(a) Recognition of railroad tracks and understanding of the space around them within which on-track safety is required.

(b) The functions and responsibilities of various persons involved with on-track safety procedures.

(c) Proper compliance with on-track safety instructions given by persons performing or responsible for on-track safety functions.

(d) Signals given by watchmen/lookouts, and the proper procedures upon receiving a train approach warning from a lookout.

(e) The hazards associated with working on or near railroad tracks, including review of on-track safety rules and procedures.

§ 214.345 Training and qualification for lone workers.

Each lone worker shall be trained and qualified by the employer to establish on-track safety in accordance with the requirements of this section, and must be authorized to do so by the railroad that conducts train operations on those tracks.

(a) The training and qualification for lone workers shall include, as a minimum, consideration of the following factors:

(1) Detection of approaching trains and prompt movement to a place of safety upon their approach.

(2) Determination of the distance along the track at which trains must be visible in order to provide the prescribed warning time.

(3) The rules and procedures prescribed by the railroad for individual train detection, establishment of working limits, and definite train location.

(4) The on-track safety procedures to be used in the territory on which the employee is be qualified and permitted to work alone.

(b) Initial and periodic qualification of a lone worker shall be evidenced by demonstrated proficiency .

§ 214.347 Training and qualification of watchmen/lookouts.

(a) The training and qualification for roadway workers assigned the duties of watchmen/lookouts shall include, as a minimum, consideration of the following factors:

(1) The detection and recognition of approaching trains.

(2) The effective warning of roadway workers of the approach of trains.

(3) The determination of the distance along the track at which trains must be visible in order to provide the prescribed warning time.

(4) The rules and procedures of the railroad to be used for train approach warning.

(b) Initial and periodic qualification of a watchman/lookout shall be evidenced by demonstrated proficiency .

§ 214.349 Training and qualification of flagmen.

(a) The training and qualification for roadway workers assigned the duties of flagmen shall include, as a minimum, the content and application of the operating rules of the railroad pertaining to giving proper stop signals to trains and holding trains clear of working limits.

(b) Initial and periodic qualification of a flagman shall be evidenced by demonstrated proficiency .

§ 214.351 Training and qualification of roadway workers who provide on-track safety for roadway work groups.

(a) The training and qualification of roadway workers who provide for the on-track safety of groups of roadway workers through establishment of working limits or the assignment and supervision of watchmen/lookouts or flagmen shall include, as a minimum:

(1) All the on-track safety training and qualification required of the roadway workers to be supervised and protected.

(2) The content and application of the operating rules of the railroad pertaining to the establishment of working limits.

(3) The content and application of the rules of the railroad pertaining to the establishment or train approach warning.

(4) The relevant physical characteristics of the territory of the railroad upon which the roadway worker is qualified.

(b) Initial and periodic qualification of a roadway worker to provide on track safety for groups shall be evidenced by a recorded examination.

§ 214.353 Training and qualification in on-track safety for operators of roadway maintenance machines.

(a) The training and qualification of roadway workers who operate roadway maintenance machines shall include, as a minimum:

(1) Procedures to prevent a person from being struck by the machine when the machine is in motion or operation.

(2) Procedures to prevent any part of the machine from being struck by a train or other equipment on another track.

(3) Procedures to provide for stopping the machine short of other machines or obstructions on the track.

(4) Methods to determine safe operating procedures for each machine that the operator is expected to operate.

(b) Initial and periodic qualification of a roadway worker to operate roadway maintenance machines shall be evidenced by demonstrated proficiency.

Issued this 11th Day of March, 1996.

Jolene M. Molitoris,

Administrator. Federal Railroad Administration

[FR Doc. 96–6175 Filed 3–12–96; 8:45 am]

BILLING CODE 4910–06–P

Federal Highway Administration

49 CFR Parts 382, 383, 390, and 391

[FHWA Docket No. MC–96–6]

RIN 2125–AD66

Safety Performance History of New Drivers

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The FHWA proposes to amend its regulations to specify minimum safety information that new and prospective employers must seek from former employers during the investigation of a driver's employment record. This notice of proposed rulemaking (NPRM) also proposes to increase the period of time for which carriers must record accident information in the accident register from one to three years. This proposal is mandated by section 114 of the Hazardous Materials Transportation Authorization Act of 1994 (HazMat Act). The proposed rules would ensure that employers would be cognizant of critical information concerning a driver's prior safety performance, while also affording the driver the opportunity to review and comment on that information.

DATES: Comments must be received on or before May 13, 1996.

ADDRESSES: All signed, written comments should refer to the docket number that appears at the beginning of this document and must be submitted to the Docket Clerk, Room 4232, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or envelope.

FOR FURTHER INFORMATION CONTACT: Ms. Valerie Height, Office of Motor Carrier Research and Standards, (202) 366–

1790, or Ms. Grace Reidy, Office of the Chief Counsel, (202) 366–0834, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

The FHWA is initiating this rulemaking in response to section 114 of the HazMat Act, Public Law 103–311, August 26, 1994, 108 Stat. 1677. Section 114 directs the FHWA to amend its regulations to require a motor carrier to request from previous employers specific safety information when investigating a driver's employment record pursuant to 49 CFR 391.23. The former employers would be required to respond to such requests within 30 days. The driver would be afforded an opportunity to review and comment on any information obtained from a former employer.

Currently, § 391.23(a)(2) of title 49 of the Code of Federal Regulations (CFR) requires motor carriers to make ''an investigation of the driver's employment record during the preceding three years,'' without specifying the type of information to be sought. The current regulation does not require a former employer to respond to the new and prospective employer's inquiry. For this reason, former employers may refuse to respond to such requests, and new and prospective employers are, therefore, unable to obtain important safety information about the driver.

