



QUARTERLY SPECIAL REPORT

TOP 10 CDL CLEARINGHOUSE FAQs



TRANSIT

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Since its implementation in January 2020, the CDL Drug and Alcohol Clearinghouse (Clearinghouse) has drawn a lot of attention, as well as countless questions. The Clearinghouse assists motor carriers in learning of unresolved drug and alcohol violations occurring under 49 CFR Part 382, as well as the status of drivers who are in process of completing the evaluation, treatment, and follow-up testing. The following represent some of the more frequently asked questions that J. J. Keller & Associates, Inc., receives on the Clearinghouse topic.

1. WHAT DATA DOES THE CLEARINGHOUSE CONTAIN?

The Clearinghouse includes records of drug and alcohol testing violations that happened under motor carrier testing programs since January 6, 2020.

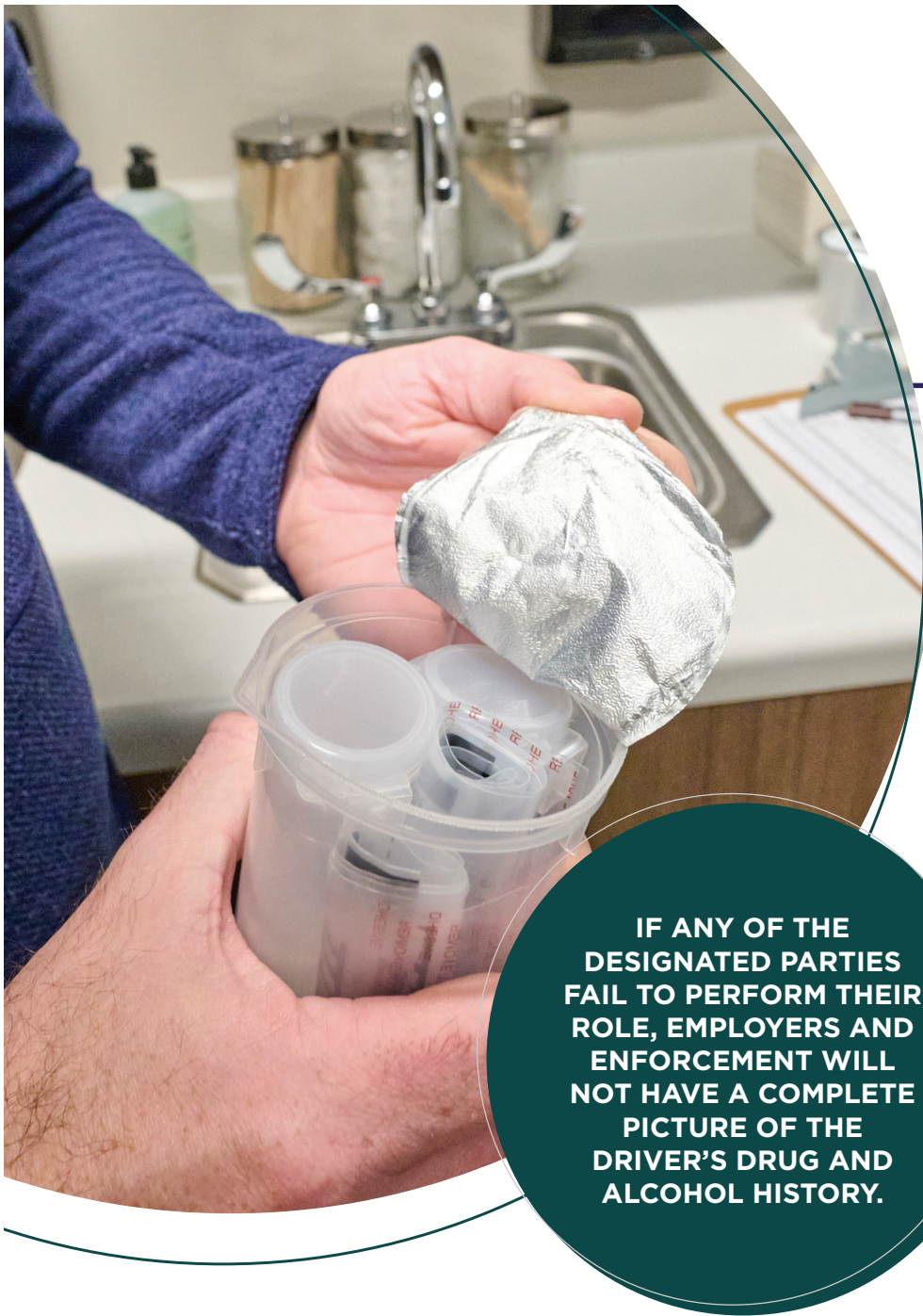
The database only contains drug and alcohol testing violations occurring under Part 382 programs. Violations under other U.S. Department of Transportation (DOT) modes, although holding consequences for the employee in the highway mode, are not captured by the Clearinghouse. In addition, non-DOT testing information does not appear since the DOT has no authority over that. As result, there are no DOT consequences for failing or refusing a non-DOT test.

