

DEPARTMENT OF TRANSPORTATION**National Highway Traffic Safety Administration****23 CFR Part 1327**

[Docket No. NHTSA-05-22265]

RIN 2127-AJ66

Procedures for Participating in and Receiving Data From the National Driver Register Problem Driver Pointer System Pursuant to a Personnel Security Investigation and Determination

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

ACTION: Interim final rule; request for comments.

SUMMARY: This interim final rule amends the agency's National Driver Register (NDR) regulations to implement an amendment to the National Driver Register Act of 1982. The amendment authorizes a Federal department or agency that investigates an individual for the purpose of determining the individual's eligibility to access national security information to request and receive information from the National Driver Register, upon request and consent of the individual. This interim final rule establishes the procedures for individuals to request and for the Federal department or agency to receive NDR information.

DATES: This interim final rule becomes effective on September 30, 2005. Comments on this interim final rule are due no later than November 1, 2005.

FOR FURTHER INFORMATION CONTACT: For program issues: Mr. Sean McLaurin, Chief, National Driver Register, NPO-124, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC, 20590. Telephone: (202) 366-4800. For legal issues: Mr. Roland (R.T.) Baumann III, Attorney-Advisor, Office of the Chief Counsel, NCC-113, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC, 20590. Telephone: (202) 366-1834.

SUPPLEMENTARY INFORMATION:**I. Background***A. National Driver Register*

The National Driver Register (NDR) is a central file of information on individuals whose license to operate a motor vehicle in a State has been denied, revoked, suspended, or canceled, for cause, or who have been convicted of certain serious traffic-

related violations in a State, such as racing on the highway or driving while impaired by alcohol or other drugs. The NDR was designed to prevent such individuals from obtaining a driver's license in another State, using a device known as the Problem Driver Pointer System (PDPS).

The PDPS consists of a list of problem drivers (with certain identifying information) contained in "pointer" records. These records "point" to the State where the substantive adverse records about the driver can be obtained. The PDPS system is fully automated and enables State driver licensing officials to determine instantaneously whether another State has taken adverse action against a license applicant.

B. National Driver Register Act of 1982

The NDR Act of 1982, as amended, 49 U.S.C. 30301, *et seq.*, authorizes State chief driver licensing officials to request and receive information from the NDR for driver licensing and driver improvement purposes. When an individual applies for a driver's license, for example, these State officials are authorized to request and receive NDR information to determine whether the applicant's driver's license has been withdrawn for cause or the applicant has been convicted of specific offenses in another State. Because the NDR is a nationwide index, State chief driver licensing officials need only submit a single inquiry to obtain this information.

State chief driver licensing officials also are authorized under the NDR Act to request NDR information on behalf of other NDR users for specific transportation safety purposes. The NDR Act authorizes the following entities to receive NDR information for limited transportation purposes: the National Transportation Safety Board and the Federal Highway Administration for accident investigation purposes; employers and prospective employers of motor vehicle operators; the Federal Aviation Administration (FAA) regarding any individual who holds or has applied for an airman's certificate; air carriers regarding individuals who are seeking employment with the air carrier; the Federal Railroad Administration (FRA) and employers or prospective employers of locomotive operators; and the U.S. Coast Guard regarding any individual who holds or who has applied for a license, certificate of registry, or a merchant mariner's document. The Act also allows individuals to learn whether information about themselves is on the

NDR file and to receive any such information.

The NDR statute allows the head of a Federal department or agency authorized to receive information regarding an individual from the NDR to request and receive such information from the Secretary of Transportation, 49 U.S.C. 30305(b)(11). This provision, by its operation, affords direct access to the NDR to identified Federal departments and agencies (through NHTSA), without the need to submit an inquiry to a State driver licensing official. In practice, virtually all Federal departments or agencies with specific access provisions have submitted inquiries directly to NHTSA.

C. Recent Amendment to National Driver Act of 1982

On October 28, 2004, Public Law 108-375 amended the NDR Act of 1982. Section 1061 of Public Law 108-375 allows "[a]n individual who has or is seeking access to national security information for purposes of Executive Order No. 12968, or any successor Executive order, or an individual who is being investigated for Federal employment under authority of Executive Order No. 10450, or any successor Executive order, [to] request the chief driver licensing official of a State to provide [NDR] information about the individual * * * to a Federal department or agency that is authorized to investigate the individual for the purpose of assisting in the determination of the eligibility of the individual for access to national security information or for Federal employment in a position requiring access to national security information." This interim final rule amends the NDR regulations, 23 CFR Part 1327, to incorporate procedures governing access to NDR information to assist in personnel security investigations.

