

SHER & BLACKWELL
ATTORNEYS AT LAW
SUITE 612
2000 L STREET, N.W.
WASHINGTON, D.C. 20036

NATHAN J. BAYER
ROBERT J. BLACKWELL
JOHN W. BUTLER
CINDY G. BUYS
MARC J. FINK
R. FREDERIC FISHER*
JEFFREY F. LAWRENCE
ANNE E. MICKEY
STEVEN Y. QUAN
WAYNE R. ROHDE
STANLEY O. SHER
TORBJORN E. SJOGREN
DAVID F. SMITH

*ADMITTED IN CA ONLY

TELEPHONE (202) 463-2500
FACSIMILE (202) 463-4950/4840

WRITER'S DIRECT DIAL NO.

(202) 463-2509

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SUITE 1100
555 MONTGOMERY STREET
SAN FRANCISCO, CA 94111
TELEPHONE (415) 788-9150
FACSIMILE (415) 788-9456

SUITE 510
15 EXCHANGE PLACE
JERSEY CITY, NJ 07310
TELEPHONE (201) 915-0100
FACSIMILE (201) 915-0393

LEGS./REGS. DIV.

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ADMINISTRATION

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Via Messenger

Docket Clerk
Office of Chief Counsel
Federal Highway Administration
400 7th Street, S.W.
Room 4232
Washington, D.C. 20590

FHWA-97-2277-34

Re: FHWA Docket No. 96-6 Safety
Performance History of New Drivers

Dear Sir or Madam:

Enclosed herewith please find an original and one (1) copy of the comments of the International Brotherhood of Teamsters in the above-referenced matter.

Kindly acknowledge receipt of this filing by date stamping the additional copy of this letter and returning it to the messenger.

Sincerely,

Marc J. Fink
Torbjorn B. Sjogren
Counsel to the International
Brotherhood of Teamsters

CC: Ms. Valerie Height, Office of Motor
Carrier Research and Standards

Ms. Grace Reidy, Office of Chief Counsel

DOCKET 96-6-33
PAGE 1 OF 7

Before the
Department of Transportation
Federal Highway Administration

Safety Performance History of New Drivers

Docket MC-96-6

COMMENTS OF THE INTERNATIONAL
BROTHERHOOD OF TEAMSTERS

On March 14, 1996, the Department of Transportation's Federal Highway Administration ("FHWA") issued a notice of proposed rulemaking ("NPR") requesting comments on proposed modifications to its existing regulations concerning safety information that new and prospective employers must seek from former employers during the investigation of a driver's employment record. 61 Fed. Reg. 10548 (March 14, 1996). The NPR also proposed to extend the period during which an employer must record accident information in the accident register from one to three years. While the International Brotherhood of Teamsters ("IBT") recognizes that the NPR makes some effort to address the concerns of the driver employees, we believe that some further procedural protections for employees should be adopted.

Obviously, the transmittal of a driver's records to a prospective employer is a matter of significant concern and presents potentially serious implications for that driver. A reference to an hours of service violation or an unexplained

DOCKET 96-6-33
PAGE 2 OF 7

dismissal in a driver's record could prevent the driver from being hired. In view of seriousness of the implications, the IBT urges FHWA to ensure that effective due process safeguards are in place to prevent innocent good drivers from the adverse consequences of false information in their records.

Section 114(a)(3) of the Hazardous Materials Transportation Authorization Act of 1994 ("HazMat Act") specifically provides that "[the Secretary of Transportation shall] ensure that the driver to whom such information applies has a reasonable opportunity to review and comment on the information." The NPR repeats this language in sections 382.413(h) and 391.23(d) but does not specify what is a reasonable opportunity and does not specify any due process safeguards for the drivers.

To correct this deficiency, the following procedural safeguards should be adopted:

- A new section 391.26 should be added to 49 CFR to read as follows:

Employment records.

Each motor carrier shall, within ten (10) days of the termination of the employment of a driver, provide such driver with a complete copy of his or her employment record (including driving record, accident register, accident report, or any other record required by a federal, state or local governmental entity or insurer). The driver shall be entitled to file with such former motor carrier

DOCKET 96-6-33
PAGE 3 OF 7

a statement with regard to his or her employment record. Any such statement shall become part of the driver's employment record transmitted to any new or prospective motor carrier employer.

- Proposed sections 391.23(d) and 382.413(h) should be revised to provide as follows (additional language is underlined):

§ 382.413(h). An employer shall provide the driver with a copy of and afford the driver a reasonable opportunity to review and comment on any information obtained by the employer under paragraph (a) of this section. Drivers may respond in writing or in person to such information and may do so within forty-five (45) days of receiving the information. The employer shall notify the driver of this provision at the time of application for employment.

§ 391.23(d). The motor carrier shall provide the driver with a copy of and 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 driver may respond in writing or in person to such information and may do so within forty-five (45) days of receiving the information. The motor carrier shall notify the driver of this right at the time of application for employment.

For the foregoing reasons, the IBT urges FHWA to implement the procedural safeguards described above.



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2000 L Street, N.W., Suite 612
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Attorneys for the International
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DOCKET 96-6-33
PAGE 4 OF 7

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DOCKET 96-6-33
PAGE 5 **OF** 7

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DOCKET 96-6-33
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DOCKET 96-6-33
PAGE 7 OF 7