U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

Commercial Driver's License Drug and Alcohol Clearinghouse

SUBMITTED BY:
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Introduction

The American Trucking Associations (ATA) [1] submits these comments in response to the Federal Motor Carrier Safety Administration's (FMCSA) Notice of Proposed Rulemaking (NPRM) titled "Commercial Driver's License Drug and Alcohol Clearinghouse."[2]

ATA strongly supports a drug and alcohol clearinghouse for drivers subject to the Department of Transportation's (DOT) drug and alcohol testing regulations. Since 1999, ATA has advocated for a database that would help close a significant loophole in the DOT testing program that allows violators of the drug and alcohol regulations to escape the consequences of their actions. With the use of a clearinghouse, hiring motor carriers would be able to reduce their reliance on applicants' honesty in giving a full and complete employment history to verify their violation histories.

ATA urged Congress in 1999 to require a study of the feasibility and merits of such a clearinghouse. FMCSA issued that study in 2004 and concluded that it would be possible to establish a Federal database which, if properly implemented, could enhance compliance and improve transportation safety.[3] However, only after an industry-supported 2012 Congressional mandate for the agency to create such a database was this proposal finally issued. While ATA strongly supports the mission of the NPRM, we do have significant concerns that could work against the proposal's primary goal and intention, which is improving highway safety. Moreover, addressing these concerns will help ensure that the clearinghouse is more effective and cost-beneficial.

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[1] ATA is a united federation of motor carrier, state trucking associations, and national trucking conferences created to promote and protect the interests of the trucking industry. Its membership includes more than 2,000 trucking companies and industry suppliers of equipment and services. Directly and indirectly through its affiliated organizations, ATA encompasses over 34,000 companies and every type and class of motor carrier operation.
[2] 79 Federal Register at 9703 (February 20, 2014)
[3] *A Report to Congress On the Feasibility and Merits of Reporting Verified Positive Federal Controlled Substance Test Results To the States and Requiring FMCSA-Regulated Employers to Query the State Databases Before Hiring a Commercial Drivers License (CDL) Holder*, Federal Motor Carrier Safety Administration, March 2004, Pg. 2.

ATA's primary concerns are:

- Employer observations of drug/alcohol misuse and employee admissions of misuse must be captured by the clearinghouse. The clearinghouse must be a "one-stop shop" for all drug and alcohol violations and test results.

- FMCSA should eliminate the redundant requirement that employers continue to conduct previous employer inquires.

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

- Service agents (including background screening firms) must be ensured access to the clearinghouse. Doing so would facilitate greater employer use and therefore, greater compliance and safety benefits.

- FMCSA must include an employer notification system that notifies employers every time a new record is entered into the clearinghouse for one of their active drivers.

- Employers and service agents should be allowed to make limited queries of the clearinghouse multiple times per year.

- FMCSA should not use state Commercial Driver's License (CDL) numbers on drug and alcohol testing forms and for tracking records in the clearinghouse. The Agency should only use the universally accepted Social Security Number (SSN).

- FMCSA should allow employers and service agents to use electronic driver consent forms for accessing the clearinghouse and for record keeping.

- Employers and service agents should be allowed to use third party software programs for the purposes of employee hiring and regulatory compliance.

- Records of driver violations should only be removed only when the drivers have met all the return-to-duty conditions (e.g., referral, evaluation and treatment).

- State licensing agencies should not just be *allowed* to access the clearinghouse but they should be *required* to make a query before issuing a CDL and at least annually thereafter. Further, they should revoke CDLs when new records of violations are reported to the clearinghouse.

- Under the terms of the NPRM, drivers could "job hop" to non-CDL positions to escape the consequences of committing a violation of the drug and alcohol regulations. FMCSA should allow employers to check the clearinghouse for any employee required to drive a commercial motor vehicle as defined in 390.5.

- Employers and Service Agents should be allowed to submit all non-DOT drug tests, as long as those tests have obtained FDA approval/clearance.

