



# Bus Industry Safety Council West California Bus Association Convention FMCSA Update

Danielle Smith, Transportation Specialist  
Commercial Passenger Carrier Safety Division  
Office of Enforcement and Compliance



# Agenda

- Lease and Interchange of Vehicles: Motor Carrier of Passenger
- Hours of Service – Notice of Proposed Rulemaking
- ELD Full Compliance Date
- Drug and Alcohol Clearinghouse



# Lease and Interchange of Vehicles Motor Carriers of Passengers

Published on August 14, 2019  
Docket No. FMCSA-2012-0103



# Lease and Interchange of Vehicles; Motor Carriers of Passengers

- Supersedes the 2015 final rule
- December 2018, FR extending compliance date to January 1, 2021. This rule will use the 2021 compliance date.
- Narrows the applicability of the rule by excluding contracts and agreements between carriers with active passenger carrier operating authority registration.



# Lease and Interchange of Vehicles; Motor Carriers of Passengers

- Returned vehicle marking requirements to previous standards with slight modifications
- Allows 48-hour delayed writing of lease during certain emergencies with or without on-board passengers
- Removed the 24-hour lease notification requirement



## Part 390 - Definitions

- **Lease** - A contract or agreement in which a motor carrier of passengers grants the use of a passenger-carrying CMV to another motor carrier, with or without a driver, for a specified period for the transportation of passengers, with or without compensation for such use.
  - *When one or more of the motor carriers of passengers is not authorized to operate in interstate commerce*
  - Includes an interchange or other agreement



## Part 390 - Definitions

- **Lessee** - The motor carrier obtaining the use of a passenger-carrying CMV, with or without the driver, from another motor carrier, through a lease.
  - Lessee includes a motor carrier obtaining the use of a passenger-carrying CMV from another motor carrier under an interchange or other agreement.
- **Lessor** - The motor carrier granting the use of a passenger-carrying CMV, with or without the driver, to another motor carrier, through a lease.
  - Lessor includes a motor carrier granting the use of a passenger-carrying CMV to another motor carrier under an interchange or other agreement.



## § 390.21 Marking Requirements

### **Rented CMVs and leased passenger-carrying CMVs.**

- A motor carrier operating a passenger-carrying CMV under a lease, when the lease has a term not to exceed of 30 calendar days, meets the requirements of this section if:
  - The CMV is marked with the Lessee's information; or
  - The CMV is marked with the Lessor's information and the rental agreement or lease is carried on the passenger-carrying CMV during the full term of the rental agreement or lease.





## § 390.21 Marking Requirements

### **Exception**

The passenger-carrying CMV operating under the 48-hour emergency exception does not need to comply with the lease information requirements provided the lessor and lessee comply with the requirements of § 390.403(a)(2).



# Subpart G

## Lease and Interchange of Passenger-Carrying CMVs

### **§ 390.401 Applicability**

- The lease of passenger-carrying commercial motor vehicles; and
- The interchange of passenger-carrying commercial motor vehicles between motor carriers.
- Irrespective of duration, or the presence or absence of compensation, by motor carriers operating commercial motor vehicles to transport passengers



## Subpart G

# Lease and Interchange of Passenger-Carrying CMVs

### Exceptions –

- Contracts and agreements between motor carriers of passengers with active passenger carrier operating authority registrations from FMCSA.
- Financial leases: A contract between a motor carrier and a bank, similar financial organization, a manufacturer or dealer of passenger-carrying CMVs allowing the motor carrier to use the passenger-carrying CMV.



# Subpart G

## Lease and Interchange of Passenger-Carrying CMVs

### **Penalties**

Both motor carriers shall be subject to a civil penalty for:

- Operating without a lease or interchange agreement, or
- Lease or interchange agreement fails to meet all applicable requirements of subpart G.