II. Procedures for Requesting and Receiving NDR Information for Personnel Security Investigations

Under the interim final rule, the procedures that a Federal department or agency performing personnel security investigations of individuals must follow to receive NDR information are similar to those followed by the FAA, the FRA, and the U.S. Coast Guard in checking their applicants for employment or certification.

The Federal department or agency may not, itself, initiate a request for NDR information. Rather, the individual subject to a personnel security investigation must do so. To initiate a request, the individual must either complete, sign and submit a request to

the chief driver licensing official of a State for an NDR file search or authorize the Federal department or agency to request the chief driver licensing official to conduct the NDR file search by providing a written and signed consent. Just as in NDR requests for traffic safety purposes, the request or written consent must state that NDR records are being requested; state specifically who is authorized to receive the records; be dated and signed by the individual; and state that it is recommended (but not required) that the Federal department or agency verify matches with the state of record. Consistent with a specific statutory restriction concerning personnel security investigations, it must also state that the authorization is valid only during the performance of the security investigation.

In accordance with Public Law 108-375, requests to transmit NDR information to the Federal department or agency (made either directly by individuals or through a written consent) may be submitted through a State chief driver licensing official. Since all 50 States and the District of Columbia currently participate in the NDR PDPS, requests may be submitted to any of the chief driver licensing officials.

Because Federal departments or agencies that perform personnel security investigations are afforded the specific right to receive NDR information, they are subject to the provision that allows them to request and receive such information from the Secretary of Transportation. Hence, they need not submit a request to the State chief driver licensing official. Consistent with past practice for safety related requests, we expect virtually all requests from Federal departments or agencies that perform personnel security investigations will be sent directly to NHTSA.

To implement these procedures, the interim final rule amends the NDR regulation at 23 CFR 1327.5, setting forth requirements that States must follow to accept NDR inquiries submitted to a chief driver licensing official. The interim final rule also amends the regulatory sections at 23 CFR 1327.6 and 1327.7, setting forth procedures for NDR inquiries submitted directly to the agency. To make clear that a covered personnel security investigation is limited to an investigation for the purpose of assisting in the determination of eligibility for access to national security information or for Federal employment in a position requiring access to national security information, the interim final rule adds

a definition of "personnel security investigation" to 23 CFR 1327.3.

Interim Final Rule

This document is published as an interim final rule. Accordingly, the changes to part 1327 described above become effective on September 30, 2005. No further regulatory action by NHTSA is necessary to make these changes effective.

Publication as an interim final rule, without prior notice and opportunity for comment, is necessary to permit individuals subject to background investigations for security clearances to submit requests to the NDR and Federal departments or agencies to receive NDR information as soon as possible. The changes made to the regulation in this interim final rule are minor and simply reflect the statutory amendments enacted by Public Law 108-375. These changes create procedures that are nearly identical to existing regulatory procedures being followed by the States, by airmen, by seamen/merchant mariners, and by others in the field of transportation safety, which were previously subjected to notice and opportunity for comment.

Statutory Basis for This Rule

This interim final rule implements a NDR access provision mandated by the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108-375, Section 1061). The NDR Act of 1982 (Pub. L. 97-364) provides general authority to issue regulations regarding access to the PDPS.

Comments

NHTSA requests comments on these regulatory changes. All comments submitted in response to this document will be considered by the agency. Following the close of the comment period, NHTSA will publish a document responding to the comments, and if appropriate, will further amend the provisions of 23 CFR part 1327. However, the interim final rule published today is effective upon publication.

Interested persons are invited to comment on this interim final rule. It is requested, but not required, that two copies be submitted. All comments must be limited to 15 pages in length. Necessary attachments may be appended to those submissions without regard to the 15-page limit. (See 49 CFR 553.21). This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

You may submit your comments by one of the following methods:

(1) By mail to: Docket Management Facility, Docket No. NHTSA-05-XXXX, DOT, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590;

(2) By hand delivery to: Room PL-401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday;

(3) By fax to the Docket Management Facility at (202) 493-2251; or

(4) By electronic submission: log onto the DMS Web site at <http://dms.dot.gov> and click on "Help and Information" or "Help/Info" to obtain instructions.

All comments received before the close of business on the comment closing date will be considered and will be available for examination in the docket at the above address. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date. The agency will continue to file relevant material in the docket as it becomes available after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

You may review submitted comments in person at the Docket Management Facility located at Room PL-401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday.

