DRUG & ALCOHOL CLEARINGHOUSE

State Partner Training

December 2019/January 2020



Agenda

About the Congressional mandate and what it means

Required actions users must take once the Clearinghouse is operational

THE CLEARINGHOUSE POLICY

How enforcement personnel use the Clearinghouse to verify compliance

NEW VIOLATIONS

Violations related to required use of the Clearinghouse

NEXT STEPS & MORE INFORMATION

How you can prepare for implementation, learn more, and get technical support



The Clearinghouse Final Rule

- Mandated by Congress (MAP-21, Section 32402)
- Published December 5, 2016
- Established requirements for the Clearinghouse
- Implementation January 6, 2020





Read about the Clearinghouse final rule at:

https://clearinghouse.fmcsa.dot.gov/About

The FMCSA Commercial Driver's License Drug and Alcohol Clearinghouse

Database containing CDL/CLP drivers' drug and alcohol violation information

- Reported by employers and medical review officers (e.g., positive tests, refusals, etc.)
- Includes whether a driver has successfully completed the mandatory return-to-duty (RTD) process following a violation

Clearinghouse information is not available to general public

- Only authorized users will be able to access the Clearinghouse for designated purposes
- Other enforcement agencies, such as State Driver's Licensing Agencies and State law enforcement agencies, will receive only driver eligibility status (i.e., Prohibited/Not Prohibited)

Who will use the Clearinghouse

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)

Learn more about the specific actions each user can take at:

https://clearinghouse.fmcsa.dot.gov/Resource/Index/User-Roles



- The Clearinghouse will contain only drug and alcohol program violation information for employees subject to the testing requirements under the FMCSRs in 49 CFR Part 382 (no other DOT modes).
- The Clearinghouse will only contain violations that occur on January 6, 2020 or later.
- Violation information will be retained in the Clearinghouse for 5 years, or until the RTD follow-up testing has been completed, whichever is later.





- A drug and alcohol program violation can be recorded even if the driver is not registered in the Clearinghouse.
 - The Clearinghouse will associate the violation with the driver's CDL information.
- MROs and SAPs have reporting functions only.
 - Cannot access driver violation records, due to privacy requirements.
 - Can review only violation information they or their Assistants have entered in the Clearinghouse.



	What information does this query provide?	When is this query required?	How is consent provided?
LIMITED QUERY	Verify presence of driver information in the Clearinghouse If information is discovered, a full query is required	Annual check on currently-employed driver Ad hoc/periodic check on driver	General consent, done outside the Clearinghouse May be electronic or wet signature, one time or unlimited
FULL QUERY	Access full violation details	Pre-employment check on prospective driver Limited query returned records for queried driver Ad hoc/ periodic check on driver	Specific consent, provided electronically within the Clearinghouse





- The Clearinghouse will maintain a history of an employer's full and limited queries, including those conducted by a designated C/TPA.
 - This will include records of the driver's response to consent requests for full queries.
- Employers will need to retain records of drivers' limited consent for 3 years.
- Employers must purchase a query plan to enable their users or their designated C/TPAs to conduct queries.
 - Query plans may only be purchased from the Clearinghouse website.
 - C/TPAs cannot purchase query plans.



The Clearinghouse will improve safety on our Nation's roadways.

Real-time access to "Driver Prohibited" status

Better insight into employer compliance with drug and alcohol testing rules

More difficult for drivers to conceal drug and alcohol violations from current and prospective employers

Provides tool for employers to meet pre-employment investigation and reporting obligations



Using the Clearinghouse Enforcement Personnel

Access to Clearinghouse Data

- State personnel will:
 - Use Query Central or CDLIS Gateway to determine if a driver is prohibited from performing safety-sensitive functions
 - Request proof of registration and queries conducted from employers and/or Division office
- FMCSA personnel will access Clearinghouse using Portal credentials
- Employers must be able to:
 - Produce copies of Clearinghouse information for the investigator (if requested)