# Subpart G

## Lease and Interchange of Passenger-Carrying CMVs

### **§ 390.403 Lease and interchange requirements.**

#### 1. Vehicle identification information.

- a. Manufacturer, Year of manufacture, and at least the last 6 digits of the VIN

#### 2. Carrier Identification information.

- a. The legal name, USDOT number, and telephone number of lessee
- b. The legal name, USDOT number, and telephone number of lessor
- c. Signatures of both parties or their authorized representatives.



# Subpart G

## Lease and Interchange of Passenger-Carrying CMVs

### **§ 390.403 Lease and interchange requirements.**

3. Time and date when, and the location where, the lease or interchange agreement begins and ends.
4. Statement that the lessee has exclusive possession, control, and use of the passenger-carrying commercial motor vehicle for the duration of the agreement, and assumes complete responsibility for operation of the vehicle and compliance with all applicable Federal regulations for the duration of the agreement.



## Subpart G

# Lease and Interchange of Passenger-Carrying CMVs

### § 390.403 Lease and interchange requirements.

- **Exception.** When an event occurs (e.g., a crash, the vehicle is disabled) that requires a motor carrier to immediately obtain a replacement vehicle, the two carriers may postpone the writing of the lease or written agreement for up to 48 hours.
- During that 48-hour period, the driver must carry a document signed and dated by the lessee's driver or available company official stating: “[Carrier A, USDOT number, telephone number] has leased this vehicle to [Carrier B, USDOT number, telephone number] pursuant to 49 CFR 390.403(a)(2).”



# Questions?

Please contact the FMCSA Passenger Carrier  
Safety Division by e-mail at:  
[mc-ecp@dot.gov](mailto:mc-ecp@dot.gov)



# Hours of Service

Notice of Proposed Rulemaking

# Background

FMCSA began work on an Advanced Notice of Proposed Rulemaking (ANPRM) in 2018 in response to widespread Congressional, industry, and citizen concerns surrounding existing hours of service (HOS) rules. The purpose of the ANPRM was to seek feedback from the public to determine if HOS revisions may alleviate unnecessary burdens placed on drivers while maintaining safety on our nation's highways and roads.

## **ANPRM:**

- ▶ Was published and open for comment last year from August 23, 2018 to October 10, 2018;
- ▶ Agency received more than 5,000 comments;
- ▶ Considered 4 areas for revision (and 2 related petitions)
- ▶ Was used to develop this Notice of Proposed Rulemaking (NPRM)

# Goals of the Proposed Rule

## Improved Safety. Increased Flexibility.

- ▶ The Department's proposed rule on hours-of-service regulations seeks to improve safety by providing additional flexibility for the nation's commercial motor vehicle drivers.
- ▶ The Department believes this proposal will improve safety by offering the flexibility drivers need to not feel like they must race the clock, needlessly drive through congestion, or have troubles finding safe parking.
- ▶ This proposed update to hours-of-service rules is designed to improve safety, but will also provide critical regulatory savings (\$270 million) for the American economy.
- ▶ This rule is still only a proposal and an additional comment period is now open. We strongly encourage everyone to submit their comments to the federal register and take part in shaping this critical reform.

# Short Haul Exception

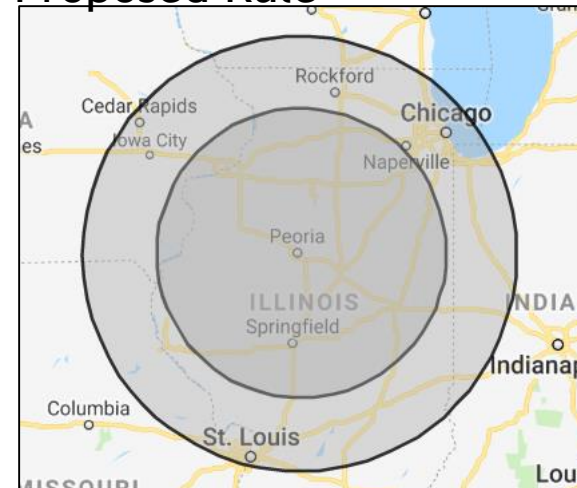
**Short Haul Exception:** FMCSA is proposing to change the short-haul exception time period from 12 to 14 hours and extending the distance the driver may operate from 100 air miles to 150 air miles.

