duty and follow-up testing for drivers who have tested at a level of .04 or above and whom their employers wish to return to the performance of safetysensitive functions.

The FHWA rules also require that employers conduct these tests using the procedures of 49 CFR part 40. Part 40 requires that the use of evidential breath testing devices (EBTs) for alcohol testing. When it published part 40 in February 1994, the Department noted that the National Highway Traffic Safety Administration (NHTSA) would issue model specifications for non-evidential alcohol screening devices. Any such devices that NHTSA approved under these specifications could be used in place of EBTs for the screening tests required by part 40 (but not for the confirmation tests, which would still have to be conducted on EBTs). As the Department noted in its February publication, the Department would have to amend part 40 to establish procedures for the use of non-evidential alcohol screening devices before NHTSA approved devices could actually be used by employers for DOT-mandated alcohol testing.

On December 2, 1994, NHTSA published a list of five non-evidential alcohol screening devices that met its model specifications. However, the Department has not yet published an amendment to part 40 providing procedures for the use of these devices, with the result that employers who are scheduled to begin testing on January 1, 1995, will not immediately be able to begin using non-evidential devices.

FHWA has received 12 petitions from motor carrier industry groups requesting postponement of the January 1, 1995, implementation date for alcohol testing. Among other reasons, the petitions suggested that it would be beneficial for the motor carrier industry to be able to postpone the beginning of alcohol testing until non-evidential screening devices could actually be used. Copies of these documents have been placed in the docket for this rulemaking.

FHWA is mindful that the motor carrier industry is, by a substantial margin, the largest industry covered by DOT alcohol testing rules. Approximately 7.1 million drivers, and over 500,000 motor carriers, are affected by these rules. The number of employers and the number of employees affected by the FHWA alcohol testing rule is far higher than the combined numbers of employers and employees in other covered transportation industries. The industry is also widely dispersed geographically, and the mobile and fluid nature of motor carrier operations

creates complex implementation problems for employers.

The turnover rate for drivers in the industry is very high, approaching 100 percent per year in some segments. This places a particularly heavy responsibility on employers with respect to meeting the statutory requirement for pre-employment testing. All these factors suggest that it is particularly important to provide employers in this industry with additional flexibility before requiring random and pre-employment testing to

We recognize the important safety benefits that will be derived from these rules but believe that it is reasonable to briefly delay them for the motor carrier industry because the rule will be more effectively implemented. This action is reasonable because, in addition to the complex problems caused by the size of the industry, there are other provisions in the FHWA rule that provide for additional safety checks of new employees. The provisions of 49 CFR 382.413, which require employers to obtain information about previous alcohol and controlled substance tests, can help employers, early in an employment relationship, to discover information about potential problems that new employees may have. Finally, there are already several existing rules that prohibit any alcohol use by drivers of commercial motor vehicles. These rules are enforced by Federal, state, and local officials who conducted over 1.9 million roadside safety inspections in

For these reasons, FHWA believes that postponing the implementation date for this kind of testing until nonevidential screening devices are fully authorized for use in the program is sensible. FHWA expects the postponement to be a short one. The Department will issue a notice of proposed rulemaking (NPRM) on nonevidential screening device procedures in the very near future, which, we anticipate, will have a 30-day comment period. The Department will review comments quickly and prepare a final rule, the effective date of which should be no later than May 1, 1995. In any case, pre-employment testing must begin by May 1, 1995, regardless of the effective date of this procedural rule. Should the procedural rule be published before April 1, 1995, the Department intends to amend part 382 to establish an implementation date for preemployment testing that is 30 days from the publication date of the procedural rule.

Large employers must begin all kinds of alcohol tests except pre-employment,

and are authorized to begin preemployment tests, under part 382 on January 1, 1995. Employers who begin pre-employment testing on or after January 1 can do so with the confidence that the authority of Federal law stands behind them.

Reasonsable suspicion and postaccident tests are particularly crucial kinds of tests for a safety-oriented program like this one. However, the overall number of such tests is expected to be small. Consequently, all larger carriers will remain responsible for conducting these types of tests beginning January 1, 1995, using existing Part 40 procedures. In addition, it is very important for safety that a driver who has tested "positive" for alcohol not return to performance of safety-sensitive functions until he or she has passed a return-to-duty alcohol test and been made subject to follow-up tests. After January 1, 1995, employers who wish to return a driver to duty after a "positive" test must ensure that these tests are conducted, using existing Part 40 procedures.

While random testing implementation will continue to begin on January 1, 1995, this does not necessarily mean that employers must actually conduct random tests on that date. Random tests must be reasonably spread throughout the year. Employers must conduct a sufficient number of tests during the year to meet the 25 percent random testing rate requirement. Employers who wished to use non-evidential screening devices for most of their random tests have the flexibility to schedule their random tests so that most were conducted after the first few months of the year, when it is likely that procedures for their use will be in place. We would caution employers that this could not be an explicit, stated company policy, however. The intent of random testing under the rule is that employees never know when they might be tested. Employers cannot tell employees that no testing will be conducted during a certain time period. Random tests are also a more significant part of a deterrence and detection-based program than pre-employment tests, in any case. Consequently, it is not necessary or prudent to postpone random testing.

It should be emphasized that none of these points apply to smaller employers, who will begin conducting all types of tests, as scheduled, on January 1, 1996. Nor does anything in this rule change the January 1, 1995, implementation date for controlled substances testing under 49 CFR part 382.