

(2) Any personnel, medical, or similar information, including the serial numbers of implanted devices, which would constitute a clearly unwarranted invasion of personal privacy under § 20.63 of this chapter or 5 U.S.C. 552(b)(6); provided, that except for the information under § 20.61 of this chapter or 5 U.S.C. 552(b)(4), FDA will disclose to a patient who requests a report all the information in the report concerning that patient.

Dated: May 9, 1997.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 97-13064 Filed 5-16-97; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

23 CFR Part 1327

[Docket No. 84-02; Notice 11]

RIN 2127-AG21

Procedures for Participating In and Receiving Data From the National Driver Register Problem Driver Pointer System

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.
ACTION: Interim final rule; request for comments.

SUMMARY: This interim final rule amends the agency's National Driver Register (NDR) regulations to implement an amendment made by the Pilot Records Improvement Act of 1996. The amendment authorizes air carriers to receive information from the National Driver Register (NDR) regarding the motor vehicle driving records of individuals who are seeking employment with an air carrier as a pilot. This interim final rule establishes the procedures for those pilots to request, and for those air carriers to receive, NDR information.

DATES: This interim final rule becomes effective on May 19, 1997. Comments on this interim final rule are due no later than July 18, 1997.

ADDRESSES: Written comments should refer to the docket number and the number of this notice and be submitted (preferably in ten copies) to: Docket Section, National Highway Traffic Safety Administration, Room 5109, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. (Docket hours are from 9:30 a.m. to 4 p.m.)

FOR FURTHER INFORMATION CONTACT: Mr. William Holden, Chief, Traffic Records

and Driver Register Division, NTS-32, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590; telephone (202) 366-4800 or Ms. Heidi L. Coleman, Assistant Chief Counsel for General Law, Office of Chief Counsel, NCC-30, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590; telephone (202) 366-1834.

SUPPLEMENTARY INFORMATION: The National Driver Register (NDR) is a central file of information on individuals whose licenses to operate a motor vehicle have been denied, revoked, suspended, or canceled, for cause, or who have been convicted of certain serious traffic-related violations, such as racing on the highways or driving while impaired by alcohol or other drugs.

As provided in the NDR Act of 1982, as amended, 49 U.S.C. 30301, *et seq.*, State chief driver licensing officials are authorized to request and receive information from the NDR for driver licensing and driver improvement purposes. When an individual applies for a driver's license, for example, these State officials are authorized to request and receive NDR information to determine whether the applicant's driver's license has been withdrawn for cause in any other State. Because the NDR is a nationwide index, chief driver licensing officials need to submit only a single inquiry to obtain this information.

State chief driver licensing officials are also authorized under the NDR Act to request NDR information on behalf of other authorized NDR users for transportation safety purposes. The NDR Act authorized the following transportation entities to receive NDR information for limited transportation safety purposes: The National Transportation Safety Board and the Federal Highway Administration for accident investigation purposes; employers and prospective employers of motor vehicle operators; the Federal Aviation Administration (FAA) regarding any individual who has received or applied for an airman's certificate; the Federal Railroad Administration (FRA) and employers or prospective employers of railroad locomotive operators; and the U. S. Coast Guard regarding any individual who holds or who has applied for a license, certificate of registry, or a merchant mariner's document. The Act also provided that individuals could learn whether information about themselves is on the NDR file and could receive any such information.

On October 9, 1996, the Pilot Records Improvement Act of 1996, Pub. L. 104-264, was enacted into law. Section 502 of that Act contained an amendment to the NDR Act of 1982, as amended, 49 U.S.C. 30305, authorizing air carriers to receive NDR information regarding individuals who are seeking employment with an air carrier as a pilot.

Procedures for Requesting and Receiving NDR Information

The procedures that air carriers would use to receive NDR information would be similar to those used by the employers of motor vehicle and railroad locomotive operators, the FAA, the FRA, and the U. S. Coast Guard in checking their applicants for employment or certification.

Air carriers may not initiate a request for NDR information. Rather, the individual seeking employment as a pilot must do so. To initiate a request, the individual must either complete, sign and submit a request for an NDR file search, or authorize the air carrier to request the NDR file search by completing and signing a written consent. The request or written consent must state that NDR records are being requested; state specifically who is authorized to receive the records; be dated and signed by the individual (the pilot); and specifically state that the authorization is valid for only one search of the NDR. It must also specifically state that the NDR identifies "probable" matches that require further inquiry for verification, that it is recommended (but not required) that the air carrier verify matches with the state of record, and state that individuals have the right to request NDR records regarding themselves to verify the accuracy of any information on the file pertaining to them.

The Pilot Records Improvement Act provides that an individual, about whom a request has been made, is entitled to receive written notice about the request for records and of the individual's right to receive a copy of any records provided to the prospective employer. Accordingly, the request or written consent that the individual completes must also include this notice.

