

New Requirement for Employers of CDL Drivers

It is common for local agencies, even small municipalities or park services, to employ one or more CDL licensed drivers. The Federal Motor Carrier Safety Administration (FMCSA) develops standards to test and license commercial motor vehicle drivers and they have now established the Drug and Alcohol Clearinghouse as an online database for identifying drivers prohibited from performing safety-sensitive functions, such as operating a commercial motor vehicle, due to a drug and alcohol program violation. This is a new requirement that went into effect January 6, 2020 and employers and drivers need to take some fairly simple initial actions to comply.



Commercial Driver's License (CDL) Program

Let's first review the fundamentals of the program. The CDL Program is administered by the FMCSA and an overview of the program is provided on their [website](#). There are three classes of CDLs with endorsements for specialized qualifications for vehicles like school buses, tank trucks, tractor trailers, etc.

- **Class A:** Any combination of vehicles which has a gross combination weight rating or gross combination weight of 11,794 kilograms or more (26,001 pounds or more) whichever is greater, inclusive of a towed unit(s) with a gross vehicle weight rating or gross vehicle weight of more than 4,536 kilograms (10,000 pounds) whichever is greater.
- **Class B:** Any single vehicle which has a gross vehicle weight rating or gross vehicle weight of 11,794 or more kilograms (26,001 pounds or more), or any such vehicle towing a vehicle with a gross vehicle weight rating or gross vehicle weight that does not exceed 4,536 kilograms (10,000 pounds).
- **Class C:** Any single vehicle, or combination of vehicles, that does not meet the definition of Class A or Class B, but is either designed to transport 16 or more passengers, including the driver, or is transporting material that has been designated as hazardous under 49 U.S.C. 5103 and is required to be placarded under subpart F of 49 CFR Part 172 or is transporting any quantity of a material listed as a select agent or

ENDORSEMENTS

Drivers who operate special types of CMVs must pass additional tests to obtain any of the following endorsements placed on their CDL:

Endorsement code	Description
T	Double/Triple Trailers (Knowledge test only)
P	Passenger (Knowledge and Skills Tests)
N	Tank vehicle (Knowledge test only)
H	Hazardous materials (Knowledge test only)
X	Combination of tank vehicle and hazardous materials endorsements (Knowledge test only)
S	School Bus (Knowledge and Skills Tests)
CLP Endorsements - Only 3 endorsements are allowed on the CLP	
P	Passenger, A CLP holder with a "P" endorsement is prohibited from operating a CMV carrying passengers, other than Federal/state auditors and inspectors, test examiners, other trainees, and the CDL holder accompanying the CLP holder as prescribed by 49CFR383.25(a)(1).
S	School Bus, A CLP holder with an "S" endorsement is prohibited from operating a school with passengers, other than Federal/state auditors and inspectors, test examiners, other trainees, and the CDL holder accompanying the CLP holder as prescribed by 49CFR383.25(a)(1).
N	Tank Endorsement, A CLP holder with an "N" endorsement may only operate an empty tank vehicle, and is prohibited from operating any tank vehicle that previously contained hazardous materials that have not been purged of any residue.

toxin in 42 CFR Part 73.

If your head is swimming a bit from that, hang in there because there are whole lists of endorsements and restrictions that can apply and both the employer and driver should take some care to ensure they are matching up the correct class of license and endorsements with the equipment and application that will be used.

Very generally speaking, think of Class A as required when you have a 26,000 plus pound, combination vehicle (like a tractor trailer) with a 10,000-pound or greater trailer. A Class B is a 26,000 plus pound vehicle or a combination unit where the trailer is 10,000 pounds or less. This can be box delivery trucks, city buses, school buses, dump trucks, or trash collection trucks. Class C requirements can include vehicles intended to transport 16 or more passengers (including the driver). It gets crazier – contrary to what you might assume, a holder of a Class A license cannot necessarily operate a vehicle requiring a Class B license (and so on) without the proper endorsements (see listing above) and there are restrictions that can apply because of skills like air brakes (see listing below).