You may also review submitted comments on the Internet by taking the following steps:

(1) Go to the DMS Web page at <http://dms.dot.gov/search/>.

(2) On that page, click on "search".

(3) On the next page (<http://dms.dot.gov/search/>) type in the four digit docket number shown at the beginning of this notice. Click on "search".

(4) On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may also download the comments. Although the comments are imaged documents, instead of word processing documents, the "pdf" versions of the documents are word searchable.

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>.

Those persons who wish to be notified upon receipt of their comments in the docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Regulatory Analyses and Notices

Executive Order 12988 (Civil Justice Reform)

This action does not have any preemptive or retroactive effect. 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 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

Executive Order 12866, “Regulatory Planning and Review” (58 FR 51735, October 4, 1993) provides for making determinations on whether a regulatory action is “significant” and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The agency has considered the impact of this action under Executive Order 12866 and determined that it is not significant. The action is also not significant under the Department of Transportation’s regulatory policies and procedures. The changes in this interim final rule merely reflect amendments contained in Public Law 108–375 providing NDR access to another group of NDR individuals—individuals who are subject to personnel security investigations. Because Public Law 108–375 provides specific NDR access to Federal departments or agencies performing personnel security investigations and because the NDR Act allows Federal agencies with specific access provisions to submit them directly to the Secretary of Transportation (by delegation, to NHTSA), we do not anticipate that this action will increase significantly the number of NDR inquiries processed by State driver licensing officials. Most, if not all, such inquiries will likely be submitted to NHTSA. Accordingly, a full regulatory evaluation is not required.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 5 U.S.C. 601–612) requires an agency to review regulations to assess their impact on small entities

unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. I hereby certify that the action would not have a significant impact on a substantial number of small entities. Accordingly, the preparation of a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

There are reporting requirements contained in the regulation that this interim final rule is amending that are considered to be information collection requirements, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320. This interim final rule does not change the reporting requirements for participating States or the procedures to be followed by individuals who request NDR information. These requirements have been submitted previously to and approved by OMB, pursuant to the Paperwork Reduction Act (44 U.S.C. 3500, *et seq.*). These requirements have been approved through July 30, 2006, under OMB No. 2127–0001.

National Environmental Policy Act

The agency has reviewed this action for the purposes of the National Environmental Policy Act (42 U.S.C. 4321, *et seq.*) and has determined that it would not have a significant impact on the quality of the human environment.

The Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531) requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This interim final rule may require that some States driver licensing officials process additional inquiries submitted to them for purposes of personnel security investigations. However, because the statute allows this type of inquiry to be submitted directly to the Secretary of Transportation (by delegation, to NHTSA), we do not anticipate that States will face a significant increase in NDR requests and, therefore, in associated costs. Most, if not all, such requirements will likely be submitted to NHTSA. Accordingly, this action does not require an assessment under this law.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in the Executive Order 12612, and it has been determined that this action does not have sufficient federalism implications to warrant preparation of a Federalism Assessment. Accordingly, a Federalism Assessment is not required.

Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

The agency has analyzed this action under Executive Order 13175, and has determined that the action would not have a substantial direct effect on one or more Indian tribes, would not impose substantial direct compliance costs on Indian tribal governments, and would not preempt tribal law. Therefore, a tribal summary impact statement is not required.

Executive Order 13045, Economically Significant Rules Disproportionately Affecting Children

This rule is not subject to E.O. 13045 because it is not “economically significant” as defined under E.O. 12866, and does not concern an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children.

Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory section 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 section with the Unified Agenda.

List of Subjects in 23 CFR Part 1327

Highway safety, Intergovernmental relations, and Reporting and recordkeeping requirements.

■ In consideration of the foregoing, the agency amends title 23 of CFR part 1327 as follows:

PART 1327—PROCEDURES FOR PARTICIPATING IN AND RECEIVING INFORMATION FROM THE NATIONAL DRIVER REGISTER PROBLEM DRIVER POINTER SYSTEM

■ 1. The authority citation for part 1327 continues to read as follows:

Authority: Pub. L. 97–364, 96 Stat. 1740, as amended (49 U.S.C. 30301 *et seq.*); delegation of authority at 49 CFR 1.50.

■ 2. Amend § 1327.3 by redesignating paragraphs (o) through (y) as paragraphs

(p) through (z) and by inserting new paragraph (o) to read as follows:

§ 1327.3 Definitions.

