



January 2021

CDL-Drivers - Checking Driving Histories and Annual Program Review

There have been several recent changes at the State and Federal level concerning employers of workers with Commercial Drivers' Licenses (CDL). The purpose of this bulletin is to provide information on the new regulations to employers and managers of CDL-holders.

New Jersey's medical marijuana regulations do not change the Federal laws strictly prohibiting the use of marijuana by CDL drivers or employees performing other safety-sensitive functions. Drivers should be reminded annually of their obligation to surrender their CDL if they begin using cannabis, even if under a doctor's care.

On January 6, 2020, the U.S. Department of Transportation's (USDOT) Drug and Alcohol Clearinghouse (Clearinghouse) became operational with regulations that all employers of drivers with a CDL must follow. **Among them is, at least once a year, employers of CDL-holders must both:**

- 1. Query the Clearinghouse and**
- 2. Check State Motor Vehicle Records about the driving histories of their CDL holders. Starting January 6, 2020 employers and drug and alcohol testing agencies must report test failures or refusals in the Clearinghouse.**

To query the Clearinghouse, employers must first go online and register as an employer in the [Clearinghouse](#). Employers will also need to purchase a Query Plan to start conducting queries. There is a \$1.25 charge for each query. They can be purchased in packages ranging from 1 to more than 1,000.

Registration in the Clearinghouse is optional for CDL-holders. **The Safety Director recommends employers require registration in the Clearinghouse and granting the employer Limited Access by signing the [General Consent of Limited Queries](#) of the FMCSA Drug and Alcohol Clearinghouse as part of their employment agreement.** Employers who cannot verify a driver's clean drug and alcohol history in the Clearinghouse may not, by law, allow a driver to operate a CDL vehicle or perform any safety-sensitive activity.

Drivers should understand not being registered in the Clearinghouse restricts the driver's employment options, and their ability to monitor their records. Also, if an employer's query of the Clearinghouse shows a note in the driver's record, the driver has 24 hours to go into the system, register, and grant the employer Full Access to investigate the record in question, Until this happens, the employer may not permit the driver to perform any safety-sensitive activities.

Employers must also check the State's Motor Vehicle Records (MVR) or driver's abstracts of CDL-drivers each year. In New Jersey, MVRs are verified using the [NJ Customer Abstract Information Retrieval](#) (NJ CAIR) Program offered through the New Jersey Motor Vehicle Commission. **Employees must be made aware their MVR will be checked periodically.** N.J. Motor Vehicle Commission requires employees to sign an acknowledgment that they are aware the employer obtains driving history abstracts before operating a motor vehicle on employer business, and periodically thereafter. The signed consent can be part of your Employee Handbook or a specific Consent form to check the employee's MVRs. A model [Consent Form](#) is available on the MEL Safety Institute. Work with your solicitor to verify it conforms to the agency's operations and any collective bargaining agreements.

This bulletin is intended for general information purposes only. It should not be construed as legal advice or legal opinion regarding any specific or factual situation. Always follow your organization's policies and procedures as presented by your manager or supervisor. For further information regarding this bulletin, contact your Safety Director at 877.398.3046.

Designate one or two authorized individuals to order the MVRs from N.J. Motor Vehicle Commission. MVRs may not be obtained through the local Police Department. Authorized individuals may be the Clerk, an Administrator, a Human Resource representative, or the Police Chief. The designated individual must understand they may not share the information with unauthorized individuals as required by the Driver Privacy Protection Act. **Remember, these are confidential reports.** Department heads who review or act upon the MVR reports must also be aware of the confidential nature of driving histories.

As part of a comprehensive risk control program, public employers should establish acceptable and unacceptable criteria for driving histories. Work with the organization's attorney and administration to establish the levels. Educate drivers on your criteria. The policy must be enforced consistently and without discrimination.

The medical evaluation and qualifications regulations for intra-state exempt CDL drivers have not changed. While most drivers who operate commercial motor vehicles solely for a public employer are exempt from having bi-annual physicals by a DOT-certified medical examiner, they are not exempt from meeting the physical requirements of the USDOT as defined in 49 CFR 391, Subpart E. Employers should annually remind workers that under 49 CFR 391.41(a)(1)(i) the driver must not operate a commercial motor vehicle if they are not physically qualified. Knowingly violating this law exposes the driver to severe consequences. CDL drivers who drive interstate, or hold Hazardous Material or Passenger endorsements are not exempt from the medical evaluations.

The USDOT requires employers of CDL-holders to have a written policy that defines the roles, rights, and responsibilities of drivers and the organization's administration. A comprehensive policy should include the following components:

- Drug and alcohol testing types, test protocols and criteria, and consequences for violations – [A Model Program Drug & Alcohol Template](#) is available on the MEL website. CDL drivers should also be required to disclose medications that could affect their ability to operate commercial motor vehicles and the procedures for when a notification is made.
- Identity of the Designated Employer Representatives and Substance Abuse Professionals
- Reasonable suspicion training for supervisors or CDL drivers, including the process for taking the driver in question to a drug and alcohol testing center on a 24/7/365 basis.
- Post-accident drug and alcohol testing protocols
- Medical qualifications and evaluations of CDL-holders
- Reporting of motor vehicle convictions to the employer by holders of CDL

Please contact the Office of the Safety Director if further information is needed.