The FHWA proposes to amend 49 CFR parts 382, 383, 390, and 391 to incorporate the changes mandated by the HazMat Act. Section 391.23 would be amended to require a motor carrier to obtain, for the preceding three-year period, information about a driver's accident record, hours-of- service violations resulting in an out-of-service order, violations of the prohibitions in subpart B of part 382, and failure to undertake or complete a rehabilitation program recommended by a substance abuse professional (SAP) under § 382.605. Former employers would be required to respond within 30 days to such requests. Drivers would be afforded an opportunity to review and comment on this information. Conforming changes would be made to §§ 383.35(f) and 391.21(d) to reflect the driver applicant's right to review and comment on information obtained from previous employers. To facilitate information exchange, § 390.15 would be amended to expand the time period for which carriers must record and retain accident information in an accident register from one to three years and require that the information in the accident register be provided to a subsequent employer in response to a request made during an employment investigation.

Part 382 would also be amended to incorporate the drug and alcohol provisions of section 114 of the HazMat Act. Consistent with § 391.23(c), § 382.413 would be amended to require employers to investigate whether a driver failed to undertake or complete rehabilitation or violated the prohibitions in subpart B of part 382. Employers subject to part 382 would also be required to obtain information concerning whether a driver violated the drug and alcohol rules of other DOT agencies as well as the prohibitions in subpart B of part 382. Other conforming changes are proposed for part 382 that do not affect § 391.23(c) and are discussed in greater detail under the section entitled ''Conforming Changes to Part 382.''

Applicability

Motor carriers subject to part 391 would be required to investigate the specific safety information proposed for § 391.23(c). They would be required to obtain information relative to a driver's accident experience and hours-of-service violations from all of the driver's motor carrier employers during the preceding three years. These motor carriers would also be required to request certain drug and alcohol information from employers that employed the driver to operate a commercial motor vehicle (CMV) requiring a commercial driver's license (CDL) under part 383 concerning events that occurred during the preceding three years. The source of the § 391.23(c) drug and alcohol information has been limited to motor carriers because, under this part, the FHWA only has authority to require a response from these employers. New and prospective employers would only be required to investigate the drug and alcohol information for drivers who operated a CMV requiring a CDL within the preceding three years because only these drivers are subject to the part 382 drug and alcohol testing program.

Under § 391.23, motor carriers may request general employment information from any employer who hired the driver within the preceding three years. The FHWA proposes to require that new and prospective employers request the safety information required under section 114 of the HazMat Act only of previous employers that are motor carriers. Although section 114 states that the requests for the safety information must be made to ''former employers,'' only motor carriers and persons who operate CMVs must comply with the requirements of 49 CFR Part 391. Thus, the proposed inquiry requirements of 49 CFR 391.23 would only apply to former employers that are (or were) motor carriers.

Section 114(a)(2) of the HazMat Act requires former employers to respond within 30 days to requests for safety information on a driver. Section 391.23(c) requires the motor carrier to make this investigation within 30 days of hiring the driver. To avoid prolonging the employment investigation process to 60 days (up to 30 days for the motor carrier to initiate the investigation plus up to 30 days for former employers to respond), the FHWA proposes to clarify § 391.23(c) to require a motor carrier to commence the investigation as soon as possible, but not later than 30 days after hiring the driver. Section 391.23(c)(2) is added to require former employers to provide the information in § 391.23(c) within 30 days of receiving the request. The former employer's 30-day response period commences from the postmarked date on a mailed request, the date of transmission on a facsimile request, or the date that the former employer was contacted for a personal or telephone interview. The 30-day period refers to calendar days and includes weekends and holidays. The 30-day response period concludes as of the date of postmark on a mailed response, date of transmission on a facsimile response, or the date that the former employer provides the information in a personal or telephone interview.

Under these proposed regulations, the driver would be given a reasonable opportunity to review and comment on any information obtained during the overall employment investigation. The motor carrier would be required to notify the driver applicant of such right when applying for employment.

The items of information proposed in § 391.23(c) are minimum safety indicators that would be investigated under § 391.23, in addition to general employment information. The specified information should not necessarily be regarded as an exclusive list of the information that would be obtained during the driver's employment record investigation. Employers would be allowed to continue to investigate, generally, an applicant's employment record. Employers who are subject to part 382 would also be required to obtain the information required by that part (See the section entitled

''Conforming Amendments to Part 382'').

Specific Minimum Safety Information To Be Sought When Investigating the Driver's Employment Record Under § 391.23

Under § 391.23, motor carriers would be required to request the following safety information from a motor carrier employer who, within the preceding three years, hired the driver to operate a CMV:

1. Accidents (as defined in § 390.5) in which the driver was involved during the past three years; and

2. Hours-of-service violations that resulted in an out-of-service order being issued to the driver during the past three years.

Motor carriers would also be required to request information regarding the following safety violations from an employer who, within the preceding three years, hired the driver to operate a CMV requiring a CDL under part 383:

3. Failure of the driver to undertake or complete a rehabilitation program prescribed by a substance abuse professional pursuant to § 382.605 during the past three years; and

4. Violations of the prohibitions in subpart B of part 382 during the past three years.

A discussion of each of the minimum safety indicators follows.

Accidents

The FHWA proposes to require new and prospective employers to investigate accidents occurring within the preceding three years involving a driver applicant. An accident is defined in § 390.5 as follows:

[A]n occurrence involving a commercial motor vehicle operating on a public road in interstate or intrastate commerce which results in—

(i) A fatality;

(ii) Bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or

(iii) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

Section 390.5 provides that the definition of an accident does not include the following:

(i) An occurrence involving only boarding and alighting from a stationary motor vehicle; or

(ii) An occurrence involving only the loading or unloading of cargo; or

(iii) An occurrence in the course of the operation of a passenger car or a multipurpose passenger vehicle (as defined in 49 CFR 571.3 of this title) by a motor carrier and is not transporting passengers for hire or hazardous materials of a type and quantity that require the motor vehicle to be marked or placarded in accordance with 49 CFR 177.823 of this title.

