

of chemicals and substances present in our society so that they are not used for nefarious purposes. We believe many, if not most, companies are taking or have already taken steps to develop systematic security plans and security awareness training. These requirements will help ensure a consistent approach in the area while permitting flexibilities that are important in keeping costs at reasonable levels.

In the end, when security measures are evaluated, an element of judgment is required to determine whether the costs of the measures are justified by the benefits that will accrue. We believe that the relatively small costs imposed on individual companies by the new security requirements in this final rule are more than offset by the potential benefits if there is a finite chance that these measures might avert a successful attack. The new requirements are not onerous. They are prudent, common-sense security measures that are in line with public expectations about the need to take action to protect hazardous materials shipments from terrorist acts.

#### B. 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. A complete analysis of the small business impacts of this final rule is available in the rulemaking docket. I hereby certify that, while the requirements in this final rule apply to a substantial number of small entities, there will not be a significant economic impact on those small entities.

#### C. 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 impose any regulation with 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.

In the NPRM, we invited comments on whether, and to what extent, State or local governments or Indian tribes should be permitted to impose similar additional requirements to those proposed in the NPRM. Commenters who address this issue unanimously agree that State, local, or tribal

governments should not be permitted to impose hazardous materials transportation security requirements that differ from or are in addition to those adopted in this final rule. We agree. Therefore, in the absence of a waiver of preemption by the Secretary under 49 U.S.C. 5125(e) or unless it is authorized by another Federal law, a hazardous materials transportation security requirement of a State, political subdivision of a State, or Indian tribe is explicitly preempted if: (1) Complying with a requirement of the State, political subdivision or Indian tribe and a requirement of this chapter or a regulation issued under this chapter is not possible; or (2) the requirement of the State, political subdivision, or Indian tribe, as applied or enforced, is an obstacle to accomplishing and carrying out this chapter or a regulation prescribed under this chapter.

#### D. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this final rule does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

#### E. Unfunded Mandates Reform Act of 1995

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in annual costs of \$100 million or more, in the aggregate, to any of the following: State, local, or Indian tribal governments, or the private sector. This rule is the least burdensome alternative to achieve the objective of the rule.

#### F. Paperwork Reduction Act

We submitted the information collection and recordkeeping requirements contained in this final rule to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act of 1995, section 1320.8(d). Title 5, Code of Federal Regulations requires us to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. Under the Paperwork Reduction Act, no person is required to respond to an information collection unless it has been approved by OMB and displays a valid OMB control number.

The May 2, 2002, NPRM included the following estimate for the information and recordkeeping burden resulting from the development and maintenance of security plans:

#### Hazardous Materials Security Plans

OMB No. 2137-xxxx

##### First Year Burden:

*Total Annual Number of*

*Respondents: 44,000.*

*Total Annual Responses: 44,000.*

*Total Annual Burden Hours: 880,000.*

*Total Annual Burden Cost:*

*\$26,400,000.*

##### Subsequent Year Burden:

*Total Annual Number of*

*Respondents: 44,200.*

*Total Annual Responses: 44,200.*

*Total Annual Burden Hours: 48,000.*

*Total Annual Burden Cost:*

*\$1,440,000.*

In the NPRM, we estimated that most companies would require about 20 hours to develop and implement a security plan conforming to the new regulatory requirements. This estimate was based on our understanding, confirmed by commenters to the NPRM, that many industry groups have developed guidance and model security plans for use by their members. Further, to assist persons to perform the risk management analysis required by this final rule, we designed a security template for the Risk Management Self-Evaluation Framework (RMSEF), developed to assist regulators, shippers, carriers, and emergency response personnel to examine their operations and consider how they assess and manage risk. The security template illustrates how risk management methodology can be used to identify points in the transportation process where security procedures should be enhanced within the context of an overall risk management strategy. Because of the widespread availability of tools to assist persons to develop and implement security plans, we concluded that the cost to an individual company to comply with the security plan requirement would average about \$600 per affected entity.

Commenters who address security plan costs disagree with our conclusion. For example, one commenter estimates that, "[f]or the 6000 (15% of the total registrants) large HAZMAT registrants, [we] estimate that it will take a minimum of 200 hours to develop a comprehensive security plan (estimated cost for the 6000 registrants: \$100 per hour x 200 hours = \$120 million)." (Dangerous Goods Advisory Council) Other commenters offered similar cost estimates.