

are attributed to: (1) Expansion of reporting requirements to persons other than a carrier in possession of a hazardous material during transportation; (2) implementation of a requirement to update incident reports under certain conditions; and (3) expansion of reporting requirements to incidents involving cargo tanks where no hazardous material is released. Reductions in the total costs associated with incident reporting requirements are attributed to implementation of an electronic filing option and expansion of current exceptions to the reporting requirements. The expected reductions in total costs generally offset the anticipated cost increases; thus, the requirements of the final rule should result in only minimal increased costs of compliance.

While it is difficult to estimate the net benefit resulting from this rulemaking, we believe that the revisions to the incident reporting requirements will greatly enhance our ability to develop strategies to reduce the risks associated with the transportation of hazardous materials. The non-quantifiable benefit of increased safety through reducing the incidence of undeclared shipments is expected to be far greater than the negligible cost increase to the regulated community.

#### 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 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.

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 package or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule addresses covered subject item number 4 above and preempts state, local, and Indian tribe requirements not meeting the "substantively the same" standard. This final rule is necessary to increase the usefulness of data collected for risk analysis and management by government and industry and, where possible, provide relief from regulatory requirements.

Federal hazardous materials transportation law provides at § 5125(b)(2) that, if we issue a regulation concerning any of the covered subjects, we must determine and publish in the **Federal Register** the effective date of Federal preemption. The preemption date of this rule is January 1, 2004.

#### 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"). This final rule does not have tribal implications, does not impose substantial direct compliance costs, and is not required by statute. Consequently, the funding and consultation requirements of Executive Order 13175 do not apply.

#### D. Executive Order 13272

This final rule has been developed in accordance with Executive Order 13272 ("Proper Consideration of Small Entities in Agency Rulemaking") and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of draft rules on small entities are properly considered.

#### E. 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. Based on the assessment in the final regulatory evaluation, I hereby certify that, while the final rule applies to a substantial number of small entities, there will not be a significant economic impact on those small entities. A

detailed Regulatory Evaluation is available in the Docket.

*Potentially affected small entities.* The revisions in this final rule will apply to persons in physical control of a hazardous material during transportation in commerce. Such persons primarily include motor carriers, air carriers, vessel operators, rail carriers, temporary storage facilities, and intermodal transfer facilities. Unless alternative definitions have been established by the agency in consultation with the Small Business Administration, the definition of "small business" has the same meaning as under the Small Business Act (15 CFR Parts 631–657c). Therefore, since no such special definition has been established, RSPA employs the thresholds (published in 13 CFR 121.201) of 1,500 employees for air carriers (NAICS Subgroup 481), 500 employees for rail carriers (NAICS Subgroup 482), 500 employees for vessel operators (NAICS Subgroup 483), \$18.5 million in revenues for motor carriers (NAICS Subgroup 484), and \$18.5 million in revenues for warehousing and storage companies (NAICS Subgroup 493). Of the approximately 116,000 entities to which the proposals in this final rule would apply (104,000 of which are motor carriers), we estimate that about 90 percent are small entities. Based on historical data, we estimate approximately 17,810 annual responses.

*Potential cost impacts.* The revision to expand reporting requirements to any person in physical possession of a hazardous material while it is being transported in commerce will primarily affect storage and in-transit storage facilities. We estimate there are approximately 6,500 warehousing and storage entities subject to this requirement which will incur the total increased compliance costs of about \$84,000. We estimate that expanding the reporting requirements will increase the number of incident reports submitted each year by about 11.45 percent of the 17,810 total annual responses, or approximately 2,180 reports. Taken on a one-to-one report to entity ratio, we estimate a cost of approximately \$39/year/company.

The revision to require updating of incident reports under certain conditions applies to all persons subject to the HMR incident reporting regulations. We estimate that this final rule will result in about 800 additional updates to reports each year for a total annual cost of \$4,800. Taken on a one-to-one report to entity ratio, we estimate a cost of \$6.00/year/company.