Note that any Part 382 violations existing prior to January 6, 2020, are not reported to the database, even if the return-to-duty process and/or follow-up testing occur after the launch date.

Besides records of violations, the Clearinghouse captures the following milestones after a violation:

- ▶ Substance abuse professional (SAP) evaluations and treatment,
- ▶ Negative return-to-duty tests, and
- ▶ The completion of the follow-up testing program.





IF ANY OF THE DESIGNATED PARTIES FAIL TO PERFORM THEIR ROLE, EMPLOYERS AND ENFORCEMENT WILL NOT HAVE A COMPLETE PICTURE OF THE DRIVER'S DRUG AND ALCOHOL HISTORY.

2. WHAT INFORMATION IS REPORTED TO THE CLEARINGHOUSE AND BY WHOM?

For the system to function as it was envisioned by the Federal Motor Carrier Safety Administration (FMCSA), the following four key players are tasked with reporting data to the Clearinghouse. If any of the designated parties fail to perform their role, employers and enforcement will not have a complete picture of the driver's drug and alcohol history.

MEDICAL REVIEW OFFICERS (MROs)

Within two business days of determining that a driver has violated DOT testing rules under Part 382, MROs must report the following to the Clearinghouse:

- ▶ Verified positive, adulterated, or substituted drug test results;
- ▶ Refusals to test (drugs), including an inadequate specimen without a valid medical explanation; and
- ▶ Driver admissions to the MRO of adulterated and substituted specimens.

Within one business day of making any changes to a test result, MROs must report the revised result to the Clearinghouse.

MOTOR CARRIERS

Motor carriers have specific reporting obligations for the Clearinghouse. This may be accomplished directly or through a designated consortium/third-party administrator (C/TPA) contracted to perform the task.

By the end of the third business day that motor carriers learn of specific information, they must submit it to the database. Motor carriers report information that the MRO is not privy to, such as alcohol test results, certain refusal-to-test scenarios, and actual knowledge.

Examples of refusals to test under Part 382 that the carrier must report include:

- ▶ Refusing to go to the testing site once notified,
- ▶ Not showing up for a test,
- ▶ Arriving late for a scheduled test,
- ▶ Leaving the collection site without providing an adequate specimen,
- ▶ Failing to cooperate with the testing procedures,
- ▶ Admitting to the collector of an adulterated or substituted drug test specimen, and
- ▶ Inadequate breath or saliva during an alcohol test without a valid medical explanation.



Actual knowledge of violations must also be reported, including:

- ▶ Alcohol use before and during on-duty time,
- ▶ Alcohol use following an accident,
- ▶ Controlled substance use, and
- ▶ Traffic citations indicating alcohol or drug use while operating a commercial motor vehicle (CMV) requiring a commercial driver's license (CDL).

And, finally, motor carriers must report negative return-to-duty tests and the successful completion of follow-up testing under their program.

SAP INFORMATION

Drivers who engage in prohibited behaviors (as listed in Part 382) must be evaluated by an SAP and successfully complete education or treatment.

Within one business day, the SAP must notify the Clearinghouse of:

- ▶ The completion of the initial assessment, and
- ▶ A determination that the driver has successfully completed assessments, treatment, and education.

