

Transport Topics

By Barbara Payne (as appeared in the September 17, 2001 edition of *Transport Topics*, the weekly newsmagazine of the American trucking industry)

When it comes to complying with federal regulations regarding the hiring of commercial truck drivers, many trucking managers rely heavily on consumer reporting agencies to conduct background checks in order to obtain more reliable data.

One of the legal obstacles to be overcome, say carriers, is caused by a paradox in the law that makes it difficult to obtain reliable information on job candidates. While Federal Motor Carrier Safety Administration regulations require carriers to obtain three years of employment and three years of driving history for every driver they want to hire, current regulations do not require previous employers to share such histories. And often those previous employers face the possibility of lawsuits against them for libel if they give out anything other than dates of employment.

The law is stronger when it comes to drug and alcohol records, mandating past employers to provide two years of drug and alcohol records. But that doesn't help when it comes to obtaining other information required under FMCSA rules. One solution for carriers is to subscribe to one of several consumer-reporting services that perform background searches on drivers.

"We could make better hiring decisions and put more control mechanisms in place if we had better disclosure," Greer Woodruff, vice president for safety at J. B. Hunt Transport Services, says. The dry van truckload, intermodal and contract carriage company based in Lowell, Ark., hires between 7,000 and 8,000 drivers a year, Woodruff says.

"What happens is there may be an accident and then because of the discovery process for a trial, information about a driver's past performance is brought to light that no one would reveal during the background check," Woodruff says. "This is a big disadvantage in a lawsuit as an attorney may raise questions with the jury as to whether the carrier should have known this information."

Carriers say they end up with incomplete and inaccurate information all the time. Dick Carr, vice president of

safety at Quality Distribution Inc. of Tampa, Fla., one of the largest bulk carriers in North America, hires 1,400 drivers a year. He said a state's license records can be months behind, which can result in hiring a driver with serious moving violations that do not show up on his record.

Even the records themselves can be misleading as a result of plea bargaining, Carr said. In some instances, he says, the attorneys hired to represent drivers in court are able to "bargain a moving violation down to something like 'excessive noise.' So the court gets its money [in the form of a fine], the driver gets off, and a carrier doesn't get a true picture of what a driver's performance has been."

Fred Sajewski, director of safety for Manfredi Motor Transit in Newbury, Ohio, says the accuracy of records can be undermined by other factors: "Guys move around; we can't track them. People are out there lying and cheating on the license bureaus. Rules counteract other rules."

To wade through the confusion, carriers can turn to a company that performs background searches. One such operation, DAC Services/STA United of Tulsa, Okla., serves 10,000 transportation companies across North America with a database of 5 million records that grows daily, according to Victoria Burge, marketing manager for DAC/STA.

While federal regulations prohibit release of driver drug and alcohol records without driver approval, they do not specify the same for employment history. DAC/STA's subscriber contract, however, requires requesters to have a signed driver release before giving out information. If a DAC/STA report contains potentially damaging information, drivers are given an opportunity to give their side of the story. Burge said employers like sending information through DAC/STA because drivers can put their comments right on the records that are issued.

According to Burge, DAC/STA is a consumer reporting agency that has access to the national repository of information for commercial

driver licenses called the Commercial Drivers License Information System and maintained by American Association of Motor Vehicle Administrators. This is the network that includes all of the state Departments of Motor Vehicles.

"We are connected to DMVs in all states," Burge says, "so even if a driver moves around a lot, we can supply complete records of any CDLs he or she has held during the required three-year period."

Besides CDL data, the DAC/STA form solicits other information. Clients who subscribe to the service fill out and file with DAC/STA a termination record for CDL drivers they've dismissed. In addition to drug and alcohol testing information, the form contains questions that can directly or indirectly be used to make an informed decision about a driver's past, according to company officials. This information includes accident records, types of driving the trucker has done, reasons for leaving and a question about a driver's work records that lets employers select multiple answers as to a driver's performance in general.

DAC/STA requires a physical copy of a signed driver release regarding drug and alcohol records. For employment history, DAC/STA requires that subscribing carriers sign an agreement that they will not request information from DAC/STA unless they have already obtained a signed release from a driver. The company doesn't require a physical copy of that release for employment history.

If drivers have disputes over any information released, parties abide by the Fair Credit Reporting Act that governs consumer reporting agencies. Drivers and employers are then allowed to append any comments to the record, and employers are protected from liability for information that comes through any consumer reporting agency.

