

Drivers of Commercial Motor Vehicles: Employment Application and Driver Record

Description:

U.S. DOT regulations establish minimum qualifications for persons who drive commercial motor vehicles as, for, or on behalf of motor carriers. The rules also establish minimum duties of motor carriers with respect to the qualifications of their drivers. Verification of driver qualification starts with the employment application and pre-employment background checks on applicants for employment whose duties include driving commercial motor vehicles.

Regulatory Reference

49 CFR § 382.301	Pre-employment testing (related substance abuse and alcohol testing)
49 CFR § 383.35	Notification of previous employment
49 CFR § 390.5	Definitions
49 CFR § 390.15	Assistance in investigations & special studies
49 CFR § 391.21	Application for employment
49 CFR § 391.23	Investigation and inquiries

Applies to:

The regulations apply to all applicants for employment as a driver of commercial motor vehicles, and to motor carriers.

General Requirements:

- (1) 49 CFR § 391.21 requires motor carriers to furnish driver/applicants an employment application form, and driver/applicants to complete the application form that contains the following information:
 - (a) The name and address of the employing motor carrier;
 - (b) The applicant's name, address, date of birth, and social security number;
 - (c) The addresses at which the applicant has resided during the 3 years preceding the date on which the application is submitted;
 - (d) The date on which the application is submitted;
 - (e) The issuing State, number, and expiration date of each un-expired commercial motor vehicle operator's license or permit that has been issued to the applicant;
 - (f) The nature and extent of the applicant's experience in the operation of motor vehicles, including the type of equipment (such as buses, trucks, truck tractors, semi trailers, full trailers, and pole trailers) which he/she has operated;
 - (g) A list of all motor vehicle accidents in which the applicant was involved during the 3 years preceding the date the application is submitted, specifying the date and nature of each accident and any fatalities or personal injuries it caused;

(r) The prospective employer must expressly notify prospective employees (drivers) with DOT regulated employment during the preceding 3 years via the application form or other written document prior to any hiring decision that he or she has the following rights regarding the investigative information that will be provided to the prospective employer:

- The right to review information provided by previous employers;
- The right to have errors in the information corrected by the previous employer and for that previous employer to re-send the corrected information to the prospective employer;
- The right to have a rebuttal statement attached to the alleged erroneous information, if the previous employer and the driver cannot agree on the accuracy of the information.

Drivers who have previous DOT regulated employment history in the preceding 3 years who wish to review previous employer-provided investigative information must submit a written request to the prospective employer, at any time, including when applying, or as late as 30 days after being employed or being notified of denial of employment. The prospective employer must provide the requested information for the previous employer(s) within 5 business days of the receipt of the requested safety performance history information. If the driver has not arranged to pick up or receive the requested records within 30 days of the prospective employer making them available, the prospective motor carrier may consider the driver to have waived his or her request to review the records.

(2) The motor carrier must investigate and make inquiries regarding each driver it employs, other than those regularly employed drivers of the motor carrier for a continuous period beginning before January 1, 1971, as set out in 49 CFR §391.23. The inquiries must include the following:

- (a) An inquiry into the driver's driving record during the preceding 3 years to the appropriate agency of every State in which the driver held a motor vehicle operator's license or permit during those 3 years; and
- (b) An investigation of the driver's employment record during the preceding 3 years.

The inquiry to State agencies must be made in the form and manner those agencies prescribe. A copy of the response by each State agency, showing the driver's driving record or certifying that no driving record exists for that driver, shall be retained in the carrier's files as part of the driver's qualification file and must be placed in the file within 30 days of the date the driver's employment begins.

Replies to the investigations of the driver's safety performance history required by DOT, or documentation of good faith efforts to obtain the investigation data, must be placed in the driver investigation history file, after October 29, 2004, 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 of obtaining information that the carrier deems appropriate. Each motor carrier must make a written record with respect to each past employer who was contacted, or good faith efforts to do so. The record must include the past employer's name and address, the date he/she was contacted, or the attempts made, and his/her comments with respect to the driver. The record shall be retained in the motor carrier's files as part of the driver's qualification file. Failures to contact a previous employer, or of them to provide the

required safety performance history information, must be documented.

