

DEPARTMENT OF TRANSPORTATION**Research and Special Programs Administration****49 CFR Parts 171 and 175****[Docket No. HM-36B; Amdt. Nos. 171-101, 175-43]****RIN 2137-AA51****Detailed Hazardous Materials Incident Reports****AGENCY:** Research and Special Programs Administration (RSPA), Department of Transportation (DOT).**ACTION:** Final rule.

SUMMARY: These amendments implement several changes to RSPA's system for collecting information on incidents involving the transportation of hazardous materials. Briefly, these amendments:

1. Revise the hazardous materials incident report form—DOT F 5800.1—to provide more meaningful and comprehensive incident data, especially in terms of incident causation and consequence;

2. Require carriers to maintain a copy of the incident report forms submitted to RSPA for a period of two years;

3. Require an incident report form to be submitted to RSPA within 30 days of the date of the incident (the current reporting requirement is 15 days);

4. Expand the present requirement that RSPA be notified of certain events including evacuations, closure of major transportation arteries or facilities, unscheduled events involving aircraft transporting hazardous materials, and fires associated with shipments of radioactive materials.

5. Clarify the present requirement that RSPA be notified of certain events involving radioactive materials and etiological agents.

6. Require all carriers involved in a hazardous materials incident to provide assistance to an authorized representative of the Department of Transportation (DOT) in any subsequent investigations or special studies which DOT might undertake in connection with the incident.

EFFECTIVE DATE: January 1, 1990. The current (DOT F 5800.1) form may be continued in use until the effective date of this rule. However, compliance with the regulations as amended is authorized immediately.

FOR FURTHER INFORMATION CONTACT: Joseph S. Nalevanko, (202) 366-4484, Policy Development and Information Systems Division, or Marilyn E. Morris, (202) 366-4488, Standards Division,

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SUPPLEMENTARY INFORMATION: On March 16, 1984, RSPA published an advance notice of proposed rulemaking (ANPRM) in the *Federal Register* (49 FR 10048) which proposed to change the hazardous materials incident reporting requirements. On March 27, 1987, RSPA published a notice of proposed rulemaking (NPRM) in the *Federal Register* (52 FR 9996) inviting comments on several specific proposed changes to its system of collecting information on incidents involving the transportation of hazardous materials. These changes are intended to enhance the value of the incident report form (DOT F 5800.1) as a means for the DOT to evaluate the effectiveness of its regulatory program, and to determine the need for regulatory changes to address new or emerging hazardous materials transportation safety problems. It is also intended to facilitate and enhance the ease of completing the hazardous materials incident report form for those who are required to submit this form to DOT.

In response to the NPRM, RSPA received written comments from two government agencies and 13 members of the public. All comments have been considered in preparing this final rule. Significant changes in this final rule from the proposals published in the NPRM are discussed in detail below. Information contained in the Supplementary Information section of the ANPRM and NPRM is hereby incorporated in this final rule by reference, except as it may be superseded herein. The public reporting burden for this collection of information is estimated to average one hour per response, including the time for reviewing instructions and existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: Information Systems Manager, Office of Hazardous Materials Transportation, DHM-63, Research and Special Programs Administration, U.S. Department of Transportation, 400 7th Street SW., Washington, DC 20590; and to the Office of Management and Budget (OMB), Paperwork Reduction Project (2137-0039), Washington, DC 20503.

Summary of Changes From NPRM

In response to the comments received and reviewed by RSPA, the final rule reflects several changes to the proposals contained in the NPRM.

Section 171.15 Immediate Notice of Certain Hazardous Materials Incidents

The NPRM had proposed to amend § 171.15 (and § 175.45 concerning incidents involving aircraft) to include three additional criteria for the immediate (i.e., telephonic) notification of the Department of certain types of hazardous materials incidents.

The first of the criteria pertains to incidents involving the evacuation of one or more properties adjacent to the property on which the incident occurs. One commenter found the language of this proposed reporting requirement to be ambiguous. This commenter stated that an "airport is usually a contiguous property of many square miles and would presumably, therefore, not require the notification if evacuated," i.e., if people in one area of an airport were evacuated to another area of the airport, the notification presumably would not be required. In response to this comment, paragraph (a)(6) of § 171.15 has been reworded to eliminate references to adjacent properties. The language of the proposed rule implied incorrectly that the Department need not be immediately notified of incidents where, for example, the general public in one area of an airport were evacuated to another area of the airport, or even of instances in which people are evacuated from an airport to property or properties adjacent to the airport that, in turn, are not evacuated. This final rule clarifies that paragraph (a)(6) applies only to incidents resulting in evacuations of the general public that are the direct result of hazardous materials. The purpose of limiting the scope of this reporting requirement to evacuations of the general public is to preclude the reporting of events wherein the initial response of either emergency response or supervisory personnel is to clear an area until the presence and the nature of a hazardous material is identified and the scope of the public risk is more adequately defined. Several commenters suggested that this safety purpose could be more effectively accomplished by limiting the reporting requirement to evacuations lasting a certain length of time. RSPA agrees with these comments and has accordingly modified the reporting requirement to accommodate them. Incidents involving evacuations of the general public with a duration of less than one hour will not require the immediate notification of the Department. It should be noted that, as written, the final rule does not require the immediate notification of the Department if members of the general public are evacuated from an area on

the erroneous assumption that a hazardous material is present or involved, even if the duration of the evacuation exceeds one hour.