''Disabling damage'' is defined in § 390.5 as ''damage which precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs.'' This includes ''damage to motor vehicles that could have been driven but would have been further damaged if so driven.'' However, § 390.5 provides that disabling damage does not include—

(i) Damage which can be remedied temporarily at the scene of the accident without special tools or parts.

(ii) Tire disablement without other damage even if no spare tire is available.

(iii) Headlamp or taillight damage.

(iv) Damage to turn signals, horn, or windshield wipers which makes them inoperative.

The FHWA proposes that only accidents, as defined in § 390.5, be investigated instead of ''any motor vehicle accidents'' as stated in the HazMat Act for the following reasons. First, the FMCSR's definition of ''accident'' contained in 49 CFR 390.5 is not as all inclusive as ''any motor vehicle accident''; and the FMCSR's definitions apply to part 391. Section 390.15 already requires motor carriers to retain a record of ''accidents'' as defined in § 390.5. Broadening the term ''accident'' to include occurrences beyond those described in § 390.5 would make its definition inconsistent with the National Governors' Association (NGA) definition and would, therefore, skew the data contained in the SAFETYNET System. Such action could also significantly increase the paperwork burden placed upon the motor carrier industry. The FHWA published a final rule on February 2, 1993, in the Federal Register (58 FR 6729) which incorporated into the FMCSRs the accident definition recommended in the NGA study entitled, ''Truck and Bus Accidents: Getting the Facts'' (1990). In that final rule, the FHWA eliminated the requirements that motor carriers submit accident reports to the FHWA and notify the agency telephonically of fatal accidents, adopted a new accident reporting system (SAFETYNET Accident Module) which collects information from police accident reports and incorporates the NGA accident reporting data elements, and required motor carriers to maintain a register of accidents for a period of one year after the accident occurs. Each of the actions put into effect by the February 2, 1993, final rule is based upon the uniform definition of the term ''accident.'' Therefore, the FHWA proposes to restrict the accidents investigated under § 391.23(c)(1)(i) to those accidents defined in § 390.5 so that (1) the relationship between the definition of an accident and the actions accomplished by the February 2, 1993, final rule is maintained and (2) motor carrier employers may comply with the HazMat Act requirements without undue burden or confusion.

To facilitate implementation of the accident information requirements, the FHWA also proposes to broaden the use of the accident register. Currently, the accident register may be used to assist investigations and special studies conducted by representatives or special agents of the FHWA. The FHWA proposes to encourage motor carriers also to use it when responding to a new or prospective employer's request for information about a driver applicant's accident record.

The FHWA proposes to extend the period of time that the register must be retained from one to three years. Extending the retention period to three years would enable a motor carrier employing a driver for three or more years to provide an accident history to a subsequent employer for the entire period required by the proposed rule.

This proposal to require inquiries of former employers would not set aside the motor carrier's responsibility to investigate a driver's driving record under § 391.23(a)(1). Motor carriers are still required to inquire about a driver's driving record from the appropriate State agency in accordance with § 391.23(a)(1). Accident information obtained from previous employers would supplement any information from State agencies and, therefore, provide a more comprehensive safety profile of the driver.

Hours-of-Service Violations Resulting in an Out-of-Service Order

The FHWA considers a driver's hours-of-service violations to be a major safety indicator. The FHWA would require this information to be included in the employment investigation under the authority in section 114(b)(4) of the HazMat Act that authorizes ''any other matters determined by the Secretary of Transportation to be appropriate and useful for determining the driver's safety performance,'' to be a part of the investigation. Drivers who violate the hours-of-service rules often have insufficient rest to safely operate a CMV. The fatigue and loss of alertness

resulting from insufficient rest may place them and other highway users at higher risk. This information, therefore, will help new and prospective employers identify potentially unsafe drivers.

Failure to Undertake or Complete Drug or Alcohol Rehabilitation

The FHWA proposes to amend § 391.23 so that motor carriers would be required to investigate whether, within the preceding three years, a driver failed to undertake or complete a rehabilitation program pursuant to 49 U.S.C. 31306 after having been found to have used drugs or alcohol in violation of law or Federal regulation. (Section 114(b)(2) of the HazMat Act incorrectly references 49 U.S.C. 31302 in addressing this issue; the drafters of the Act clearly intended to reference the rehabilitation program under section 31306. This intention is evidenced by earlier versions of Senate Bill 1640 that relate the rehabilitation program to section 12020 of the Commercial Motor Vehicle Safety Act of 1986.)

Under 49 U.S.C. 31306, the Secretary of Transportation is directed to ''prescribe regulations establishing requirements for rehabilitation programs that provide for the identification and opportunity for treatment of operators of commercial motor vehicles who are found to have used alcohol or a controlled substance in violation of law or a Government regulation.'' The regulations implementing the rehabilitation requirements of section 31306 appear in 49 CFR 382.605 and apply generally to drivers of CMVs with a gross vehicle weight rating (GVWR) in excess of 26,000 lbs., vehicles transporting hazardous materials which are required to be placarded, or vehicles designed to transport more than 15 passengers, including the driver. Part 382 contains alcohol and drug rules pertaining to motor carriers and provides procedures and regulations for referring drivers who violate its prohibitions to a SAP, to determine what, if any, rehabilitation programs are needed to resolve problems associated with alcohol misuse and substance abuse. Section 382.501(b) also prohibits an employer from using a driver who was found to have illegally used drugs or alcohol in a safety-sensitive function until that driver has received the recommended treatment.

