

Application and Previous Employer Background Check / Rebuttal Policy



**Stover Transportation, Inc.
3710 Lacon Road
Hilliard, Ohio 43026**

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Updated by : Josh Vittie

1 Policy Overview

As an applicant to drive for Stover Transportation, Inc., you should be aware of the information that Federal Regulations require a carrier to collect from an applicant, the background check / investigation (including your rights to review / correct / rebut responses provided by previous employers), and the information required for your driver qualification file.

2 Application – Driver Specific

The Federal Motor Carrier Safety Administration (FMCSA) and Federal Motor Carrier Safety Regulations (FMCSRs) requires a driver-specific application with the following information (49 CFR 391.21):

§391.21 Application for employment.

(a) Except as provided in subpart G of this part, a person shall not drive a commercial motor vehicle unless he/she has completed and furnished the motor carrier that employs him/her with an application for employment that meets the requirements of paragraph (b) of this section.

(b) The application for employment shall be made on a form furnished by the motor carrier. Each application form must be completed by the applicant, must be signed by him/her, and must contain the following information:

- (1) The name and address of the employing motor carrier;
- (2) The applicant's name, address, date of birth, and social security number;
- (3) The addresses at which the applicant has resided during the 3 years preceding the date on which the application is submitted;
- (4) The date on which the application is submitted;
- (5) The issuing State, number, and expiration date of each unexpired commercial motor vehicle operator's license or permit that has been issued to the applicant;
- (6) 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, semitrailers, full trailers, and pole trailers) which he/she has operated;
- (7) 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;
- (8) A list of all violations of motor vehicle laws or ordinances (other than violations involving only parking) of which the applicant was convicted or forfeited bond or collateral during the 3 years preceding the date the application is submitted;
- (9) A statement setting forth in detail the facts and circumstances of any denial, revocation, or suspension of any license, permit, or privilege to operate a motor vehicle that has been issued to the applicant, or a statement that no such denial, revocation, or suspension has occurred;
- (10)
 - (i) A list of the names and addresses of the applicant's employers during the 3 years preceding the date the application is submitted,
 - (ii) The dates he or she was employed by that employer,
 - (iii) The reason for leaving the employ of that employer,
 - (iv) After October 29, 2004, whether the
 - (A) Applicant was subject to the FMCSRs while employed by that previous employer,
 - (B) Job was designated as a safety sensitive function in any DOT regulated mode subject to alcohol and controlled substances testing requirements as required by 49 CFR part 40;
- (11) For those drivers applying to operate a commercial motor vehicle as defined by part 383 of this subchapter, a list of the names and addresses of the applicant's employers during the 7-year period preceding the 3 years contained in paragraph (b)(10) of this section for which the applicant was an operator of a commercial motor vehicle, together with the dates of employment and the reasons for leaving such employment; and

Application and Previous Employer Background Check / Rebuttal Policy

(12) The following certification and signature line, which must appear at the end of the application form and be signed by the applicant:

This certifies that this application was completed by me, and that all entries on it and information in it are true and complete to the best of my knowledge.

_____ (Date)

_____ (Applicant's signature)

(c) A motor carrier may require an applicant to provide information in addition to the information required by paragraph (b) of this section on the application form.

(d) Before an application is submitted, the motor carrier must inform the applicant that the information he/she provides in accordance with paragraph (b)(10) of this section may be used, and the applicant's previous employers will be contacted, for the purpose of investigating the applicant's safety performance history information as required by paragraphs (d) and (e) of §391.23. The prospective employer must also notify the driver in writing of his/her due process rights as specified in §391.23(i) regarding information received as a result of these investigations.

3 Background Checks / Investigation

3.1

At a minimum, Stover Transportation, Inc. will conduct all required background checks and investigations as required by 49 CFR 391.23. As an applicant, you are hereby notified that Stover Transportation, Inc. will make an inquiry to each state where you held, or hold, a motor vehicle operator's license and/or permit during the preceding three (3) years to obtain your motor vehicle record AND an investigation of your safety performance history with DOT regulated employers during the preceding three (3) years.

3.2

391.23(f) – you are required to provide a written consent to release information. Failure to provide this consent requires Stover Transportation, Inc. to prohibit you from operating a Commercial Motor Vehicle (CMV).

3.3

391.23(i) – (j) explains your rights to view information received from previous employers and how to correct inaccuracies and/or rebut statements provided. Specifically, under 391.23(i)(1) – you have the right to review information provided by previous employers; the right to have errors corrected and corrections resent; and the right to have a rebuttal statement attached to the alleged erroneous information, if you and the previous employer cannot agree on the accuracy of the information.

3.4

Federal Regulations for Investigation and Inquiries:

§391.23 Investigation and inquiries.

