

safety due to reductions in accidental and intentional HM releases. Secondary benefits were also considered. Among the secondary benefits is the reduction in incident delays, evacuations, product losses, property damages, environmental damages and cleanups. For accidental releases, incident cost estimates for specific hazard classes from a prior FMCSA risk study were combined with estimates of the number of crashes expected to occur annually in each hazard class among the permitted shipments. FMCSA assumes that the safety elements of the proposed permitting program will reduce the number of HM incidents among permitted shipments by 25 percent. Therefore, the expected annual benefit from reducing accidental HM releases is \$2,025,000.

The potential benefits of reducing intentional releases due to increased security measures are consistent with those analyzed in the NPRM for HM-232. The security measures under the HM-232 NPRM are consistent with, and applicable to, the proposed permitting program. Therefore, a separate analysis of the benefits of security was not conducted.

It is difficult to accurately ascertain the direct benefit of this proposal insofar as its impact upon reducing the malicious use of hazardous materials in transportation. To begin with, the actual costs that an averted terrorist attack of this nature would have imposed, and its probability of success with and without these measures, is unknowable. Terrorism is a fairly new phenomenon, and we have little notion of a likelihood function under the current conditions for HM transportation or under this proposal regarding hazardous materials permitting procedures. Similarly, we have little idea of the expected cost of a terrorist attack, given that one occurs. So although the theory for calculating the benefit is straightforward and simple, finding actual data for a future attack is not possible.

For purposes of this analysis and given the lack of data in this area, FMCSA has assigned 1/1000 as the probability that this proposal would be decisive in stopping an incident involving the malicious use of hazardous materials. FMCSA interprets this to mean that this proposal would result, over the next 1,000 years, in one additional year that is free from a malicious hazardous materials incident than would have occurred without these procedures. Interpreted differently, FMCSA estimates that this proposal would completely foil one of the next 1,000 attempted malicious hazardous materials incidents. FMCSA interprets

this to mean that this proposal would make each attempted malicious hazardous materials incident less likely to inflict its intended damage. Alternately, one could interpret this to mean that these procedures will completely foil one of the next 1,000 attempted malicious hazardous materials incidents.

Next, FMCSA derived a scaled estimate of \$25 billion as the cost of a malicious hazardous materials incident (This figure is based upon the lowest estimate reported of the most costly terrorist attack ever—the September 11th attacks and the costs of other recent terrorist attacks occurring in the past ten years. Please refer to the regulatory evaluation for this rulemaking, Hazardous Materials Carrier Permitting Program; Benefit-Cost Analysis of Permitting Options, for a more detailed discussion of how the scaled estimate was derived).

Finally, we multiplied the scaled estimate of the cost of a malicious hazardous materials incident by the probability estimate as follows: \$25 billion  $\times$  .001 = \$25 million. Therefore, FMCSA estimates that this proposal would result in a direct benefit of \$25 million each year for the ten-year planning horizon, insofar as it relates to a malicious hazardous materials incident. When calculating total benefits, these should be discounted using a standard 7% rate. We limit the analysis to ten years to conform to FMCSA analytical standards. (FMCSA uses a 10-year time frame for all its regulatory analyses to allow comparability from one rule to another.) There is no reason to believe that the benefits would stop unless the policy underlying this proposed rulemaking was to be changed.

Therefore, the combined annual direct benefit of this proposal would be \$27 million (\$2 million (rounded) + \$25 million). FMCSA invites comments from the public to assess any potential costs or burdens that may be associated with this proposal.

#### *Executive Order 13175 (Tribal Consultation)*

The FMCSA has analyzed this action under Executive Order 13175, dated November 6, 2000, and believes that the proposed rule would not have substantial direct effects on one or more Indian tribes; would not impose substantial direct compliance costs on Indian tribal governments; and would not preempt tribal law. Therefore, a tribal summary impact statement is not required.

#### *Executive Order 13211 (Energy Supply, Distribution, or Use)*

FMCSA has analyzed this proposed rule under Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.” FMCSA has preliminarily determined that this action would not be a significant energy action under that Executive Order because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects under Executive Order 13211 is not required.

#### *Unfunded Mandates Reform Act of 1995*

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; 2 U.S.C. 1532, *et seq.*) requires each agency to assess the effects of its regulatory actions on State, local, tribal governments, and the private sector. Any agency promulgating a final rule that is likely to result in a Federal mandate requiring expenditures by a State, local, or tribal government or by the private sector of \$100 million or more in any one year must prepare a written statement incorporating various assessments, estimates, and descriptions that are delineated in the Act. The FMCSA has determined that the changes proposed in this rulemaking would not have an impact of \$100 million or more in any one year.

#### *Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires each agency to analyze proposed regulations and assess their impact on small businesses and other small entities to determine whether the proposed rule is expected to have a significant impact on a substantial number of small entities. Based on the assessment in the accompanying regulatory evaluation, and the absence of contradictory information submitted to the docket during the public comment period, FMCSA certifies that the proposals in this rulemaking are not applicable to a substantial number of small businesses.

The definition of “small businesses” has the same meaning as under the Small Business Act, established by the Small Business Administration (SBA), Office of Size Standards and codified in 13 CFR 121.201. The FMCSA evaluated the effects of this proposed rule on small business entities, including as applicable small businesses, small non-profit organizations, and small governmental entities with populations under 50,000. Many of these small business entities operate as motor carriers of property in interstate or intrastate commerce.