information. To mitigate the risk, FMCSA will restrict access to the Clearinghouse by establishing strict registration procedures for drivers, employers and service agents. Registrants will be required to provide names, addresses, telephone numbers, and other information necessary to validate identity. Employers will be required to submit the names of all persons authorized to access the Clearinghouse on behalf of the employer. C/TPAs will be required to supply similar information. Employers will be required to designate authorized C/TPAs and drivers will be required to designate authorized SAPs before a C/TPA or SAP can be granted access to enter information into the Clearinghouse on behalf of that employer or driver. MROs and SAPs will be required to provide evidence that they meet DOT qualifications and training requirements. Employers and C/TPAs will be required to update annually the names of the people they authorize to access the Clearinghouse on their behalf. This information will be subject to specific registration protocol for MROs and SAPs. The initial registration term will be five years unless FMCSA has revoked or canceled a user's registration. FMCSA will also cancel registrations that are inactive for two years. FMCSA prohibits anyone from knowingly reporting false or inaccurate information. FMCSA will have the right to revoke the registration of anyone who fails to comply with any of the prescribed rights and restrictions on accessing the Clearinghouse, which will include (but not be limited to) submission of inaccurate information, misuse or misappropriation of access rights, misuse of protected information, and failure to maintain the requisite qualifications, certifications, or training requirements included in 49 CFR Part 40. Anyone violating these provisions will be subject to the civil and criminal penalties included in 49 CFR Part 382.507, as well as any other applicable penalties.

No employer motor carrier can allow a driver to perform a safety sensitive function if that driver refuses to grant consent for the employer to conduct a query or to receive driver-specific information from the Clearinghouse. A driver will be required to provide electronic consent to FMCSA before a current or prospective employer could obtain access to information about that driver in the Clearinghouse.

In addition, FMCSA is responsible for identifying, training, and holding agency personnel accountable for adhering to agency privacy and security policies and regulations. FMCSA has incorporated its Best Practices for Protection of PII in the design and implementation process for the Clearinghouse.

Responsible Official

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Approval and Signature

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Appendix A – Summary of Clearinghouse Requirements

The Clearinghouse includes the following requirements:

REPORTS AND NOTIFICATIONS OF POSITIVE TESTS

1. Medical Review Officers (MROs) will be required to report to the Clearinghouse verified positive controlled-substances test results for CDL drivers. Each test will be identified as pre-employment, post-accident, random, reasonable suspicion, return-to-duty, or follow-up. MROs will also be required to report drug test refusals to the Clearinghouse.
2. FMCSA will notify each driver that information about him or her has been reported to, revised or removed from the Clearinghouse. The drivers will also have the opportunity to review this information.
3. Substance Abuse Professionals (SAPs) will be required to report to the Clearinghouse information about the evaluation and treatment process completion.
4. Employers or Consortium/Third Party Administrators (C/TPAs) acting on employers' behalf will be required to report verified alcohol test results at or above 0.04 alcohol concentration for CDL drivers to the Clearinghouse, subsequent follow-up test results stemming from the initial test at or above 0.04 alcohol concentration, and test refusals. Each test will be identified as pre-employment, post-accident, random, reasonable suspicion, return-to-duty, or follow-up. Employers or C/TPAs will also be required to report negative return-to-duty test results.
5. Employers will be required to report actual knowledge, as defined in 49 CFR § 382.107, that a driver has used alcohol on duty, used alcohol within four hours of coming on duty, used alcohol prior to post-accident testing, or has used a controlled substance.
6. Employers will be required to report refusals "failing to appear" to the Clearinghouse

Reporting Entities and Circumstances	
Reporting Entity	When Information Will Be Reported to Clearinghouse
Prospective/Current Employer of CDL Driver	<ul style="list-style-type: none"> — An alcohol confirmation test with a concentration of 0.04 or higher — Refusal to test (alcohol) as specified in 49 CFR 40.261 — Refusal to test (drug) not requiring a determination by the MRO as specified in 49 CFR 40.191 — Actual knowledge, as defined in 49 CFR 382.107, that a driver has used alcohol on duty, used alcohol within four hours of coming on duty, used alcohol prior to post-accident testing, or has used a controlled substance. — Negative return-to-duty test results (drug and alcohol testing, as applicable) — Completion of follow-up testing
Service Agent acting on behalf of Current Employer of CDL Driver	<ul style="list-style-type: none"> — An alcohol confirmation test with a concentration of 0.04 or higher — Refusal to test (alcohol) as specified in 49 CFR 40.261 — Refusal to test (drug) not requiring a determination by the MRO as specified in 49 CFR 40.191 — Actual knowledge, as defined in 49 CFR 382.107, that a driver has used alcohol on duty, used alcohol within four hours of coming on duty, used alcohol prior to post-accident testing, or has used a controlled substance. — Negative return-to-duty test results (drug and alcohol testing, as applicable) — Completion of follow-up testing
MRO	<ul style="list-style-type: none"> — Verified positive, adulterated, or substituted drug test result — Refusal to test (drug) requiring a determination by the MRO as specified in 49 CFR 40.191
SAP	<ul style="list-style-type: none"> — Identification of driver and date the initial assessment was initiated — Successful completion of treatment and/or education and the determination of eligibility for return-to-duty testing

MANDATORY QUERIES

7. Employers will be required to query the Clearinghouse annually for all drivers in their employ in order to ascertain if any of them have drug or alcohol prohibitions.
8. Employers will be required to query the Clearinghouse as part of their pre-employment screening process of potential hires, in order to ascertain if a perspective employee has a drug or alcohol prohibition with a previous employer.

DESIGNATING SERVICE AGENTS

9. Employers will be required to designate (and submit authorization for) any service agentsthey elect to use..

10. Drivers undergoing the return-to-duty process prescribed by 49 CFR part 40, subpart O will be required to designate a SAP.

REGISTRATION AND AUTHORIZATION VERIFICATION

11. Employers, C/TPAs, MROs, SAPs, and other service agents will be required to register with the Clearinghouse.
12. Employers and C/TPAs will be required to verify, on an annual basis, the names of person(s) authorized to report and obtain information from the Clearinghouse.

DRIVER CONSENT VERIFICATION

13. Electronic consent for the full queries must be obtained from the driver prior to release of information from the Clearinghouse.

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