Roadside Inspections

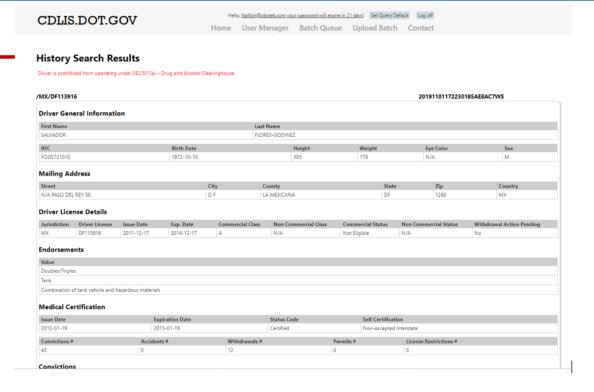


- Process remains the same
- Check Query Central or CDLIS Gateway
 - Will provide additional information on driver's Clearinghouse status
- If driver is prohibited, cite 390.3(e)
- Updated CVSA OOS criteria goes into effect April 1, 2020





CDLIS



History Search Results

Driver is prohibited from operating under 382.501(a) - Drug and Alcohol Clearinghouse

- The Clearinghouse query results will display directly under the history search results.
 - Driver prohibited
 - Driver not prohibited
 - Driver not found
- Not all messages will be in red.



QueryCentral



Driver Identification				
Driver Name:	JONATHAN THOMAS WYNN			
Address:	180 DIXIE DR NE CLEVELAND, TN			
CDL#:	140880302	SSN:	258-73-0314	
St/Prov:	TN	DOB:	12/29/1987	

License Summary				
Commercial Status: Licensed Class: A				
Non-Commercial Status:	Licensed	Class:	D	
Expires:	es: 6/18/2026			
Restrictions:	: Corrective Lenses must be worn			
Endorsements: No Endorsements Listed				
Drug and Alcohol Clearinghouse Status				
Driver is prohibited from operating under 49 CFR § 382.501(a)				

			Alias			
First Name	Middle Name	Last Name	SUFFIX	Birth Date	License	State
					050916306	GA
					8030013382	IN

				Medical Certification			
Issue Date	Expiration Date	SPE Issue	SPE Expiration	Med WE Issue	Med WE Expiration	Status Code	Self Certification
10/28/2018	10/29/2019					Certified	Non-excepted Interstate

Medical Certificate Restrictions

Restriction

Corrective Lenses

Driver is prohibited from operating under 49 CFR § 382.501(a)

- The Clearinghouse query results will display in the upper right table.
 - Driver prohibited
 - Driver not prohibited
 - Driver not found





Safety Audits and Investigations: Pre-Investigation



- Run CDLIS Gateway or Query Central checks to verify current status of drivers
- Request Clearinghouse report from motor carrier or FMCSA Division
- Review Clearinghouse report to verify carrier has:
 - Registered
 - Designated a C/TPA, if applicable
 - Reported required drug and alcohol program violation information
 - Performed required queries



Safety Audits and Investigations



Verify users have registered with the Clearinghouse



Verify carrier has performed required queries



Verify carrier received consent



Verify required reporting



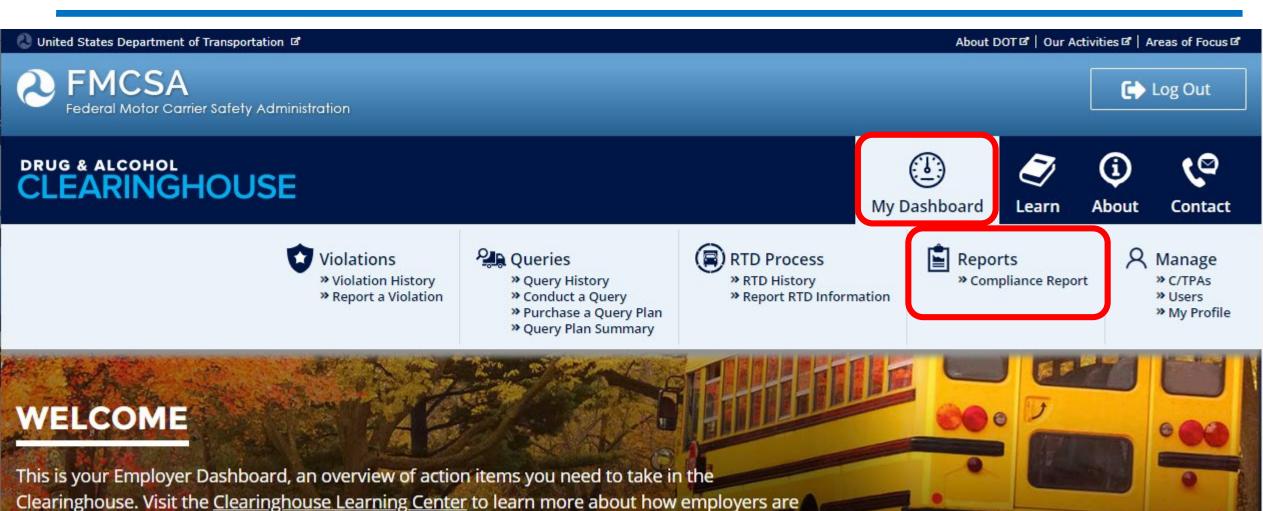
Verify refusal and actual knowledge documentation