Discussion

Employer Observations and Employee Admissions of Misuse – ATA has serious concerns regarding FMCSA's proposal not to include *all* violations of the drug and alcohol prohibitions[4] in the clearinghouse. Instead, FMCSA proposes to exclude employers' actual knowledge of misuse (as defined in 382.107) based on direct observation or employee admission of misuse. The NPRM states, *"As part of this proposed rule, employers would only be required to report to the Clearinghouse violations based on actual knowledge of employees receiving a citation for operating a CMV under the influence of drugs or alcohol. FMCSA proposes to require only this one category of actual knowledge violations because a traffic citation provides objective documentation on which to base a report to the Clearinghouse."*[5]

ATA understands FMCSA's explanation for not wanting to include other instances of actual knowledge, such as direct observation and employee admissions of misuse, but believes it's unpersuasive. FMCSA contends that providing objective documentation of such violations would be difficult. However, these types of events still constitute violations of the drug and alcohol probations and drivers who commit them are subject to the same referral, evaluation and treatment requirements as drivers who violate other DOT prohibitions. Further, FMCSA proposes to retain the requirement that past employers report these violations directly to subsequent employers conducting previous employer inquiries. Whether these actual knowledge violations are reported to a hiring employer directly by the previous employer or through the clearinghouse, the documentation concerns raised by FMCSA remain the same.

By not requiring all instances of actual knowledge to be captured by the clearinghouse, FMCSA is perpetuating the current loophole that the clearinghouse is expected to close. In its 2004 report to Congress, the Agency acknowledged this would be the case if all violations were not reported. Specifically, the report says: "*With an incomplete database, it could appear that a driver is eligible when, in fact, he or she may not be.*" It went on to say that, lacking records of all types of violations (e.g., refusals to test, positive alcohol tests), "*…the new database(s) would end up actually increasing the administrative burden on employers while still leaving a substantial safety gap.*"[6] This is precisely ATA's concern.

All violations of the DOT drug and alcohol prohibitions must 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. In light of the 2004 report's findings, it was this sort of a comprehensive database that Congress mandated. Specifically, 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*

[4] 49 C.F.R. §382 (Subpart B-Prohibitions).
[5] 79 Federal Register at 9710 (February 20, 2014)
[6] *A Report to Congress On the Feasibility and Merits of Reporting Verified Positive Federal Controlled Substance Test Results To the States and Requiring FMCSA-Regulated Employers to Query the State Databases Before Hiring a Commercial Drivers License (CDL) Holder*, Federal Motor Carrier Safety Administration, March 2004, Pg. 37, 100.

vehicle operators and violations by such operators of prohibitions set forth in subpart B of part 382 of title 49" (emphasis added).[7]

Critics of ATA's proposal will likely contend that requiring employers to report observations and admissions of misuse raises the potential for capturing erroneous information that could ultimately harm drivers. However, if incorrect information does exist then the next employer would still obtain that information during the previous employer check. Also, placing these records into the clearinghouse would help prevent drivers from evading consequences in the event the past employer goes out of business, the previous employer cannot be contacted, or if the driver-applicant lies about his or her employment history. Further, the clearinghouse would include a far more controlled system for drivers to challenge reports they contend are erroneous.

The Previous Employer Inquiry Requirement – Currently during the pre-employment screening process, employers are required to make inquiries about a driver-applicant's DOT drug and alcohol history with all DOT-regulated employers that employed the driver within the previous three years. The creation of a drug and alcohol clearinghouse would make this requirement redundant, unnecessarily time-consuming, and otherwise inefficient. Once the clearinghouse has been created and is fully populated with three years' worth of data (including all prohibition violations as discussed above) mandatory pre-employment clearinghouse queries must replace the current requirement that prospective employers inquire with applicants' past employers. Continuing to require previous employer inquiries, while also requiring employers to check the clearinghouse for driver records, will unnecessarily increase the administrative burden on employers.

Fees – ATA is concerned with future costs for employers to access the clearinghouse and how FMCSA proposes to assess these fees. The NPRM suggests that fees for accessing the clearinghouse would be transaction-based. However, in a 2004 report to Congress FMCSA recommended that fees be assessed on a subscription-based model, rather than per transaction. Specifically, the report said, *"It is recommended that a fee be charged for the registration of system users of $10-$20 per year (to be paid in advance), and that employers would not be made to pay a fee per system query."* The report went on to point out that not charging a fee for each query would simplify bookkeeping and eliminate potential accounting overhead.[8] ATA agrees with FMCSA's 2004 report that an annual subscription based system should be implemented. Paying a small annual fee to access the clearinghouse for unlimited queries would be an easy and affordable method for all motor carriers and service agents to comply with this new requirement.

