



DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 385 and 391

[Docket No. FMCSA-2018-0224]

RIN 2126-AC15

Record of Violations

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: FMCSA proposes to eliminate the requirement that drivers operating commercial motor vehicles (CMVs) in interstate commerce prepare and submit a list of their convictions for traffic violations to their employers annually. This requirement is largely duplicative of a separate provision that requires each motor carrier to make an annual inquiry to obtain the motor vehicle record (MVR) for each driver it employs from every State in which the driver holds or has held a CMV operator's license or permit in the past year. To ensure motor carriers are aware of traffic violations for a driver who is licensed by a foreign authority rather than by a State, that provision would be amended to provide that motor carriers must make an annual inquiry to each driver's licensing authority where a driver holds or has held a CMV operator's license or permit. This change would require motor carriers to request the MVR equivalent from Canadian and Mexican driver's licensing authorities. FMCSA expects that removing the requirement for drivers to provide a list of their convictions for traffic violations to their employers annually would reduce the paperwork burden on drivers and motor carriers without adversely affecting CMV safety.

DATES: Comments on this notice of proposed rulemaking (NPRM) and information collection must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments regarding this NPRM identified by docket number FMCSA-2018-0224 using any of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov/#!docketDetail;D=FMCSA-2018-0224>. Follow the online instructions for submitting comments.
- Mail: Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue, SE, West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.
- Hand Delivery or Courier: West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.
- Fax: (202) 493-2251.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, Office of Driver and Carrier Operations, at Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590-0001; (202) 366-4325; or MCPSD@dot.gov. If you have questions on viewing or submitting material to the docket, call Dockets Operations at (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. PUBLIC PARTICIPATION AND REQUEST FOR COMMENTS

A. Submitting Comments to the NPRM

If you submit a comment to this NPRM, please include the docket number (FMCSA-2018-0224), indicate the specific section of this document to which each

comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov/#!docketDetail;D=FMCSA-2018-0224>, click on the “Comment Now!” button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period and may make changes based on your comments.

Confidential Business Information

Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission that constitutes CBI as “PROPIN” to indicate it contains proprietary information. FMCSA will treat such marked submissions as confidential under the Freedom of Information Act, and they will not be

placed in the public docket for this rulemaking. Submissions containing CBI should be sent to Mr. Brian Dahlin, Chief, Regulatory Analysis Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590-0001. Any comments FMCSA receives that are not specifically designated as CBI will be placed in the public docket for this rulemaking.

B. Viewing Comments and Documents

To view comments, as well as any documents mentioned as being available in the docket, go to <http://www.regulations.gov/#!docketDetail;D=FMCSA-2018-0224> and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE, Washington, DC 20590-0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

C. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice DOT/ALL 14 – FDMS, which can be reviewed at <https://www.transportation.gov/privacy>.

D. Waiver of Advance Notice of Proposed Rulemaking

Under 49 U.S.C. 31136(g)(1), FMCSA is required to publish an advance notice of proposed rulemaking or conduct a negotiated rulemaking if a proposed rule is likely to lead to the promulgation of a major rule.¹ As this proposed rule is not likely to result in

¹ A “major rule” means any rule that the Administrator of OIRA at OMB finds has resulted in or is likely to result in (a) an annual effect on the economy of \$100 million or more; (b) a major increase in costs or prices for consumers, individual industries, Federal agencies, State agencies, local government agencies, or

the promulgation of a major rule, the Agency is not required to issue an advance notice of proposed rulemaking or to proceed with a negotiated rulemaking.

E. Comments on the Information Collection

Written comments and recommendations for the information collection discussed in this NPRM can be sent to FMCSA within 60 days of publication using any of the methods described in “Public Participation and Request for Comments” above.

II. EXECUTIVE SUMMARY

A. Purpose of the Regulatory Action and Summary of the Major Provisions

As part of FMCSA’s ongoing regulatory reform efforts to remove costly, redundant, and burdensome regulations, the Agency proposes to rescind 49 CFR 391.27, *Record of violations*, and all related references to the rule in the Federal Motor Carrier Safety Regulations (FMCSRs). Section 391.27 provides that each motor carrier must, at least once every 12 months, require each driver it employs to prepare and furnish the motor carrier with a list of all violations of motor vehicle traffic laws and ordinances, other than violations involving only parking, of which the driver has been convicted or for which the driver has forfeited bond or collateral during the preceding 12 months. When a driver does not have any violations to report, the driver is required to furnish a certification to that effect. The motor carrier must retain the list of violations or certification of no violations in the driver’s qualification file.

FMCSA would retain the requirement in § 391.25(a), *Annual inquiry and review of driving record*, for an annual MVR inquiry, which is largely duplicative of the requirement in § 391.27 for drivers to provide an annual list of their violations to their motor carriers. Section 391.25 requires each motor carrier to make an annual inquiry to

geographic regions; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets (5 U.S.C. 804(2)).

obtain the MVR for each driver it employs from every State² in which the driver holds or has held a CMV operator's license or permit in the past year. The motor carrier is required to review the MVR obtained and to maintain a copy of it in the driver's qualification file. Thus, § 391.25 currently applies to all motor carriers, domestic and foreign, but is limited to inquiries for drivers licensed by a State.

To ensure motor carriers are aware of traffic violations for a driver who is licensed by a foreign authority rather than by a State, FMCSA proposes to amend § 391.25(a) to require motor carriers to inquire annually of each driver's licensing authority where a driver holds or has held a CMV operator's license or permit. This change would require motor carriers to request the MVR equivalent from Canadian and Mexican driver's licensing authorities.

To maintain consistency within part 391 with respect to requests for MVRs, FMCSA proposes conforming changes to the hiring process. Section 391.23, *Investigation and inquiries*, requires a motor carrier to make an inquiry to each State where the driver holds or has held a motor vehicle operator's license or permit during the preceding 3 years to obtain the driver's MVR when a motor carrier is hiring a driver. Changes would be made in § 391.23 to require motor carriers to make inquiries to each driver's licensing authority where a driver holds or has held a motor vehicle operator's license or permit. A change also would be made in § 391.21, *Application for employment*, to require each driver to provide on the employment application the issuing driver's licensing authority of each unexpired CMV operator's license or permit that has been issued to the driver so motor carriers could make the required inquiries under § 391.23. Other conforming changes are outlined in the section-by-section analysis in Section VII., below.

B. Costs and Benefits

² For purposes of part 391, the term "State" includes the District of Columbia (49 CFR 390.5T).

The proposed elimination of § 391.27 would result in cost savings to drivers, as they would no longer spend time completing a list of convictions for traffic violations. It would result in cost savings to motor carriers, as they would no longer have to file the lists in driver qualification files. The Agency estimates that rescinding § 391.27 would result in cost savings of \$28.1 million over 10 years, at a 7 percent discount rate. The annualized cost savings would be estimated at \$4.0 million.

The proposed changes in the FMCSRs to require inquiries to Canadian and Mexican driver's licensing authorities would have minimal, if any, impact. Only a small proportion of CMV drivers operating in the United States are licensed by a foreign authority rather than by a State. Of the 6.2 million CMV drivers reported in FMCSA's *2018 Pocket Guide to Large Truck and Bus Statistics*,³ the Agency estimates that at most only 2.0 percent are employed by Canadian motor carriers operating in the United States and 0.5 percent are employed by Mexican motor carriers operating in the United States. The combined total of 2.4 percent represents approximately 139,733 drivers reported as being employed by Canadian and Mexican motor carriers.⁴

The proposed changes would not increase reporting and recordkeeping costs for motor carriers or drivers. This is because the Motor Carrier Management Information System (MCMIS), the repository for the Agency's driver population data, counts the total number of drivers reported by motor carriers, both foreign and domestic, and for purposes of information collection burden calculation, the median fee for obtaining an MVR or its equivalent from either a foreign or a domestic authority is generally the same.⁵ FMCSA uses the MCMIS driver population data, which currently includes drivers

³ Available at <https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/safety/data-and-statistics/413361/fmcsa-pocket-guide-2018-final-508-compliant.pdf>, Exhibit 1-10 (accessed Apr. 22, 2019).

⁴ The sum of the number of Canadian and Mexican drivers as a percentage of the total number of drivers in Exhibit 1-10 does not add up to 2.5 percent due to rounding.

⁵ Motor carriers also must pay driver's licensing authorities to request MVRs and MVR equivalents. The current OMB-approved information collection request associated with the reporting and recordkeeping requirements of §§ 391.23 and 391.25 estimates the cost incurred by motor carriers to request MVRs based on the median for the 51 State driver's licensing agencies (SDLAs). The median fee used in this analysis is

employed by Canadian and Mexican motor carriers, to calculate the burden associated with information collections and paperwork. Therefore, though FMCSA is proposing new requirements for motor carriers to request MVRs for their drivers operating in the United States who are licensed by a foreign authority rather than by a State, the current OMB-approved information collection already includes the reporting and recordkeeping costs and burdens.

In addition, Canadian and Mexican motor carriers are already required by their applicable safety codes to request the equivalent of MVRs for their drivers from their country's licensing authorities.⁶ Accordingly, FMCSA has determined that the proposed changes to §§ 391.23 and 391.25 to require inquiries to Canadian and Mexican driver's licensing authorities to obtain the equivalent of MVRs would impose no new record keeping or reporting costs or burdens. Though Canadian and Mexican motor carriers would not be required to change their current business practices and would not have any new costs or burdens imposed as a result of the proposed rule, FMCSA continues to include the costs and burdens for requesting MVR equivalents in the current OMB-approved information collection to treat all motor carriers consistently and for administrative convenience.

