WHITE PAPER: SPIREON - DRUG & ALCOHOL CLEARINGHOUSE

Know Your Drivers

THE CLEARINGHOUSE WILL HELP IDENTIFY WHO YOU'RE PUTTING ON THE ROAD

It's important to know the various things that don't mix well in this world. Oil and water, electricity and water, alcohol and drugs – and drinking and driving may be the worst of the bunch. It's baffling that there are still folks out there that attempt this act. Imagine discovering that a person who works for you and operates a commercial motor vehicle with your name painted on it, has a history of doing it.

With the FMCSA's new Drug and Alcohol Clearinghouse, it's now easier to know whether your drivers have any drug or alcohol violations.

This paper originates from a webinar hosted by Spireon featuring Dave Osiecki of Scopelitis Transportation Consulting, where Osiecki sheds light on this new database uncovering violations and test-taking refusals by commercial drivers.

NEW CLEARINGHOUSE BEGINNINGS
To begin, we must go back to 2016 with the passing of the ELD final rule. Moving forward to March 2019, the Federal Motor Carrier Safety Administration, FMCSA for short, posted a new Clearinghouse website.

"It was really just an educational and awareness website for the government to push information out, to communicate with the stakeholders and so forth," says Osiecki.

The new Clearinghouse started October 2019 when the FMCSA opened the registration process. In November 2019, query plans were made available to purchase. It's important to purchase your query plan before the implementation of the Clearinghouse begins.

Beginning on January 6, 2020, the mandatory reporting of violation data starts.

OVERVIEW OF THE CLEARINGHOUSE

The Clearinghouse will provide a plethora of information for employers to help in hiring drivers and checking on their current drivers for any violations.

"That's a big reason for the Clearinghouse, to help employers who employ or utilize CDL drivers to make sure that the person that they are contracting is eligible to operate a commercial motor vehicle," says Osiecki. "Even if they've had a violation in the past, they're certainly still eligible, provided they complete a return-to-duty process that's spelled out in the Drug and Alcohol testing regulations."

One piece of information that the Clearinghouse will provide is whether a CDL driver has completed the mandatory return-to-duty process after a violation. CDL drivers will, of course, be able to use the Clearinghouse to access their information. They must use the system to provide consent to what is called queries by employers, which will be talked about later.

The State Driver Licensing Agencies and State Law enforcement agencies will have a role to play in the process. Neither will be able to see all the details of past violations. However, both agencies will have access to see a driver's eligibility status from a licensing and law enforcement standpoint.

It's expected that the FMCSA will do its best to meet the federal security standards for this database. The agencies will help in regularly verifying the effectiveness of the security protocols.

A key thing to note, the FMCSA itself did not design or develop the Clearinghouse. Volpe, who is part of the U.S. Department of Transportation, is the creator. They're not within the FMCSA, but a different body of DOT. The relationship between Volpe and FMCSA comes from the creation of the CSA scoring methodology and CSA program. The FMCSA relies on Volpe to undertake several programs, which is the case with the Clearinghouse.

Osiecki explains it as a push-pull system. You won't find his explanation about a push and pull system in the guidelines, but it's a great way to understand the Clearinghouse process.

"Pushing data into the system is the reporting aspect and pulling information or data out of the system is the querying aspect," says Osiecki.

THIRD PARTY ADMINISTRATORS

As for the identified users in the Clearinghouse, the drivers and employers, the latter will have the most burden. If you have been in the transportation business, you understand the responsibility of safety and drug and alcohol testing for your company. The thing is, most companies don't do drug and alcohol testing themselves.

To take care of this responsibility, service agents, consortiums, or third-party administrators are used. This has been the way things have been run regarding the Drug and Alcohol Testing Program.

Medical Review Officers (MROs), State Abuse Professionals (SAPs), and State Driver Licensing Agencies (SDLAs) will also have roles to play and will be required to use the Clearinghouse.

REGISTRATION FOR THE CLEARINGHOUSE

To access the Clearinghouse and all its details, one must register before any access is given. These registered users will be able to register, access, report to, and query the Clearinghouse for designated purposes.

MOTOR CARRIER REGISTRATION

There are two types of Registration processes for the Clearinghouse: Motor Carrier Registration and Driver Registration. Starting with the Motor Carrier Registration, motor carrier employers must register if they have CDL drivers, which includes Canadian and Mexican operations. Carriers who register must also use their DOT number and not their tax number or Employer Identification Number. A list of authorized users who will have access to the Clearinghouse must be provided as well.

Some companies may utilize service agents to help push information into the system or pull records out of the system. Most carriers in the industry will designate a service agent to help them with those responsibilities. A company's carriers will have up to ten days to update if they decide to change a service agent.

Carriers and employers do not need to designate which MRO is going to report their information, but they must register as independent MROs if so. Registration is valid for five years for each employer, MRO, and SAO, unless canceled or revoked.

DRIVER REGISTRATION

Driver Registration is much different, as you may expect. For one, you'll not see a registration requirement for drivers. Nothing in the Clearinghouse will showcase the need for a driver to register into the system.

However, if a driver plans or attempts to be moved to another company, they'll have to register. Why? When applying for a new CDL driving job, they must provide consent to a full query by the potential employer, aka a background check of your driving history.

