

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 1**

[WT Docket No. 08–7; Report No. 3111]

Petition for Reconsideration of a Declaratory Ruling on Regulatory Status of Wireless Messaging Service**AGENCY:** Federal Communications Commission.**ACTION:** Petition for Reconsideration.**SUMMARY:** A Petition for Reconsideration (Petition) has been filed regarding the Commission's declaratory ruling by John Bergmayer on behalf of Public Knowledge.**DATES:** Oppositions to the Petition must be filed on or before March 25, 2019. Replies to an opposition must be filed on or before April 2, 2019.**ADDRESSES:** Federal Communications Commission, 445 12th Street SW, Washington, DC 20554.**FOR FURTHER INFORMATION CONTACT:** Elizabeth McIntyre, Deputy Chief, Competition and Infrastructure Policy Division, Wireless Telecommunications Bureau, at (202) 418–0668, email elizabeth.mcintyre@fcc.gov.**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's document, Report No. 3111, released February 5, 2019. The full text of the Petition is available for viewing and copying at the FCC Reference Information Center, 445 12th Street SW, Room CY–A257, Washington, DC 20554. It also may be accessed online via the Commission's Electronic Comment Filing System at: <http://apps.fcc.gov/ecfs/>. The Commission will not send a Congressional Review Act (CRA) submission to Congress or the Government Accountability Office pursuant to the CRA, 5 U.S.C. 801(a)(1)(A) because no rules are being adopted by the Commission.*Subject:* Petition for Declaratory Ruling on Regulatory Status of Wireless Messaging Service, WT Docket No. 08–7, FCC 18–178, published at 84 FR 5008, February 20, 2019. This document is being published pursuant to 47 CFR 1.429(e).*Number of Petitions Filed:* 1.

Federal Communications Commission.

Cecilia Sigmund,*Federal Register Liaison Officer.*

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DEPARTMENT OF TRANSPORTATION**Federal Motor Carrier Safety Administration****49 CFR Part 391**

[Docket No. FMCSA–2018–0247]

RIN 2126–AC13

Qualification of Drivers; Employment Application**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.**ACTION:** Advance notice of proposed rulemaking (ANPRM).**SUMMARY:** FMCSA is considering changes to the requirement to have prospective drivers complete an employment application. FMCSA requests public comment on the value of and need for this requirement. Comment also is sought on ways the requirement for an employment application could be changed to reduce the associated paperwork burdens for drivers and motor carriers, including but not limited to the complete elimination of the requirement.**DATES:** Comments on this ANPRM must be received on or before May 7, 2019.**ADDRESSES:** You may submit comments bearing the Federal Docket Management System Docket ID (FMCSA–2018–0247) using any of the following methods:*Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.*Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590.*Hand Delivery or Courier:* U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.*Fax:* (202) 493–2251.**FOR FURTHER INFORMATION CONTACT:** For information concerning this ANPRM, contact Ms. Pearlle Robinson, Driver and Carrier Operations Division, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590, (202) 366–4325, MCPSD@dot.gov. If you have questions on viewing or submitting material to the docket, contact Docket Services at (202) 366–9826.**SUPPLEMENTARY INFORMATION:****I. Public Participation and Request for Comments****A. Submitting Comments**

If you submit a comment, please include the docket number for this ANPRM (FMCSA–2018–0247), 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 methods. 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 the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov> and put the docket number (FMCSA–2018–0247) in the “Keyword” box, and click “Search.” When the new screen appears, click on the “Comment Now!” button and type your comment into the text box in 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.

Confidential Business Information (CBI) is commercial or financial information that is customarily not made available to the general public by the submitter. Under the Freedom of Information Act (5 U.S.C. 552), CBI is eligible for protection from public disclosure. If you have CBI that is relevant or responsive to this ANPRM, it is important that you clearly designate the submitted comments as CBI. Accordingly, please mark each page of your submission as “confidential” or “CBI.” Submissions designated as CBI and meeting the definition noted above will not be placed in the public docket of this ANPRM. Submissions containing CBI should be sent to Brian Dahlin, Chief, Regulatory Evaluation Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590–0001. Any commentary FMCSA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

FMCSA will consider all comments and material received during the comment period.