Drivers and employers of CDL drivers pick up on all this pretty quickly, so it's not so bad once you are in the game and up to speed. But make no mistake, obtaining a CDL license requires some time and some skill and once a driver has one, employment opportunities expand, so they protect their license very carefully. One of the best ways to endanger your

CDL license is to fail any type of drug or alcohol test. A driver shall not use alcohol while performing a safety-sensitive function and shall not perform safety-sensitive functions while having an alcohol concentration of 0.04 or greater. It gets a bit more complicated for controlled substances, but suffice to say drivers shall not perform safety-sensitive functions having used any drug or substance identified in 21 CFR 1308.11 [Schedule I](#). Schedule I includes the substances you think it does, such as opiates, opium derivatives, hallucinogenic substances, depressants, stimulants, and cannabimimetic agents – all of these are no-nos and there's not a limit in your system – you cannot have

RESTRICTIONS

Restriction code	Description
L	If the driver does not pass the Air Brakes Knowledge Test, does not correctly identify the air brake system components, does not properly conduct an air brake systems check, or does not take the Skills test in a vehicle with a full air brake system, the driver must have an "L" no full air brake restriction placed on their license.
Z	If the driver takes the test in a vehicle with an air over hydraulic brake system, then they will have a "Z" no full air brake restriction placed on their license. In either case the driver is not authorized to operate a CMV equipped with full air brakes.
E	If the driver takes the Skills Test in a vehicle that has an automatic transmission, then an "E" no manual transmission restriction is placed on their license.
O	If the driver takes the Skills Test in a Class A vehicle that has a pintle hook or other non-fifth wheel connection, they will have an "O" restriction placed on their license restricting them from driving any Class A vehicle with a fifth wheel connection.
M	If a driver possesses a Class A CDL, but obtains his or her passenger or school bus endorsement in a Class B vehicle the State must place an "M" restriction indicating that the driver can only operate Class B and C passenger vehicle or school buses.
N	If a driver possesses a Class B CDL, but obtains his or her passenger or school bus endorsement in a Class C vehicle; the State must place an "N" restriction indicating that the driver can only operate Class C passenger vehicle or school buses.
V	If the State is notified by the FMCSA that a medical variance has been issued to the driver, the State must indicate the existence of such a medical variance on the CDLIS driving record and the CDL document using a restriction code "V" to indicate that there is information about the medical variance on the CDLIS record.

a CDL and use these substances except some instances where a medical practitioner has so instructed. Tests are required – pre-employment, post-accident, random, reasonable suspicion, return to duty, and follow-ups – all designed to ensure everyone follows the rules.

Yet, we still have roadway crashes and fatalities each year involving commercial motor vehicles (CMVs) and drugs or alcohol. We will forgo the obligatory citing of statistics because we all watch the news and read the papers – we know the problem persists.

Drug and Alcohol Clearinghouse

The FMCSA Drug and Alcohol [Clearinghouse](#) is intended to provide transparency in the system (with seemingly appropriate safeguards for privacy) so that drivers that have an outstanding violation cannot move from one employer to another without the new employer having the benefit of the facts so that appropriate precautions can be taken. Also, employers who might subscribe to the notion that a “wink is as good as a nod to a blind man” when it comes to a new driver’s background should no longer be able to claim ignorance of an outstanding violation. Accountability on the part of both drivers and employers should improve.



Beginning January 6, 2020, various parties are required to register with the Clearinghouse, including:

- CDL drivers
- Employers of drivers operating CMVs that require a CDL or commercial learner’s permit (CLP)
- Consortia/third-party administrators (C/TPAs)
- Medical review officers (MROs)
- Substance abuse professionals (SAPs)
- Enforcement personnel

The Clearinghouse [Learning Center](#) is a good place to begin. Where appropriate, the information is often broken down by whether you are a driver or MRO, etc. Recordings of recent webinars (again, targeted to various parties) can be viewed through the Learning Center.

From the training webinars they have held, it appears that if you have not yet registered, it is not a problem. However, because of very tight deadlines for reporting to the Clearinghouse should a problem come up, it is important to register in advance of any incident. Hence, go ahead and get it done now. The registration process does not appear to be overly burdensome – it looks to be only a handful of information, all of which you should have readily available.

As usual, it would appear that establishing a username and password may be the most complicated part. To that point, employers registering for the first time and who do not have a FMCSA Portal Account (a web system that allows employees of motor carriers to

How will MROs use the Clearinghouse?

