

Sequence of Optional Shipping Paper Description in the NPRM

The December 3, 2002 NPRM contains an error in § 172.203(b), pertaining to the proposed optional sequence of information for the basic description on shipping papers. We intended that the proposed description be identical to that specified in the UN Recommendations, *ie.*, identification (ID) number, proper shipping name, hazard class, subsidiary hazard, and packing group. A correct example would be "UN2744, Cyclobutyl chloroformate, 6.1, (8.3), PG II." The proposed rule incorrectly specified the order of sequence as ID number, hazard class, subsidiary hazard, proper shipping name, and packing group.

Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. The rule is not considered a significant rule under the Regulatory Policies and Procedures of the Department of Transportation [44 FR 11034]. Benefits resulting from the adoption of the amendments in this final rule include enhanced transportation safety resulting from the consistency of domestic and international hazard communications and continued access to foreign markets by domestic shippers of hazardous materials. This final rule applies to offerors and carriers of hazardous materials, such as chemical manufacturers, chemical users and suppliers, packaging manufacturers, distributors and training companies.

Adoption of the amendments in this final rule should result in minimal cost savings by easing the regulatory compliance burden for shippers engaged in domestic and international commerce by aircraft and vessel. Although preparation of a regulatory impact analysis or regulatory evaluation is not warranted because these amendments do not impose mandatory additional requirements, a preliminary regulatory evaluation addressing the December 3, 2002 NPRM is available for review in Docket Number RSPA-2002-13658.

B. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This final rule preempts State, local and Indian tribe requirements but does not propose any regulation that has substantial direct effects on the States, the relationship

between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazardous material transportation law, 49 U.S.C. 5101-5127, contains an express preemption provision (49 U.S.C. 5125(b)) that preempts State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

- (1) The designation, description, and classification of hazardous materials;
- (2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;
- (3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;
- (4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials; or
- (5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule addresses covered subject items (1), (2), (3), and (5), above, and would preempt State, local, and Indian tribe requirements not meeting the "substantively the same" standard. This final rule is necessary to incorporate changes adopted in international standards, effective January 1, 2003. Without adoption of the amendments in this final rule, U.S. companies, including numerous small entities competing in foreign markets, would be at an economic disadvantage. These companies would be forced to comply with a dual system of regulations. The changes in this rulemaking are intended to avoid this result.

Federal hazardous materials transportation law provides at section 5125(b)(2) that, if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. The effective date of Federal preemption will be April 8, 2003.

C. Executive Order 13175

This final rule was analyzed in accordance with the principles and

criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this rule does not have tribal implications, does not impose substantial direct compliance costs, and is required by statute, the funding and consultation requirements of Executive Order 13175 do not apply.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities, unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. This rule will facilitate the transportation of hazardous materials in international commerce by providing consistency with, and authorizing the use of, international standards contained in the 2003-2004 ICAO Technical Instructions and Amendment 31 to the IMDG Code. This final rule applies to offerors and carriers of hazardous materials, some of whom are small entities such as chemical users and suppliers. The total net increase in costs to small businesses in implementing this rulemaking is minimal. We believe that any costs associated with adoption of these amendments will be outweighed by the benefits. This final rule will facilitate the transportation of hazardous materials in international commerce by providing consistency with international requirements. By adopting the amendments in this final rule, U.S. companies, including numerous small entities competing in foreign markets, will have continued access to foreign markets and will not be at an economic disadvantage by being forced to comply with a dual system of regulations. Consistency with international requirements also will result in enhanced safety. Therefore, I certify that this final rule will not have a significant economic impact on a substantial number of small entities.

E. Paperwork Reduction Act

There are no information collection requirements in this final rule.

F. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.