B. Viewing Comments and Documents

To view comments, as well as any documents mentioned in this ANPRM as being available in the docket, go to <http://www.regulations.gov> and insert the docket number (FMCSA–2018–0247) in the “Keyword” box and click “Search.” Next, click the “Open Docket Folder” button and choose the document listed to review. If you do not have access to the internet, you may view the docket by visiting the Docket Management Facility in Room W12–140 on the ground floor of the U.S. Department of Transportation (DOT) West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

C. Privacy Act

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. Advance Notice of Proposed Rulemaking

Under section 5202 of the Fixing America’s Surface Transportation (FAST) Act (Pub. L. 114–94, 129 Stat. 1312, 1534, Dec. 4, 2015), FMCSA is required to publish an ANPRM or conduct a negotiated rulemaking if a proposed rule is likely to lead to the promulgation of a major rule¹ (49 U.S.C. 31136(g)(1)). If FMCSA’s estimate of the burden hours associated with the requirement to have prospective drivers complete an employment application is correct, the possible proposal to change or eliminate the requirement could lead to the promulgation of a major rule. Using FMCSA’s typical current wage rate for truck and bus drivers of \$38.24 per hour and for motor carrier administrative personnel of \$28.82 per hour, the burden hours associated with

¹ A “major rule” means any rule that the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget (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 geographic regions; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets (5 U.S.C. 804(2)). The term “major rule” does not include any rule promulgated under the Telecommunications Act of 1996 and the amendments made by that Act.

the requirement would equate to approximately \$180 million. Accordingly, the Agency is publishing this ANPRM in accordance with the FAST Act.

II. Legal Basis

The possible proposal to amend FMCSA’s regulations to change or eliminate 49 CFR 391.21, which includes the requirement to have prospective drivers complete an employment application, is based on the authority of the Motor Carrier Act of 1935 (1935 Act) and the Motor Carrier Act of 1984 (1984 Act), both as amended.

Section 204(a) of the 1935 Act (Pub. L. 74–255, 49 Stat. 543, 546, Aug. 9, 1935), 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 ANPRM addresses the qualifications of prospective motor carrier drivers, consistent with the safe operation of commercial motor vehicles (CMV).

The 1984 Act provides concurrent authority to regulate drivers, motor carriers, and vehicle equipment. Section 211(b) of the 1984 Act (Pub. L. 98–554, 98 Stat. 2832, 2841, Oct. 30, 1984), codified at 49 U.S.C. 31133(a), grants the Secretary broad power, in carrying out motor carrier safety statutes and regulations, to “prescribe recordkeeping and reporting requirements” and to “perform other acts the Secretary considers appropriate” (49 U.S.C. 31133(a)(8), (10) respectively).

Section 206(a) of the 1984 Act (98 Stat. 2834), codified at 49 U.S.C. 31136(a), grants the Secretary broad authority to issue regulations “on commercial motor vehicle safety.” The regulations must ensure that “commercial motor vehicles are . . . operated safely” (49 U.S.C. 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 elimination of the requirement to have prospective drivers complete an employment application 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 directly address medical standards for

drivers (section 31136(a)(3)) or possible physical effects caused by driving CMVs (section 31136(a)(4)). FMCSA does not anticipate that drivers would be coerced (section 31136(a)(5)) because of this rulemaking.

Finally, 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.

III. Background

On April 22, 1970, the Federal Highway Administration (FHWA), a predecessor agency to FMCSA, added § 391.21, *Application for employment*, that requires every prospective driver to submit information, such as the applicant’s driving record, prior employers, accident history, and driver’s license status, on an employment application furnished by the motor carrier. The prospective driver also must furnish information concerning the nature and extent of experience driving motor vehicles (35 FR 6461). That same rulemaking also added the requirement in § 391.11(b)(12) that an individual is qualified to drive a motor vehicle only if the individual has completed and furnished an employment application to the motor carrier (35 FR 6461).

Section 391.21 was amended in response to section 12003(c) of the Commercial Motor Vehicle Safety Act of 1986 (Pub. L. 99–570, 100 Stat. 3207–170, 3207–171, Oct. 27, 1986), codified at 49 U.S.C. 31303(c). Section 31303(c) provides that every individual who operates a CMV² and applies for employment as a CMV operator must notify the employer at the time of application of the individual’s previous employment as a CMV operator. The Secretary was directed to prescribe the period for which notice of previous employment must be given. The statute provides, however, that “the period may not be less than the 10-year period ending on the date of the application” (49 U.S.C. 31303(c)(2)).

