

Questions from the October 2019 Spireon sponsored, Scopelitis Transportation Consulting delivered webinar.

Answers by Scopelitis Transportation Consulting
October 2019

1. Q: Can we as a company register our drivers for the Clearinghouse?

A: No, drivers must register themselves

2. Q: What is required of a motor carrier after a driver has a verified positive test and is reported to the Clearinghouse? Does a motor carrier have to have a return-to-duty plan?

A: No, a return-to-duty plan is not required of the carrier. The rules dictating the motor carrier's responsibilities to the driver in the event of a verified positive test result have not changed. The rules dictating what a carrier must do in the event of verified positive test results are laid out in 49 CFR §40.23. See 40 CFR §§40.287 and 40.289 for rules concerning a carrier's responsibilities for the return-to-duty process.

If the carrier intends to hire a driver who has not completed the required return-to-duty process however, it will need to first obtain the return-to-duty plan from the previous employer (see 49 CFR §40.25(b)(5)) and ensure the driver completes the process before he or she can operate a commercial motor vehicle (CMV).

3. Q: If a driver is on a continual SAP Testing program from a prior violation before 1/6/2020 does this need to be added?

A: No, violations (and any SAP-determined testing plans) occurring prior to January 6, 2020 will not be included in the Clearinghouse.

4. Q: To perform the annual query, will the current drivers need to register and provide their consent through the Clearinghouse, or does a written authorization form suffice for the annual review?

A: A written authorization will suffice for the annual query. FMCSA's sample language can be found [here](#).

5. Q: Does the driver need to register for a motor carrier to perform a limited query?

A: No

6. Q: If a driver does not need to register, how will we get their information for the Annual (Limited) Query?

A: Violation information for a driver is reported to and stored in the Clearinghouse based on their name, date of birth and driver's license information (CDL license number and state of issuance). Driver registration is not required for a carrier to make a limited query on a driver.

7. Q: What if a driver gets picked for a random? Will they need to be registered for the Clearinghouse?

A: No

8. Q: Will FMCSA or state agencies send letters to CDL holders regarding this new system?

A: No. FMCSA has created an educational website about the Clearinghouse and those who choose to “subscribe” on the website will receive periodic email updates with the latest information. Motor carriers should educate their driver workforce.

9. Q: Will a motor carrier need to continue requesting drug and alcohol history information from previous employers?

A: Yes, until January 6, 2023. After January 6, 2023, an active registration with the Clearinghouse will fulfill the previous employer drug and alcohol history request requirement.

10. Q: I have 4 small companies with different USDOT numbers but only have one email address. Will it let me use my email with each DOT registration?

A: Yes, a Clearinghouse administrator is able to link multiple DOT #'s, based on FMCSA Portal registrations, to his or her Clearinghouse account. More information about the process is available [here](#).

11. Q: What if they are getting their CDL at time of hire - no history - is a full query still required?

A: Yes. A full query is required of all CDL or CLP drivers before they are eligible to perform a safety sensitive function on behalf of a motor carrier (e.g., operate a CMV).

12. Q: Just to be clear, the drivers that are currently employed with a motor carrier do not need to register unless they need to consent to a FULL query?

A: Correct.

13. Q: Does a full pre-employment query have to be completed prior to road testing a candidate?

A: No. The pre-employment road test is not considered to be operating in inter- or intrastate commerce. As such, a pre-employment query isn't required until before the driver hauls his or her first load. From a practical standpoint, however, it may not make sense to incur the expense associated with administering the test only to find out via information in the Clearinghouse that the driver is not qualified to drive based on his or her drug or alcohol violation history.

14. Q: If the clearinghouse is empty starting Jan 6, 2020, why do we need to complete a pre-employment check? It seems this is a money maker for the government and a huge cost to the motor carrier?

A: The Clearinghouse was created to close the loophole through which drivers could evade the consequences of positive drug or alcohol tests by excluding previous or prospective employers for which they failed a drug or alcohol screen. Requiring carriers to begin querying the Clearinghouse immediately ensures that if a driver fails a drug test after January 6, 2020, he or she will be held accountable. Carriers must continue conducting traditional drug and alcohol history checks of an applicant's previous employer until January 6, 2023.

15. Q: What if a carrier cannot obtain a full query consent within 24 hours following a limited query that indicates information exists in the Clearinghouse?