Beginning January 6, 2020, medical review officers (MROs) will be required to report the following violations in the Clearinghouse:


- Verified positive, adulterated, or substituted controlled substances test results
- Refusal-to-test determinations for controlled substances tests

These must be reported within two days of making the verification or determination. The MRO must report any changes of a verified drug test within one business day of making any changes to the reported results.

DRUG & ALCOHOL CLEARINGHOUSE U.S. Department of Transportation Federal Motor Carrier Safety Administration

Who is required to use the Clearinghouse?

- ✓ Drivers who hold commercial driver's licenses (CDLs) or commercial learner's permits (CLPs)*
- ✓ Employers of CDL drivers who operate commercial motor vehicles (CMVs)
- ✓ Consortia/third-party administrations (C/TPAs)
- ✓ Medical review officers (MROs)
- ✓ Substance abuse professionals (SAPs)
- ✓ State Drivers Licensing Agencies (SDLAs)




access FMCSA web systems; they say if you have or should have a USDOT Number, you should have a Portal account) should consider using a generic (albeit, protected) email address (e.g., FMCSA@Town.Delaware.Gov) and that way, it is more easily transferred internally. In their Employer brochure, FMCSA states that the email cannot be changed at

a later date – in the webinar, they suggested that it could by jumping through a series of hoops; why not avoid the headache if you can?

Once a given party is registered, they must report to the Clearinghouse certain information. The employer's and C/TPA's requirements are shown in the graphic below. MROs must report verified positive, adulterated, or substituted drug test results or refusal to test (drug) within two business days of making a determination or verification of a DOT-approved test and within one business day of making any change in the report of a verified drug test. SAPs must report the start of a driver's initial assessment by the close of business day following the date of the initial assessment and by the close of business day following the determination that a driver has completed the return to duty (RTD) process.

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What information are employers or C/TPAs required to report?

INFORMATION TO BE REPORTED TO CLEARINGHOUSE	
 <p>Prospective/Current Employer of CDL Driver Or C/TPA acting on behalf of Current Employer of CDL Driver</p>	An alcohol confirmation test with a concentration of 0.04% or higher.
	Refusal to test (alcohol) as specified in 49 CFR 40.261 .
	Refusal to test (drug) not requiring a determination by the MRO as specified in 49 CFR 40.191 .
	Actual knowledge, as defined in 49 CFR 382.107 , that a driver has used alcohol on duty, used alcohol within four hours of coming on duty, used alcohol prior to post-accident testing, or has used a controlled substance.
	Negative RTD test results (drug and alcohol testing, as applicable)
	Completion of follow-up testing.

Given the tight timelines to report information that may come up suddenly (post-accident, reasonable suspicion, random), registering now will ensure you are in place to meet these reporting deadlines. Regardless, employers and designated C/TPAs must request specific consent from a driver to conduct a full query (including pre-employment queries), query all prospective and current CDL licensed employees at least annually, and report certain drug and alcohol program violations, negative RTD test results, and successful completion of a driver's follow up testing plan. To do so, they must be registered in the Clearinghouse.

CDL Drivers must register in the Clearinghouse before they can respond to a consent request for a full query from a current or potential employer, review his/her Clearinghouse record, or designate a SAP in the Clearinghouse.

In the Clearinghouse [Learning Center](#), there are many frequently asked questions. A few that are likely of interest to local agencies deserve a summary here. Only violations that occur on or after January 6, 2020 are to be reported to the Clearinghouse. Violation information is retained in the Clearinghouse for five years or until the RTD process is successfully completed.

This article is a good faith effort to capture the bare essence of this new Clearinghouse. Employers, CDL drivers, and other parties are encouraged to visit the FMCSA website, review the materials in the Learning Center and elsewhere, and if still unsure, contact the Clearinghouse directly. In the recorded webinars, they appear eager for the parties to understand their responsibilities and encourage contacting them if the posted materials don't answer questions, so by all means do so.

The Delaware T²/LTAP Center is anxious to hear reports of your experience with the new Clearinghouse and we encourage you to contact our Municipal Engineering Circuit Rider to share your story. You can contact Matt Carter at matheu@udel.edu or (302) 831-7236.