FMCSA does not expect this proposed rule would negatively affect CMV safety. Motor carriers would still be required by § 391.25 to make an inquiry at least annually to each driver's licensing authority in which an employed driver holds or has held a CMV operator's license or permit to obtain the MVR of each driver they employ. Thus, motor carriers would still have a reliable way to learn of any convictions for traffic violations incurred by their driver employees.

based on the 51 SDLAs' and Canadian licensing authorities' fees. The median fee is \$9 with or without the Canadian authorities' fees. Thus, this new requirement imposes no new costs on motor carriers.

⁶ See Section IX.A., below, and footnote 10 for additional information.

III. LEGAL BASIS FOR THE RULEMAKING

Sections 391.21, 391.23, 391.25, and 391.27 in title 49 of the CFR are based on the authority of the Motor Carrier Act of 1935 (1935 Act) (Pub. L. 74–255, 49 Stat. 543, 546, August 9, 1935) and the Motor Carrier Safety Act of 1984 (1984 Act) (Pub. L. 98–554, 98 Stat. 2832, 2834, 2841, October 30, 1984), both as amended.

This NPRM proposes to rescind § 391.27 and to amend §§ 391.23 and 391.25 to require motor carriers to make an inquiry to each driver’s licensing authority where each driver they propose to hire, or have employed for the last 12 months, holds or has held a CMV operator’s license or permit, to obtain the MVR for that driver. In addition, the Agency proposes to amend § 391.21 to require drivers to provide on the employment application the issuing driver’s licensing authority of each unexpired CMV operator’s license or permit that has been issued to the driver.

The 1935 Act, as codified at 49 U.S.C. 31502(b), authorizes the Secretary of Transportation (Secretary) to “prescribe requirements for— (1) qualifications and maximum hours of service of employees of, and safety of operation and equipment of, a motor carrier; and (2) qualifications and maximum hours of service of employees of, and standards of equipment of, a motor private carrier, when needed to promote safety of operation.” This NPRM addresses the qualifications of motor carrier employees, consistent with the safe operation of CMVs.

The 1984 Act, as codified at 49 U.S.C. 31136, provides concurrent authority to regulate drivers, motor carriers, and vehicle equipment. Section 31136 requires the Secretary to issue regulations on CMV safety including regulations to ensure that “commercial motor vehicles are . . . operated safely” (section 31136(a)(1)). The remaining statutory factors and requirements in section 31136(a), to the extent they are relevant, are also satisfied here. In accordance with section 31136(a)(2), the requirement for motor carriers to inquire of driver’s licensing authorities to obtain the MVR of each

driver they employ would not impose any “responsibilities . . . on operators of commercial motor vehicles [that would] impair their ability to operate the vehicles safely.” This rule would not address medical standards for drivers or possible physical effects caused by driving CMVs (section 31136(a)(3) and (a)(4), respectively). FMCSA believes there is no basis to anticipate that drivers would be coerced (section 31136(a)(5)) because of this rulemaking. The Secretary has discretionary authority under 49 U.S.C. 31133(a)(8) to prescribe, and thus to remove, recordkeeping and reporting requirements. This deregulatory action to rescind § 391.27 rests on that authority.

The Administrator of FMCSA is delegated authority under 49 CFR 1.87 to carry out the functions vested in the Secretary by 49 U.S.C. chapters 311 and 315 as they relate to CMV operators, programs, and safety.

Finally, prior to prescribing any regulations, FMCSA must consider their “costs and benefits” (49 U.S.C. 31136(c)(2)(A) and 31502(d)). Those factors are discussed in the Regulatory Analyses section of this proposed rule.

IV. BACKGROUND

Currently, 49 CFR 391.27 specifies, in part and subject to limited exceptions, that each motor carrier must, at least once every 12 months, require each driver it employs to prepare and furnish the motor carrier with a list of all violations of motor vehicle traffic laws and ordinances, other than violations involving only parking, of which the driver has been convicted or for which the driver has forfeited bond or collateral during the preceding 12 months. Section 391.27 became effective on January 1, 1971 (35 FR 6458, 6462, Apr. 22, 1970).

On two previous occasions the Federal Highway Administration (FHWA), FMCSA’s predecessor agency, proposed removing § 391.27 and its related requirements. The initial proposal was included in a January 10, 1994, NPRM titled “Removal of Obsolete and Redundant Regulations and Appendices” (59 FR 1366). In that document,

FHWA stated the objective of § 391.27 is to provide the employing motor carrier with information about a driver's moving violations so the carrier can use the information to ensure that its driver has not been disqualified to drive a CMV (59 FR 1367). FHWA also stated that the requirements in § 391.27 are unnecessary and redundant because commercial driver's license (CDL) regulations already require CMV drivers to notify their current employers within 30 days of any conviction for a non-parking violation in any kind of vehicle. FHWA stated further that it is a common practice for motor carriers to obtain State MVRs on each of their drivers once or more per year, though such action is not required.

In response to the NPRM, nine commenters supported and eight opposed the removal of § 391.27. Some commenters recommended replacing the requirement for a list of violations with similar requirements involving an annual inquiry by motor carriers to the State driver's licensing agencies (SDLA) regarding the employee's driving record. Other commenters stated the requirement to provide a list of violations is the only notification requirement applicable to drivers of smaller commercial vehicles, and its removal would eliminate an important source of information. FHWA decided not to remove the requirement to provide a list of violations when the final rule was adopted, but stated it would evaluate the comments further and determine whether a future rulemaking to amend such requirements would be warranted (59 FR 60319, 60320, November 23, 1994).

The second proposal to eliminate § 391.27 was included in a January 27, 1997, NPRM titled "Review of the [FMCSRs]; Regulatory Removals and Substantive Amendments" (62 FR 3855). FHWA proposed replacing the requirement for drivers to provide a list of violations with similar requirements involving an annual inquiry regarding drivers' driving records by motor carriers to the SDLA, as proposed in § 391.25. The proposal to eliminate § 391.27 was based on two assumptions. The first

assumption was that SDLAs would be able to provide a comprehensive record of crashes and traffic violations for both CDL and non-CDL CMV drivers so a motor carrier could “better verify that its drivers have not lost their driving privileges and have not been otherwise disqualified to drive a CMV” (62 FR 3858). The second assumption was that the State records would be more accurate than the practice of relying on a driver’s memory or honesty.

Several commenters expressed reservations about the completeness and timeliness of SDLA information at that time. They believed that significant improvements needed to be made in the States’ collection and transmission of data before motor carriers should be asked to rely completely on State driving records. Other commenters supported the proposal as a more consistent and objective method to gather information. FHWA determined that it was in the best interest of safety to retain § 391.27. FHWA stated that, until the completeness and timeliness of State-based driver record information is substantially improved, it is important for motor carriers to obtain violation information from both the driver and State-based source to enable cross-verification of information (63 FR 33254, 33262, June 18, 1998). FHWA did amend § 391.25, however, to include a specific requirement for a motor carrier to make an annual inquiry for the driving record of each of its drivers to the appropriate agency of every State in which the driver held a CMV operator’s license or permit during the relevant time period (63 FR 33277).

On October 2, 2017, as part of the President’s directives to review existing regulations to evaluate their continued necessity, determine whether they solve current problems, and evaluate whether they are burdensome, DOT published a *Federal Register* document seeking input on existing rules and other agency actions (82 FR 45750). DOT invited the public to identify rules and other actions that are good candidates for repeal, replacement, suspension, or modification. In response, the American Trucking Associations and the American Pyrotechnics Association recommended that FMCSA

eliminate the requirement in § 391.27 that a driver provide his or her employer with a list of violations at least annually.⁷ They commented that the requirement is duplicative of § 391.25, which requires motor carriers to order a driver's MVR at least annually, because the MVR contains violation information and must be placed in the driver's qualification file.

V. DISCUSSION OF PROPOSED RULEMAKING

FMCSA proposes to rescind 49 CFR 391.27, *Record of violations*, and all related references to the rule in the FMCSRs. Section 391.27 provides that each motor carrier must, at least once every 12 months, require each driver it employs to prepare and furnish the motor carrier with a list of all violations of motor vehicle traffic laws and ordinances, other than violations involving only parking, of which the driver has been convicted or for which the driver has forfeited bond or collateral during that period. When a driver does not have any violations to report, the driver is required to furnish a certification to that effect. The motor carrier must file the list of violations or certification of no violations in the driver's qualification file.

FMCSA would retain the requirement in § 391.25(a), *Annual inquiry and review of driving record*, for an annual MVR inquiry, which is largely duplicative of the requirement in § 391.27 for drivers to provide a list of their convictions for traffic violations to their motor carriers. With limited exceptions, § 391.25 requires each motor carrier to inquire annually to obtain the MVR for each driver it employs from every State in which the driver holds or has held a CMV operator's license or permit in the past year. Additionally, the motor carrier is required to review the MVR obtained and to maintain a copy of it in the driver's qualification file.

Section 391.25 currently applies to all motor carriers, domestic and foreign, but is limited to inquiries for drivers licensed by a State. FMCSA proposes to amend

⁷ Both comments are available in the docket for this rulemaking.

§ 391.25(a) to require that motor carriers make an annual inquiry to each driver's licensing authority where a driver holds or has held a CMV operator's license or permit. For example, any motor carrier that employs a driver who holds a Canadian or Mexican license to operate a CMV and is authorized to operate in the United States would be required to request the equivalent of an MVR from the Canadian or Mexican licensing authority where the driver is licensed.