Accordingly, a June 1, 1987, final rule added a new paragraph (b)(11) to § 391.21 (52 FR 20589). Paragraph (b)(11) requires that drivers applying to operate a CMV, as defined by part 383, must provide a list of the names and

² For purposes of 49 U.S.C. 31303, a CMV is defined generally as a vehicle used in commerce that is at or above 26,001 pounds gross vehicle weight or weight rating, used to transport 16 or more passengers (including the driver), or is used to transport placardable hazardous materials (49 U.S.C. 31301(4)). With limited exceptions, a driver of such a CMV is required to hold a commercial driver’s license (CDL). This definition of CMV is reflected in § 383.5.

addresses of the employers for which the applicant was an operator of a CMV during the 7-year period preceding the 3 years of employment history required by § 391.21(b)(10), together with the dates of employment and the reasons for leaving such employment. Therefore, drivers applying to operate a CMV that requires a CDL must provide their experience operating such CMVs during the prior 10 years. The final rule also added § 383.35, *Notification of previous employment*, to the CDL standards. That section requires a prospective driver to provide, and the employer to request, at the time of application for employment the same information requested in § 391.21(b)(11) regarding a driver's experience operating a CMV that requires a CDL during the prior 10 years.

In 1997, as part of a review of the Federal Motor Carrier Safety Regulations (FMCSRs), FHWA proposed to remove the requirement in § 391.11(b) to complete and furnish an employment application as a driver qualification standard (62 FR 3855, Jan. 27, 1997). FHWA noted that the driver qualification standards in § 391.11 “are designed to protect the safety of the motoring public by not permitting a person to drive a CMV who lacks the essential abilities to perform his/her duties safely” (62 FR 3857). FHWA stated, however, that completing and furnishing an employment application were not driver qualification standards, but rather actions that enable motor carriers to evaluate the competence of applicants for CMV driver positions. FHWA stated further that the failure of a CMV driver to complete and furnish an application to his or her employing motor carrier should not result in the CMV driver being unqualified to drive. The proposal to remove an employment application as a driver qualification standard in § 391.11(b) was not intended to affect the responsibility of CMV drivers to complete and furnish the motor carriers that employ them with employment applications containing certain information as required by § 391.21 (see 62 FR 3858).

In its comments to the 1997 proposal, the American Trucking Associations, Inc. (ATA) opposed removing the requirement in § 391.11(b) that a CMV driver furnish the employing motor carrier with an employment application. It stated that completion of an application for employment is fundamental to the process of selecting safe CMV drivers and was published as a trucking industry safety standard in 1939, 12 years before it was incorporated into the FMCSRs. ATA believed the deletion of the driver

qualification standard would prevent motor carriers from gathering information to determine applicants' qualifications in accordance with § 391.21 (63 FR 33260, June 18, 1998).

FHWA reasoned in the June 18, 1998, final rule that a “driver's application for employment is not a ‘qualification’ *per se*. The revised heading of § 391.11 as ‘General qualifications’ clarifie[d] the intent to include performance-oriented qualifications” (63 FR 33260). FHWA considered an application for employment simply a presentation of a recordkeeping document, and removed the requirement for an employment application as a qualification standard from § 391.11(b) as proposed. FHWA noted specifically that it was not revising or removing § 391.21 (63 FR 33260).

In 2004, FMCSA amended § 391.21 in response to section 114 of the Hazardous Materials Transportation Authorization Act of 1994 (Pub. L. 103–311, 108 Stat. 1673, 1677, Aug. 26, 1994). Section 114 directed the Secretary to amend § 391.23, *Investigations and inquiries*, to specify the minimum safety information to be investigated from previous employers as part of performing the required safety background investigations on driver applicants. Section 114 requires a motor carrier, at minimum, to investigate a driver's accident record and alcohol and controlled substances history from all employers the driver worked for within the previous 3 years.

