

FMCSA Clearinghouse Requirements Are Officially In Effect

By Attorneys Tim Roth and Sal Shah

The Federal Motor Carrier Safety Administration (FMCSA) Commercial Driver's License Drug and Alcohol Clearinghouse (Clearinghouse) requirements go into effect today. The requirements impose Reporting and Verification obligations upon entities who hire and drug test commercial drivers.

The Clearinghouse is a database which tracks commercial drivers' drug and alcohol test history and ensures drivers with positive results are not on the road until they become compliant with the return-to-duty process.

FMCSA-regulated employers, Medical Review Officers (MROs), Substance Abuse Professionals (SAPs), and consortia/third party administrators (C/TPAs) are now required to report violations of drug and alcohol violations to the Clearinghouse. State licensing agencies will also be required to check the Clearinghouse any time a CDL is issued, renewed, transferred, or upgraded.

FMCSA-regulated employers must also now search the Clearinghouse for drug and alcohol violations committed by current and prospective commercial drivers before allowing them to operate a commercial vehicle on public roads. The regulations also require employers to perform Clearinghouse inquiries on current employees annually.

Records of drug and alcohol violations will be maintained in the Clearinghouse for the later of 5 years or until the driver has completed the return-to-duty process. Every commercial driver is required to open their own individual account in the Clearinghouse and must affirmatively give permission to an FMCSA-regulated employer before their record can be queried. Any prospective driver who does not give the requisite permission cannot be hired. Any current employee who does not give the requisite permission must be suspended from operating a commercial vehicle on a public road.

FMCSA-regulated employers are advised to revise their drug and alcohol policies to disclose all of the infractions that are required to be reported to the Clearinghouse. The list of infractions is as follows:

- A verified positive, adulterated, or substituted drug test results;
- 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 that a covered employee used illegal drugs or alcohol before duty, while on duty, or following a workplace accident, as 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 SAP's report of the successful completion of the return-to-duty process;
- A negative return-to-duty test result;
- An employer's report of completion of follow-up testing.

The Clearinghouse regulations are codified at 49 CFR Part 382, Subpart G, §§ 382.701 *et seq.* The Clearinghouse website contains answer to more than 50 frequently asked questions, which can be accessed at <https://clearinghouse.fmcsa.dot.gov/FAQ>.

If you have any questions, please contact.

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