

and the procedures under part 40, subpart O, of this title;

(10) The consequences for drivers found to have an alcohol concentration of 0.02 or greater but less than 0.04;

(11) 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

(12) 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.

(c) *Optional provision.* The materials supplied to drivers may also include information on additional employer policies with respect to the use of alcohol or controlled substances, including any consequences for a driver found to have a specified alcohol or controlled substances level, that are based on the employer's authority independent of this part. Any such additional policies or consequences must be clearly and obviously described as being based on independent authority.

(d) *Certificate of receipt.* Each employer shall ensure that each driver is required to sign a statement certifying that he or she has received a copy of these materials described in this section. Each employer shall maintain the signed certificate and may provide a copy of the certificate to the driver.

[66 FR 43103, Aug. 17, 2001, as amended at 78 FR 58479, Sept. 24, 2013; 81 FR 87725, Dec. 5, 2016; 83 FR 16226, Apr. 16, 2018]

§ 382.603 Training for supervisors.

Each employer shall ensure that all persons designated to supervise drivers receive at least 60 minutes of training on alcohol misuse and receive at least an additional 60 minutes of training on controlled substances use. The training will be used by the supervisors to determine whether reasonable suspicion exists to require a driver to undergo testing under § 382.307. The training shall include the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances. Recurrent training for supervisory personnel is not required.

§ 382.605 Referral, evaluation, and treatment.

The requirements for referral, evaluation, and treatment must be performed in accordance with 49 CFR part 40, Subpart O.

Subpart G—Requirements and Procedures for Implementation of the Commercial Driver's License Drug and Alcohol Clearinghouse

SOURCE: 81 FR 87725, Dec. 5, 2016, unless otherwise noted.

§ 382.701 Drug and Alcohol Clearinghouse.

(a) *Pre-employment query required.* (1) Employers must not employ a driver subject to controlled substances and alcohol testing under this part to perform a safety-sensitive function without first conducting a pre-employment query of the Clearinghouse to obtain information about whether the driver has a verified positive, adulterated, or substituted controlled substances test

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result; has an alcohol confirmation test with a concentration of 0.04 or higher; has refused to submit to a test in violation of §382.211; or that 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.

(2) The employer must conduct a full query under this section, which releases information in the Clearinghouse to an employer and requires that the individual driver give specific consent.

(b) *Annual query required.* (1) Employers must conduct a query of the Clearinghouse at least once per year for information for all employees subject to controlled substance and alcohol testing under this part to determine whether information exists in the Clearinghouse about those employees.

(2) In lieu of a full query, as described in paragraph (a)(2) of this section, an employer may obtain the individual driver's consent to conduct a limited query to satisfy the annual query requirement in paragraph (b)(1) of this section. The limited query will tell the employer whether there is information about the individual driver in the Clearinghouse, but will not release that information to the employer. The individual driver may give consent to conduct limited queries that is effective for more than one year.

(3) If the limited query shows that information exists in the Clearinghouse about the individual driver, the employer must conduct a full query, in accordance with paragraph (a)(2) of this section, within 24 hours of conducting the limited query. If the employer fails to conduct a full query within 24 hours, the employer must not allow the driver to continue to perform any safety-sensitive function until the employer conducts the full query and the results confirm that the driver's Clearinghouse record contains no prohibitions as defined in paragraph (d) of this section.

(c) *Employer notification.* If any information described in paragraph (a) of this section is entered into the Clearinghouse about a driver during the 30-

day period immediately following an employer conducting a query of that driver's records, FMCSA will notify the employer.

(d) *Prohibition.* No employer may allow a driver the employer employs or intends to hire or use to perform any safety-sensitive function if the results of a Clearinghouse query demonstrate that the driver 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 §382.211; or that 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:

(1) That the driver has successfully completed the SAP evaluation, referral, and education/treatment process set forth in part 40, subpart O, of this title; 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 §40.307 of this title and specified in the SAP report required by §40.311 of this title, the driver has completed the SAP evaluation, referral, and education/treatment process set forth in part 40, subpart O, of this title 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.

(e) *Recordkeeping required.* Employers must retain for 3 years a record of each query and all information received in response to each query made under this section. As of January 6, 2023, an employer who maintains a valid registration fulfills this requirement.

[81 FR 87725, Dec. 5, 2016, as amended at 86 FR 35639, July 7, 2021]