

Comments on FMCSA-97-2277

Ideally any changes to the regulations should include some type of national database where all drivers of commercial motor vehicles would be required, at the time of their driver's license issuance and renewals thereafter, to permit the FMCSA to collect that driver's accident data, substance abuse testing data, and prior employment safety and/or background data. This national database could be administered similarly to that of the MCMIS online registration system, allowing only registered employer representatives to either download, fax, or have mailed information for an applicant for a CDL required safety sensitive position, or upload information for past employees. The system could be a phased-in system, and some of the costs could be passed on through an increase in the costs for state-issued driver's licenses and/or increase in the filing fees for commercial motor carriers (MCS-150) and/or fines imposed against drivers/motor carriers during roadside inspections. Data could be dispersed to prospective employers through online access, fax-back/fax-on-demand, and through a centralized, automated telephonic system. The same systems could be utilized for adding information to the system. Adverse data regarding substance abuse could remain confidential if healthcare providers who have access to confidential medical records as recognized in HIPAA could be responsible for uploading of that information, maintaining confidentiality of the process. Additionally data is collected regarding drivers through carrier profiles on the MCMIS system anyway. I am sure the technology is available to allow that data to be migrated over into a driver database now. This database would meet most, if not all, requirements of the SNPRM:

1. The appropriateness of the days could be set at a 30 day rate as the information could be readily accessible. Those employers or motor carriers accessing the system could be supplied a PIN number which could then time stamp the day the information was accessed, thereby allowing a paper trail for a compliance review.
2. Information obtained can only be used during the hiring process, and accessed by those persons involved with the process for employers/motor carriers. This information would be time-stamped thus making an employer liable for accessing that information for any other reason other than the hiring process.
3. DOT accident registers can then be kept and controlled at a central location within this database, already maintained by the MCMIS system, thus reducing paperwork required by employers/motor carriers.
4. The economic impact on small businesses would be minimal, and marginalized, as underwriting costs (i.e. insurance rates) are reduced as unsafe drivers are recognized and weeded out.
5. Drivers who believe that adverse information exists within these database records would have an opportunity to review and comment through a "request for information" form provided by local driver's license bureaus and/or employers.
6. Recordkeeping requirements could be managed by the computer database, and prior, out-dated records could be purged from the system as anniversary dates pass.

The current system of “good faith” checks is absolutely abysmal. Prior employers are simply not returning information requested for potential employers. These “prior employers” fear litigation if sensitive data is released or that an adverse decision is made that would expose them to any legal action. The “potential employer” is at the mercy of the information provided by the driver applicant as truthful, which we all know may not be the case. The now “employer” can face litigation for negligent entrustment if these background checks are not returned, with little to no mitigation against prior employers who may have gone out of business, merged, or simply may not exist. I also believe that this system should be administered by a pseudo-governmental agency or a contractor, not multiple, private sector, for-profit companies due to non-standardization of the reporting or procedures that could cause confusion from one employer to the next. Dr