(a) Except as provided in subpart G of this part, each motor carrier shall make the following investigations and inquiries with respect to each driver it employs, other than a

Application and Previous Employer Background Check / Rebuttal Policy

person who has been a regularly employed driver of the motor carrier for a continuous period which began before January 1, 1971:

- (1) An inquiry to each State where the driver held or holds a motor vehicle operator's license or permit during the preceding 3 years to obtain that driver's motor vehicle record.
- (2) An investigation of the driver's safety performance history with Department of Transportation regulated employers during the preceding three years.

(b) A copy of the motor vehicle record(s) obtained in response to the inquiry or inquiries to each State required by paragraph (a)(1) of this section must be placed in the driver qualification file within 30 days of the date the driver's employment begins and be retained in compliance with §391.51. If no motor vehicle record is received from the State or States required to submit this response, the motor carrier must document a good faith effort to obtain such information, and certify that no record exists for that driver in that State or States. The inquiry to the State driver licensing agency or agencies must be made in the form and manner each agency prescribes.

(c)

- (1) Replies to the investigations of the driver's safety performance history required by paragraph (a)(2) of this section, 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. Any period of time required to exercise the driver's due process rights to review the information received, request a previous employer to correct or include a rebuttal, is separate and apart from this 30-day requirement to document investigation of the driver safety performance history data.
- (2) 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, or good faith efforts to do so. The record must include the previous employer's name and address, the date the previous employer was contacted, or the attempts made, and the information received about the driver from the previous employer. Failures to contact a previous employer, or of them to provide the required safety performance history information, must be documented. The record must be maintained pursuant to §391.53.
- (3) Prospective employers should report failures of previous employers to respond to an investigation to the FMCSA and use the complaint procedures specified at §386.12 of this subchapter. Keep a copy of the reports in the driver investigation history file as part of documenting a good faith effort to obtain the required information.
- (4) Exception. For drivers with no previous employment experience working for a DOT-regulated employer during the preceding three years, documentation that no investigation was possible must be placed in the driver investigation history file, after October 29, 2004, within the required 30 days of the date the driver's employment begins.

(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. The investigation request must contain specific contact information on where the previous motor carrier employers should send the information requested.

- (1) General driver identification and employment verification information.
- (2) The data elements as specified in §390.15(b)(1) of this chapter for accidents involving the driver that occurred in the three-year period preceding the date of the employment application.
 - (i) Any accidents as defined by §390.5 of this chapter.
 - (ii) Any accidents the previous employer may wish to provide that are retained pursuant to §390.15(b)(2), or pursuant to the employer's internal policies for retaining more detailed minor accident information.

(e) In addition to the investigations required by paragraph (d) of this section, the prospective motor carrier employers must investigate the information listed below in this paragraph from all previous DOT regulated employers that employed the driver within the

Application and Previous Employer Background Check / Rebuttal Policy

previous three years from the date of the employment application, in a safety-sensitive function that required alcohol and controlled substance testing specified by 49 CFR part 40.

- (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, or 49 CFR part 40.
- (2) 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, or 49 CFR part 40, subpart O. 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 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 or 49 CFR part 40, subpart O 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 employer must provide to the previous employer the driver's written consent meeting the requirements of §40.321(b) 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 employer must not permit the driver to operate a commercial motor vehicle for that motor carrier.

(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.
- (2) Take all precautions reasonably necessary to ensure the accuracy of the records.
- (3) Provide specific contact information in case a driver chooses to contact the previous employer regarding correction or rebuttal of the data.
- (4) Keep a record of each request and the response for one year, including the date, the party to whom it was released, and a summary identifying what was provided.
- (5) Exception. Until May 1, 2006, carriers need only provide information for accidents that occurred after April 29, 2003.

(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 driver safety performance history records from disclosure to any person not directly involved in forwarding the records, except the previous employer's insurer, except that the previous employer may not provide any alcohol or controlled substances information to the previous employer's insurer.

(i)

- (1) The prospective employer must expressly notify drivers with Department of Transportation regulated employment during the preceding three 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 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 previous employer and for that previous employer to re-send the corrected information to the prospective employer;

Application and Previous Employer Background Check / Rebuttal Policy

(iii) 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.

(2) Drivers who have previous Department of Transportation regulated employment history in the preceding three years, and wish to review previous employer-provided investigative information must submit a written request to the prospective employer, which may be done 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 this information to the applicant within five (5) business days of receiving the written request. If the prospective employer has not yet received the requested information from the previous employer(s), then the five-business days deadline will begin when the prospective employer receives the requested safety performance history information. If the driver has not arranged to pick up or receive the requested records within thirty (30) days of the prospective employer making them available, the prospective motor carrier may consider the driver to have waived his/her request to review the records.