**Example:** The driver here is based out of Peoria. Under current rules the distance the driver could go in a day left out Chicago and St. Louis. The new proposal would allow that driver to service those two cities, as well as an additional 2 hours to do so.

Current Rule



Proposed Rule



# Adverse Driving Conditions Exception



**Adverse Driving Conditions Exception:** FMCSA is proposing to change the adverse driving conditions exception by extending the duty day by 2 hours when adverse driving conditions are encountered. This is in addition to the additional 2 hours of driving time already allowed.

The proposed change would apply for both property-carrying (14 hour “driving window”) and passenger-carrying (15 hour “driving window”) operators.

**Example:** A driver is 15 miles from his destination when he hears of a gravel spill on the bridge just ahead (the bridge is the only access to the destination). He has an hour left of driving time and an hour left in his driving day. Under the new proposal this driver can stop at the rest stop at the next exit (for up to 2 hours) and let the road clean up crew work and still have time to get to his destination without violating HOS rules.

# Focus Questions

NPRMs often ask questions, similar to ANPRMs. We continue to seek input and data from industry and the public on a number of questions included throughout the NPRM. These questions cover a range of topics so read carefully. While we are interested in hearing back on all those questions in the NPRM, here are a few we'd like to focus on:

- ▶ FMCSA is interested in comments and any supporting data on the possibility of a 6 and 4 hour split break.
- ▶ What operations would benefit from multiple off duty periods totaling 3 hours?
- ▶ How often do work shifts require an individual to drive more than 8 hours without at least a 30-minute change in duty status?
- ▶ Understanding adverse conditions cannot be predicted, will drivers utilize this provision more often after the proposed changes?

# Comments

- ▶ **Docket Number:** FMCSA-2018-0248  
<https://www.regulations.gov/docket?D=FMCSA-2018-0248>
- ▶ **Submit a Comment:** If you'd like to comment on any of the topics discussed please go to the docket. There you can view the full NPRM, submit a comment and view other people's comments.

- ▶ **Comment Period:** Open for 45 days

- ▶ **Additional Information:**  
<https://www.fmcsa.dot.gov/content/hours-service-nprm>

**EXTENDED**

Comment period for the Hours of Service proposed rule extended until **Monday, October 21, 2019**