Also, FMCSA should *want* to have a subscription-based system. Such a system would be a better way for FMCSA to anticipate revenue based on the fairly predictable number of carriers that would be using the system, versus the relatively unpredictable number of inquiries employers would conduct each year. The latter could vary significantly based on time of year, economic

[7] Public Law 112-141: Moving Ahead for Progress in the 21st Century Act (MAP-21), *Subtitle D – Safe Roads Act of 2012* (126 Stat. 796; Date: July 6, 2012).

[8] *A Report to Congress on the Feasibility and Merits of Reporting Verified Positive Federal Controlled Substance Test Results To the States and Requiring FMCSA-Regulated Employers to Query the State Databases Before Hiring a Commercial Drivers License (CDL) Holder*, Federal Motor Carrier Safety Administration, March 2004, Pg. 80.

circumstances (driver demand), and average turnover, which could be difficult business model to manage.

In addition, ATA is very concerned that FMCSA would establish a fee structure similar to the Pre-Employment Screening Program (PSP). Despite being an effective tool for motor carriers to reduce their overall crash rates,[9] the PSP system is significantly under-utilized. In fact, only 5,476 motor carriers use the system to evaluate driver applicants.[10] The transaction-based fee to access PSP has deterred fleets from using it, causing the number of industry users of the program to be lower than previously estimated when PSP was originally created.

Despite the lower than expected use of PSP, the transactional-based fee structure has allowed the PSP contractor to pay off all of its development and management investment to establish the system much sooner than anticipated. Now, just 4 years after inception, the PSP is a significant profit center for the company. In fact, their 2013 Form 10-K (Annual Report) reported that the company "*currently earns a significant portion of its revenues from its contract with the FMCSA to develop and manage the PSP for motor carriers nationwide, using a self-funded, transaction-based business model."*[11] ATA believes that the low number of carriers using PSP is due, in part, to the high cost of the per-transaction based model.

The NPRM's Regulatory Evaluation Initial Regulatory Flexibility Analysis estimated that a transactional-based fee structure, similar to that used by the PSP system, will generate over $35 million dollars per year in fees. In addition to paying these fees, the agency projects it will cost the industry $47 million per year to comply with the new reporting and inquiry requirements. Yet, the cost to develop and manage the clearinghouse is only estimated to be $3 million.

The resulting $32 million estimated profit from fees for managing the clearinghouse is clearly inappropriate, excessive and unreasonable. If FMCSA chooses to use a third party to manage the clearinghouse, the agency should make the fees the third party intends to charge a criterion for selection. Further, implementation of an annual subscription fee model should be required of the third party. Finally, FMCSA should ensure that the fees charged to the industry for use of the clearinghouse will not greatly exceed the contractor's costs to manage the system.

Defining Designated Service Agent – FMCSA must clarify the definition of *"designated service agent,"* so that it includes any person or entity that helps an employer comply with the drug and alcohol testing regulations. The NPRM defined *"designated service agents"* as medical review officers (MROs), consortia/third party administrators (C/TPAs), and substance abuse professionals (SAPs). ATA would like FMCSA to expand this definition to include consumer reporting agencies (CRAs), also known as background screening firms. ATA believes it was FMCSA's intent to include CRAs within the parameters of the TPA definition. However, the commonly accepted industry definition of TPAs would not include all CRAs.

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[9] *Safety Analysis and Industry Impacts of the Pre-Employment Screening Program (PSP),* Federal Motor Carrier Safety Administration, October 2013, Pg. 10, http://ntl.bts.gov/lib/51000/51200/51258/13-003-PSP-Safety-Impact.pdf.

[10] Ibid, Pg. 7.

[11] NIC Inc, 2013Form 10-K (Annual Report), Feb. 27, 2014, Pg. 28, http://files.shareholder.com/downloads/EGOV/3046705151x0xS1157523-14-862/1065332/filing.pdf.

In its 2004 report to Congress FMCSA stated that, to avoid operational obstacles for the database, the Agency must *"ensure that any unnecessary due process requirements will not overwhelm or obstruct the system."*[12] CRAs, in addition to TPAs, play an integral part of many companies' processes to ensure compliance with the DOT regulations and could help FMCSA minimize the obstacles identified in its 2004 report. For instance, many motor carriers are not "trucking companies" per se; their core business is some other function (e.g., landscapers, building contractors). They rely on service agents for their knowledge of the regulations and as a "turn-key" source for conducting background checks. Absent CRA access, some regulated motor carriers may unwittingly fail to comply with the clearinghouse due process requirements.