A: The motor carrier may not allow the driver to serve in a safety sensitive function (e.g. drive a CMV) until consent is received and the information is reviewed.

16. Q: When an individual relocates to a different state, are they required to re-register with their new license state / number?

A: No. The driver should log-in and update his or her CDL information in their profile however. The driver's failure to do this will not impact a carrier's ability to obtain accurate results.

17. Q: Is a driver required to give consent by logging into the Clearinghouse?

A: A driver is required to grant consent to a full query by logging into the Clearinghouse. A driver is required to consent to a limited query by signing a form provided by the motor carrier.

18. Q: Can a third-party service agent register an employer or a driver for the Clearinghouse?

A: No. An employer or driver must register him/herself.

19. Q: How often may a motor carrier request a limited query?

A: A motor carrier must make a limited query at least once every 12 months. A motor carrier can make a limited query more often if desired. The limited query driver consent form should be created by a motor carrier to accommodate more frequent queries.

20. Q: Once this program has been in effect for 3 years, will employers still be required to obtain drug and alcohol testing info from previous employers?

A: Generally, no. However, if the driver applicant has operated in other regulated modes (e.g. public transit) or if the motor carrier uses the pre-employment testing exception (49 CFR §382.301), the previous employer inquiry is still required.

21. Q: Is the fee charged for each transaction needed for an individual or just one fee per individual?

A: A query fee of \$1.25 is assessed for each query. If a limited query indicates information exists on the driver and it is therefore converted by the motor carrier to a full query as required, the full query will be provided at no charge.

22. Q: Is the employer reporting required after a DUI citation, or after a conviction?

A: An employer must report an actual knowledge violation following a citation for a DUI in a CMV.

23. Q: Is any consideration being given to drivers in states that allow medical and/or recreational marijuana use off-the-job, resulting in a positive drug test?

A: No. The federal government considers marijuana a Schedule I drug and prohibits its use by CDL drivers, regardless of state law.

24. Q: What if a driver refuses to grant consent to a limited or full query?

A: If a driver refuses to grant consent, they cannot perform safety-sensitive functions (i.e. drive a CMV) until consent is granted and the information has been reviewed.

25. Q: Will there be a consent form available online or will the company have to produce their own form?

A: Consent for a full query will be requested and granted online through the Clearinghouse. Consent for the limited query is granted by signing a form produced by the motor carrier. Sample language is available [here](#).

26. Q: When must a carrier do the first “limited query?”

A: The first limited query for drivers employed before January 6, 2020 is required by January 5, 2021. The first limited query for drivers hired after January 6, 2020 is required within one year from the date the initial full (pre-employment) query was requested.

27. Q: One EIN has two DOT numbers - do they need to register under each DOT number?

A: Each DOT number should be registered.

28. Q: What if you have past positives, do we need to report those?

A: No. Positive test results occurring before January 6, 2020 may not be reported.

29. Q: I own a construction company that doesn't require prospective new hires to have a CDL, but if we have a current employee or new hire that is interested in getting their CDL we will pay for them to get it. Would we be required to go through the Clearinghouse before we can add them to our drivers list?

A: Yes, you must query the Clearinghouse prior to allowing the driver to operate a CMV requiring a CDL.

30. Q: How do you register for the Clearinghouse from the Portal?

A: Instructions on how to register for the Clearinghouse are available [here](#).

31. Q: I have 6 current drivers. Will I only have to do limited query as of 1/6/20? We are in the process of hiring a driver right now – should I plan to run the full query on him (or no, since he'll be employed before 1/6/20)?

A: Motor carriers will need to run a limited query on drivers employed before January 6, 2020 no later than January 5, 2021. Full queries are only required on drivers hired on or after January 6, 2020.

32. Q: Can you go into more detail on how the bulk file mentioned is uploaded into the FMCSA Clearinghouse?

A: More details on bulk queries is available in the FMCSA's Frequently Asked Questions website. See question: “Can I initiate queries for a large number of drivers without having to enter them into the system one at a time?”

33. Q: I am a small biz owner with one part-time intrastate CDL driver. Do I have to register for the Clearinghouse?

A: Yes.

34. Q: One company has three DOT numbers with one driver pool. Do we need to query all drivers under all 3 DOT numbers? All of our drivers drive for any of our companies. Also, all 3 companies are housed in the same building.

