

the nation's roads and highways is a matter of national concern. Congress recognized the need for mandating a more complete background check of drivers' safety performance from previous DOT regulated employers when drivers apply to work for a new motor carrier employer. This data is vital to prospective employers establishing a driver's safety performance history. In section 114 of the HazMat Act, Congress directed FMCSA (then FHWA) to amend its regulations to specify the minimum safety information that a motor carrier must investigate from a driver's former DOT regulated employers, and require those employers to provide that data to the requesting motor carrier in a timely fashion.

The motor carrier industries expressed great concern that the proposals in the 1996 NPRM could subject them to considerable litigation and expense by drivers denied employment based on this data. In section 4014 of TEA-21, Congress responded to those concerns and specifically granted limited liability to employers and agents furnishing and using this information by preempting State and local laws and regulations creating such liability. It directed FMCSA to include provisions addressing implementation of this limited liability in a revision to the previously issued 1996 NPRM.

Section 4014 of the 1998 TEA-21 explicitly says "No State or political subdivision thereof may enact, prescribe, issue, continue in effect, or enforce any law (including any regulation, standard, or other provision having the force and effect of law) that prohibits, penalizes, or imposes liability for furnishing or using safety performance records in accordance with regulations issued by the Secretary to carry out this section." This Federal preemption of State or local jurisdictions' liability rights is codified at 49 U.S.C. 508, and is intended to facilitate the transfer of this vital investigative driver safety information between DOT regulated employers. The liability limitation does not apply if it is proven the previous employer provided incorrect information.

The Act replaces the litigation alternative with a mandated administrative process as the means for a prospective driver to address their privacy rights to challenge potentially incorrect safety performance data provided by a previous employer. This mandated process would enable a driver to review his/her investigative information provided by a previous DOT regulated employer, request

correction of incorrect information, and require inclusion of a driver provided rebuttal if agreement is not reached between the driver and the previous employer furnishing the investigative background information.

The Act says " * * * provide protection for driver privacy and to establish procedures for review, correction, and rebuttal of the safety performance records of a commercial motor vehicle driver." The process proposed in this SNPRM is similar to what is specified under the Fair Credit Reporting Act (FCRA) (15 U.S.C. 1681 *et seq.*) for protecting a person's rights when investigating previous employer background information. Processes are also proposed in this SNPRM for recordkeeping to make it possible for FMCSA to verify that previous and prospective employers are conforming to the agency's proposed processes protecting driver rights.

Drivers, State and local subdivisions, and others still have the right to allege non-compliance with these proposed regulations by reporting to FMCSA under its complaint procedures at 49 CFR 386.12. Such complaints could result in an enforcement follow-up for a motor carrier compliance review. An increasing number of States are participating under the MCSAP grants as the investigating agents for FMCSA of these motor carrier regulations, *i.e.*, in such States it is State agents that perform motor carrier compliance reviews. Thus, States could be the investigating agents to verify that employers are complying with the driver protections proposed in this SNPRM.

This action was analyzed in accordance with the principles and criteria contained in Executive Order 13132 that requires agencies to certify they have evaluated Federalism issues. The original NPRM was published in 1996 and there was no preemption of State or local liability laws or regulations in that proposal. Consequently, the agency did not receive any comments from elected State or local officials on the preemption issue.

We anticipate implementation of this proposed rule change, in conformance with the specification contained at 49 U.S.C. 508(c), would not add any additional costs or preemption burdens to States or local subdivisions. We also anticipate these changes would have no effect on the State or local subdivisions' ability to discharge traditional governmental functions.

Because the preemption requirement set forth in this SNPRM was established in 1998 by the TEA-21, this is the first

time this preemption is being set forth as a proposed regulatory change. FMCSA is seeking comments on possible compliance costs or preemption implications from elected State and local government officials as part of this SNPRM stage.

Comments to the docket are sought from State and local officials on whether there may be any major concerns about the proposed preemption of State and local law and regulations for these Federally protected interests. The FMCSA is requesting States and local government officials, or their representatives, to express any concerns they may have by submitting comments to the public docket. The agency will address any concerns prior to issuing a final rule on this subject.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), requires Federal agencies to obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. FMCSA has determined that the proposals in this SNPRM would impact and/or reference three currently-approved information collections (IC), as follows: (1) Driver Qualification Files, OMB Control No. 2126-0004 (formerly 2125-0065), approved at 941,856 burden hours through December 31, 2005; (2) Accident Recordkeeping Requirements, OMB Control No. 2126-0009 (formerly 2125-0526), approved at 37,800 burden hours through September 30, 2005; and (3) Controlled Substances and Alcohol Use and Testing, OMB Control No. 2126-0012 (formerly 2125-0543), approved at 573,490 burden hours through August 31, 2004.

The effect of this SNPRM on the burdens of the last two of these will be minimal, and will relate primarily to the length of time that records must be kept. The FMCSA, while acknowledging that there may be a minor impact associated with these collections, is not making estimates or discussing these minimal impacts at this time. Instead, the agency is focusing on the information collection regarding Driver Qualification Files, which will be impacted in a significant manner by this proposed rule.