Verify that the carrier did not use any drivers prohibited from safety sensitive functions

required to use the Clearinghouse.

Clearinghouse Carrier Dashboard – Homepage



Clearinghouse Carrier Report

CLEARINGHOUSE









My Dashboard

Learn

About

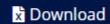
S BACK TO DASHBOARD

Sample-CTPA

Address: 55 Broadway; Cambridge, MA 02472; US

Owner Operator:

As of: 12/12/2019 11:56



REGISTERED USERS

Email	Name	Created	Last Login
Sample-Employer@example.com		10/22/2019	

Clearinghouse Carrier Report

C/TPAS DESIGNATED

С/ТРА	Status i	Report Violations	Report RTD Information i	Conduct Queries
Sample-CTPA	Pending	Yes	Yes	Yes

DRIVER CHECK (ANNUAL QUERIES CONDUCTED)

Name	Country	CDL	Most Recent Query	Submitted on	Consent Received	Result
John Lacek	United States	RI-321312	Limited	12/9/2019	General Consent Obtained outside Clearinghouse	Driver Not Prohibited

Clearinghouse Driver Report

VIOLATIONS REPORTED

Test Date	Driver Name	CDL/CLP i	Test Reason	Violation Type	Reported By	Reported On	Updated On
12/8/2019	Querty Board	US-CA-87921369	Random	Concentration of 0.04 or greater	Sample- Employer@example.com	12/12/2019	12/12/2019
12/11/201	Susan Zak	US-MA-88774433	Random	Drug test refusal	Sample- Employer@example.com	12/12/2019	12/12/2019

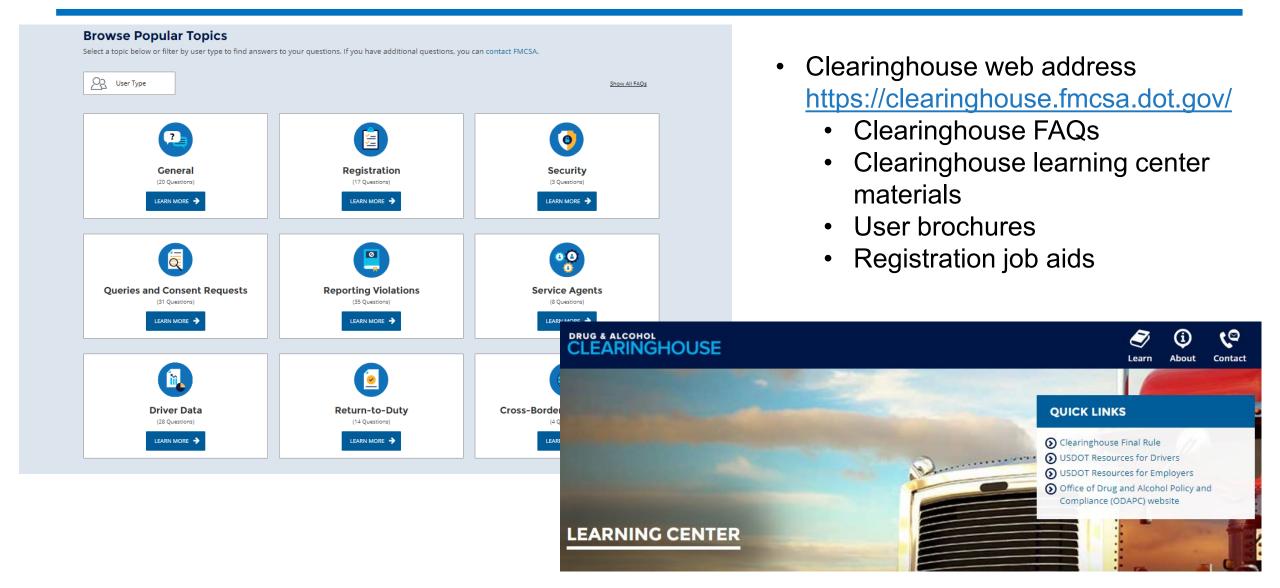
Safety Audits and Investigations: Close-out



