



*Contract Freighters, Inc.*

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FEDERAL HIGHWAY  
ADMINISTRATION

Docket Clerk, Room 4232  
Office of Chief Counsel  
Federal Highway Administration  
400 Seventh Street S.W.  
Washington, D.C. 20590

*FHWA-97-2277-28*

RE: **FHWA Docket No. MC-96-6**  
Proposed Rule Making Request for Comments

Listed below are the items CFI feels are of most importance in the proposed rule making.

**Hours of Service / Out of Service Records**

- Drivers placed out of service due to hours of service violations are not necessarily fatigued. There are currently no documented studies that show a correlation between out of service orders and fatigue.
- It is CFI's position that this proposal be stricken.

**Section 382.413 (amendments)**

Should this section be amended, the following points apply.

- If the carrier is required to investigate all drivers failure to undertake or complete rehabilitation or violation of 382, subpoint b, changes should be made to require the carrier to get the information, "pre-offer."
- Information not acquired pre-offer forces a two step process on the industry. 1) Obtain employment and safety information from the former carrier, document the information, 2) make an offer of employment and obtain the drug and alcohol information. This process is in use today only on those applicants we intend to hire.

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- The carrier must be afforded some protection from the EEOC through the regulations and should not be required to try and comply with both.
- CFI does not retain drivers following a positive drug or alcohol test. Therefore, it would be nearly impossible to determine if the driver ever responded to the Substance Abuse Professional or completed rehabilitation.
- If this proposal does become a rule, it should only apply to drivers discharged after the effective date of the rule.

### Drivers Right to Review

- This proposal will most likely increase litigation from drivers if it is not limited to the driver having the right to review only the safety sensitive information about their employment record. This litigation will most likely occur between the applicant and the former carrier, not the hiring carrier.
- If this proposal does become a rule, it should stipulate that the driver request this information in writing and be limited to accident information only.

### Release Language

It is our understanding that several groups have suggested a release be required from the driver prior to the former carrier releasing past employment and work history information. The following points should be considered.

- Accident information may be the only data ending up being required in this regulation. With this in mind, accident reports are a matter of public record and can be purchased by anyone willing to pay a small fee to local and state agencies. Why is a release from a driver necessary in this situation?
- Most carriers would interpret the regulation to say that they had to see proof of the release before sharing the information. This will slow down the process and require a fax be sent to each past employer of each applicant. We could easily be sending and receiving as many as 30 faxes just to hire one driver.

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- *If this proposal becomes the rule, it should clearly state that the employer supplying the information is not required to receive a copy of the release signed by the applicant.*
- *It is our opinion that a release not be required. The benefit of this rule is to provide safe drivers behind the wheel of all commercial vehicles. Any new regulation should provide protection to the carrier in sharing information.*

### **Summary**

*The proposed regulation was designed to afford carriers some protection in sharing information relevant to the safety sensitive issues pertaining to drivers. We do not feel that the rule will provide this protection or satisfy the need of the industry.*

*It is our opinion that this proposed regulation would further inhibit the sharing of information among carriers for the following reasons.*

- *The drivers right to review will cause carriers to be protective about releasing information resulting in less information being shared than we currently experience today.*
- *The requirement of a release will cause a delay in receiving information necessary to making a hiring decision and may prohibit the use of outside vendor data bases as a way of obtaining past work history.*
- *Hours of Service / Out of Service data is not indicative of an unsafe or fatigued driver.*
- *Carriers will find it impossible, in most cases, to follow the progress of a former drivers, substance abuse progress.*

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We appreciate your efforts to allow easy access to safety sensitive information. However, the information required should be pertinent and should not further burden the process of the motor carriers.

Sincerely,

CONTRACT FREIGHTERS, INC.



Bruce M. Stockton  
Vice President - Safety

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