



U.S. Department
of Transportation

**Federal Motor Carrier
Safety Administration**

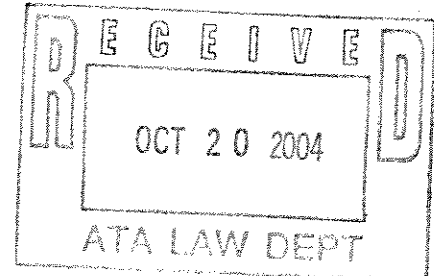
Administrator

OCT 15 2004

400 Seventh St., S.W.
Washington, D.C. 20590

Refer to: MC-CCR

Mr. Richard D. Holcomb
General Counsel and Sr. Vice President
American Trucking Associations, Inc.
2200 Mill Road
Alexandria, VA 22314-4677



Dear Mr. Holcomb:

Thank you for your letter of April 28 enclosing a petition for reconsideration of the Federal Motor Carrier Safety Administration's (FMCSA) March 30 Final Rule on "Safety Performance History of New Drivers" (69 Fed. Reg. 16684). The rule includes a requirement that former employers respond within 30 days to a request for driver background information from a prospective employer. 49 C.F.R. 391.23(g).

American Trucking Associations, Inc. (ATA) requested that FMCSA reduce the 30-day response time to 5 business days. After careful consideration of the issues raised by ATA, FMCSA has determined that this petition must be denied.

ATA is concerned that the 30-day response period is too long and that it will adversely affect the potential safety benefits of the new rule. The new rule requires significantly enhanced safety management systems on the part of previous and prospective motor carrier employers. Previous employers will be required to develop and maintain systems to document the process of gathering this information, reviewing the contents of the information, and preparing a required response. When previous employers have significant safety information about a former employee driver, it may take them some time to review the information properly and communicate this information to the prospective employer. A 5-day window in these situations is simply not practical. Many motor carriers are small businesses that cannot afford the administrative staff to process requests of this kind rapidly. In some cases, an owner-operator is both driver and office manager, and he or she may be away from the office for several weeks. A 5-day turnaround time would impose a disproportionate and unjustifiable economic burden on such carriers.

Second, ATA states that motor carriers will be compelled to hire drivers on a conditional basis rather than wait 30 days to obtain and review the required information. Most drivers are hired "at will" and those who have withheld significant safety information from their new employers in the application process may be separated from their driving duties for cause. Motor carriers should use their best judgment at the time of hire when selecting safe drivers. The new rule provides additional information when assessing that new driver's performance.

Finally, ATA suggests that the rule places “unnecessary restrictions” on the industry in the process of hiring safe and qualified drivers. FMCSA does not believe that the rule places any unnecessary restrictions on the industry; the new regulations allow previous employers the time necessary to conduct their operations and also to receive, process, develop and document previous employer-provided investigative information. Further, there is no regulatory requirement either to put new drivers to work or to restrict them from driving. The new rule does not “unnecessarily restrict” prospective employers from hiring or using an otherwise qualified driver.

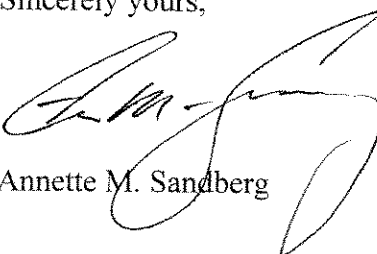
One of the potential safety benefits of this new rule is that it provides prospective employers with information about a driver applicant or new hire, which may not have been available to them in the past, and it does so at or near the time of hire. Providing 30 days for previous motor carriers to respond ensures that they have adequate time to gather, deliver and document at least the required minimum levels of safety compliance information required. Prospective employers may make the interim time period a conditional hire period, wait until all information is received, or work with previous employers directly to secure information in less than the 30-day period. If necessary, prospective employers may utilize the services of private-sector firms to expedite collection of driver background information. Thirty days is not an excessively long period to provide this information, and it is sufficiently close to the timeframe a prospective employer would use to solicit, interview, process, and qualify a newly-hired driver. The new rule allows the previous employer an adequate time period to respond to employee background investigations, and at the same time allows prospective employers to hire or use the driver if they so choose.

FMCSA believes the new rule strikes the appropriate balance between practicality, uniformity and enforceability, while at the same time improving safety and protecting all highway users.

If response times shorter than 30 days can be achieved without harming small carriers, all parties would benefit. We encourage the industry to collect data showing the distribution of response times to previous employer requests and to suggest non-discriminatory methods of reducing those times.

If you require further information, please feel free to contact Pamela Pelcovits, Acting Director, Office of Bus and Truck Standards and Operations, at (202) 366-5370 or Pamela.Pelcovits@fmcsa.dot.gov.

Sincerely yours,



Annette M. Sandberg