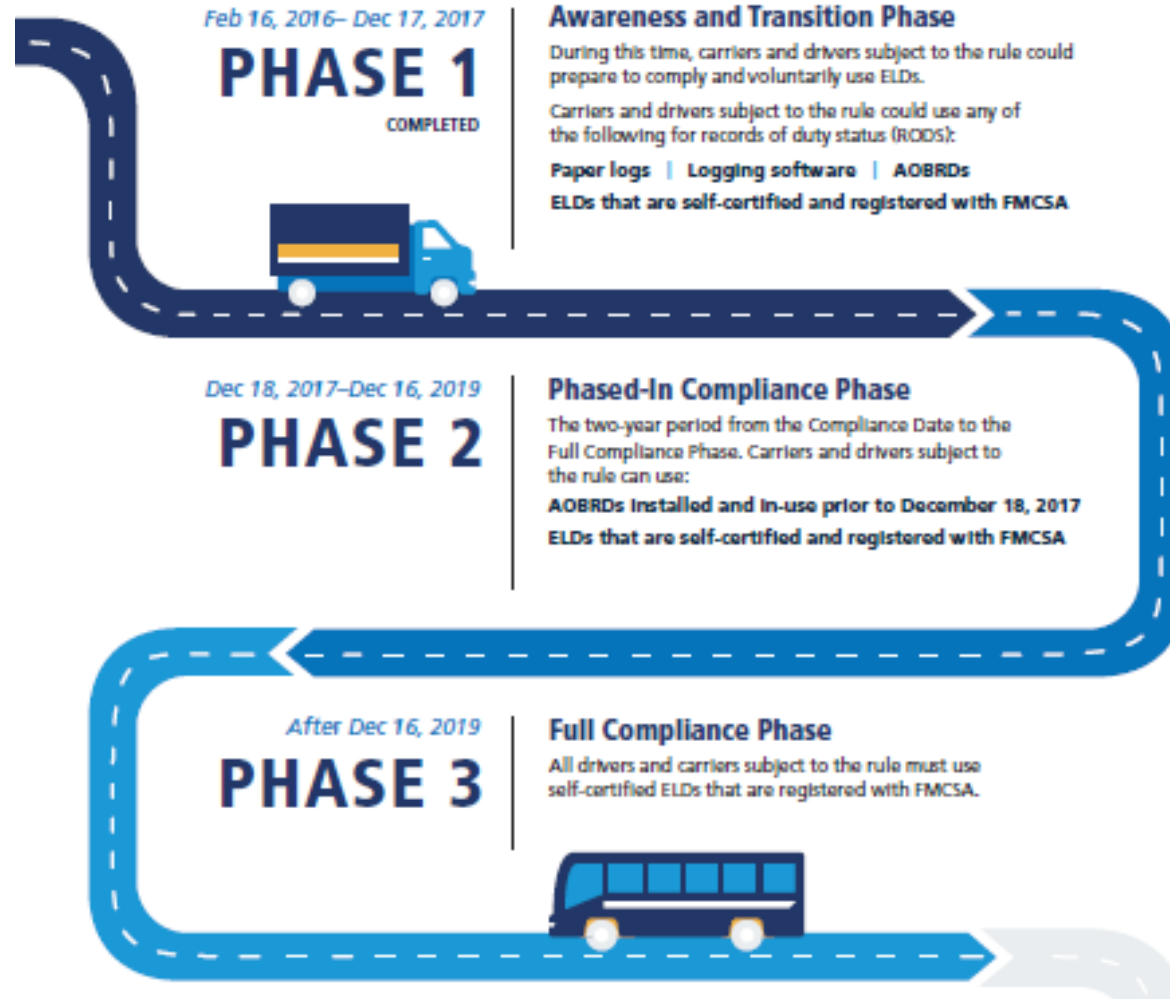
# ELD | ELECTRONIC LOGGING DEVICE

 U.S. Department of Transportation  
Federal Motor Carrier Safety Administration

## ELD Full Compliance Phase



# ELD Timeline



## Phase 3: Full Compliance

*Per 395.8(a)(1)(iii):*

A motor carrier that installs and requires a driver to use an automatic onboard recording device in accordance with § 395.15 before December 18, 2017 may continue to use the compliant automatic on-board recording device ***no later than December 16, 2019.***



# ELD Hours of Service Full Compliance

- AOB RD Systems to ELD
  - Ensure the software version you are using is listed on the ELD Self-Certified Listing
    - If not on the registration list, data transfers will not be accepted by the file validator.
    - Make that call.... (Ensure you have the latest updates before the full compliance date)
  - The time to change is NOW if you haven't already done so.



# ELD Hours of Service Full Compliance

- ELD Systems

- Ensure drivers are properly trained on system use and know the location of key inspection items.
  - In-Vehicle Information -
    1. User's manual for the driver describing how to operate the ELD;
    2. Instruction sheet describing the data transfer mechanisms supported by the ELD and step-by-step instructions for the driver to produce and transfer the driver's hours-of-service records to an authorized safety official;
    3. An instruction sheet for the driver describing ELD malfunction reporting requirements and recordkeeping procedures during ELD malfunctions;
    4. Blank records of duty status graph-grids sufficient to record the driver's duty status for a minimum of 8 days
- Retrain or review the transfer process with drivers.