The SAP's entry in the Clearinghouse indicates the driver's eligibility for a return-to-duty drug and/or alcohol test.

However, before SAPs can enter this information into the Clearinghouse, drivers must log in to their personal accounts and designate them.



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C/TPA'S ROLE

C/TPAs are a resource used by both owner-operators and many motor carriers.

An owner-operator is a single-driver operation where the individual is both driver and employer. The owner-operator must create a Part 382 program and participate in a consortium for random testing. The individual in this scenario is not working under someone else's authority (leased). C/TPAs are required to enter motor carrier data on behalf of the owner-operator. Owner-operators may use a C/TPA to request Clearinghouse queries, providing the agent offers the service. Owner-operators must designate the C/TPA in their Clearinghouse account before the service provider can enter information or request a query.

Motor carriers who are not owner-operators may designate a C/TPA to assume specific administrative functions, such as submitting data and/or requesting queries. The motor carrier must select the service agent within the carrier's portal account. Note that simply selecting the agent on the motor carrier's Clearinghouse dashboard does not automatically mean the service will be performed. Motor carriers must contract with a C/TPA to guarantee the business will perform the service(s).

Whenever any function under Part 382 is outsourced, the motor carrier is still held responsible for compliance with the requirements.





3. HOW LONG DOES A VIOLATION STAY IN THE CLEARINGHOUSE?

For a driver's drug or alcohol violation to be removed from the Clearinghouse, all of the following must take place:

- ▶ The SAP reports a successful assessment and treatment,
- ▶ The motor carrier reports a negative return-to-duty test,
- ▶ The motor carrier reports completion of follow-up tests, and
- ▶ Five years have passed since the original violation.

4. DO ALL CDL DRIVERS NEED A CLEARINGHOUSE ACCOUNT?

No. A personal Clearinghouse account is only required of those drivers who must:

- ▶ Consent to a full query, or
- ▶ Designate an SAP.

It may be beneficial for drivers to create an account even if they don't currently need one.

Setting up an account provides drivers:

- ▶ Access to information reported about them by others, and
- ▶ Communication from the Clearinghouse via the portal and personal email.

Drivers who don't have an account will be contacted by the Clearinghouse via the address on the driver's license. When someone submits data to the Clearinghouse or requests a query on a driver, the use of U.S. mail can take up to two weeks to alert drivers.



5. WHEN ARE CLEARINGHOUSE QUERIES REQUIRED?


Motor carriers are required to request Clearinghouse queries for drivers operating CMVs requiring a CDL at time of hire (pre-employment) and annually. The pre-employment query is a full query, while an annual query can be either a full or limited query.

A full query provides details of a violation or the status of the return-to-duty process and follow-up testing. The full query may not be released unless the driver submits an electronic consent in the Clearinghouse, granting permission to access specific records. To provide this authorization, the CDL driver must create an account within the Clearinghouse.

Limited queries indicate whether information exists, with no additional details. The driver may give the motor carrier written or electronic consent, which is provided through the motor carrier outside of the Clearinghouse. If the limited query shows there is data available, a full query is required within 24 hours of the limited query.

A driver who refuses to grant consent for either a limited or full query cannot be used in a safety-sensitive function.

The FMCSA notifies motor carriers if a driver's Drug & Alcohol Clearinghouse record changes within 12 months after their last query.

A photograph of two men in safety vests shaking hands next to a white truck. The man on the left is wearing a grey shirt and a yellow safety vest. The man on the right is wearing a dark blue shirt, a black cap, and a yellow safety vest. They are standing in front of a white truck with the number 208682 on the side. The background shows a clear sky and some trees.

**THE FMCSA IS NOW
NOTIFYING MOTOR
CARRIERS IF A DRIVER'S
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CLEARINGHOUSE RECORD
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Previously, such alerts were limited to 30 days following pre-employment queries. This change should help carriers identify violations occurring under another motor carrier's drug or alcohol testing program.

Changes in a driver's Clearinghouse record that might prompt an alert from the FMCSA include:

- ▶ A new violation (failed test, actual knowledge, or a refusal to test);
- ▶ An entry from a substance abuse professional (SAP);
- ▶ A negative return-to-duty test; or
- ▶ A completed follow-up testing program.

