

Webinar - THE NEW FMCSA CLEARINGHOUSE GOES LIVE 1.6.2020 (8.28.19)

Questions	Answers
1. To clarify, if my organization employs non-CDL drivers, we will not be required to use the Clearinghouse, correct?	You are correct, no Clearinghouse compliance issues with non-CDL employees.
2. I run a small random drug pool for small trucking companies and owner-operators. Should we update our agreement with these companies to state they are required to search the Clearinghouse before hiring a driver? We only handle randoms for them so only want to have to report results to the Clearinghouse.	You are functioning in the role of a certified third-party administrator and would need a new updated agreement delineating exactly what you would be responsible for. The owner-operators would need a new updated Clearinghouse policy as well.
3. Don't you still have to do a paper query at the same time since there is a 3-year timeline?	You are correct — except that if a driver is hired after 1.6.2020, you would not have to query that hiring employer.
4. I've heard employers will still need to send the Release of Information to previous employers until 2023. Is this correct?	see the answer to #3, above
5. Is the consent that is required good for the employee's full employment time, or does it have to be signed annually?	If you're talking about the annual limited query, the FMCSA has stated during a live presentation that a query can be for the duration of employment, which is what I would recommend. In late September or October, the FMCSA will release a new query format document
6. Does the employer need to input all their driver information on the drivers that are already employed prior to January 6th?	FMCSA employer should now start building an Excel spreadsheet of all of their drivers to include the following, Last Name, First Name, CDL #, County of Issue, State of Issue, mobile # (optional). I have included the County of Issue after having seen a demonstration slide by the FMCSA
7. Do you recommend getting consent from CDL drivers each year for the annual query?	See answer to 5. above
8. Will drivers and/or employers be able to register in the Clearinghouse without an email address?	Yes, but it will be difficult. It is highly recommend that all employers and employees secure at least a Gmail address. Register for the Clearinghouse updates and the FMCSA will provide further guidance on that very issue.

9. How can employers run a successful query if a driver does not consent?	They cannot, the driver would have to be immediately removed from safety-sensitive functions based on refusal to consent
10. I see that third parties are allowed but does this include a 3rd party verification company or only 3rd parties that administer the drug and alcohol testing?	Only third parties service agents who register with the Clearinghouse would be allowed to perform any Clearinghouse related functions
11. Why do you need the County of Issue for Drivers License	see answer to #6, Above
12. All of our trucks are under 26,000lbs, and our drivers only are required to have an endorsement on their driver's license. We also require a DOT physical. Is this required? Is it best practice for us?	I would need to know more about your particular type of business or whether you are a public employer to give you an answer to this particular question. Just because a DOT physical is required doesn't make them a CDL driver. Also a 26,000lbs truck might weigh more after cargo has been loaded. FMCSA coverage is based on the combined load and truck weight.
13. Will we need to do a per employment query for candidates that we hire into a safety-sensitive position, but have not yet obtained their CDL?	A Clearinghouse query would only be done after a final conditional job offer has been extended. They are not considered an FMCSA driver until they have obtained their CDL or are in some type of official training status.
14. Does the Clearinghouse require the County of Issue for the driver's license? If not, what is the purpose of obtaining this information?	see answer to #6, Above
15. What does SAP stand for?	Substance Abuse Professional
16. DO DRIVERS HAVE TO CONSENT EVERY YEAR OR EVERY TIME A QUERY IS RUN?	See answer to #5, above
17. Do all CDL holders have to register themselves into the Clearinghouse? If yes, By when? Will there be a fee to self-register ?	No they do not, but FMCSA urges them to do so. There is no fee to register either as a driver or as a service agent.
18. How much historical testing data will the Clearinghouse have when it goes live on Jan 6 th ?	Unknown at this point.
19. What are the two type of tests: 1st a regular test and if it's a substituted drug test what is the second test type that should be run in order to identify that it is truly positive or negative?	The second test would be considered and observed collection conducted under 49 CFR part 40 of the regulations.
20. Isn't there some situations where the EMPLOYER would report the	There are several situations where the employer would be the reporting party for an employee refusal to test. The MRO's reporting