The proposed amendment to § 391.25(a) represents a change for motor carriers from making inquiries for MVRs only to States, to include making inquiries for MVR equivalents to Canadian and Mexican driver's licensing authorities. This change would have minimal, if any, impact, as relatively few drivers operating in the United States are licensed by a foreign authority rather than by a State. In addition, Canadian and Mexican motor carriers are already required by their applicable safety codes to request the equivalent of MVRs for their drivers from their country's licensing authorities. Moreover, FMCSA currently includes the costs and burdens for requesting MVR equivalents in its current information collections. As explained above in the discussion of the legal basis for this rulemaking, FMCSA has the statutory authority to make the proposed change.

To maintain consistency within part 391 with respect to requests for MVRs, FMCSA proposes conforming changes to the hiring process. Paragraph (a)(1) of § 391.23, *Investigation and inquiries*, requires a motor carrier hiring a driver to make an inquiry to each State where the driver holds or has held a motor vehicle operator's license or permit during the preceding 3 years to obtain the driver's MVR. Accordingly, the term "State" in paragraph (a)(1) would be changed to provide that the inquiry must be to each "driver's licensing authority." Similar changes to replace references to States would be made in paragraph (b), which requires that a copy of the MVR obtained in response to the inquiry to each State must be placed in the driver's qualification file. A change also

would be made in § 391.21(b)(5), *Application for employment*, to require each driver to provide on the employment application the issuing “driver’s licensing authority,” instead of “State,” of each unexpired CMV operator’s license or permit that has been issued to the driver so motor carriers could make the required inquiries under § 391.23.

Other FMCSRs would be amended to reflect the elimination of § 391.27 or the change from an inquiry to each “State” to an inquiry to each “driver’s licensing authority” for the MVR. Paragraph (b)(6) in § 391.11, *General qualifications of drivers*, which provides that a driver is not qualified to operate a CMV unless the driver has prepared and furnished the motor carrier that employs him or her with the list of violations or the certificate required by § 391.27, would be removed.

In § 391.51, *General requirements for driver qualification files*, paragraphs (b)(6) and (d)(3), which relate to maintaining in the driver qualification file a list or certificate relating to violations of motor vehicle laws and ordinances as required by § 391.27, would be removed. Paragraphs (b)(2) and (4), and (d)(1) would be amended to reflect the change from an inquiry to each “State” to an inquiry to each “driver’s licensing authority” relating to maintaining copies of MVRs received pursuant to inquiries required by § 391.23(a)(1) or 391.25(a).

In § 391.63, *Multiple-employer drivers*, paragraph (a)(5), which provides that a multiple-employer driver need not furnish a list of violations or a certificate in accordance with § 391.27, would be removed.

Eliminating the requirement for drivers to provide an annual list of their convictions for traffic violations would reduce the paperwork burden on drivers and motor carriers. The burden on motor carriers would be reduced because they would no longer be required to file the lists. The proposed changes to §§ 391.21, 391.23, and 391.25 would not increase reporting or recordkeeping costs. FMCSA is not proposing changes to other self-reporting requirements applicable to drivers.

FMCSA does not expect that this proposed rule would affect CMV safety adversely because the annual MVR inquiry would continue to provide a reliable way for motor carriers to learn of their drivers' convictions for traffic violations. The distribution of the MVR also has become more reliable and efficient. The "Commercial Driver's License Testing and Commercial Learner's Permit Standards" final rule (76 FR 26854, May 9, 2011) required all States to upgrade their computer systems. In addition, FMCSA has conducted outreach and education with courts and judges, which has improved the transmission of convictions from courts to SDLAs. Accordingly, there have been improvements in data collection and transmission that support this rulemaking at this time.

Retaining the annual MVR inquiry in § 391.25, with the proposed amendment to paragraph (a), would satisfy the objective of § 391.27 to provide the employing motor carrier with the information necessary to ensure that its drivers have not lost their driving privileges or been disqualified to drive a CMV. In the event a motor carrier desires additional information concerning violations that the MVR may not reflect (for example, violations occurring in a country where the driver is not licensed), FMCSA believes the best approach would be to allow the driver and motor carrier to determine the most efficient manner and process for them to obtain and communicate the information.

FMCSA is proposing an additional amendment to § 391.23(b) that is unrelated to the proposal to rescind § 391.27. Paragraph (b) of § 391.23 currently requires when no MVR is received from a State that the motor carrier must (1) document a good faith effort to obtain the MVR, and (2) certify that no record exists for the driver in that State. FMCSA is proposing to remove the requirement for a certification. A motor carrier does not have access to a licensing authority's records; therefore, it is impossible for the motor carrier to know what records are or are not maintained for a particular driver by the

licensing authority. The requirement for the motor carrier to document a good faith effort to obtain the MVR would be retained.

VI. INTERNATIONAL IMPACTS

Motor carriers and drivers are subject to the laws and regulations of the countries in which they operate, unless an international agreement states otherwise. The specific impacts of this proposed rule on foreign licensed drivers and foreign motor carriers operating CMVs in the United States are discussed throughout the preamble of this NPRM.

VII. SECTION-BY-SECTION ANALYSIS

This section includes a summary of the proposed regulatory changes organized by the part and section number.

A. Part 385

Appendix B to Part 385—Explanation of Safety Rating Process

FMCSA proposes conforming changes to section VII. List of Acute and Critical Regulations of Appendix B to Part 385. Due to the proposed removal of § 391.51(b)(6), which relates to maintaining in the driver's qualification file a list or certificate relating to violations of motor vehicle laws and ordinances required by § 391.27, paragraph (b)(7) would be renumbered as paragraph (b)(6). Accordingly, the current entry set forth in Appendix B to Part 385 relating to § 391.51(b)(7), failing to maintain the medical examiner's certificate in the driver's qualification file, would be renumbered as § 391.51(b)(6).

B. Part 391

Section 391.11 General Qualifications of Drivers

In § 391.11, FMCSA proposes to remove paragraph (b)(6), which references the requirements of § 391.27. Paragraphs (b)(7) and (8) would be renumbered as (b)(6) and (7).

Section 391.21 Application for Employment

In paragraph (b)(5) of § 391.21, FMCSA proposes to change the reference to a “State” to a “driver’s licensing authority” to identify the entity issuing each unexpired CMV operator’s license or permit to the driver.

Section 391.23 Investigation and Inquiries

In paragraphs (a)(1) and (b) of § 391.23, FMCSA proposes to change references to a “State” to a “driver’s licensing authority” to designate where the motor carrier should make inquiries for MVRs when a driver is hired and from where records are received. In paragraph (b), the requirement for a motor carrier to certify that no record exists, when no MVR is received from the licensing authority for a driver, would be removed.

Section 391.25 Annual Inquiry and Review of Driving Record

Similar to the revisions proposed in § 391.23, FMCSA proposes to amend § 391.25(a) by deleting the words “the appropriate agency of every State in which” and adding in their place the words “each driver’s licensing authority where” to designate where the motor carrier must make annual inquiries.

Section 391.27 Record of Violations

FMCSA proposes to remove § 391.27 and reserve it for future use.

Section 391.51 General Requirements for Driver Qualification Files

In § 391.51, the Agency proposes to delete the words “State record” in paragraph (b)(2) and “State driver licensing agency” in paragraph (b)(4), and to add in their place the words “driver’s licensing authority.” Paragraph (b)(6) would be deleted to remove a reference to the requirements of § 391.27, and paragraphs (b)(7) through (9) would be renumbered as paragraphs (b)(6) through (8).

Paragraph (d)(1) would be revised to delete the words “State driver licensing agency” and to add in their place the words “driver’s licensing authority.” To remove a reference to the requirements of § 391.27, paragraph (d)(3) would be removed, and

paragraphs (d)(4) through (6) would be renumbered as (d)(3) through (5). A cross reference in new paragraph (d)(3) would be changed because of the renumbering in paragraph (b).

Section 391.63 Multiple-Employer Drivers

In § 391.63, FMCSA proposes to remove paragraph (a)(5) to delete a reference to the requirements of § 391.27. Paragraphs (a)(3) and (4) would be changed to conform by making punctuation changes.

VIII. GUIDANCE STATEMENTS

FMCSA employs guidance statements to explain how the Agency applies regulations to specific facts. A guidance statement does not alter the meaning of a regulation. This rulemaking proposes to amend regulations that have associated guidance statements or interpretations. FMCSA would change the existing guidance to conform to the changes proposed in this NPRM.

Guidance statements are not legally binding in their own right and will not be relied on by FMCSA as a separate basis for affirmative enforcement action or other administrative penalty. Conformity with guidance statements is voluntary only, and nonconformity will not affect rights and obligations under existing statutes or regulations.

Section 391.23 Investigation and Inquiries

Question 2 to § 391.23⁸ would be revised as stated immediately below to reflect that inquiries for MVRs must be made to all “driver’s licensing authorities” where the driver holds or has held a motor vehicle operator’s license or permit, rather than only to “States.”

Question 2: May motor carriers use third parties to ask driver’s licensing authorities for copies of the driving record of driver-applicants?

⁸ See <https://www.fmcsa.dot.gov/registration/commercial-drivers-license/may-motor-carriers-use-third-parties-ask-state-agencies> (accessed Nov. 30, 2020).

Guidance: Yes. Driver information services or companies acting as the motor carrier's agent may be used to contact driver's licensing authorities. However, the motor carrier is responsible for ensuring the information obtained is accurate.

Section 391.25 Annual Inquiry and Review of Driving Record

Questions 1 and 3 to § 391.25⁹ would be revised as stated immediately below to reflect that MVRs must be requested from all "driver's licensing authorities" where the driver held a CMV operator's license or permit, rather than only "States." Question 3 also would be revised to improve clarity and correct grammatical errors.

Question 1: To what extent must a motor carrier review a driver's overall driving record to comply with the requirements of § 391.25?