The March 30, 2004, Safety Performance History of New Drivers final rule amended § 391.21(b)(10) (69 FR 16719). Paragraph (b)(10) required that a prospective driver must include on the employment application a list of the names and addresses of the applicant's employers during the 3 years preceding the date the application was submitted, the dates employed, and the reason for leaving each employer. Language was added to require information regarding whether the applicant was subject to the FMCSRs while employed by each previous employer, and whether the job was designated as a safety sensitive function in any DOT regulated mode subject to alcohol and controlled substances testing requirements.

In the same rulemaking, FMCSA also amended § 391.21(d), which provided that, before an application was submitted, the motor carrier must inform the applicant that the information he or she provides in accordance with paragraph (b)(10) may be used, and the applicant's previous employers will be contacted, for the purpose of investigating the applicant's

safety performance history information as required by § 391.23. Language was added to require the prospective employer to notify the driver in writing of his or her due process rights as specified in § 391.23(i) regarding information received as a result of the investigations.

IV. The Need for Regulatory Action

On October 2, 2017, DOT published a Notification of Regulatory Review and stated that it was reviewing its “existing regulations and other agency actions to evaluate their continued necessity, determine whether they are crafted effectively to solve current problems, and evaluate whether they potentially burden the development or use of domestically produced energy resources” (82 FR 45750). As part of these reviews, DOT sought public comment on existing rules that are good candidates for repeal, replacement, suspension, or modification. In response, ATA identified a number of motor carrier operational regulations it believed needed reform or elimination.³

With respect to § 391.21, ATA recommended that paragraph (b)(11) be eliminated. ATA's stated rationale was that, during the hiring process, CDL drivers are required to include 10 years of employment history on their applications. Motor carriers, however, are only required to verify license, violation, accident, and drug testing information from the applicant's previous employers going back 3 years because the information is often not retrievable beyond 3 years. ATA recommended that motor carriers that wish to verify employment status beyond the required 3 years should be allowed to do so, but “given the dearth of information available and the inefficiency of gathering it, this should not be required” (see page 12 of ATA's December 1, 2017, comment, which is available in the docket for this ANPRM).

The requirement that drivers provide their employment history operating a CMV requiring a CDL during the prior 10 years when applying to operate such a CMV is statutorily mandated; therefore, FMCSA may not eliminate that requirement. The statutory requirement to provide 10 years of employment history is implemented through § 383.35 and, as a result, § 391.21(b)(11) may not be necessary to comply with the statutory mandate. FMCSA requests public comment on the extent to which the information required in § 391.21(b)(11) may be necessary, obtainable, or burdensome. Additionally, FMCSA seeks comment

³ See Docket DOT-OST-2017-0069, Item 2758.

on available alternatives to an employment application that could provide a driver's employment history operating a CMV requiring a CDL in the past 10 years consistent with the prevailing statutory mandate.

Although ATA's specific recommendation requires Congressional action to effectuate, the suggestion led FMCSA to review § 391.21 and evaluate whether the requirement for drivers to complete an employment application continues to be necessary and effectively solves a current problem. As noted above, few substantive changes have been made to § 391.21 since it was adopted in 1970.

Section 391.21 provides that an individual may not drive a CMV unless he or she has completed and furnished the motor carrier that employs him or her with an application for employment that includes certain information prescribed by FMCSA. FMCSA does not require that a specific form or format be used for the application. Rather, the motor carrier is to provide the application form to the driver. FMCSA requires, however, that the application contain the following information:

1. The name and address of the employing motor carrier;
2. The applicant's name, address, date of birth, and social security number;
3. The addresses at which the applicant has resided during the 3 years preceding the date on which the application is submitted;
4. The date on which the application is submitted;
5. The issuing State, number, and expiration date of each unexpired CMV operator's license or permit that has been issued to the applicant;
6. The nature and extent of the applicant's experience in the operation of motor vehicles, including the type of equipment that he or she has operated;
7. A list of all motor vehicle accidents in which the applicant was involved during the 3 years preceding the date the application is submitted, specifying the date and nature of each accident and any fatalities or personal injuries it caused;
8. A list of all violations of motor vehicle laws or ordinances (other than violations involving only parking) of which the applicant was convicted or forfeited bond or collateral during the 3 years preceding the date the application is submitted;
9. A statement setting forth in detail the facts and circumstances of any denial, revocation, or suspension of any license, permit, or privilege to operate a motor vehicle that has been issued to the applicant, or a statement that no

such denial, revocation, or suspension has occurred;