When a motor carrier receives an alert that a driver's record has changed, they are not required to request a follow-on full query. But it is highly recommended that they:

- ▶ Request a full query within 24 hours, and
- ▶ Verify the driver's status (prohibited or not prohibited).

Motor carriers must pull the driver from safety-sensitive functions if an unresolved testing violation is discovered.

6. IS A PRE-EMPLOYMENT QUERY REQUIRED BEFORE ADMINISTERING A ROAD TEST ON AN APPLICANT?

No. A motor carrier is not required to conduct a pre-employment query of the Clearinghouse before administering a road test to a prospective driver who is subject to Part 382. Section 382.701(a) states employers (motor carriers) are required to query the Clearinghouse when hiring a driver to perform safety-sensitive functions. The road test occurs before the driver is hired, so employers may conduct a pre-employment query at the time they road test a prospective driver but are not required to do so.

7. DOES ENFORCEMENT HAVE ACCESS TO CLEARINGHOUSE DATA?

Traffic enforcement and roadside inspectors, although accessing information in different ways, have the same objective — to remove drivers with an unresolved violation under Part 382 from operating a commercial motor vehicle. Neither have access to specific details surrounding the violation on the driver's Clearinghouse record.

State-based MCSAP (Motor Carrier Safety Assistance Program) enforcement personnel have electronic access to a CDL or CLP driver's Clearinghouse status during a roadside inspection. A driver found to be in a prohibited status is placed out of service.

A non-MCSAP traffic enforcement officer will be able to see whether the driver can lawfully operate a commercial motor vehicle due to a downgraded CDL or CLP on the driver's motor vehicle record. The downgrade would be the result of an unresolved testing violation.

This loss of CDL privileges will be available to traffic enforcement once a driver's state downgrades the license, which is within 60 days of the state learning of the Clearinghouse prohibited status. The state will reinstate privileges after learning that the driver is no longer prohibited.





8. DOES A PROHIBITED STATUS IN THE CLEARINGHOUSE KEEP DRIVERS FROM OPERATING ANY CMV?

Yes. Many may be surprised to learn that when commercial drivers violate drug and alcohol prohibitions under Part 382, they are prevented from operating any type of commercial motor vehicle (CMV) — including those that do not require a commercial driver's license (CDL).

WHAT IS MEANT BY NON-CDL CMV?

The Federal Motor Carrier Safety Regulations (FMCSRs) contain two definitions of CMV. One is associated with CDL licensing, DOT drug and alcohol testing, and driver training. This definition is found in 383.5.

The other definition in 390.5 applies to the bulk of the safety regulations (Parts 390-399). It includes several vehicle types, including large pickup trucks and pickup truck/trailer combinations, box trucks, and some passenger vans, along with larger and hazmat placarded vehicles fitting within the scope of 383.5 requiring a CDL.

Section 382.501(c) restricts the operation of a CMV as defined in 390.5 until a Part 382 violation is resolved through evaluation, treatment, and return-to-duty testing. Using the definition in 390.5 and comparing it against the CDL CMV definition in 383.5 reveals the following vehicle types used in interstate commerce that are regulated, but do not require a CDL to operate:

- ▶ Vehicles with an actual weight or weight rating of 10,001 pounds to 26,000 pounds,
- ▶ Truck-trailer combinations with an actual combined weight or combined weight rating of 10,001 pounds to 26,000 pounds, and
- ▶ Vehicles designed or used to transport 9 to 15 passengers (including the driver) for compensation.

The above vehicles are commonly called non-CDL CMVs.

QUERIES AS BEST PRACTICE

Motor carriers that are subject to Part 382 — and as a result have a Clearinghouse account — are permitted (not required) to query the database for CDL holders who operate non-CDL CMVs on behalf of the carrier. However, motor carriers must still follow the consent requirements set forth in 382.703.

This best practice allows motor carriers to determine whether a CDL holder had a violation under Part 382 reported to the Clearinghouse. Without this knowledge, a motor carrier may inadvertently use a driver in a prohibited status.

