



## OBTAINING LEGISLATIVE AUTHORITY

### Background: the First and Second Clearinghouse Final Rules

The Commercial Driver’s License Drug and Alcohol Clearinghouse [2016 final rule \(Clearinghouse-I\)](#), which implemented a statutory mandate, 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 CDL drivers’ violations of FMCSA’s drug and alcohol regulations in 49 CFR part 382, subpart B. The Clearinghouse-I final rule was implemented on January 6, 2020.

The Controlled Substances and Alcohol Testing: State Driver’s Licensing Agency (SDLA) Non-Issuance/ Downgrade of Commercial Driver’s License [2021 final rule \(Clearinghouse-II\)](#), requires SDLAs to downgrade the commercial driver’s license (CDL) or commercial learner’s permit (CLP) privileges when a driver has a Clearinghouse status of “Prohibited,” and reinstate the CDL/CLP privilege when a driver’s Clearinghouse status changes to “Not Prohibited.” To meet these requirements, SDLAs must be able to request information from, or “query,” the Clearinghouse and receive notifications from FMCSA. The rule also makes certain clarifying and conforming changes to existing regulations, as described in the [SDLA Clearinghouse Compliance Factsheet](#).

CLEARINGHOUSE-II FINAL RULE INFORMATION	
Federal Register Publication Date	October 7, 2021
Effective Date	November 8, 2021
State Compliance Date	November 18, 2024
Federal Motor Carrier Safety Regulation Parts Affecting SDLAs	Parts 382, 383, 384

### Clearinghouse Requirements

**Note: Full compliance with the Clearinghouse-II final rule requires actions in addition to having the appropriate legal authority to implement the Clearinghouse query and CLP/CDL downgrade requirements.** For more information on how to fully comply with the Clearinghouse-II final rule, including but not limited to Information Technology (IT) connection options, and Commercial Driver’s License Program Implementation (CDLPI) grant opportunities, visit <https://clearinghouse.fmcsa.dot.gov/Resource/Page/SDLA-Resources>.



#### Consult Your Legal Counsel

As an initial step, States should consult with their legal counsel to determine if existing legislative authorities allow for compliance with the Clearinghouse-II final rule, or if it is necessary to adopt legislation or amend the State’s current regulations.



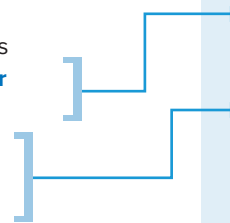
## Obtaining Legislative Authority

States may use this outline of the Clearinghouse-II requirements to assist them in making the changes to their State's statutes and regulations if they are necessary to facilitate implementation of the SDLA Clearinghouse query and CLP/CDL downgrade requirements by November 18, 2024.

The following excerpts from the Clearinghouse-II final rule highlight SDLA requirements.

### Querying the Clearinghouse and Denying Licensing Transactions

"The Clearinghouse regulations require that SDLAs check the driver's status by **querying the Clearinghouse prior to issuing, renewing, transferring, or upgrading a CDL**. The final rule provides that, if the reply to the query indicates the driver is prohibited from operating a CMV, the **SDLA must deny the requested commercial licensing transaction, resulting in non-issuance.**" See 49 CFR 383.73(b)(10); (c)(10); (d)(9); (e)(8); and (f)(4).



Ensure there is a process in place to:

- Query** a commercial driver's status in the Clearinghouse.
- Deny** the issuance, renewal, upgrade, or transfer of a CDL and the issuance, upgrade, or renewal of a CLP if the query indicates the driver is subject to the CMV driving prohibition.

"Because CLP holders are authorized to operate a CMV on a public road if accompanied by a CDL holder, they are subject to drug and alcohol testing under 49 CFR part 382, and thus subject to the CMV driving prohibition in 49 CFR 382.501(a). Accordingly, the final rule adds CLP holders to the scope of the States' query requirements set forth in 49 CFR 383.73, requiring SDLAs to conduct a check of the Clearinghouse prior to issuing, renewing, or upgrading a CLP."

### State Regulatory/Legislative Requirements

For States needing to amend their regulations or statutes to implement the State requirements of Clearinghouse-II on or before November 18, 2024, any revisions should include the following:

- A requirement that the SDLA **query** the Federal Motor Carrier Safety Administration's Drug and Alcohol Clearinghouse prior to the issuance, upgrade, renewal, or transfer of a CDL and the issuance, upgrade, or renewal of a CLP.
- A requirement that the SDLA **deny** the commercial licensing transaction and initiate downgrade procedures for CLP/CDL holders and applicants if the query results indicate that the driver is prohibited from operating a CMV due to a violation of 49 CFR part 382, subpart B.