Employer Notification of New Clearinghouse Entries – MAP-21 requires FMCSA to notify prospective employers of positive test results or other violations reported to the clearinghouse during the seven day period immediately following the prospective employer's query relating to an applicant. The same is true for all employees that are listed as having multiple employers. The NPRM clearly establishes such a procedure for the seven day period immediately following a clearinghouse query in proposed §382.701. However, the procedure for electronically notifying employers of new records relating to employees who work for multiple employers is conspicuously missing.

In the interests of safety, the clearinghouse should immediately notify all of a driver's employers when the driver is to be removed from a safety-sensitive position. If such a process is not provided, employers will be forced to rely on the honesty of their employees to inform them of their non-compliance. Yet, there is little to compel an employee in such circumstances to do so. Though the NPRM calls for FMCSA to assess criminal and civil penalties to drivers that fail to disclose such non-compliance to their current employers in writing, a provision ATA strongly supports, the threat of these penalties is not enough. When an employee's livelihood is on the line, fines and penalties would likely be perceived by the employee to be the lesser threat.

To address this problem, FMCSA should go beyond the MAP-21 requirement and notify employers every time a new record is entered into the clearinghouse for one of their active drivers and not just those who work for more than one employer. For instance, an employer should be made aware if one of his/her employees tests positive on a pre-employment test while seeking employment elsewhere. Under FMCSA's proposal an employer may verify that a *new* applicant does not have a database record, but has no other means to know that a *current* employee has not tested positive elsewhere, other than through the annual query process. However, such annual queries may produce results as much as a year old, effectively allowing drivers to operate in violation for an extended period of time.

Such a system to provide timely notification to employers is necessary and would be beneficial. In lieu of requiring annual queries, FMCSA could require employers to submit an updated list of active employees periodically (e.g., quarterly) so that the database administrator would know

[12] *A Report to Congress On the Feasibility and Merits of Reporting Verified Positive Federal Controlled Substance Test Results To the States and Requiring FMCSA-Regulated Employers to Query the State Databases Before Hiring a Commercial Drivers License (CDL) Holder*, Federal Motor Carrier Safety Administration, March 2004, Pg. 36.

which motor carrier(s) to notify upon receipt of a driver violation record. A similar system has been successfully employed by the state of California to provide employers with timely notification of driver license record changes (e.g., suspensions and violations). Similarly, a third party service provider to the trucking industry, HireRight, provides subscribers with such proactive notification from the 37 states in which such records are available.

If FMCSA chooses not to implement a proactive employer notification system as described above, at a minimum the Agency should clarify that employers are allowed to make limited queries of the database more frequently than once a year. The NPRM is not clear on this point, so additional employer access must be clarified. Doing so would provide employers with a means to confirm that their drivers have not committed violations elsewhere (e.g. while working simultaneously for another employer or on a pre-employment test when applying for employment).

The Use of Commercial Driver's License Numbers – In the NPRM, FMCSA proposes a shift away from using SSNs on the Alcohol Testing Form (ATF) and the Federal Drug Testing Custody and Control Form (CCF). The agency also proposes that SSNs not be used as an identifier when submitting records to and querying the clearinghouse. The only permitted employee ID number would be the driver's CDL number and the State of issuance. ATA views this "shift" as being significantly problematic.

First, FMCSA does not have the authority to require that different identifiers be used on the ATF or the CCF. Both forms require drivers to provide their SSNs and clearly state that *"All responses to this collection of information are mandatory."* To accomplish its objective, FMCSA would have to establish new forms specifically for CDL drivers. ATA believes that significant changes to these forms can only be initiated in conjunction with DOT's Office of Drug and Alcohol Policy and Compliance (ODAPC) or Health and Human Services' (HHS) Substance and Mental Health Services Administration (SAMHSA).

Second, the use of CDL numbers for entering driver records and querying the clearinghouse poses significant challenges. The CDL number and the State of issuance for a single driver can change multiples times during a driver's career (e.g., driver relocates to another state). Having a clearinghouse comprised of records from numerous drivers with multiple identifiers would present a significant data integration issue. For instance, how would FMCSA track and identify drivers who have multiple records in the clearinghouse under multiple CDL numbers?