# DRUG & ALCOHOL CLEARINGHOUSE

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# Timeline: Drug and Alcohol Clearinghouse

December 5, 2016

**Final Rule Published**  
Requirements, user roles established

March 2019

**Information Phase**

- Launch of Clearinghouse website
- Subscribe for email updates

Fall 2019

**Registration Opens**

Create your user account ahead of Implementation Date

January 6, 2020

**Implementation Date**

- Mandatory reporting begins
- Both electronic and manual queries required

January 6, 2023

**3-Year Post Implementation**

- Clearinghouse contains 3 years of violation data
- Only electronic queries required



## Who will be required to use the Clearinghouse?

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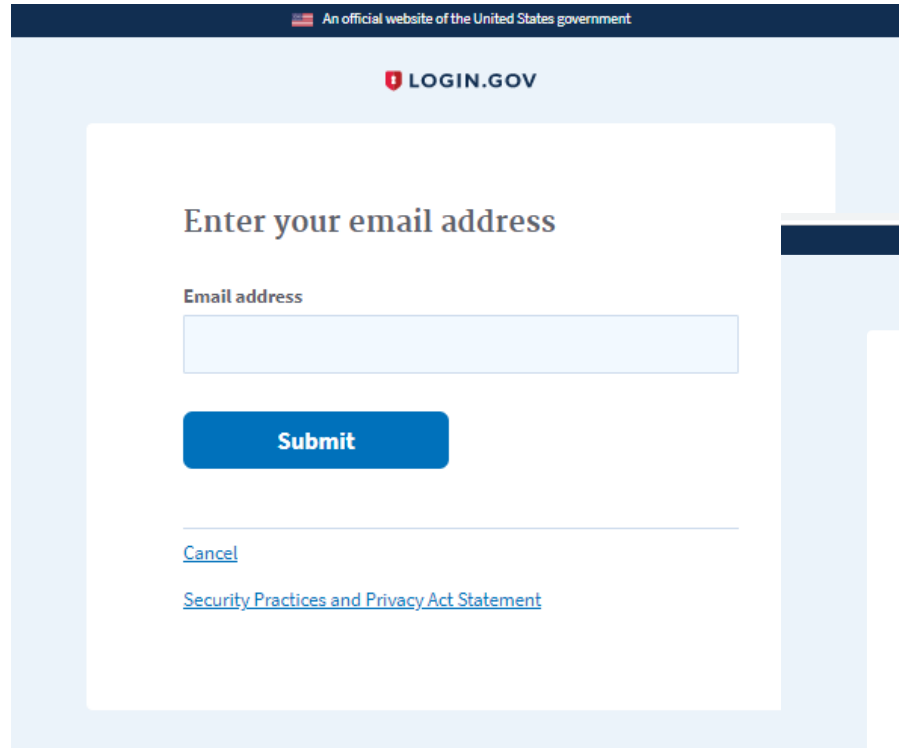
- ☑ Drivers who hold commercial driver's licenses (CDLs) or commercial learner's permits (CLPs)
- ☑ Employers of CDL drivers who operate commercial motor vehicles (CMVs)
- ☑ Consortia/Third-Party Administrations (C/TPAs)
- ☑ Medical Review Officers (MROs)
- ☑ Substance Abuse Professionals (SAPs)
- ☑ State Drivers Licensing Agencies (SDLAs)