Adrem Profiles Inc. is another background check service company located in Tampa, Fla., which does work

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for the trucking industry. Michael Plumridge, executive vice president of sales and marketing, emphasizes that it's critical to hire an agency that knows the laws, knows how to comply and conducts thorough investigations.

"There are 11,000 court repositories and 4,000 other repositories of information out there that need to be searched when you're doing a background check," Plumridge says. "You need to make sure that whoever does the checks for you understands the guidelines of Section 1681 of the Code of Federal Regulations that give guidance to anyone who provides consumer reports."

Investigations conducted by consumer agencies are not foolproof. If a previous employer doesn't participate in a service, or if a company goes out of business, there can be gaps in a driver's record. According to Tony Baker, recruiting manager for P&P Transport of Delran, N.J., the current CDL system itself is full of holes.

"Information is still not reciprocal for all states, or the point system varies," Baker says. "If a driver fails a drug or random or post-accident drug screen, it only gets reported to the state where his CDL is issued. CDLIS was supposed to fix all this reciprocity but it hasn't."

QDI's Carr, pointing to another flaw in the system, says an arrest for driving under-the-influence in a driver's personal vehicle is not recorded on the driver's CDL license

"In one case, we hired a driver after a previous employer had told us he was dismissed for violating a company policy. But we found out later they meant he'd failed a roadside alcohol test," Carr says. "Even though the driver's level was actually below the 0.04% [Department of Transportation] mandate, their policy was zero tolerance. Since we also have zero policy, we would not have hired this driver if we'd known. Technicalities relating to inconsistent thresholds can greatly affect hiring decisions."

Indeed, the potential pitfalls in the background check process seem limitless.

J.B. Hunt's Woodruff cites the example of a driver who doesn't disclose on his job application that he previously failed a pre-employment drug test. Drivers reason that they weren't employed by that carrier so they don't have to count that test as reportable, he says.

J.B. Hunt finds some drivers take advantage of the fact that employers have gone out of business to say they were with them - which means, conveniently, that no references are available to the hiring carrier. "But we also can't get records even for good drivers who worked for a company that's gone out of business," Woodruff says.

Other gaps occur when drivers don't tell doctors of heart or other health problems. In those cases, that information doesn't get reported to the hiring carrier. Then there are instances when companies deliberately slow the process down and put obstacles in the way of the hiring carrier's background check because those companies want to keep a driver in their stable.

In their efforts to overcome these and

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Trucking Industry Seeks Better Way to Check a Driver's History

While the Department of Transportation works to get new rules on the books regarding background checks for drivers applying for a job, some trucking executives say they would like to see certain specific practices applied to the problem.

Greer Woodruff is the vice president for safety at J.B. Hunt Transport Services, a dry van truckload, intermodal and contract carriage company based in Lowell, Ark., that hires, according to Woodruff, between 7,000 and 8,000 drivers a year.

Woodruff says the following ideas could make a real difference in helping carriers get what they need in terms of running background checks by using existing resources and not putting additional burdens on carriers.

- Universal access for any carrier to the Federal Motor Carriers Safety Administration's existing motor carrier management information system that contains records of all roadside inspections and accidents.

"I'd know a lot about any driver from this database," Woodruff says, "And we could put immediate controls, like training or monitoring, in place if the record warrants it."

Woodruff says that carriers are not required to do more paperwork or take extraordinary measures to get the information.

- Institute a regulation where medical review officers must report to a central repository all positive drug test results of any kind - pre-employment, probable cause, etc. - and give all carriers open access to the data.

National Diagnostics of Charlotte, N.C., handles J.B.

Hunt's medical reviews. The MRO administers 16,000 drug tests annually. Jerry Stewart, executive vice president and general counsel there confirms Woodruff's reference to a program already put in place by the Oregon DMV that requires recording any positive test results, regardless of whether the driver took employment at that company. Stewart says the Oregon agency also gives drivers an opportunity for a hearing and a chance to expunge information after a certain period of time.

However, Stewart says, "It's only been in place a year, so there's no real evaluation [of how well it's working] yet."

- Pattern a program on the California Pull Program. Under CPP, carriers register all the California drivers they hire. The state puts the driver information into a database where it's kept updated by

carriers notifying of changes in employment and the state recording any changes on that driver's license - including suspensions, citations and medical problems. The state automatically sends a report of any changes to all registered carriers.

"It's a model that FMCSA ought to be seriously looking at," says Woodruff, who adds that his company also runs annual checks of its drivers. The California program "would save lots of money. I'd guess that 50% of the [annual checks] we run on any license haven't had any activity. Now we're spending \$7.50 a report for no new information."