A number of commenters objected to the requirement that the Department be given immediate notification of incidents involving evacuations where there is no release or spill of a hazardous material. The basis for this objection is summarized by one commenter who noted that:

local officials often order evacuations when no threat of physical injury or property damage exists. Evacuations are frequently ordered out of an abundance of caution. For example, an evacuation is usually ordered when a train derailed containing hazardous materials, even if no hazardous material is released as a result of the derailment. The decision to evacuate, while understandable from the perspective of local officials, is not sufficiently related to safety issues to require carriers to satisfy the notification requirement contained in the proposed rule, § 171.15(a)(6).

RSPA does not agree with this line of reasoning. The Department's need to be immediately informed of certain types of evacuations does not depend on whether, in hindsight, a particular decision to evacuate an area was disproportionate to the actual risks involved in an incident. As pointed out in the Department's Emergency Response Guidebook (Guidebook for Initial Response to Hazardous Materials Incidents, DOT P 5800.4), an "evacuation is, by itself, a process of significant risk for the persons being evacuated. The risk associated with a hazardous materials incident is directly related to the probability of the release or spill of the material and the number of people exposed to the release or spill. When a tank car or a cargo tank truck overturns, the probability of a release of the hazardous material is certainly greater than otherwise, and the risk associated with such events can be reduced if the number of people exposed to the potential release of the material is also reduced (i.e., by means of an evacuation). Finally, RSPA finds no merit in the argument that evacuations are never warranted unless there has been an actual release of a hazardous material. A tank car carrying a flammable gas can for a time be engulfed by fire and still not leak; but certainly an evacuation would be appropriate in such a situation. Therefore, RSPA cannot accept the suggestion that the reporting requirement for evacuations be limited only to instances in which there has been an actual release of the hazardous material.

The NPRM proposed to amend § 171.15 to require the immediate notification of the Department for all incidents involving the closure or shutdown of one or more major transportation arteries or facilities for one hour or more. The phrase "major transportation arteries or facilities" includes, at the minimum, segments of interstate highways; bridges or tunnels providing access to interstate highways; airports where scheduled passenger operations are conducted; commercially navigable waterways; and railroad mainline track. Several commenters opposed this reporting criterion on the grounds that it is unduly broad and unnecessary from a safety standpoint, especially if no release or spill of a hazardous materials occurs. RSPA believes that there are significant safety concerns involved in decisions to shut down or close major transportation arteries and facilities that are the direct result of hazardous materials. Some of the more obvious safety concerns involved with the shut down or closure of major transportation arteries and facilities are: The prevention of the general public from entering the area affected by the incident; diversions and delays in the routing of other hazardous materials; and the fact that incidents that result in the shut down of major transportation arteries or facilities are, by their very nature, more severe and entail greater public safety concerns than incidents that do not result in such disruptions. These safety concerns are not definable solely in terms of whether or not there has been a release of hazardous materials. Even for incidents involving fatalities or injuries it is not necessarily the case that such incidents entail the involuntary release of the hazardous material from its container. People have been killed or injured while cleaning tanks that contained hazardous materials or by opening domes or manholes of cargo tanks and tank cars containing hazardous materials. These are incidents that may not entail the unintentional release of the hazardous material.

One commenter objected to the reporting criterion on the grounds that it would require "a rail carrier to immediately report practically every derailment because a rail line is often closed for more than an hour when a train derailed. This objection is apparently based on a misreading of § 171.15(a). While it is true that derailments almost always result in rail lines being closed for more than an hour solely because of the safety concerns and mechanical problems involved with clearing the track, it is not always the case that rail lines are closed "as the

direct result of hazardous materials" If a rail line is closed as the direct result of hazardous materials for less than an hour, then carriers are not required to immediately notify the Department even if hazardous materials are present, unless other reporting criteria require such notification.

The NPRM had proposed to amend § 171.15 to require the immediate notification of the Department for all incidents involving deviation of an aircraft from its planned course or its scheduled landing. The only comment received on this reporting criterion pointed out that the criterion should also pertain to flights that are terminated before take-off (i.e., a turnaround) due to hazardous materials, and to certain other events, such as flights declaring an emergency due to hazardous materials, even though a flight did not deviate from its planned route, or entail an unscheduled landing. RSPA agrees, and has changed this reporting requirement to pertain to all incidents in which as a direct result of hazardous materials, the operational flight pattern or routine of an aircraft is altered.

In reviewing the comments received in response to the proposed changes to § 171.15 (and § 175.45), RSPA believes the distinction should be clarified between incidents in which something happens as a direct result of hazardous materials (e.g., a death caused by exposure to a hazardous materials) and two other types of incidents. These are incidents in which either something happens to the hazardous material itself such as its being spilled or something occurs in the presence of the hazardous material such as the occurrence of a fire.