Note that a motor carrier that does not have a Part 382 program is unable to perform a query as best practice and cannot assist the driver with the DOT return-to-duty steps.

AN ALTERNATIVE TO THE RETURN-TO-DUTY PROCESS

There is an option for drivers with unresolved testing violations who want to continue driving non-CDL CMVs but work for carriers without Part 382 programs.

If drivers voluntarily surrender their CDLs, they are permitted to operate non-CDL CMVs in interstate commerce without having to go through the evaluation, treatment, and testing.





9. ARE CDL PRIVILEGES TIED TO A DRIVER'S STATUS IN THE CLEARINGHOUSE?

A requirement to downgrade CDLs and CLPs went into effect on November 8, 2021, and state driver licensing agencies (SDLAs) are required to comply no later than November 18, 2024.

By applying for CDL, a driver is deemed to have consented to the release of the Clearinghouse information to the SDLA.

FMCSA requires SDLAs to:

- ▶ Deny CDL and commercial learner's permit (CLP) issuance, renewal, upgrade, or transfer for any driver that has an unresolved violation in the Clearinghouse; and
- ▶ Downgrade existing CDL and CLP holders while they are in prohibited status in the Clearinghouse.

Drivers can have their prohibited status removed by completing the return-to-duty process, which includes being evaluated by an SAP, completing required education and/or treatment, and having a negative return-to-duty drug and/or alcohol test.

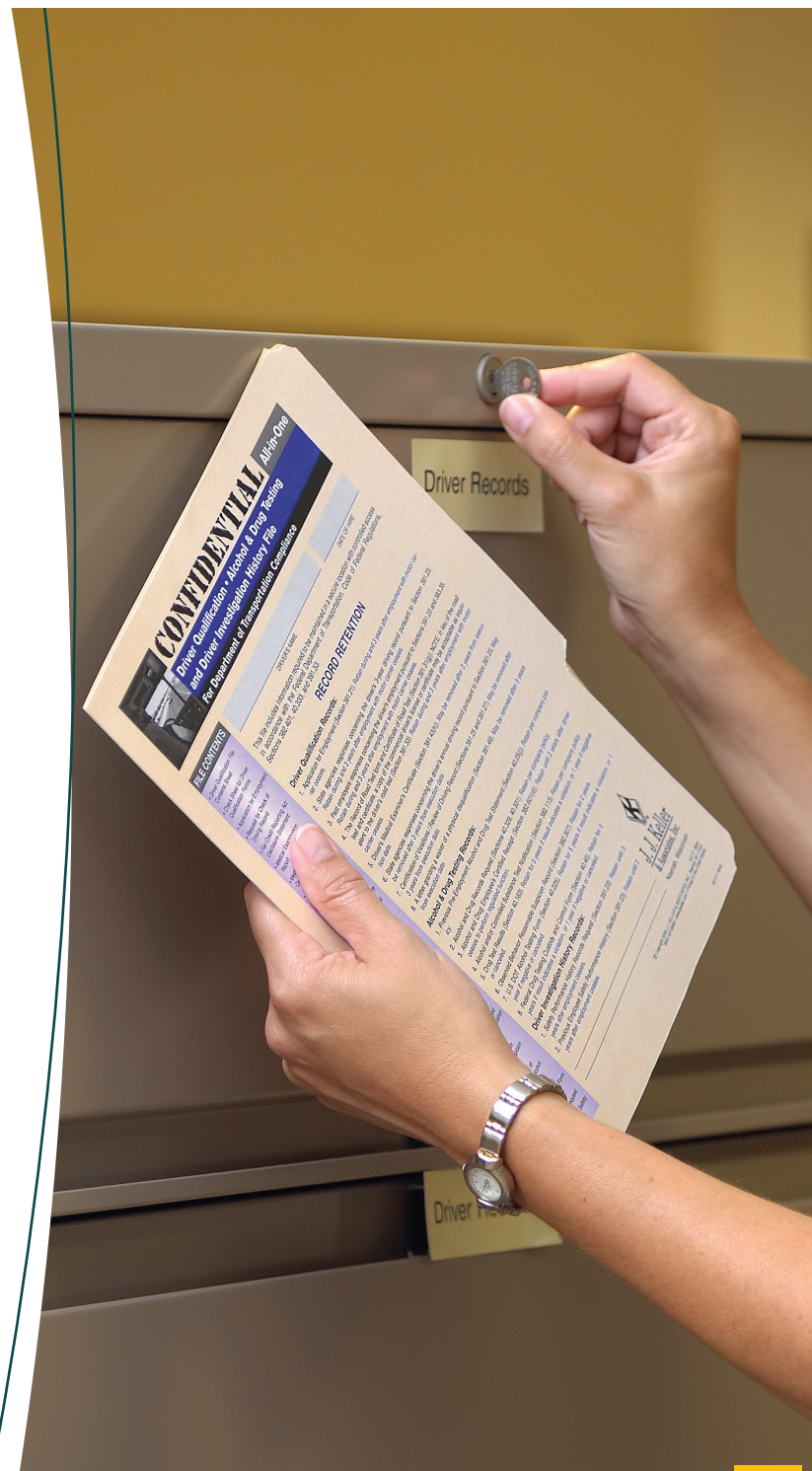
Please check with the driver's SDLA to learn whether this rule has been implemented in the state.

