

For purposes of this information collection, the agency is using 6,458,430 as the estimate of the number of interstate and intrastate drivers that could be impacted by this proposal. Several existing FMCSA information collections employ this number (OMB Control No. 2126-0001—Drivers Records of Duty Status; OMB Control No. 2126-0004—Driver Qualification Files; and OMB Control No. 2126-0006—Medical Qualification Files). The agency believes this high-end estimate captures all drivers who may be affected by the new information collection burdens being proposed. The agency continues to explore methods of more precisely determining the number of drivers that could be affected by FMCSA regulations.

The truck driving industry is characterized, in general, by a high driver turnover rate. Previous information collections have estimated there are burden hours associated with 839,596 driver applications each year. That represents 13 percent of the 6,458,430 truck driver positions. Comments to the docket describe various driver-screening processes used by trucking companies to fill these driver positions. However, no data is currently available on how many applicants, or what percentage of applicants, are denied employment using current screening practices. FMCSA requests comments addressing what the current denial rates may be under existing driver screening processes.

This proposed rule would provide employers with more information about the background and safety history of the applicants for employment as drivers. The agency estimates that an additional 10 percent of the driver applicants with accidents over the last 3 years (14,300) and 25 percent of the drivers with positive alcohol or controlled substances tests for the 1 additional year (1,300) will be refused employment because of the heightened scrutiny of their background information. Rounded up to the nearest thousand, this represents 16,000 additional drivers that will be involved in the hiring process. Employing these figures, the agency estimates this proposed rule would require motor carriers to make requests for driver safety background information for a total of approximately 855,596 (839,596 + 16,000) drivers.

In addition, the proposed rule would require the prospective employer to seek information from all previous employers for whom the applicant has worked in the past 3 years. For purposes of this information collection, the agency is estimating that, on average, each

applicant had 1.39 employers in the past 3 years. Therefore, the number of requests for background information would be 1,189,278 (1.39 employers  $\times$  855,596 drivers).

This proposed rule would also require driver applicants to be advised they can review, request correction, or rebut what a previous employer provided as that driver's employment history with that employer. The majority of these notifications would be made via a statement on the job application; therefore, we are not assigning an information collection burden for this notification. We request comments on whether there might be any significant burden in sectors of the industry using telephone job application processes.

The currently-approved Driver Qualification Files information collection can be broken down into two sections: (1) Addressing the burdens of prospective employers and driver applicants during the hiring process, and (2) addressing the burdens related to carriers and drivers who are currently employed (e.g., annual review). This proposed rule would require revisions to the first section and leave the second section unchanged. In addition, it would create a third section—to address new burdens imposed by the proposed rule on the former employers of drivers. The resulting three elements of this information collection, as proposed, would be: (1) The hiring process (prospective employers and driver applicants), (2) the annual review (current employers and drivers), and (3) the responsibilities of previous employers.

*First Element of IC.* The changes proposed by this SNPRM to the first item—the hiring process—address the specific types and timeframes of employment history to be requested (includes accident data). The proposed changes to specific types of safety performance history requested and timeframes of employment do not increase the information collection burden for the prospective employer investigations as part of the hiring process. However, prospective employers would be required to notify drivers of their right to review their safety performance history received from prospective employers and provide them with that information, if requested. The burden estimate for this element is 1,333 burden hours (16,000 drivers  $\times$  5 minutes for prospective employers to provide the data to each of those drivers, divided by 60 minutes).

Another increase regarding the various elements of the hiring process is to adjust the number of driver applicants estimate to include 16,000

additional drivers who would need to apply to fill the positions of the 16,000 it is estimated would not be hired due to enhanced safety performance history data being received. The increase in the various elements within the hiring section results in an additional burden of 4,799 hours for this first IC item (799 hours for the driver and motor carrier to perform 16,000 additional employment application-related activities + 4,000 hours for motor carriers to request driving and safety performance history data for 16,000 additional applicants).

*Second Element of IC.* The second element of the Driver Qualification Files—annual review—would be unaffected by this proposal.

*Third Element of IC.* The third element of this information collection is created due to the changes made in this SNPRM. In the past, previous employers were not required to systematically provide employment history on their former employees. This proposal would require all employers to provide driver safety performance history data (including accident data) for the 3-year period preceding the date of the request. The annual burden for this requirement is estimated to be 99,107 burden hours (855,596 drivers  $\times$  an estimated 1.39 previous employers per driver  $\times$  5 minutes, divided by 60 minutes).

This rule also proposes a new right for former drivers to protest or rebut employment data supplied by previous employers to prospective employers. Prospective employers would be required to provide the driver applicant with copies of the information it receives from the former employer. Former employers would have a duty and be required to: (1) Provide the past employee/driver the opportunity to rebut; (2) review a rebuttal, if submitted; (3) amend records, if persuaded by the rebuttal; (4) append the driver's rebuttal to the record, if not persuaded to revise their records by the rebuttal; and (5) keep a copy of the rebuttal with the file and send: (a) the revised record to the prospective employer, or a copy of the driver's rebuttal, and (b) the employment history with the appended rebuttal when requested in the future.

The agency assumes that 16,000 drivers would protest the employment history provided by former employers. The FMCSA estimates it would take approximately 2 hours for the driver to create and submit a protest. It is further estimated that it would take the previous employer 2 hours to address and respond to each protest. Therefore, the burden estimate for this activity is 64,000 hours ((16,000  $\times$  2 hours per protesting driver) + (16,000  $\times$  2 hours per previous employer)).