Concerning the occurrence of fires and the presence of radioactive materials, § 171.15(a)(4) as presently worded requires the immediate notification of the Department for "each incident in which as a direct result of hazardous materials: fire, breakage, spillage, or suspected radioactive contamination occurs involving shipment of radioactive material. In the case of fires this reporting requirement can be incorrectly interpreted as applying only to instances in which a hazardous material (which may not be a radioactive material) has caused a fire, i.e., the fire is a direct result of a hazardous material. The Department must be immediately notified regardless of whether or not the fire, or breakage, or spillage, or suspected radioactive contamination is the direct result of a hazardous material. In light of these considerations, which also apply to incidents involving etiologic agents, § 171.15 has been

reworded to clarify its intended scope and coverage.

Section 171.16 Detailed Hazardous Materials Incident Reports

The NPRM proposed to revise the hazardous materials incident report form—DOT F 5800.1—to provide more meaningful and comprehensive data on incidents, especially in terms of causation and consequence factors. In general, the proposed revision of the report form was designed to retain as many features as possible of the current report form, not only because many of the data fields on the current report form are essential, but also because of the wide experience and familiarity the industry has with this form. The improvement in the analytic usefulness of the form was accomplished by carefully and more logically reorganizing data fields and by providing a much broader array of choices to be marked as factors that best describe the nature of the incident. In the past, this type of information was largely provided by carriers who submitted lengthy narrative descriptions of the incident. RSPA believes that this change to the report form will significantly facilitate the completion of the form, provide a more systematic description of the incident, and decrease the time and effort involved in entering the information into RSPA's computerized incident data base. With one exception, all commenters favored a revision of the current incident report form.

A number of commenters suggested that several new data fields be added to the report form and that other proposed and existing data fields be clarified. These suggestions have been carefully evaluated and, where appropriate, have been incorporated into the report form (exhibit #1) and discussed in the guidance document for preparing the form (exhibit #2). For example, the new report form now requires those submitting the form to check the appropriate block that best describes the land use and the type of community at the site of the incident. On the other hand, the proposed data field pertaining to the estimated ambient temperature at the time of the incident has been deleted from the report form. RSPA believes that such estimates are not likely to be very accurate and will be duplicated by information requested elsewhere on the report form (e.g., instances of package failures due to heat or freezing).

Many commenters took exception to the proposed requirement that copies of other required reports be submitted to RSPA along with the incident report form. RSPA agrees and has deleted the

requirement accordingly. This action, however, does not affect the current requirement in § 171.16(a)(1) that a copy of the hazardous waste manifest be attached to the incident report form when the incident involves a hazardous waste; nor does it affect the current requirement in § 175.45(c) that, for incidents involving aircraft, a separate copy of the incident report form be sent to the FAA Civil Aviation Security Office nearest the incident.

The NPRM proposed to require that photographs be taken of the damage to packaging and accompany all report forms for all incidents resulting in a fatality or an injury requiring hospitalization caused by the release of a hazardous material from bulk packaging such as portable tanks, cargo tanks, rail tank cars (see § 171.8 for a precise definition of "bulk packaging"). Two commenters opposed this requirement. The American Trucking Association, Inc. (ATA) urged that photographs of incidents be furnished at the option of the carrier; the National Tank Truck Carriers Inc., (NTTC) believed that the proposed requirement that carriers assist the Department in any investigation or special studies relating to an incident (see discussion on § 171.21, *infra.*) would provide a better means for obtaining information on how a package failed than that provided by a photograph.

In light of these comments, RSPA has decided to retain the present language on the current incident report form that photographs and diagrams of the particulars of an incident should be, but are not required to be, submitted for clarification along with the report form itself.

Several commenters urged that RSPA give consideration to incorporating into Part 171 of 49 CFR, a specific set of instructions for completing Form 5800.1, in a manner similar to 49 CFR 394.20, which provides instructions for the preparation of the Motor Carrier Accident Report form MCS-50T. This suggestion has not been accepted. Currently, RSPA publishes a detailed, seven-page document entitled "Guidelines for Preparing Hazardous Materials Incident Reports." This guide is intended to assist carriers in accurately completing the hazardous materials incident report, Form 5800.1, and is available to the public upon request to the RSPA. In conjunction with this rulemaking, the guide has been extensively revised and expanded (see exhibit #2). RSPA's experience has shown that possible future revisions, clarifications and additional instructional assistance in completing

the incident report form are more easily accommodated and accomplished through a guidelines document than by incorporating such material into the body of the regulations. However, an informational note has been added at the end of § 171.16 to advise interested persons as to the availability of the guidelines free of charge upon request to RSPA.

