

# Drug and Alcohol Clearinghouse Rule Now in Effect

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On January 4, 2017 the Federal Motor Carrier Safety Administration (FMCSA) enacted the Drug and Alcohol Clearinghouse Rule with a required compliance date of January 6, 2020. (49 CFR 382.701-727). The FMCSA Commercial Driver's License Drug and Alcohol Clearinghouse is a secure online database that will give employers, the FMCSA, state driver licensing agencies and state law enforcement personnel real-time information about commercial driver's license (CDL) and commercial learner's permit (CLP) holders' drug and alcohol program violations. *There are no exemptions for municipal government employers.*

## Who is affected?

All CDL drivers who operate Commercial Motor Vehicles (CMVs) on public roads and their employers are subject to the Clearinghouse. This includes municipalities and municipal drivers of CMVs. The only

exemption to this rule applies to drivers who perform only FTA-regulated safety-sensitive functions (fire service personnel, EMT's, etc., even if a city requires them to have a CDL). These drivers and employers are subject to drug and/or controlled substances testing requirements found elsewhere in the law.

Currently, the requirements of CDL holders have not been changed by this rule. Drivers are not required by the rule to register within the clearinghouse. However, for employers to complete some requirements contained within the rule, the CDL holder must register and give electronic permissions to the employer. Failure to complete this task could result

in the driver being unable to be employed. Drivers must also be registered to electronically view the information in his or her own Clearinghouse record.

## What is required of your municipality?

Employers (or their designated representatives) are required to report information to the clearinghouse about positive drug tests, alcohol tests greater than 0.04 blood alcohol content, refusals to test and other non-test violations of drug and alcohol regulations. Negative return-to-duty test results and the date of successful completion of a follow-up testing plan for any driver who is employed must also be recorded in the Clearinghouse.



Only violations that occurred on or after January 6, 2020, will be reported to the Clearinghouse. Testing conducted for internal purposes (not related to the drivers CDL) should not be reported through the Clearinghouse.

As of January 6, 2020, employers are required to conduct both electronic queries in the Clearinghouse as well as traditional manual inquiries with previous employers. Conducting both inquiries will be required until January 6, 2023, at which point the manual inquiry will no longer be required. Employers are required to conduct a full query of the Clearinghouse as part of each pre-employment process. Limited queries must also be performed at least annually for every CDL holder that is in their employment. The Clearinghouse will retain a record of every query an employer conducts, reducing the recordkeeping requirements of employers.

When performing a limited query, a general consent is required. This is obtained outside the Clearinghouse through a physical, signed consent form. Employers may obtain a multi-year general consent form from the driver for limited queries. A sample form can be found at: [www.clearinghouse.fmcsa.dot.gov/Resource/Index/Sample-Limited-Consent-Form](http://www.clearinghouse.fmcsa.dot.gov/Resource/Index/Sample-Limited-Consent-Form).

For full queries, the driver must provide specific consent to the employer electronically within the Clearinghouse. This requires the driver to be registered within the Clearinghouse, and this consent must be provided prior to each full query performed for that driver.

If an employer uses a third-party administrator (TPA) to comply with reporting requirements, the employer still retains the ultimate responsibility for ensuring that the required reports are made; that they are truthful and accurate; and that records are retained. Employers can reduce the risk associated with a TPA through contract language that makes clear responsibilities and protections (such as indemnification if the TPA makes a late report).

### **How does it work?**

Once registered, employers can report violations through the Clearinghouse as well as query the system as needed to satisfy their requirements. Employers can also invite users to complete required actions in the Clearinghouse on their behalf. These users would register as Clearinghouse Assistants. Employers can assign assistants to conduct queries and report drug and alcohol violations on their behalf. Employers may have multiple Clearinghouse assistants, and Clearinghouse assistants can support multiple employers.

Some actions within the Clearinghouse do charge a fee. While there is no cost for registration, reporting violations or some other activities, employers are charged a fee to conduct limited and full queries within the Clearinghouse.

### **How to register for the Clearinghouse**

Before you can conduct queries or report violations or return-to-duty information in the Clearinghouse, an employer must first register. First, if one does not already exist, a login.gov account will need to be created. The link to create this account can be found at: [www.clearinghouse.fmcsa.dot.gov/Register](http://www.clearinghouse.fmcsa.dot.gov/Register). Click “Create an account” and follow the prompts to finalize the registration process. For detailed instructions on how to register if you don’t have a DOTnumber (municipalities are not required to have a DOT number), visit: [www.clearinghouse.fmcsa.dot.gov/Resource/Index/Registration-Instructions-Employer-without-Portal](http://www.clearinghouse.fmcsa.dot.gov/Resource/Index/Registration-Instructions-Employer-without-Portal). ■