Prospective driver safety performance history requests to previous employers must contain:

- (a) Where the previous motor carrier employer(s) should send the information requested;
- (b) General driver identification and employment verification information;
- (c) The data specified in § 390.15(b)(1) for accidents involving the driver that occurred in the 3-year period preceding the date of the employment application;
- (d) Any accidents as defined by § 390.5 and any other accidents the previous employer may wish to provide related to § 390.15(b)(2) or minor accident information in keeping with the previous employer's internal policies;
- (e) Whether, within the previous 3-year period, the driver had violated the alcohol and controlled substances prohibitions under subpart B of part 382, or 49 CFR part 40;
- (f) Whether the driver failed to undertake or complete a rehabilitation program prescribed by a substance abuse professional (SAP), or if the previous employer does not know this information (for example, the previous employer terminated an employee who tested positive on a drug or alcohol test), the prospective motor carrier must obtain documentation of the driver's successful completion of the SAP's referral directly from the driver; if the driver successfully completed a rehabilitation referral and remained employed, whether the following testing violations occurred subsequent to rehabilitation:
 - Alcohol test(s) with a result of 0.04 or higher alcohol concentration;
 - Verified positive drug tests;
 - Refusal(s) to be tested (including verified adulterated or substituted drug test results)
- (g) The prospective motor carrier employer must provide to the previous employer the driver's written consent meeting the requirements of § 40.321(b) for the release of the required information. 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.
- (h) After October, 29, 2004, previous employers must:
 - Respond to each request for DOT defined information concerning its current or previous employees within 30 days after the request is received;
 - Take all precautions reasonably necessary to ensure the accuracy of the records.
 - Provide specific contact information in case a driver chooses to contact the previous employer regarding correction or rebuttal of the data.

- Keep a record of each request and the response for 1 year, including the date, the party to whom it was released, and a summary identifying what was provided.
- Exception. Until May 1, 2004, carriers need only provide information for accidents that occurred after April 20, 2003

(3) § 382.301 Pre-employment testing states the following:

- (a) Prior to the first time a driver performs safety-sensitive functions for an employer, the driver shall undergo testing controlled substances as a condition prior to being used, unless the employer uses the exception in paragraphs (c) and (d) of this section. No employer shall allow a driver, who the employer intends to hire or use, to perform safety-sensitive functions unless the driver has been administered and has received a controlled substances test result from the MRO indicating a verified negative test result.
- (b) Exception for pre-employment controlled substances testing. An employer is not required to administer a controlled substances test required by paragraph (a) of this section if:
1. The driver has participated in a controlled substances testing program that meets the requirements of this part within the previous 30 days; and
 2. While participating in that program, either
 - (i) Was tested for controlled substances within the past 6 months (from the date of application with the employer) or
 - (ii) Participated in the random controlled substances testing program for the previous 12 months (from the date of application with the employer); and
 3. The employer ensures that no prior employer of the driver of whom the employer has knowledge has records of a violation of this part or the controlled substances use rule of another DOT agency within the previous six months.
- (c) (1) An employer who exercises the exception in paragraph (b) of this section shall contact the alcohol and/or controlled substances testing program(s) in which the driver participates or participated and shall obtain and retain from the testing program(s) the following information:
- (i) Name(s) and address(es) of the program(s).
 - (ii) Verification that the driver participates or participated in the program(s).
 - (iii) Verification that the program(s) conforms to part 40 of this title.
 - (iv) Verification that the driver is qualified under the rules of this part, including that the driver has not refused to be tested for controlled substances.
 - (v) The date the driver was last tested for alcohol or controlled substances.

- (vi) The results of any tests taken within the previous six months and any other violations of subpart B of this part.
- (2) An employer who uses, but does not employ, a driver more than once a year to operate commercial motor vehicles must obtain the information in paragraph (c)(1) of this section at least once every six months. The records prepared under this paragraph shall be maintained in accordance with §382.401. If the employer cannot verify that the driver is participating in a controlled substances testing program in accordance with this part and part 40, the employer shall conduct a pre-employment alcohol and/or controlled substances test.

[Note: Paragraph numbering shown above does not correspond to the numbering of 49 CFR § 382.301 because paragraph (e) in the regulation eliminated pre-employment testing for alcohol as of May 1, 1995.]

Training Requirements:

There are no training requirements currently associated with the regulations cited in this guide. However, managers, supervisors, human resources department personnel, and anyone having new employee hiring authorization should be thoroughly familiar with the regulations and required applicant background verification procedures to ensure that an unqualified person is not allowed to perform a safety sensitive function without the direct supervision of a qualified person.

Maintenance and Review

Most operating companies find it necessary to designate a person responsible for review of driver/applicant qualifications, driver record and previous employer inquiries prior to allowing any new applicant to drive a commercial motor vehicle.