

NORTH RISK PARTNERS | **PATRON DOT Compliance**

FMCSA CLEARINGHOUSE: NEW RULE UPDATES & WHAT YOU NEED TO KNOW

NOVEMBER 2024

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WEBINAR TOPICS

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PRESENTER

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WHAT IS THE COMMERCIAL DRIVER'S LICENSE DRUG AND ALCOHOL CLEARINGHOUSE?

- The Federal Motor Carrier Administration (FMCSA) established the Commercial Driver's License (CDL) Drug and Alcohol Clearinghouse (Clearinghouse) effective January 6, 2020. This new database contains information pertaining to violations of the U.S. Department of Transportation (DOT) controlled substances (drug) and alcohol testing program for holders of CDLs.
- The Clearinghouse rule requires FMCSA-regulated employers, medical review officers (MROs), substance abuse professionals (SAPs), consortia/third party administrators (C/TPAs), and other service agents to report to the Clearinghouse information related to violations of the drug and alcohol regulations in 49 Code of Federal Regulations, Parts 40 and 382 by current and prospective employees.



The Clearinghouse retains information about holders of commercial driver's licenses (CDLs) and Department of Transportation (DOT) drug and alcohol testing program.

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WHAT IS THE COMMERCIAL DRIVER'S LICENSE DRUG AND ALCOHOL CLEARINGHOUSE?

The Clearinghouse provides FMCSA and employers the necessary tools to identify drivers who are prohibited from operating a CMV based on DOT drug and alcohol program violations and ensure that such drivers receive the required evaluation and treatment before operating a CMV on public roads. Specifically, information maintained in the Clearinghouse enables employers to identify drivers who commit a drug or alcohol program violation while working for one employer, but who fail to subsequently inform another employer (as required by current regulations).

Records of drug and alcohol program violations will remain in the Clearinghouse for five years, or until the driver has completed the return-to-duty process, whichever is later.

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WHAT IS THE COMMERCIAL DRIVER'S LICENSE DRUG AND ALCOHOL CLEARINGHOUSE?

The Clearinghouse final rule requires the following:

- Employers must query the Clearinghouse for current and prospective employees' drug and alcohol violations before permitting those employees to operate a commercial motor vehicle (CMV) on public roads. **(FULL QUERY)**
- Employers must annually query the Clearinghouse for each driver they currently employ. **(LIMITED QUERY)**

For more information on the Clearinghouse, visit <http://clearinghouse.fmcsa.dot.gov/>

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REGISTRATION: EMPLOYERS

Create a Login.gov Account
 Accessing the Clearinghouse requires the creation of an account with login.gov, a shared service that offers secure online access to participating government systems, including the Clearinghouse. If you do not have a login.gov account, or would like to create a new one, you will need to follow the steps below.

- 1 Visit <https://clearinghouse.fda.gov/govregister> and click **Go to login.gov**.
 During the login.gov registration process, after 30 minutes of inactivity, the current page will clear whatever information is entered on the page below.
- 2 On the login.gov sign in screen, click **Create an account**.
 If you already have a login.gov account, enter your credentials on this screen, click **Sign in to get going!**

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REGISTRATION: EMPLOYERS

- 3 Enter your email address and click **Submit**. This is the email address the Clearinghouse will use to send you notifications about your Clearinghouse account. This email address will also be used to identify you in the Clearinghouse, and cannot be modified.
 Enter your email address and click **Submit**.
- 4 Check your email and open the email from **no-reply@login.gov**, with the subject line **Confirm your email**.
 Click **Confirm email address**, or copy and paste the link into a web browser.

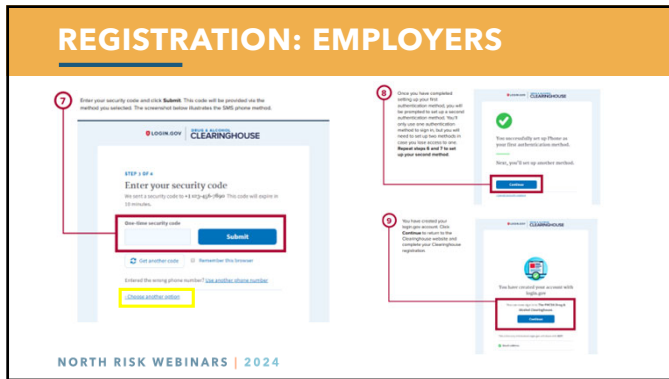
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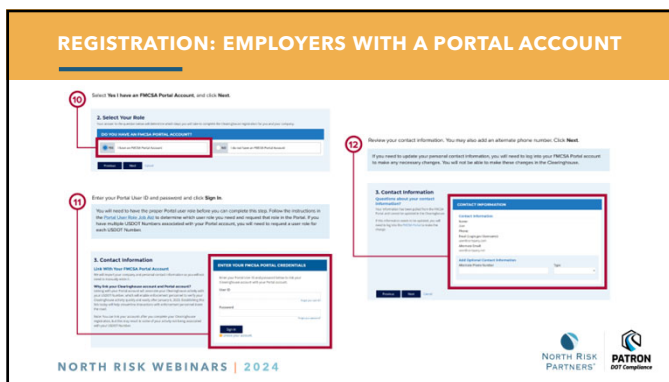
REGISTRATION: EMPLOYERS

