

(c) The investigation of the driver's employment record required by paragraph (a)(2) of this section must be completed within 30 days of the date the driver's employment begins. 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. The record must include the previous employer's name and address, the date the previous employer was contacted, and the information provided about the driver. The record must be maintained pursuant to § 391.53.

(d) The motor carrier must investigate, at a minimum, the information listed in this paragraph from all previous employers that employed the driver to operate a CMV within the previous three years:

(1) General information about a driver's employment record;

(2) (i) Any accidents, as defined by § 390.5 of this subchapter, involving the driver that occurred in the three-year period preceding the date of the employment application. The specific information to be sought regarding any accident is described in § 390.15(b)(1) of this chapter.

(ii) Exception. Until [Insert date two years after the effective date of the final rule.] carriers need only provide information for accidents that occurred after [Insert date one year prior to the effective date of the final rule.].

(e) The motor carrier must investigate the information listed below in this paragraph from all previous employers that employed the driver within the previous three years in a safety-sensitive function, as defined under § 382.107 of this chapter, that required controlled substance and alcohol testing pursuant to part 382 of this chapter:

(1) Whether, within the previous three years, the driver had violated the alcohol and controlled substances prohibitions under subpart B of part 382 of this chapter.

(2) For a driver reported pursuant to paragraph (e)(1) of this section, whether the driver failed to undertake or complete a rehabilitation program prescribed by a substance abuse professional (SAP) pursuant to § 382.605 of this chapter. If the previous employer does not know this information (e.g., an employer that terminated an employee who tested positive on a drug test), the prospective motor carrier must obtain documentation of the driver's successful completion of the SAP's referral directly from the driver.

(3) For a driver reported pursuant to paragraph (e)(1) of this section who had successfully completed a SAP's rehabilitation referral, and remained in the employ of the referring employer, information on whether the driver had the following testing violations subsequent to completion of a § 382.605 referral:

(i) Alcohol tests with a result of 0.04 or higher alcohol concentration;

(ii) Verified positive drug tests;

(iii) Refusals to be tested (including verified adulterated or substituted drug test results).

(f) A prospective motor carrier must provide to the previous motor carrier the driver's written consent for the release of the information in paragraph (e) of this section. If the driver refuses to provide this written consent, the prospective motor carrier must not permit the driver to operate a commercial motor vehicle for that motor carrier.

(g) Previous employers must respond to requests for the information in paragraphs (d) and (e) of this section within 30 days after the request is received. The previous employer must take all precautions reasonably necessary to ensure the accuracy of the records.

(h) The release of information under this section may take any form that reasonably ensures confidentiality, including letter, facsimile, or e-mail. The previous employer and its agents and insurers must take all precautions reasonably necessary to protect the records from disclosure to any person not directly involved in forwarding the records, except the previous employer's insurer.

(i)(1) The prospective employer must expressly notify the driver—via the application form or other written document—that he or she has the following rights regarding the investigative information provided to the prospective employer pursuant to paragraphs (d) and (e) of this section:

(i) The right to review information provided by previous employers;

(ii) The right to have errors in the information corrected by the providing previous employer and for that previous employer to re-send the corrected information to the prospective employer;

(iii) The right to have a rebuttal statement attached to the alleged erroneous information, if the submitting previous employer disagrees with the driver that the information is incorrect.

(2) Drivers wishing to review previous employer-provided investigative information must submit a written request to the prospective employer.

The prospective employer must provide this information to the applicant within two (2) business days. If the prospective employer has not yet received the requested information from the previous employer(s), then the two-business days deadline will begin when the prospective employer receives the requested information. If the driver has not arranged to pick up or receive the requested records within thirty (30) days, the prospective motor carrier may consider the driver to have waived his/her request to review the records.

(j)(1) Drivers wishing to correct erroneous information in records provided pursuant to paragraphs (d) and (e) of this section must send the allegation of error, proof of error, and request to correct, to the previous employer who provided the records to the prospective employer.

(2) If the previous employer and the driver agree the information in question is erroneous, the previous employer must correct the information and, within thirty (30) business days after receiving the driver's allegation/proof/request to correct, must send the corrected information to the prospective employer. The previous employer must also retain the corrected information for providing to subsequent prospective employers when requests for this information are received.

(3) If the previous employer and the driver cannot agree the information in question is erroneous, then the previous employer must accept a rebuttal from the driver, if he or she wishes to provide one, and within thirty (30) business days after receiving the driver's allegation/proof/request to correct, must send a copy of the driver's rebuttal to the prospective employer. The previous employer must append the driver's rebuttal to the information in its file and provide the complete appended information to any subsequent investigating prospective employer.

(k)(1) The prospective employer must use the information described in paragraphs (d) and (e) of this section only to decide whether to hire the driver who is the subject of those records.

(2) The prospective employer and its agents and insurers must take all precautions reasonably necessary to protect the records from disclosure to any person not directly involved in deciding whether to hire the driver, except that disclosure (excluding any alcohol or controlled substances information) may be made to the prospective employer's insurer for the purpose of determining whether to include the driver on carrier insurance.

(l)(1) No action or proceeding for defamation, invasion of privacy, or