

FMCSA Clearinghouse Opened, Transportation Department Announces

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The U.S. Department of Transportation's Federal Motor Carrier Safety Administration (FMCSA) Clearinghouse registration, which is the electronic database that will contain information about commercial motor vehicle drivers' drug and alcohol program violations, is open, the agency has announced. The Clearinghouse will become operational on January 6, 2020, and FMCSA-regulated employers must be in compliance with the Clearinghouse requirements on that date.

Authorized users may visit <https://clearinghouse.fmcsa.dot.gov/register> to create a user account and become familiar with the site.

FMCSA-regulated employers, Medical Review Officers, Substance Abuse Professionals, consortia and third-party administrators, and other service agents must report to the Clearinghouse information related to violations of FMCSA's drug and alcohol testing regulations by current and prospective employees.

Beginning on January 6, 2020, FMCSA-regulated employers must be prepared to do the following:

Queries of New Hires/Transfers. Employers must query the Clearinghouse before allowing a newly hired commercial motor vehicle driver (or current employee who transfers into such a position) to begin operating a commercial motor vehicle. Drivers must sign a consent form allowing the employer to query the Clearinghouse.

Annual Queries of Current Employees. Employers must query the Clearinghouse at least once a year for each driver they currently employ. Drivers must sign a consent form allowing the employer to query the Clearinghouse. The employer must maintain records of all queries, and information obtained in response to the queries, for a period of three years. (As of January 6, 2023, an employer who maintains a valid registration fulfills this requirement.)

Reporting of Drug and Alcohol Program Violations. Employers must report drivers' drug and alcohol program violations (listed below) to the Clearinghouse within three business days after the employer learns of the information.

Employers must prohibit drivers who have violated FMCSA's drug and alcohol program regulations from performing safety-sensitive duties unless the driver has complied with the return-to-duty process (at 49 CFR Part 40, Subpart O).

Revise Drug and Alcohol Testing Policies. In addition to registering with the Clearinghouse, FMCSA regulations require employers to add language to their FMCSA drug and alcohol testing policies to notify drivers and driver applicants that the following information will be reported to the Clearinghouse:

- A verified positive, adulterated, or substituted drug test result;

- An alcohol confirmation test with a concentration of 0.04 or higher;
- A refusal to submit to a drug or alcohol test;
- An employer's report of actual knowledge (defined at 49 CFR § 382.107);
- On-duty alcohol use (pursuant to 49 CFR § 382.205);
- Pre-duty alcohol use (pursuant to 49 CFR § 382.207);
- Alcohol use following an accident (pursuant to 49 CFR § 382.209);
- Drug use (pursuant to 49 CFR § 382.213);
- A Substance Abuse Professional's report of the successful completion of the return-to-duty process;
- A negative return-to-duty test; and
- An employer's report of completion of follow-up testing.

Employers who do not comply with the FMCSA Clearinghouse requirements are subject to the civil or criminal penalties, or both, as set forth at 49 U.S.C. 521(b)(2)(C). Civil penalties cannot exceed \$2,500 for each offense.

Jackson Lewis attorneys are available to answer questions related to the Clearinghouse requirements, drug and alcohol policies, and other issues.

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