

Drug & Alcohol Clearinghouse for CDL License Holders



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Overview

School bus drivers and other Commercial Driver's License holders in New York provide fingerprints for a criminal background check, and a school district has everyday access to the Department of Motor Vehicles driver abstracts for annual and ad-hoc review. A driver abstract shows violations in other states with which New York shares information. The DMV also notifies a school district when an employed Commercial Driver's License holder receives a Vehicle and Traffic Law violation summons or an arrest related to alcohol and drugs while operating a motor vehicle. This means a school district in New York should already have the information it is mandated to record in the federal Drug & Alcohol Clearinghouse described in this fact sheet.

The Federal government has created a new online clearinghouse to track drug and alcohol violations of all holders of Commercial Driver's Licenses (CDL), including school bus drivers. The secure database began on January 6, 2020 and includes all violations on and after this date. Employers are required to use the online CDL Drug and Alcohol Clearinghouse database in order to acquire and report information about drug and alcohol program violations for their prospective and current CDL employees. The database makes it easier for employers to do the checks already required by state law.

Requiring consent to conduct background checks, including drug and alcohol violations, for CDL employees is not new. As stipulated by the Code of Federal Regulations (CFR) §382.413 and §391.23 employers are required to query previous employers when conducting a background check for prospective employees. Prospective CDL drivers have had to provide written consent for these checks (per 49 CFR §40.321 (b)).

The purpose of the database is to improve roadway safety nationwide by identifying CDL drivers with drug or alcohol violations, which make them ineligible to operate a commercial motor vehicle, and to ensure those drivers have received the evaluation and treatment required before they may return-to-duty (RTD). The national database aims to prevent such drivers from obtaining CDL safety-sensitive employment in another county or state.

CDL drivers must sign a consent form in order to begin or continue safety-sensitive functions, including driving. The employer must obtain driver consent in order to conduct annual and ad-hoc limited checks on current drivers and full queries on prospective drivers, or current drivers whose limited query check necessitates a full check. Employers must remove drivers who refuse consent from safety-sensitive functions.

About the Online Clearinghouse

The Federal Motor Carrier Safety Administration (FMCSA), a part of the U.S. Department of Transportation, oversees and administers the Clearinghouse, and has a sample consent form on its site, with language stipulating to consent of a limited query. A sample is available at: <https://clearinghouse.fmcsa.dot.gov/Resource/Index/Sample-Limited-Consent-Form>.

If a subsequent broader search is sought, because the limited query returned a result, a full query may be conducted only with additional consent granted by the subject. The second consent gives the current employee the opportunity to review the database before the broader search.

The Clearinghouse looks forward from January 6, 2020. It is not a retrospective database. Drivers will be identified by their CDL number and its state of issuance, name and date of birth.

Violation information will be retained in this Clearinghouse for five years, except in the case of an incomplete RTD process, where the information will be kept until the RTD and successful follow-up testing is completed.

Information that must be reported to the Clearinghouse:

- Alcohol confirmation test results of 0.04% or higher
- Refusal to take an alcohol test (per 49 CFR 40.261) or drug test (49 CFR 40.191)
- Knowledge that the driver has used alcohol while on duty, within four hours of coming on duty, or prior to post-accident testing. Or has used a controlled substance
- RTD test with negative results
- Successful completion of follow up RTD testing

Who can add information to the Clearinghouse?

- Employers and/or their agents
- Substance abuse professionals (SAP)
- Medical review officers (MRO)
- Enforcement personnel

Consent Requests- Limited Query and Full Query

CDL drivers must sign a consent form in order to begin or continue safety-sensitive functions, including driving. The employer must obtain driver consent in order to conduct annual and ad-hoc limited checks on current drivers and full queries on prospective drivers, or current drivers whose limited check necessitates a full check. Employers must remove drivers who refuse consent from safety-sensitive functions.

Limited Query: This query checks for a driver's presence on the online database. A hit on the database will trigger the need for a full query. If you are a current employee, who signed a limited query release and the limited query indicated information exists for you, your employer is required to obtain your consent for a full query. This consent must be provided electronically to the Clearinghouse. Prior to giving that consent, drivers should view the information to check its accuracy and to petition for any corrections necessary.

Full Query: Prospective drivers must consent to a full query, which looks for any violations present on the database. Currently employed drivers who signed a limited query consent and whose query returned a result in the database should be contacted by the employer for consent to conduct a full query. Drivers must give specific consent to the prospective or current employer before each full query.

