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Federal Motor Carrier Safety Administration

49 CFR Parts 380, 390, and 391

Safety Performance History of New Drivers and Minimum Training Requirements for Longer Combination Vehicle (LCV) Operators and LCV Driver-Instructor Requirements; Final Rule

requiring some type of driving experience.

Those carriers hiring inexperienced new entrant drivers will systematically be subject to the costs of providing the safety performance history data, but will not equally get the advantages of this data from other previous employers. The Regulatory Evaluation section presents two possible scenarios, each indicating that some motor carriers hire drivers with no driving experience. Under scenario 1, the percent of drivers hired from outside the industry would be over 25 percent new entrants. Under Scenario 2, the percent of the drivers hired from outside the industry would be over 34 percent new entrants.

FMCSA points out that our regulations do not prevent previous employers from charging a fee for this information. If such fees are charged to offset carriers' cost of providing the required safety performance data, FMCSA encourages development of a market that establishes reasonable, predictable fees. Although FMCSA agrees any fees should be reasonable and predictable, somewhat like the State fees for the MVRs, FMCSA does not believe it has the authority to set fees for release of former driver safety performance history information to prospective employers.

However, FMCSA believes it has the authority to require previous employers to release the minimum data, for alcohol and controlled substances specified in part 382 and for accidents as defined in § 390.5, to the investigating prospective motor carrier within the time period required at § 391.23(g)(1), even if the previous employer has to initially absorb the costs for maintaining and providing this information, *i.e.*, extend credit. Previous employers may not condition release of this required investigative safety performance history information on first receiving payment of a fee by the prospective motor carrier. A copy of a corresponding FMCSA interpretation to this effect in the context of alcohol and controlled substance information was placed in the docket as document 55. This does not apply to accident data not defined by FMCSA and retained either pursuant to § 390.15(b)(2) or because the motor carrier chooses to maintain more detailed minor accident information for their own purposes.

FMCSA does not believe it has a regulatory role in establishing reasonable, predictable fees for the safety performance history information previous employers are required to provide once this rule is implemented. What such fees may be, and how they are collected, should be determined in a free, open, efficient, competitive marketplace.

Miscellaneous

Relation of Hours of Service to Safety Performance

The ATA believes that the regulatory evaluation discussion in the SNPRM did not provide the evidence showing the claimed positive relationship between hours of service violations resulting in out-of-service orders and future safety performance. ATA urges FMCSA to place appropriate proof of this claimed relationship in the public docket.

AHAS strongly disagrees with FMCSA's decision to accept the SBA request to delete the requirement for previous employers to disclose records evidencing previous driver hours of service (HOS) violations resulting in out-of-service orders. AHAS is not persuaded that the agency's rationale for excising this aspect of the proposed rule has any merit. AHAS challenges that a ''failure to require employers to provide such information on driver HOS violations to any prospective new employer of that driver arguably abets ongoing HOS violations by refusing to stop their concealment from subsequent employers.''

FMCSA Response: With regard to ATA's comment, the information referred to in the SNPRM was developed in a study for FMCSA. A preliminary report on this study was presented at the 2002 annual Transportation Research Board meeting in Washington, DC. A copy of a current report on that analysis is included in the docket as document 85.

More accurately, the SNPRM discussion refers to a positive and significant relationship between a measure developed by that study of traffic convictions and driver out-of-service (OOS) orders, which are largely from hours of service violations or record of duty (logbook/timecard) violations. Drivers receiving more traffic convictions for moving violations, particularly those defined as CDL serious or disqualifying convictions, are identified by the required Commercial Driver License Information System (CDLIS) recordkeeping functions.

Depending on the traffic law conviction received and the number of such convictions, the driver may be identified by the State driver licensing agency as a safety risk requiring driver improvement actions, such as suspension or revocation, in accordance with the CDL program regulations. It is an underlying premise of the CDL program that drivers with such conviction patterns are considered higher risk for being involved in accidents, and should be removed from driving CMVs, either temporarily or permanently.

The study found a significant, positive, linear correlation between the proposed carrier-driver conviction measure with OOS orders and carrier power unit crash rate. This implies that if the driver OOS information were available to prospective employers, it could also be useful in predicting future safety problems, including accidents. The relationship of driver OOS orders and future crash involvement is being further researched.

In regard to the AHAS comments, as stated in the SNPRM, FMCSA continues to believe ''* * * requiring this information collection and establishing a motor carrier recording requirement would be particularly burdensome to small entities * * *'' ''* * * because this information is only systematically reported to FMCSA as part of the Motor Carrier Safety Assistance Program (MCSAP) enforcement activities of the States.'' FMCSA provides the following additional details why this would be burdensome on small entities, as well as not meet the three-year reporting requirement of the HazMat Act.

Motor carriers are not currently required by the FMCSRs to maintain a three-year record for hours of service violations resulting in an out-of-service order. Requiring motor carriers to maintain and provide three-years of such information would necessitate creating a new recordkeeping requirement for motor carriers to obtain and maintain this data, and creation of such a process could be problematic.

The following things are currently required. Drivers are required by § 395.13(d)(3) to notify their employer of having received a driver out-of-service order for an hours-of-service violation. Motor carriers are then required by § 395.8(k)(1) to retain such data as a supporting document for 6-months. Under § 396.9(d)(3), motor carriers are required to retain a copy of inspection reports they receive from the driver, some of which could include information about a driver out-of-service order, for 1-year.

Because of the known problem with drivers not providing all such information to their motor carrier, FMCSA created a capability for motor carriers to obtain a carrier profile from FMCSA for a fee. If there is information on that profile about a driver-out-of-service order the motor carrier did not receive from the driver, the motor carrier may either contact the State MCSAP agency that issued the report, or request a facsimile copy of that