10. HOW LONG AND WHERE ARE QUERIES STORED BY THE MOTOR CARRIER?

Records of queries can be stored in the Clearinghouse as an electronic filing cabinet and accessed in the event of an audit up to three years, providing the carrier has an active Clearinghouse account. For example, suppose a carrier no longer operates CDL CMVs and closes its Clearinghouse account. Prior to an inactive account, the carrier must download or print off Clearinghouse records. A carrier can opt to store the queries outside of its Clearinghouse account even with an active account.

When stored outside of the Clearinghouse, the records must be kept for three years from request date. And just like any other record under Part 382, the information must be retained in a secure location with controlled access. This means under lock and key for hardcopies and password protected for electronic files.

For the limited annual queries, the carrier is required to store the driver's consent, which was obtained outside of the Clearinghouse. The consent can be hardcopy or electronic. The record of consent must be retained for at least three years from the date it was last used for a query. For example, if a motor carrier has a signed form that is valid for annual queries performed through duration of employment, it would be kept for three years from the last annual query it was tied to. If the carrier has the driver provide consent each year, it would be purged when you remove the annual limited query it was used for.





CLOSING THOUGHTS

As motor carriers, service agents, and drivers try to maneuver through the Clearinghouse requirements, they need to have a clear understanding of their individual roles. Consider the following:

- ▶ Parties should know and understand 49 CFR Part 382, focusing specifically on Subpart G which details the Clearinghouse.
- ▶ Those with reporting functions must clearly understand what is considered a violation under Part 382 and report it within the timeline provided in the regulations.
- ▶ Motor carriers must respond appropriately to query results, including:
 - Refraining from using anyone in a prohibited status until the necessary return-to duty steps are completed and recorded in the Clearinghouse; and
 - Beginning or continuing with follow-up testing and reporting when the last negative test is received.

MOTOR CARRIERS, SERVICE AGENTS, AND DRIVERS MUST ALL HAVE A CLEAR UNDERSTANDING OF THEIR INDIVIDUAL ROLES TO NAVIGATE CLEARINGHOUSE REQUIREMENTS.

BOTTOM LINE: Information must be accurate and timely to have the complete drug and alcohol history of any CDL holder.

ABOUT THE AUTHOR

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Kathy joined J. J. Keller & Associates, Inc. in 1999, serving as a driver's qualification file auditor, reviewing clients' compliance with 49 CFR Part 391, and as a third-party administrator of DOT drug and alcohol testing programs for motor carriers. Kathy is currently an editor in Transportation Publishing, Editorial Resources, with expertise in the Compliance, Safety, Accountability (CSA) enforcement model, transportation security, DOT drug and alcohol testing, and driver qualification. In addition to creating content for J. J. Keller publications, Kathy's work has been published in *Heavy Duty Trucking* and *Work Truck*, among others, and she also shares her expertise with association and satellite radio audiences.



ABOUT THE AUTHOR

ABOUT J. J. KELLER & ASSOCIATES, INC.

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