

## **COMPLIANCE WITH REGULATIONS REGARDING THE FMCSA CLEARINGHOUSE**

The District is committed to complying with all federal regulations and assuring the safety of its students. Therefore, it is the policy of the District to comply with all Federal Department of Transportation (DOT) agency regulations regarding mandatory use of the Federal Motor Carrier Safety Administration's (FMCSA) Commercial Driver's License (CDL) Drug and Alcohol Clearinghouse (Clearinghouse) to screen its current and prospective CDL employees before and throughout their employment with the District. This policy supplements the District's existing drug and alcohol testing policies regarding bus drivers.

The District may contract with a Consortium/Third-Party Administrator (Consortium) to manage its compliance with this policy and law regarding the Clearinghouse, except its obligations to register and set up and account with the Clearinghouse and pay for queries.

### **Definitions**

"CDL Employee" means an employee of the District who performs a safety-sensitive function and must hold a CDL as a condition of their employment. This definition expressly includes any individual subject to drug testing under the District's *Drug Testing for Bus Drivers* policy.

"Current CDL Employee" means an CDL employee who was hired prior to January 6, 2020.

"Prospective CDL Employee" means either:

- a current employee of the District who seeks to perform safety-sensitive functions for the first time after January 6, 2020, and must hold a CDL as a condition to perform those safety-sensitive functions, or
- an applicant for a position within the District who was or will be hired after January 6, 2020, for which holding a CDL is a condition of employment.

### **Non-Delegable Duties Regarding the Drug and Alcohol Clearinghouse**

The District shall itself register and set up an account with the Clearinghouse and purchase queries from the Clearinghouse. It shall not contract with a Consortium to perform those duties.

### **CDL Employees Hired After January 6, 2020: Pre-Employment Screening**

- The District shall require all prospective CDL employees to register themselves with the Clearinghouse and provide the District with digital consent to obtain all information available from a full query.
- Until January 6, 2023, the District shall also secure the prospective CDL employee's written consent to obtain from previous and current DOT-regulated employers the following information covering the past three (3) years:
  - Any verified positive, adulterated, or substituted controlled substances test result; any alcohol confirmation test with a concentration of 0.04 or higher;

any refusal to submit to a test in violation of 49 C.F.R. § 382.211; or any employer has reported actual knowledge, as defined at § 382.107, that the driver used alcohol on duty in violation of § 382.205, used alcohol before duty in violation of § 382.207, used alcohol following an accident in violation of § 382.209, or used a controlled substance, in violation of § 382.213.

- o The District shall obtain the necessary consent and conduct a full query through the Clearinghouse for all prospective CDL employees and obtain results that confirm the prospective CDL employee's Clearinghouse record contains none of the violations listed in this section before permitting any prospective CDL employee to perform a safety-sensitive function for the District, including operating a CMV.
- o Once a prospective CDL employee has been hired, the District will conduct query requirements on the employee to the same extent those required on Current CDL Employees.

#### **Current CDL Employees: Conducting Queries from the Clearinghouse**

- At least annually (defined as once per 365-day period), the District shall conduct queries (full or limited) from the Clearinghouse on each CDL employee to determine whether information exists in the Clearinghouse. Any query run on an employee (including any full query run on a prospective CDL employee) shall count towards this requirement.
- When the District runs full queries on its CDL employees, it shall require those employees to register with the Clearinghouse and provide digital consent for the District to obtain all information available from a full query.
- The District may, in lieu of full queries, annually obtain its CDL employees' written consent and perform limited queries of the Clearinghouse.
  - o Should a limited query show that information exists within the Clearinghouse about a particular CDL employee, the District shall, within 24 hours of conducting the limited query, require the employee to register with the Clearinghouse (if not already registered) and provide digital consent for the District to obtain all information available from a full query; the District shall then conduct a full query to confirm the CDL employee's Clearinghouse record contains none of the prohibitions listed below.
  - o If the District fails to conduct a full query with the prescribed 24 hours, it shall not permit the CDL employee to continue to perform safety-sensitive functions until the District obtains a full query showing none of the prohibitions listed below.

#### **Prohibitions**

- The District shall not permit a CDL employee to perform any safety-sensitive function if they refuse to provide the necessary consents or the results of a Clearinghouse query demonstrate any of the following:
  - o a verified positive, adulterated, or substituted controlled substances test result; an alcohol confirmation test with a concentration of 0.04 or higher; a refusal to submit to a test in violation of 49 C.F.R. § 382.211; an employer has reported actual knowledge, as defined at § 382.107, that the driver used alcohol on duty in violation of § 382.205, used alcohol before duty in violation of § 382.207, used alcohol following an accident in violation of § 382.209, or used a controlled substance in

violation of § 382.213, except where a query of the Clearinghouse demonstrates that:

- (1) That the driver has successfully completed the Substance Abuse Professional (SAP) evaluation, referral, and education/treatment process set forth in part 40, subpart O, of title 49; achieves a negative return-to-duty test result; and completes the follow-up testing plan prescribed by the SAP.
- (2) That, if the driver has not completed all follow-up tests as prescribed by the SAP in accordance with 49 C.F.R. § 40.307 and specified in the SAP report required by § 40.311, the driver has completed the SAP evaluation, referral, and education/treatment process set forth in part 40, subpart O, of title 49 and achieves a negative return-to-duty test result, and the employer assumes the responsibility for managing the follow-up testing process associated with the testing violation.

### **Recordkeeping Requirements**

- The District shall retain for three (3) years a record of each Clearinghouse query it runs and all information received in response to each query made. The District shall additionally retain any written employee consent to limited queries for a period of not less than three (3) years from the last date a query was run on the employee.

### **Updating the Clearinghouse**

- The District or a Service Agent on behalf of the District, shall, by the close of the third business day following the date on which it obtained information related to a CDL employee, update the Clearinghouse with all information required under 49 C.F.R. §382.705(b), in any of the following circumstances:
  - o An alcohol confirmation test with a concentration of 0.04 or higher or a refusal to test for alcohol.
  - o Refusal to test for drugs when the a determination by an MRO is not required.
  - o Actual knowledge (defined by 49 C.F.R 382.107) that a driver has used alcohol on duty, used alcohol within four (4) house of coming on duty, used alcohol prior to a post-accident test, or has used a controlled substance.
  - o Negative return-to-duty test results (drug and alcohol testing); and
  - o Completion of a follow-up test.
- A SAP or MRO as defined in the *Drug Testing for Bus Drivers* policy shall report any information required by 49 C.F.R. 382.705 in the circumstances required pursuant to that regulation. The circumstances that must be reported include:
  - o Verified positive, adulterated, or substituted controlled substance tests results (MRO);
  - o Refusal-to-test determination by the MRO (MRO);
  - o A negative return-to-duty test (SAP); and
  - o An employer's report of completion of follow-up testing (SAP);

#### **Use of the Drug and Alcohol Clearinghouse to Comply with 40 C.F.R. § 40.25**

- As of January 6, 2023, the District shall use the Clearinghouse in accordance with 49 C.F.R. § 382.701(a) to comply with its obligations under 49 C.F.R. § 40.25 regarding its drug and alcohol testing requirements for CDL employees; except, where an employee subject to follow-up testing has not successfully completed all follow-up tests, the District shall then request the employee's follow-up testing plan directly from the previous employer in accordance with § 40.25(b).

Additionally, the District shall request information required under § 40.25 directly from those employers regulated by a DOT agency other than FMCSA if a prospective CDL employee was subject to an alcohol and controlled testing program under the requirements of a DOT Agency other than FMCSA.