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Mr. Juan Moya  
Compliance Division  
Federal Motor Carrier Safety Administration (FMCSA)  
1200 New Jersey Ave., SE  
Washington, DC 20590-0001  
Re: Commercial Driver's License Drug and Alcohol Clearinghouse Docket No. FMCSA-2019-0108

Following are the comments of the Drug & Alcohol Testing Industry Association (DATIA) on the FMCSA Commercial Driver's License Drug and Alcohol Clearinghouse (Clearinghouse) Renewal and Revision of an Approved Information Collection.

DATIA is a 1,500+-member national trade association representing the full spectrum of drug and alcohol testing providers including laboratories, specimen collection facilities, C/TPAs, BATs, MROs, SAPs, employers, and testing device manufacturers. DATIA's mission includes working closely with key policy makers in Federal Agencies and in Congress to ensure that the interests of the industry are heard and taken into account when changes in drug and alcohol testing rules are proposed. DATIA works to ensure that these changes foster rather than hinder the industry's growth, and provide for safe and effective drug free workplaces. DATIA further works to educate the industry on current standards of service and regulatory policies and procedures. DATIA's comments on behalf of its constituency are based upon input from DATIA's members, Legislative & Regulatory Committee, and Board of Directors.

DATIA strongly supports the FMCSA's forward movement on this important issue. DATIA has been in support of such a clearinghouse since its inception in 1995. We constantly hear from our members about situations where they provide services for multiple employers, and in turn are privy to positive test results that they aren't able to share with those other employers. Knowing that a driver is still driving for one employer while being barred from performing safety sensitive duties following a drug and alcohol violation for another employer is extremely disconcerting. From job-hopping and conveniently excluding a previous employer from their application to working for multiple FMCSA mandated employers at one time, it is very easy for CDL drivers to "hide" previous drug and alcohol testing violations from prospective employers and to continue performing safety sensitive duties without completing the return- to-duty process. This goes against the goal of providing safe public highways while also protecting driver confidentiality.

With that said, DATIA and its constituents do have a number of concerns and questions. We feel that a number of issues need to be addressed so that the Clearinghouse operates as efficiently as possible while ensuring accuracy of the information submitted to the database and maintaining strict

confidentiality of that information. A main problem is that there are no set or released functionalities of the Clearinghouse despite being finalized over three years ago. Below are the key areas where we see changes need to be addressed and considered.

### **§382.721 Fees**

As DATIA commented in 2014 on the proposed rule, the cost needs to be reasonable and affordable for all as it is a required vs. voluntary compliance issue imposed by the Federal Government. This is especially true for small companies as well as owner-operators. “§382.721 Fees - This section only states that the FMCSA will require reasonable fees from entities to query the database. Since employers will be required to conduct not only pre-employment queries, but also annual queries on all drivers DATIA encourages the FMCSA to keep fees to less than \$5 per query.” For the first three years, employers must perform the database queries as well as the manual previous employer queries per §40.25 creating an additional burden. At the time of the final rule making in 2016, the FMCSA indicated that it would use the competitive bidding process to secure a third-party provider for the database and would require batch processing of data, subscription fees, and pre-population of recurring data. Given that the rule was made final in 2016 and the FMCSA has been moving forward with its development, a provider with an estimate should have been selected by now. As such rates should be announced immediately and open for comment as companies are now working on their 2020 budgets and these additional costs need to be considered.

### **§382.123 Driver Identification**

Again, as commented in 2014, DATIA opposes the requirement to use the driver’s CDL number and state of issuance as the driver identification. The current federally approved Custody and Control form (CCF) states Social Security Number or Employee ID Number as the identifiers to be entered on the CCF. While in the issuance of the 2016 final rule the FMCSA stated that the CDL number and state of issuance is considered an Employee ID Number, this will require a complete retraining of specimen collectors for FMCSA collections – the largest percentage of DOT required drug tests. Again, to quote the Specimen Collection Guidelines as mandated and issued by DOT-ODAPC that is the overarching agency in terms of this “The collector enters the employee’s social security number or employee’s ID number after verifying the employee’s identity.” As such, there is a very high likelihood that the CDL number and Issuing State won’t be captured at the time of collection. Therefore, we request that the regulation be changed to have drivers in the Clearinghouse identified by their SSN.