Finally, using CDL numbers as a way to track clearinghouse records would prevent employers trying to determine if a prospective commercial motor vehicle (CMV) driver of a non-CDL vehicle (e.g., of a vehicle between 10 and 26,000 lbs) has a clearinghouse record. Some employers are concerned that by using CDL numbers an employer's ability to query the clearinghouse for *all* CMV drivers would be significantly limited. A CDL driver who tests positive would be able to avoid the consequences of his/her actions by getting re-licensed and "job hoping" to a CMV job that does not require a CDL. In this scenario, the use of only CDL numbers to track clearinghouse records would prevent the employer from learning of the driver's past violation. Of course, such a query is important and necessary, since regulated employers are

prohibited from allowing a driver who has committed a drug or alcohol violation from operating any type of CMV, not merely a CDL vehicle.

ATA recommends that FMCSA continue the use of SSNs on the ATF, CCF, and for identifying CDL drivers for the purpose of entering records and querying the clearinghouse. Also, FMCSA should establish encryption protocols to ensure that driver identities are protected. Doing so would achieve FMCSA's objective in proposing that CDL numbers be used as identifiers without the corresponding difficulties that would accompany such a change.

Electronic Driver Consent –In MAP-21, Congress required that, *"The Secretary shall ensure that records can be electronically submitted to, and requested from, the clearinghouse by authorized users."*[13] Additionally, they required that *"An employer may not access an individual's record from the clearinghouse unless the employer… obtains the prior written or electronic consent."*[14]

In today's modern work environment, many motor carriers work almost exclusively in a paperless setting. These carriers have found that being paperless improves the efficiency, accuracy, and security of their documents. By allowing employers and service agents to use electronic consent to access the clearinghouse and to maintain such consent electronically for recordkeeping purposes, they can significantly improve efficiency, accuracy, and security of driver consent forms. Further, ATA recommends that FMCSA's proposal should explicitly allow the use of electronic signatures for driver consent, as long as the documentation is in compliance with the E-Sign Act.[15]

Third Party Software/ Motor Carrier Driver Qualifications Files - Many employers use work flow and document management systems, created and operated by third party software providers, to help manage the hiring process and assist in regulatory compliance. Allowing the use of these systems would help employers manage their regulatory compliance responsibilities more efficiently and timely. ATA recommends that FMCSA allow employers and service agents the ability to submit clearinghouse queries electronically into these systems, provided that all records submitted are maintained and accessible only to the employer for which the record was requested.

Clearinghouse Driver Records Retention - In the NPRM, FMCSA requested comments on whether the clearinghouse should retain records for three years or five years past the date a violation occurred. ATA prefers removal after five years, consistent with the 2004 report's recommendation.[16] On a related note, ATA also strongly supports FMCSA's proposal to require that traffic citations be retained in the clearinghouse permanently.

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[13] Public Law 112-141: Moving Ahead for Progress in the 21st Century Act (MAP-21), *Subtitle D – Safe Roads Act of 2012* (126 Stat. 796; Date: July 6, 2012).
[14] Ibid.
[15] The Electronic Signatures in Global and National Commerce Act (E-Sign). 5 U.S.C. 552; Public Law 106-229 (June 30, 2000).
[16] *A Report to Congress on the Feasibility and Merits of Reporting Verified Positive Federal Controlled Substance Test Results To the States and Requiring FMCSA-Regulated Employers to Query the State Databases Before Hiring a Commercial Drivers License (CDL) Holder*, Federal Motor Carrier Safety Administration, March 2004, Pg. 59.

State Access to the Clearinghouse – ATA supports allowing state licensing agencies to access the clearinghouse when a driver applies for or renews a CDL. However, FMCSA should take this process a step further. Since querying the clearinghouse would benefit safety, state agencies should be *required* to do so – not merely *allowed* to do so. Also, FMCSA should expand this provision to require that states not simply check the clearinghouse upon driver licensure, but also annually thereafter. Moreover, states should revoke a driver's CDL if that driver is found to have committed a violation of the drug and alcohol prohibitions.

Employer Requirement to Notify Drivers When Information is entered into the Clearinghouse – The NPRM requires that employers notify a driver when they submit a record to the clearinghouse relating to that driver. However, despite every attempt to do so, employers could fail to meet this requirement if they are unable to locate or contact the driver. Instead, FMCSA should require that employers make a "good faith effort" to notify such drivers, especially those that have been terminated and cannot be contacted.