- Clearinghouse resources
- Provide NCCDB guidance for complaints against service agents or other carriers
- Provide DataQs guidance for driver petitions



Clearinghouse Resources



NCCDB Modifications for the Clearinghouse

Filed by drivers/employers against SAPs/MROs

SUCH AS:

- MRO did not report drug and alcohol program violation within 2 business days of making the determination or verification
- SAP did not accept driver request, unable to report required information in the Clearinghouse

INVESTIGATED BY:

FMCSA HQ Team

Filed by drivers against employers

SUCH AS:

- Failing to obtain consent
- Employer did not report negative RTD test result to Clearinghouse
- Employer did not report completion of follow-up testing plan to Clearinghouse

INVESTIGATED BY:

Field Safety Investigators

DataQs Requests for Data Review for the Clearinghouse

- The driver may submit a petition via FMCSA's DataQs system to challenge the accuracy of the information reported
- Drivers cannot challenge the accuracy of test results and refusals with the following exceptions:
 - Request removal of employers report of a violation if it does not comply with § 382.705(b)(3)
 - Request removal of employer's report of actual knowledge if it does not comply with § 382.705(b)(5)
 - Request removal of employer's report of actual knowledge that 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
- 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 explanation and information and/or documentation
 - Driver informed of decision, which will be considered final Agency action

Enforcement



- When conducting enforcement against motor carriers, follow current enforcement guidelines
- Information found during the investigation that warrants enforcement against a C/TPA must be directed to the Compliance Division MC-ECS at <u>clearinghouse@dot.gov</u>
- For violations of C/TPAs outside the scope of Part 382, Subpart G or Part 40 violations, refer to the current public interest exclusion (PIE) policy



Clearinghouse Violations

Verifying Registration

- Review and verify registration in accordance with § 382.711
 - State personnel request that the Division office check the Clearinghouse or ask the carrier to show its registration

ALL EMPLOYERS

(including Owner-Operators)

 May designate a C/TPA to conduct queries, and/or report violations, and/or report RTD information

OWNER-OPERATORS

(only)

 <u>Must</u> designate a C/TPA to report violations incurred by owner-operator

Employer Registration Violations

§ 382.711(b)	Failing to register in the Clearinghouse Note: Also includes failing to update information.
§ 382.705(b)(6)	Failing to designate a C/TPA Note: To be use against an owner-operator that fails to designate a C/TPA.

Verifying Required Queries

Confirm the carrier has performed the required pre-employment and annual queries as required by § 382.701

- Review pre-employment queries based on "Part 382 Drug & Alcohol Pre-employment" sampling table
 - Drivers must not operate until carrier receives a non-violation query result
- Review annual queries based on "Part 391 DQ Files" sampling table
 - Were they performed within required timeframes?
 - Annual query (limited or full) is required once every 365 days, at minimum
 - If limited query returns info, ensure it was followed by a full query
 - Employer is required to remove driver from safety-sensitive functions until employer receives confirmation that the return-to-duty process is complete (Clearinghouse will display: "Violation is resolved")

Employer Query Violations

§ 382.701(a)	Failing to conduct a pre-employment query
§ 382.701(b)(1)	Failing to conduct an annual query
§ 382.701(b)(3)	Failing to conduct a full annual query within the 24 hours after receiving information from a limited query
§ 382.701(e)	Failing to retain a record of each query and all information received in response to each query made prior to 01/06/2023

