



MINERALS & CHEMICAL GROUP

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April 16, 1996

Attn: Docket Clerk
 Room 4232
 Office of the Chief Counsel
 Federal Highway Administration
 400 Seventh Street, SW
 Washington, DC 20590

DOCKET NO. MC-96-6

FHWA-97-2277-2

RE: COMMENTS ON SAFETY PERFORMANCE HISTORY OF NEW DRIVERS

FEDERAL HIGHWAY ADMINISTRATION
 96 APR 22 P 2: 59
 LEGS./REGS. DIV.

The Minerals and Chemical Division of the J.R. Simplot Company, a privately held agri-business, has several comments for your consideration concerning the proposed rulemaking for reviewing the safety performance history of new drivers.

Because hiring a new driver already involves many safeguards to assure only the safest drivers are on the road, it is questionable that this additional information will increase highway safety. Perhaps a cost vs. benefit analysis would be appropriate. We estimate that it takes a minimum of approximately 24 hours to complete all the paperwork, drug testing and training currently required before a driver ever sets foot in a truck.

In addition, it is our experience that under current requirements in 391.23, we average 1 response from previous employers for every 100 requests--even after multiple requests. How does FHWA propose to enforce previous employers that would now be "required" to respond within 30 days to do so? Currently, other companies feel there is a greater liability by responding to these inquiries than by the remote potential that a federal agency would enforce such an "unenforceable" rule. For example, our current Company policy only allows us to provide hire and termination dates and job title at the time of separation. There is no other information provided.

Other questions that arise from this inquiry would be, "What if the perspective employer never hears from the former employer?" If the 30 days has elapsed and the driver must be removed from safety sensitive functions, in many cases this would be revoking the offer of employment. Or, "What if a driver refuses to provide written consent to obtain this information from a previous employer?" Must the perspective employer refuse to offer employment?

Also, is a perspective employer negligent by hiring a driver that upon this disclosure finds out that the driver had one accident and one out of service order in the previous three years? What does a perspective employer do with this information once obtained? Will the rulemaking spell out by regulation the requirements of the potential employer upon receiving this information?

Another overly burdensome requirement is that of the perspective employer to investigate if a driver was ever referred to a SAP, if the SAP referred the driver to rehabilitation and a SAP's evaluation certifying a driver is qualified to return to duty. This information is unlikely, in most cases, to ever be obtained. For example, our Company policy states that if a commercial driver test positive for an illegal drug or at or above 0.04 breath alcohol, the driver will be terminated. If we were contacted by a perspective employer for this driver, we would have no way of knowing of any rehabilitation or SAP interaction with the driver. This is not an uncommon disciplinary action. Therefore, it would be a waste of time and money for ourselves and the perspective employer.

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Every employer must be responsible to assure that any driver employed is qualified and safe to drive. However, the process of hiring a driver has become as convoluted, costly and time consuming as should be tolerated. Current requirements are more than adequate to assure the perspective employer of the opportunity to investigate the qualification and safety of the driver.

The J.R. Simplot Company appreciates the opportunity to comment on this proposed rulemaking. Please contact myself at (208) 238-2869 or Gayland Archibald at (208) 238-2772, if you have any questions regarding the above comments or need additional information.

Respectfully submitted,



Lori Hamann
Retail Safety and Environmental Manager

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