Guidance: The motor carrier must consider as much information about the driver's experience as is reasonably available. This would include all known violations, whether they are part of an official record maintained by a driver's licensing authority, as well as any other information that would indicate the driver has shown a lack of due regard for the safety of the public. Violations of traffic and criminal laws, as well as the driver's involvement in motor vehicle accidents, are such indications and must be considered. A violation of size and weight laws should be considered.

Question 3: May motor carriers use third parties to ask driver's licensing authorities for copies of driving records to be examined during the carrier's annual review of each driver's record?

Guidance: Yes. An examination of the official driving record maintained by the driver's licensing authority is not required during the annual review. Motor carriers may use third-party agents, such as driver information services or companies, to contact

⁹ See <https://www.fmcsa.dot.gov/registration/commercial-drivers-license/what-extent-must-motor-carrier-review-drivers-overall> and <https://www.fmcsa.dot.gov/registration/commercial-drivers-license/may-motor-carriers-use-third-parties-ask-state-agencies-0>, respectively (accessed Nov. 30, 2020).

driver's licensing authorities and obtain copies of driving records. However, the motor carrier is responsible for ensuring the information is accurate.

Section 391.27 Record of Violations

Because FMCSA proposes to rescind § 391.27, the guidance to that section also would be rescinded.

IX. REGULATORY ANALYSES

A. Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), and DOT Regulations

Under section 3(f) of E.O. 12866 (58 FR 51735, Oct. 4, 1993), Regulatory Planning and Review, as supplemented by E.O. 13563 (76 FR 3821, Jan. 21, 2011), Improving Regulation and Regulatory Review, this rule does not require an assessment of potential costs and benefits under section 6(a)(3) of E.O. 12866. Accordingly, OMB has not reviewed it under that Order. In addition, this rule is not significant within the meaning of DOT regulations (84 FR 71714, Dec. 27, 2019).

As described above, the purpose of this proposed regulatory action is to remove § 391.27 and the requirement for drivers to provide their motor carrier employers a list of convictions for traffic violations (other than parking) that occurred during the previous 12 months or a certification of no violations. The proposed rule would retain the requirement in § 391.25 that motor carriers make an annual inquiry to obtain a driver's MVR. Because § 391.25 is limited to inquiries for drivers licensed by a State, the proposed rule would modify § 391.25 to require motor carriers to request a driver's MVR from each licensing authority that issued the driver a license. To maintain consistency within part 391 with respect to requests for MVRs, FMCSA proposes conforming changes to § 391.23, which requires motor carriers to request MVRs for the 3 years preceding the date of employment when hiring a driver. These changes would require motor carriers to request the MVR equivalent from Canadian and Mexican driver's

licensing authorities. A change also would be made in § 391.21 to require each driver to provide on the employment application the issuing driver's licensing authority of each unexpired CMV operator's license or permit that has been issued to the driver so motor carriers could make the required inquiries under § 391.23. The proposed changes would not add new reporting or recordkeeping costs.

The proposed elimination of § 391.27 would result in cost savings to drivers because they would no longer spend time completing a list of convictions for traffic violations. It would also result in cost savings to motor carriers because they would no longer have to file the lists in driver qualification files. The Agency estimates that the proposed rule would result in cost savings to CMV drivers and motor carriers of \$40.1 million over 10 years on an undiscounted basis, and \$28.1 million discounted at 7 percent over the 10-year analysis period. Expressed on an annualized basis, this equates to cost savings of \$4.0 million at a 7 percent discount rate.

The proposed changes to §§ 391.21, 391.23, and 391.25 would not increase reporting or recordkeeping costs. The proposed rule would institute new requirements under the FMCSRs for motor carriers to request MVRs for their drivers operating in the United States who are licensed by a foreign authority rather than by a State. However, the current OMB-approved information collection for §§ 391.23 and 391.25 titled "Driver Qualification Files," OMB Control Number 2126-0004, already includes reporting and recordkeeping costs and burdens incurred by motor carriers to request MVRs for such drivers. As explained below, applicable motor carriers would not incur an increase in costs or burdens as a result of this proposed rule. Nonetheless, FMCSA retains these costs and burdens under OMB Control Number 2126-0004 to treat all motor carriers consistently and for administrative convenience. Similarly, the current OMB-approved information collection for § 391.21 already includes reporting and recordkeeping costs incurred by drivers to prepare and submit employment applications.

All motor carriers authorized to operate in the United States are required to file with FMCSA Form MCS-150 (Motor Carrier Identification Report), Form MCS-150B (Motor Carrier Identification Report and Hazardous Material Permit Application), or Form MCSA-1. These registration forms require motor carriers to report the number of drivers they employ and are the source of driver counts in MCMIS, which counts the total number of drivers reported by both domestic and foreign motor carriers. In turn, FMCSA uses the MCMIS driver population data published in FMCSA's annual *Pocket Guide to Large Truck and Bus Statistics*, which includes drivers employed by Canadian and Mexican motor carriers, to calculate the burden associated with information collections and paperwork. Thus, requests for MVR equivalents for drivers holding licenses issued by Canadian or Mexican licensing authorities have already been included in the OMB-approved information collections for §§ 391.23 and 391.25. In addition, the time for all drivers to prepare and submit employment applications has already been included in the information collection for § 391.21.

This change under the FMCSRs to require inquiries to Canadian and Mexican driver's licensing authorities would have minimal, if any, impact, because relatively few drivers operate in the United States who are licensed by a foreign authority rather than by a State. Of the 6.2 million CMV drivers reported in FMCSA's *2018 Pocket Guide to Large Truck and Bus Statistics*,¹⁰ the Agency estimates that at most only 2.0 percent are employed by Canadian motor carriers operating in the United States and 0.5 percent are employed by Mexican motor carriers operating in the United States. The combined total 2.4 percent represents 139,744 drivers reported as being employed by Canadian and Mexican motor carriers.¹¹

¹⁰ Available at <https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/safety/data-and-statistics/413361/fmcsa-pocket-guide-2018-final-508-compliant.pdf> (accessed Apr. 22, 2019).

¹¹ The sum of the number of Canadian and Mexican drivers as a percentage of the total number of drivers in Exhibit 1-10 does not equal 2.5 percent due to rounding.

Canadian and Mexican motor carriers are already required by their applicable safety codes to request the equivalent of MVRs for their drivers from their licensing authorities.¹² Accordingly, FMCSA has determined that the proposed changes to §§ 391.23 and 391.25 to require inquiries to Canadian and Mexican driver’s licensing authorities for the equivalent of MVRs would not impose any new recordkeeping or reporting costs or burdens because Canadian and Mexican motor carriers are already making the inquiries. Though Canadian and Mexican motor carriers would not be required to change their current business practices and would not have any new costs or burdens imposed as a result of the proposed rule, FMCSA continues to include the costs and burdens for requesting MVR equivalents in the current OMB-approved information collections to treat all carriers consistently and for administrative convenience.

The proposed rule would not increase costs to motor carriers because of fees paid to Canadian and Mexican driver’s licensing authorities to request MVR equivalents. The supporting statement (OMB Control Number 2126-0004) for the “Driver Qualification Files” information collection, available in the docket, provides that SDLAs assess motor carriers a \$10 fee to obtain MVRs consisting of a \$9 median fee charged by 51 SDLAs, plus a \$1 third-party processing fee. FMCSA has surveyed fees charged by driver’s licensing authorities and third-party processing companies in Canada. FMCSA has determined that the median fee charged for a MVR equivalent in Canada is also \$9, when

¹² Canadian National Safety Code (NSC) Standard 15, Facility Audit, establishes the minimum requirements for Provincial and Territorial licensing authorities’ regulations that specify the content of driver abstracts. Standard 15, Appendix A, Section 3 requires motor carriers to make available for a Facility Audit a driver abstract issued within the last 12 months. The abstract must include name, date of birth and license number, current license class and status (e.g., active or suspended), driver qualifications, and 2-year histories of traffic and criminal driving offenses, convictions, and accidents. NSC Standard 15 is available at <https://ccmta.ca/en/national-safety-code/national-safety-code-nsc#NSC> (accessed Apr. 17, 2019). Similarly, the “Reglamento del Servicio de Medicina Preventiva en el Transporte” (Transportation Preventive Medicine Service Regulations) in Chapter VI (Of Solitary Responsibility of the Concessionaire or Permittee, or Airline Operator), Article 39 provides generally that motor carriers are to keep updated individual files for their employees that include records related to accidents or incidents of federal transport. The regulations are available at: http://www.sct.gob.mx/fileadmin/DireccionesGrales/DGPMPT/Documentos/normatividad/Reglamento_DGPMPT_10-05-2013.pdf (accessed June 3, 2019).

adjusted to United States dollars, and that third-party processing fees are consistent as well. There is no fee to request MVR equivalents in Mexico. However, fees are considered a transfer payment. Thus, the requirement that motor carriers obtain MVRs from Canadian and Mexican driver's licensing authorities are transfer payments so they are not included in the benefit-cost analysis. They are included in the Paperwork Reduction Act supporting statement prepared for the proposed rule.

For all the above reasons, FMCSA has determined that the proposed changes to §§ 391.23 and 391.25 to require inquiries to Canadian and Mexican driver's licensing authorities to request MVR equivalents would not impose any new reporting or recordkeeping costs.

Scope and Key Inputs to the Analysis

The baseline for this analysis is the monetized value of motor carriers' and drivers' time spent meeting the annual reporting and recordkeeping requirements of § 391.27. The estimated cost of this information collection has been approved by OMB in an information collection request (ICR) titled "Driver Qualification Files," OMB Control Number 2126-0004, which expires April 30, 2023. The Agency estimated the 3-year average burden associated with § 391.27 at 0.12 million hours and \$3.9 million. The baseline in this analysis extends the supporting statement projections an additional 7 years. That is, it estimates the costs that drivers and motor carriers would incur over the 10-year period 2021 through 2030, in the absence of the proposed rule.

