

each of the 419,000 driver record searches conducted annually (with the letter either containing the data investigated or a statement indicating that no test/program data were found). Multiplying the cost per record for each activity by the number of records handled under each activity, total first-year costs from: (a) Searching/retrieving, duplicating, and refiling one year of such data in preparation for mailing, and (b) mailing out the information are \$0.8 million. Because of cost savings and overlaps with the already existing processes being performed, the actual cost likely could be less.

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 initiates 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.

#### Costs To Notify Drivers of Rights To Review Data

Under this proposed rule, the § 391.23 investigation into a driver's employment history involves the prospective employer acquiring driver safety performance data from previous employers. Under this rule, data obtained through investigation is defined to include driver accident and alcohol/controlled substances data. For this analysis, we assumed that 419,000 drivers applying for positions would be notified of such rights on their employment applications, or via a simple return letter sent to the driver upon receipt of the application and signed consent form (for the purposes of retrieving accident and alcohol/controlled substances data from previous employers). Since we expect that employers would have to purchase new application forms (including the

new/revised information), we used the difference between the current cost of a standard application form (at \$0.06 each when purchased from a large office supply distributor) and what we believed would be the cost for the new customized form (\$0.12 each). For 419,000 applications, the annual cost to provide this information to applicants is much less than \$0.1 million.

We do not have sufficient data to estimate the costs that would be incurred to provide the required notification of driver rights by those employers who initiate the application process by telephone or other such means rather than by a form application. However, such costs would presumably be relatively small. We invite comments on this issue.

#### Costs Associated With Driver Data Protests

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 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,