Lacking acceptance of this change, then the HHS Federal CCF and DOT CFR Part 40 regulations need to be changed prior to implementation of the Clearinghouse to provide a means to input the CDL number and state of issuance as neither are currently formalized to be captured during the specimen collection procedure. As such, MROs that are required to report on by CDL license number do not have the information needed to report results based on CDL numbers and state of issuance not being included on the current CCF or required by overriding §49.40 regulations.

Alternatively, since this is an employer responsibility, and employers have access to all of their drivers’ CDL numbers, then the shift of reporting positives and infractions could be returned to the employers and removed from the MROs. FMCSA regulates employers – not their service agents.

### **Batch Querying Feasibility**

While the FMCSA stated in its final rule in 2016 that the third-party contractor would need to offer batch data processing and wrote “Nothing in this rule would foreclose the possibility of batch-processing annual queries. Details on Clearinghouse functionality will be addressed during the design and development

process”, DATIA would like to reiterate that this feature is necessary to increase efficiency of the process and reduce time spent querying each individual driver, specifically in terms of the required annual queries. Again, the rule was implemented in 2016 with a compliance date of January 2020. With the FMCSA having three years already, time needs to be given to employers and service providers to review functionality and create efficient processes to be able to perform the services provided.

### **Driver Consent and Registration**

Streamlining the driver/employee registration process needs to be facilitated by the FMCSA and/or State Driver Licensing Agencies (SDLA). The FMCSA states the following on its National Clearinghouse website.

Does every driver need to register for the Clearinghouse? No, Clearinghouse registration is not a required step for drivers. If a driver is never required to provide consent to a pre-employment or other full query, and never incurs a drug and alcohol program violation, then the driver will not need to register for the Clearinghouse.

However, a driver will need to be registered to provide electronic consent in the Clearinghouse for a prospective or current employer to conduct a full query of his or her driver record. A full query releases detailed violation information contained in a driver’s Clearinghouse record to the querying employer. Beginning January 6, 2020, a full query will be required during a pre-employment driver investigation for a commercial driver’s license (CDL) holder who will perform safety-sensitive functions, including operating a commercial motor vehicle (CMV). Early registration will allow drivers to respond quickly to a query request. A driver must also be registered to view the information electronically in his or her own Clearinghouse record.

As such, DATIA recommends that the FMCSA and/or SDLAs start a campaign to contact CDL holders to let them know of their need to register for the Clearinghouse. This will be effective in many ways. First, the agencies mentioned have all of the information required to send the notices, and secondly, it will put drivers on notice of the future inability to circumvent violations of the DOT drug and alcohol testing regulations. Finally, it will limit impact on the employers and service providers that are being tasked with the time resources and costs of this regulation.

### **Application Programming Interface**

Having a pre-set application programming interface (API) is necessary for the long-term efficient use of the clearinghouse to fully realize its potential. Integration with TPAs/employers/MROs will streamline the process, increase efficiency, reduce delays and errors, increase compliance with reporting and overall a feature required keeping the long-term solution that clearinghouse is looking to offer.

### **Compliance Date**

Given the above, and the needed changes and considerations, DATIA requests that the FMCSA extends the compliance date from January 2020 to six months after the release of final regulations, instructions, and cost implications of the database. There is much work for service providers and employers to complete to be in full compliance with no specific operational guidelines set yet by the FMCSA on functionality of reporting results to the database, etc. For the FMCSA to have had three years to determine these items and not have determined any, and yet requiring service providers to comply within four months is a unfortunate situation. Service Providers and Employers need at least 6 months after seeing the final functionality and cost requirements of the Clearinghouse to make all work.

DATIA thanks the FMCSA for the opportunity to provide comments on the National Drug and Alcohol Clearinghouse regulations. With proper consideration of all involved in reporting and querying the database, and their concerns, we are hopeful that this will close loopholes and make the roads safer. In

actualizing this goal, however, the FMCSA needs to consider the stresses being placed on small businesses to satisfy the safety concerns and do its best to create a copacetic resolution. Please feel free to contact me if you would like to further discuss any of the above comments.

Sincerely,



Linda Wilson  
DATIA Executive Director



Neha Badheka  
DATIA Board Member



Kelly Dobbins  
DATIA Board Member



Angela Moore  
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Chandra Spring DeWald  
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