The NPRM proposed that the current 15-day period for submitting incident report forms be increased to 30 days in order to provide more time to gather data and complete the report form as accurately as possible. Generally, commenters were either silent about this proposal or were in support of it. One commenter, however, urged RSPA to clarify the requirement that the information to be submitted within 30 days of the date of the incident be the best information available within 30 days. RSPA has not accepted this comment. Information that can reasonably be expected to be available within 30 days is, by definition, the best information available. No useful purpose is served by creating an implied distinction between the best information available and information that is less than the best. It is true that better information on the consequences of an incident, especially in terms of health effects or the estimated dollar amount of damage, may become available after 30 days. But RSPA has not proposed a requirement that carriers monitor the consequences of an incident beyond 30 days and subsequently submit this information to RSPA even though carriers on their own initiative may wish, and are encouraged, to do so.

This final rule also reflects two further revisions to § 171.16. The phrase "as a direct result of hazardous materials" has been deleted from § 171.16(a) as no longer applicable in view of the need to distinguish between incidents and consequences which are the "direct result of hazardous materials" and incidents involving the mere presence of hazardous materials. Section 171.16(a)(2) has been changed to reflect the fact that Part H of the current report (Form F 5800.1) has become section VIII in the revised report form.

The comments relating to the proposed change to § 171.16 concerning the requirement that carriers maintain a copy of each incident report for a period of two years are reviewed in the discussion under § 171.21 below, because this record retention requirement is related to the requirements of that section.

Section 171.21 Assistance in Investigations and Special Studies

As proposed in the NPRM, paragraph (a) of § 171.21 would require that hazardous materials carriers make all records and information pertaining to any incident available, upon request, to an authorized representative of the Department of Transportation. Further, under this paragraph, a carrier of hazardous materials is required to give an authorized representative or special agent of the Department all reasonable assistance in the investigation of any incident. One commenter expressed concern about the interpretation of the phrase "reasonable assistance," pointing out that it is possible that a carrier's understanding of this phrase could differ from that of the representative or agent of the Department. In order to avoid such differences of opinion, the commenter suggested that paragraph (a) of § 171.21 be limited to the requirement that carriers make any existing records available to authorized representatives of the Department. RSPA has not accepted this comment. The language of § 171.21 is virtually identical to the language of § 394.15 of the Federal Motor Carrier Safety Regulations (49 CFR Parts 390-397). Section 394.15 has been in force for a number of years, and the Federal Highway Administration (FHWA) reports that the interpretation of the term "reasonable assistance" has not been a source of contention between the FHWA and motor carriers subject to its jurisdiction. Moreover, the requirement establishes a "reasonableness" test which has wide currency and broad judicial acceptance concerning matters that cannot be specified in advance.

As proposed in the NPRM, under paragraph (b)(1) of § 171.21, carriers would be required to respond within 15 days, or within such other time as specified by the Department, to inquiries by the Department in connection with any Department studies of hazardous material incidents. A number of commenters urged that this paragraph be changed to permit a 30-day or longer response period. These commenters point to the possibility that a carrier might be unable to respond to such an inquiry within 15 days, especially if the inquiry involved a large number of documents. RSPA believes that the proposed 15 day limitation could be too restrictive, and a 30 day period has been adopted in the final rule.

Since the incident report forms will be of significant importance in any investigations or special studies conducted by the Department under

§ 171.21, the NPRM had proposed to revise § 171.16 to require all carriers to maintain a copy at their principal places of business of each incident report form submitted to the Department for a period of two years. The American Trucking Association (ATA) was joined by another commenter in taking strong exception to this proposed requirement on the grounds that this imposes an unreasonable paperwork burden on carriers, that the absence of such a requirement in the current regulations has created no apparent problem, that the retention of the incident report form by the carrier serves no useful purpose to the carrier or to the Department, and that the requirement results in the duplication of information. RSPA disagrees with these comments for several reasons.

First, regarding the paperwork burden on carriers, in general, given that failure to comply with the hazardous materials incident reporting requirements can result in a civil penalty, it is doubtful that prudent carriers would not keep copies of the reports they submit to the Department in their own files. Moreover, 49 CFR 394.13 requires motor carriers to maintain "a copy of each report that the carrier has filed pursuant to § 394.9, with a state agency, or with an insurer, with respect to any reportable accident entered in the accident register. Some of these accident reports will also entail hazardous materials incidents that are required to be kept by motor carriers under § 394.13(c) for a period of three years. It should also be noted that the Federal Railroad Administration (FRA) requires each railroad to maintain a duplicate of each form it submits to the FRA under 49 CFR 225.21 for at least two years.

Second, § 171.16 requires that the hazardous materials incident report form be provided to the Department in duplicate. The incremental paperwork burden of a carrier's preparing the incident report form in triplicate, with one copy for the carrier's own records, is minimal.

Third, hazardous materials incident report forms can be and have been used as evidence in court. RSPA does not believe that carriers can or would be content with the idea that RSPA be the sole possessor of such records. This disposes of the claim that the retention of the incident report form by the carrier is of no use to the carrier, even apart from the insight and benefit a carrier can derive from studying its own record of hazardous materials incidents.

