

(5) Persons performing unloading functions must be trained in handling emergencies that may occur during the unloading operation.

We are also changing the outlet section reference for portable tanks from § 178.345–11 to § 178.275(d)(3). In the HM–215D final rule, we added § 178.275(d)(3) to address the requirements for equipping UN portable tanks with a thermal means of remote activation of the internal self-closing stop-valves fitted on the bottom discharge outlets. Although the two sections contain the same requirements, the addition of § 178.275(d)(3) into the HMR now makes it a more appropriate reference because it is specific to portable tank requirements.

Finally, we are revising § 177.834(o) to clarify that the requirement for a thermal means of remote activation of bottom discharge outlets applies to IM and UN portable tanks containing liquid hazardous materials of Class 3 (flammable), PG I and II, and PG III with a flash point less than 100 °F (38 °C); Division 5.1 (oxidizer), PG I and II; and Class 6.1 (poisonous/toxic), PG I and II, when the appropriate proper shipping name entry in the § 172.101 table is assigned a T Code in Column (7) authorizing a bottom outlet and a packaging authorization section (§ 173.242 or § 173.243) in Column (8C) requiring internal valves in conformance with § 178.275(d)(3). In this way, we are limiting the applicability to materials posing a risk of fire or acute health and environmental risks. This revision is consistent with the current requirements located in §§ 178.345–11 and 178.275.

Part 178

Section 178.275. We are revising paragraph (d)(3) to clarify when IM and UN portable tanks are subject to the retrofitting requirements.

IV. 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 alternative interim provisions in this final rule include providing the industry additional time to come into compliance with existing regulatory requirements

for those portable tanks intended to be unloaded in the same manner as cargo tanks. There is no requirement in the current regulations, and we are not incorporating one in this final rule, for an IM or UN portable tank to conform to the outlet requirements if it is not intended to be unloaded while it remains on a transport vehicle with the power unit attached. Because this final rule eases the regulatory compliance burden for operators of portable tanks by providing an alternative interim provision, a regulatory analysis or a regulatory evaluation is not warranted. Any adverse safety impacts that may occur from the regulatory relief provided by this amendment would be minimized by conformance with the interim provisions adopted herein.

B. Executive Order 13132

This final rule was 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 incorporate 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.

Federal hazardous material transportation law, 49 U.S.C. 5101–5127, contains an express preemption provision (49 U.S.C. 5125(b)) preempting 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; and
- (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 (2) and (5), above, and would preempt 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 will be November 26, 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 final rule does not have tribal implications and does not impose substantial direct compliance costs, 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 a rule is not expected to have a significant impact on a substantial number of small entities. This final rule applies to manufacturers, operators, lessors and users of IM and UN portable tanks, some of whom are small entities. This final rule benefits such persons by further relaxing an existing regulatory requirement for an interim period. Therefore, I certify this rule will not have a significant economic impact on a substantial number of small entities.

E. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid Office of Management and Budget (OMB) control number. This final rule does not impose any new information collection burdens. The information collection associated with information specified in § 177.834(o) of this final rule is currently required by other Federal regulations. In § 177.834(o)(2)(i) and (o)(2)(iii), the information collection requirements pertaining to fire suppression and emergency shutdown are currently required by the Department of Labor’s OSHA. Finally, in § 177.834(o)(2)(iv), the emergency response planning requirements are currently required by the Environmental Protection Agency. Based on the above