"refusal to test" on a drug test rather than the MRO?	on the issue is typically limited to a shy bladder determination when there is no medical evidence to support the claim. Otherwise, it is the employer's reporting responsibility
21. You gave the example of the local garbage truck driver who didn't have to test under DOT regs before. Am I correct that now those type of drivers are subject to ALL DOT regs, including DOT tests for Pre-Employment and being included in DOT Random pools?	With the modification of the definition in 49 CFR part 383 of the regulations defining who is covered, I think your question is very timely. I believe that full compliance is now required by all public entities who have CDL's that traffic on the roadways. In all of these cases, Clearinghouse compliance is required.
22. Does a driver who holds a CDL but drives a CMV under 26,000 lbs have to be registered into the Clearinghouse?	see answer to #12, above
23. Is the Employer FMCSA Clearinghouse Report something that is available or do we have to design that?	The FMCSA is designing the report, which is in actuality a database system.
24. So if an employer is told by a collection site that the employee refused a drug test, would just the COC form indicated that the employee refused the test be sufficient?	Not in my legal opinion since the COC is not signed under penalty of perjury and is not considered an affidavit. It could possibly fall under some type of business records exception, but the reporting party is clearly putting themselves at risk to not make it into legally and introducible evidence.
25. Are there any penalties to employers or other entities who fail to report a refusal to test or a positive breath alcohol test?	There are FMCSA employer-mandated record keeping requirements that can result in penalties of \$1,100 a day up to a maximum of \$11,000
26. Can a TPA/Consortium report refuse to test or positive BAT tests for the employer in the database?	Yes, if the employer so authorizes once the database becomes active in October 2019
27. MRO is reporting to Clearinghouse in two days, what if a donor requests Split, is this reporting time requirement still two days or do we wait until the Split reconfirmation outcome?	The report would still have to be made within the two days, and if the split comes back unconfirmed, the MRO would make a corrective report within one day after receiving the split information from the laboratory
28. What does an employer do in states where marijuana has been legalized?	DOT does not consider any of the medical marijuana statutes to affect its jurisdiction or the employer's actions. However, that issue should be addressed in the non-DOT company authority policy for non-DOT testing.

29. The 0.04 has been for a CDL holder driving a CMV. Has this changed to any time a CDL holder has a positive alcohol test?	There is no change in that part of the regulations just in how a positive alcohol test is described in the definitional section of the regulations
30. Can the State Patrol or other police entities report positive drug and/or alcohol results as part of an accident investigation?	Yes. The report would be made by the chief of the commercial driver's license bureau in that particular state where the infraction occurred
31. What would an alcohol test of 0.03 be...negative or positive?	Alcohol test of 0.03 would not be reported to the Clearinghouse. The driver would be sent home for 24 hours and retested before reporting for duty. The company can have other requirements under its company authority policy related to discharge or discipline of the driver
32. Are there any penalties to employers or others for failure to report or reporting wrong information?	see answer to #25, above
33. What if a CDL driver has a drug or alcohol violation on their own time with their personal vehicle, does that get reported to the Clearinghouse?	Yes. The report could be made by the chief of the commercial drivers license bureau in that particular state where the infraction occurred and after-hours DUI is not considered to be actual knowledge by the employer of substance abuse under the regulations
34. How do we find out what county the driver license was issued from?	I would first ask the driver, and then look at the drivers other drivers license
35. A driver was cited and arrested but not convicted—do I have to report it?	Yes, but be prepared to make a corrective report later if there is no conviction
36. What if the Employee received a DUI while operating personal vehicle? Would that need to be reported?	No. See answer to #33, above
37. What if an employer does an annual background screening and includes both the private and commercial record of the driver and sees there is a violation on their personal record? Is that actual knowledge?	No. See answer to #33, above
38. Dialoguing with a new employee's current employers was mentioned...but employers can't release drug testing results over the phone regarding an employee without consent, correct? Please clarify.	This discussion about dialogue was merely for the purpose of alerting another employer that was employing the same driver, during the same period time in the event a positive drug testing issue arose that might otherwise disqualify the driver. Any discussion along these lines would not be under the regulations
39. Does the FMCSA have plans to update the requirements for Chain & Custody Control Forms (CCFs) to add	Unknown at this point. Sign up for the Clearinghouse email updates