Employee drivers that hold a CDL must register if they're seeking employment. If an employee is happy where he is, he will never have to register, and he won't have to consent to a full query.

"The Clearinghouse registration is not a required step for the driver," says Osiecki. "If a driver never incurs a drug or alcohol violation, that driver is never going to need to register."

UNDERSTANDING QUERIES

Starting with the full query, which is done on a pre-employment basis, the applicant must go into the Clearinghouse and provide consent. To do this, the applicant will have to check an electronic box in the Clearinghouse, which triggers the need of the person to register in the system.

The full query is a full record that shows any violation of Part 382, the Drug and Alcohol Testing Regulations for CDL drivers. It also shows any status in terms of that person's ability to return to work. The information in the Clearinghouse is available for five years and could be longer if the person's return-to-duty status is not completed within that five-year window.

Carriers will be responsible to query the system for violation data on a driver. If there is no violation data, the employer can move forwared hiring the driver. If there is violation data, the employer must verify that the return-to-duty process is completed before the person can take on a driving role.

LIMITED QUERY

A limited query is a request to see if there is information about a driver. This is used in what the FMCSA calls their annual check requirement.

If you have been working in the industry, you know there is an annual Motor Vehicle Record (MVR) requirement, which is a driving history of your drivers. The limited query is similar, but it pulls from the Clearinghouse to check if there is violation data on an employer's drivers. A limited query only indicates if any information exists in the system. If info does exist, then the employer must convert that into a full query, which must be done within 24 hours.

DRIVER CONSENT

A significant thing to note for limited queries is that they also require the driver's consent. To obtain consent from your current drivers, the employer should create a form where the driver signs once, and the employer then puts away to file. A simple paper or electronic form will do.

Employers can also add this consent language to other general forms that the employer may have. Osiecki explains that the consent language can be added into forms such as the MVR check and claim history check, but cannot be added to the Pre-Employment Screening Program consent form.

Limited queries can be conducted more than once a year – it depends mainly on the carrier and how often they want to do it. No matter how many times you conduct a limited query in a year, make sure to have the driver's consent.

THE PROCESS OF QUERYING

The information needed to make the query is simple: the driver's name, date of birth, CDL number, and the CDL state of issuance. Though this process won't be seen by the employer, it's ensuring that the Clearinghouse is identifying the right person. The CDLIS check also verifies the person is an actual current CDL holder.

Once the info is delivered and the employer initiates the Full Query, an email will be sent back to the employer. The employer will log into the Clearinghouse to review the information, which will then be posted on the employer dashboard. Limited queries are delivered instantly; full queries likely will take minutes to perhaps hours to be posted on the employer dashboard.

QUERYING FEE

Querying fees are based on a pay-first model. Once you register, you must create an account and post-money into the account, from which queries are debited. Anytime you make a query, you'll be deducted $1.25, the price of a query, full or limited.

There is another query payment plan called the Unlimited Query Plan. The plan lasts for one year, with a cost of $24,500. The employer will have an unlimited number of queries for one year. However, it's expected that many companies will go for the smaller query plan of $1.25 per query. Not many trucking companies will want to pay that much for a year, but the plan exists nonetheless.

REPORTING DATA

As Osiecki mentioned, the Clearinghouse is like a push and pull system. With all the queries put into the system, it must be reported or pulled out. It is required the carrier to report specific information from the Clearinghouse. For one, violation information must be reported, specifically the DOT-FMCSA testing program violations.

Regarding alcohol tests, alcohol confirmation tests that are over or equal to 0.04 must be provided. Also, refusals to test for alcohol must be reported. Acknowledgement that somebody has used drugs or alcohol is a violation and must be reported, as well.

Employers must also submit a negative return-to-duty test. If a driver goes through the program and completes the return-to-duty test, which then comes back negative, it must be noted.

The information must be uploaded by the third business after the notice is received. It's important to note that it's only Part 40 and 382 violations occurring on or after January 6th, 2020.

RECORDKEEPING FOR THE CLEARINGHOUSE

As mentioned earlier, January 6th, 2020, is the scheduled compliance date for the Clearinghouse. However, with this being a new data system, it's going to be empty. It will take time for it to be populated, which may take months or even a couple of years. From 2020 to 2023, motor carriers must maintain all records of queries and information received. Starting in 2023, the Clearinghouse will become the single source of drug and alcohol violations.

Records will remain in the Clearinghouse until the return-to-duty process is complete, and five years have passed since the violation. Employers must keep records of all drug and alcohol violations for a minimum of five years. The employer may use service agents for this purpose if needed.

"Noncompliance is not an option mainly because this is FMCSA's system with the help of Volpe," says Osiecki. "The FMCSA is going to be able to easily look into this system, generate reports, and see which DOT numbers, which employers are not making the queries as they're required."

For more information about driver behavior monitoring or fleet tracking, visit
spireon.com/fleet-management or call one of our friendly experts at **800.557.1449.**

Dave Osiecki was the featured guest speaker for
"FMCSA's Drug and Alcohol Clearinghouse – What You Need to Know," a recent webinar hosted by Spireon. To see the upcoming slate of Spireon webinars featuring fleet and trailer management, visit **spireon.com/webinars.**

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