



Federal Motor Carrier Safety Administration (FMCSA) Drug & Alcohol Clearinghouse

Question 1:

What is the FMCSA Drug and Alcohol Clearinghouse?

Response & Analysis:

The Clearinghouse is a secure online electronic federal database that will give employers, the FMCSA, State Driver License Agencies (SDLAs), and State law enforcement personnel real time information about commercial driver's license holders (CDL) and commercial learner's permit (CLP) holders' drug and alcohol program violations. The rule was an act of Congress and will go into effect January 6, 2020.

The purpose of the Clearinghouse is to afford employers a better tool to ensure the safety of the "Traveling Public". The much anticipated Clearinghouse will enable employers to identify drivers who have committed a drug and alcohol violation while working for one employer, but who fail to subsequently inform another employer (as required by current regulation 49 CFR Part 40) that he or she either tested positive for drugs and or alcohol or had a Refusal to test. Real life implications for employers in these instances were that they would unknowingly hire an individual that had a history of past and possible current drug and or alcohol usage, creating an environment where safety would be compromised.

Under the DOT a safety sensitive employer must perform a pre-employment drug screen for all new hires and before those new hires can start work the employer must receive from the Medical Review Officer (MRO) a verified negative test. In fact, as outlined in 49 CFR Part 40 all safety sensitive employees will be subject to the following testing events:

- Pre Employment
- Random
- Post-Accident
- Reasonable Cause
- Return to Duty
- Follow Up

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Under the Clearinghouse the above referenced tests must be documented if there is a positive or Refusal to test. Currently when an applicant applies for a job in a safety sensitive capacity such as a “CDL holder”, potential employers reach out to previous employers via mail, secure fax or email to ascertain whether a new hire had ever violated DOT regulations prohibiting drug use and alcohol misuse within a three (3) year period while employed with the previous employer. The “Previous employer request” was hampered at times by employers failing to respond to requests for information due to a variety of reasons - such as the time needed to follow up on requests and the costs involved to contact prior employers - even though it was mandated by the DOT. An additional problem was that many employers would either not respond to these requests due to concerns of privacy or confidentiality issues or the potential employees would not provide accurate information as to their past employment to avoid discovery of a previous drug or alcohol problem. In the interest of safety, this was not the best measure for making a determination of prior violations, nor was there a penalty assessed for companies that failed to perform this request of each previous employer for potential new hires.

The new DOT Clearinghouse effective January 6, 2020 will afford employers an electronic depository of data that will come from both previous employers and DOT Service Agents.

Question 2:

Are other DOT modalities subject to the rules of the new Clearinghouse regulation?

Response & Analysis:

Only Federal Motor carrier companies are subject to the DOT Clearinghouse at this time. Eventually all DOT modalities will participate but for now the concentration is on the FMCSA as the largest DOT governed agency.

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Question 3:

As an employer what action do I need to take to be in compliance?

Response & Analysis:

Employers are required to register their company immediately if you have not already done so. Accessing the Clearinghouse requires the creation of an account with login.gov, a shared service that offers secure online access to participating government systems, including the Clearinghouse. If you do not have a login.gov account, or would like to create a new one, you will need to follow the steps below:

Visit <https://clearinghouse.fmcsa.dot.gov/register> and click **Go to login.gov**.

During the login.gov registration process, after 15 minutes of inactivity, the current page will clear whatever information is entered into data fields.

If you are working with a consortium/Third Party Administrator (C/TPA) you will need to designate your C/TPA in the Clearinghouse. This will allow your service agent to access the Clearinghouse on your behalf.

In order to perform this action please follow these steps:

Enter the name of your C/TPA

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in the field labeled “Who is your C/TPA?”

Then click on the search icon, or hit “Enter”.

Please note: If you are going to utilize your TPA to run Queries on your behalf you will need to designate that TPA for performing these searches. Please note that you can have multiple TPAs noted on the Clearinghouse.

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Question 4:

What is a Query as it relates to the Clearinghouse?

Response & Analysis:

A query is an electronic check in the DOT Clearinghouse that can be conducted by the employer or designated C/TPA, to determine if current or prospective employees are prohibited from performing safety sensitive functions such as operating a commercial motor vehicle (CMV) due to unresolved drug and alcohol violations. Keep in mind that there are two (2) types of Queries that can be performed on the database.

“Limited” which satisfies the annual query requirement under regulations. There is a penalty that will be assessed if a motor carrier fails to perform a Limited query of existing drivers.