10. A list of the names and addresses of the applicant's employers during the 3 years preceding the date the application is submitted, the dates he or she was employed by that employer, the reason for leaving the employ of that employer, whether the applicant was subject to the FMCSRs while employed by that previous employer, and whether the job was designated as a safety sensitive function in any DOT regulated mode subject to alcohol and controlled substances testing requirements as required by 49 CFR part 40;

11. For those drivers applying to operate a CMV as defined by part 383, a list of the names and addresses of the applicant's employers during the 7-year period preceding the 3 years contained in paragraph 10 for which the applicant was an operator of a CMV, together with the dates of employment and the reasons for leaving such employment; and

12. A certification and signature line. Before the application is submitted, the motor carrier must inform the applicant how the employment information covering the past 3 years will be used. Additionally, the employer must notify the driver in writing of certain due process rights regarding the information received as the result of the inquiries to the prior employers.

FMCSA recognizes that the use of paper documents in business is becoming obsolete and that many businesses and individuals can achieve greater efficiencies using electronic methods. In recent years, FMCSA has received a number of requests from motor carriers and other interested parties asking permission to use electronic methods to comply with various Agency regulations that require motor carriers and individuals to generate, sign, or store documents. On April 16, 2018, FMCSA issued a final rule amending its regulations to allow the use of electronic records and signatures to satisfy FMCSA's regulatory requirements (73 FR 16210).

The requirement that a driver complete an employment application and provide the information specified by FMCSA may limit flexibility for prospective drivers and motor carriers and be overly prescriptive. It is not typical for the Federal government to require employers in regulated industries to have their prospective employees complete employment applications and provide information specified by the government. Even within other DOT regulated industries, agencies, such as the Federal Aviation

Administration and Federal Railroad Administration, do not impose a requirement to have prospective employees complete an employment application. Additionally, the information required by § 391.21 might be redundant of certain regulatory requirements (e.g., §§ 383.35, 383.37, 391.11, and 391.23), and thus may be unnecessary or could be obtained more efficiently from alternative sources. Accordingly, the best approach may be to leave it to the prospective drivers and motor carriers to determine the most efficient manner and process for them to fulfill their required notification and investigation duties.

The Agency already concluded in 1998 that the act of completing and providing an application for employment is merely the presentation of a recordkeeping document and does not determine whether a driver is qualified to operate a CMV. Moreover, this recordkeeping requirement imposes significant compliance burdens on the industry.

Because FMCSA requires that certain information be provided as part of the employment application, the requirement that a prospective driver complete and provide an employment application to a motor carrier constitutes an information collection subject to the Paperwork Reduction Act of 1995 (PRA). The PRA requires Federal agencies to minimize the burden on the public resulting from their information collections, and to maximize the practical utility of the information collected. OMB oversees agency information collection activities under the PRA. Before an agency undertakes a collection of information, OMB must review and approve the burden imposed on the public by such an information collection.

On January 6, 2017, OMB approved FMCSA's request to renew the information collection titled "Driver Qualification Files," OMB number 2126-0004, which expires January 31, 2020. FMCSA estimated 4.8 million hours as the annual recordkeeping burden on CMV operators and motor carriers to comply with most of § 391.21, except § 391.21(b)(11). The full methodology FMCSA used to estimate the burden hours is described in the Driver Qualification Files Supporting Statement posted on *Reginfo.gov* on July 15, 2016,⁴ which is also available in the docket for this ANPRM.

⁴ See https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201607-2126-001 under "Supporting Statement A" (Accessed February 20, 2019).

The 2017–2020 Driver Qualification Files information collection annual burden estimate was based on:

1. A 63 percent turnover rate among interstate and intrastate CMV drivers;
2. 18 million employment applications per year submitted to motor carriers, which is the product of an estimated 3.6 million job openings per year and 5 applications received by motor carriers for each job opening;
3. 15 minutes for a driver to complete an application, which includes obtaining a certificate of past traffic violations; and
4. 1 minute for the motor carrier to handle the application.

The Agency also assumed that some of the regulatory requirements in § 391.21 would be employed by any hiring entity, including hiring motor carriers, even if the FMCSRs did not exist. For instance, employers must ask for the driver's name, address, date of birth, and social security number, as well as the issuing State, number, and expiration date of the driver's license to operate a CMV. The Agency determined that employers would ask the nature and extent of the driver's experience in the operation of CMVs even in the absence of § 391.21. The Agency considered such elements of the application process, whether required of applicants or hiring motor carriers, to be exempt from PRA estimates under the "usual and customary" practices exception (5 CFR 1320.3(b)(2)).

