

THE DRUG AND ALCOHOL NATIONAL DATABASE REPORT TO CONGRESS

Pursuant to the Joint Explanatory Statement accompanying the
Transportation, Housing and Urban Development, and
Related Agencies Appropriations Act, 2009 (P.L. 111-8)
March 2010

The Joint Explanatory Statement accompanying the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2009 (P.L. 111-8, division I), requested the Federal Motor Carrier Safety Administration (FMCSA or Agency) to submit a report that provides a detailed timeline for the implementation of a national database of positive and refusal-to-test drug and alcohol test results of commercial drivers.

The successful implementation of the drug and alcohol test results database requires many steps, including notice and comment rulemaking and the development of a robust, secure information technology (IT) system. The FMCSA is in the initial phase of developing the notice and comment rulemaking to require motor carrier employers and, potentially, medical review officers (MROs) and other service agents, to provide information on positive test results and refusals-to-test to the Agency. As contemplated by the Agency, the proposed rule would mandate reporting requirements in order to assure that holders of commercial driver's licenses who test positive or refuse to test do not drive until they comply with the return-to-duty process prescribed in Title 49, Code of Federal Regulations (CFR), Part 40, Subpart O. In addition, the FMCSA proposed rule being developed would require that motor carrier employers access and review the relevant information contained in the database to ensure that a driver is in compliance with the U.S. Department of Transportation (DOT) drug and alcohol testing requirements before allowing the driver to perform safety-sensitive functions.

The drug and alcohol testing IT system is being designed to securely accept the drug and alcohol test results and refusals-to-test, track a driver's progress in completing the return-to-duty process, monitor motor carrier queries of the system in advance of hiring, and identify motor carriers failing to conduct drug and alcohol testing. As this database will contain very sensitive personal information, FMCSA is addressing security and privacy requirements as a key implementation factor. The FMCSA will also need to secure Paperwork Reduction Act approval from the Office of Management and Budget to collect the necessary data and information contemplated by the rulemaking.

A more detailed discussion of the critical project deliverables follows. Although discussed separately, the deliverables collectively provide the necessary framework to ensure success. Also, there are some existing limitations that impact FMCSA's ability to deliver the most comprehensive rulemaking and database.

REGULATORY REQUIREMENTS

To ensure a robust and accurate system, FMCSA plans on obtaining drug and alcohol information from appropriate sources. The Agency would require direct online reporting by motor carrier employers and consortia/third party administrators (C/TPAs) with respect to testing of owner-operators, and could also require reporting by other C/TPAs, MROs, and additional parties who participate as service agents under the DOT testing program. The purpose of this reporting would be to establish a complete, accurate, and timely drug and alcohol driver information system. Since this rulemaking is deemed significant, the Agency will prepare an accompanying cost/benefit analysis. The FMCSA estimates publishing the Notice of Proposed Rulemaking in the Federal Register by the end of 2010 and the Final Rule by the end of 2011.

DESIGNING AND BUILDING A DRUG AND ALCOHOL DRIVER DATA SYSTEM

Key capabilities of the proposed system include the submission of drug and alcohol data, support of queries and report generation, user account and access management, and interface with the existing FMCSA IT systems. The proposed system also will meet the overarching need for security and privacy to protect sensitive drug and alcohol testing results and personal driver information. The proposed FMCSA IT system will provide the ability for motor carrier employers and, if appropriate, other identified parties to submit drug and alcohol related information to the database.

The proposed system will allow authorized FMCSA and State enforcement personnel to access the data and create reports for enforcement and analysis activities. The data in the proposed system will be integrated with existing FMCSA field systems to provide FMCSA and State Motor Carrier Safety Assistance Program enforcement personnel the ability to identify unqualified drivers operating commercial motor vehicles.

Commercial motor carriers also will have access to the data to perform a pre-employment verification of drivers. The contemplated FMCSA system will provide the capability to manage the accounts, authorization, and access to the information. It will also include capabilities to ensure the confidentiality and integrity of the data. In summary, the system must ensure that accurate information is provided only to authorized persons that need to know the information, additionally meeting all of the requirements in the proposed regulations, as well as the existing Federal security and privacy requirements.

The FMCSA estimates implementing the envisioned system by the end of 2012.

FMCSA CIVIL PENALTY AUTHORITY

To ensure that the system includes complete, timely, and accurate information about drivers testing positive and refusing to test, it is critical that the regulated parties report as accurately and completely as possible. Any failure in meeting requirements to report information could result in noncompliant motor carrier employers and unqualified drivers operating on the Nation's highways undetected.

Currently, FMCSA only has authority to initiate enforcement action against a service agent through the labor-intensive Public Interest Exclusion process provided in Title 49 CFR Part 40, Subpart R. Ultimately, expanded civil penalty enforcement authority to cover all DOT service agents may be necessary to effectively implement the database system to strengthen the Agency's ability to ensure collection sites and all other service agents perform drug and alcohol testing responsibilities in accordance with Title 49 CFR Part 40.

SUMMARY

The FMCSA is working to create a national database of verified positive drug and alcohol test results and refusals. Changes to the existing regulations within Title 49 CFR Part 382 are necessary. A sophisticated IT system must be created. The FMCSA's goal is to implement a fully functional drug and alcohol national database by the end of calendar year 2012.