“Full Query” is performed in two instances – the first occurs when looking to hire a new employee (which includes all pre-employment queries). The second instance of performing a full query is as a result of the Limited query having found a record of the CDL/CMV holder on the database. When the employer or their service agent running a full query is notified that information exists, a “Full Query” must be performed after “Consent” is given by the driver. Please note that failure to give consent by an employee after a “Limited Query” record has been reported is a violation. If after 24 hours the employee fails to give consent, the “employer” must remove the employee from performing safety sensitive functions.

Question 5:

How does the Query work for employers?

Response & Analysis:

Each employer must obtain permission from their drivers or potential new hires to run a Query of information found on the DOT Clearinghouse. Each employer will be charged a fee to run a query. Query plans must be purchased from the FMCSA clearinghouse only. You must be registered to have access to the Clearinghouse ordering process. There are several different plans available online with descriptions of how to select the plan that will best fit your needs.

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Question 6:

How do you get Consent to Run a Query?

Response & Analysis:

If you are performing a “Limited” query of existing employees as required annually by the DOT you must use a written consent form authorizing you to run a “Limited” query. Per the FMCSA the following link provides a sample “General Consent for Limited Queries of the Federal Motor Carrier Administration (FMCSA) Drug and Alcohol Clearinghouse”. Employers may, however, use or adapt the content as they see fit.

<https://clearinghouse.fmcsa.dot.gov/Resource/Index/Sample-Limited-Consent-Form>

A “Full” Query must be performed online with “electronic” consent given by employees and or potential new hires. To reiterate, the process of running a query will disclose to employers and C/TPAs detailed information about any resolved or unresolved violations in a driver’s Clearinghouse record. The driver’s specific electronic consent in the Clearinghouse is required.

This means that you must have each of your CDL employees register online by using their CDL number. Information should have been received by now by all CDL holders that fall under the FMCSA that this a mandatory requirement. Failure to do so will result in their license being revoked and as an employer the employee must be removed from safety sensitive work until they have provided proof of registration.

Question 7:

Who else is effected by the Clearinghouse rule?

Response & Analysis:

The Clearinghouse rule requires FMCSA-regulated employers, Medical Review Officers (MROs), Substance Abuse Professionals (SAPs), consortia/ Third-Party Administrators (C/TPAs), and other service agents to report to the Clearinghouse information related to violations of the drug and alcohol regulations in 49 Code of Federal Regulations, Parts 40 and 382 by current and prospective employees. As data is added to the Clearinghouse (effective January 6, 2020) information will begin appearing that will bring to light a driver’s history of possible violation of drug and alcohol regulations.

Training will be an effective tool for both supervisors and employees within in your company. There are helpful learning tools found on the DOT Clearinghouse website by clicking on the following link:

<https://clearinghouse.fmcsa.dot.gov/Learn>

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If your Designated Employer Representative (DER) or Drug and Alcohol Program Manager (DAPM) has not addressed the impact of this new regulation it is a good time to review your company policy. It is also a good time to provide training to your employees on the potential impact findings may cause for their CDL license and whether they have tested positive or refused to submit to DOT testing in the past which was not previously resolved by working with a Substance Abuse Professional (SAP).

Question 8:
What happens if derogatory information is found on Clearinghouse?

Response & Analysis:

Drivers have the right to challenge information found on the Clearinghouse either through a “Limited” or “Full” query. If information is found, you - the “Employer” - will receive written notification from the DOT reporting said violation information. Drivers will also receive notification every time information is reported or updated. This is why it is important to educate your employees on making sure they have entered accurate information when registering on the Clearinghouse. If they wish to be notified electronically via email or via mail that should be noted. Challenges to information found on the Clearinghouse must be done directly on the Clearinghouse website and the DOT has 30 days in which to inform both the “Employer” and “Employee” or “Applicant” with regard to their investigation into the information noted.

Question 9:
What must I do now?

Response & Analysis:

- As an employer subject to FMCSA regulation you must create an account on the Clearinghouse website as the “Employer”

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- You must ensure all employees that hold a CDL/CMV license create an account as an “Employee” on Clearinghouse website
- If you use or intend to utilize a third party to facilitate queries on your company’s behalf you must designate your C/TPA on the Clearinghouse to enable them to run such queries for you
- You may have multiple C/TPAs linked to your federal motor carrier account found on the Clearinghouse
- Have a written “Consent” form ready for performing “Limited” queries which must be signed off on by your existing CDL/CMV employees
- Review your current employee pool size to determine which Query plans you will need to purchase, enabling you to run queries
- Visit the DOT Clearinghouse regularly for updates and additional information as it becomes available to users
- Provide training to your DERs, DAPMs, Supervisors, and Employees
- Review your company policy to ensure compatibility with the new DOT Clearinghouse regulation
- If you have questions concerning the Clearinghouse reach out directly to the DOT at the following link: <https://clearinghouse.fmcsa.dot.gov/Contact> ■

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