

levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazardous materials 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 material; 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 item (5) above and preempts state, local, and Indian tribe requirements not meeting the “substantively the same” standard.

Federal hazardous materials transportation law provides at § 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 is 90 days from the date of publication of this final rule.

C. 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 have tribal implications, does not impose substantial direct compliance costs on Indian tribal governments, and does not preempt tribal law, the funding and consultation requirements of Executive Order 13175 do not apply and a tribal summary impact statement is not required.

D. 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 regulatory evaluation, and information generally available on the number and size of potentially affected entities, we find that:

- All small entities that engage in the manufacture, operation, testing or inspection of certain DOT specification cargo tank motor vehicles would be subject to some or all of the provisions of this final rule;
- In each instance where regulatory provisions require a new or increased cost to a regulated party, the cost is a modest \$100 or less per cargo tank; and
- Small entities will be able to take advantage of the relaxations in the final rule, resulting in a net reduction of regulatory costs.

We estimate that most of the approximately 3,700 interstate and 5,500 intrastate motor carriers that would be subject to the requirements of this rule are small businesses. There are also approximately 7,000 cargo tank inspection/testing facilities subject to the requirements that are estimated to be small businesses. We estimate that operators of existing fleets of cargo tank motor vehicles would incur costs of approximately \$75 per year for each of the approximately 5,000 affected series 307, 312, 407 and 412 cargo tank motor vehicles in corrosive material service, and \$100 every two years for thickness testing of appurtenances on the estimated 15,000 cargo tanks in that same series. In neither case is the additional cost likely to have a significant economic impact on the operator's net income or ability to remain competitive.

Although there are other provisions in this rule that would present an added cost to these small businesses, there are also safety benefits that have the potential to save money and protect the viability of small businesses by lowering the risk of a catastrophic accident. Most of the provisions of the rule are directed toward individual cargo tanks. Since small businesses operate fewer cargo tanks, most of the cost of this final rule would affect larger businesses.

The final rule includes several provisions that will provide savings to small businesses by allowing experienced Registered Inspectors and Design Certifying Engineers to continue

to perform functions for which they were previously qualified, allowing recertification of certain cargo tanks to their original specification, and relaxing requirements for leakage testing of cargo tanks in anhydrous ammonia service that are operated almost exclusively by entities that are small businesses (including small farms).

In addition, a number of other provisions of this final rule allow for a potential net reduction in regulatory costs. For example, owners of cargo tanks may re-certify their cargo tanks to the original specification. Manufacturers of MC 338 cargo tanks may take advantage of the relaxation of mounting requirements, which will save engineering and construction costs. Likewise, the revisions for bottom damage protection devices create further possible reductions in compliance costs. These and other relaxations offset the additional requirements, while maintaining current safety standards.

In consideration of the above, while the final rule applies to a substantial number of small entities, I certify that the economic impact on those small entities is not significant.

E. Paperwork Reduction Act

RSPA has a current information collection approval under OMB No. 2137–0014, Cargo Tank Specification Requirements, with 102,021 burden hours and \$4,088,350 annual costs, which includes \$1,595,000 in one-time start-up costs. This final rule identifies information collection that RSPA submitted to OMB for approval based on the requirements in the proposed rule. OMB approved the information collection on January 10, 2002. The approved information collection and recordkeeping burden is as follows:

OMB No.: 2137–0014.

Number of Respondents: 41,366.

Total Annual Responses: 132,600.

Total Annual Burden Hours: 102,021.

Total Annual Burden Cost:

\$4,088,350.

One Time Start Up Cost: \$1,595,000.

Requests for a copy of the information collection should be directed to Deborah Boothe, Office of Hazardous Materials Standards (DHM–10), Research and Special Programs Administration, Room 8102, 400 Seventh Street, SW., Washington, DC 20590–0001, Telephone (202) 366–8553.

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