The Pilot Records Improvement Act also provides that requests for NDR information are to be submitted through State chief driver licensing officials. Such requests may be submitted through the chief driver licensing official of any State that participates in the NDR's Problem Driver Pointer System (PDPS). Currently, 49 States (all States, except for the State of Oregon and the District of Columbia) participate

in the NDR PDPS. The agency recognizes, however, that even participating States will require some time to develop procedures for processing these air carrier requests and to train their personnel in the new procedures. Accordingly, to provide the States with sufficient preparation time, the NDR will accept air carrier requests for NDR information directly for a limited period of time. The regulation provides that such requests may be submitted directly to the NDR for processing until September 30, 1997. After that date, air carrier requests must be submitted through a State chief driver licensing official. The agency believes this period (until September 30, 1997) will provide sufficient planning time for participating States.

The regulation provides that requests submitted through State chief driver licensing officials must follow procedures established by the State and requests submitted directly to the NDR must follow NDR procedures. For example, individuals must verify their identity in accordance with State procedures when they submit requests through a State. When individuals submit requests directly to the NDR, their requests must be notarized.

If a request has been submitted directly to the NDR, the response will be provided from the NDR directly to the air carrier. If a request has been submitted through a State chief driver licensing official, the response will be provided from the NDR to the chief driver licensing official, who in turn will provide it to the air carrier.

The NDR response will indicate whether a match (probable identification) was found and, if so, the response will also identify the State in which the full substantive record can be found (the State of record). The agency encourages air carriers that receive matches to obtain the substantive data relating to the match from the State of record to determine whether the person described in the record is in fact the subject individual before taking further action. Air carriers will not receive information that was entered in the NDR if the information concerns a licensing action that took place more than five years before the date of the request, unless the information concerns a revocation or suspension still in effect on the date of the request.

The Pilot Records Improvement Act of 1996 further provided that air carriers that maintain, or request and receive NDR information about an individual must provide the individual a reasonable opportunity to submit written comments to correct any inaccuracies contained in the records

before making a final hiring decision with respect to the individual.

For additional information regarding requests authorized under the Pilot Records Improvement Act of 1996, including sample forms, see FAA Advisory Circular 120-68.

Part 1327 currently provides that a third party may be used by a person authorized to receive NDR information (an authorized user) to forward requests for NDR file searches to the NDR; however, the third party requester may not receive the NDR response since the third party is not authorized by the NDR Act to receive NDR information. Part 1327 provides that both the authorized user and the individual concerned must sign a written consent authorizing the third party to forward requests for NDR file searches to the NDR. This portion of part 1327 has not been changed by this interim final. The authorized users to which this provision applies will expand to include air carriers.

Interim Final Rule

This notice is published as an interim final rule. Accordingly, the changes to part 1327 described above are fully in effect and binding upon the date of the notice's publication. No further regulatory action by NHTSA is necessary to make these changes effective.

Section 502(d) of the Pilot Records Improvement Act of 1996, provides that air carriers hiring individuals as pilots will be authorized to receive NDR information regarding applications first received by the carriers on or after February 6, 1997. In an effort to establish the procedures to permit pilots to submit requests to the NDR and air carriers to receive NDR information as close as possible to the February 6 date, these regulatory changes have been made in an interim final rule, without prior notice and opportunity for comment. In addition, the changes made to the regulation in this interim final rule simply reflect the statutory amendments enacted by the Pilot Records Improvement Act. Further, the procedures that have been established in this interim final rule for requesting that NDR information be provided to air carriers are nearly identical to the procedures already being followed by the States, by airmen and by others in the field of transportation safety. Those procedures were established by a rulemaking process during which notice and an opportunity to comment were provided.

NHTSA requests comments on these regulatory changes. All comments submitted in response to this notice will be considered by the agency. Following

the close of the comment period, NHTSA will publish a notice responding to the comments and, if appropriate, will further amend the provisions of part 1327.

Written Comments

Interested persons are invited to comment on this interim final rule. It is requested, but not required, that ten copies be submitted.

All comments must be limited to 15 pages in length. Necessary attachments may be appended to those submissions without regard to the 15-page limit. (49 CFR 553.21.) This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

Written comments to the public docket must be received by July 18, 1997. All comments received before the close of business on the comment closing date, will be considered and will be available for examination in the docket at the above address before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date. Following the close of the comment period, NHTSA will publish a notice responding to the comments and, if appropriate, NHTSA will amend the provisions of this rule. NHTSA will continue to file relevant material in the docket as it becomes available after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Copies of all comments will be placed in Docket 84-02; Notice 11 of the NHTSA Docket Section in Room 5109, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Regulatory Analyses and Notice

Executive Order 12778 (Civil Justice Reform)

This interim final rule will not have any preemptive or retroactive effect. The enabling legislation does not establish a procedure for judicial review of final rules promulgated under its provisions. There is no requirement that individuals submit a petition for reconsideration or other administrative proceedings before they may file suit in court.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The agency has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or Department of Transportation Regulatory Policies and Procedures. The changes in this interim final rule merely reflect amendments contained in Public Law 104-264. Accordingly, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601-612), the agency has evaluated the effects of this action on small entities. Based on the evaluation, we certify that this action will not have a significant impact on a substantial number of small entities. Accordingly, the preparation of a Regulatory Flexibility Analysis is unnecessary.

