



## COOK COUNTY BUREAU OF HUMAN RESOURCES

### POLICY TITLE: BACKGROUND CHECK POLICY ADDENDUM

Approved: December 28, 2020

Effective: January 5, 2021

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#### A. Overview

The Federal Motor Carrier Safety Administration ("FMCSA") amended the Federal Motor Carrier Safety Regulations to establish requirements for the Commercial Driver's License Drug and Alcohol Clearinghouse ("Clearinghouse"). See 49 CFR §382.701 et seq. The Clearinghouse, which is a database under the FMCSA's administration, contains information pertaining to violations of the FMCSA controlled substances and alcohol testing program for holders of Commercial Driver's Licenses ("CDLs").

#### B. Purpose

In response to the FMCSA's final ruling on commercial driver's licensure, Cook County will implement Clearinghouse query processes and procedures for employees in safety sensitive-position functions with CDLs who operate Commercial Motor Vehicles, those subject to the FMCSA drug and alcohol testing regulations and applicants for such positions.

#### C. Intent

This policy is intended to be interpreted consistent with and subject to applicable law. It supersedes all earlier policies and/or memoranda that may have been issued from time-to-time on subjects covered in this policy. This policy is not intended to supersede or limit the County from enforcing programs or provisions in any applicable collective bargaining agreement. Should any provision in this policy conflict with a provision(s) in the Background Check Policy, the provision(s) in this policy shall take precedence.

#### D. Severability

If any section or provision of this document should be held invalid by operation of law, none of the remainder shall be affected.

#### E. Jurisdiction

The Bureau of Human Resources ("BHR") is authorized to develop and issue policies for the effective management of Cook County employees, applicants and candidates for employment, pursuant to section 44-45 of the Cook County Code of Ordinances.



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**F. Areas Affected**

This policy applies to County employees and applicants in Departments in the Offices under the President and/or covered by the Cook County Employment Plan.

**G. Nondiscrimination**

Cook County prohibits the discriminatory application, implementation, or enforcement of any provision of this policy on the basis of race, color, sex, age, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, military discharge status, source of income, gender identity or housing status, or any other protected category established by law, statute, or ordinance.

**H. Definitions**

For the purposes of this policy, the following terms shall be given the following meanings as set forth below:

**Commercial Driver’s License (“CDL”)** – A license that allows a tested and approved driver to operate certain types of motor vehicles including, but not limited to, 18-wheeler trucks, tour buses, school buses, tanker vehicles and vehicles transporting hazardous materials.

**Commercial Driver's License Drug and Alcohol Clearinghouse (“Clearinghouse”)** – A secure online database that gives employers, the FMCSA, State Driver Licensing Agencies (SDLAs), and State law enforcement personnel real-time information about CDL and Commercial Learner's Permit (CLP) holders' drug and alcohol program violations. Employers and service agents are required to report information and to conduct queries regarding drivers who are subject to the FMCSA controlled substance and alcohol testing regulations.

**Commercial Learner’s Permit (“CLP”)** – A permit issued to an individual by a State or other jurisdiction of domicile, in accordance with the standards contained in 49 CFR 383, which, when carried with a valid driver's license issued by the same State or jurisdiction, authorizes the individual to operate a class of a commercial motor vehicle when accompanied by a holder of a valid CDL for purposes of behind-the-wheel training. When issued to a CDL holder, a CLP serves as authorization for accompanied behind-the-wheel training in a CMV for which the holder's current CDL is not valid.

**Full Query** – An electronic check in the Clearinghouse query, conducted by an employer or their designated Third-Party Administrator, to determine if current employees or



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applicants are prohibited from performing safety-sensitive functions, due to unresolved drug and alcohol program violations. A Full Query allows the employer to see detailed information about any drug and alcohol program violations in a driver’s Clearinghouse record.

