



Amalgamated Transit Union

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Office of the International President

Memorandum

To: U.S. ATU Local Union Presidents
From: John A. Costa, International President 
Date: January 4, 2021
Subject: FMCSA CDL Drug & Alcohol Clearinghouse

On January 6, 2020, the Federal Motor Carrier Safety Administration (FMCSA) launched the Commercial Driver's License (CDL) Drug & Alcohol Clearinghouse. The Clearinghouse is a secure database which stores certain drug and alcohol testing information related to certain CDL and Commercial Learner's Permit (CLP) holders.

CDL and CLP holders in the school bus and over-the-road industries are covered by these rules. Notably, FMCSA rules do not apply to most other mass transit employees who hold a CLP or CDL. Your employers have likely begun to ask members subject to FMCSA rules for consent to search the Clearinghouse database for any reported violations of the U.S. Department of Transportation's (DOT) drug and alcohol testing requirements.

Employers, medical review officers (MROs), substance abuse professionals (SAPs) and others are now required to report to the Clearinghouse positive drug and alcohol tests, refusals to test, and other drug testing program violations. Additionally, employers are now required to check the Clearinghouse database for violations by each covered employee at least once annually, and by any prospective employee who would be subject to FMCSA regulations.

Although employers are required to secure an employee's consent prior to conducting a search of the Clearinghouse database, an employee who does not consent to the search of the database cannot perform any safety sensitive functions—i.e., a non-consenting employee can neither drive a bus which requires a CDL to operate nor maintain such a bus.

This memo summarizes employees' rights and responsibilities regarding the Clearinghouse, the kinds of information stored in the database, and the ways employers, their agents, State Driver Licensing Agencies (SDLAs), and medical professionals interact with that information. For detailed instructions on registering with the Clearinghouse as a driver, please see the enclosed FMCSA brochure and the FMCSA's detailed [FAQ](#).

Which Operators are Subject to Drug & Alcohol Clearinghouse Requirements?

As a general matter, among ATU members, only CDL operators or CLP holders who work in the school bus and over-the-road bus industries are covered. CDL and CLP holders who work at mass transit agencies, whether directly employed or employed by contractors, are largely exempt and instead subject to the Federal Transit Administration (FTA) drug testing requirements.

There are exceptions to this rule. Certain CDL and CLP holders are subject to both FTA and FMCSA requirements depending on their job duties. For example, a CDL operator who drives both charter and fixed-route buses, even if for the same employer, generally must comply with both FMCSA and FTA requirements. Not covered by the Clearinghouse requirements are operators who drive vehicles not requiring CDLs, such as certain paratransit, shuttle and small school buses; minivans; and sedans.

What Information is Stored in the Clearinghouse?

All violations of the U.S. DOT drug and alcohol testing program for covered CLP and CDL holders occurring on or after January 6, 2020, are searchable in the Clearinghouse for five (5) years from the date of the violation, or until a violating holder completes an SAP-recommended treatment plan—whichever is later. Until January 6, 2023, employers will continue to manually inquire with covered operators' former employers to obtain any of the preceding three (3) years' drug and alcohol violation information not listed in the Clearinghouse.

The Clearinghouse also requires employers to submit "actual knowledge" reports of drug and alcohol violations, negative return-to-duty test results, and documents verifying completion of return-to-duty treatment plans.

What is Considered a CDL Drug & Alcohol Violation?

Violations include positive DOT-mandated drug and alcohol test results and refusals of both pre-employment and employer tests. "Actual knowledge" reports of drug and alcohol violations submitted by employers are also considered violations. Some of your employers might administer additional drug and alcohol tests *not* mandated by DOT, like hair tests. The results and refusals of drug and alcohol tests not mandated by DOT are not recorded in the Clearinghouse.

Who Can Access Clearinghouse Information?

The FMCSA maintains the confidentiality of information stored in the Clearinghouse in compliance with Federal data security standards. The following parties are authorized to access Clearinghouse information once they are properly registered:

- **Covered CLP/CDL holders** may register with the Clearinghouse to view their own records for free. No permit/license holders can access information about other holders.
- **Prospective/current employers and designated agents** may view a CLP/CDL holder's records once the operator consents to the query. Employers and agents are

also required to update their employees' records with violations occurring after January 6, 2020.

- **SDLAs** may query the Clearinghouse before the issuance, renewal, transfer, and upgrade of a CDL. They will be required to do so after January 6, 2023. SDLAs will still manually inquire with former employers to obtain information not listed in the database.
- **MROs and SAPs** are required to update the records of violating CLP/CDL holders whose return-to-duty treatment they supervise or advise on.

How Will Covered Members Use the Clearinghouse?

Your covered members are not responsible for personally submitting their drug and alcohol testing violation information to the Clearinghouse. They will use the Clearinghouse to:

- **Review** their individual records and initiate the process to revise incorrect information.
- **Consent** to the release of drug and alcohol violation information to a current or prospective employer who “fully” queries their records.
- **Identify SAPs** to report on any return-to-duty treatment.

They will be notified every time information about them is revised, added, or removed in the Clearinghouse via the email or mailing address they provided in their Clearinghouse registration, or at the mailing address associated with their CDL if they have not yet registered with the Clearinghouse.

How Will Employers and Their Agents Use the Clearinghouse?

Employers are required to query all covered employees' records at least once annually, and to report any violations. Prospective employers must query the database before hiring any new covered CDL operator. There are two different kinds of queries: “limited” queries and “full” queries, both of which require covered CDL holders' consent before employers may perform them.

Limited queries indicate whether an operator has records of resolved or unresolved violations in the Clearinghouse. This kind of query does not release detailed violation records to the employer. Employers only need general consent, which is obtained outside the Clearinghouse, to perform a limited query on an employee's or a prospective employee's Clearinghouse records. All general consent requests must state the timespan to which the consent applies.

Full queries release detailed violation records to the employer. A full query allows the employer to see detailed information about any drug and alcohol program violations in an employee's Clearinghouse record. The employer must obtain the employee's electronic consent in the Clearinghouse before detailed violation information can be released during the full query. The employer must seek this consent every time they fully query the employee's records.

Do Covered Employees Have to Consent to Queries?

As stated above, refusal to consent to a query to view drug and alcohol testing information will result in the non-consenting CLP/CDL holder being barred from performing safety-sensitive job functions by their employer or prospective employer until consent is granted.

Enclosure

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