



EMA COMPLIANCE BULLETIN

January 2, 2020

COMPLIANCE WITH FMCSA ONLINE DATABASE FOR MANAGING CDL DRIVER DRUG AND ALCOHOL TEST RECORDS STARTS JANUARY 6, 2020

CONTACT: Mark S. Morgan, EMA Regulatory Counsel: mmorgan@emamerica.org

Reminder! The U.S. Department of Transportation's Federal Motor Carrier Safety Administration (FMCSA) new online CDL driver drug and alcohol Clearinghouse database requirements take effect **January 6, 2020**. Petroleum marketers who are subject to the FMCSA drug and alcohol testing requirements **must register** with the Clearinghouse and **use it to store manage** employee drug and alcohol testing records. Drivers must register with the Clearinghouse to provide electronic consent for those who must have access to his/her drug and alcohol testing records. Registration for both employers and drivers must occur before generating any new drug and alcohol testing records after January 6, 2020.

The Clearinghouse is a secure online, searchable electronic database where all CDL driver drug and alcohol violations will now be posted. The Clearinghouse will provide employers, CDL drivers, medical review officers (MRO), substance abuse professionals (SAP), state driver licensing agencies (SDLA) and enforcement authorities real-time information about CDL drivers drug and alcohol program violations. The Clearinghouse will contain records of violations of drug and alcohol prohibitions, including positive drug or alcohol test results, test refusals, completion of return-to-duty (RTD) process and follow-up testing plan. CDL drivers, employers, MROs, SAPs and SDLAs must all register to use the database.

The Clearinghouse mandate **does not** change any current U.S. DOT drug and alcohol testing regulations or procedures other than to require use of the online database to comply with existing drug and alcohol record keeping requirements. Employer use of the Clearinghouse database **is required** for pre-employment CDL driver record investigation; annual drug and alcohol investigations for all current CDL employees; to upload driver drug and alcohol violations; and return to duty status records. Congress required the FMCSA to create and implement the Clearinghouse under the *Moving Ahead for Progress in the 21st Century Act* (Pub. L. 112-141, 126 Stat. 405).

1. EMPLOYER RESPONSIBILITIES

The Clearinghouse offers employers (or their third-party assignees) a centralized location to query driver information and report drug and alcohol program violations incurred by their current and prospective employees holding CDLs and/ commercial driver learner's permit. The employer must use the CDL driver drug and alcohol violation Clearinghouse to:

- **Register** online to access the Clearinghouse database.
- **Search** the Clearinghouse as part of each pre-employment driver investigation process.
- **Conduct** limited annual queries for every driver they employ.
- **Request** electronic consent from the driver for a full query, including pre-employment queries.
- **Report** drug and alcohol program violations.
- **Record** the negative return-to-duty (RTD) test results and the date of successful completion of a follow-up testing plan for any driver they employ with unresolved drug and alcohol program violations.

2. CLEARINGHOUSE REGISTRATION

Employers must register with the Clearinghouse database **before** searching and /or uploading driver information. Employers must follow a two-step registration process:

- **STEP ONE: Federal “login.gov” Registration** - The first registration step requires employers to obtain a secure federal government login account. You must have this account before you can register with the FMCSA Clearinghouse. The secure login account will help ensure that the information in the Clearinghouse remains secure and private. Login accounts may be obtained here: [Secure Login Account](#).
- **STEP TWO: Clearinghouse Registration** – Once employers obtain a secure login.gov account, they must register with the Clearinghouse here: [Clearinghouse Registration](#).

3. SEARCHING THE CLEARINGHOUSE DATABASE

Employers are able to conduct two types of queries on the Clearinghouse database:

- **QUERY ONE: Limited Query** - A limited query allows an employer to determine if an individual driver's Clearinghouse record has any information about resolved or unresolved drug and alcohol program violations but does not release any specific violation information contained in the driver's Clearinghouse record. Limited queries require only a **general driver consent**, which is obtained outside the Clearinghouse; this general consent is not required on an annual basis, it may be effective for more than one year. However, the limited consent request must be in writing, and specify the duration of the consent period. The limited query meets the annual drug and alcohol record check requirements all employers must already conduct for CDL drivers.
- **QUERY TWO: Full Query** - A full query allows the employer to see detailed information about any drug and alcohol program violations in a driver's Clearinghouse record. An

employer must obtain the driver's **electronic consent** in the Clearinghouse prior to the release of detailed violation information during the full query.

- The full query meets the federal pre-employment drug and alcohol violations search employers must conduct before hiring a CDL driver.

The Clearinghouse database only contains **new** driver drug and alcohol information occurring after January 6, 2020. Manual record investigation must continue to reach back three years for **pre-employment** driver record check already required by the DOT regulations. A fact sheet on Clearinghouse database searches may be found here: [Clearinghouse Queries](#).

4. USER QUERY FEE

- **Query Fee** – The FMCSA is charging a flat \$1.25 rate for each full query. Limited queries are free. Query purchase plans may be purchased here: [Query Purchase Plans](#).

5. ASSIGNING THIRD PARTIES TO SEARCH AND UPLOAD DRIVER INFORMATION

Once registered, employers may designate a consortium/third-party administrator (C/TPA) to access the Clearinghouse on your behalf (Drug and Alcohol Testing Vendors)

- **Third Party Assignment** - Employers, consortia/third-party administrators (C/TPAs), medical review officers (MROs), and substance abuse professionals (SAPs) must identify an individual for their company to serve as a Clearinghouse Administrator. These Clearinghouse Administrators have the option to invite users to serve in an Assistant role, enabling them to use the Clearinghouse on their company's behalf.

6. DRIVER RESPONSIBILITIES

Drivers must register with the Clearinghouse in order to:

- **Check Records** – Drivers must register with the clearing house to check their drug and alcohol driving record and be able to contest incorrect entries.
- **Provide Consent** – Drivers must register to provide electronic consent for prospective employers to conduct pre-employment drug and alcohol records search.

7. COMPLIANCE DEADLINE

- **Employers and drivers** *must* register with the FMCSA drug and alcohol Clearinghouse before generating and drug and alcohol records after **January 6, 2020**. Registration began October 12, 2019. There is no defined or limited registration period. Registration is open at all times.
- **Employers and/or their third-party designees** must begin using the database for pre-employment investigations on **January 6, 2020**.

- **Employers** will no longer be required to conduct manual pre-employment driver drug and alcohol investigations once **three years** of testing and/or violation data is stored in the Clearinghouse. Three years of drug and alcohol testing and/or violation data will be available on the Clearinghouse database by **January 6, 2023**. After this date, manual pre-employment (calling former employers etc.) searches are not allowed. All pre-employment searches must be done through the Clearinghouse.
- **Employers and/or third-party designees**, medical review officers, and substance abuse professionals must begin uploading new driver drug and alcohol violations to the Clearinghouse beginning **January 6, 2020**. Most marketers use third parties to administer their drug and alcohol programs. However, employers and drivers must still register with the Clearinghouse in order to provide/obtain electronic consent and conduct drug and alcohol record searches.

Important! In order to be fully prepared to access and use the Clearinghouse, it is **highly recommended** that employers, drivers, drug and alcohol testing vendors and substance abuse professionals register as soon as possible – preferably **before** mandatory registration is required when generating new drug and alcohol records after January 6, 2020.

8. ADDITIONAL INFORMATION

- For additional information on the FMCSA Drug and Alcohol Clearinghouse go to <https://clearinghouse.fmcsa.dot.gov>.
- **Mark. S. Morgan, EMA Regulatory Counsel at (703) 281-6600 or mmorgan@emamerica.org**