Fourth, the contention that the absence of a record retention requirement in the current regulations

has created no apparent problems is beside the point; it is precisely to prevent future problems, especially in terms of the enforceability of § 171.21, that is the principal reason for the record retention requirement. Without such a requirement, the investigations and special studies envisioned in § 171.21 would be very difficult, if not impossible, to implement. This requirement will also aid in the verification of the accuracy of the reports submitted to RSPA, thus demonstrating that the requirement is not only useful, but necessary.

Finally, while the requirement does result in a duplication of information, this duplication has the result of increasing the availability and accessibility of information. It does not duplicate efforts to obtain information.

As proposed in the NPRM, a copy of each incident report was to be retained at the carrier's principal place of business. However, as pointed out by the ATA, under 49 CFR 394.13, motor carriers may maintain their accident registers at regional or terminal offices, upon written request to, and with the approval of, Director, Regional Motor Carrier Safety, FHWA. At the urging of the ATA, RSPA has modified the requirement that a copy of the incident report form be retained at the carrier's principal place of business to include "other places as authorized and approved in writing by an agency of the Department of Transportation.

Additional Public Comments

In response to the NPRM, RSPA also received a number of comments on issues which, although they concern RSPA's Hazardous Materials Information System (HMIS), were either fully discussed and resolved in the preamble to the NPRM or were not the subject of any particular proposed amendments in the NPRM. Although it is not obligated to respond to such comments, RSPA believes that the acknowledgment and a short discussion of these comments are worthwhile.

The Air Transport Association of America commented that the NPRM included no proposal to exempt air carriers from the current requirement under paragraphs (c) and (d) of § 171.16 to report a hazardous material incident involving a consumer commodity; a battery, electric storage, wet, filled with acid or alkali; or paint and paint-related material when shipped in packaging of five gallons or less. This commenter could find no justification that supports the "continued requirements to report incidents that occur aboard aircraft which under all other circumstances

DOT clearly believes to be trivial. In response to these comments, RSPA notes that the exception provided by paragraphs (c) and (d) of § 171.16 does not apply to incidents involving the transportation of hazardous waste. Also, RSPA believes that there is a fundamental difference in the risk of transporting hazardous materials aboard aircraft versus other modes of transportation. A simple, but non-trivial, instance of this difference is illustrated by the fact that, generally, unlike a truck driver, a pilot cannot simply stop his vehicle to determine what is causing the smoke or fumes emitting from the cargo hold. Moreover, the rapidity with which pressure and temperature changes can occur aboard aircraft is vastly different from what can occur aboard vehicles and vessels in surface transportation.

The Association of American Railroads (AAR), in connection with the requirement in § 171.15 that carriers report certain hazardous materials incidents by telephone at the earliest possible moment, noted that:

for certain incidents two phone calls have to be made, to RSPA (49 CFR 171.15) and the National Response Center (40 CFR 300.37), and the Federal Railroad Administration and the National Transportation Safety Board (49 CFR 225.9 and 840.3). FRA and NTSB have coordinated their requirements so that only one phone call has to be made to satisfy their requirements, although their actual notification requirements are independent of each other. Similarly, RSPA and EPA have coordinated their requirements so that only one phone call has to be made to satisfy their requirements, although their requirements are also independent of each other. We see no reason why RSPA, NTSB, FRA, and NRC cannot develop one set of notification requirements for transportation incidents.

These comments are well taken, and RSPA, as time and response permit, will explore the feasibility of a "one call" notification system under § 171.15 which would simplify the carrier notification requirements.

The National Tank Truck Carriers, Inc. (NTTC) has commented on two issues that were discussed in the preamble of the NPRM. The first issue pertains to the requirement in § 171.15(a) to report all unintentional releases of hazardous materials, regardless of the amount of the material released. The NTTC believes the RSPA should establish "a minimum product loss amount threshold to trigger" this reporting requirement. RSPA does not agree. Essentially, as explained in the preamble to the NPRM, such a reporting requirement would severely diminish the usefulness of the hazardous materials incident reporting system. The second issue raised by the NTTC

pertains to the question of who is responsible for reporting incidents occurring during loading/unloading operations that are directed by or under the control of shippers or consignees. It is the carrier who is required to report each incident that occurs during the course of transportation (including loading, unloading, and storage incidental thereto), regardless of who is in control of the loading/unloading operations. However, the reporting requirement does not apply if the carrier is not physically present at the site of the incident (and not required to be) and has no knowledge of the incident ("knowledge" is defined in 49 CFR 107.299).

The ATA commented that the incident report form—DOT F 5800.1—provides information that is of value to DOT as well as to carriers, shippers, and container manufacturers, and urged RSPA to make this information more available to the public in terms of increased published reports and analyses based on the incident reports it receives. Currently, RSPA publishes an annual report on hazardous materials transportation which, among other things, provides summary statistics on hazardous materials transportation incidents. RSPA will also soon be publishing a separate document devoted entirely to the presentation of statistics on hazardous materials transportation incidents.

