On February 20, 2014, the Federal Motor Carrier Safety Administration (FMCSA) published a Notice of Proposed Rule Making (NPRM) to create a Commercial Driver’s License (CDL) Drug and Alcohol Clearinghouse (Clearinghouse). A summary of the proposed rule is attached.

Though ATA supports the clearinghouse proposal, we have some concerns about the details of its design and operation. To help communicate the importance of these issues, ATA is asking other interested parties to also file comments discussing them.

Below is a list ATA’s primary thoughts/concerns and a short discussion of each. Affiliated organizations, ATA’s members, and others are strongly encouraged to capture these concepts in short comments to the proposal. Comments on the NPRM will be accepted until April 21, 2014. To file comments electronically, simply go to this link and upload a file (e.g., pdf or Word document).

Questions may be directed to ATA’s Drug and Alcohol Testing specialist, Abigail Potter, at apotter@trucking.org.

**Primary Thoughts and Concerns**

1. The industry strongly supports creation of a drug and alcohol clearinghouse. While FMCSA’s proposal is a good one, it needs improvement.

2. Employer observations of drug/alcohol misuse and employee admissions of misuse should also be captured by the clearinghouse. The clearinghouse must be a “one-stop shop” for drug and alcohol violations and test results.

3. FMCSA should eliminate the redundant requirement that employers continue to conduct previous employer inquiries.

4. Fees to conduct clearinghouse inquiries should be subscription-based, not transaction-based. Further, FMCSA should include fee amount as a criterion for determining which third party will be awarded the contract to manage the clearinghouse.

5. Third party service providers (e.g., background screening firms) must be ensured access to the clearinghouse. Doing so will facilitate greater employer use and, therefore, greater compliance.
Discussion

1. **The Industry Supports Creation of a Clearinghouse.** The industry has long called for, and supports, creation of a clearinghouse to track drivers who use drugs or alcohol in violation of the regulations. Absent such a clearinghouse, a driver found in violation can escape the consequences of his/her actions by seeking employment elsewhere. The future prospective employer only knows of the violation: a) if the driver furnishes the prospective employer with an honest and complete employment history; and b) the prospective employer successfully contacts the past employer.

2. **Employer Observations and Employee Admissions of Misuse Should Be Reported to the Clearinghouse** – All violations of the DOT drug and alcohol prohibitions should be captured by the Clearinghouse. By not including employers’ actual knowledge of misuse (based on direct observation of alcohol or drug use) and employees’ admissions of use, the Clearinghouse will not represent a comprehensive database of drivers that are prohibited from serving in safety sensitive positions. Currently, the proposal does not call for the clearinghouse to include these two items. MAP-21 clearly states that the Clearinghouse “shall function as a repository for records relating to the positive test results and test refusals of commercial motor vehicle operators and violations by such operators of prohibitions set forth in subpart B of part 382 of title 49” (emphasis added).

3. **The Previous Employer Inquiry Requirement Should Be Eliminated** - Pre-employment Clearinghouse queries should replace the current requirement that prospective employers inquire with applicants’ past employers for the previous three years. FMCSA’s proposal to require employers to continue to conduct these checks is redundant, time consuming, inefficient, and costly. ATA recommends that three years after the Clearinghouse has been established, FMCSA should eliminate the three year previous employer drug and alcohol inquiry requirement.

4. **Fees for Inquires Should Be Subscription Based and Carefully Controlled** – FMCSA’s proposal suggests that fees for accessing the Clearinghouse would be transaction-based. However, in a previous 2004 report to Congress FMCSA stated that access based on an annual subscription model (that allows unlimited queries within a 12 month period) would be preferred. Also, the agency’s proposal stated that fees to access the Clearinghouse would be “reasonable.” In evaluating third parties seeking to manage the clearinghouse for FMCSA, the agency should make fees the third parties intend to charge a criterion for selection.

5. **Background Screening Companies Should Be Ensured Access** — FMCSA should clarify the definition of a “service agent” in the proposal to ensure that any person or entity that helps employers comply with the drug and alcohol testing regulations is allowed to query the Clearinghouse on behalf of an employer. Many employers rely exclusively on third parties to conduct applicant background screening for them. Ensuring third party access to the clearinghouse will ultimately help promote use of the Clearinghouse and the corresponding safety benefits.
Executive Summary of the
Commercial Driver’s License
Drug and Alcohol Clearinghouse NPRM
February 14, 2014

On February 12, 2014, the Federal Motor Carrier Safety Administration (FMCSA) issued a Notice of Proposed Rule Making (NPRM) to create a Commercial Driver’s License (CDL) Drug and Alcohol Clearinghouse. The Clearinghouse would serve as a central repository of drivers’ positive test results, refusals to test and other such violations of the drug and alcohol testing regulations. ATA has been a strong advocate of the establishment of such a database to close a known loophole in the existing process that allows CDL drivers who test positive to escape the consequences of their actions. Currently, a subsequent employer will only know of the driver’s past violations by contacting past employers identified by the applicant.

Under the proposal, motor carrier employers, medical review officers, third party administrators and substance abuse professionals would be required to submit a variety of records to the clearinghouse including positive drug and alcohol test results, refusals to test, negative return to duty tests, and traffic citations for driving a commercial motor vehicle under the influence of drugs or alcohol. For those individuals who have tested positive but sought to return to driving, the clearinghouse would also include records on drivers’ compliance with the substance abuse professional referral, evaluation and treatment requirements. The database would not include records relating to employers’ observations of prohibited drug or alcohol-related conduct, nor employees admissions of misuse.

Each motor carrier employer would be required to query the clearinghouse before hiring a CDL driver applicant to verify that the driver had not violated the drug and alcohol prohibitions. Employers would also be required to query the database annually for records relating to their existing driver workforce. If a motor carrier were to find that a driver had tested positive or refused to test, etc., the employer would also need to verify that the driver had successfully completed the mandatory substance abuse professional referral, evaluation and treatment process. State licensing agencies would also be able to query the database to verify that a CDL holder (or applicant) had not tested positive or refused to test.

The notice suggests that employers would have the option of running two types of database queries. The first, a full query, would provide all available records in the database on a given driver. The second, a partial query which would be used to meet the annual inquiry requirement, would simply verify whether or not the database contains any records on a particular driver. In all circumstances, an inquiry could only be made consistent with the driver’s written consent.

ATA has several concerns with the proposal and will be responding to FMCSA accordingly. First, the agency’s suggestion that employer observations and employee admissions of misuse not be captured or recorded means that the existing loophole will continue to exist. Also, to identify these instances the proposal suggests that prospective employers continue to be required to conduct inquiries to past employers for records relating to drug and alcohol violations. Finally, the notice says that employers will be charged a “reasonable fee” to access clearinghouse records, but does define “reasonable” in this context. Comments on the NPRM are due by April 21, 2014.

ATA first called for creation of the clearinghouse in the late 1990s. Subsequently, in 1999, Congress mandated that FMCSA study the benefits and feasibility of such a system. FMCSA submitted its report to Congress in 2004 saying that a clearinghouse would be both feasible and beneficial. In 2012, the latest version of highway reauthorization legislation (MAP-21) mandated that FMCSA establish a clearinghouse. The mandate was cited as the basis for this NPRM.

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