**Limited Query** – An electronic check in the Clearinghouse query to determine if an employee’s Clearinghouse record has any information about resolved or unresolved drug and alcohol program violations. A limited query allows an employer to determine if an individual driver’s Clearinghouse record has any information about resolved or unresolved drug and alcohol program violations, but does not release any specific violation information contained in the driver’s Clearinghouse record.

**Qualified Department of Transportation Substance Abuse Professional (“SAP”)** – An individual who is credentialed as a physician, social worker, psychologist or certified employee assistance professional who is knowledgeable about disorders associated with substance abuse in relation to safety-sensitive duties regulated by the Department of Transportation (“DOT”). A DOT-qualified SAP initially evaluates drivers who have violated DOT drug and alcohol regulations and makes recommendations concerning education, treatment, follow-up testing, and aftercare. Once the education and/or treatment is successfully completed, the SAP reassesses the driver’s condition and, if satisfied with the driver’s compliance, completes a SAP report and prescribes a series of follow-up tests covering a period of time. Any motor carrier employing this driver during the prescribed period must complete the follow-up testing as specified by the SAP.

**Removal** – no employee shall perform safety-sensitive functions, including driving a commercial motor vehicle, if the employee has engaged in conduct prohibited by an alcohol or controlled substances rule of the Department of Transportation agency.

**Safety-sensitive Function for CDL License Holders** – all time from the time a driver begins to work or is required to be in readiness to work until the time he/she is relieved from work and all responsibility for performing work. Safety-sensitive functions shall include:

- (1) All time at an employer or shipper plant, terminal, facility, or other property, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the employer;
- (2) All time inspecting equipment as required by 49 CFR § 392.7 and 49 CFR § 392.8 or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time;



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(3) All time spent at the driving controls of a commercial motor vehicle in operation;

(4) All time, other than driving time, in or upon any commercial motor vehicle except time spent resting in a sleeper berth (a berth conforming to the requirements of 49 CFR § 393.76);

(5) All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded; and

(6) All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

**I. Policy and Procedures**

Pursuant to the final rule regarding the FMCSA Clearinghouse, the County will conduct an electronic query for CDL safety-sensitive positions to check for drug and alcohol violations. The information collected from the Clearinghouse will be used for the employment decision-making process for both applicants and current employees. All full-time, part-time and seasonal drivers required to possess a CDL including, but not limited to drivers of construction equipment operators, municipal vehicle, and drivers subject to FMCSA drug and alcohol testing regulations, who operate a commercial motor vehicle on public roads are required to participate in the Clearinghouse. Employment offers to applicants, who are required to possess a CDL for a safety-sensitive position, are contingent upon satisfactory Background Check, which includes a check of drug and alcohol violations either through the Clearinghouse and through contacting previous employers, where applicable. Traditional manual inquiries through previous employers will be conducted until January 6, 2023 to meet the three-year timeframe for checking CDL driver violation histories.

**1. Consent**

Clearinghouse queries are subject to advanced consent by employees and applicants through a General Consent for Limited Queries of the FMCSA Drug and Alcohol Clearinghouse Form (“Consent Form”) for Limited Queries or electronically through the Clearinghouse for Full Queries. The Consent Form is attached as Exhibit A.



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**a. Full Query**

Current employees and applicants must register with the Clearinghouse database in the time frame required by the County. After registering, consent must be provided electronically within the Clearinghouse for the County to perform a Full Query. Specific consent must be provided to the County prior to each Full Query. Once consent is granted and the County performs a Full Query, the Clearinghouse will notify the County of any change to a driver’s record within 30 days of a pre-employment query being conducted. Instructions on how to register will be sent with the offer letter.

**b. Limited Query**

Current employees provide consent for the County to perform a Limited Query by completing a Consent Form within the applicable time frame. The permission to perform a Limited Query may be effective for more than one year, however, the timeframe must be specified on the Consent Form. The Consent Form must be submitted to the Department Head who will forward it to the Personnel Services Division of the Bureau of Human Resources.