The amendments proposed under § 391.23(c)(1)(iii) and (iv) would better enable a motor carrier that operates CMVs with a GVWR between 10,000 and 26,000 lbs. in interstate commerce to comply with § 382.501(b). Although such an employer is not subject to the entire part 382, he or she may not use a driver in safety-sensitive functions, including driving a CMV, if that driver has been found to have illegally used drugs or alcohol until that driver has received the recommended treatment. Section 391.23(c)(1)(iv) would require a motor carrier to investigate whether a driver had illegally used drugs or alcohol within the previous three years. Section 391.23(c)(1)(iii) would require a motor carrier to determine whether a driver had failed to undertake or complete recommended treatment after having been found to have illegally used drugs or alcohol. This information would assist the motor carrier that is not subject to part 382 in determining whether a driver was qualified to operate a CMV.

Determining whether a driver completed rehabilitation may not always be a straightforward process. Section 382.605(b) requires employers to refer CDL holders violating the prohibitions of part 382 to a SAP. The SAP must determine what, if any, assistance the driver needs in resolving problems associated with controlled substance use and alcohol misuse. If a SAP refers a driver to a rehabilitation program, the employer may not use that driver in a safety-sensitive function until assured that the driver has complied with the treatment recommended by the SAP. The employer is required to maintain records pertaining to a SAP's determination concerning a driver's need for assistance and records concerning a driver's compliance with the SAP's recommendations. Even if a SAP does not refer a driver to a rehabilitation program, the employer is still required to maintain a record of the SAP's evaluation.

However, if a driver quits working for the employer before seeing a SAP or undertaking or completing rehabilitation, that employer is not required to ensure that the driver completes the SAP reference and evaluation process. An employer is only prohibited from using the driver in a safety-sensitive function until the driver complies with a SAP's recommendations. If the driver terminates employment before the SAP evaluation or rehabilitation, the employer may not know if rehabilitation was undertaken, completed or even recommended. A new or prospective employer would also have no evidence that the driver complied with the SAP's recommendations.

Therefore, to comply with this requirement, a new employer would have to investigate whether (1) the driver was ever referred to a SAP, (2) the SAP referred the driver to a rehabilitation program, and (3) a SAP's evaluation certified the driver was qualified to return to duty.

Violations of the Prohibitions in Subpart B of Part 382

Section 114(b)(3) of the HazMat Act mandates the investigation of ''any use by the driver, during the preceding 3 years, in violation of law or Federal regulation, of alcohol or a controlled substance subsequent to completing such a rehabilitation program.'' This mandate requires that a motor carrier determine whether a driver continued to abuse alcohol and/or a controlled substance subsequent to treatment for such abuse. Section 114(b)(4) authorizes the Secretary to include in the required information other matters that are appropriate and useful to determine a driver's safety record. In conjunction with section 114(b)(3), the FHWA proposes to execute the authority granted in section 114(b)(4) to clarify and enhance the substance abuse safety information requirement.

Under § 391.23, the FHWA proposes to require that only violations of the prohibitions listed in 49 CFR Part 382, subpart B, be required as reportable violations of ''law or Federal regulation, of alcohol or a controlled substance,'' pursuant to section 114(b)(3). It is impractical for the FHWA to enforce a rule requiring a motor carrier to investigate all illegal uses of drugs and alcohol. The statutory language, ''in violation of law or Federal regulation,'' is broad and includes drug and alcohol use in violation of State, Federal, or local law or Federal regulation. A previous employer may have knowledge of whether a driver used drugs or alcohol ''in violation of law or Federal regulation,'' but, under this part, the FHWA could only require employers subject to its regulations to provide it. Most employers may not willingly respond to such requests for fear of a lawsuit by the driver.

It is more feasible to clarify the term, ''in violation of law or Federal regulation,'' to mean violations of the prohibitions in subpart B of part 382. Subpart B contains drug and alcohol regulations that pertain to CMV operators. Transmission of the required information will be aided by the fact that employers subject to part 383 already maintain a record of a driver's violations under part 382.

The FHWA also proposes to utilize the section 114(b)(4) authority to require that all part 382, subpart B, violations occurring within the previous three years be transmitted to the inquiring motor carrier from the previous

employer. This requirement expands the provision that required violations occurring subsequent to rehabilitation be transmitted to the motor carrier requesting the information. The FHWA believes that a three-year period, as specified in section 114(b) for other required information, is in accordance with the intent of the HazMat Act to grant new and prospective employers sufficient knowledge about safety histories of drivers.

Extending the reporting period to three years is also efficient because it may be difficult to determine when rehabilitation was completed. Many times when a driver is found to have illegally used drugs or alcohol, an employer provides the driver a list of SAPs, terminates the driver's employment, and makes a record of the referral. In this case, the employer would not know whether rehabilitation was recommended or completed, nor is he or she required to know. Thus, it could be very difficult, if not impossible, for a new or prospective employer to ascertain when rehabilitation was recommended or completed.

Removing the ''after rehabilitation'' limitation would satisfy the intent of the HazMat Act within the authority granted FHWA and enable motor carriers to more easily implement the requirement. A new or prospective employer would only be required to know whether, during the past three years, the driver operated a CMV requiring a CDL under part 383, to determine whether this information must be obtained. If so, the motor carrier would be required to seek the information only from employers that hired the driver to operate a CMV requiring a CDL under part 383 during the past three years.

The Driver's Written Consent for Drug or Alcohol Information

Part 382 requires that drug and alcohol information pertaining to a driver be released pursuant to the terms of the driver's written consent. For this reason, the FHWA proposes to add § 391.23(e) to similarly require employers to request the drug and alcohol information pursuant to the driver's written consent. Thus, employers could avoid processing delays caused when the request is not accompanied by the driver's written authorization.

Driver's Right to Review and Comment on Information

The motor carrier must allow the driver a reasonable opportunity to review and comment on any safety information obtained. This proposal does not define ''a reasonable opportunity'' but proposes to leave this to the motor carrier's discretion. We invite public comment on whether it is necessary for the FHWA to define what constitutes ''reasonable opportunity'' and include a specific time frame for compliance.

