



DRUG & ALCOHOL CLEARINGHOUSE: THE ULTIMATE BLIND DATE

THE DATE IS LOOMING, BUT
WHAT WILL IT LOOK LIKE?



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The Federal Motor Carrier Administration (FMCSA) has set the trucking industry up with a blind date but, as is often the case in that scenario, we aren't completely sure of what it will look like. FMCSA recently established a Drug and Alcohol Clearinghouse rule that goes into effect early in 2020. While it may seem like that is still far in the future, it's important to understand what the clearinghouse means for the transportation industry and how to plan for its implementation. There are still several aspects that many find confusing or unclear. DriverFacts has answers to some of the most frequently asked questions regarding the new rule.

THE FMCSA DRUG AND ALCOHOL CLEARINGHOUSE AT A GLANCE

The Drug and Alcohol Clearinghouse is a database created by FMCSA to house drug and alcohol violations for commercial vehicle drivers. It is designed to help FMCSA and motor carriers better identify commercial drivers who are prohibited from operating commercial vehicles due to a drug & alcohol violation and refusals to test.

FINAL RULE REQUIREMENTS

Under the clearinghouse final rule, FMCSA-regulated employers, medical review officers (MROs), designated employee representatives (DERs), DOT-qualified substance abuse professionals (SAPs), and third-party administrators must notify drivers that they will report information to the clearinghouse. They will also be required to report all the following to the database in regard to commercial driver's license (CDL) and commercial learners permit (CLP) holders. See chart below.

REPORTING ENTITY	WHEN INFORMATION WILL BE REPORTED TO CLEARINGHOUSE
<p>Prospective/Current Employer of CDL Driver</p> <p>or</p> <p>Service Agent acting on behalf of Current Employer of CDL Driver</p>	<ul style="list-style-type: none"> • An alcohol confirmation test with a concentration of 0.04 or higher • Refusal to test (alcohol) as specified in 49 CFR 40.261 • Refusal to test (drug) not requiring a determination by the MRO as specified in 49 CFR 40.191 • Actual knowledge, as defined in 49 CFR 382.107, that a driver has used alcohol on duty, used alcohol within four hours of coming on duty, used alcohol prior to post-accident testing, or has used a controlled substance • Negative return-to-duty test results (drug and alcohol testing, as applicable) • Completion of follow-up testing
<p>MRO</p>	<ul style="list-style-type: none"> • Verified positive, adulterated, or substituted drug test result • Refusal to test (drug) requiring a determination by the MRO as specified in 49 CFR 40.191
<p>SAP</p>	<ul style="list-style-type: none"> • Identification of driver and date the initial assessment was initiated • Successful completion of treatment and/or education and the determination of eligibility for return-to-duty testing

AN EXPLANATION OF EMPLOYER/CARRIER RESPONSIBILITY

Employers must register with the clearinghouse and perform queries on current employees annually. Registration is good for five years unless it is revoked, cancelled or remains unused for two years. When hiring a CDL driver, carriers must search the clearinghouse to see if the driver has any drug or alcohol violations.

Employers will also have to submit detailed documentation of “actual knowledge” violations. If tangible evidence is unavailable, the employer can attest to each alleged violation in an affidavit. Employers must also ensure that a driver under these circumstances doesn’t perform any safety-sensitive functions until he or she has completed the return-to-duty process.

BASIC CLEARINGHOUSE PROCESS

1. The employer makes an electronic request for information
2. The driver is notified and his or her consent is requested
3. FMCSA receives electronic consent from the driver
4. If records exist, they are released to the employer

RECORD AVAILABILITY

Records of violations remain in the clearinghouse until all the following provisions are met and reported to the database:

1. The driver completes a SAP evaluation and recommended education/treatment process
2. The driver receives a negative return-to-duty test
3. The driver successfully completes all follow-up tests
4. Five years have passed from the day the violation is submitted.

IMPLEMENTATION OF DATA: 2020

The clearinghouse is scheduled to start on January 6, 2020 and will only contain violations that occur on or after this date. Any violations that occur prior to 2020 will not be included in the clearinghouse.

Data within the clearinghouse is referenced by the driver's CDL and date of birth. The clearinghouse will interface with the Commercial Driver's License Information System (CDLIS) and track drug and alcohol violations for domestic and foreign drivers regardless of how many times the driver changes jobs or applies for a CDL in a different state. This prevents drivers from getting hired by a carrier after committing a drug or alcohol violation while working for another employer.

COMPLIANCE WITH THE PRIVACY ACT

The clearinghouse is subject to the Privacy Act and requires employers to obtain written consent from a driver before searching the database for information about that driver. The driver's release must state that they release information for five years instead of the current three-year requirement. This does not prevent MROs, DERs and third-party administrators from releasing testing results to the employer, the clearinghouse, and DOT agency or state or local officials with jurisdiction over controlled substances and alcohol testing. The clearinghouse is also subject to certain provisions in the Fair Credit Reporting Act (FCRA). Information received during a pre-employment check from the clearinghouse, however, is not subject to FCRA rules and considered to be "excluded communication" for employment purposes.