A: All queries need to be associated with a DOT number. Motor carriers are not required to query the Clearinghouse under each number but should attribute each driver query to the DOT number they operate for most often.

35. Q: If our company has a 1 strike policy and provide the driver a few suggestions for an SAP, is there any other follow-up needed?

A: No.

36. Q: Are currently employed drivers required to register for the Clearinghouse for annual (limited) queries?

A: No, unless a limited query indicates information exists in the Clearinghouse, which then requires a full query. A driver must be registered to grant consent for a full query.

37. Q: Is the report returned by the Clearinghouse in a PDF format? Can it be downloaded?

A: Generally speaking, results from queries will be available in the motor carrier's dashboard and can be downloaded.

38. Q: If a resident driver (not new hire) fails a random test and we are required to upload the info, is the driver then required to register?

A: No, drivers are not required to be registered for the Clearinghouse for a motor carrier to report test results.

39. Q: Under what authority could a motor carrier require all drivers to register up front?

A: As a matter of carrier policy, drivers can be required to register for the Clearinghouse as a condition of employment.

40. Q: If a driver discloses drug use over the phone, but we do not have it in writing or any proof other than word of mouth, and it is not for them to request treatment – is there a way to report it legally? Or do we need to have co-driver as witness if they saw it, or have it in writing?

A: Actual knowledge includes a driver's admission of alcohol or controlled substance use and should be uploaded into the Clearinghouse unless the carrier has a voluntary self-identification policy described in 49 CFR §382.121.

41. Q: If a driver tests positive for random then we get result, as employer we report to clearinghouse and plus driver has to log in and report it also, is this correct?

A: No. The medical review officer is required to report verified positive controlled substance tests. Employers are required to report positive alcohol tests (and other violations such as a refusal to take a test). The driver is never responsible to report his or her positive test results.

42. Q: If the employer has CDL drivers, but the company's Drug/Alcohol program is mandated by FTA (Federal Transit Administration), is the employer still required to use the FMCSA Clearinghouse?

A: Yes, employers must run queries on all drivers subject to FMCSA's drug and alcohol testing rules. While the employee may perform more than 50 percent of their functions for a mode other than FMCSA, possibly placing the employee in that agency's random pool, the Clearinghouse query requirements apply so long as the employee performs any FMCSA-regulated functions.

43. Q: When is a full query required?

A: A full query is required before a newly hired CDL driver is allowed to operate a CMV and any time a limited query indicates information exists in the Clearinghouse.

44. Q: Do we have to give a road test to a driver who has a valid CDL and 3 years of experience?

A: Generally, no. Road testing requirements are outlined in 49 CFR §§391.31 – 391.33.

45. Q: How long does the consent for the limited query last?

A: A carrier can determine the length of time (and/or number of queries) for which a driver's consent to limited queries is valid. Limited query consent forms may be written to apply to a driver for the duration of their employment.

46. Q: Does this new program cover non CDL CMV drivers? We have both.

A: The Clearinghouse rules only apply to CDL drivers.

47. Q: My CMV drivers do not have CDLs. Do I need to use the Clearinghouse?

A: No, the Clearinghouse is only drivers of CMVs that require a CDL.

48. Q: I employ drivers that hold a CDL but only operate CMVs that do not require a CDL. Do I need to query the Clearinghouse for these drivers?

A: No. Only drivers who hold a CDL and operate a vehicle requiring a CDL are included in the Clearinghouse. The final rule explains: "It would not be appropriate to require that motor carriers who employ individuals (either non-CDL holders or CDL holders) to operate a CMV with a CVWR between 10,001 and 26,000 pounds to query the Clearinghouse." (81 Federal Register 87690 (December 5, 2016))

49. Q: I tried to sign in today and they asked to connect to my FMCSA PORTAL account, but when I signed into my account there was no way for me to allow it. Is the portal not ready for this yet?

A: Yes, it is possible to connect a FMCSA portal account to a Clearinghouse Account. If you are encountering problems registering, you can submit a help request [here](#).

50. Q: We are an intrastate company. Are we required to register with the Clearinghouse?

A: Yes. If you employ CDL drivers who operate CMVs requiring a CDL, you are required to register, query, and report to the Clearinghouse.

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