(j)

(1) Drivers wishing to request correction of erroneous information in records received pursuant to paragraph (i) of this section must send the request for the correction to the previous employer that provided the records to the prospective employer.

(2) After October 29, 2004, the previous employer must either correct and forward the information to the prospective motor carrier employer, or notify the driver within 15 days of receiving a driver's request to correct the data that it does not agree to correct the data. If the previous employer corrects and forwards the data as requested, that employer must also retain the corrected information as part of the driver's safety performance history record and provide it to subsequent prospective employers when requests for this information are received. If the previous employer corrects the data and forwards it to the prospective motor carrier employer, there is no need to notify the driver.

(3) Drivers wishing to rebut information in records received pursuant to paragraph (i) of this section must send the rebuttal to the previous employer with instructions to include the rebuttal in that driver's safety performance history.

(4) After October 29, 2004, within five business days of receiving a rebuttal from a driver, the previous employer must:

(i) Forward a copy of the rebuttal to the prospective motor carrier employer;

(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.

(l)

(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—

Application and Previous Employer Background Check / Rebuttal Policy

- (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 (l)(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 (l)(1) of this section do not apply to persons who knowingly furnish false information, or who are not in compliance with the procedures specified for these investigations.

(m)

(1) The motor carrier must obtain an original or copy of the medical examiner's certificate issued in accordance with §391.43, and any medical variance on which the certification is based, and, beginning on or after May 21, 2014, verify the driver was certified by a medical examiner listed on the National Registry of Certified Medical Examiners as of the date of issuance of the medical examiner's certificate, and place the records in the driver qualification file, before allowing the driver to operate a CMV.

(2) Exception. For drivers required to have a commercial driver's license under part 383 of this chapter:

(i) Beginning January 30, 2015, using the CDLIS motor vehicle record obtained from the current licensing State, the motor carrier must verify and document in the driver qualification file the following information before allowing the driver to operate a CMV:

(A) The type of operation the driver self-certified that he or she will perform in accordance with §383.71(b)(1) of this chapter.

(B)

(1) Beginning on May 21, 2014, and ending on June 22, 2018, that the driver was certified by a medical examiner listed on the National Registry of Certified Medical Examiners as of the date of medical examiner's certificate issuance.

(2) If the driver has certified under paragraph (m)(2)(i) (A) of this section that he or she expects to operate in interstate commerce, that the driver has a valid medical examiner's certificate and any required medical variances.

(C) Exception. Beginning on January 30, 2015 and until June 22, 2018, if the driver provided the motor carrier with a copy of the current medical examiner's certificate that was submitted to the State in accordance with §383.73(b)(5) of this chapter, the motor carrier may use a copy of that medical examiner's certificate as proof of the driver's medical certification for up to 15 days after the date it was issued.

(ii) Until January 30, 2015, if a driver operating in non-excepted, interstate commerce has no medical certification status information on the CDLIS MVR obtained from the current State driver licensing agency, the employing motor carrier may accept a medical examiner's certificate issued to that driver, and place a copy of it in the driver qualification file before allowing the driver to operate a CMV in interstate commerce.

(3) Exception. For drivers required to have a commercial learner's permit under part 383 of this chapter:

(i) Beginning July 8, 2015, using the CDLIS motor vehicle record obtained from the current licensing State, the motor carrier must verify and document in the driver qualification file the following information before allowing the driver to operate a CMV:

(A) The type of operation the driver self-certified that he or she will perform in accordance with §383.71(b)(1) and (g) of this chapter.

(B)

(1) Until June 22, 2018, that the driver was certified by a medical examiner listed on the National Registry of

Application and Previous Employer Background Check / Rebuttal Policy

Certified Medical Examiners as of the date of medical examiner's certificate issuance.

(2) If the driver has a commercial learner's permit and has certified under paragraph (m)(3)(i)(A) of this section that he or she expects to operate in interstate commerce, that the driver has a valid medical examiner's certificate and any required medical variances.

(C) Until June 22, 2018, if the driver provided the motor carrier with a copy of the current medical examiner's certificate that was submitted to the State in accordance with §383.73(a)(2)(vii) of this chapter, the motor carrier may use a copy of that medical examiner's certificate as proof of the driver's medical certification for up to 15 days after the date it was issued.

(ii) Until July 8, 2015, if a driver operating in non-excepted, interstate commerce has no medical certification status information on the CDLIS MVR obtained from the current State driver licensing agency, the employing motor carrier may accept a medical examiner's certificate issued to that driver, and place a copy of it in the driver qualification file before allowing the driver to operate a CMV in interstate commerce.