Verifying Required Consent

Confirm the carrier has performed the required pre-employment and annual queries as required by § 382.701

- Review pre-employment queries based on "Part 382 Drug & Alcohol Pre-employment" sampling table
 - Drivers must not operate until carrier receives a non-violation query result
- Review annual queries based on "Part 391 DQ Files" sampling table
 - Were they performed within required timeframes?
 - Annual query (limited or full) is required once every 365 days, at minimum
 - If limited query returns info, ensure it was followed by a full query
 - Employer is required to remove driver from safety-sensitive functions until employer receives confirmation that the return-to-duty process is complete (Clearinghouse will display: "Violation is resolved")

Employer Consent Violations

§ 382.703(a)	Failing to query the Clearinghouse without first obtaining the driver's written or electronic consent
	Failing to keep records of the electronic consent for 3 years from the date of the last query
	Note: This cite includes two scenarios: (1) consent was not obtained by the motor carrier, or (2) the motor carrier did not keep record of the consent on file.
§ 382.703(c)	Allowing a driver, who refused to provide consent to query the Clearinghouse, to operate a CMV

Verifying Reporting

- Employers, MROs, C/TPAs, and SAPs are required to report to the Clearinghouse (§ 382.705)
 - C/TPAs can report on behalf of the employer when designated by the registered employer in the Clearinghouse

Employer Reporting Violations

§ 382.705(b)(1)(i)	Failing to report an alcohol confirmation test result with an alcohol concentration of 0.04 or greater
§ 382.705(b)(1)(ii)	Failing to report a negative return-to-duty test result
§ 382.705(b)(1)(iii)	Failing to report a refusal to take an alcohol test
§ 382.705(b)(1)(iv)	Failing to report a drug test refusal to test determination
§ 382.705(b)(1)(v)	Failing to report that the driver has successfully completed all follow-up tests as prescribed in the SAP report
§ 382.705(c)	Failing to report violation to the Clearinghouse by the third business day
	Note: This includes a refusal, an alcohol violation, and actual knowledge under this section.
§ 382.705(e)	Providing false or inaccurate information

Verify Refusal and Actual Knowledge Documentation

- Confirm refusal documentation and actual knowledge are consistent with the information submitted in the Clearinghouse
- Failing to report or providing misleading information could result in administrative sanctions and civil and criminal proceedings (§ 382.727)

§ 382.705(e) Providing false or inaccurate information

Note: This can apply to any entity.





Next Steps & More Information

Next Steps

- Apply new policy beginning on January 6, 2020
- Clearinghouse Technical Questions: <u>clearinghouse@dot.gov</u>



More Information

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

- > Visit the Clearinghouse Learning Center
- > Read frequently asked questions
- Download and share user brochures
- > Stay up to date with news and events

Questions about Clearinghouse?

- Gian Marshall
 Gian.Marshall@dot.gov
- Barbara Baker barbara.baker@dot.gov

Questions about Drug and Alcohol policy?

Juan Moya
juan.moya@dot.gov

Additional Informational Slides

Using the Clearinghouse Reporting Violations



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





Prospective/Current Employer of CDL Driver

Or

C/TPA acting on behalf of Current Employer of CDL Driver

INFORMATION TO BE REPORTED TO CLEARINGHOUSE

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 <u>49</u> <u>CFR 40.191</u>.

Actual knowledge, as defined in <u>49 CFR 382.107</u>, 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.

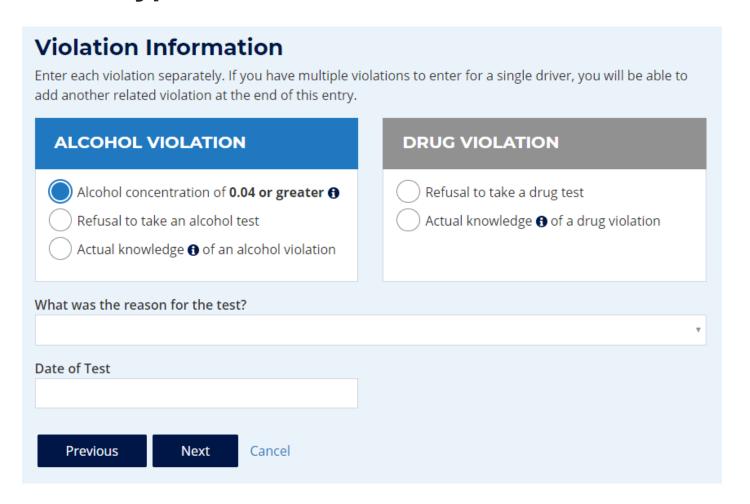
What information are MROs and SAPs required to report?