The driver's right to review and comment on the information is clearly established by section 114(a)(3) of the HazMat Act. The FHWA believes that the motor carrier should inform the driver of this right when the application for employment is completed. The driver's comments, if any, could be made orally or in writing. However, the motor carrier is not responsible for correcting any information obtained. The driver should contact the former employer to settle disputes over allegedly incorrect information.

Conforming Amendments to Part 382

Because much of the information mandated by section 114 of the HazMat Act is similar to information currently shared by employers under part 382, conforming changes are being proposed for §§ 382.405 and 382.413 to ensure consistency with the HazMat Act. Accordingly, § 382.413 would be amended to require an employer to seek information from former employers regarding (1) a driver's failure, during the preceding three years, to undertake or complete a rehabilitation program after being found to have violated alcohol or controlled substances laws or regulations, and (2) any use by the driver, during the preceding three years, of alcohol or a controlled substance in violation of 49 CFR Part 382, subpart B or the rules of other DOT agencies. The congressional mandate in the HazMat Act requires that this information be released by former employers within 30 days, and that the driver to whom the information applies would have a reasonable opportunity to review and comment on the information.

Section 382.413, as currently written, requires much of the same information to be shared between new and prospective employers and former employers as proposed in this action. Section 382.413 requires the sharing of information on certain violations of part 382: positive drug test results, alcohol results of 0.04 alcohol concentration or greater, and refusals to be tested. Section 114(b)(3) of the HazMat Act is both broader and narrower than part 382's requirements since section 114(b)(3) mandates the sharing of information on all prohibited uses of drugs and alcohol by drivers, but limits the inquiry to those violations that occurred after completing rehabilitation. Section 382.413(a) would be revised to include all violations of subpart B by a driver, not just testing violations. In addition, based on the authority granted by section 114(b)(4) of the HazMat Act, which empowers the Secretary to include other matters ''appropriate and useful for determining a driver's safety performance'', such violations would continue to include, but not be limited to, those occurring after rehabilitation. The FHWA believes that all violations of the prohibitions in part 382 are important indicators of the driver's safety performance.

The information required by section 114(b)(2) of the HazMat Act relative to a driver's failure to complete rehabilitation (already required implicitly by § 382.413(g)) which must be obtained before a violator may be permitted to return to driving would be listed as a separate item in § 382.413(a)(1)(ii).

It should be noted that the records required to be obtained under § 382.413 would be limited only to those records generated under part 382 and the alcohol and drug testing rules of other DOT agencies after January 1, 1995. Interstate motor carriers must maintain their records, generated under part 391, for the periods of time specified in § 382.401. Because of the significant difference between the testing programs in parts 382 and 391, the FHWA would not require new or prospective employers to obtain the information maintained by former employers prior to January 1, 1995, for large employers, and January 1, 1996, for small employers. See § 382.413(i).

Other amendments are necessary to conform 49 CFR part 382 to the HazMat Act. First, § 382.413(a)(1)(i) would extend the period of shared information from two to three years. Second, § 382.413(h) would afford drivers a reasonable opportunity to review and comment on any information obtained by new or prospective employers under § 382.413(a)(1). Third, § 382.405(f) would allow former employers 30 days to respond to requests for information. The amendment to § 382.405(f) recognizes that a great majority of requests for testing information from former employers will occur pursuant to § 382.413. There is no reason for two standards for response periods. The 30-day response period provided in the HazMat Act for information requests to former employers would be made a general standard in § 382.405(f), thus applying to all requests for drug and alcohol testing information from employers. Of course, employers may only disclose a driver's drug and alcohol

records under part 382 pursuant to the driver's written consent.

The current 14-day limit for new employers to obtain the information after first using a driver, when not feasible to do so before using the driver, would be extended to 30 days. Employers would be required to request the information from former employers as soon as the employer expects to use or hire the driver to drive or perform other safety-sensitive functions. The 30-day period should be sufficient to accommodate information requests and responses made by mail. Although there is no requirement that the inquiries and responses be processed by mail, the prudent employer may wish to employ the faster and confidential communication methods authorized in § 382.413(e) to meet the 30-day time limit requirement.

Part 382 would continue to require, if feasible, the employer to obtain the information prior to the first performance of safety-sensitive functions by a driver. If obtaining the information prior to the driver's first performance of safety-sensitive functions for the employer is not feasible, the information would have to be obtained as soon as possible, but no more than 30 days after first using the driver to perform safety-sensitive functions.

Beyond incorporating the HazMat Act requirements into part 382, the source of the violations enumerated in § 382.413 would also be amended to include all DOT agencies'' alcohol and controlled substances regulations. The FHWA believes that some drivers may apply for positions that require driving CMVs after they have violated the alcohol or drug use prohibitions of another DOT agency. The FHWA has, therefore, included a requirement that employers request information from all past employers for which a driver worked in a position covered by the alcohol and/or drug prohibitions and testing requirements of another DOT agency. This would ensure that persons applying for positions that require operating a CMV would have all of their relevant records of violations investigated. It would also ensure that persons who test positive are evaluated by a SAP, and, before returning to perform safety-sensitive functions, complete a recommended rehabilitation program.

Section 382.413(a)(2) was incorporated into the FMCSRs by a final rule published in the Federal Register on March 8, 1996, (61 FR 9546). That action allows previous employers to include information obtained from other previous employers when responding to requests for a driver's drug and alcohol information under § 382.413(a)(1), as long as that information falls within the previous two- year period. Because the March 8, 1996, final rule was a technical amendment, the FHWA was unable to mandate the requirements now proposed in § 382.413(a)(2). Such an action would have made a substantive change to the regulations requiring public notice before becoming a final rule. This notice proposes to mandate the requirements proposed in § 382.413(a)(2) in accordance with the intent of section 114(b) of the HazMat Act by changing the word ''may'' to ''shall.''