## Registration and User Verification

### To register and access the Clearinghouse, users must:

1. Enter an email address for username
2. Complete the verification process to protect account



An official website of the United States government

LOGIN.GOV

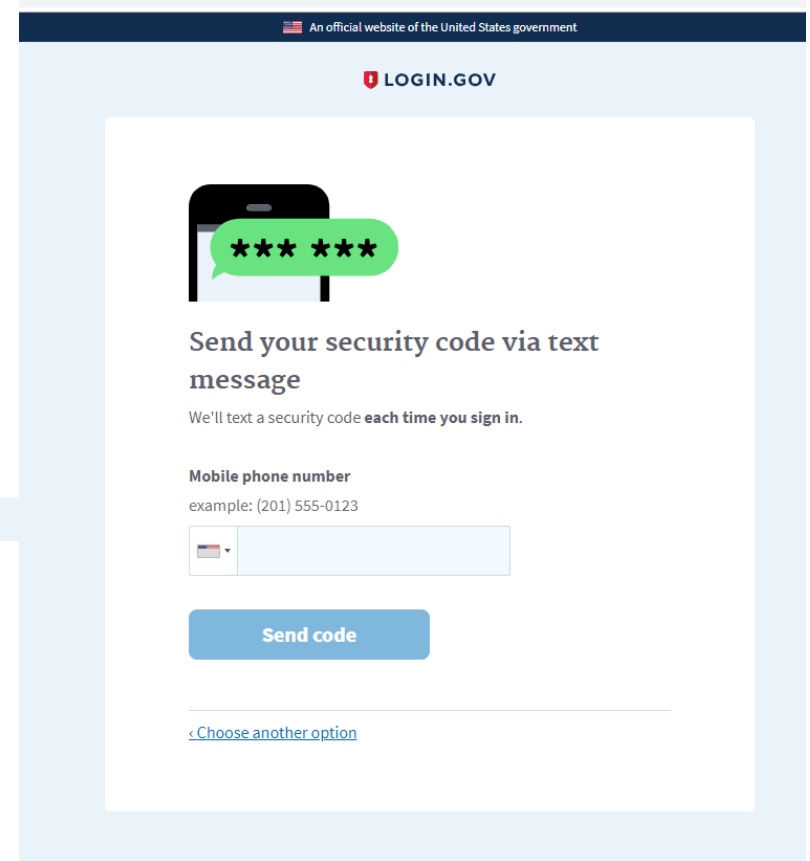
Enter your email address

Email address

Submit


[Cancel](#)

[Security Practices and Privacy Act Statement](#)



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Send your security code via text message

We'll text a security code **each time you sign in.**

Mobile phone number

example: (201) 555-0123



Send code

[◀ Choose another option](#)



# Drivers

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**Drivers will complete the following actions in the Clearinghouse:**

1. **REGISTER**
2. **VIEW** their information
3. **PROVIDE** or refuse specific electronic consent to an employer for a full query (includes pre-employment queries)
4. **IDENTIFY** a SAP before the SAP can enter return-to-duty (RTD) information about them

**Drivers may:**

1. Submit a petition to correct inaccurately reported information as established in the Clearinghouse final rule and per 49 CFR Part 10
2. Request the removal from the Clearinghouse of an employer's report of actual knowledge of a driver's traffic citation for operating a CMV under the influence of drugs or alcohol if the citation did not result in a conviction
3. Request that other reports of actual knowledge violations, as well as "failure to appear" test refusals, be removed from the Clearinghouse if they were not reported in accordance with §382.705(b)(5)

# Employers



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Employers will complete the following actions in the Clearinghouse:



1. **Register**
2. **Report** drug and alcohol violations
3. **Request** specific electronic consent from the driver prior to conducting a full query of his or her Clearinghouse record (includes pre-employment queries)
4. **Designate** a C/TPA which allows the C/TPA to enter violation information or conduct queries on the employer's behalf
5. **Report** a negative return-to-duty (RTD) alcohol and/or controlled substances test result
6. **Report** the completion of a driver's follow-up testing plan

An **EMPLOYER** who employs him/herself as a driver (**owner-operator**) must designate a C/TPA in the Clearinghouse.

