

FMCSA Releases Drug and Alcohol Clearinghouse Rule

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On December 2, 2016, the Federal Motor Carrier Safety Administration (“FMCSA”) released a final rule creating the Commercial Driver’s License Drug and Alcohol Clearinghouse (the “Clearinghouse”). The rule is designed to establish a universal database for reporting and accessing information related to drivers having a commercial driver’s license (“CDL”) who have tested positive, refused to test, or otherwise violated the drug and alcohol testing regulations (49 CFR §382). The Clearinghouse will also provide employers, such as motor carriers, access to verify completion of a driver’s return to duty requirements from a reported violation.

As motor carriers are aware, the current process relies on the tedious task of contacting a driver’s previous employer(s) and begging or hoping for a response. The new rule set to go into effect on January 5, 2017 attempts to eliminate this process by inserting FMCSA as the intermediary responsible for ensuring accurate reporting of drug and alcohol violations by motor carriers, Medical Review Officers, and Substance Abuse Professionals.

Motor carriers will be required to query the Clearinghouse before hiring a CDL driver and at least annually on all of its current CDL employees. The rule created two types of queries to access the Clearinghouse: 1) a full query which requires a driver’s written consent to release the information to a specific individual or organization at a particular point in time; and 2) a limited query which allows an employer to determine if any information about the driver exists in the Clearinghouse *but* does not release any specific information about the driver. If the limited query reveals that the Clearinghouse has information on the queried driver, then the motor carrier is required to obtain specific consent from the driver to perform a full query. Such a full query is required before the driver can perform any safety sensitive function. FMCSA’s plans to assess a fee for queries to the Clearinghouse but such amount has yet to be determined.

Much like the National Driver Register, the driver will be able to access the Clearinghouse to view their own information at any time and at no charge to the driver. One major difference is that the driver will be able to access the Clearinghouse electronically and without a notarized statement. The driver can request to have any information in the Clearinghouse corrected but cannot challenge the validity of the test results or a refusal.

So what does this mean for motor carrier operation? First of all, nothing involving the federal government happens quickly! Compliance with the new rule does not go into effect until January 6, 2020. In the interim, motor carriers will still be required to request (beg) previous employers for such information until the Clearinghouse has been in operation for three (3) years. Once the Clearinghouse is operational, motor carriers will be required to maintain a record of all queries and the information provided therefrom for a period three (3) years. Thereafter, if a motor carrier maintains a valid registration with the Clearinghouse, it will not need to maintain a record of such request/information.

At the onset of this new rule, it appears to be a win for motor carriers and their safety departments that aspire to ensure that only safe drivers are permitted behind the wheel. The ability to have one source to access and rely upon for such important and sensitive information should also help reduce administrative costs (depending on FMCSA's ultimate fees) for motor carriers.

Of course, as with any new process, there will be new hurdles to overcome but, hopefully, the new process will be better than the *status quo*. For more details or questions concerning the Clearinghouse Rule, please feel free to contact Matt Selby at msselby@beneschlaw.com or 216-363-4458.