**c. Refusal/Failure to Consent**

Refusal or failure to consent to a Full or Limited Query shall result in rescission of the employment offer and/or removal of the employee from their CDL safety-sensitive functions. Additionally, employees will be subject to disciplinary action, up to and including discharge in accordance with the applicable collective bargaining agreements and/or the Cook County Personnel Rules.

**2. Employee Access to Information in the Clearinghouse**

Employees and applicants may review information in the Clearinghouse about themselves, except as otherwise restricted by law or regulation. Employees and applicants must register with the Clearinghouse before accessing information.

**3. Forms of Background Checks Performed**

Background Checks performed for CDL drivers will be through the Clearinghouse database as required by the FMSCA regulation. However,



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in addition to Clearinghouse queries, traditional manual inquiries with previous employers must continue until January 6, 2023 to meet the three-year timeframe for checking CDL driver violation histories.

**4. Required Queries**

**a. Pre-employment Query**

i. The County is required to conduct a Full Query of the Clearinghouse before employing applicants who are subject to controlled substances and alcohol testing under 49 CFR Part 382 to perform safety-sensitive functions. The purpose of the pre-employment Full Query is to obtain the following information about whether the applicant:

- has a verified positive, adulterated, or substituted controlled substances test result;
- has an alcohol confirmation test with a concentration of 0.04 or higher;
- has refused to submit to a test in violation of 49 CFR § 382.211; or
- that an employer has reported actual knowledge, as defined at 49 CFR § 382.107, that the driver used alcohol on duty in violation of 49 CFR § 382.205, used alcohol before duty in violation of 49 CFR § 382.207, used alcohol following an accident in violation of 49 CFR § 382.209, or used a controlled substance, in violation of 49 CFR § 382.213.

**b. Annual Query**

i. The County must conduct a Limited Query of the Clearinghouse at least once per year for information for all employees who are subject to controlled substance and alcohol testing under 49 CFR Part 382 to determine whether information exists in the Clearinghouse about those employees. The limited query will tell the County whether there is information about the individual employee in the Clearinghouse, but will not release the specific information to the County.



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- ii. If the limited query shows that information exists in the Clearinghouse about the individual employee, the County must conduct a Full Query, within 24 hours of conducting the Limited Query. If the County fails to conduct a Full Query within 24 hours, it must not allow the driver to continue to perform any safety-sensitive function until the County conducts the Full Query and the results confirm that the employee’s Clearinghouse record contains no prohibitions.

**5. Prohibitions**

- a. The County may not allow an employee or applicant to perform any safety-sensitive function if the results of a Clearinghouse query demonstrate the employee or applicant:
  - i. has a verified positive, adulterated, or substituted controlled substances test result;
  - ii. has an alcohol confirmation test with a concentration of 0.04 or higher;
  - iii. has refused to submit to a test in violation of 49 CFR § 382.211; or
  - iv. that an employer has reported actual knowledge, as defined at 49 CFR § 382.107, that the driver used alcohol on duty in violation of 49 CFR § 382.205, used alcohol before duty in violation of 49 CFR § 382.207, used alcohol following an accident in violation of 49 CFR § 382.209, or used a controlled substance, in violation of 49 CFR § 382.213.
- b. The exception to Section 5.a. is where a query of the Clearinghouse demonstrates:
  - i. That the employee or applicant has successfully completed the 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; or



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- ii. That, if the driver has not completed all follow-up tests as prescribed by the SAP in accordance with 49 CFR § 40.307 and specified in the SAP report required by 49 CFR § 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.

**6. Background Check Review Process**

- a. Background Check Reports, related to the Clearinghouse, will be designated "approved" provided:
  - i. There is no record of a violation, or
  - ii. The Full Query report complies with the exceptions in 5. b. above.
- b. Background Check Reports will be designated "pending," related to the Clearinghouse, provided that an employee's Clearinghouse results indicate a violation on record and the applicant or employee has been given an opportunity to cure.
  - i. Employees that show a record of a drug or alcohol violation through a limited query must provide consent for the County to conduct a Full Query.
  - ii. Upon consent, a Full Query will be conducted to view the details of the violation and ascertain the return-to-duty status.
- c. Background Check Reports will be designated "disapproved" provided that:
  - i. The applicant's results indicate:
    - A violation on record that has not been cleared
    - A positive drug test result
    - A refusal/failure to submit to a test, and/or
    - An inability to prove successful completion of the return-to-duty process with a SAP.





