

§ 391.25

(ii) Append the rebuttal to the driver's information in the carrier's appropriate file, to be included as part of the response for any subsequent investigating prospective employers for the duration of the three-year data retention requirement.

(5) The driver may submit a rebuttal initially without a request for correction, or subsequent to a request for correction.

(6) The driver may report failures of previous employers to correct information or include the driver's rebuttal as part of the safety performance information, to the FMCSA following procedures specified at § 386.12.

(k)(1) The prospective motor carrier employer must use the information described in paragraphs (d) and (e) of this section only as part of deciding whether to hire the driver.

(2) The prospective motor carrier employer, 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. The prospective motor carrier employer may not provide any alcohol or controlled substances information to the prospective motor carrier employer's insurer.

(1)(1) No action or proceeding for defamation, invasion of privacy, or interference with a contract that is based on the furnishing or use of information in accordance with this section may be brought against—

(i) A motor carrier investigating the information, described in paragraphs (d) and (e) of this section, of an individual under consideration for employment as a commercial motor vehicle driver,

(ii) A person who has provided such information; or

(iii) The agents or insurers of a person described in paragraph (1)(1)(i) or (ii) of this section, except insurers are not granted a limitation on liability for any alcohol and controlled substance information.

(2) The protections in paragraph (1)(1) of this section do not apply to persons who knowingly furnish false information, or who are not in compliance with

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the procedures specified for these investigations.

(Approved by the Office of Management and Budget under control number 2126-0004)

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§ 391.25 Annual inquiry and review of driving record.

(a) Except as provided in subpart G of this part, each motor carrier shall, at least once every 12 months, make an inquiry into the driving record of each driver it employs, covering at least the preceding 12 months, to the appropriate agency of every State in which the driver held a commercial motor vehicle operator's license or permit during the time period.

(b) Except as provided in subpart G of this part, each motor carrier shall, at least once every 12 months, review the driving record of each driver it employs to determine whether that driver meets minimum requirements for safe driving or is disqualified to drive a commercial motor vehicle pursuant to § 391.15.

(1) The motor carrier must consider any evidence that the driver has violated any applicable Federal Motor Carrier Safety Regulations in this subchapter or Hazardous Materials Regulations (49 CFR chapter I, subchapter C).

(2) The motor carrier must consider the driver's accident record and any evidence that the driver has violated laws governing the operation of motor vehicles, and must give great weight to violations, such as speeding, reckless driving, and operating while under the influence of alcohol or drugs, that indicate that the driver has exhibited a disregard for the safety of the public.

(c) Recordkeeping. (1) A copy of the response from each State agency to the inquiry required by paragraph (a) of this section shall be maintained in the driver's qualification file.

(2) A note, including the name of the person who performed the review of the driving record required by paragraph (b) of this section and the date of such review, shall be maintained in the driver's qualification file.

[63 FR 33277, June 18, 1998]