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BACKGROUND SCREENING SOLUTIONS

TRANSPORTATION GUIDE

FMCSA CLEARINGHOUSE

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In December 2016, the FMCSA finalized the rule amending the Federal Motor Carrier Safety Regulations to establish requirements for the creation of the Commercial Driver's License Drug and Alcohol Clearinghouse, or Clearinghouse for short. This database is intended to compile information regarding violations of the FMCSA's drug and alcohol testing program for commercial driver's license (CDL) holders, including positive drug or alcohol test results and test refusals.

Beginning on January 6, 2020, impacted employers must submit queries to the Clearinghouse and report certain drug and alcohol program violations. By 2023, the Clearinghouse will satisfy covered employers' requirements to identify prospective drivers who have committed drug and alcohol violations.

Employer Action Items

Register

Registration opened in October 2019. Employers should take the step to register as soon as possible. This includes designating an individual within their company to serve as a Clearinghouse Administrator. The Administrator can also invite other individuals from within the company to serve as "assistants".

Note: Third-party administrators cannot register employers on their behalf.

Review and Purchase Query Plan(s)

Next, employers should review query plan options. Employers are charged a fee for searching the Clearinghouse which thus requires a query plan. The individual query plan is a \$1.25 flat rate per inquiry (whether limited or full). The FMCSA suggests selecting a query bundle large enough to cover the amount of drivers currently employed, but additional plans may be purchased as needed. Queries purchased do not expire. There is also an option for higher-volume employers to purchase an unlimited plan for \$24,500 (one annual payment). This plan expires twelve (12) months after the date of purchase.

According to the Fact Sheet published by the FMCSA, if an employer originally submits a limited query, but then needs to submit a full query, the employer will only be charged once for both. (See our Understanding Queries section for more information about the difference in query types.)

Note: Third-party administrators cannot purchase query plans on behalf of employers.

Encourage Drivers to Register

While drivers are not required to register for the Clearinghouse, employers should consider encouraging their driver employee base to register. Drivers will need to register in order to provide electronic consent for a full query of the Clearinghouse so any delays in this registration can lead to a delay in allowing that individual to perform safety-sensitive functions. Drivers must also be registered in order to view their own Clearinghouse record.

Drivers that register will also be notified by either email or mail (depending on the method they select) any time information about them is added, revised or removed from the Clearinghouse. Drivers that do not register will only receive those notifications via mail using the last known address associated with their CDL. Drivers may also challenge the accuracy of information reported to the Clearinghouse.

Designate a Third-Party Administrator

Employers may designate a third-party administrator (TPA) to conduct queries and/or report violations on their behalf. The TPA must also be registered in the Clearinghouse and must be designated to act on behalf of the employer.

Note: Employers must update any changes to its service agents within ten (10) days of the change.

Begin Submitting Queries – Starting January 6, 2020

Either directly or through a third-party administrator.

Employers (or third-party administrators on their behalf) may submit queries individually or in bulk. According to the FMCSA's FAQs, the Clearinghouse will allow for batch processing which must include specific information needed to complete the query and included an example file for review. (Note, hyperlink will download and open a zip file provided by the FMCSA).

Note: In addition to conducting a query of the Clearinghouse, employers must also follow what has been the standard process of verifying particular information about driver-applicants, including: previous employment history, whether any of those positions were safety-sensitive functions that required drug and alcohol testing, and whether within the past 3 years the driver had violated DOT's or FMCSA's drug and alcohol prohibitions. Employers should review the DOT's sample consent form and should note that such form cannot be a "blanket release" meaning a separate form needs to be completed for every employer the applicant worked for in the preceding three years. Employers may also find the best practices guide from the Office of Drug and Alcohol Policy and Compliance (ODAPC) helpful.

Important Topics

Understanding Query Types

There are two types of queries in the Clearinghouse: limited and full. Both require consent, although the type of consent will differ depending on what query is being conducted.