- 5 Create a password. This password must be at least 12 characters long, if the password you enter is not strong enough, you will not be able to confirm. Enter a strong password and click **Continue**.
- 6 Select an option to secure your account and click **Continue**.
 Login.gov requires the completion of a user verification process to ensure the proper person is using those credentials. Follow the instructions for the method you select.

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CONDUCTING A FOLLOW-ON QUERY

A follow-on query in the Drug & Alcohol Clearinghouse is required when an employer receives a notification that a driver's Clearinghouse record has changed:

Timeframe

- The follow-on query must be completed within 24 hours of receiving the notification

Purpose

- The query determines if the new information prevents the driver from performing safety-sensitive functions, like driving a (CMV) **PROHIBITED** or **NOT PROHIBITED**

Consent

- The driver must provide electronic consent in the Clearinghouse for the employer to conduct the query

Consequences

- If the employer doesn't complete the query within 24 hours, the driver must be removed from safety-sensitive functions. The employer could also face **substantial fines** if audited.

Annual query

- A follow-on query can satisfy the annual query requirement. *

*For example, if an employer completes a follow-on query on Feb. 1, 2023, they won't need to complete another annual query until Feb. 1, 2024.

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HOW TO REPORT VIOLATIONS

Violation Reporting Requirements

Employers are required to report driver drug and alcohol program violations in the FMCSA Commercial Driver's License Drug and Alcohol Clearinghouse. An employer may designate a consortium/third-party administrator (C/TPA) in the Clearinghouse to assist with meeting these reporting requirements; however, the employer retains ultimate responsibility for compliance. See the [Reporting Violations for C/TPAs Job Aid](#) for instructions.

Employers also have reporting requirements regarding any drivers they employ who are undergoing a return-to-duty (RTD) process. [Learn more about the RTD process.](#)

Owner-operators—that is, employers who employ themselves as CDL drivers, typically a single-driver operation—are required to designate a C/TPA in the Clearinghouse. Owner-operators may choose to report drug and alcohol program violations for any other drivers they employ, however, the C/TPA has the responsibility to report any drug and alcohol program violation incurred by the owner-operator.

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HOW TO REPORT VIOLATIONS CONT.

Which violations are employers responsible for reporting?

Both employers and medical review officers (MROs) are required to report drug and alcohol program violations in the Clearinghouse per § 382.705. The table below identifies who is responsible for reporting each type of violation.

Reporting Entity	Violations Reported to the Clearinghouse	Timeframe for Reporting
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 of a drug or alcohol violation, as defined in 49 CFR § 382.907	Employers must report any drug and alcohol program violation information by the close of the third business day following the date on which the employer obtained the information.
MRO	Verified positive, adulterated, or substituted drug test result Refusal to test (drug) requiring a determination by the MRO as specified in 49 CFR § 40.191	MROs must report results within two business days of making a determination or verification of a Department of Transportation (DOT)-required drug test. Any changes to the results report of a verified drug test must be reported to the Clearinghouse within one business day of making the changes.

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RETURN-TO-DUTY PROCESS (RTD)

§ 40.295 May employees or employers seek a second SAP evaluation if they disagree with the first SAP's recommendations?

(a) As an employee with a DOT drug and alcohol regulation violation, when you have been evaluated by a SAP, you must not seek a second SAP's evaluation in order to obtain another recommendation.

(b) As an employer, you must not seek a second SAP's evaluation if the employee has already been evaluated by a qualified SAP. If the employee, contrary to paragraph (a) of this section, has obtained a second SAP evaluation, as an employer you may not rely on it for any purpose under this part.

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UPDATING YOUR FEDERAL DRUG & ALCOHOL POLICY § 382.601

To update your federal drug and alcohol policy for the Clearinghouse, you need to explicitly incorporate the requirement to query the Clearinghouse for all pre-employment and periodic drug and alcohol tests of commercial drivers, outlining procedures for accessing the database, interpreting results, and taking appropriate actions based on a driver's "prohibited" status, including mandatory return-to-duty processes if a violation is found; ensure your policy clearly defines the reporting obligations to the Clearinghouse for any positive tests or refusals, and specify the consequences for drivers with violations in their Clearinghouse record.