~ Barbara Payne

FMCSA Reviews Proposed Rules on Driver Background Information

Federal officials are examining new rules proposed to address the responsibilities of providing driver background information, according to Neill L. Thomas, director of safety and operations for American Trucking Associations.

The rules, under review by the Office of the Chief Counsel of the Federal Motor Carrier Safety Administration, concern several issues. Among them is a proposal to expand the number of days employers would be given to respond to requests for information on

previous employees to 30 from the current 14, Thomas said.

Employers would be encouraged to refrain from putting drivers behind the wheel or in other safety-sensitive positions until the information arrives but would not suffer legal penalties until after the grace period expires.

Other issues that have delayed the publication of the new rules including the restructuring of the Department of Transportation and the formation of a separate

agency to police motor carrier safety.

The U.S. Small Business Administration also has raised questions about the potential burden of the new rules on small businesses, Thomas said.

Under the FMCSA proposal, prospective employers would have to record three years of accident information - a change from one year - and guarantee access to pertinent safety performance information. Also, information on all new hires would have to include:

- Driver accident records
- Hours-of-service violations resulting in any out-of-service order.
- All violations of existing drug and alcohol regulations, plus any failures to undertake or complete substance abuse rehabilitation.
- Information on all driving violations, including those involving a private vehicle, for three years rather than two.

~ Barbara Payne
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other obstacles, many larger carriers and some smaller one greatly expand the background check process. Some staff members spend large amounts of time making personal calls and faxing requests and releases to previous employers.

"We have 110 trucks," P&P's Baker says, "and we use DAC/STA Services, yes, but we also go back ourselves seven years for work history."

Baker says his company sends written verification forms and compares them to the driver's application to identify potential problems. He said it's important to get opinions about a driver's past performance, not just the facts. Though they have the process down to a science, they focus mainly on retaining drivers with pay and management practices in order to minimize their need to keep hiring.

In 1994, Congress enacted a law giving DOT broad powers to remedy the reporting and confidentiality issues associated with the background checking process. The law mandates that employers openly share information on driver performance.

In another piece of legislation passed in 1998, protection is given to carriers against being sued for sharing such information, as long as they comply with requirements for driver releases. Driver releases, though required under current law, do not in and of themselves completely protect carriers from libel lawsuits. The other processes and procedures carriers use to collect information are still

susceptible to drivers' accusations of impropriety in obtaining information.

Despite the admitted obstacles to getting necessary information, carriers are divided on the issue of whether more legislation is the answer. Fix existing systems is what some carriers say. Others aren't anxious to have the government involved at all.

FMCSA expects to make further progress later this year on revising its regulations to help ease carrier burdens in the background check process. The agency published an initial notice of proposed rulemaking in 1996 to be implemented as of Jan. 31, 1999, but the regulations were never released by DOT. Though FMCSA did solicit and receive public comment on the proposed rulemaking, that's where the efforts ended. Changes were never written to take public comments into account, and the revised rule has not been published.

Dave Longo, public affairs officer at FMCSA, says the agency is "continuing to work on the rulemaking. I can only say I expect further movement later this year." He was unable to say exactly what changes are being contemplated.

ATA representatives have discussed with some larger carriers ideas for making the background check process easier while minimizing additional burdens on carriers. Executives at J.B. Hunt, rated 13th on the Transport Topics 100 list, have worked out extensive suggestions for FMCSA to consider while they formulate changes to the rulemaking. Woodruff lists their ideas as allowing universal access to the

existing inspection and accident reporting database, requiring every positive drug test be made accessible, and instituting states' cooperation in maintaining a database of every driver's license and employment changes.

Gary Alexander, vice president for driver services and safety at Arrow Trucking in Tulsa, Okla., says their trick to making the background check process less error-prone is to "interview, interview, interview. We feel repeating the process can catch people in misrepresentations. They become more relaxed and eventually they tell you the bad things if they have bad things in their background - or good things."

Sajewski of Manfredi has a suggestion for easing the process: "The police have a system called NCIC. All you need is a social security number and you can find out anything. With the police tool, we'd have a better shot" at getting the necessary information.

Carr from Quality Distribution agrees that background checking is a laborious process and requires that carriers make extra efforts beyond simply using a service.

"I want to tell terminal managers for any trucking company, 'If you were going to buy 10 new tractors, you'd spend days and days and hundreds of hours figuring all the options before you took delivery,'" Carr says. "Why hire a driver just because he walked in the door?"

~ Barbara Payne is a freelance writer who writes on high-tech and Internet topics for transportation and other industries.