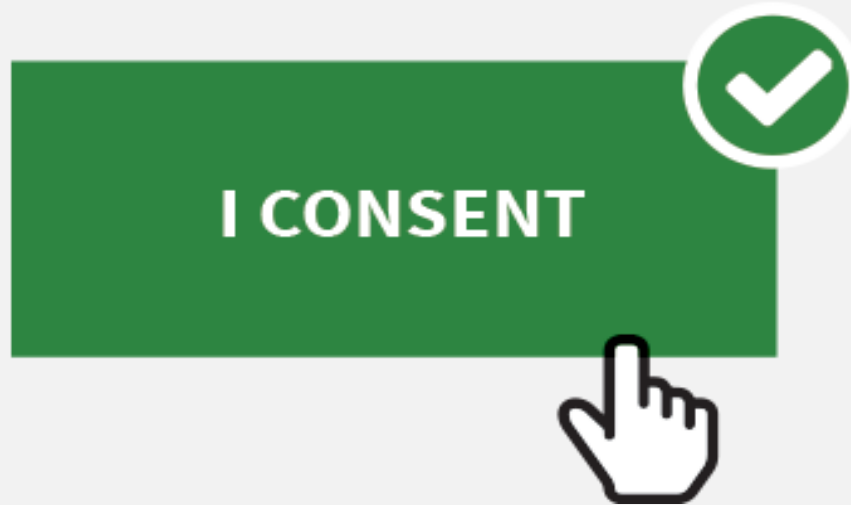
# Queries

	Reason for Query	Information Returned	Required Action
<b>LIMITED QUERY</b>  	Annual check on currently-employed driver	No records found in the Clearinghouse for queried driver	No action required
	Ad hoc/periodic check on driver	Records found in the Clearinghouse for queried driver	Full query must be conducted for violation and/or RTD details to be released; if full query is not conducted within 24 hours, driver is removed from safety-sensitive functions, including operating a CMV
<b>FULL QUERY</b>  	Pre-employment check on prospective driver  Limited query returned records found for queried driver  Ad hoc/periodic check on driver	Full violation and/or RTD details for queried driver	If driver has a violation and no negative RTD test result, driver is removed from safety-sensitive functions  If driver has a violation and a negative RTD test result, no action required

# Consent Requests

	When is driver consent required?	How is consent provided?	For how long is consent effective?	What action is required?
<p><b>LIMITED QUERY</b></p> 	<p>Annual check on currently-employed driver</p> <p>Ad hoc/periodic check on driver</p>	<p>Outside the Clearinghouse</p> <p>May be electronic or wet signature</p> <p><i>Note: FMCSA will provide sample limited consent request form on website</i></p>	<p>Limited consent form must specify time range</p>	<p><b>Consent refused</b></p> <ul style="list-style-type: none"> <li>Query cannot be conducted</li> <li>Driver removed from safety-sensitive functions</li> </ul> <p><b>Consent provided</b></p> <ul style="list-style-type: none"> <li>Retain via paper or electronically in driver's qualification file</li> <li>Request limited query in the Clearinghouse</li> </ul>
<p><b>FULL QUERY</b></p> 	<p>Pre-employment check on prospective driver</p> <p>Limited query returned information exists for queried driver</p> <p>Ad hoc/ periodic check on driver</p>	<p>Electronically within the Clearinghouse</p>	<p>For each full query for individual driver</p>	<p><b>Consent refused</b></p> <ul style="list-style-type: none"> <li>Employer notified of refused consent</li> <li>Query cannot be conducted</li> <li>Driver cannot perform/removed from safety-sensitive functions</li> </ul> <p><b>Consent provided</b></p> <ul style="list-style-type: none"> <li>Query conducted</li> <li>Violation details released, including RTD status</li> <li>If queried driver has violation and no negative RTD test result, driver removed from safety-sensitive functions</li> </ul>

# Queries and Consent Requests



## REGISTER

**Drivers** must register in the Clearinghouse to provide consent for full queries (including pre-employment queries)

## CONSENT

**Employers** must obtain a driver's specific electronic consent before querying the driver's violation information



## REFUSED CONSENT

**Drivers** who refuse their consent cannot perform safety-sensitive functions (including operating a CMV) for that employer

<https://clearinghouse.fmcsa.dot.gov>

# Frequently Asked Questions

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## Frequently Asked Questions

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- **Will violations that occurred prior to January 6, 2020, be reported to the Clearinghouse?**
  - No, only violations that occur on January 6, 2020, or later.
- **How long is the violation information retained in the Clearinghouse?**
  - 5 years, unless the RTD and follow-up testing is not completed (will be retained indefinitely until follow-up testing is successfully completed).
- **Will a prospective employee's drug and alcohol violation history with other DOT modes be available in the Clearinghouse?**
  - No, the Clearinghouse will contain only drug and alcohol program violation information for employees subject to the testing requirements under the Federal Motor Carrier Safety Regulations in 49 CFR part 382.
- **Can an employer designate more than one C/TPA?**
  - Yes.