This section describes the required content that needs to be addressed in your company's Federal Drug & Alcohol Testing Policy.

§ 382.601 Employer obligation to promulgate a policy on the misuse of alcohol and use of controlled substances.

(a) General requirements. Each employer shall provide educational materials that explain the requirements of this part and the employer's policies and procedures with respect to meeting these requirements.

- (1) The employer shall ensure that a copy of these materials is distributed to each driver prior to the start of alcohol and controlled substances testing under this part and to each driver subsequently hired or transferred into a position requiring driving a commercial motor vehicle.
- (2) Each employer shall provide written notice to representatives of employee organizations of the availability of this information.

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UPDATING YOUR FEDERAL DRUG & ALCOHOL POLICY § 382.601 CONT.

(b) Required content. The materials to be made available to drivers shall include detailed discussion of at least the following:

- 1) The identity of the person designated by the employer to answer driver questions about the materials;
- 2) The categories of drivers who are subject to the provisions of this part;
- 3) Sufficient information about the safety-sensitive functions performed by those drivers to make clear what period of the workday the driver is required to be in compliance with this part's specific information concerning driver conduct that is prohibited by this part;
- 4) The circumstances under which a driver will be tested for alcohol and/or controlled substances under this part, including post-accident testing under § 382.203(d);
- 5) The procedures that will be used to test for the presence of alcohol and controlled substances, protect the driver and the integrity of the testing process, safeguard the validity of the test results, and ensure that those results are attributed to the correct driver, including post-accident information, procedures and instructions required by § 382.203(d);
- 6) The requirement that a driver submit to alcohol and controlled substances tests administered in accordance with this part;
- 7) An explanation of what constitutes a refusal to submit to an alcohol or controlled substances test and the attendant consequences;
- 8) The consequences for drivers found to have violated subpart B of this part, including the requirement that the driver be removed immediately from safety-sensitive functions, and the procedures under part 40, subpart Q, of this title;
- 9) The consequences for drivers found to have an alcohol concentration of 0.02 or greater but less than 0.04;
- 10) Information concerning the effects of alcohol and controlled substances use on an individual's health, work, and personal life; signs and symptoms of an alcohol or a controlled substances problem (the driver's or a co-worker's); and available methods of intervening when an alcohol or a controlled substances problem is suspected, including confrontation, referral to any employee assistance program and/or referral to management; and
- 11) The requirement that the following personal information collected and maintained under this part shall be reported to the Clearinghouse:
 - i. A verified positive, adulterated, or substituted drug test result;
 - ii. An alcohol confirmation test with a concentration of 0.04 or higher;
 - iii. A refusal to submit to any test required by subpart C of this part;
 - iv. An employer's report of actual knowledge, as defined at § 382.107;
 - A. On-duty alcohol use pursuant to § 382.205;
 - B. Pre-duty alcohol use pursuant to § 382.207;
 - C. Alcohol use following an accident pursuant to § 382.209; and
 - D. Controlled substance use pursuant to § 382.213;
 - v. A substance abuse professional (SAP as defined in § 40.3 of this title) report of the successful completion of the return-to-duty process;
 - vi. A negative return-to-duty test; and
 - vii. An employer's report of completion of follow-up testing.

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SAFETY PERFORMANCE HISTORY REQUESTS (SPHR) § 391.23(D) INVESTIGATION AND INQUIRIES.


The Clearinghouse replaces the investigation or inquiry to the previous employer in the last 3 years as it relates to the Drug & Alcohol Testing.

As of January 6, 2023, employers subject to and § 391.23(e) Investigation and inquiries must use the Drug and Alcohol Clearinghouse to comply with the requirements of § 391.23(e) with respect to FMCSA-regulated employers.

After January 6, 2023, the prospective motor carrier must investigate, at a minimum, the information listed below from all previous employers of the applicant that employed the driver to operate a CMV within the previous three years. The investigation may consist of personal interviews, telephone interviews, letters, or any other method for investigating that the carrier deems appropriate. Each motor carrier must make a written record with respect to each previous employer contacted, or good faith efforts to do so.

- 1) General driver identification and employment verification information.
- 2) Accidents involving the driver that occurred in the three-year period preceding the date of the employment application.
- 3) Any accidents the previous employer may wish to provide that are pursuant to the employer's internal policies for retaining more detailed minor accident information.

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HELPFUL LINKS


<https://clearinghouse.fmcsa.dot.gov/Learn>
<https://clearinghouse.fmcsa.dot.gov/FAQ/>
<https://clearinghouse.fmcsa.dot.gov/Resource/Storyline/Employer-Reg/>
<https://clearinghouse.fmcsa.dot.gov/resource/page/sdla-resources>
<https://clearinghouse.fmcsa.dot.gov/FAQ/>

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QUESTIONS?



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