



Interstate Truckload Carriers Conference

2200 MILL ROAD • ALEXANDRIA, VA 22314 • (703) 838-1950 FAX: (703) 836-6610

ROBERT G. ROTHSTEIN
General Counsel

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February 6, 1997

LEGS. / REGS. DIV.
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ADMINISTRATION

George L. Reagle
Associate Administrator
for Motor Carriers
Federal Highway Administration
400 Seventh Street, S.W.
Washington, DC 20590

**RE: Docket No. MC - 96 - 6
Safety Performance History
of New Drivers**

FHWA-97-2277-35

Dear Mr. Reagle:

A ministerial matter has been identified relative to providing driver background information. If not corrected, the problem may occlude the beneficial results sought to be obtained.

The Federal Highway Administration ("FHWA") initiated the referenced matter by way of a Federal Register notice published March 14, 1996, in which it proposed to amend the Federal Motor Carrier Safety Regulations as directed in Section 114 of the Hazardous Materials Transportation Authorization Act of 1994, Pub. L. 103-311 ("Act").

Section 114 of the Act provides, in part, that prescribed safety information be solicited by a driver-applicant's prospective employer, and requires that the prescribed information be produced by prior carriers. Such information includes (1) any motor vehicle accidents in which the driver was involved; (2) any failure of the driver to undertake or complete a rehabilitation program after being found to have used, in violation of law or federal regulation, alcohol or a controlled substance; (3) any use by the driver, in violation of law or federal regulation, of alcohol or a controlled substance subsequent to completing such a rehabilitation program; and (4) any other matters determined by the Secretary of Transportation to be appropriate and useful for determining a driver's safety performance. The only other such matter that was proposed was hours of service violations that resulted in an out-of-service order being issued to the driver during a prior three year period. This latter proposal was widely objected to by various trucking industry interests.

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The Interstate Truckload Carriers Conference ("ITCC") filed timely comments in the proceeding, as did the American Trucking Associations, Inc. ("ATA") and the Regular Common Carrier Conference, among others. Supplemental comments were also filed by ITCC and ATA.

The information required to be disclosed relates to a driver's safety performance, but does not include a driver applicant's social security number or other corroborating identifying information. Unless there are adequate safeguards, it is possible for a carrier to respond to a request for a driver's safety history with information on another individual. Such a result could occur any number of ways, including mistake, error, or oversight on the part of the soliciting or responding carrier(s). As an example, a carrier could solicit information on Paul Smith, and might assume, incorrectly, that the information supplied on Paula A. Smith is the same individual, or might not notice that the information is for a different individual. More troubling is the suggestion from a handful of carriers, who view negatively their impending obligation to respond to information requests, that the required information is the maximum amount of information that must be disclosed, and that such disclosure excludes any corroborating information such as a social security number. To preserve the inherent accuracy that is needed to make the required information valuable to a soliciting carrier, it is essential that information requested and supplied be accompanied by some corroborating identifying information to increase the confidence that both parties are referencing the same individual.

While it may be difficult to imagine requests or responses without accompanying identification, the added burden of requiring such fundamental identification is greatly outweighed by the increased accuracy of all parties in handling sensitive information upon which critical employment decisions will be made, particularly in light of some individuals' stated intent not to provide it. Moreover, addressing this concern in the manner suggested will protect drivers' interests, relative to their right to review information sent by prior employers, by minimizing the possibility of driver disputes over the accuracy of information provided by prior employers. We therefore suggest that 49 CFR 391.23 be further amended to require that soliciting and responding carriers correlate their driver safety performance history requests and responses with a social security number or other unique identification not prohibited by law.

I am authorized to represent that the ATA concurs in the foregoing suggestion. Thank you for your consideration of this request.

Very truly yours,



ROBERT G. ROTHSTEIN