

access to increased information about the safety performance history of drivers, including access to investigation information from prior employers about driver applicants.

Regulations at § 391.23(a)(2) and (c) currently require prospective employers to investigate a driver's employment record with previous employers. The regulations do not specify what information prospective employers must investigate, nor do they require previous employers to respond to investigations received from prospective employers. Comments to the docket for this rulemaking such as those from Dart and Fleetline, Food Distributors International, Interstate Truckload Carriers Conference, American Movers Conference, United Motor Coach Association, and the National Private Truck Council state that many previous employers are either not responding, or not providing any information other than verification of employment and dates.

Further, comments to docket FMCSA-2001-9664 state that many previous employing motor carriers either do not respond to investigations for alcohol and controlled substances information, or do so belatedly, making the data of questionable value in the hiring decisions. Docket 9664 contains the **Federal Register** notice and numerous comments regarding the requirement of section 226 of MCSIA for a Report to Congress on the possibility of requiring employers to report positive controlled substances test results and for prospective employers to check such a computer source for the existence of such information as part of the hiring decision process. A copy of section 226 of MCSIA is included in the docket as document 40.

The objective of this proposed rulemaking is to improve the quantity and quality of investigations made to previous employers, as well as the quantity, quality and timeliness of background driver safety performance information provided to prospective employers. This should foster more informed employment judgments about the safety risks of potential new employees, while affording drivers the opportunity to review and comment on the accuracy of information provided by previous employers.

This proposed regulation specifies minimum information that must be investigated, and proposes process modifications to facilitate this information exchange so as to minimize the reporting burden, including establishing the limit on potential liability of employers, their agents and

insurance providers from defamation lawsuits, etc.

(3) *A description of, and, where feasible, an estimate of the number of small entities to which the proposed rule will apply.* This proposal will apply to all motor carrier employers regulated by the FMCSRs whose employees apply to work for a motor carrier in interstate commerce. This includes small motor carriers as well as numerous entities in other industries covered by the FMCSRs because they operate their own private commercial motor vehicles. Examples include drivers who operate CMVs in industrial categories such as: bakeries, petroleum refiners, retailers, farmers, bus and truck mechanics, cement masons and concrete finishers, driver/sales workers, electricians, heating, air conditioning and refrigeration mechanics and installers, highway maintenance workers, operating engineers and other construction equipment operators, painters construction and maintenance workers, plumbers, pipefitters and steamfitters, refuse and recyclable material collectors, roofers, sheet metal workers, telecommunications equipment installers and repairers, welders, cutters, solderers, and brazers.

The SBA regulations at 13 CFR part 121 specify Federal agencies should analyze the impact of proposed and final rules on small businesses using the SBA Small Business Size Standards. Where SBA's standards do not appropriately reflect the effects of a specific regulatory proposal, agencies may develop more relevant size determinants for rulemaking.

The regulatory evaluation below estimates the number of driver hiring decisions affected by this proposed rule at approximately 419,000 annually. This estimate is a function of three components, including (1) annual driver turnover within the industry, (2) annual employment growth within the industry, and (3) an increase in the number of drivers required to fill vacancies left by those denied employment when the background information proposed in this SNPRM becomes available to prospective employers.

It is difficult to determine exactly how many existing motor carriers would be affected by this proposed rule, since it is not known year-to-year how many employers on average hire drivers. However, it is known from the Motor Carrier Management Information System (MCMIS) that there are approximately 500,000 active motor carriers currently operating in interstate commerce in the United States (this includes both for-hire and private motor carriers, but

deducts a number of carriers believed not to be currently operating but still having files within MCMIS). Data from the 1997 Economic Census (U.S. Census Bureau), Standard Industrial Classification (SIC) Code 4213 "Trucking, Except Local" indicates that over 90 percent of trucking firms in that SIC code had less than \$10 million in annual sales in 1997 (\$10 million in annual revenues represents the threshold for defining small motor carriers in this analysis).

Because the FMCSA does not have annual sales data on private carriers, we assume the revenue and operations characteristics of the private trucking firms would be generally similar to those of for-hire motor carriers. Using the 90-percent estimate to identify the small business portion of the existing industry indicates that 450,000 out of 500,000 total existing motor carriers could be defined as small businesses within this industry. Also, we had estimated that a net 419,000 hiring decisions would be affected by this proposed rule annually. These 419,000 net annual hirings within the industry represent 14 percent of the total three million drivers currently employed within the trucking industry. To be conservative, we assumed that 14 percent of existing motor carriers would be filling the 14 percent of driver positions each year. Therefore, 14 percent of existing motor carriers translates to 70,000 out of the 500,000 existing motor carriers who would be hiring drivers each year.

We conservatively assumed that these 70,000 hiring employers would bear the full cost of the data retention and reporting on the 419,000 drivers to be hired each year for the driver data search, duplication, and reporting costs incurred by previous employers for providing the information. (This may not be true based on FMCSA policy that the previous employer cannot demand payment as a condition for releasing the data.) Conversely, if we assumed previous employers would bear these costs (and we assume at least one previous employer to each driver over the past three years), we could divide compliance costs by 140,000 carriers. However, to ensure we do not underestimate the impact to small employers, we will stick with the 70,000 estimate.

Total discounted compliance costs of this proposed rule are estimated at \$76 million over the 10-year analysis period (2003-2012), while first-year costs (in 2003) are estimated at \$10 million. If we divide these first-year costs by the 70,000 hiring companies estimated to be hiring drivers within a given year, the