### Downgrading and Reinstating Commercial Driving Privileges

“In addition to the non-issuance requirement, the rule requires that SDLAs **initiate the process to remove the CLP or CDL privilege from the driver’s license after receiving notification from FMCSA** that, in accordance with 49 CFR 382.501(a), an individual is prohibited from operating a CMV.

“There are two ways the SDLA will receive notification of the driver’s prohibited status: (1) The SDLA ‘pulls’ the information from the Clearinghouse by conducting a required query prior to a specified commercial licensing transaction; and (2) FMCSA ‘pushes’ the information to the SDLA whenever a drug or alcohol program violation is reported to the Clearinghouse for a CLP or CDL holder licensed in that State. FMCSA will also ‘push’ a notification to the SDLA when the driver complies with return-to-duty (RTD) requirements and is no longer prohibited by FMCSA’s regulations from operating a CMV.

“FMCSA will also ‘push’ a notification to the SDLA when the driver complies with RTD requirements **and is no longer prohibited by FMCSA’s regulations from operating a CMV**. In addition, if FMCSA determines that a driver was erroneously identified as prohibited, the Agency will notify the SDLA that the individual is not prohibited from operating a CMV; the SDLA **must promptly reinstate the commercial driving privilege to the driver’s license, and expunge the driving record accordingly.**”

#### State Regulatory/Legislative Requirements

For States needing to amend their regulations or statutes to implement the State requirements of Clearinghouse-II on or before November 18, 2024, any revisions should include the following:

- A requirement that the SDLA **downgrade** the CLP/CDL, by removing the commercial privilege from the driver’s license, after receiving a notification from FMCSA that an individual is prohibited from operating a CMV due to a drug or alcohol violation. The downgrade must be effective within 60 days of receiving notification of the driver’s prohibited operating status.
- A requirement that the SDLA **reinstate** the commercial driving privilege to a driver’s license following notification from FMCSA that the driver is no longer prohibited from operating a CMV, if reinstatement is permitted by State law.
- A requirement that the SDLA **reinstate** the commercial driving privilege to a driver’s license **as expeditiously as possible** following notification from FMCSA that the driver was erroneously identified as prohibited from operating a CMV.
- A requirement that the SDLA **expunge** the CDLIS driver record (and if applicable the motor vehicle record) of any reference to the driver’s prohibited status, should FMCSA notify the State that a driver was erroneously placed in a prohibited status, thereby restoring the record as it existed before the erroneous notification. The State must implement the Clearinghouse requirement no later than November 18, 2024.

Ensure a process is in place to:

**Downgrade** the license to remove the commercial privilege.

**Reinstate** the commercial privilege after FMCSA notification that the driver is no longer prohibited, if reinstatement is permitted under State law.

**Reinstate the commercial privilege as expeditiously as possible** after FMCSA notification that the driver was erroneously identified as prohibited from operating a CMV.

**Expunge the record** when FMCSA notifies the State that a driver was erroneously identified as prohibited from operating a CMV.



## Why is this important?

- ▶ Commercial licensing transactions are often the initial point of contact between the CLP/CDL holder or applicant and the SDLA, making this a critical safety checkpoint.
- ▶ Taking these steps provides legal authority to deny a driver or applicant's licensing transaction based on the driver's prohibited CMV operating status as indicated in the Clearinghouse and, for a driver issued a CLP or CDL by the State, to remove the commercial privilege from the driver's license within 60 days of conducting the Clearinghouse query.
- ▶ The downgrade requirement also improves enforcement of the CMV driving prohibition by ensuring the CMV driver's license status is available to all traffic safety enforcement personnel.
- ▶ You are maintaining fairness by ensuring that if FMCSA erroneously sends notice of prohibited status to the State, the erroneous status is corrected and the driver's CLP/CDL privilege is promptly restored.
- ▶ In meeting these requirements, you are helping your State improve roadway safety by ensuring that drivers who cannot lawfully operate a CMV due to a violation of FMCSA's drug and alcohol use and testing regulations do not hold a valid CDL or CLP. In short, you are ensuring the driver is authorized to operate a CMV.