Administrative Notices

a. *Paperwork Reduction Act.* The information collection requirements contained in this rule were submitted for approval to OMB under provision of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35). The information collection requirements in the final rule were approved by OMB and assigned control number —

b. *Executive Order 12291.* RSPA has determined that this rulemaking: (1) is not a "major rule" under Executive Order 12291; (2) is "significant" under DOT's regulatory policies and procedures (44 FR 11034); (3) will not affect not-for-profit enterprises or small governmental jurisdictions; and (4) does not require an environmental impact statement under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*). A regulatory evaluation is available for review in the docket.

c. *Regulatory Flexibility Act.* The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires a review of certain rules proposed after January 1, 1981 for their effects on small businesses, organizations, and governmental bodies. I certify that this regulation will not

have a significant economic impact on a substantial number of small entities.

d. *Executive Order 12612.* This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

e. A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Regulatory Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Regulatory Agenda.

List of Subjects

49 CFR Part 171

Hazardous materials transportation, General information, Regulations, and Definitions.

49 CFR Part 175

Hazardous materials transportation, Carriage by aircraft.

In consideration of the foregoing, 49 CFR Part 171 and Part 175 are amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for Part 171 continues to read as follows:

Authority: 49 U.S.C. 1802, 1803, 1804, 1808; 49 CFR Part 1, unless otherwise noted.

2. In § 171.15, paragraph (a) is revised to read as follows:

§ 171.15 Immediate notice of certain hazardous materials incidents.

(a) At the earliest practicable moment, each carrier who transports hazardous materials (including hazardous wastes) shall give notice in accordance with paragraph (b) of this section after each incident that occurs during the course of transportation (including loading, unloading and temporary storage) in which—

(1) As a direct result of hazardous materials—

- (i) A person is killed; or
- (ii) A person receives injuries requiring his or her hospitalization; or
- (iii) Estimated carrier or other property damage exceeds \$50,000; or
- (iv) An evacuation of the general public occurs lasting one or more hours; or

(v) One or more major transportation arteries or facilities are closed or shut down for one hour or more; or

(vi) The operational flight pattern or routine of an aircraft is altered; or

(2) Fire, breakage, spillage, or suspected radioactive contamination occurs involving shipment of radioactive material (see also §§ 174.45, 175.45, 176.48, and 177.807 of this subchapter); or

(3) Fire, breakage, spillage, or suspected contamination occurs involving shipment of etiologic agents; or

(4) A situation exists of such a nature (e.g., a continuing danger to life exists at the scene of the incident) that, in the judgment of the carrier, it should be reported to the Department even though it does not meet the criteria of paragraph (a) (1), (2) or (3) of this section.

3. In § 171.16, paragraphs (a) and (b) are revised, and a "Note" is added at the end of the section to read as follows:

§ 171.16 Detailed hazardous materials incident reports.

(a) Each carrier who transports hazardous materials shall report in writing, in duplicate, on DOT Form F 5800.1 (Rev. 6/89) to the Department within 30 days of the date of discovery, each incident that occurs during the course of transportation (including loading, unloading, and temporary storage) in which any of the circumstances set forth in § 171.15(a) occurs or there has been an unintentional release of hazardous materials from a package (including a tank) or any quantity of hazardous waste has been discharged during transportation. If a report pertains to a hazardous waste discharge:

(1) A copy of the hazardous waste manifest for the waste must be attached to the report; and

(2) An estimate of the quantity of the waste removed from the scene, the name and address of the facility to which it was taken, and the manner of disposition of any removed waste must be entered in Section IX of the report form (Form F 5800.1) (Rev. 6/89).

(b) Each carrier making a report under this section shall send the report to the Information Systems Manager, DHM-63, Research and Special Programs Administration, Department of Transportation, Washington, DC 20590; a copy of the report shall be retained, for a period of two years, at the carrier's principal place of business, or at other places as authorized and approved in

writing by an agency of the Department of Transportation.

Note: A guideline document for assisting in the completion of DOT Form F 5800.1 (Rev. 6/89) may be obtained from the Office of Hazardous Materials Transportation, DHM-51, U.S. Department of Transportation, Washington, DC 20590.

4. In Part 171, a new § 171.21 is added to read as follows:

§ 171.21 Assistance in investigations and special studies.

(a) A carrier who is responsible for reporting an incident under the provisions of § 171.16 shall make all records and information pertaining to the incident available to an authorized representative or special agent of the Department of Transportation upon request. The carrier shall give an authorized representative or special agent of the Department of Transportation reasonable assistance in the investigation of the incident.

(b) If the Department of Transportation makes an inquiry to a carrier of hazardous materials in connection with a study of incidents, the carrier shall—

(1) Respond to the inquiry within 30 days after its receipt or within such other time as the inquiry may specify; and

(2) Provide full, true, and correct answers to any questions included in the inquiry.

5. The incident reporting form (DOT Form F 5800.1) is revised to read as indicated in the attached exhibit #1. (The form will not appear in the Code of Federal Regulations.)

PART 175—CARRIAGE BY AIRCRAFT

6. The authority citation for Part 175 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1807, 1808; 49 CFR Part 1, unless otherwise noted.

7. In § 175.45, paragraph (a), the introductory text of paragraph (b) and the first sentence of paragraph (c) are revised to read as follows:

§ 175.45 Reporting hazardous materials incidents.

