

and comment procedures are “impracticable, unnecessary or contrary to the public interest.”

The catastrophic effect of the attacks on the World Trade Center and Pentagon on September 11, 2001, revealed the vulnerability of the nation’s transportation system to terrorism. National security and intelligence officials have warned that future terrorist attacks are likely. The number of commercial vehicles that carry hazardous materials is far greater than the number of aircraft that might be hijacked by terrorists. A vehicle carrying hazardous materials, if used as a weapon in a terrorist attack, could cause significant loss of life and property damage.

Section 1012 of the USA PATRIOT Act is a measure to increase the security of highway transportation of hazardous materials. The DOT began developing this rule as soon as the USA PATRIOT Act was enacted. Because of the likelihood of future terrorist attacks, and the potential for significant casualties and property damage in the event of a terrorist attack involving a vehicle carrying hazardous materials, FMCSA and TSA believe that immediate action is warranted, and TSA finds that notice and public comment procedures under 5 U.S.C. 553(b) are impracticable and contrary to the public interest. The delays inherent in such a process could make the difference between preventing and overlooking a terrorist threat.

However, TSA is not making the procedures for fingerprint checks that will eventually be included in this rule effective upon publication because the development of those procedures will

require additional consultation with the States. Delaying the full implementation of the security threat assessment process, including submission of fingerprints, for 180 days will give the States, the DOJ, and TSA a sufficient amount of time to develop the infrastructure and procedures to complete the fingerprint requirements that will be a part of this rule. By publishing this rule now and making it effective immediately, however, TSA can begin checking individuals against terrorist watchlists and other databases using names and other databases, including the FBI’s criminal history database, using names and other information, to begin to determine if any individuals pose a security threat. In addition, the rule places a self-disclosure requirement on individuals who hold hazardous materials endorsements.

TSA is requesting public comments on the rule. The agency will consider all comments received on or before the closing date for comments. Late-filed comments will be considered to the extent practicable. If changes to the rule are necessary to address transportation security more effectively, or in a less burdensome but equally effective manner, TSA will not hesitate to make such changes.

Regulatory Evaluation

Executive Order 12866, “Regulatory Planning and Review” (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is “significant” and therefore subject to Office of Management and

Budget (OMB) review and to the requirements of the Executive Order.

TSA has determined that this action is a significant regulatory action within the meaning of Executive Order 12866 because there is significant public interest in security issues since the events of September 11, 2001. This interim final rule responds to the background check requirements of section 1012 of the USA PATRIOT Act by establishing the criteria and procedures TSA will follow in determining whether an individual applying for, transferring, or renewing a hazardous materials (HM) endorsement for a commercial drivers license (CDL) poses a security risk warranting denial of the endorsement.

TSA has performed a preliminary analysis of the expected costs of this interim final rule for a 10-year period, from 2003 through 2012. Figures may change in the full Regulatory Evaluation that will be completed in the near future. As required by the Office of Management and Budget (OMB), the present value of this cost stream is calculated using a discount factor of 7 percent. All costs in this analysis are expressed in 2002 dollars. TSA requests comments on all methodologies, factors or numbers contained in this analysis, and will consider responses in the final rule analysis.

Increment Rule Cost

Table 1 summarizes the estimated incremental compliance costs associated with this rule. It is estimated that this rule will cost \$633 million (present value, \$470 million) over 10 years.

TABLE 1
(million)

	Nominal value	Present value
Population	8.7
Direct Costs:		
Fingerprint Capture	\$434	\$320
Government Impact	\$55	\$43
State Impact	\$8	\$8
Total Direct Costs	\$490	\$364
Opportunity Costs:		
Lost Time	\$143	\$106
Total Rule Cost	\$633	\$470

Background Check Population

The primary incremental cost component of this rule is the cost associated with the fingerprinting process. Under this rule, 180 days after the effective date of the rule applicants must have successfully completed a fingerprint-based criminal history

records check (CHRC) prior to receiving a new, renewed or transferred hazardous materials endorsement. Based on figures from the Federal Motor Carrier Safety Administration (FMCSA), it is estimated that there are currently 3.5 million drivers holding a CDL with a hazardous materials endorsement. A

pending rule from the FMCSA will require States to require drivers to renew their hazardous materials endorsement every five years. Therefore, it is assumed that one-fifth of that number will apply for renewal each year.