4 Driver Qualification File

4.1

The following is a list of the minimum amount of information Stover Transportation, Inc. is required to collect and maintain to comply with Federal Motor Carrier Safety Regulations. Information in the driver qualification file will be retained for the length of employment plus three (3) years.

1. Driver's application for employment [391.21]
2. A copy of the driver's license as proof of completing a road test [391.33]
3. A Motor Vehicle Report (MVR) for the time of hire [391.25]
4. Signed authorization to check MVRs at least once per year [391.25]
5. A list or certificate of motor vehicle law violations [391.27]
6. Medical examiner's certificate [391.43]
7. A Skill Performance Evaluation Certificate (for those with the loss or impairment of limbs) [393.49]
8. A signed statement showing total on-duty time for the previous seven (7) days and the time at which the driver was last relieved from duty [395.3]
9. Negative DOT pre-employment drug test result OR documentation of exception to pre-employment test [382.301]
10. Certificate of receipt of drug/alcohol policy [382.601]
11. Documentation of the type of driving the driver self-certified that they will perform [383.71(g)]

4.2

Federal Requirements for Driver Qualification Files:
§391.51 General requirements for driver qualification files.

Application and Previous Employer Background Check / Rebuttal Policy

- (a) Each motor carrier shall maintain a driver qualification file for each driver it employs. A driver's qualification file may be combined with his/her personnel file.
- (b) The qualification file for a driver must include:
- (1) The driver's application for employment completed in accordance with §391.21;
 - (2) A copy of the motor vehicle record received from each State record pursuant to §391.23(a)(1);
 - (3) The certificate of driver's road test issued to the driver pursuant to §391.31(e), or a copy of the license or certificate which the motor carrier accepted as equivalent to the driver's road test pursuant to §391.33;
 - (4) The motor vehicle record received from each State driver licensing agency to the annual driver record inquiry required by §391.25(a);
 - (5) A note relating to the annual review of the driver's driving record as required by §391.25(c)(2);
 - (6) A list or certificate relating to violations of motor vehicle laws and ordinances required by §391.27;
 - (7)
 - (i) The medical examiner's certificate as required by §391.43(g) or a legible copy of the certificate.
 - (ii) *Exception.* For CDL holders, beginning January 30, 2012, if the CDLIS motor vehicle record contains medical certification status information, the motor carrier employer must meet this requirement by obtaining the CDLIS motor vehicle record defined at §384.105 of this chapter. That record must be obtained from the current licensing State and placed in the driver qualification file. After January 30, 2015 a non-excepted, interstate CDL holder without medical certification status information on the CDLIS motor vehicle record is designated "not-certified" to operate a CMV in interstate commerce. After January 30, 2015 and until June 22, 2018, a motor carrier may use a copy of the driver's current medical examiner's certificate that was submitted to the State for up to 15 days from the date it was issued as proof of medical certification.
 - (iii) If that driver obtained the medical certification based on having obtained a medical variance from FMCSA, the motor carrier must also include a copy of the medical variance documentation in the driver qualification file in accordance with §391.51(b)(8);
 - (8) A Skill Performance Evaluation Certificate obtained from a Field Administrator, Division Administrator, or State Director issued in accordance with §391.49; or the Medical Exemption document, issued by a Federal medical program in accordance with part 381 of this chapter; and
 - (9)
 - (i) For drivers not required to have a CDL, a note relating to verification of medical examiner listing on the National Registry of Certified Medical Examiners required by §391.23(m)(1).
 - (ii) Until June 22, 2018, for drivers required to have a CDL, a note relating to verification of medical examiner listing on the National Registry of Certified Medical Examiners required by §391.23(m)(2).
- (c) Except as provided in paragraph (d) of this section, each driver's qualification file shall be retained for as long as a driver is employed by that motor carrier and for three years thereafter.

Application and Previous Employer Background Check / Rebuttal Policy

(d) The following records may be removed from a driver's qualification file three years after the date of execution:

- (1) The motor vehicle record received from each State driver licensing agency to the annual driver record inquiry required by §391.25(a);
- (2) The note relating to the annual review of the driver's driving record as required by §391.25(c)(2);
- (3) The list or certificate relating to violations of motor vehicle laws and ordinances required by §391.27;
- (4) The medical examiner's certificate required by §391.43(g), a legible copy of the certificate, or for CDL drivers any CDLIS MVR obtained as required by §391.51(b)(7)(ii);
- (5) Any medical variance issued by FMCSA, including a Skill Performance Evaluation Certificate issued in accordance with §391.49; or the Medical Exemption letter issued by a Federal medical program in accordance with part 381 of this chapter; and
- (6) The note relating to verification of medical examiner listing on the National Registry of Certified Medical Examiners required by §391.23(m).