The U.S. Department of Transportation’s Federal Motor Carrier Safety Administration (FMCSA) published a notice of proposed rulemaking (NPRM) on April 28, 2020 seeking to prohibit State Driver’s Licensing Agencies (SDLAs) from issuing, renewing, upgrading, or transferring a commercial driver’s license (CDL) or commercial learner’s permit (CLP) for individuals prohibited from driving a commercial motor vehicle due to drug and alcohol program violations identified by the FMCSA’s Clearinghouse.

The FMCSA Clearinghouse is an electronic database that contains information about commercial motor vehicle drivers’ drug and alcohol program violations. It became operational on January 6, 2020 and within the first weeks of operation identified nearly 8,000 positive drug and alcohol test results. (Click here to read our earlier posts about the Clearinghouse). Prior to the establishment of the Clearinghouse, it
was incumbent on drivers and their employers to ensure that drivers who violated the drug and alcohol program rules did not drive commercial motor vehicles. Now that the Clearinghouse is operational, both FMCSA and SDLAs have access to this information in real time.

The NPRM seeks to establish how, and when, SDLAs would access and use driver-specific information from the Clearinghouse to ensure that drivers who violate drug and alcohol rules stay off the road until they complete the DOT return-to-duty process set forth at 49 CFR Part 40, Subpart O. Currently, there is an information gap where a driver can continue to hold a valid CDL or CLP while prohibited from operating a commercial motor vehicle due to the drug or alcohol rule violation. The major provisions of the proposed rule are as follows:

- **Non-Issuance**: If an SDLA’s query to the Clearinghouse prior to issuing, renewing, upgrading or transferring a CDL indicates the driver is prohibited from operating a commercial motor vehicle, the proposed rule would require the SDLA to deny the licensing transaction, resulting in non-issuance. A driver whose transaction is denied would have to reapply after completing the return-to-duty requirements.

- **FMCSA’s Preferred Enforcement Alternative – Mandatory Downgrade**: Upon receiving a “push” notification from the Clearinghouse that a driver is prohibited from operating a commercial motor vehicle, the SDLA would be required to remove the CLP or CDL privilege of that driver. This downgrade (from “licensed” to “eligible”) would align the driver’s licensure status with his or her driving status under the regulations.

- **Alternative # 2 – Optional Notice of Prohibited Status**: This option would permit, but not require, SDLAs to receive “push” notifications from the Clearinghouse when a driver is prohibited from driving due to a drug or alcohol violation. The SDLA would also be notified when the driver has completed the return-to-duty process and is able to resume operating a commercial motor vehicle. This option provides States with maximum flexibility to determine how to use Clearinghouse information to enhance enforcement of the driving prohibition.

The NPRM also would revise how an employer’s report of actual knowledge of a driver’s drug or alcohol use to the Clearinghouse, based on the issuance of a citation to the driver for DUI in a commercial motor vehicle, is handled. First, the employer’s report would remain in the Clearinghouse, regardless of whether the driver is ultimately convicted of the offense. The reason is that a driver violates Part 382, subpart B, when he or she receives a citation for a DUI in a commercial motor vehicle; a subsequent conviction carries separate consequences under Part 383. Second, drivers who are not convicted of the offense could petition FMCSA to add documentary evidence of that fact to their Clearinghouse record.

FMCSA is accepting public comments on the NPRM until June 29, 2020.

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