The Agency intends to use the methodology described in the 2016 Supporting Statement to estimate the burden hours drivers and motor carriers would no longer incur if § 391.21 is changed or eliminated; however, more current data would be used in the estimate. The Agency requests public comment on the efficacy of its assumptions and methodology, as posited in Section V.

On October 31, 2018, OMB received FMCSA's request to renew the information collection titled "Commercial Driver Licensing and Testing Standards," OMB number 2126–0011, which was renewed and now expires December 31, 2021. This information collection includes the burden to comply with the requirement in § 391.21(b)(11) that drivers, who are applying to operate a CMV that requires a CDL, report their experience operating such CMVs in the previous 10 years.

Although the Agency is seeking comment on whether to revise or eliminate § 391.21 and its requirement for an employment application with specific information, FMCSA emphasizes that it is not seeking comment on whether to eliminate the underlying notification and investigation requirements associated with the employment process that are required by parts 383 and 391. Because the underlying notification and investigation requirements are beyond the scope of this rulemaking, some of the burden for complying with them that was previously accounted for in the Driver Qualification Files information collection for § 391.21 might be accounted for in other information collections.

V. Questions

The Agency seeks comments and data from the public in response to this ANPRM. FMCSA requests that commenters address their comments specifically to the questions below, and that commenters number their comments to correspond to each question.

1. How would the elimination of 49 CFR 391.21, which includes the requirement to have prospective drivers complete an employment application, impact a motor carrier's ability to hire safe drivers?
2. If the requirement in 49 CFR 391.21 for an employment application is not eliminated in its entirety, what elements should be retained to determine the safety performance history of the driver?
3. In the ordinary course of business, would a motor carrier require a prospective driver to prepare an employment application? If so, what (if any) information currently required by § 391.21 would a motor carrier not require a prospective driver to include on the employment application?
4. Is there information required by § 391.21 that a motor carrier or safety official could reasonably find in the motor carrier's personnel or other files, on government databases, or from other sources that would make the employment application duplicative of that information? If so, what is the information and what are the sources?
5. Knowing there are notification and investigation requirements that would not be removed by changing or eliminating the requirement for an employment application, for example,

§§ 383.35, 391.23, and 391.53, how would an employer and driver demonstrate compliance with each requirement in the absence of an employment application for both CDL and non-CDL CMV drivers?

6. Is the requirement in § 391.21(b)(11) that drivers provide their employment history operating a CMV that requires a CDL during the prior 10 years when applying to operate such a CMV necessary, obtainable, or burdensome?

7. Are there less burdensome alternatives to an employment application that could provide the necessary 10 years of driver employment history operating a CMV that requires a CDL?

8. Are there alternative methodologies to the 2016 Supporting Statement's methodology referenced above that would provide a superior estimate of the number of job openings and employment applications submitted to motor carriers?

9. Is the assumption used in the 2016 Supporting Statement that a job opening will result in a motor carrier receiving five employment applications on average reasonable? If not, what would be a better estimate and why? Please provide data if possible.

10. The 2016 Supporting Statement describes the data sources and methodology on page 5 used to estimate the turnover rate for CMV operators.⁵ Do they result in a reasonable estimate of the 63 percent turnover rate?

11. Are there any specific impacts of the proposed changes on small motor carriers that the Agency should consider?

Issued under the authority of delegation in 49 CFR 1.87.

Raymond P. Martinez,
Administrator.

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⁵ The 63 percent turnover rate is a weighted average of turnover rates by for-hire industry sectors (truckload—94 percent, over the road—94 percent, and less than truckload carriers—13 percent). The data were obtained from the Journal of Commerce, *US truck driver turnover rate rises, pressuring shipping costs*, February 2, 2015, http://www.joc.com/trucking-logistics/labor/us-truck-driver-turnover-rate-rises-pressuring-shipment-costs_20150202.html. The Agency estimated the proportion of drivers by industry sector at 20 percent for truckload, 40 percent for over the road, and 40 percent for less than truckload.