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May 8, 1996

Docket Clerk
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Office of the Chief Counsel
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FHWA-97-2277-23

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LEGS./REGS. DIV.
ADMINISTRATION

RE: **FHWA** Docket No. MC-96-6

Comments to Proposed Amendment to Section 391.23.

The proposed amendment generally requires that the motor carrier be required to request the information from a motor carrier employer who, ". . . within the preceding three years, hired the driver to operate a **CMV**: . . ."

COMMENT:

Given the current driver turnover situation, the employer may be asked to respond to multiple prospective employers each time a driver changes companies. Over the course of a year, this requires thousands of responses from large carriers. Consideration should be given to requiring each motor carrier employer to report the requested information to the Federal Highway Administration within thirty (30) days of the termination of any driver. Once done, the carrier would be relieved of any obligation to respond to any other prospective motor carrier employer as the prospective employer would obtain the relevant information from the Federal Highway Administration. Additionally, the regulations should provide that the employer supplying the requested information, absent willful intent to harm the former employee, should be released from any liability to the former employee on the basis of the information provided.

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Note that this section also requires that the information be obtained from a former **"employer."** This raises the question of whether a **prospective employer** who has administered a **pre-**employment drug test must be contacted by the hiring employer or disclosed by the driver. The argument is, of course, that the individual was never employed or did not receive compensation.

With regard to the requirement that hours-of-service violations that resulted in an out-of-service order being **issued** to the driver during the past three years be disclosed, we point out that, in practice, a high percentage of states do not send this information to the carriers and other states do not promptly send copies of out-of-service orders to the employers. Drivers often fail to disclose that information to their employer. Again, that information could be sent directly by the states to the Federal Highway Administration which could in turn maintain the database for prospective employers. In any event, carriers should be under no obligation to report anything other than what is then contained in their file at the time of receipt of the request.

In the course of adopting regulations, it would also be a good time to deal with the issue created by gaps in employment. Often, an individual advises that he has been unemployed or **self-**employed during a portion of the preceding three years. At the present time, there exists no easy, reliable way for the prospective employer to verify that information. Again, a central filing system would eliminate that problem as the previous employers would have reported at the time the individual left their employment.

With regard to the portion of the regulation giving the driver the opportunity to review and comment on any information obtained by the prospective employer, it is our observation that there would **be** very little gained. If that driver then attempts to clear up any disputed information with the former employer, it again appears that there would be only a relatively small number of cases in which that would be of any value. Most often, the dispute is **likely** to center around whether or not certain motor vehicle accidents were preventable or nonpreventable. The fact that the prospective driver claims the accidents were nonpreventable would be of **very little** comfort to the prospective employer. All in all, making that information available to the driver will have a negative impact in that only the most skeletal information required to satisfy the regulations will be provided by the prior employers.

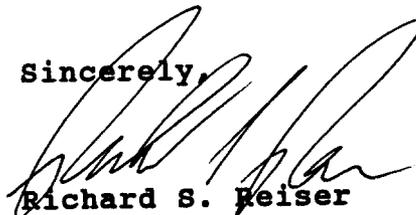
Finally, to achieve the goal of getting unsafe drivers off the highways, employers providing the information on the prior employee must be released of liability for doing so. Absent an

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intentional or willful decision to supply inaccurate information, the company supplying the information should be free to provide the information without having to face threats of legal action by unhappy drivers.

sincerely,



Richard S. Reiser

RSR:gao
FHWA.c04

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