



changes in DOT policy about how docket address information is described for accessing and making comments, and notices of privacy.

Text in the paperwork reduction section of the manuscript sent to OMB on page 39 was revised to read as follows:

All small entities for the previous three years would now be required to provide their employment investigative safety performance history data. That data, minus the alcohol and controlled substances data, likely would be requested routinely for all driver applicants from all previous motor carriers as part of the initial employment screening process that does not require signed authorization. For those drivers still under consideration for employment, the same previous employers could receive a subsequent second request for the alcohol and controlled substances information.

The 1997 CDL Effectiveness study contained a report of a focus group meeting of motor carrier safety directors. (CDL Focus Group Study, November 1996, copy of Safety Director comments in docket.) It documents that a number of motor carriers require drivers to have obtained previous experience driving a CMV before that motor carrier will hire the driver. If some employers operate more as employers of entry-level drivers, then they could often be required to provide investigation information, but not get much benefit of receiving such investigations from other previous employers. In such cases, if the motor carriers furnishing the investigation data are small entities, the costs could potentially rise to the level of a significant economic impact on a substantial number of small entities.

If such entities are unable to insist on receiving payment for the costs of performing this function prior to releasing the data because of FMCSA policy, there could be a negative impact on them. FMCSA requests comments on how significant this might be.

Text in the Regulatory Evaluation: Summary of Benefits and Costs section of the manuscript sent to OMB on pages 53-54 was revised to read as follows:

FMCSA has a policy that previous employers cannot make receiving payment for their costs a condition of providing alcohol and controlled substances data. If this is also applied to this new requirement of providing accident data in response to investigations, then the costs incurred by previous employers for providing all safety performance history information will be largely borne by previous employers. If these costs are relatively equally shared, i.e., each employer gets as much value from investigations to other employers as from providing the information, then who incurs these costs is not directly important to calculation of the estimated total costs of this proposed SNPRM.

The 1997 CDL Effectiveness study contained a report of a focus group meeting of motor carrier safety directors. (CDL Focus Group Study, November 1996, copy of Safety Director comments in docket.) It documents that a number of motor carriers require drivers to have obtained previous experience driving a CMV before that carrier will hire the driver. If some employers operate more as employers of entry-level drivers, then they could often be required to provide investigation information, but not get much benefit of receiving such investigations from other previous employers. In such cases, if

the motor carriers furnishing the investigation data are small entities, the costs could potentially rise to the level of a significant economic impact on a substantial number of small entities. FMCSA requests comments regarding any information that might indicate a different analysis of costs should be used, if such inequalities might be created by the existing FMCSA policy preventing motor carriers who are furnishing investigation information, from receiving payment for the information as a condition of releasing the information.

Text in the Regulatory Analysis section of the manuscript sent to OMB on pages 57-58 was revised to read as follows:

To calculate the new accident records that would likely need to be stored and reported on as part of this rule, we used the average annual total for truck-related accidents for 1999 and 2000, which is equal to 445,000 (includes all truck-related fatal, injury, and property-damage-only accidents). Using an estimate of 3 million as the total existing driver population, we estimated the number of annual accidents per driver at 0.148 (i.e., 445,000/ 3 million). In this analysis, we assumed drivers being hired due to internal turnover (i.e., 320,000 positions) would be experienced drivers (i.e., with accident records) and the remainder (i.e., those hired due to attrition, retirement, and industry growth) would be new drivers (i.e., those without previous accidents). As such, the number of accidents for which the number of drivers being hired each year would be responsible is equal to 47,500 (i.e., 0.148 x 320,000).

Over three years, the number of reportable accidents these drivers would be involved in would total 143,000. We assumed for 10 percent of these accidents (or almost 14,300 cases, after rounding), the driver would not be hired as a result. Assuming one accident per driver, we estimate this new data would reverse 14,300 of the 403,000 hiring decisions made each year within the industry. We believe the 10-percent assumption is reasonable, given the importance of accident data in determining insurance rates and forecasting potential liability costs for trucking companies. For example, of the average 445,000 truck-related annual accidents reported in calendar years 1999 and 2000, one percent (or 4,450) were fatal, 22 percent (or 98,000) were injury-related, and 77 percent (or 343,000) were property-damage-only (PDO).<sup>1</sup> Also, FMCSA research into NHTSA's Fatal Accident Reporting System (FARS) database reveals in almost 30 percent of two-vehicle accidents involving a large truck and passenger vehicle, the driver of the truck exhibited behavior that may have contributed to the accident.<sup>2</sup>

Since the literature carefully notes a "contributing factor" cannot be equated with crash causation (and FMCSA does not yet have definitive data on crash causation factors), we must assume that in only a certain percentage of these crashes did the truck driver's behavior actually cause the crash. We assume a prospective employer would use "cause" as the primary criterion in deciding whether to hire a driver or not. In this analysis, we assumed that in only one-third of these "contributing factor" crashes, or 10 percent of all crashes (i.e., 1/3 of 30% of all crashes = 10%), did the truck driver's

---

1 "Large Truck Crash Facts 2000", Federal Motor Carrier Safety Administration, Analysis Division, March 2002.