a requirement to list the donor's CDL number? If not, how would an MRO obtain this information to submit results to the Clearinghouse?	
40. What if the employer has multiple locations? Which location is used for registration?	I would use the home office or state of incorporation
41. If a driver tests positive, the MRO will notify the Clearinghouse and then we the employer also has to notify the Clearinghouse of the SAME positive result, correct?	No. That is only an MRO reporting responsibility
42. Are you saying that if a collector claims an employee refused a drug or alcohol test, you recommend an affidavit before reporting it?	My recommendation is to ensure that what is reported to the Clearinghouse is backed up by some type of legally recognized evidence, such as an affidavit or declaration signed in accordance with the United States Code
43. Regarding the reporting that must be truthful and accurate: Why is the driver declaration necessary? If the MRO interviews the driver and reports the test as a positive for cocaine, why is a driver declaration relevant to the accuracy of the data reported?	There is no driver declaration required. Sorry about any confusion.
44. Do you have to provide a legal service by a process server or a certified letter to the driver who received a violation or can you just give the employee a copy of what you plan to enter into the database by a meeting with the employee in question?	My recommendation is to put a certificate of service on the bottom of your document, much like a legal document has a certificate of service, that you are presenting to the driver and show date and method of service, ie hand delivery, mailing, texting. You can also put an acknowledgment of receipt at the bottom under a driver response section.
45. Is the Tool Kit that you referenced available to participants?	Our firm prepares these customized Clearinghouse ready documents as a service to our clients, along with Clearinghouse-ready policies. There is an intake document you received if you would like a free flat rate quote.
46. Is this requirement for all companies who hire CDL drivers regardless of the size of the company? Thank you.	Yes
47. Will we be required to report to the Clearinghouse a positive drug test result from a NON-DOT regulated drug test? Our company policy is to drug test for every incident, but most	Only DOT mandated test would be reported to the Clearinghouse

incidents don't meet the test to be a DOT post-accident test.	
48. Do all of the DOT numbers that we have participating in a consortium have to be entered into the database?	Yes. From what we can tell this point FMCSA employers will have to register with Clearinghouse themselves and purchase an initial number of queries at \$1.25 covering all of their employees
49. Are the drivers being notified of this requirement or do we as employers have to provide training?	Employers are strongly urged to notify the drivers. There is no other system in place.
50. What happens with state regulations that have a "three-strikes-you're-out" policy for CDL drivers? In WA State, the 3rd drug or alcohol violation means the employee can no longer be issued a CDL in WA State.	Then the Washington chief CDL official would permanently suspend that driver's ability to obtain a CDL license in the state of Washington. That is my best guess
51. Are TPA charged these fees or is the employer?	Employer of the driver
52. An owner/operator is considered both an employee and an employer. Does this mean they have to query themselves once per year?	The CTPA will have to run the annual query
53. If a company's vehicles do not require a CDL to operate, is the company required to participate in the Clearinghouse?	No
54. What about truck driving schools?	More than likely they would function in the role of the employer, but that is a question better posed to the FMCSA
55. If the employer obtains a CDL driver, from a Union Hall, who is obligated to run the pre-employment determination, the employer or the Union?	There should be established a memorandum of understanding between the union and the employer as to who will handle that responsibility. I think it would typically fall back to the employer if there's no other agreement
56. You mentioned this would affect cloud storage. Can you go into more detail regarding this?	The broad nature of the regulations update reflects that anyone who possesses Clearinghouse data would be considered a covered service agent.
57. We have drivers that the position doesn't require a CDL, but the driver has one...do we have to report?	No in less they are operating a commercial motor vehicle
58. Your information (phone#) to contact for information regarding purchasing a DOT drug and alcohol policy	205.222.8030 or teden@constangy.com
59. Can the annual limited query reports for CDL drivers be used in lieu of the	No. These are completely different purposes and results.

annual MVR's we run or are they in addition to?	
60. Can you go into more details on the wise counsel 10 day unpaid suspension?	My concern is that the new driver petition procedure to challenge Clearinghouse reports with which he/she disagrees may create some unintended employer liability if the FMCSA finds in favor of the driver and rules that the employer has made a false or inaccurate report. Allowing 10 days to pass is just wise counsel.