

The Drug & Alcohol Clearinghouse – FMCSA’s Next Mandate on the Motor Carrier Industry

By Sean Garney, VP, Scopelitis Transportation Consulting LLC and Regulatory Consultant to Spireon, June 2019

Early Preparation Will Be Key to Success

OVERVIEW

On January 6, 2020, motor carriers must begin using a new, Federal Motor Carrier Safety Administration-created Drug & Alcohol Clearinghouse to screen for drivers who are ineligible to operate a commercial motor vehicle (CMV) based on DOT drug and alcohol program violations. The new system will make it harder for drivers to evade the consequences of a positive DOT drug or alcohol test by making it easier for motor carriers to identify them. It will accomplish this by collecting all positive drug and alcohol tests, including refusals to test and actual knowledge reports, and storing them in a central database that motor carriers must query as part of the hiring process, and annually thereafter.

The Federal Motor Carrier Safety Administration (FMCSA) estimates the new rules (found at 49 CFR 382 Subpart G) will eliminate almost 900 crashes annually and result in a total benefit to society of \$196 million. To obtain these benefits, however, all parties will need to participate, and motor carriers will bear the brunt of the responsibility. This paper focuses on a motor carrier’s responsibilities.

MOTOR CARRIER RESPONSIBILITIES

While motor carriers stand to reap the greatest benefit from the clearinghouse, they also bear a significant share of the burden. While drivers, medical review officers (MROs) and substance abuse professionals (SAPs) will participate in unique portions of the clearinghouse process, motor carriers will be key players in all elements.

Registration:

Every motor carrier will be required to register with the clearinghouse and will use their log-in credentials to access driver information pre-hire and annually. They’ll also need to provide a list of authorized users and update it annually. If they’re utilizing a consortia/third party administrator or any other service agents to comply with drug and alcohol program rules, they’ll need to identify them and make sure they’re also registered. Updates to this information will be required within 10 days of the change.

Alcohol and Controlled Substance Inquiries From Previous Employers:

Initially, motor carriers will still be required to request alcohol and controlled substance information from any motor carrier who employed the driver in the last three years as required under 49 CFR §382.301(b). In addition, employers will also be required to request a “full query” from the clearinghouse before allowing the driver to perform safety-sensitive job functions, including operating a CMV. A “full query” will return all information contained in the clearinghouse related to that driver, such as any positive drug tests or refusals to test and whether the driver has completed the return-to-duty process, if required. Beginning January 6, 2023, however, contacting previous employers will no longer be required unless the employer forgoes the pre-employment drug testing requirements by using the exception under §382.301(b) or if the driver has operated a CMV in other regulated modes in the previous three years.

Annual Query:

Annually, motor carriers will need to request a “limited query” for all their CDL drivers. This “limited query” tells the carrier if any information about the driver exists in the clearinghouse. If information exists, carriers will have 24 hours to request a “full query” and review the information to determine if the driver is eligible to operate a CMV.



Driver Consent:

Both query types require driver consent. Motor carriers will only be able to request consent for a “full query” through the clearinghouse, which means both the motor carrier and the driver will need to be registered with the clearinghouse to complete the consent process. Consent for a “limited query” can be obtained via a document signed by the driver and maintained by the motor carrier. While FMCSA will not specify language for this consent form, it plans to provide sample language that carriers can use. Consent for a limited query can be combined with other consent forms.

Uploading Data to the Clearinghouse:

Motor carriers will also be required to contribute data to the clearinghouse. Within three business days of the occurrence, motor carriers will need to upload the following data: positive alcohol confirmation tests; refusals to test for alcohol; refusals to test for drugs not requiring an MRO determination; actual knowledge of drug use; negative return-to-duty tests; and the completion of follow-up testing.

Record Retention:

Employers will need to maintain records of all drug and alcohol violations for a minimum of five years and must keep records of all queries made and the results of those queries until January 6, 2023. Subsequently, a valid clearinghouse registration will fulfill the query record-keeping requirement.



COMPLIANCE AND OPERATIONAL CHALLENGES FOR MOTOR CARRIERS AND DRIVERS

The new clearinghouse rules will result in new operational and compliance challenges to which motor carriers will need adapt.

Driver Registration and Consent:

Any complications that arise during the driver registration process may prevent drivers from being able to register on-the-spot. This may slow onboarding if the driver hasn't registered by the time the motor carrier requests consent to pull a "full query." Because "full queries" will be required pre-hire and in the event an annual "limited query" indicates new data is available, timely registration of CDL drivers will be a key to success. As a result, motor carrier policies and procedures should be updated to require all prospective and current drivers to register for the clearinghouse, if they haven't already.

Plan for Additional Onboarding Costs:

At least initially, the clearinghouse will increase the cost burden of recruiting and onboarding new drivers for a couple reasons. First, using the clearinghouse will not be free. FMCSA's rule makes clear that motor carriers will be charged for its use. While fee details have not been finalized, motor carriers should expect to pay a nominal fee for both full and limited queries. Volume or subscription pricing models may ease this pain but the federal law that authorized the program stipulated that FMCSA may charge a fee to recoup the cost of operation and maintenance of the system.

Second, for the first three years of the program, carriers will still be required to conduct the previous employer inquiry required under 49 CFR §382.413. That's because the clearinghouse will not begin collecting data until it goes live on January 6, 2020. Even then, it will not accept results of drug or alcohol tests that occurred prior to that date. That means that until January 6, 2023, there will not be enough data to complete a full three-year review using only the clearinghouse. This duplicated effort will result in additional administrative burdens and, therefore, additional costs.

SUMMARY

With every big change in motor carrier compliance comes challenges. Motor carriers will experience growing pains as they adapt their procedures and practices to remain compliant and optimize the safety value from the clearinghouse. Motor carriers should act now to be sure they fully understand their roles and responsibilities and how they interact with other stakeholders involved. Prior planning, early training and registration will be key to a successful roll-out. FMCSA has created a website they plan to use to publish new information, FAQs, and fact sheets as they become available. Bookmarking it and subscribing to any updates will ensure you're ahead of the curve.

<https://clearinghouse.fmcsa.dot.gov>.

Have questions? Want to know more? If so, call or email Sean Garney, of Scopelitis Transportation Consulting LLC, at sgarney@scopelitisconsulting.com or 202-728-2853

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