Driver Population Projection

The driver population is based on a 0.595 percent annual growth rate applied to the 6.2 million driver population as of December 29, 2017, reported in FMCSA's *2018 Pocket Guide to Large Truck and Bus Statistics*.¹³ The growth rate is a weighted average

¹³ Available at <https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/safety/data-and-statistics/413361/fmcsa-pocket-guide-2018-final-508-compliant.pdf> (accessed Apr. 22, 2019).

of the annual compound growth rates estimated using the United States Department of Labor, Bureau of Labor Statistics (BLS) Employment Projections Program point projections for the four categories of commercial vehicle drivers for 2016 and 2026.

Table 1 shows the calculation of the growth rate and the calculation of the weighted average compound growth rate.

Table 1. Population Growth Rate

BLS Standard Occupation	2016 Total Employment (thousands)	2016 Employment Percentage of Total	2026 Total Employment (thousands)	Compound Annual Growth Rate in Employment (2016-2026)	Weighted Average Compound Growth Rate
	<i>A</i>	$B = A/3,512$	<i>C</i>	$D = ((C/A) ^ (1/10)) - 1$	$E = B \times D$
Heavy and tractor-trailer truck drivers	1,871	53.3%	1,980	0.568%	0.303%
Light truck or delivery services drivers	953	27.1%	953	0.634%	0.17%
Bus drivers, school or special client	508	14.5%	508	0.525%	0.08%
Bus drivers, transit and intercity	179	5.1%	179	0.864%	0.04%
	3,512	100%	3,620		0.595%

Note: The 0.595 percent weighted average growth rate does not equal the sum of the components due to rounding.

Table 2 shows the extrapolation of the driver population from the 6.2 million driver population on December 29, 2017, at a 0.595 percent average annual growth. The 10-year projection period used in this analysis begins in 2021 and ends in 2030. This 10-year population projection is the base from which the Agency estimates the number of drivers, which in the absence of the proposed rule, would be required to provide motor carriers an annual list of violations.

Table 2. Driver Population 2021-2030

Year	Number of Drivers
2017	6,200,000
2018	6,236,870
2019	6,273,960
2020	6,311,270
2021	6,348,802
2022	6,386,558
2023	6,424,538
2024	6,462,743

2025	6,501,176
2026	6,539,838
2027	6,578,729
2028	6,617,852
2029	6,657,207
2030	6,696,796

The number of drivers who would no longer be required to submit an annual list of convictions for traffic violations is estimated as the difference between the projections of annual driver population and annual job openings. The number of job openings is estimated by applying a 71.6 percent average annual driver turnover rate to the annual driver population shown in Table 2. The turnover rate is derived from turnover rates reported for three categories of motor carriers by the American Trucking Associations, which are over-the-road carriers (OTR) at 98 percent, truckload carriers (TL) at 72 percent, and less-than-truckload carriers (LTL) at 14 percent. The OTR category is made up predominantly of CMV drivers transporting general freight on behalf of for-hire motor carriers. The TL category is made up predominantly of CMV drivers transporting specialized freight on behalf of for-hire motor carriers. The LTL category is made up of CMV drivers transporting the property of their motor carrier and drivers engaged in specialized operations analogous to LTL operations. The individual turnover rates are weighted by the relative shares of the driver population distributed among the three categories of motor carriers, which are 52 percent for OTR drivers, 24 percent for TL drivers, and 24 percent for LTL drivers.¹⁴ As shown in Table 3, the sum of the product of the turnover rates and percentage of drivers by category results in a 71.6 percent weighted average turnover rate.

¹⁴ American Transportation Research Institute, *ATRI Analysis of the Operational Cost of Trucking: 2018 Update*. Available at <http://atri-online.org/wp-content/uploads/2018/10/ATRI-Operational-Costs-of-Trucking-2018.pdf> (accessed Apr. 22, 2019).

Table 3. Weighted Average Turnover Rate

Driver Type	Turnover Rate	Percent of Drivers in Driver Type Category
Over-the-Road	98%	52%
Truckload	72%	24%
Less-than-Truckload Drivers	14%	24%
Weighted Average Turnover Rate		71.6%

Note: The weighted average turnover rate is calculated as: $(98\% \times 52\%) + (72\% \times 24\%) + (14\% \times 24\%) = 71.6\%$.

Table 4 shows the annual projections of the number of drivers subject to the reporting requirements of § 391.27 who would no longer have to submit a list of convictions for traffic violations if § 391.27 is rescinded. The projections cover the 10-year period ending in 2030. Drivers who have been recently hired are not subject to the annual reporting requirements of § 391.27. The hiring process includes similar reporting requirements for which the information collection burden is accounted for under a different regulation.

Table 4. Driver Population Affected by Proposed Rule

Year	Driver Population <i>A = From Table 2</i>	Number of Job Openings <i>B = A x 71.6%</i>	Driver Population Subject to § 391.27 <i>C = A - B</i>
2021	6,348,802	4,545,743	1,803,060
2022	6,386,558	4,572,775	1,813,782
2023	6,424,538	4,599,969	1,824,569
2024	6,462,743	4,627,324	1,835,419
2025	6,501,176	4,654,842	1,846,334
2026	6,539,838	4,682,524	1,857,314
2027	6,578,729	4,710,370	1,868,359
2028	6,617,852	4,738,382	1,879,470
2029	6,657,207	4,766,560	1,890,647
2030	6,696,796	4,794,906	1,901,890

Wage Rates

FMCSA evaluated the opportunity cost of time for drivers using a rounded representative driver wage rate of \$36 per hour. This hourly cost represents the value of

driver time that, in the absence of the proposed rule, he or she would spend completing a list of convictions for traffic violations, but would now be available to perform other tasks. Table 5 summarizes the estimation of a weighted average hourly wage of \$36.25 for drivers. The weighted average hourly wage is derived from the BLS Occupational Employment Statistics (OES) estimates of the median wages of four categories of drivers assigned to BLS Standard Occupation Codes (SOC), shown in Table 5. The median hourly wages for each driver SOC are increased to account for fringe benefits and motor carrier overhead as explained below. The hourly wages are weighted based on the population of drivers for each SOC relative to the total population as shown by the percentages in Table 5, Column B.

BLS does not publish data on fringe benefits for specific occupations, but it does publish fringe benefit data for the broad industry groups in its quarterly Employer Costs for Employee Compensation (ECEC) news releases. This analysis uses the ECEC data to estimate a fringe benefit rate based on the hourly wage for the “transportation and warehousing” sector average hourly wage (\$25.80) and average hourly benefits (\$14.69) for the “transportation and warehousing” sector.¹⁵ The ratio of the two values results in a 56.9 percent fringe benefit rate (56.9 percent = \$14.69 per hour ÷ \$25.80 percent) that is added to the average hourly wage. The hourly wage, including fringe benefits, is further increased by 27.4 percent to account for motor carriers’ overhead.¹⁶

¹⁵ U.S. Department of Labor, Bureau of Labor Statistics, *Table 10: Employer costs per hour worked for employee compensation and costs as a percent of total compensation: Private industry workers, by industry group, June 2018*. Available at <https://www.bls.gov/news.release/archives/ecec> (accessed Apr. 23, 2019).

¹⁶ Berwick, Farooq. *Truck Costing Model for Transportation Managers*, North Dakota State University, Upper Great Plains Transportation Institute, 2003. Appendix A, pp. 42-47. This estimate is based on an average cost of \$0.107 per mile of CMV operation for management and overhead, and \$0.39 per mile for labor. The ratio of these values results in an estimated 27.4 percent overhead rate (27.4 percent = \$0.107 ÷ \$0.39). Available at: <https://www.ugpti.org/resources/reports/details.php?id=475> (accessed Apr. 23, 2019).

Table 5. Driver Hourly Wage Including Fringe Benefits and Motor Carrier Overhead

Standard Occupation Title and Code	Total Drivers	% of Total Drivers	Median Hourly Base Wage	Weighted Hourly Wage	Fringe Benefits Rate	Overhead Rate	Weighted Average Hourly Cost
	<i>A = from BLS OES Data</i>	<i>B = A/Sum of Column A</i>	<i>C = from BLS OES Data</i>	<i>D = B x C</i>	<i>E = from BLS ECEC Data</i>	<i>F</i>	<i>G = D x (1+0.569) x (1+0.274)</i>
Heavy and Tractor Trailer Drivers (53-3032)	1,748,140	52.8%	\$20.42	\$10.79	56.9%	27.4%	\$21.57
Light truck and delivery Service Drivers (53-3033)	877,670	26.5%	\$15.12	\$4.01	56.9%	27.4%	\$8.02
Bus drivers, school and or special client (53-3022)	176,140	5.3%	\$19.61	\$1.04	56.9%	27.4%	\$2.09
Bus drivers, Transit and Intercity (53-3021)	507,340	15.3%	\$14.93	\$2.29	56.9%	27.4%	\$4.58
Weighted Average Driver Wage							\$36.25

Notes:

- (a) The number of drivers is the number of respondents by SOC included in the BLS survey. The coverage and scope of the survey is described at https://www.bls.gov/oes/oes_emp.htm#scope (accessed May 12, 2019).
- (b) The \$36.25 hourly weighted average wage does not equal the sum of the components due to rounding.