(a) Each operator who transports hazardous materials shall report to the nearest FAA Civil Aviation Security Office by telephone at the earliest practicable moment after each incident that occurs during the course of transportation (including loading, unloading or temporary storage) in which—

(1) As direct result of hazardous materials—

(i) A person is killed; or

(ii) A person receives injuries requiring hospitalization; or

(iii) Estimated carrier or other property damage, exceeds \$50,000; or

(iv) An evacuation of the general public occurs lasting one or more hours; or

(v) One or more major transportation arteries or facilities are closed or shutdown for two hours or more; or

(vi) The operational flight pattern or routine of an aircraft is altered; or

(2) Fire, breakage, or spillage or suspected radioactive contamination occurs involving shipment of radioactive materials (see § 175.700(b)); or

(3) Fire, breakage, spillage, or suspected contamination occurs involving shipment of etiologic agents (in addition to the report required by paragraph (a) of this section, a report on an incident involving etiologic agents should be telephoned directly to the Director, Center for Disease Control, U.S. Public Health, Atlanta, Georgia, area code 404-633-5313); or

(4) A situation exists of such a nature (e.g., a continuing danger to life exists at the scene of the incident) that, in the judgment of the carrier, it should be reported to the Department even though it does not meet the criteria of paragraph (a) (1), (2) or (3) of this section.

(b) If the operator conforms to the provisions of this section, the carrier requirements of § 171.15, except § 171.15(c), of this subchapter shall be deemed to have been satisfied. The following information shall be furnished in each report.

(c) Each operator who transports hazardous materials shall report in writing, in duplicate, on DOT Form F 5800.1 (Rev. 6/89) within 30 days of the date of discovery, each incident that occurs during the course of transportation (including loading, unloading or storage incidental thereto) in which any of the circumstances set forth in paragraph (a) of this section occurs or there has been unintentional release of hazardous materials from a package.

Issued in Washington, DC on May 23, 1989, under the authority delegated in 49 CFR Part 1.

Travis P Dungan,
Administrator, Research and Special Programs Administration.

Exhibit 1

BILLING CODE 4910-60-M

DEPARTMENT OF TRANSPORTATION
HAZARDOUS MATERIALS INCIDENT REPORT

REQUIREMENTS: The regulations requiring reporting of hazardous materials incidents are contained in the Code of Federal Regulations (CFR), Title 49 Parts 100 to 179 (governing the transport of hazardous materials by rail, air, water and highway). Failure to comply with the reporting requirements contained therein can result in a civil penalty.

A Guide for Preparing the Hazardous Materials Incident Report is available from the Information Systems Manager, Office of Hazardous Materials Transportation, DHM-63, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

PUBLIC REPORTING BURDEN FOR THIS COLLECTION OF INFORMATION IS ESTIMATED TO AVERAGE HOUR PER RESPONSE, INCLUDING THE TIME FOR REVIEWING INSTRUCTIONS, SEARCHING EXISTING DATA SOURCES, GATHERING AND MAINTAINING THE DATA NEEDED, AND COMPLETING AND REVIEWING THE COLLECTION OF INFORMATION. SEND COMMENTS REGARDING THIS BURDEN ESTIMATE OR ANY OTHER ASPECT OF THIS COLLECTION OF INFORMATION, INCLUDING SUGGESTIONS FOR REDUCING THIS BURDEN, TO INFORMATION SYSTEMS MANAGER, OFFICE OF HAZARDOUS MATERIALS TRANSPORTATION, DHM-63, RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION, U.S. DEPARTMENT OF TRANSPORTATION, WASHINGTON, DC 20590; AND TO THE OFFICE OF INFORMATION AND REGULATORY AFFAIRS, OFFICE OF MANAGEMENT AND BUDGET, WASHINGTON, DC 20503.