* * * * *

(o) Personnel security investigation means an investigation of an individual for the purpose of assisting in the determination of the eligibility of the individual for access to national security information under the authority of Executive Order No. 12968, or any successor Executive order, or for Federal employment in a position requiring access to national security information under the authority of Executive Order No. 10450, or any successor Executive order.

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■ 3. Amend § 1327.5 by redesignating paragraph (d) as (e) and by inserting new paragraph (d) to read as follows:

§ 1327.5 Conditions for becoming a participating State.

* * * * *

(d) Personnel security investigations. The chief driver licensing official of a participating State shall provide for and establish routine procedures and forms to accept requests for NDR file checks from individuals subject to personnel security investigations and from Federal departments or agencies that are authorized to perform personnel security investigations. These authorized users may receive information from the NDR file through participating States.

(1) The procedures or forms developed by the chief driver licensing official to facilitate NDR searches for these authorized users shall provide for the request to be made by the individual or by the Federal department or agency if the individual first consented to the search in writing. Any request to the chief driver licensing official and any written consent by the individual shall:

- (i) State that NDR records are to be released;
- (ii) Specifically state who is authorized to receive the records;
- (iii) Be signed and dated by the individual or individual's legal representative;
- (iv) Specifically state that the authorization is valid only for the duration of the personnel security investigation; and
- (v) Specifically state that it is recommended, but not required, that the authorized recipient of the information verify matches with the State of Record.

(2) Any request made by a Federal department or agency may include, in lieu of the actual information described in paragraphs (d)(1)(i) (C) through (E) of this section, a certification that a written

consent was signed and dated by the individual or the individual's legal representative, specifically stated that the authorization is valid only for the duration of the personnel security investigation, and specifically stated that it is recommended, but not required, that the authorized recipient of the information verify matches with the State of Record.

(3) The chief driver licensing official shall provide to the authorized user a response indicating either Probable Identification (match) or No Record Found. In the case of probable identification, the State of Record will also be included in the response so that the Federal department or agency may obtain additional information regarding the individual's driving record.

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■ 4. Amend § 1327.6 by redesignating paragraphs (h) through (i) as paragraphs (i) through (j) and by inserting new paragraph (h) to read as follows:

§ 1327.6 Conditions and procedures for other authorized users of the NDR.

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(h) Federal departments or agencies conducting personnel security investigations. (1) To initiate an NDR file check, an individual who has or is seeking access to national security information for purposes of Executive Order No. 12968, or any successor Executive order, or an individual who is being investigated for Federal employment under authority of Executive Order No. 10450, or any successor Executive order shall follow the procedures specified in § 1327.7

(2) Upon receipt of the NDR information, the Federal department or agency should make information from the State of Record available to the individual for review and comment.

(3) In the case of a match (probable identification), the Federal department or agency conducting the personnel security investigation should obtain the substantive data relating to the record from the State of Record and verify that the person named on the probable identification is in fact the individual concerned before using the information as the basis for any action against the individual.

(4) A Federal department or agency that receives information about an individual under this section may use such information only for purposes of the authorized investigation and only in accordance with applicable law.

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■ 5. Amend § 1327.7 by revising paragraphs (a) introductory text, (d)(4), and (d)(5) to read as follows:

§ 1327.7 Procedures for NDR information requests.

(a) To initiate an NDR file check, an individual who is employed or seeking employment as a motor vehicle operator; who has applied for or received an airman's certificate; who is employed or seeking employment as a locomotive operator; who holds or has applied for a license, certificate of registry, or a merchant mariner's document or is an officer, chief warrant officer, or enlisted member of the U.S. Coast Guard or Coast Guard Reserve; or who is seeking employment as pilot with an air carrier; or an individual subject to a personnel security investigation; shall either:

* * * * *

(d) * * *

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(4) Specifically state that the authorization is valid for only one search of the NDR (or in the case of a personnel security investigation state that the authorization is valid only for the duration of the investigation); and

(5) Except for inquiries concerning personnel security investigations, specifically state that the NDR identifies probable matches that require further inquiry for verification; that it is recommended, but not required, that the employer/prospective employer verify matches with the State of Record; and that individuals have the right to request records regarding themselves from the NDR to verify their accuracy.

Issued on: August 26, 2005.

Jeffrey W. Runge,
Administrator.

[FR Doc. 05-17464 Filed 9-1-05; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9224]

RIN 1545-BD17

Updating Estimated Income Tax Regulations Under Section 6654

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to certain changes made to the law by the Tax Reform Act of 1984. These final regulations are necessary to update, clarify, and reorganize the rules and procedures for making payments of estimated income