

Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034) because of significant public interest. A regulatory evaluation is available for review in the public docket for this rulemaking.

For the most part, the provisions of this final rule maintain the status quo for applicability of the HMR and, thus, neither increase nor decrease the costs of compliance with the HMR for persons who offer hazardous materials for transportation or transport hazardous materials in commerce. The only change from the status quo concerns rail tank car unloading operations. This final rule excludes consignee unloading of rail cars from regulation under the HMR, thereby reducing the costs of compliance with the HMR for rail tank car unloading facilities. In addition, this final rule expands application of current requirements for placing warning signs, setting brakes, and blocking wheels during rail tank car unloading operations to loading operations, as well. Rail facilities currently utilize these protective measures as part of their standard safe operating procedures and, thus, should incur minimal increased costs as a result of this proposal.

#### *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 law and will have substantial direct effects on the states, the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, the consultation requirements of Executive Order 13132 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(s) 1–5 above and preempts state, local, and Indian tribe requirements not meeting the "substantively the same" standard. This final rule is necessary because there appears to be confusion in the regulated community and among Federal, state, and local agencies with hazardous materials safety responsibilities concerning whether and to what extent the HMR apply to particular operations and activities related to the transportation of hazardous materials in commerce. The most obvious area of confusion was identified in the 1996 and 1999 ANPRMs issued for this docket—which loading, unloading, and storage activities are incidental to the movement of hazardous materials in commerce and therefore subject to the HMR. In addition, there is uncertainty concerning the extent to which other Federal, state, and local agencies may regulate hazardous materials safety, particularly at fixed facilities where the lines between pre-transportation, transportation, and non-transportation operations are not clearly articulated.

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 90 days from publication of a final rule in this matter in the **Federal Register**.

As required under Executive Order 13132, we consulted with state and local officials early in the process of developing a proposed regulation in this matter. Through letters dated November 2, 1999, we invited the following organizations to participate in a meeting to discuss the HM–223 rulemaking: National Governors' Association; Council of State Governments; National Conference of State Legislatures; U.S. Conference of Mayors; the National Association of Counties; the National Association of Towns and Townships; and the National League of Cities. We met with representatives of the National Governors' Association, the Council of State Governments, and the National Conference of State Legislatures on

January 20, 2000. During the meeting, we provided a brief summary of the status of the rulemaking. In addition, we explained the preemption provisions of Federal hazmat law and how this rulemaking could affect state and local government programs governing hazardous materials safety. The state and local government representatives asked several questions about time frames and procedures for the rulemaking and expressed general support for the rulemaking goals as expressed in the two ANPRMs. The state and local government representatives did not comment on the issues and options discussed in the two ANPRMs and expressed a preference to wait to submit comments until we publish a specific proposal in an NPRM. We encouraged the state and local representatives to submit written comments in advance of publication of the NPRM to assure that the rulemaking addresses their concerns. After the meeting, we sent letters to all of the invited organizations, summarizing the meeting and again encouraging them to submit written comments to the HM–223 docket in advance of publication of the NPRM. None chose to do so.

In addition, following publication of the NPRM, we wrote to the above-listed organizations to provide them with a copy of the NPRM. We encouraged the organizations to submit comments on the NPRM and invited them to meet with us to discuss the specifics of the proposals in the NPRM. None of the organizations requested a meeting nor did they submit comments.

RSPA made all written communications submitted in this proceeding by state and local officials available to the Director of the Office of Information and Regulatory Affairs, Office of Management and Budget.

#### *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, and is required by statute, the funding and consultation requirements of Executive Order 13175 do not apply. Nevertheless, through a letter dated November 2, 1999, we invited the National Congress of American Indians (NCAI) to participate in a meeting to discuss this rulemaking. The NCAI did not attend the meeting, which occurred on January 20, 2000. After the meeting, we sent a letter to the NCAI, summarizing the meeting and encouraging the