

# Clearinghouse- You Must Get Consent

BY ALEX TIMMONS

It has now been over eight months since the Drug and Alcohol Clearinghouse went live on January 6, 2020. As many of you know, the purpose of the Clearinghouse, according to the FMCSA, is to create an online database "that will allow FMCSA employers, State Driver Licensing Agencies, and law enforcement officials to identify – in real time – CDL Drivers who have violated federal drug and alcohol testing program requirements and thereby improve safety on our nation's roads." Over the last eight months, information has been uploaded into this database.

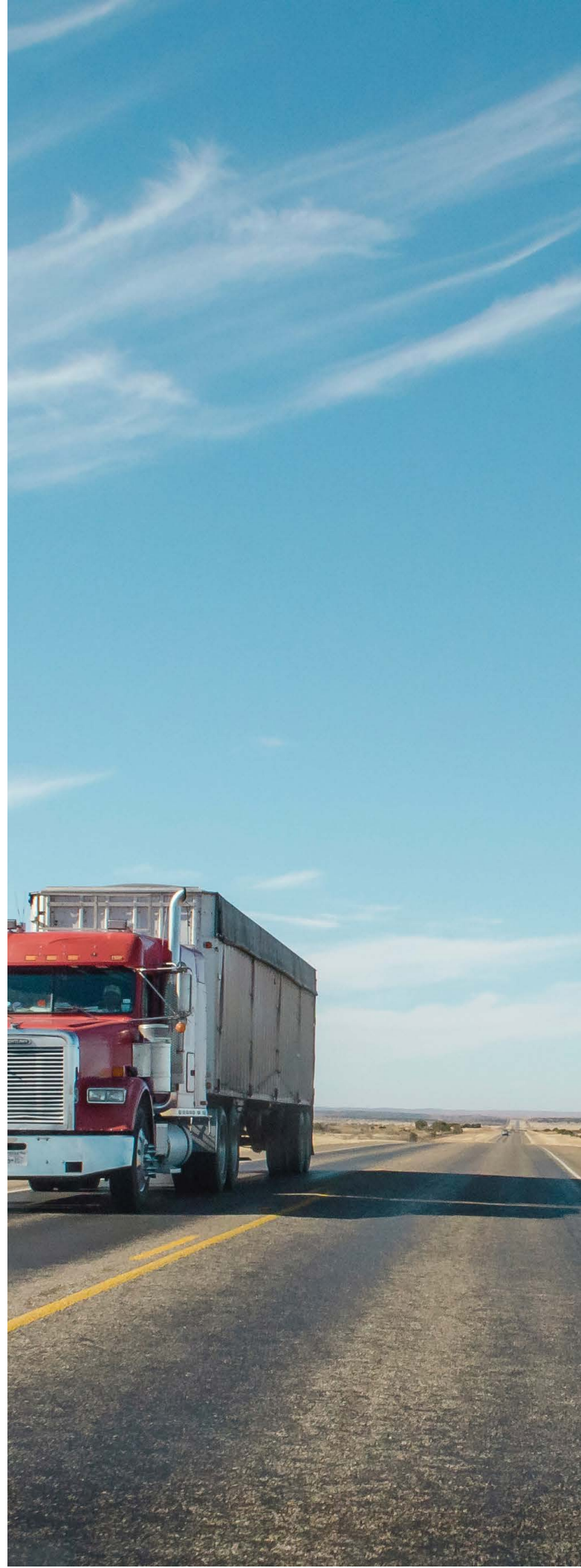
*How do I get access to the information in the database? CONSENT!!*

FMCSA 382.703(a) "No employer may query the Clearinghouse to determine whether a record exists for any particular driver without first obtaining that driver's written or electronic consent." The type of consent required depends on the type of query being run. There are two types of queries that can be requested: limited and full queries.

*Why run a Limited Query?*

A limited query allows an employer to determine if any information has been added to a driver's Clearinghouse record regarding any resolved or unresolved drug and alcohol program violations. The limited query does not allow an employer to see any specific information in the driver's record but alerts them that there is information available. Limited queries are used by employers for annual queries of their employees subject to alcohol and substance testing.

General consent is needed to run a limited query on a driver. The general driver consent is obtained outside the Clearinghouse and can be effective for more than one year. Employers and employees are free to work out the details for obtaining general consent for limited queries,



such as when the consent is originally obtained, for how long it is effective, and whether it is combined with other consent forms. The general consent must specify the timeframe the driver is providing consent for. Employers must retain the consent for 3 years from the date of the last query. The FMCSA website provides a sample consent form for a limited query. (1)

*Why would I need to run a Full Query?*

Full queries are needed for pre-employment driver investigation as well as any time a limited query shows that information exists in the Clearinghouse about an individual driver. A full query allows the employer to see detailed information about any drug and alcohol program violation in a driver's Clearinghouse record. The employer may not request a full query of a driver without first obtaining a driver's electronic consent through the Clearinghouse. The driver grants this electronic consent by logging into the Clearinghouse and authorizing the release of their records to a specific employer. Unlike the consent for a limited query which can be valid for a specified period of time, a driver must provide an employer electronic consent through the Clearinghouse for each full query.

If the limited query shows information, the employer must conduct a full query within 24 hours of conducting the limited query. If the employer does not perform the full query within 24 hours, the employer must pull the driver from all safety-sensitive functions.

*What if the consent is not given?*

A driver who refuses to give consent must be pulled by the employer from all safety-sensitive functions.

*What Does This Mean?*

Employers must ALWAYS get CONSENT before running a query on a driver. General consent is needed for a limited query, and specific electronic consent must be given for a full query. (2)

(1) <https://clearinghouse.fmcsa.dot.gov/Resource/Index/Sample-Limited-Consent-Form>

(2) The FMCSA website provides great resources including a quick reference chart for queries and consent. <https://clearinghouse.fmcsa.dot.gov/Resource/Index/Query-Consent-Factsheet>