New and prospective employers should ensure that the driver's written consent authorizes former employers to disclose all prohibitions listed under § 382.413(a)(1), that occurred within the previous three years, of which the former employer has knowledge. Otherwise, a former employer may be prohibited by § 382.405(f) from passing along to the inquiring employer any § 382.413(a)(1) information that was obtained from another previous employer. Section 382.405(f) states that records under part 382 may only be released to a subsequent employer upon receipt of written authorization from a driver. Disclosure of the part 382 records by the subsequent employer is also permitted only as expressly authorized by the terms of the driver's signed authorization. If the driver's authorization had prohibited the subsequent employer from disclosing the information, sharing that information with the inquiring employer would be in violation of § 382.405(f).

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, the FHWA will also continue to file in the docket relevant information that becomes available after the comment closing date. Interested persons should continue to examine the docket for new material. Nevertheless, the FHWA may issue a final rule on this matter at any time after the close of the comment period.

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

The FHWA has determined that this document does not constitute a significant regulatory action for the purposes of Executive Order 12866 or a significant regulation under the regulatory policies and procedures of the DOT. These proposed changes to the Federal Motor Carrier Safety Regulations would not cause an annual impact on the economy of over $1 million, and they would not adversely affect a sector of the economy in a material way. These changes would not create an inconsistency or otherwise interfere with another agency's actions, nor do they raise novel legal or policy issues. These changes merely implement a recently enacted legislative mandate directing the FHWA to amend its regulations to require a motor carrier to request from previous employers specific safety information when investigating a driver's employment record pursuant to 49 CFR 391.23. Motor carriers are already required by section 391.23(a)(2) to make ''an investigation of the driver's employment record during the preceding three years.'' These proposed changes merely specify the types of information to be sought, increase the period of time for which carriers must record accident information from one to three years, direct former employers to respond to information requests within thirty days, and require that drivers be afforded an opportunity to review and comment on any information obtained from a former employer. Thus, in light of this analysis, especially the finding that the economic impact of this action is likely to be minimal, the FHWA has determined that a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this rule on small entities. It is anticipated that the economic impact of this rulemaking on all employers, regardless of size, will be minimal. This NPRM proposes to set forth minimum safety information that new and prospective employers would request when investigating a driver applicant's employment record. Employers are already required to maintain this safety information. These amendments would clarify existing requirements and would impose only a minor additional requirement on employers to record and retain accident information for three years instead of one. Accordingly, the

FHWA certifies that under the criteria of the Regulatory Flexibility Act this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that these proposed changes would not preempt any State law or State regulation, and no additional costs or burdens would be imposed on the States. In addition, these changes would have no effect on the States' ability to discharge traditional State governmental functions. Motor carrier safety is a matter of national concern to which Congress has responded by enacting section 114 of the HazMat Act which directs the FHWA to amend its regulations to specify the safety information a motor carrier must request from a driver's former employers. Thus, in light of the importance to the nation as a whole of ensuring that motor carrier vehicles are operated by safety conscious drivers, this Federal action regarding the safety performance history of drivers is justified and does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

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 apply to this program.

Paperwork Reduction Act

This action would impact existing collection of information requirements for purposes of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501—3520). It would affect the period of retention for an existing accident record keeping requirement, extend the period of inquiry relating to a driver's alcohol and controlled substance history, and require additional information relating to a driver's employment investigation under § 391.23 to be retained in the driver's qualification file. Because of these changes, existing Office of Management and Budget (OMB) approvals are being revised.

Motor carriers are required under 49 CFR 390.15 to maintain and retain an accident register for a period of one year. That requirement was approved by the OMB under control number 2125–0526. This NPRM proposes to extend the period for which the accident register must be retained from one to three years under the previous OMB authority. Extending the retention period would enable motor carriers to satisfy, with an existing resource, the accident reporting requirements of section 114(b) of the HazMat Act for the full three-year period. The information collection requirements imposed by this proposed amendment have been submitted to the OMB under OMB Control Number 2125–0526 for approval under the Paperwork Reduction Act.

Section 391.23(c) proposes to require motor carriers to request from previous employers information about a driver's accidents, illegal drug and alcohol use, failure to complete recommended treatment for such abuse, and certain hours of service violations. Currently, motor carriers are only required to request general employment information from the previous employer. The amendments proposed in § 391.23(c) are mandated by Congress and would ensure that employers are cognizant of critical information concerning a driver's safety performance. The information collection requirements imposed by these proposed amendments have been submitted to the OMB under OMB Control Number 2125–0065 for approval under the Paperwork Reduction Act.

Similarly, employers of both interstate and intrastate drivers that must hold commercial drivers licenses are required, under 49 CFR 382.413, to seek testing information from previous employers for only the preceding two years. OMB approval for that requirement was granted under control number 2125–0543. This NPRM would require all motor carriers to request three years of drug and alcohol testing information on new drivers who operate in interstate commerce. Therefore, employers subject to 49 CFR 382.413 would be required to seek drug and alcohol information about a driver for the previous three years instead of two. Additionally, not just testing information would be requested from former employers. Employers would be required to obtain information about violations of the prohibitions of subpart B of part 382 or the drug and alcohol rules of another DOT agency or a driver's failure to undertake or complete recommended treatment. These conforming amendments are mandated by section 114 of the HazMat Act. The information collection requirements imposed by these proposed amendments have been submitted to the OMB under OMB Control Number 2125–0543 for approval under the Paperwork Reduction Act. The FHWA requests public comment on these new and revised paperwork collection requirements.

National Environmental Policy Act

This agency has analyzed this proposed action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that it would not have any effect on the quality of the environment.

Regulation Identification Number

A regulatory identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR 382, 383, 390, and 391

Alcohol concentration, Alcohol testing, Commercial motor vehicles, Controlled substances testing, Drivers, Driver qualifications, Highway safety, Highways and roads, Hours of Service, Intermodal transportation, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements, Safety, Transportation.

Issued on: March 6, 1996.

