

government agencies as may be appropriate and will forward the list of acceptable carriers, offerors, drivers, and train crew members to the United States Customs Service. TSA will not include on the list of known carriers, offerors, drivers, or train crew members any whose background check indicates that they are not truly known (such as they are not truly authorized to conduct business in Canada) or may present a security risk.

The United States Customs Service will conduct a number of checks at the border. It will check the driver's commercial driver's license, as well as shipping papers and other required documentation. The Customs Service will determine whether the carrier, offeror, driver, and train crew member are on the list of known persons. If a carrier attempts to enter the United States without having complied with this section, the Customs Service will deny entry of the explosives and take other appropriate action. The Customs Service may allow the driver or train crew member to return to Canada, hold the shipment until the carrier has corrected the problem (such as by providing a driver or train crew member who is on the list), or take whatever action the Customs Service deems appropriate under other laws that may apply.

If a person violates TSA regulations, including those adopted here, TSA may take civil enforcement action if appropriate, including seeking a civil penalty of up to \$10,000 for each violation. *See* 49 U.S.C. 46301(a). TSA's enforcement procedures are in 49 CFR part 1503. In appropriate cases violations will be referred for criminal investigation and prosecution.

It should be noted that some U.S. citizens and lawful permanent resident aliens have Canadian commercial driver's licenses or are train crew members on operations subject to this rulemaking. Because such persons are not required to comply with this rule, they may not appear on the list of known drivers or train crew members provided by Transport Canada. To show to the Customs Service that they are eligible to serve as drivers, they may provide a valid U.S. passport or other U.S. Federal or State identification acceptable to the Customs Service.

Once a carrier, offeror, or driver is on the known list, they do not need to be submit their names again under this rule. Transport Canada and TSA will conduct additional checks on these persons as appropriate and will remove names from the list as necessary.

#### *Section 1572.11 Transportation of Explosives From Canada to the United States via Railroad Carrier*

New section 1572.11 covers transportation of explosives from Canada to the United States via railroad carrier. It closely parallels § 1572.9, with changes to reflect that crews rather than individual drivers operate trains and that the Customs Service sometimes directs trains to inspection points that are not precisely at the border.

#### *Transportation by Maritime and Aviation*

This rule does not cover transportation by maritime or aviation. The Coast Guard has extensive regulations relating to the security of transportation of explosives by aliens designed to discover and prevent entry to ports and places in the United States of those who present a threat to the United States on ships carrying explosives. *See* 33 CFR 160.T208 and 33 CFR part 6, and 33 CFR 160.111(a). DOT has determined that there is no need at this time to add further requirements. Similarly, TSA has extensive security requirements covering the security of flight crew and cargo on both foreign and U.S. air carriers. *See* 49 CFR parts 1544 and 1546. These requirements include criminal history checks and checks against other Federal databases of the flight crewmembers to ensure that they do not pose a security threat. DOT has determined that there is no need to add further requirements at this time. DOT has assessed the security risk posed by aliens transporting explosives by water and air and has determined that existing regulations are sufficient to mitigate the risk. Accordingly, these regulations exempt aliens transporting explosives in the United States by water and by air from liability for transportation offenses under 18 U.S.C. 845(a)(1).

#### **Good Cause for Immediate Adoption**

This action is being taken without providing the opportunity for notice and comment, and it provides for immediate effectiveness upon adoption. Under the Administrative Procedure Act (APA) an agency may forgo notice and comment rulemaking when "the agency for good cause finds \* \* \* that notice and public procedures thereon are impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b). TSA finds good cause under 5 U.S.C. 553 that notice and comment are impracticable and contrary to the public interest. This rule is designed to address an unanticipated impact of the Safe Explosives Act on the routine

transportation of explosives in commerce across the U.S.-Canadian border. This rule has been developed after consultation with representatives of the Canadian government and the trucking and railroad industry.

Further, TSA has determined that this action is necessary to minimize security threats and potential security vulnerabilities. TSA and other federal security organizations have been concerned about the potential use of explosives to carry out terrorist acts in the United States since September 11, 2001. This rule provides additional assurance that explosives being carried into this country will be carried by authorized persons.

Further, the Under Secretary finds that good cause exists under 5 U.S.C. 553(d) for making this final rule effective immediately upon publication. Without an immediate effective date, there is a potential for a serious disruption of trans-border transportation.

#### **Economic Analyses**

Changes to Federal regulations must undergo several economic analyses. First, Executive Order (E.O.) 12866 directs each Federal agency to propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation).

#### *Executive Order 12866 and DOT Regulatory Policies and Procedures*

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. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or