Under the proposed rule, FMCSA would also be required to notify a driver when a new record for the individual was entered into the clearinghouse. However, FMCSA would only be required to send a letter, unless the driver requests a different form of communication (ex. electronic mail, text message). To be consistent, the requirement for an employer to contact a driver to report a clearinghouse record submission should mirror the requirement for FMCSA to notify a driver of the same (e.g. U.S. mail or electronic mail).

FMCSA Should Allow Employers to Query the Clearinghouse for All CMV Drivers –As discussed in the "*The Use of Commercial Driver's License Numbers*" section above, the creation of a drug and alcohol clearinghouse presents an interesting discrepancy in the regulations. Specifically, the prohibitions in Part 382 only apply to drivers operating vehicles requiring a CDL, but motor carriers are prohibited from allowing drivers who commit such violations from operating a CMV of *any* size. Given this discrepancy and to prevent "job hopping" from a CDL required position to a non-CDL CMV driving position, ATA recommends that FMCSA allow employers to query the clearinghouse for all CMV drivers as defined in 390.5.

Inclusion of All Non-DOT Drug Test Results – In §382, employers are required to remove any CMV driver from a safety sensitive position when an employer has actual knowledge that a driver has misused a substance that could impair driving ability. To help identify drivers that are misusing prohibited substances, many employers have implemented additional drug testing programs to that go beyond the minimum DOT drug testing requirements. Often these additional testing programs are implemented during the hiring process, as a way to weed out "lifestyle" drug users before they are placed behind the wheel.

Over the last decade, hair testing and expanded urinalysis drug testing panels have been a growing trend within the trucking industry. Hair testing has been proven as an effective tool for many employers in identifying these "lifestyle" users with the use of its longer detection window for illegal substances. Also, hair testing has helped reduce many carriers' positive random testing and positive post-accident testing rates. Expanded drug testing panels have been a way for many employers to respond quickly to threats caused by "trendy" drugs becoming popular for misuse,

like synthetic marijuana and synthetic opioids (prescription painkillers ex. OxyContin, Vicodin, etc.). Additionally, these expanded drug testing panels are frequently used by companies that employ CMV drivers not subjected to DOT's drug testing program.

The inclusion of non-DOT drug test results within the clearinghouse would improve the safety of our roads by ensuring that drivers who test positive for prohibited substances are not "job hopping" to another company where their prior drug misuse cannot be detected. ATA recommends that once an employer has actual knowledge of prohibited drug use with a non-DOT drug test that has been approved/ cleared by the Federal Drug Administration (FDA) all records should be required to be submitted to the clearinghouse.

Conclusion

For over 15 years, ATA has consistently advocated for a database of drug and alcohol violations to eliminate a significant loophole in the current DOT drug and alcohol testing program. This loophole allows drivers to escape the consequences of committing violations of the drug and alcohol prohibitions. While the proposed rule is a momentous step in the right direction, FMCSA must make significant changes in the final rule to ensure that the clearinghouse is most effective and does not merely raise the administrative burden on employers.

ATA encourages FMCSA to give careful consideration to all of the issues discussed above. Most importantly, FMCSA should add employer observations and employee admissions of drug/alcohol misuse to the list of violations that must be reported to the clearinghouse and eliminate the redundant requirement that employers continue to conduct previous employer inquires. Also, consistent with the recommendation in the 2004 Report to Congress, the clearinghouse should have a subscription-based fee structure, not a transactional-based structure, to help ensure that fees are "reasonable." In addition, FMCSA should expand the definition of service agent to include CRAs to broaden clearinghouse use and so that all types of motor carriers can comply with the new requirements.

Other improvements ATA recommends include: the creation of a system to alert employers to violations committed by their active drivers; continued use of SSNs (in lieu of CDL numbers) for tracking driver records; the permitted use of electronic driver consent forms and third party software programs; retention of violation records for five years; a requirement that state licensing agencies query the clearinghouse upon driver licensure and annually thereafter and revoke CDLs when learning of driver violations; permitting employers to query the clearinghouse for all CMV drivers as defined in 390.5; and allowing employers and services agents to submit non-dot drug tests.

Thank you for the opportunity to comment on this important matter.