

TRANSPORTATION SAFETY NEWSLETTER

OCTOBER 2019

UNDERSTANDING THE DRUG & ALCOHOL CLEARINGHOUSE

The Drug and Alcohol Clearinghouse, mandated by the Moving Ahead for Progress in the 21st Century (MAP-21) highway bill of 2012, is going into effect soon, with full compliance effective on January 6, 2020. In just a few short months, users will be able to create an account to ensure they're prepared for the January compliance deadline. Those who will be required to register with the Clearinghouse include drivers, employers, consortium/third-party administrators, Medical Review Officers and Substance Abuse Professionals.

But what does this new regulation mean for employers? And how will their pre-employment requirements change once this rule goes into effect? In an attempt to offer some clarity on these changes, we have outlined a few of the new requirements below.

What is the DOT Drug & Alcohol Clearinghouse?

The Drug & Alcohol Clearinghouse is an online database that will house drivers' non-negative drug and alcohol test results, as well as information about their participation in a return-to-duty program. Employers will be required to check this database before hiring a new safety-sensitive driver, as well as annually for the remainder of each driver's employment. All information regarding drug and alcohol violations will stay publicly available in the Clearinghouse for five years or until the return-to-duty process is complete (whichever is later).

Reporting

To start with, employers, as well as the other players in FMCSA-mandated drug and alcohol testing programs, will have new reporting requirements in regards to testing. FMCSA-regulated employers, Medical Review Officers, Substance Abuse Professionals (SAPs), Consortia/Third party administrators (C/TPAs)

or their designated representatives will now be required to report any adverse drug and alcohol testing information to the Clearinghouse. This includes any positive drug results, any alcohol results with a blood alcohol content greater than 0.04, refusals to test, and any other non-test violations of FMCSA's drug and alcohol regulation. Employers will have to submit a report of a drug or alcohol program violation by the close of the third business day following the date on which the employer obtained the information.

In addition, employers will be required to report any "actual knowledge" violations along with documentation that includes the date of the violation, a detailed description of the event, an approximate time the violation occurred, the names and contact information for any corroborating witnesses and evidence to support each fact alleged in the description of the violation. If they are unable to provide tangible written, video or audio evidence, the employer must attest to each alleged fact in an affidavit. This will also be required within three business days following the triggering event and the employer must verify that they provided all of this evidence to the employee.

In addition, there will be strict regulations around the time frames for reporting results from the MRO. For instance, if a previously reported test is later canceled by an MRO, he/she will have one day to report this change to the Clearinghouse.

Running Searches

The new rule will add a step to how employers hire drivers as well as how they maintain the records for their current safety-sensitive staff. To start with, all FMCSA safety sensitive companies will have to register with the Clearinghouse, including identifying their C/TPA. This is an important consideration for owner/operators who will have to designate a C/TPA before they will be able to register for the Clearinghouse and comply with the regulation.

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Employers will be required to query the system through an online search of the Clearinghouse for violations that would prohibit the driver or prospective driver from performing safety-sensitive functions, such as driving a CMV. This query must be run on every prospective driver before they are able to perform safety sensitive functions. In addition, employers will be required to query the database at least once a year for their current employees. An employer will need to register their company and pay a fee (still undetermined) for access to the Clearinghouse. A prospective employee will also need to log into the Clearinghouse and authorize the release of his/her records to a particular employer.

The Clearinghouse offers two types of queries to employers: a full or a partial. The full query requires the driver's specific consent to release the information in the Clearinghouse to the requesting party and it covers all the records that the Clearinghouse contains. A limited query allows an employer to determine if any information about an individual driver exists in the clearinghouse, but does not provide for the release of any specific violation information.

Drivers

The Clearinghouse offers some added clarity and protection to the drivers it covers that should be mentioned. Drivers will have the ability to register and query the database to review their own records or determine the status of information in their record at no cost. In addition, the Clearinghouse will notify a driver by mail (unless they have opted to receive electronic notifications) any time information about the driver is added, revised, or removed. Another important feature of the Clearinghouse for drivers is the way their information is categorized. Rather than utilizing Social Security Numbers, the Clearinghouse will store driver data by CDL number and date of birth.

Are You Ready for the Clearinghouse?

The DOT Clearinghouse goes into effect soon – impacting both your hiring processes and compliance programs. From making sure you and all your drivers are registered – to selecting a TPA – now is the time to prepare for this important regulatory shift.

How it Will Impact You:

The Clearinghouse impacts safety-sensitive employers by adding additional steps in the following areas:

- **The pre-employment process**
- **The annual review**
- **Managing your drug and alcohol testing program**
- **Recordkeeping requirements**
- **Employee training**
- **Background check dispute management**
- **Disclosure & authorization process**

As the implementation date approaches, it is important for FMCSA-regulated companies to familiarize themselves with the new Clearinghouse regulations and to make appropriate changes to their policies and procedures.

For more information on the Drug & Alcohol Clearinghouse and to register for a secure online user account, please visit <https://clearinghouse.fmcsa.dot.gov/>