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- ii. An employee’s Limited Query returns with a violation on their driver’s record and requires them to give consent for a Full Query within 24 hours. Lack of consent within the timeframe would cause the driver to be removed from safety-sensitive functions.

**7. Correcting Information in the Database**

Employees, applicants or an authorized representative may challenge the accuracy of the information reported by the FMCSA on the Clearinghouse through its petition process. The petitioner may submit his/her petition electronically through the Clearinghouse or in writing to: Federal Motor Carrier Safety Administration, Office of Enforcement and Compliance, Attention: Drug and Alcohol Program Manager, 1200 New Jersey Avenue SE., Washington, DC 20590.

**8. Availability and Removal of Information**

- a. Information about employee’s or applicant’s drug or alcohol violations will be available when the County conducts a query of the Clearinghouse until all of the following conditions relating to violations are satisfied:
  - i. The SAP reports to the Clearinghouse the information required in 49 CFR § 382.705(d);
  - ii. The employer reports to the Clearinghouse that the employee’s return-to-duty test results are negative;
  - iii. The applicant’s current employer or the County reports that an employee has successfully completed all follow-up tests as prescribed in the SAP report in accordance with § 40.307, 40.309, and 40.311 of title 49; and
  - iv. Five years have passed since the date of the violation determination.
- b. Information about a particular employee or applicant’s drug or alcohol violation will remain available to the County until the violation is resolved through the successful completion of the return-to-duty (RTD) process and follow-up testing plan.



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**9. Recordkeeping**

The County must retain a record of each query and all information received in response to each query made for 3 years. As of January 6, 2023, an employer who maintains a valid registration fulfills this requirement.

**J. Confidentiality**

Cook County maintains confidentiality of information, to the extent required by applicable law.



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**EXHIBIT A**

**GENERAL CONSENT FOR LIMITED QUERIES OF THE FMCSA DRUG AND  
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**General Consent for Limited Queries of the  
Federal Motor Carrier Safety and Administration (FMCSA)  
Drug and Alcohol Clearinghouse (49 CFR 382)**

I, \_\_\_\_\_, hereby provide consent to the Cook County Bureau of Human Resources to conduct Limited Queries of the FMCSA Commercial Driver’s License Drug and Alcohol Clearinghouse (“Clearinghouse”) to determine whether drug or alcohol violation information about me exists in the Clearinghouse.

I understand that this consent includes multiple annual limited queries for the duration of my employment. The Clearinghouse requires that all employees be queried at least once within a 365-day or 12-month period. The Cook County Bureau of Human Resources reserves the right to use this consent for the purpose of conducting required annual limited queries.

I understand that if the Limited Query conducted by the Cook County Bureau of Human Resources indicates that drug or alcohol violation information about me exists in the Clearinghouse, FMCSA will not disclose that information to Cook County without first obtaining additional specific consent from me. This will require a Full Query consent by me, within 8 hours of the Cook County Bureau of Human Resources’ request, which must be completed electronically through the Clearinghouse website, <https://clearinghouse.fmcsa.dot.gov>.

I further understand that if I refuse to provide consent for the Cook County Bureau of Human Resources to conduct a Limited Query of the Clearinghouse, Cook County must prohibit me from performing safety-sensitive functions, including driving a commercial motor vehicle, as required by FMCSA’s drug and alcohol program regulations (49CFR 382.703 (c)). *Please note that refusal to consent may result in disciplinary action, up to and including discharge in accordance with the applicable collective bargaining agreements and/or the Cook County Personnel Rules.*

\_\_\_\_\_  
Employee Signature

\_\_\_\_\_  
Date