Rodney E. Slater,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA proposes to amend title 49, CFR, subtitle B, chapter III, parts 382, 383, 390, and 391 as set forth below:

PART 382—[AMENDED]

1. The authority citation for 49 CFR part 382 is revised to read as follows:

Authority: 49 U.S.C. 31133, 31136, 31301 *et seq.*, 31502; sec. 114, Pub. L. 103–311, 108 Stat. 1673, 1677; and 49 CFR 1.48.

2. In § 382.405, paragraph (f) is revised to read as follows:

§ 382.405 Access to facilities and records.

* * * * *

(f) Records shall be made available, within 30 days, to a subsequent employer upon receipt of written authorization from a driver. Disclosure by the subsequent employer is permitted only as expressly authorized by the terms of the driver's signed authorization.

* * * * *

3. Section 382.413 is revised to read as follows:

§ 382.413 Inquiries for alcohol and controlled substances information from previous employers.

(a) (1) An employer, including a prospective employer, shall, pursuant to the driver's written authorization, inquire about the following information relating to the driver from the driver's previous employers:

(i) Violations of the prohibitions contained in subpart B of this part, or the alcohol or controlled substances rules of other DOT agencies, during the past three years; and

(ii) Failure to undertake or complete a rehabilitation program prescribed by a substance abuse professional pursuant to § 382.605, or the alcohol or controlled substances rules of another DOT agency, during the past three years.

(2) The information obtained from a previous employer must contain any alcohol and drug information the previous employer obtained from other previous employers under paragraph (a)(1) of this section.

(b) If feasible, the information in paragraph (a) of this section must be obtained and reviewed by the employer prior to the first time the driver performs safety-sensitive functions for the employer. If not feasible, the information must be obtained and reviewed as soon as possible, but no later than 30 calendar days after the first time a driver performs safety-sensitive functions for the employer. An employer shall not permit a driver to perform safety-sensitive functions after 30 days without having made a good faith effort to obtain the information as soon as possible. If a driver hired or used by the employer ceases performing safety-sensitive functions for the employer before expiration of the 30-day period or before the employer has obtained the information in paragraph (a) of this section, the employer must still make a good faith effort to obtain the information.

(c) An employer shall maintain a written, confidential record of the information obtained under paragraph (a) or (f) of this section. If, after making a good faith effort, an employer is unable to obtain the information from a previous employer, a record shall be made of the efforts to obtain the information and retained in the driver's qualification file.

(d) The new/prospective employer must provide to each of the driver's previous employers the driver's specific, written authorization for release of the information in paragraph (a) of this section.

(e) The release of any information under this section may take the form of personal interviews, telephone interviews, letters, or any other method of transmitting information that ensures confidentiality. The written authorization for release of this information may be transmitted to the previous employer by any method that ensures confidentiality.

(f) The information in paragraph (a) of this section may be provided directly to the prospective employer by the driver, provided the employer assures itself that the information is true and accurate.

(g) An employer may not use a driver to perform safety-sensitive functions if the employer obtains information on a violation of the prohibitions in subpart B of this part by the driver, without obtaining information on subsequent compliance with the referral and rehabilitation requirements of § 382.605 of this part.

(h) An employer shall afford the driver a reasonable opportunity to review and comment on any information obtained by the employer under paragraph (a) of this section. The employer shall notify the driver of this provision at the time of application for employment.

(i) Employers need not obtain information under paragraph (a) of this section generated by previous employers prior to the starting dates in § 382.115 of this part.

PART 383—[AMENDED]

4. The authority citation for 49 CFR part 383 is revised to read as follows:

Authority: 49 U.S.C. 3102, 31101 *et seq.;* and 31136; sec. 114, Pub. L. 103–311, 108 Stat. 1673, 1677; and 49 CFR 1.48.

5. In § 383.35, paragraph (f) is revised to read as follows:

§ 383.35 Notification of previous employment.

* * * * *

(f) Before an application is submitted the employer shall inform the applicant that the information he/she provides in accordance with paragraph (c) of this section may be used, and the applicant's previous employers will be contacted, for the purpose of investigating the applicant's work history. The employer shall also inform the applicant that he/she will be provided an opportunity to review and comment on any information obtained from previous employers.

PART 390—[AMENDED]

6. The authority citation for 49 CFR part 390 is revised to read as follows:

Authority: 49 U.S.C. 5901–5907, 31132, 31133, 31136, 31502, and 31504; sec. 114, Pub. L. 103–311, 108 Stat. 1673, 1677; and 49 CFR 1.48.

7. Section 390.15 is revised to read as follows:

§ 390.15 Assistance in investigations and special studies.

(a) A motor carrier shall make all records and information pertaining to an accident available to an authorized representative or special agent of the Federal Highway Administration upon request or as part of any inquiry within such time as the request or inquiry may specify. A motor carrier shall give an authorized representative of the Federal Highway Administration all reasonable assistance in the investigation of any accident including providing a full, true and correct response to any question of the inquiry.

(b) Motor carriers shall maintain for a period of three years after an accident occurs, an accident register containing at least the following information:

(1) A list of accidents containing for each accident:

(i) Date of accident,

(ii) City or town in which or most near where the accident occurred and the State in which the accident occurred,

(iii) Driver name,

(iv) Number of injuries,

(v) Number of fatalities, and

(vi) Whether hazardous materials, other than fuel spilled from the fuel tanks of motor vehicle(s) involved in the accident, were released.

(2) Copies of all accident reports required by State or other governmental entities or insurers.

(c) Motor carriers shall make available, within 30 days after receiving a request for information about a driver's accident record from a new or prospective employer, all records and information within the accident register that pertain to that driver's accident record.

PART 391—[AMENDED]

8. The authority citation for 49 CFR part 391 is revised to read as follows:

Authority: 49 U.S.C. 504, 31133, 31136, and 31502; sec. 114, Pub. L. 103–311, 108 Stat. 1673, 1677; and 49 CFR 1.48.

