



A MRO's Perspective on the FMCSA National Drug & Alcohol Clearinghouse

By: Todd Simo, M.D. – Chief Medical Officer and Managing Director of Transportation

Preface: In 2012, President Obama signed the Moving Ahead for Progress in the 21st Century Act (MAP-21). In MAP-21, Congress directed the Secretary of Transportation to establish a national Clearinghouse for violations of FMCSA's drug and alcohol testing program. This Clearinghouse is a long needed tool for FMCSA regulated employers to identify commercial drivers who are prohibited from performing safety sensitive duties based on DOT drug and alcohol program violations. This Clearinghouse also helps facilitate drivers who violate these rules to receive the required Substance Abuse Professional (SAP) evaluation and any mandated treatment before once again returning to FMCSA safety sensitive work. The current go-live date of this Clearinghouse is January 6, 2020.

Background: In today's world, FMCSA employers who are trying to hire a driver are dependent upon previous employers providing information on their previous drivers who violated FMCSA's drug/alcohol policy. How does the new employer know who to query; they ask the driver. If the driver "forgets" about that employer, the new employer is unaware of that violation.

Furthermore, current employers who share their drivers with other companies rarely have knowledge of a violation from their other regulated employer. The driver once again "forgets" to disclose the violation. The above dilemma clearly illustrates why FMCSA has been pushing for a national Clearinghouse of driver regulations for several years (with the first notice of proposed rulemaking happening in February of 2014).

Specifically, information maintained in the Clearinghouse will enable employers to identify drivers who commit a drug or alcohol program violation while working for one employer, but who fail to subsequently inform another employer (as required by current regulations). Records of drug and alcohol program violations will remain in the Clearinghouse for five years, or until the driver has completed the return-to-duty process, whichever is later. Meaning a violation from 2020 will remain in the clearing house until well after 2025 if the driver never follows through with the mandated Substance Abuse Professional evaluation and return to duty/follow up testing program.



National Clearinghouse Program Configuration: The National Clearinghouse will be set-up to support two different types of queries.

Configuration #1) Limited Query: The limited query will be used by employers who have FMCSA regulated drivers for annual screening purposes. Just as FMCSA requires you to monitor your driver records every year, the annual query of the Clearinghouse is your annual check for drug/alcohol violations. A limited query only identifies whether potentially derogatory information about the driver exists in the Clearinghouse; however, this type of query will not result in release of any driver information. If the limited query shows potential derogatory information, the employer would be required to run a full query (see below), triggering FMCSA verification of specific driver consent before releasing information. Drivers refusing consent will not be able to perform safety sensitive functions, such as driving a commercial motor vehicle. To access a limited query for your drivers, FMCSA has propagated a one time, evergreen release for your drivers to sign exclusive to FMCSA, and since this annual query is a requirement, signing the consent should be a condition of employment. A sample of the limited query consent will be published on the FMCSA website.

Configuration #2) Full Query: A full query as the name implies is a full look at the driver's record in the Clearinghouse. A full query will contain the following information as applicable:

- A verified positive, adulterated, or substituted controlled substances test result
- An alcohol confirmation test with a concentration of 0.04 or higher
- A refusal to submit to a test in violation of § 382.211
- An employer's report of actual knowledge, as defined at § 382.107
 - ✓ On duty alcohol use pursuant to § 382.205
 - ✓ Pre-duty alcohol use pursuant to § 382.207
 - ✓ Alcohol use following an accident pursuant to § 382.209
 - ✓ Controlled substance use pursuant to § 382.213
- A SAP report of the successful completion of the return-to-duty process
- A negative return-to-duty test
- An employer's report of completion of follow-up testing

A full query must be done prior to placement into FMCSA safety sensitive duties. The full query is also needed if the limited query shows that there is potentially new disqualifying information in the driver's profile. To gain access to a full query, the driver must provide specific consent to the requester by interacting with the platform. The evergreen request mentioned above, does not provide consent for a full query and does not replace disclosure and consent requirements under the Fair Credit Reporting Act.



Reporting Entities: FMCSA employers and their service agents (Third Party Administrators, Medical Review Officers, and Substance Abuse Professionals) all have reporting requirements:

Prospective/Current Employer of CDL Driver

- 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

- 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

- 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

- 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



As shown above, motor carriers have multiple scenarios which require companies to place information into the Clearinghouse. The reporting requirements of several of these can be delegated to a service agent, but there are some scenarios where only you as the motor carrier will be aware of the violation which requires reporting.

Preparation: The current go-live date for this safety initiative is January 6, 2020. Despite this date being on the horizon, there are still many unknowns such as:

- Will I be able to integrate with the Clearinghouse for full and/or limited queries?
- How do I, my service agents, and current drivers sign up?
- What will the data look like?

These are just a few questions that will remain unanswered. According to FMCSA, the sign up process is to be released in the fall of this year. That is the next major milestone, but what should you be doing in the interim. My recommendations are as follows:

Socialize the upcoming Clearinghouse requirements with:

- Your drivers
- Your driver recruiters and human resources team
- Your safety team

Reinforce to each one of these groups that there will be actions that are required. Your drivers need to be aware that every one of them will need to create a profile since even if they are not looking to make an employment move, they will need a profile for annual queries. You as a company and your service agents will need to enroll to assure that you have access to both receive and place data in the Clearinghouse. You will need to know how you will go about attaining a full query on pre-placement and setting up a mechanism to receive your annual queries. Prepare yourself for getting derogatory information that you have never received before, as well as, what to do when you get this information.

Contact your screening service agent to see if they are creating a product to support both your pre-placement and annual Clearinghouse screening requirements. And lastly, sign up for alerts from FMCSA as they roll out the database functionality.