

FMCSA alcohol and controlled substances regulations (*i.e.*, 49 CFR part 382, subpart B). Note that part 382 in conformance with part 40, requires motor carriers to investigate alcohol and controlled substance information from any previous employer during the prior two years where the driver held a safety sensitive job.

Specifically, the prospective motor carrier would have to investigate whether a driver had received a rehabilitation referral from an SAP pursuant to § 382.605. If so, the prospective motor carrier would have to receive: (1) Documentation of the driver's successful completion of DOT return-to-duty requirements, and (2) any positive test results or refusals to be tested that occurred subsequent to completion of return-to-duty requirements.

In a related issue, FMCSA would continue not requiring previous employers to divulge information regarding self disclosed violations of the alcohol and controlled substances prohibitions made under § 382.121. Such disclosures are not required to be reported as testing violations nor are they subject to DOT return-to-duty requirements.

Request for Comments

The FMCSA requests comments on any and all aspects of the revised proposals in this SNPRM. The comments to the docket on the NPRM remain active. Thus, there is no need to revisit the issues discussed in the 1996 NPRM.

Rulemaking Analyses and Notices

Regulatory Notices

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.) You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit <http://dms.dot.gov>.

Executive Order 12866 (Regulatory Planning And Review) And DOT Regulatory Policies And Procedures

The FMCSA has determined this action is a significant regulatory action within the meaning of Executive Order 12866, and is significant within the meaning of Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). It has been reviewed by the

Office of Management and Budget. The subject of requirements for background checks of prospective driver safety performance history information will likely generate considerable public interest within the meaning of Executive order 12866. We have classified the rule as significant because of the high level of public and congressional interest in the rule.

This SNPRM modifies an earlier notice of proposed rulemaking by: (1) Including an expanded discussion of the economic and information collection burdens of the proposal, (2) setting limitations on employer liability for using and providing the safety performance history data of a driver by including the requirements of section 4014 of TEA–21 codified at 49 U.S.C. 508, and (3) establishing the Act's required due process rights of drivers. FMCSA anticipates that the economic impact of this SNPRM will not exceed the annual \$100 million threshold for economic significance.

Under a following section of this SNPRM entitled "Regulatory Evaluation: Summary of Benefits and Costs," the agency estimated the first-year costs to implement this rule would amount to approximately \$10 million. Total discounted costs over the 10-year analysis period (2003–2012) would be \$76 million, using a discount rate of seven percent. All these costs are associated with the statutorily mandated requirements of section 114 of the Hazmat Act and section 4014 of TEA–21. The first-year net benefits associated with this rule would be negative. Total discounted benefits over the 10-year analysis period (2003–2012) would be equal to \$88 million. Total discounted net benefits from implementing this rule would equal \$12 million over the 10-year analysis period (2003–2012).

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement and Fairness Act (SBREFA), requires Federal agencies to analyze the impact of rulemakings on small entities, unless the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. In response to SBA's request for more information on the economic impact of this proposed rule upon small entities, and the determination that this is considered a significant rulemaking proposal, the agency has prepared an initial regulatory evaluation and the following RFA analysis.

(1) *A description of the reasons why action by the agency is being considered.* A large number of motor

carriers must hire drivers to operate large commercial motor vehicles on the nation's roads and highways. These drivers are responsible for safe, secure and reliable operation of these vehicles on the nation's roads and highways. Public concern regarding the safety of commercial motor vehicles and their operators has heightened awareness of the limited driver safety performance information available to prospective motor carrier employers when making hiring decisions. If prospective employers had access to more information about driver safety performance history it would enable employers to make more informed decisions regarding the relative safety risk of drivers who apply for employment.

With enactment of section 114 of the HazMat Act, Congress directed FMCSA to revise its safety regulations to specify additional minimum driver safety performance information a prospective employer must investigate from previous employers. Additionally, the HazMat Act sets a time limit for previous employers to respond to the investigations, and provides the driver an opportunity to review and, if necessary, correct or rebut the safety performance information provided by current or previous employers to the prospective employer.

In response to industry concerns about the legal liability which would arise from providing information about driver employment safety history, Congress determined that the societal importance of this information is sufficient to grant limited liability to motor carriers by preempting State and local laws and regulations creating liability. This is carried out in section 4014 of TEA–21. The liability limitation applies to prospective and previous employers, their agents, and their insurance providers from defamation suits when investigating, using or providing accurate information about safety performance histories of their drivers. The right of drivers to review such employer investigation records, and to have them corrected or include a rebuttal from the driver, is made statutory. FMCSA is directed to develop procedures for implementing these requirements as part of the changes to § 391.23 mandated by section 114 of the HazMat Act.

(2) *A succinct statement of the objectives of, and legal basis for, the proposed rule.* The legal bases for this proposed rule are the Congressional directives contained in section 114 of the HazMat Act and section 4014 of TEA–21. Congressional intent is to ensure prospective motor carriers have