9. In § 391.21, paragraph (d) is revised to read as follows:

§ 391.21 Application for employment.

* * * * *

(d) Before an application is submitted, the motor carrier shall inform the applicant that the information he/she provides in accordance with paragraph (b)(10) of this section may be used, and the applicant's prior employers will be

contacted for the purpose of investigating the applicant's background as required by § 391.23. The employer shall also inform the applicant that he/she will be provided an opportunity to review and comment on any information obtained from previous employers.

10. In § 391.23, paragraph (c) is revised and new paragraphs (d) and (e) are added to read as follows:

§ 391.23 Investigation and inquiries.

* * * * *

(c) The investigation of the driver's employment record required by paragraph (a)(2) of this section must commence as soon as possible, but no later than 30 days after the date the driver's employment begins. The investigation shall consist of personal interviews, telephone interviews, letters of inquiry, or any other method of obtaining information that the motor carrier deems appropriate. Each motor carrier must make a written record with respect to each previous employer that was contacted. The record must include the previous employer's name and address, the date the previous employer was contacted, and its comments with respect to the driver. The record shall be maintained in the driver's qualification file.

(1) The following information, as a minimum, must be obtained from all previous employers that employed the driver to operate a commercial motor vehicle:

(i) Any accidents, as defined by § 390.5 of this subchapter, in which the driver was involved during the preceding three years;

(ii) Any hours-of-service violations resulting in an out-of-service order being issued to the driver within the preceding three years;

(iii) Any failure of the driver, during the preceding three years, to undertake or complete a rehabilitation program pursuant to § 382.605, after being found to have used, in violation of law or Federal regulation, alcohol or a controlled substance;

(iv) Any use by the driver, during the preceding three years, in violation of law or Federal regulation, of alcohol or a controlled substance subsequent to completing such a rehabilitation program.

(2) Previous employers shall respond to requests for the information in paragraph (c)(1) of this section within 30 days after the request is received.

(d) The motor carrier shall afford the driver a reasonable opportunity to review and comment on any information obtained during the employment investigation, including the information described in paragraph (c)(1) of this section. The motor carrier shall notify the driver of this right at the time of application for employment.

(e) The information required under paragraphs (c)(1)(iii) and (iv) of this section must be obtained pursuant to the driver's written authorization.

[FR Doc. 96–6130 Filed 3–13–96; 8:45 am]
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National Highway Traffic Safety Administration

49 CFR Part 571

Denial of Petition for Rulemaking; Federal Motor Vehicle Safety Standards

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of denial of petition for rulemaking.

SUMMARY: This notice denies the petition by Darrin L. Johnson for the issuance of a mandatory order requiring that all motor vehicles be equipped with front stop lamps. NHTSA's analysis of the petition concludes that requiring front stop lamps on all motor vehicles does not further the cause of reducing the risk of motor vehicles related fatalities, injuries and accidents. The denial notice concludes that the likely consequence of implementing such a system will be higher risk behavior by motorists and pedestrians.

FOR FURTHER INFORMATION CONTACT: Kenneth O. Hardie, Safety Performance Standards, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Mr. Hardie's telephone number is (202) 366–6987.

SUPPLEMENTARY INFORMATION: By letter dated September 19, 1995, Darrin L. Johnson of North Hollywood, California petitioned the NHTSA to issue a rule that would mandate the equipping of all motor vehicles with front ''brake lights.'' The petitioner stated that front ''brake lights'' will save lives because it is necessary for other drivers and pedestrians to know the intended maneuvers of a vehicle, from the front of the vehicle as well as the rear. The petitioner stated that it is important to know from the front if an approaching driver intends to decrease his speed and/or is applying the brakes at certain crucial periods. The petitioner would require the front ''brake lights'' to be steady burning and red in color. The front ''brake lights'' would light simultaneously with the rear stop lamps, when the brake is depressed and/or applied. The petitioner estimates that the cost for the front ''brake light'' system to be as follows:

Production Cost—$35.00
Wholesale Cost—$70.00
Retail Price—$150.00

Analysis of Petition

The petition contains a number of scenarios that suggest that forward-facing stop signals will reduce the risk of fatalities, injuries and accidents by minimizing the amount of driver guesswork of when to maneuver a vehicle into traffic. The petitioner's rationale for mandating a rule requiring all motor vehicles to be equipped with front stop lamps is these lamps would communicate an approaching driver's intent to brake or decrease speed. Presumably, other drivers or pedestrians would have information on the intent of the approaching vehicle based upon whether the front stop lamps had been activated. The observing individual could then act accordingly or maneuver onto traffic.

The petitioner presents a number of scenarios to support a claim that front stop lamps will result in a reduction of accidents involving a vehicle that is attempting to enter traffic from a driveway, street, or entrance road of a freeway. The petitioner claims that a motorist would have additional safety information when attempting to enter traffic by monitoring the front stop lamps of an approaching vehicle. The petitioner claims that vehicles entering traffic would avoid a higher percentage of collisions with oncoming vehicles because the driver attempting to enter traffic would know whether the driver with the right-of-way was giving up the right-of-way, thus, allowing him/her to more safely enter traffic. The petitioner claims that this could be done by observing if the approaching vehicle's front stop lamps were illuminated, thus, indicating braking or stopping. The assumption of the petitioner appears to be that an illuminated front stop lamp means that the approaching driver has relinquished the right-of-way.

It is NHTSA's belief that forward-facing stop lamps might provide some useful information to drivers, but that a front stop signal might also produce ambiguity and could lead to dangerous driver or pedestrian action if it is not interpreted by the viewer in an appropriate manner. For example, a driver whose vehicle is not slowing down but who taps the brake pedal as a precaution when approaching an intersection could find a car pulling out dangerously close in front of him/her, because the other drivers assumed that the vehicle would be making a turn or