

substances inquiries under part 382. However, requests for that data are the last information requested in the screening process because of the requirement for a signed authorization to release any such data, and this occurs only for that portion of drivers still under consideration for employment. This proposed rule would enhance the ability to take enforcement action if a previous employer does not provide the information required in a timely manner.

All small entities for the previous three years would now be required to provide their employment investigative safety performance history data. That data, minus the alcohol and controlled substances data, likely would be requested routinely for all driver applicants from all previous motor carriers as part of the initial employment screening process that does not require signed authorization. For those drivers still under consideration for employment, the same previous employers could receive a subsequent second request for the alcohol and controlled substances information.

The 1997 CDL Effectiveness study contained a report of a focus group meeting of motor carrier safety directors. (CDL Focus Group Study, November 1996, copy of the Safety Director comments are included in docket as document 41.) It documents that a number of motor carriers require drivers to have obtained previous experience driving a CMV before that motor carrier will hire the driver. If some employers operate more as employers of entry-level drivers, then they could often be required to provide investigation information, but not get much benefit of receiving such investigations from other previous employers. In such cases, if the motor carriers furnishing the investigation data are small entities, the costs could potentially rise to the level of a significant economic impact on a substantial number of small entities.

If such entities are unable to insist on receiving payment for the costs of performing this function prior to releasing the data because of FMCSA policy, there could be a negative impact on them. FMCSA requests comments on how significant this might be.

Recordkeeping. It is a largely accepted industry practice that alcohol and controlled substance information is kept separately from the driver qualification file. This is a practical arrangement that assists employers to easily defend that the data is adequately secured and access to it is controlled, in compliance with the recordkeeping requirements of part 382.

Employers are currently required by § 391.23(c) to keep prior employer furnished investigative information in the driver qualification file. Because 49 U.S.C. 508 restricts previous employer investigative data to just the hiring decision, this SNPRM proposes changing the specification of where previous employer investigative information is kept to instead be with the alcohol and controlled substance data in the already established controlled access, secure file. Because such a file already exists, there should be no significant impact on recordkeeping requirements of prospective employers.

Professional skills. Motor carriers are already required to provide alcohol and controlled substances data. That function requires a person who is designated as having controlled access to that data. The addition of reporting accident data could be an added responsibility of the person already required to report the alcohol and controlled substances data.

(5) *An identification, to the extent practicable, of all Federal rules which may duplicate, overlap, or conflict with the proposed rule.* The Fair Credit Reporting Act (FCRA) specifies procedures that must be followed by consumer reporting agencies when providing inquiry and investigative data to motor carriers as part of the hiring decision process. If such a consumer reporting agency is also the agent of a motor carrier, then there could be overlap between proposals in this SNPRM and the FCRA.

(6) *A description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.* The FHWA published an NPRM on March 14, 1996 (61 FR 10548) following the detailed prescriptive specifications contained in section 114 of the HazMat Act. It proposed processes for investigations with previous employers and use of that data in the hiring decision process. This SNPRM responds to additional prescriptive requirements contained in section 4014 of TEA-21, and to concerns expressed by various commenters, including the SBA. FMCSA believes that the alternatives discussed in this SNPRM are the ones available to the agency within the mandates of the HazMat Act and the TEA-21.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4; 2 U.S.C. 1532)

requires each agency to assess the effects of its regulatory actions on State, local, and tribal governments and the private sector. Any agency promulgating a final rule likely to result in a Federal mandate requiring expenditures by a State, local, or tribal government or by the private sector of \$100 million or more in any one year must prepare a written statement incorporating various assessments, estimates, and descriptions that are delineated in the Act. FMCSA has determined that the changes proposed in this rulemaking would not have an impact of \$100 million or more in any one year.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (April 23, 1997, 62 FR 19885), requires that agencies issuing "economically significant" rules that also have an environmental health or safety risk that an agency has reason to believe may disproportionately affect children must include an evaluation of the environmental health and safety effects of the regulation on children. Section 5 of Executive Order 13045 directs an agency to submit for a "covered regulatory action" an evaluation of its environmental health or safety effects on children. The agency has determined that this rule is not a "covered regulatory action" as defined under Executive Order 13045.

This rule is not economically significant under Executive Order 12866 because the FMCSA has determined that the changes in this rulemaking would not have an impact of \$100 million or more in any one year. This rule also does not concern an environmental health risk or safety risk that would disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This rule will not effect a taking of private property or otherwise have taking implications under Executive order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 13132 (Federalism)

The safety performance of drivers operating commercial motor vehicles on