TEAR HERE

DEPARTMENT OF TRANSPORTATION HAZARDOUS MATERIALS INCIDENT REPORT		Form Approved OMB No. 2137 0039	
<p>INSTRUCTIONS: Submit this report in duplicate to the Information Systems Manager, Office of Hazardous Materials Transportation, DHM-63, Research and Special Programs Administration, U.S. Department of Transportation, Washington, D.C. 20590. If space provided for any item is inadequate, complete that item under Section IX, leaving to the entry number being completed. Copies of this form, in limited quantities, may be obtained from the Information Systems Manager, Office of Hazardous Materials Transportation. Additional copies in this prescribed format may be reproduced and used, if on the same size and kind of paper.</p>			
I. MODE, DATE, AND LOCATION OF INCIDENT			
1. MODE OF TRANSPORTATION: <input type="checkbox"/> AIR <input type="checkbox"/> HIGHWAY <input type="checkbox"/> RAIL <input type="checkbox"/> WATER <input type="checkbox"/> OTHER _____			
2. DATE AND TIME OF INCIDENT (Use Military Time, e.g. 8:30am - 0830. Date: _____ TIME: _____ noon - 1200, 6pm - 1800, midnight - 2400)			
3. LOCATION OF INCIDENT (include airport name in ROUTE/STREET if incident occurs at an airport.) CITY: _____ STATE: _____ COUNTY: _____ ROUTE/STREET: _____			
II. DESCRIPTION OF CARRIER, COMPANY, OR INDIVIDUAL REPORTING			
4. FULL NAME		5. ADDRESS (Principal place of business)	
6. LIST YOUR OMC MOTOR CARRIER CENSUS NUMBER, REPORTING RAILROAD ALPHABETIC CODE, MERCHANT VESSEL NAME AND ID NUMBER OR OTHER REPORTING CODE OR NUMBER			
III. SHIPMENT INFORMATION (From Shipping Paper or Packaging)			
7. SHIPPER NAME AND ADDRESS (Principal place of business)		8. CONSIGNEE NAME AND ADDRESS (Principal place of business)	
9. ORIGIN ADDRESS (if different from Shipper address)		10. DESTINATION ADDRESS (if different from Consignee address)	
11. SHIPPING PAPER/WAYBILL IDENTIFICATION NO.			
IV. HAZARDOUS MATERIAL(S) SPILLED (NOTE: REFERENCE 49 CFR SECTION 172.101)			
12. PROPER SHIPPING NAME		13. CHEMICAL/TRADE NAME	14. HAZARD CLASS
		15. IDENTIFICATION NUMBER (e.g. UN 2764, NA 2020)	
16. IS MATERIAL A HAZARDOUS SUBSTANCE? <input type="checkbox"/> YES <input type="checkbox"/> NO		17. WAS THE RD MET? <input type="checkbox"/> YES <input type="checkbox"/> NO	
V. CONSEQUENCES OF INCIDENT, DUE TO THE HAZARDOUS MATERIAL			
18. ESTIMATED QUANTITY HAZARDOUS MATERIAL RELEASED (include units of measurement)		19. FATALITIES	20. HOSPITALIZED INJURIES
22. NUMBER OF PEOPLE EVACUATED		21. NON-HOSPITALIZED INJURIES	
23. ESTIMATED DOLLAR AMOUNT OF LOSS AND/OR PROPERTY DAMAGE, INCLUDING COST OF DECONTAMINATION OR CLEANUP (Round off in dollars)			
A. PRODUCT LOSS	B. CARRIER DAMAGE	C. PUBLIC/PRIVATE PROPERTY DAMAGE	D. DECONTAMINATION/ CLEANUP
E. OTHER			
24. CONSEQUENCES ASSOCIATED WITH THE INCIDENT: <input type="checkbox"/> VAPOR (GAS) DISPERSION <input type="checkbox"/> MATERIAL ENTERED WATERWAY/SEWER <input type="checkbox"/> SPILLAGE <input type="checkbox"/> FIRE <input type="checkbox"/> EXPLOSION <input type="checkbox"/> ENVIRONMENTAL DAMAGE <input type="checkbox"/> NONE <input type="checkbox"/> OTHER: _____			
VI. TRANSPORT ENVIRONMENT			
25. INDICATE TYPE(S) OF VEHICLE(S) INVOLVED: <input type="checkbox"/> CARGO TANK <input type="checkbox"/> VAN TRUCK/TRAILER <input type="checkbox"/> FLAT BED TRUCK/TRAILER <input type="checkbox"/> TANK CAR <input type="checkbox"/> RAIL CAR <input type="checkbox"/> TOP/COFCO <input type="checkbox"/> AIRCRAFT <input checked="" type="checkbox"/> BARGE <input type="checkbox"/> SHIP <input type="checkbox"/> OTHER: _____			
26. TRANSPORTATION PHASE DURING WHICH INCIDENT OCCURRED OR WAS DISCOVERED: <input type="checkbox"/> EN ROUTE BETWEEN ORIGIN/DESTINATION <input type="checkbox"/> LOADING <input type="checkbox"/> UNLOADING <input type="checkbox"/> TEMPORARY STORAGE/TERMINAL			
27. LAND USE AT INCIDENT SITE: <input type="checkbox"/> INDUSTRIAL <input type="checkbox"/> COMMERCIAL <input type="checkbox"/> RESIDENTIAL <input type="checkbox"/> AGRICULTURAL <input type="checkbox"/> UNDEVELOPED			
28. COMMUNITY TYPE AT SITE: <input type="checkbox"/> URBAN <input type="checkbox"/> SUBURBAN <input type="checkbox"/> RURAL			
29. WAS THE SPILL THE RESULT OF A VEHICLE ACCIDENT/DERAILMENT? <input type="checkbox"/> YES <input type="checkbox"/> NO IF YES AND APPLICABLE, ANSWER PARTS A THRU C.			
A. ESTIMATED SPEED:	B. HIGHWAY TYPE: <input type="checkbox"/> DIVIDED/LIMITED ACCESS <input type="checkbox"/> UNDIVIDED	C. TOTAL NUMBER OF LANES: ONE THREE TWO FOUR OR MORE	SPACE FOR DOT USE ONLY