	INFORMATION TO BE REPORTED TO CLEARINGHOUSE	DEADLINE FOR REPORTING INFROMATION	
MRO	Verified positive, adulterated, or substituted drug test result	Within two business days of making a determination or verification of a DOT-approved drug test	
	Refusal to test (drug) requiring a determination by the MRO as specified in 49 CFR 40.191		
	Changes a verified drug test per 49 CFR Part 40	Within one business day of making any change in the reported results	
SAP	Identification of driver and date the initial assessment was initiated	By the close of the business day following the date of initial assessment	
	Date of determination of eligibility for RTD testing	By the close of the business day following the determination that the driver completed the RTD process	



Recording Violation Data - Employer

Select type of violation

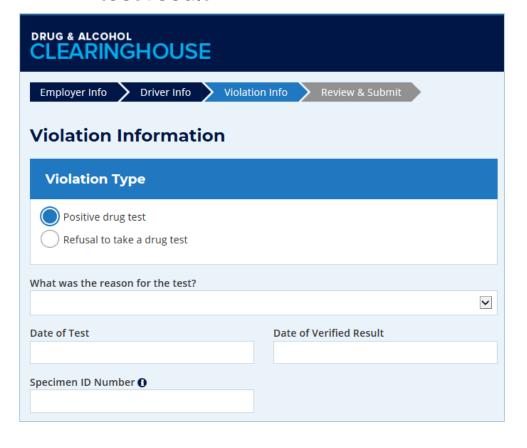


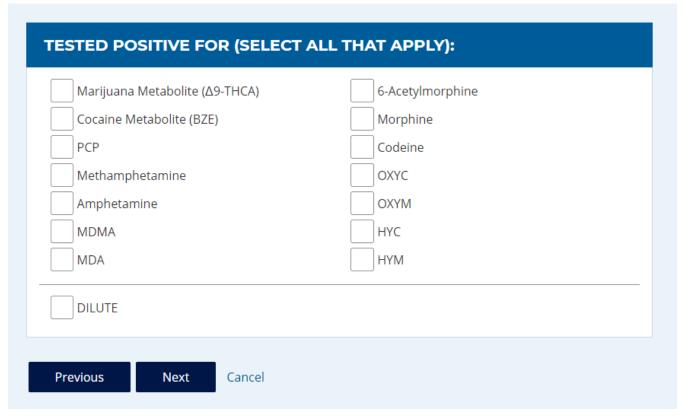


Recording Violation Data - MRO

Violation Information

 Reason for the test, CCF Specimen ID number, date of the test, date of the verified result and test result





Using the Clearinghouse Queries & Consent Requests

Query Requirements

Employers will be required to query the Clearinghouse for:

1. PRE-EMPLOYMENT SCREENING to ensure the prospective employee is not prohibited from performing safety-sensitive functions

2. ANNUAL VERIFICATION to ensure that a driver is still not prohibited from performing safety-sensitive functions

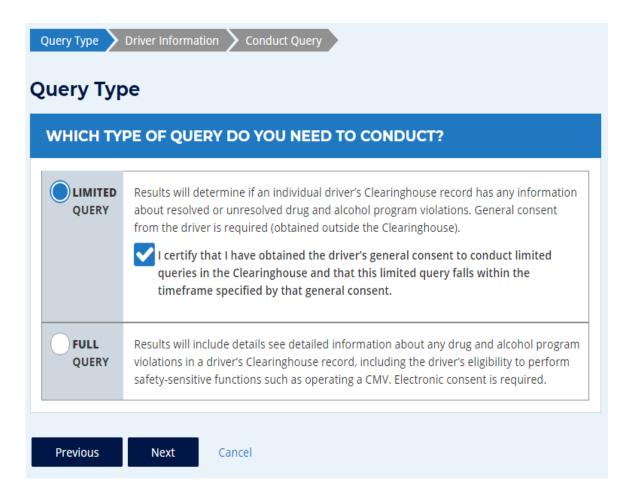
The purpose will determine the type of query:

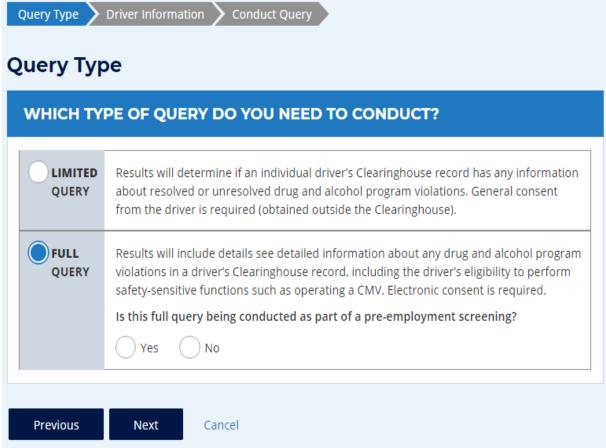
Purpose	Query Type
Pre-employment screening	Full query – access full violation details
Annual verification	Limited query – verify presence of driver information in the Clearinghouse. If information is discovered, a full query is required

Consent Requirements Based on Type of Query

	When is this query required?	How is consent provided?	For how long is consent effective?	What action is required?
LIMITED QUERY	Annual check on currently-employed driver Ad hoc/periodic check on driver	General consent, done outside the Clearinghouse May be electronic or wet signature, one time or unlimited	Limited consent form must specify time range	 Consent refused Query cannot be conducted Driver removed from safety-sensitive functions Consent provided Retain via paper or electronically in driver's qualification file Request limited query in the Clearinghouse
FULL QUERY	Pre-employment check on prospective driver Limited query returned records for queried driver Ad hoc/ periodic check on driver	Specific consent, provided electronically within the Clearinghouse	For each full query of an individual driver	 Consent refused Employer notified of refused consent Query cannot be conducted Driver cannot perform/removed from safety-sensitive functions Consent provided Query conducted Violation details released, including RTD status If queried driver has violation and no negative RTD test result, driver removed from safety-sensitive functions