Paperwork Reduction Act

There are reporting requirements contained in the regulation that this rule is amending that are considered to be information collection requirements, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320. Accordingly, these requirements have been submitted previously to and approved by OMB, pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*). These requirements had been approved through October 31, 1996, under OMB No. 2127-0001. A request for an extension of the OMB approval until the year 2000 is currently pending.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that it will not have any significant impact on the quality of the human environment.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment. Accordingly, the preparation of a Federalism Assessment is not warranted.

List of Subjects in 23 CFR Part 1327

Driver licensing, Driver records, Highway safety, National Driver Register, Transportation safety.

In consideration of the foregoing, title 23 of the CFR is amended as follows:

PART 1327—PROCEDURES FOR PARTICIPATING IN AND RECEIVING INFORMATION FROM THE NATIONAL DRIVER REGISTER PROBLEM DRIVER POINTER SYSTEM

1. The authority citation for part 1327 will continue to read as follows:

Authority: Pub. L. 97-364, 96 Stat. 1740, as amended (49 U.S.C. 30301, *et seq.*); delegation of authority at 49 CFR 1.50.

§ 1327.6 [Amended]

2. Section 1327.6 is amended by redesignating paragraphs (f) and (g) as paragraphs (g) and (h), and by adding a new paragraph (f) as follows:

* * * * *

(f) *Air carriers.* (1) To initiate an NDR file check, the individual seeking employment as a pilot with an air carrier shall either:

(i) Complete, sign and submit a request for an NDR file check directly to the chief driver licensing official of a participating State in accordance with procedures established by the State for this purpose; or

(ii) Authorize, by completing and signing a written consent, the air carrier with whom the individual is seeking employment to request a file check through the chief driver licensing official of a participating State in accordance with procedures established by that State for this purpose.

(2) Until September 30, 1997, an NDR file check initiated under either paragraph (f)(1)(i) or (f)(1)(ii) of this section may be submitted directly to the NDR in accordance with procedures established by the NDR rather than through the chief driver licensing official of a participating State in accordance with procedures established by that State for this purpose.

(3) The request for an NDR file check or the written consent, whichever is used, must:

(i) State that NDR records are to be released;

(ii) State as specifically as possible who is authorized to receive the records;

(iii) Be dated and signed by the individual (or legal representative as appropriate);

(iv) Specifically state that the authorization is valid for only one search of the NDR;

(v) Specifically state that the NDR identifies probable matches that require further inquiry for verification; that it is

recommended, but not required, that the prospective employer verify matches with the State of record; and that individuals have the right to request records regarding themselves from the NDR to verify their accuracy; and

(vi) Specifically state that, pursuant to Section 502 of the Pilot Records Improvement Act of 1996, the request (or written consent) serves as notice of a request for NDR information concerning the individual's motor vehicle driving record and of the individual's right to receive a copy of such information.

(4) Air carriers that maintain, or request and receive NDR information about an individual must provide the individual a reasonable opportunity to submit written comments to correct any inaccuracies contained in the records before making a final hiring decision with respect to the individual.

(5) In the case of a match (probable identification), the air carrier should obtain the substantive data relating to the record from the State of record and verify that the person named on the probable identification is in fact the individual concerned before using the information as a basis for any action against the individual.

* * * * *

Issued on: May 13, 1997.

Ricardo Martinez, M.D.,
Administrator, National Highway Traffic Safety Administration.

[FR Doc. 97-12925 Filed 5-16-97; 8:45 am]

BILLING CODE 4910-59-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DE-28-1009; FRL-5823-4]

Approval and Promulgation of Air Quality Implementation Plans; State of Delaware; Enhanced Motor Vehicle Inspection and Maintenance Program

ACTION: Final conditional approval.

SUMMARY: EPA is granting conditional approval of a State Implementation Plan (SIP) revision submitted by the State of Delaware. This revision establishes and requires the implementation of a low enhanced motor vehicle inspection and maintenance (I/M) program in the counties of Kent and New Castle. The intended effect of this action is to conditionally approve the Delaware enhanced motor vehicle I/M program. EPA is conditionally approving Delaware's SIP revision based on the fact that: Delaware's SIP is deficient in certain aspects with respect to the