Driver consent is not necessary for SDLAs when processing a driver's application for a CDL, change of address or state, or a license renewal. In these instances, SDLAs are required to query the clearinghouse to determine whether or not the driver is qualified to operate a commercial motor vehicle.

Drivers will also have the ability to register with the clearinghouse at no cost. They will be able to review and check the status of information in their own records. Registering will also allow drivers to be notified any time information is added, revised or removed from their record. Drivers will be able to challenge the accuracy of information regarding name, CDL number, duplicate test results or "actual knowledge" reports by requesting an administrative review by FMCSA. Owner operators must join a consortium or use a third-party drug test administrator to submit information on their behalf to the clearinghouse.

COMMON QUESTIONS ABOUT THE D&A CLEARINGHOUSE RULE

Will employers have to query both the clearinghouse and the previous employer?

The Drug and Alcohol Clearinghouse is a database created by FMCSA to house drug and alcohol violations for commercial vehicle drivers. It is designed to help FMCSA and motor carriers better identify commercial drivers who are prohibited from operating commercial vehicles due to a drug & alcohol violation and refusals to test.

What are the differences between full and limited queries?

Limited queries allow employers to see if any data exists about a driver in the clearinghouse but does not give any specific information. If the limited query shows that there is information in the driver's record, the employer must perform a full query within 24 hours which will provide more detailed information. If the driver does not give consent, then the employer is obligated to prohibit the driver from performing safety sensitive operations. Annual queries can be performed by batch. While driver consent is needed for both types of queries, consent for a limited query can remain valid for multiple years, while consent for a full query is only valid for one year.

Will there be a cost?

While there will be a charge to employers for conducting pre-employment and annual queries, the clearinghouse rule does not specify the exact cost. FMCSA plans to contract a third party to operate and maintain the clearinghouse; user fees will be addressed during the bidding process. It is possible that differing fees will be assessed for various services such as registration, limited queries, full queries, annual queries and others. It is imperative that the third party chosen to implement this process will prioritize affordability and ease of use.

What happens to prohibited drivers?

The clearinghouse final rule states that it will provide FMCSA and employers a way to identify drivers who are prohibited from operating a CMV based on DOT drug

and alcohol program violations. The intention is to ensure that these drivers receive the required evaluation and treatment before operating a CMV on public roads. At this time, drivers must complete a program with a SAP in order to complete the return-to-duty process. This is a costly program for drivers and there is no guarantee that the driver will get hired or rehired after they complete the program.

How can drivers access their records?

Once registered to the clearinghouse, drivers can access their records via computer or mail. If they opt to receive information by mail, it will be sent to the address listed on their CDL. Drivers can also choose to receive this information electronically. However, waiting for the mail or no access to a mobile app may delay the process in receiving information.

Can drivers control who sees their records?

Drivers can control who has access to their information. When a driver receives a request via mail or e-mail, he or she will need to respond to the clearinghouse and release the records to the requesting party. This step relies on the driver and his or her access to a computer or the mail process, so there may be a delay in getting information to the prospective employer.

What's the turnaround time for reporting?

In reality, this step may be solely dependent on when the driver gives electronic or written consent. This can lead to a delay in the hiring process and may add to the hours spent on each pre-employment screening. Much is still unknown about the process and time it will take to receive data from the clearinghouse.

What if there are changes to information?

FMCSA will be required to report information back to a carrier if any data has changed. If the data changes within 30 days of an employer performing a query, the requestor will be notified.

Is my current D&A release valid?

Companies will need to revise their releases and are encouraged to consult their legal departments for guidance. One major change would be authorizing the release of 5 years of data. FMCSA will have examples of both limited and full query releases.

While the FMCSA has set up the blind date for us, DriverFacts would like to help you go into it with as much helpful information as possible and offer an overview of what is needed for implementation. DriverFacts is prepared to answer some of the frequently asked questions in regard to the new rule, however, there are still several areas of the rule that are confusing and unclear.

If you have any questions or would like information about how DriverFacts can assist with your D&A testing process documentation and submissions to the Clearinghouse please call **(888) 844-4730 x803**, visit **www.driverfacts.com**, or email **mpatterson@driverfacts.com**.

ABOUT DRIVERFACTS

DriverFacts helps companies stay compliant by automating DOT-mandated work history requests to free motor carriers from the traditional methods of processing hiring materials. Its Drug & Alcohol Manager gives its clients real-time results for testing and can report to the clearinghouse as a third-party administrator. Established in 1993, DriverFacts works with trucking companies as an extension of their own compliance department, providing paperless storage, automatic image archiving and DOT compliance to help save valuable time, money and resources.