Conduct Query

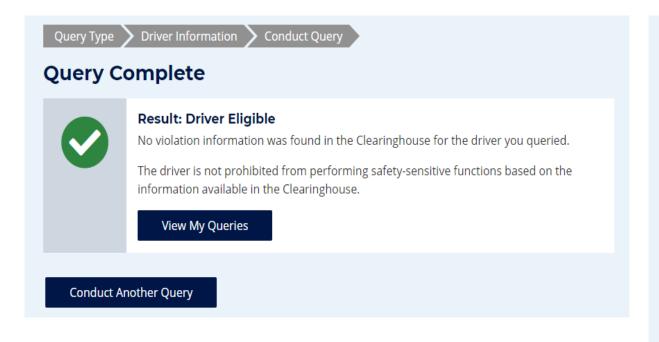


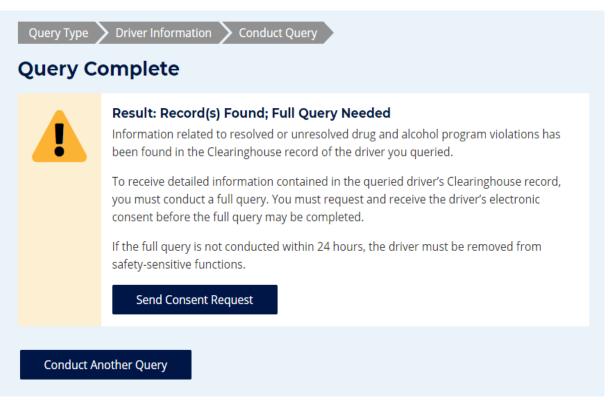




Conduct Query/Send Consent Request

Limited Query Results



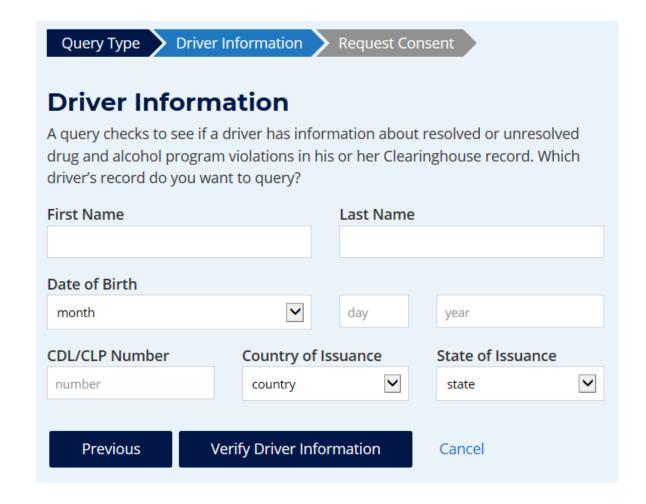




Conduct Query/Send Consent Request

Driver Information

- Driver's name, date of birth, and CDL number and State of issuance
- Information will be verified against FMCSA internal database and/or the Commercial Driver's License Information System (CDLIS)
 - Employer or C/TPA will have two attempts to enter the driver's information correctly
 - If the information cannot be validated, the query can not be conducted; the driver should be instructed to log into their Clearinghouse account for further instructions

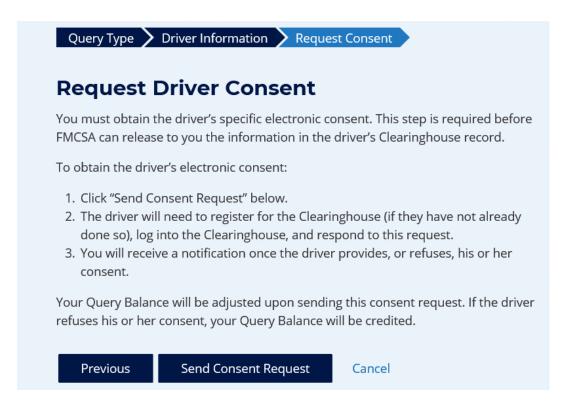


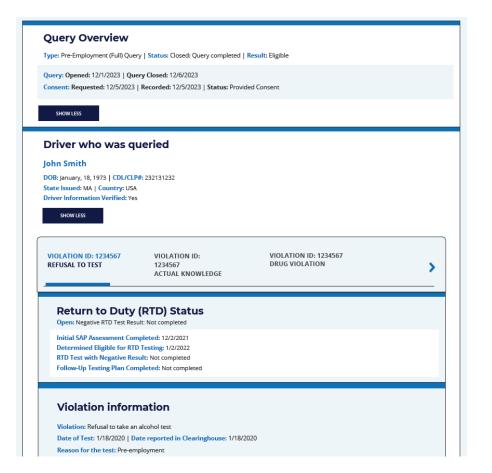


Conduct Query/Send Consent Request

Full Query

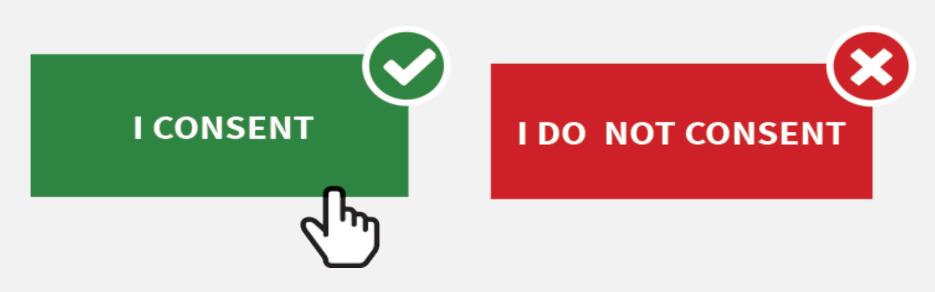
(must obtain electronic consent, then log into Clearinghouse to view results)







Drivers Respond to Consent Requests in the Clearinghouse



- Drivers must be registered in the Clearinghouse to provide consent for pre-employment and full queries
- Employers must obtain a driver's consent before querying the driver's violation information
- Drivers who refuse their consent cannot perform safety-sensitive functions (including operating a CMV) for that employer