

Truckload Carriers Association
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May 21, 2014

U.S. Department of Transportation
Docket Management Facility
Room W12-140
1200 New Jersey Avenue, S.E.
Washington, DC 20590
Submitted via www.regulations.gov

Re: FMCSA Notice of Proposed Rulemaking on Commercial Driver License Drug and Alcohol Clearinghouse;
Docket No. FMCSA-2011-0031-0001

Dear Docket Clerk:

These comments are filed in response to the U.S. Department of Transportation (DOT), Federal Motor Carrier Safety Administration's (FMCSA's) Notice of Proposed Rulemaking published in the February 20th, 2014, *Federal Register*.

The Truckload Carriers Association (TCA), with offices at 555 East Braddock Road, Alexandria, VA 22314 is the only national trade association whose sole focus is the truckload segment of the trucking industry. TCA represents dry van, refrigerated, flatbed and intermodal container carriers operating in the 48 contiguous states as well as Alaska, Mexico and Canada. As a major part of an industry that has over 524,000 companies within the U.S. operating millions of power units, TCA and its trucking company members are vitally interested in the DOT's objectives and strategies to improve highway safety and the potential impact these objectives and strategies could eventually have on our operations. Accordingly, and as this relates to the critical issue of a drug and alcohol clearinghouse, TCA and its trucking company members are extremely interested in submitting comments to the current proposal.

TCA believes in the notion that every person is entitled to a drug-free workplace, and for our drivers that deliver our nation's freight, that workplace is our highways. As a representative of an industry with a zero tolerance policy regarding drugs and alcohol, TCA supports the development of a clearinghouse to store drug testing results, but does have some concerns that will need clarification with respect to this proposal. Those concerns are as follows:

- The fees charged for utilizing the clearinghouse
- The recording of observed or admitted use of a prohibited substance
- The elimination of the Previous Employer Inquiry [49 CFR §391.23 (e)(1)]

Clearinghouse Fees

As FMCSA begins evaluating third parties that seek to develop the proposed clearinghouse, TCA believes that proper emphasis should be placed on the fees that will be charged, the manner in which they will be assessed as well as the appropriateness of the amount. While it is fair to note that TCA supports the development of a national drug and alcohol clearinghouse that would provide historical information on a driver's positive drug or alcohol test results, our members do have an explicit concern over the fees charged to access the database. The recent notice of proposed rulemaking suggests that fees for accessing the clearinghouse be transaction-based. Our members believe that a subscription-based fee structure that would allow for unlimited access to a clearinghouse would be more cost effective and therefore provide for greater use.

In an industry where driver turnover rates often exceed 100 percent, carriers may find themselves paying unreasonable fees due to the constant churn of drivers. A once per year subscription rate could ease the burden for carriers that continually combat high turnover and allow for unlimited access to a resource that is needed in our industry. We note that FMCSA has submitted a report to Congress advocating that a subscription-based model would be a preferred option when developing a fee-based system.

Observed or Admitted Use Inclusion

As stated earlier, TCA supports the development of a drug and alcohol clearinghouse for the purposes of recording positive test results for prohibited substances, as well as drug test refusals. However, such a clearinghouse would not be complete without including any observed or admitted use of a banned substance by an employee performing safety-sensitive functions. If the clearinghouse is to be accurate, it should record all violations.

The trucking industry is a known national entity with a zero tolerance policy; because of that policy, self-policing is quite prevalent. Whether via witness or by admission, an employer may have actual knowledge of an employee's misuse of a prohibited substance. Because of that, access to the clearinghouse may be needed in order to capture the information. In other words, all avenues of illicit drug and alcohol use or misuse should be reported so the clearinghouse and made available to employer's.

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The Elimination of the Previous Employer Inquiry

Part §391.23 (e)(1) of the Federal Motor Carrier Safety Regulations provides a requirement that motor carriers must inquire with previous employers, whether a prospective driver had violated the alcohol and controlled substances prohibitions within the previous three years. With the advent of the clearinghouse, Part §391.23 (e)(1) should be eliminated as it would be redundant. In addition, such inquiries have been historically time consuming and often times incomplete.

TCA believes that with the use of technology and the development of this repository, any inquiry with previous employers should be considered unnecessary, inefficient and costly. The same information derived from previous employers will be delivered faster and more accurately from the clearinghouse.

TCA appreciates the efforts of the Federal Motor Carrier Safety Administration to develop a rule that we believe is very beneficial. The opportunity to create a drug-free work place for our drivers has proven not only beneficial to their health and well-being, but also to those they share the road with them. We look forward to the development of this clearinghouse and continue to support the agency in this meaningful endeavor.

We wish to thank the Department for the opportunity to provide comment.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Burruss", with a long horizontal flourish extending to the right.

Chris Burruss
President