2 "Large Truck Crash Profile: The 1997 National Picture", by the Analysis Division, Office of Motor Carriers, Federal Highway Administration, September 1998.

behavior cause the crash. In the other two-thirds of “contributing factor” crashes, we assumed the truck driver’s behavior either did not in fact cause the crash or that further investigation on cause was inconclusive and the driver was hired.) Therefore, in 14,300 of the cases where three years of new accident data would be made available the hiring decisions would be reversed, i.e., the driver would be denied employment. The FMCSA invites comments regarding the accuracy of these assumptions.

Regarding retention costs for this new accident data, employers would be required to store an additional two years of all truck-related accidents, or 890,000 records, at an average of \$0.15 per record (according to the Association for Records Management Activities (ARMA)).

Text in the Regulatory Analysis section of the manuscript sent to OMB on pages 59-60 was revised to read as follows:

In this analysis, we estimated that roughly 25 percent (or 1,300) of those 5,100 commercial drivers who fail random or non-random alcohol/controlled substance tests annually, who are referred to rehabilitation programs, and who change employment within the industry each year, would now be denied employment because of the new alcohol/controlled substance program data made available to prospective employers. Coupled with the 14,300 we earlier estimated would not be hired because of the new accident data, we have estimated a total of 16,000 commercial driver applicants likely to be denied employment as a result of this proposed rule’s implementation. This estimate will be revisited when we estimate accident reduction benefits.

Implicit in parts of the above discussion, where we discussed the number of driver safety performance investigations to be made to previous employers, we assumed one applicant per job and therefore one set of investigations to previous employers per prospective driver, i.e., not multiple drivers applying for one job each being investigated to all previous employers. This is likely an underestimate of the true number of investigations likely to be made to previous employers each year, since in some cases a prospective employer will request safety performance data on more than just one prospective driver. The safety directors in the CDL Effectiveness Focus Group Study (November 1996) reported having to screen many drivers to obtain one good driver to hire. “It will take 100 applications to find 10 or 20 good ones, and that’s good.” Additionally, some portion of prospective drivers will likely have had more than one previous employer within the last three years, which would further increase the total number of investigations made to previous employers within a given year.

However, FMCSA was not able to estimate with any certainty the number of drivers a prospective employer might consider “serious candidates” for a position and for whom safety performance history data would be requested. Additionally, although recent estimates on industry turnover would indicate that across all segments, an average driver would likely be with the same employer for three or more years, it is well reported that some segments have much higher turnover rates. In such segments a prospective driver may have had multiple employers within the past three years. Given the relative uncertainty in these numbers though, we assumed one investigation per position to be filled for the purposes of this evaluation. The agency invites comments regarding the

accuracy of these assumptions and encourages commenters to provide data to support their position.

Also, we know that some segments of the industry initiate applications using telephone and other means of communication. As a result, the prospective employer initiates the required inquiries and investigations based on the application before the prospective employer has obtained the signed driver authorization to obtain the drug and alcohol data. Some portion of these drivers will pass the initial screening. They will be asked to provide the signed authorization for the drug and alcohol data.

These second stage screening investigations for possible drug and alcohol data would be to the same previous employers who were investigated for accident and other safety performance history data. We do not have enough data to estimate the additional cost these employers would bear for these multiple investigations for the same driver application.

Text in the Regulatory Analysis section of the manuscript sent to OMB on pages 61-62 was revised to read as follows:

This SNPRM provides that all drivers have the right to review, comment on, and refute the investigative employment data provided by their previous employers to prospective employers. However, those drivers most likely to refute such data are those denied employment as a result of the information. As such, we assume only those drivers who are denied employment as a result of the new data (or 16,000 drivers) would contest their safety performance data provided by a previous employer.

For these 16,000 cases, we assumed two additional hours of labor time spent by each driver to file a request/protest with their previous employer and two additional hours of labor time spent by each previous employer to address each request/protest. We used an average 2001 hourly wage rate for trucking managers of \$35.94, obtained from a cost-benefit analysis performed for FMCSA by Moses and Savage, 1993, and updated to 2001 using the GDP Price Deflator. We multiplied this figure by 16,000 cases, yielding total costs to the trucking company to address driver protests of their data files of roughly \$1.1 million annually (undiscounted).

As stated, we also assumed the driver would spend two hours filing the protest with the previous employer. Using the 2001 hourly wage rate of \$14.66 and 16,000 drivers, this cost adds another \$0.5 million to the annual total. Lastly, at \$0.15 per record filing (using ARMA recordkeeping estimates) and 16,000 cases, filing activities add only \$2,300 to this cost. Totaling these three components yields an annual total cost to address driver protests of \$1.6 million.

In estimating the driver and employer costs associated with potential protests, it was unclear how frequently the driver or the employer might secure the services of an attorney to either prosecute or defend against such protests. Presumably the hourly cost of attorneys would exceed the cost assumed for trucking managers of \$35.94. If this should occur very often, it could alter the assumed costs. However, because of the uncertainty, costs associated with possible attorney services were not included in this analysis. The agency invites comments regarding this approach and encourages commenters to provide data to support their position.

#