Limited Query

According to the FMCSA's Fact Sheet, a limited query is appropriate for annual or periodic checks on a currently-employed driver. If the limited query returns no records, there is no further action required for employers. If a record does return, employers must then conduct a full query. This full query must be conducted within 24 hours or the driver must be removed from safety-sensitive functions.

Consent is required from the driver and may be obtained via an electronic or handwritten signature. The limited consent form must specify the time range (although employers may obtain a multi-year general consent) and the FMCSA has published a sample limited consent form for consideration. If the employee driver refuses consent, the query cannot be conducted and the employee must be removed from safety-sensitive functions. Employers must retain records of drivers' limited consent forms for three (3) years. As noted in the FMCSA's FAQs, these consent forms do not need to be retained in the driver qualification file (DQF) but must be produced upon request.

Full Query

A fully query must be conducted in the pre-employment timeframe for prospective drivers, and when a limited query returns records. A full query may also be conducted as part of a periodic check on currently employed drivers. This full query returns detailed information about any drug and alcohol program violations in a driver's Clearinghouse record.

Consent must be provided electronically by the driver within the Clearinghouse. If consent is refused, the employer will be notified and the driver must either be barred or removed from performing safety-sensitive functions.

Note: Any consent requirements imposed via use of the Clearinghouse would be in addition to consent requirements employers may have under the Fair Credit Reporting Act if using a consumer reporting agency to fulfill this search. Employers are strongly encouraged to work with qualified legal counsel on this topic.

Reporting Violations

Employers with "actual knowledge" that a driver has used alcohol or controlled substances in violation of Subpart B of Part 382 must report such information to the Clearinghouse. Employers must also report: (i) an alcohol confirmation test result with an alcohol concentration of 0.04 or greater, (ii) a negative return-to-duty test result, (iii) a refusal to take an alcohol test pursuant to 49 CFR 40.261, (iv) a refusal to test determination made in accordance with the regulations,

and (v) a report that the driver has completed all follow-up tests as prescribed in the SAP report in accordance with the regulations.

When reporting actual knowledge, employers must include:

- Driver's name, date of birth, commercial driver's license (CDL) number and State of issuance;
- Employer name, address, and USDOT number, if applicable;
- Date the employer obtained actual knowledge of the violation;
- Witnesses to the violation, if any, including contact information;
- Description of the violation;
- Evidence supporting each fact alleged in the description of the violation, which may include, but is not limited to, affidavits, photographs, video or audio recordings, employee statements (other than admissions pursuant to § 382.121), correspondence, or other documentation; and
- A certificate of service or other evidence showing that the employer provided the employee with all information reported.

All violations must be reported by the close of the third (3rd) business day following the date on which the employer became aware of the violation. Rather than using an individual's SSN or employee identification number, employers must submit the driver's CDL and issuing state when reporting violations to the Clearinghouse. Violations must be reported even if the driver is not registered. The Clearinghouse will associate the violation with the driver's CDL information and will then be available in future queries for that driver's information.

The duty to report to the Clearinghouse applies to drug and alcohol program violations occurring on or before January 6, 2020. According to the FMCSA's FAQs, violations occurring prior to January 6, 2020 do not need to be reported to the Clearinghouse.

Note: Results of a test conducted under the authority of another US Department of Transportation agency should not be reported to the FMCSA Clearinghouse. Employers should remember that knowingly submitting false information to the Clearinghouse can subject them to criminal and/or civil penalties. Specific documentation supporting reporting of actual knowledge or a refusal to rest is required.

Helpful Resources:

- [FMCSA's Frequently Asked Questions](#)
- [Employer Brochure](#)
- [Drug & Alcohol Clearinghouse Fact Sheet](#)

About Asurint

Asurint is leading the background screening industry forward. Our powerful, customizable technology—backed by expert answers and personalized assistance—helps employers hire the right candidates every time, and faster than ever before.

Our clients leverage better background checks to reduce manual workloads, minimize compliance risk, promote a safer workplace, and drive insights to boost hiring and recruitment success.

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