# Frequently Asked Questions

## What information is the employer required to report?

### INFORMATION TO BE REPORTED TO CLEARINGHOUSE



Prospective/Current  
Employer of CDL Driver

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.



## Frequently Asked Questions

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- **Will every driver need to register in the Clearinghouse?**
  - No. A driver will only need to register if they need to provide consent to the employer in the Clearinghouse for pre-employment/full queries.
  - If a driver is currently with an employer, never incurs a drug or alcohol violation, and never seeks other employment, then the driver does not need to register in the Clearinghouse.
- **Can an employer register their drivers in the Clearinghouse?**
  - No. Each individual driver will need to register himself or herself. Registration and login will require users to complete the verification process
- **Are Canadian and Mexican drivers conducting operations in the United States subject to the Clearinghouse requirements?**
  - Yes, only Canadian and Mexican drivers operating in the United States are required to comply with FMCSA drug and alcohol testing requirements and must comply with the Clearinghouse final rule.

## Frequently Asked Questions

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- **Will a driver's follow-up testing plan be available in the Clearinghouse?**
  - No, follow-up testing plans will not be uploaded into the Clearinghouse.
  - When a prospective employee has not completed a follow-up testing plan prescribed by the SAP, the subsequent new employer must continue to obtain the follow-up testing plan from the previous employer, as required in §382.413, and complete the follow-up testing.
  
- **Will follow-up testing be tracked within the Clearinghouse?**
  - No, follow-up testing will not be tracked in the Clearinghouse.
  - However, if there is a positive follow-up test result, it must be reported as a new violation.
  - The RTD process would be re-initiated after the new violation is entered.

# Frequently Asked Questions

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## ■ How does a driver change or remove inaccurate data?

- The driver may submit a petition via FMCSA's DataQs system
- FMCSA will review petition and notify driver of decision to remove, retain, or correct information in the Clearinghouse and the reason for decision
- If the driver believes a petition decision was made in error, he/she may submit a request for an Administrative Review
  - Request must include an explanation why he/she believes FMCSA made an error in their decision
  - Driver informed of decision
  - Decision will constitute as the final Agency action

### **The petition must include:**

- Petitioner's contact information
- Petitioner's CDL number and state of issuance
- Detailed description why the information is not accurate

## ■ What information may be challenged by the driver?

- The accuracy of the information reported
- Report of employer's actual knowledge the driver received a traffic citation for driving a CMV while under the influence of drugs or alcohol if it did not result in a conviction
- **Accuracy of test results and refusals may not be challenged**

## Frequently Asked Questions

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- **Is the driver's social security number (SSN) or employee identification number (EIN) required when reporting violation information or querying the Clearinghouse?**
  - No, per §382.123, the employer shall provide the driver's CDL number and state of issuance
- **Will FAQs and other outreach materials about the Clearinghouse be updated?**
  - Yes, our website at <https://clearinghouse.fmcsa.dot.gov> will be updated regularly with new information, including the factsheet and FAQs. In addition, you will be able to sign up for email updates.

# Coming Fall 2019: Register for the Clearinghouse

- Register your company and/or yourself
- Designate C/TPA (employers, if applicable)
- Set up Assistants (employers, C/TPAs, SAPs, MROs)
- Encourage drivers to register



## For more information

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Visit <https://clearinghouse.fmcsa.dot.gov>

- Subscribe for email updates
- Read frequently asked questions
- Download the Clearinghouse factsheet
- Download the User Role card

Contact [clearinghouse@dot.gov](mailto:clearinghouse@dot.gov)

