

Do the New Safety Performance History Regulations Require an Employer to Provide Information on a **Current** Driver Employee?

A common question we hear concerns whether a current employer must provide background information to another company if the driver is still employed.

There's no doubt that carriers must investigate certain information. §391.23(d) of the Federal Motor Carrier Safety Regulations (FMCSR) states:

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

There's also no doubt that *previous* carrier employers must provide certain information. §391.23(g) states:

*(g) After October 29, 2004, previous employers must:
(1) Respond to each request for the DOT defined information in paragraphs (d) and (e) of this section within 30 days after the request is received. If there is no safety performance history information to report for that driver, previous motor carrier employers are nonetheless required to send a response confirming the non-existence of any such data, including the driver identification information and dates of employment.*

The question is, do the new regulations require a current employer to provide information on a current driver employee when asked to do so by a prospective employer?

We believe the new regulations do require a current employer to provide information on a current driver. §390.5 adds a new definition, the text of which is:

Previous employer means any DOT regulated person who employed the driver in the preceding 3 years, including any possible current employer.

So when §391.23(g) above requires "previous employers" to provide information the definition of "previous employer" includes "any possible current employer." Therefore, current employers are required to provide the employment history information just as past employers are required.