Section 391.27 requires motor carriers to incur labor costs to file drivers’ lists of convictions for traffic violations in their driver qualification files. The burden hours associated with this task are monetized using an hourly wage for a file clerk adjusted for fringe benefits and motor carrier overhead. The BLS median wage for a file clerk is \$14.48. The hourly wage is increased for fringe benefits and motor carrier overhead, which results in a \$28.96 wage, rounded to \$29 ($\$28.96 = \$14.48 \times (1+56.9\%) \times (1+27.4\%)$).

Costs

The proposed rule would result in cost savings to drivers and motor carriers. Drivers’ cost savings would be the result of no longer having to prepare an annual list of convictions for traffic violations for their employers. Motor carriers would realize cost savings from no longer having to file the lists in driver qualification files. The Agency estimates that drivers and motor carriers would each spend 2 minutes on their respective tasks.

Table 6 shows the estimated driver cost savings resulting from the removal of § 391.27. Over the 10-year projection period, driver cost savings are estimated at \$22.2 million. At a 7 percent discount rate, driver cost savings are estimated at \$15.6 million and annualized cost savings are estimated at \$2.2 million.

Table 6. Driver Cost Savings

	Driver Population Providing Lists of Violations	Driver Burden Hours (million)	Driver Costs (2017\$ million)	Driver Cost at 7% Discount Rate (\$ million)
	<i>A</i>	<i>B = A x (2 Minutes/60)</i>	<i>C = B x \$36</i>	<i>D</i>
2021	1,803,060	0.060	(\$2.2)	(\$2.0)
2022	1,813,782	0.060	(\$2.2)	(\$1.9)
2023	1,824,569	0.061	(\$2.2)	(\$1.8)
2024	1,835,419	0.061	(\$2.2)	(\$1.7)
2025	1,846,334	0.062	(\$2.2)	(\$1.6)
2026	1,857,314	0.062	(\$2.2)	(\$1.5)
2027	1,868,359	0.062	(\$2.2)	(\$1.4)
2028	1,879,470	0.063	(\$2.3)	(\$1.3)
2029	1,890,647	0.063	(\$2.3)	(\$1.2)
2030	1,901,890	0.063	(\$2.3)	(\$1.2)
Total		0.62	(\$22.2)	(\$15.6)
Annualized				(\$2.2)

Notes:

(a) Total cost values may not equal the sum of the components due to rounding (the totals shown in this column are the rounded sum of unrounded components).

(b) Values shown in parentheses are negative values (i.e., less than zero), and represent a decrease in cost or a cost savings.

Table 7 summarizes motor carrier projected cost savings. Over the 10-year projection period, motor carrier cost savings are estimated at \$17.9 million. At a 7 percent discount rate, motor carrier cost savings are estimated at \$12.5 million and annualized cost savings at \$1.8 million.

Table 7. Motor Carrier Cost Savings

	Number of Lists of Violations to File	Motor Carrier Burden Hours (million)	Motor Carrier Costs (2017\$ million)	Motor Carrier Cost at 7% Discount Rate (\$ million)
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	<i>A</i>	<i>B = A x (2 Minutes/60)</i>	<i>C = B x \$29</i>	<i>D</i>
2021	1,803,060	0.060	(\$1.7)	(\$1.6)
2022	1,813,782	0.060	(\$1.8)	(\$1.5)
2023	1,824,569	0.061	(\$1.8)	(\$1.4)
2024	1,835,419	0.061	(\$1.8)	(\$1.4)
2025	1,846,334	0.062	(\$1.8)	(\$1.3)
2026	1,857,314	0.062	(\$1.8)	(\$1.2)
2027	1,868,359	0.062	(\$1.8)	(\$1.1)
2028	1,879,470	0.063	(\$1.8)	(\$1.1)
2029	1,890,647	0.063	(\$1.8)	(\$1.0)
2030	1,901,890	0.063	(\$1.8)	(\$0.9)
Total		0.62	(\$17.9)	(\$12.5)
Annualized				(\$1.8)

Notes:

(a) Total cost values may not equal the sum of the components due to rounding (the totals shown in this column are the rounded sum of unrounded components).

(b) Values shown in parentheses are negative values (i.e., less than zero), and represent a decrease in cost or a cost savings.

The estimated cost savings resulting from the proposal to rescind § 391.27 total \$40.1 million over the 10-year projection period. At a 7 percent discount rate, the estimated total cost savings are \$28.1 million and the annualized cost savings are \$4.0 million.

Benefits

This proposed rule would allow drivers and motor carriers to more efficiently allocate their time. As discussed above, eliminating the requirement for drivers to provide a list of their convictions for traffic violations on an annual basis would reduce the paperwork burden and result in cost savings for drivers and motor carriers. FMCSA does not expect this proposed rule to affect safety negatively. Motor carriers would still be made aware of their employees' convictions for driving violations via the annual MVR check required in § 391.25.

B. E.O. 13771 (Reducing Regulation and Controlling Regulatory Costs)

This proposed rule is expected to have total costs less than zero, and, if finalized, would qualify as an E.O. 13771 deregulatory action. The present value of the cost savings

of this proposed rule, measured on an infinite time horizon at a 7 percent discount rate, expressed in 2016 dollars, and discounted to 2021 (the year the proposed rule, if finalized, would be expected to go into effect and cost savings would first be realized), would be \$57.8 million. On an annualized basis, these cost savings would be \$4.0 million.

For E.O. 13771 accounting, the April 5, 2017, OMB guidance¹⁷ requires that agencies also calculate the costs and cost savings discounted to year 2016. In accordance with this requirement, the present value of the cost savings of this rule, measured on an infinite time horizon at a 7 percent discount rate, expressed in 2016 dollars, and discounted to 2016, would be \$41.2 million. On an annualized basis, the cost savings would be \$2.9 million.

C. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 et seq.), OIRA designated this rule as not a “major rule,” as defined by 5 U.S.C. 804(2).¹⁸

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (Pub. L. 96–354, 94 Stat. 1164, September 19, 1980 (5 U.S.C. 601 et seq.)), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857, Mar. 29, 1996), requires Federal agencies to consider the impact of their regulatory proposals on small entities, analyze effective alternatives that minimize small entity impacts, and make their analyses available for public comment. The term “small entities” means small

¹⁷ Available at <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2017/M-17-21-OMB.pdf> (accessed June 26, 2019).

¹⁸ A “major rule” means any rule that the Administrator of Office of Information and Regulatory Affairs at the Office of Management and Budget finds has resulted in or is likely to result in (a) an annual effect on the economy of \$100 million or more; (b) a major increase in costs or prices for consumers, individual industries, Federal agencies, State agencies, local government agencies, or geographic regions; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets (5 U.S.C. 804(2)).

businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations under 50,000 (5 U.S.C. 601). Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities, and mandates that agencies strive to lessen any adverse effects on these entities. FMCSA is therefore publishing this initial regulatory flexibility analysis to aid the public in commenting on the potential small business impacts of the proposals in this NPRM. FMCSA invites all interested parties to submit data and information regarding the potential economic impact that would result from adoption of the proposals in this NPRM. FMCSA will consider all comments received in the public comment process when deciding on the final regulatory flexibility assessment.

An initial regulatory flexibility analysis must include six components (5 U.S.C. 603(b) and (c)). The Agency discusses each of the components below.

1. A description of the reasons why the action by the agency is being considered.

The Agency is proposing to rescind § 391.27 because the annual list of convictions for traffic violations that drivers are required to provide motor carriers is largely duplicative of information reported on drivers' MVRs that motor carriers are required to obtain from SDLAs on an annual basis pursuant to § 391.25. The Agency finds that the information reported on MVRs that motor carriers obtain from driver's licensing authorities is sufficient, without drivers having to provide an annual list of violations. Thus, the proposed rule relieves drivers and motor carriers of the reporting and recordkeeping costs incurred to comply with § 391.27, without compromising safety.

Section 391.25 currently applies to all motor carriers, domestic and foreign, but is limited to inquiries for drivers licensed by a State. To ensure motor carriers are aware of convictions for traffic violations for a driver who is licensed by a foreign authority rather than by a State, FMCSA proposes to amend § 391.25(a) to require that motor carriers make an annual inquiry to each driver's licensing authority where a driver holds or has

held a CMV operator's license or permit. For example, any motor carrier that employs a driver who holds a Canadian or Mexican license to operate a CMV and is authorized to operate in the United States would be required to request the equivalent of an MVR from the applicable Canadian or Mexican licensing authority where the driver is licensed. The proposed rule would make conforming changes to §§ 391.21 and 391.23 with respect to the hiring-related inquiries for MVRs motor carriers are required to perform.

2. *A succinct statement of the objectives of, and legal basis for, the proposed rule.*

The objective of this rulemaking is to reduce redundant regulatory requirements where applicable.

The statutory authority for §§ 391.21, 391.23, 391.25, and 391.27 in title 49 of the CFR derives from the Motor Carrier Act of 1935 and the Motor Carrier Safety Act of 1984, both as amended. In addition, the Secretary has discretionary authority under 49 U.S.C. 31133(a)(8) to prescribe (and thus to remove) recordkeeping and reporting requirements. This deregulatory action, to eliminate § 391.27, rests on that authority. This statutory authority is delegated to FMCSA by § 1.87. A full explanation of the legal basis for this rulemaking is set forth in Section III.

3. *A description, and, where feasible, an estimate of the number of small entities to which the proposed rule will apply.*

“Small entity” is defined in 5 U.S.C. 601(6) as having the same meaning as the terms “small business” in paragraph (3), “small organization” in paragraph (4), and “small governmental jurisdiction” in paragraph (5). Section 601(3) defines a small business as a “small business concern” under section 3 of the Small Business Act (15 U.S.C. 632(a)), which means a business that is independently owned and operated and is not dominant in its field of operation. Section 601(4) defines small organizations as not-for-profit enterprises that are independently owned and operated, and are not dominant in their fields of operation. Additionally, section 601(5) defines small

governmental jurisdictions as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of less than 50,000.