Signing a Consent Form

Prospective employees must electronically sign their query consents on the Clearinghouse website (requires registration).

Current driver employees are not required to register with the Clearinghouse, but must sign a consent for their employer for a limited query on the database. Registration will allow you to review any information in the database about your record. The limited query allows the employer to run a check to see if the driver appears on the Clearinghouse database. If this limited search returns a result, the employer must notify the driver. Notify your local president and NYSUT LRS if you are a current employee and your employer wants you to consent to a full query instead of a limited query as your first request. A limited query must specify a timeframe.

Request for Full Query Consent of Current Driver. The employer's first request for consent should be for a limited query. If the employer runs a limited query and the database returns a result that information exists, the employer must request consent for a full query. The driver should register with the Clearinghouse and view his or her information to ensure accuracy or to correct any errors, before signing the full query consent.

Your Responsibilities

In order to work as a school bus or other CDL driver, you are required to consent to an electronic search for your records in this database. If you do not consent to the query, the employer cannot conduct a search and the employer must not allow you to perform safety-sensitive functions. If you are a current employee, you are only required to sign consent for a limited query and you do not need to register with the Clearinghouse in order to provide consent for your employer to perform this check. There is no cost to drivers to register or to access his or her information on the database. The FMCSA has a sample consent form on its site, with language stipulating to consent of a limited search, and if a broader search is merited, additional consent must be sought and granted from the driver. **Locals are encouraged to work with their NYSUT Labor Relations Specialist to agree on a reasonable consent form for their employer to utilize.**

School bus drivers and other CMV operators with a CDL continue to be subject to the requirements for pre-employment and random drug and alcohol testing as required by Article 19-A of New York State Vehicle and Traffic Law. The Online Clearinghouse does not change that.

Until January 6, 2023 employers will be required to query the Clearinghouse online and to also request drug and alcohol history background investigation from previous employers (per (CFR) §40.25, §382.413 and §391.23). After January 6, 2023, employers must use the Online Clearinghouse to obtain such information, except under certain circumstances when the employer must seek additional information from previous employers.

The Return-to-Duty (RTD) Process

When an employee has violated the drug and alcohol regulations, he or she must complete the RTD process (DOT rule 49 CFR Part 40) and must be evaluated by a substance abuse professional (SAP), this is followed by referral and education /treatment process. After the SAP determines the employee has successfully completed the education and/or treatment prescribed, the employee may take a return-to-duty test, with a negative drug test results and a less than 0.02 alcohol concentration before resuming safety sensitive duties, such as driving.

Whether an employer allows a driver who has successfully completed the entire RTD process to return-to-duty depends on your collective bargaining agreement, employer prerogative and/or other legal requirements.

Safety-sensitive functions mean, in addition to driving the bus all the time leading up to driving the bus, including, but not limited to inspecting, servicing the commercial motor vehicle prior to driving, other bus maintenance activities, awaiting assistance or staying with a disabled vehicle while it is being attended, as stipulated in §392.7 and §392.8. This includes all time on employer's property, unless the driver has been released from duty by the employer.

Visit <https://clearinghouse.fmcsa.dot.gov> for more information.

TERMS: CDL – Commercial Driver's License
CMV – Commercial Motor Vehicle
DOT – Department of Transportation
MRO – Medical Review Officer
RTD – Return-to-Duty
SAP – Substance Abuse Professional

SOURCES:

The Alcohol and Drug Clearinghouse: <https://clearinghouse.fmcsa.dot.gov>

Buses.org: <https://www.buses.org/assets/images/uploads/general/BISC%20West%202019%20-%20FMCSA.pdf>

Federal Motor Carrier Safety Administration:

<https://www.fmcsa.dot.gov/regulations/commercial-drivers-license-drug-and-alcohol-clearinghouse>

<https://clearinghouse.fmcsa.dot.gov/FAQ/Topics/General>)

National Highway Traffic Safety Administration: www.nhtsa.gov/School-Buses

National Association of State Directors of Pupil Transportation Services — www.nasdpts.org

Legal Information Institute- — “49 CFR §40.305 - How Does the Return-to-Duty Process Conclude?” <https://www.law.cornell.edu/cfr/text/49/40.305>

DOT Driver Qualification and Background Checks: <http://part380.com/blog/tag/safety-sensitive-functions-under-part-382-107/>