

fingerprint collection or begin it. As indicated in comments to the IFR, most States have already devoted considerable time to determining how drivers could best be fingerprinted in light of each State's current hazardous material endorsement and licensing program. Submitting a fingerprint collection plan to TSA that reflects this thinking by April 1 should be possible. On the other hand, some States will be prepared to begin fingerprint collection within three months and so need not prepare or submit a new plan to TSA. Therefore, TSA believes that this amended IFR will not impose significant time constraints on the States.

By making the rule effective as of the date of publication, however, TSA can begin name checks of individuals against international and terrorist-related databases as soon as TSA has accurate driver data and is able to adjudicate the results of the checks.

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 amended interim final rule responds to the background check requirements of section 1012 of the USA PATRIOT Act by establishing the criteria that will be used in determining whether an individual applying for, transferring, or renewing a HME poses a security risk warranting denial of the endorsement.

TSA has performed a preliminary analysis of the expected costs of this interim final rule, but the figures may change when a full Regulatory Evaluation is completed in the proposed rulemaking that will follow publication of this document. TSA will prepare a full regulatory evaluation based on comments received from the States, the trucking industry, and pertinent nongovernmental organizations, which will improve the reliability of the cost and benefit estimates.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980, as amended, (RFA) was enacted by Congress to ensure that small entities (small businesses, small not-for-profit

organizations, and small governmental jurisdictions) are not unnecessarily or disproportionately burdened by Federal regulations. The RFA requires agencies to review rules to determine if they have "a significant economic impact on a substantial number of small entities." TSA has determined that the amended interim final rule will not have a significant economic impact on a substantial number of small entities.

Current industry practice is for drivers to obtain their CDL certification as a condition of employment. Individuals are required to have a current CDL with appropriate endorsements to be eligible for employment. This is an employment cost typically borne by the individual employee. This amended IFR will affect the States, but they are not considered "small governmental jurisdictions", such as small towns or boroughs. Therefore, the burden on small business entities from this rule is expected to be *de minimis*.

TSA conducted the required review of this rule accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b) TSA certifies that this rule will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), a Federal agency must obtain approval from the Office of Management and Budget (OMB) for each collection of information it conducts, sponsors, or requires through regulations. This amended interim final rule contains information collection activities subject to the PRA. Accordingly, the following information requirements are being submitted to OMB for its review.

Title: Security Threat Assessment for Individuals Applying for a Hazardous Materials Endorsement for a Commercial Driver's License.

Summary: TSA is establishing standards for security threat assessments of individuals applying for, renewing, or transferring a hazardous materials endorsement (HME) for a commercial driver's license (CDL), which in addition to the information already collected by the States for the purpose of HME applications will now include fingerprints as well as the disclosure of the applicant's citizenship, mental health defects, and criminal history. States must also submit a plan to TSA outlining the fingerprint process they intend to implement.

Use of: Truck drivers must complete an application and provide fingerprints for the purpose of conducting a background check. The States and local

agencies will most likely collect this information when individuals apply for, renew or transfer an HME. This information will be used to conduct background checks to ensure that these individuals do not have a disqualifying criminal offense on their record. In addition, the States' fingerprint collection plans will be used by TSA to ensure regulatory compliance, uniformity of standards, and adequacy of process.

Respondents (including number of): The likely respondents to this proposed information requirement are individuals applying for, renewing or transferring an HME and each of the 50 States, for a pool of approximately 3.5 million respondents.

Frequency: Estimates indicate that approximately 3.5 million people have an HME and this number is expected to grow by approximately 2.8% people per year for a ten-year total of approximately 4.5 million people (450,000 annualized). The number of fingerprint applications to be collected over a ten-year period is approximately 8.7 million (870,000 annualized). This number includes new applicants and renewals, which occur at least once every five years. States are required to submit their fingerprinting plans upon their completion or amendment.

Annual Burden Estimate: Fingerprint costs consist of a processing fee, processing time, and material. The average cost for the fingerprint process was estimated at approximately \$50 per set when the original IFR was published. However, empirical data and further research indicate that this estimate is low for the population covered by this rule. We also estimate that it would take an average of thirty minutes to complete an FBI fingerprint card and forward it to the FBI for further processing. Based on this information, TSA originally estimated that the background check process would involve 4.4 million hours over the ten-year (436,000 annualized) and would cost \$452 million over the ten-year period (\$45.2 million annualized). However, TSA now believes that these estimates may be low and requests comment from all affected parties concerning cost assumptions that can be made in preparing this analysis.

The agency is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;