This proposed rule would affect interstate CMV drivers and interstate motor carriers. CMV drivers, however, do not meet the definition of a small entity in section 601 of the RFA. Specifically, CMV drivers are considered neither a small business under section 601(3) of the RFA, nor a small organization under section 601(4) of the RFA.¹⁹

FMCSA used data from the 2012 Economic Census to determine the percentage of motor carriers with annual revenue at or below the Small Business Administration's (SBA) thresholds.²⁰ The SBA thresholds are used to classify a business as a small business for purposes of determining eligibility to participate in SBA and Federal contracting programs.²¹ The Economic Census sums the number of firms classified according to their North American Industry Classification System (NAICS) code by ranges of annual revenue. The ranges with the high end closest to the SBA thresholds was used to determine the percentage of trucking firms and passenger carriers that meet the definition of an SBA small business. FMCSA used the Economic Census as the basis for estimating the number of small entities affected by the proposed rule. As discussed below, the Agency estimates that 98.7 percent of trucking firms and 95.2 percent of passenger carriers are classified as small businesses.

The Economic Census and the SBA aggregate revenue data for the Truck Transportation industry under the NAICS Code 484. The SBA threshold for NAICS Code 484 is \$30 million. For purposes of determining the percentage of trucking firms

¹⁹ Though individual CMV drivers are not small entities for purposes of the RFA, individual CMV drivers who are owner-operators are considered small businesses for purposes of the RFA. In addition, driver and motor carrier cost savings are estimated on a per driver basis using an estimate of the total driver population that includes owner-operators.

²⁰ U.S. Census Bureau, *2012 Economic Survey*, Table EC1248SSSZ4-Summary Statistics by Revenue and Size of Firm. Available at https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_48SSSZ4&prodType=table (accessed Apr. 24, 2019).

²¹ The SBA regulation defining small business size standards by North American Industry Classification System codes is set forth in 13 CFR 121.201.

with annual revenue less than or equal to \$30 million, the Agency considered the annual revenue for all truck transportation firms reported in the Economic Survey under NAICS Code 484. The Economic Survey revenue range closest to the SBA \$30.0 million threshold includes all truck transportation firms with annual revenue ranging from \$10.0 million to \$24.9 million. The total number of truck transportation firms within the 8 ranges of annual revenue less than or equal to \$30.0 million accounts for 98.7 percent of survey respondents. The Agency finds that this 98.7 percent is a reasonable proxy for the number of trucking firms with annual revenue equal to or less than the \$30.0 million SBA threshold.

The Agency used the same methodology to determine the percentage of passenger carriers that qualify as an SBA small business. The SBA threshold for Transit and Ground Transportation firms (NAICS Code 485) is \$16.5 million. For purposes of determining the percentage of passenger carriers with annual revenue less than or equal to \$16.5 million, the Agency considered the number of passenger carriers in three NAICS Code subsectors: Charter Bus; Interurban Transportation and Rural Transportation; and School and Employee Transportation subsectors.²² The Economic Census revenue range closest to the SBA \$16.5 million threshold includes passenger carriers with revenue ranging from \$5 million to \$9.9 million. Passenger carriers with revenue less than or equal to \$9.9 million account for 95.2 percent of survey respondents within the three subsectors. Thus, the Agency finds that 95.2 percent of passenger carriers with revenue less than or equal to \$9.9 million is approximately the same percentage of those with annual revenue less than the \$16.5 million SBA threshold.

4. *A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities*

²² Commuter rail, public transit systems, taxi, limousine, and special needs transportation that are included in Subsector 485 are excluded from the analysis.

that will be subject to the requirement and the types of professional skills necessary for preparation of the report or record.

By rescinding § 391.27, the proposed rule would eliminate reporting and recordkeeping costs incurred by drivers and motor carriers. For a discussion of the paperwork burden associated with the proposed rule, see Section IX.F., below. CMV drivers would no longer be required to provide their employer an annual list of convictions for traffic violations. All motor carriers would be relieved from the recordkeeping cost of filing the lists in driver qualification files.

5. *An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule.*

The Agency proposes to rescind § 391.27 because it duplicates information regarding drivers' convictions for traffic violations that is reported on MVRs that motor carriers are required to request from SDLAs annually pursuant to § 391.25. Section 391.25, as revised, would require motor carriers to request MVRs annually from every licensing authority where a driver holds or has held a CMV operator's license or permit in the past year. In addition, a conforming change would be made to § 391.23(a) to require motor carriers to request MVRs from all driver's licensing authorities when hiring new drivers.

6. *A description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.*

There is no significant economic impact on small entities because of the proposed rule. FMCSA did not identify any significant alternatives to the proposed rule that would result in equivalent cost savings to small entities, as compared to those resulting from the elimination of § 391.27.

E. Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, FMCSA wants to assist small entities in understanding this proposed rule so that they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the SBA's Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of FMCSA, call 1-888-REG-FAIR (1-888-734-3247). DOT has a policy regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

F. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$168 million (which is the value equivalent of \$100,000,000 in 1995, adjusted for inflation to 2019 levels) or more in any 1 year. Though this proposed rule would not result in such an expenditure, the Agency does discuss the effects of this rule elsewhere in this preamble.

G. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) requires that an agency consider the impact of paperwork and other information collection burdens

imposed on the public. Section 1320.8(b)(3)(vi) of Title 5 of the CFR prohibits an agency from collecting or sponsoring an information collection, as well as imposing an information collection requirement, unless the collection vehicle displays a valid OMB control number. This proposed rule would amend the existing information collection titled “Driver Qualification Files,” OMB Control Number 2126-0004, which expires April 20, 2023. In accordance with 44 U.S.C. 3507(d), FMCSA will submit the proposed information collection amendments to OMB for its approval.

This proposed rule would eliminate the information collections required by § 391.27. Under § 391.27, a driver operating a CMV must complete a list of convictions for traffic violations and submit the list to his or her employer on an annual basis. When a driver does not have any violations to report, the driver is required to furnish a certification to that effect. The motor carrier must file the list of violations or certification of no violations in the driver’s qualification file. These requirements are largely duplicative of the requirements in § 391.25 that motor carriers make an annual inquiry to SDLAs to request a driver’s MVR and file the MVR in the driver’s qualification file.

Because § 391.25 is currently limited to inquiries for drivers licensed by a State, the proposed rule would modify § 391.25 to require motor carriers to request a driver’s MVR from each licensing authority that issued the driver a license. This change would require motor carriers to request the MVR equivalent from Canadian and Mexican driver’s licensing authorities. To maintain consistency within part 391 with respect to requests for MVRs, FMCSA proposes to make conforming changes to § 391.23, which requires motor carriers to request MVRs from SDLAs for the 3 years preceding the date of employment when hiring a driver. A change also would be made in § 391.21 to require each driver to provide on the employment application the issuing driver’s licensing authority, instead of State, of each unexpired CMV operator’s license or permit that has

been issued to the driver so motor carriers could make the required inquiries under § 391.23.

The proposed changes to §§ 391.21, 391.23, and 391.25 would not increase paperwork burdens. This is because MCMIS, the repository for the Agency's driver population data, counts the total number of drivers reported by motor carriers, both foreign and domestic, and for purposes of information collection burden calculation, the median fee for obtaining an MVR or its equivalent from either a foreign or a domestic authority are the same.²³ FMCSA uses the MCMIS driver population data, which currently includes drivers employed by Canadian and Mexican motor carriers, to calculate the burden associated with information collections and paperwork. Therefore, though the proposed rule would institute new requirements for motor carriers to request MVRs for their drivers operating in the United States who are licensed by a foreign authority rather than by a State, the current OMB-approved information collections for §§ 391.23 and 391.25 in the "Driver Qualification Files" ICR already include reporting and recordkeeping costs incurred by motor carriers to request MVRs for such drivers. Similarly, the current OMB-approved information collection for § 391.21 already includes reporting and recordkeeping costs incurred by drivers to prepare and submit employment applications.

The proposed changes to §§ 391.23 and 391.25 also would not increase costs to motor carriers because of fees paid to Canadian and Mexican driver's licensing authorities to obtain the equivalent of MVRs. As set forth in section 13 of the supporting statement, FMCSA has surveyed fees charged by driver's licensing authorities and third-party processing companies in Canada and has determined that they are consistent with

²³ Though Mexican motor carriers do not pay a fee to obtain MVR equivalents, FMCSA continues to include the cost for consistency and administrative convenience.

those to obtain MVRs from States. However, there is no fee to obtain MVR equivalents in Mexico.

The proposed elimination of § 391.27 would delete IC-2.1 (driver submits list of violations to motor carrier) and IC-2.2 (motor carrier files list of violations in driver qualification file). The supporting statement shows the burden associated with IC-2.1 is 0.6 million hours and \$2.16 million. The burden associated with IC-2.2 is 0.6 million hours and \$1.74 million. Thus, the elimination of § 391.27 would result in a paperwork burden reduction of 0.12 million hours and \$3.9 million for drivers and motor carriers.

The draft supporting statement for the ICR prepared for this rulemaking is compared to the approved supporting statement for the ICR. The draft supporting statement accounts for the incremental reduction in burden hours and costs realized from rescinding § 391.27 and updates the driver population. The draft supporting statement burden hours and costs cover the 3-year period ending in 2023, whereas the approved supporting statement covers the 3-year period ending in 2022. Response times for each information collection and hourly wage rate used to monetize burden hours have not been changed. The Agency has decreased its estimate of the total information collection burden from 12.26 million hours at a cost of \$350.45 million, to 12.22 million hours at a cost of \$348.61 million. The net reporting and recordkeeping cost savings in the draft supporting statement prepared for this proposed rule are estimated at \$1.84 million (\$350.45 million - \$348.61 million). The estimated \$3.9 million cost savings from rescinding § 391.27 are partially offset by a \$2.06 million increase in labor costs for other components of the ICR, adjusted for population growth. Thus, the estimated net reduction in reporting and recordkeeping costs is \$1.84 million (\$3.90 million - \$2.06 million).

Title: Driver Qualification Files.

OMB Control Number: 2126-0004.

Type of Review: Revision of a currently-approved information collection.

Summary: The proposed rule would eliminate § 391.27 and the requirements that a driver operating a CMV complete a list of convictions for traffic violations or a certification of no traffic violations, and submit the list or certification to his or her employer on an annual basis. The motor carrier must file the lists and certifications in the driver's qualification file. The proposed elimination of § 391.27 would delete current IC-2.1 (driver submits list of violations to motor carrier) and IC-2.2 (motor carrier files list of violations in driver qualification file). In the summary statistics below, motor carriers are included in the estimated number of respondents.

Estimated Number of Respondents: 6.93 million (6.39 million drivers + 0.54 million motor carriers).

Estimated responses: 98.37 million.

Frequency: Responses may be random, annual, or when hiring a driver.

Estimated burden hours: 12.22 million.

Estimated cost: \$348.61 million.

FMCSA asks for comment on the information collection requirements of this proposed rule, as well as the total paperwork burden for the ICR. The Agency's analysis of these comments will be used in devising the Agency's estimate of the information collection burden of the final rule. The draft rulemaking and approved supporting statements for this ICR are available in the docket for comment and review.

Specifically, the Agency asks for comment on: (1) whether the proposed information collection is necessary for FMCSA to perform its functions; (2) how the Agency can improve the quality, usefulness, and clarity of the information to be collected; (3) the accuracy of FMCSA's estimate of the burden of this information collection; and (4) how the Agency can minimize the burden of the information collection.

If you have comments on the collection of information, you must send those comments as described under Section I.E. of the **SUPPLEMENTARY INFORMATION** section at the beginning of this document.

H. E.O. 13132 (Federalism)

A rule has implications for federalism under section 1(a) of E.O. 13132 if it has “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” FMCSA determined that this proposal would not have substantial direct costs on or for States, nor would it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation. Therefore, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Impact Statement.

I. Privacy

Section 522 of title I of division H of the Consolidated Appropriations Act, 2005 (Pub. L. 108-447, 118 Stat. 2809, 3268 (Dec. 8, 2004), note following 5 U.S.C. 552a), requires the Agency to conduct a privacy impact assessment of a regulation that will affect the privacy of individuals. The assessment considers impacts of the rule on the privacy of information in an identifiable form and related matters. The FMCSA Privacy Officer has evaluated the risks and effects the rulemaking might have on collecting, storing, and sharing personally identifiable information and has evaluated protections and alternative information handling processes in developing the rule to mitigate potential privacy risks. FMCSA determined that this proposed rule does not create privacy risks to individuals.

In addition, the Agency submitted a Privacy Threshold Assessment analyzing the rulemaking to the DOT, Office of the Secretary’s Privacy Office. The DOT Privacy Office also has determined that this rulemaking does not create privacy risk.

The E-Government Act of 2002, Pub. L. 107-347, sec. 208, 116 Stat. 2899, 2921 (Dec. 17, 2002), requires Federal agencies to conduct a privacy impact assessment for new or substantially changed technology that collects, maintains, or disseminates information in an identifiable form. No new or substantially changed technology would collect, maintain, or disseminate information because of this proposed rule.

J. E.O. 13175 (Indian Tribal Governments)

This proposed rule does not have Tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

K. National Environmental Policy Act of 1969

FMCSA analyzed this proposed rule consistent with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1 (69 FR 9680, Mar. 1, 2004), Appendix 2, paragraph 6.s.(2). The Categorical Exclusion (CE) in paragraph 6.s.(2) covers a requirement for drivers to notify their current employer and State of domicile of certain convictions. The proposed deregulatory action in this rulemaking is covered by this CE, there are no extraordinary circumstances present, and the proposed rule would not have any effect on the quality of the environment.

List of Subjects

49 CFR Part 385

Administrative practice and procedure, Highway safety, Mexico, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 391

Alcohol abuse, Drug abuse, Drug testing, Highway safety, Motor carriers, Reporting and recordkeeping requirements, Safety, and Transportation.

Accordingly, FMCSA proposes to amend 49 CFR chapter III to read as follows:

PART 385—SAFETY FITNESS PROCEDURES

1. The authority citation for part 385 is revised to read as follows:

AUTHORITY: 49 U.S.C. 113, 504, 521(b), 5105(d), 5109, 5113, 13901-13905, 13908, 31135, 31136, 31144, 31148, 31151, 31502; sec. 350, Pub. L. 107-87, 115 Stat. 833, 864; and 49 CFR 1.87.

2. Amend Appendix B to Part 385, section VII, by removing the entry for “§ 391.51(b)(7)” and adding an entry for “§ 391.51(b)(6)” to read as follows:

Appendix B to Part 385—Explanation of Safety Rating Process

* * * * *

VII. List of Acute and Critical Regulations.

* * * * *

§ 391.51(b)(6) Failing to maintain medical examiner’s certificate in driver’s qualification file (critical).

* * * * *

PART 391—QUALIFICATIONS OF DRIVERS AND LONGER COMBINATION VEHICLE (LCV) DRIVER INSTRUCTORS

3. The authority citation for part 391 continues to read as follows:

AUTHORITY: 49 U.S.C. 504, 508, 31133, 31136, 31149, 31502; sec. 4007(b), Pub. L. 102-240, 105 Stat. 1914, 2152; sec. 114, Pub. L. 103-311, 108 Stat. 1673, 1677; sec. 215, Pub. L. 106-159, 113 Stat. 1748, 1767; sec. 32934, Pub. L. 112-141, 126 Stat. 405, 830; secs. 5403 and 5524, Pub. L. 114-94, 129 Stat. 1312, 1548, 1560; sec. 2, Pub. L. 115-105, 131 Stat. 2263; and 49 CFR 1.87.

§ 391.11 General qualifications of drivers [Amended]

4. Amend § 391.11 by removing paragraph (b)(6) and redesignating paragraphs (b)(7) and (8) as paragraphs (b)(6) and (7), respectively.

5. Amend § 391.21 by revising paragraph (b)(5) to read as follows:

§ 391.21 Application for employment.

* * * * *

(b) * * *

(5) The issuing driver's licensing authority, number, and expiration date of each unexpired commercial motor vehicle operator's license or permit that has been issued to the applicant;

* * * * *

6. Amend § 391.23 by revising paragraphs (a)(1) and (b) to read as follows:

§ 391.23 Investigation and inquiries.

(a) * * *

(1) An inquiry, within 30 days of the date the driver's employment begins, to each driver's licensing authority where the driver held or holds a motor vehicle operator's license or permit during the preceding 3 years to obtain that driver's motor vehicle record.

* * * * *

(b) A copy of the motor vehicle record(s) obtained in response to the inquiry or inquiries to each driver's licensing authority required by paragraph (a)(1) of this section must be placed in the driver qualification file within 30 days of the date the driver's employment begins and be retained in compliance with § 391.51. If no motor vehicle record is received from a driver's licensing authority required to submit this response, the motor carrier must document a good faith effort to obtain such information. The inquiry to a driver's licensing authority must be made in the form and manner each authority prescribes.

* * * * *

7. Revise § 391.25(a) to read as follows:

§ 391.25 Annual inquiry and review of driving record.

(a) Except as provided in subpart G of this part, each motor carrier shall, at least once every 12 months, make an inquiry to obtain the motor vehicle record of each driver it employs, covering at least the preceding 12 months, to each driver's licensing authority where the driver held a commercial motor vehicle operator's license or permit during the time period.

* * * * *

§ 391.27 [Removed and Reserved]

8. Remove and reserve § 391.27.

9. Amend § 391.51 as follows:

a. Revise paragraphs (b)(2) and (4);

b. Remove paragraph (b)(6) and redesignate paragraphs (b)(7) through (9) as paragraphs (b)(6) through (8), respectively;

c. Revise paragraph (d)(1);

d. Remove paragraph (d)(3) and redesignate paragraphs (d)(4) through (6) as paragraphs (d)(3) through (5), respectively; and

e. Revise newly redesignated paragraph (d)(3).

The revisions to read as follows:

§ 391.51 General requirements for driver qualification files.

* * * * *

(b) * * *

(2) A copy of the motor vehicle record received from each driver's licensing authority pursuant to § 391.23(a)(1);

* * * * *

(4) The motor vehicle record received from each driver's licensing authority to the annual driver record inquiry required by § 391.25(a);

* * * * *

(d) * * *

(1) The motor vehicle record received from each driver's licensing authority to the annual driver record inquiry required by § 391.25(a);

* * * * *

(3) The medical examiner's certificate required by § 391.43(g), a legible copy of the certificate, or, for CDL drivers, any CDLIS MVR obtained as required by § 391.51(b)(6)(ii);

* * * * *

10. Amend § 391.63 by revising paragraphs (a)(3) and (4) and removing paragraph (a)(5) to read as follows:

§ 391.63 Multiple-employer drivers.

(a) * * *

(3) Perform the annual driving record inquiry required by § 391.25(a); or

(4) Perform the annual review of the person's driving record required by § 391.25(b).

* * * * *

Issued under authority delegated in 49 CFR 1.87.

James W. Deck,
Deputy Administrator.