

DEPARTMENT OF TRANSPORTATION

Research and Special Programs
Administration

49 CFR Parts 171, 172, 173 and 176

[Docket No. HM-126C; Amdt. Nos. 171-102,
172-116, 173-213, 176-28]

RIN 2137-AA88

Emergency Response Communication
StandardsAGENCY: Research and Special Programs
Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the Hazardous Materials Regulations (HMR; 49 CFR Parts 171 through 179) to impose new requirements for emergency response information on shipping papers, and placement of emergency response information on vehicles and at transportation facilities. This action is necessary to improve the emergency response information requirements in the HMR in order to enhance communication pertaining to the safe handling and identification of hazardous materials involved in transportation incidents.

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EFFECTIVE DATE: These amendments are effective on April 2, 1990. However, compliance with the regulations amended herein is authorized as of July 31, 1989.

SUPPLEMENTARY INFORMATION:I. Background and Summary of
Comments

As a result of the investigation of an accident which occurred near Odessa, Delaware in October 1982, the National Transportation Safety Board (NTSB) recommended that the DOT "... Determine by mode of transportation, the feasibility of requiring comprehensive product-specific emergency response information, such as Material Safety Data Sheets, to be appended to shipping documents for hazardous materials transported in bulk quantities, giving particular attention to the early emergency response problems posed by n.o.s. commodities in transit." In October 1983, RSPA received a petition from the American Trucking Associations (ATA) which requested DOT "require, by rule, motor carriers

involved in the transportation of hazardous materials to maintain a copy of the Emergency Response (Guidebook), DOT P 5800.2, at each motor carrier facility where hazardous materials shipments are loaded or unloaded from vehicles."

In response to concerns expressed in the NTSB recommendation (I-83-2) and the ATA petition (P-922), on March 16, 1984, RSPA published an advance notice of proposed rulemaking (ANPRM) under Docket HM-126C in the *Federal Register* (49 FR 10048). The ANPRM, entitled "Required Use of Emergency Response Guidebooks and Material Safety Data Sheets", quoted the NTSB recommendation and the ATA petition in their entirety, and solicited comments on the benefits and consequences of requiring the use of the Emergency Response Guidebook (ERG) or Material Safety Data Sheets (MSDS) to communicate information on the hazards of materials moving in commerce.

Evaluation of the comments to the ANPRM indicated a need for requiring additional emergency response information on hazardous materials transported in commerce. The majority of commenters supported RSPA requiring additional emergency response information. However, only two commenters supported the NTSB recommendation that an MSDS accompany every bulk shipment of hazardous materials. Several commenters stated that although some of the information on an MSDS might be useful, they believed that use of the ERG would be a more effective method of communicating fundamental hazard information to emergency response personnel, and that the ERG should be maintained as the primary reference.

Based on RSPA's evaluation of the merits of the comments to the ANPRM, on August 30, 1987, a notice of proposed rulemaking (NPRM) was published entitled "Emergency Response Communication Standards" under Docket No. HM-126C (53 FR 31486). The NPRM solicited comments on requiring improved emergency response information on shipping papers and packages, and placement of emergency response information on vehicles and at facilities involved in hazardous materials transportation. The NPRM addressed both bulk and non-bulk packages.

In the NPRM, it was noted that widespread support was expressed by commenters to the ANPRM for requiring use of the ERG. Many commenters believe that to better inform emergency response personnel about the hazards of a material, the use of the ERG would

satisfy the emergency response information requirements. The NPRM included a proposal to require that persons offering hazardous materials for transportation provide on the shipping paper a twenty-four hour emergency response telephone number of a person knowledgeable about the hazardous materials being shipped. In addition, the NPRM contained a proposal to require that technical names be shown on shipping papers and packages for materials which are described under "n.o.s." or generic descriptions. A detailed discussion of these proposals, as well as the comments to these proposals follows.

II. Discussion of Comments Made to the
NPRM

RSPA received more than seventy comments to the NPRM under Docket HM-126C. Comments were received from associations, chemical companies, emergency response organizations, and Federal and State agencies. Most commenters supported the intent of the proposed rule to improve emergency response communication during transportation incidents involving hazardous materials. However, many commenters expressed concern over certain aspects of the proposal and requested clarification on the use of certain technical names (i.e., proprietary or trade names) for "n.o.s." entries, maintenance of a twenty-four hour emergency response telephone number to obtain product-specific information on the hazardous material being transported, and the feasibility of requiring placement of the ERG, MSDS or other emergency response information on vehicles and at facilities.

Major Issues

A. Emergency Response Information

ATA strongly supported requiring additional emergency response information on shipping papers and packages, and placement of the ERG at facilities. However, ATA expressed concern about requiring the placement of the ERG on transport vehicles. ATA stated:

(t)he cost of providing the ERG and insuring that it is on all transport vehicles will result in the expenditure of millions of dollars which would not be cost effective to safety in the trucking industry.

ATA did not provide quantitative or qualitative data in their comments to support this contention. It should be noted that the NPRM did not propose imposing mandatory use of the ERG on vehicles or at facilities to satisfy the emergency response information

requirements, but rather the ERG could be used as one of several alternatives to satisfy those requirements. Although businesses may incur additional paperwork burdens, due to the requirement for placement of emergency response information on transport vehicles, RSPA believes that those burdens are justified because the requirement will improve the availability of information at the scene of an incident involving hazardous materials and thereby enhance emergency response efforts during such incidents.

RSPA did not propose that drivers of motor vehicles or crews aboard aircraft or trains attempt themselves to take emergency response measures. Instead, RSPA believes that during the initial stages of an emergency, having this information immediately available aboard a transport vehicle is important to convey information concerning the risks of materials, the basic precautions to be taken by transportation workers, and to improve the effectiveness of the first on the scene emergency responders.

The Association of American Railroads (AAR) commented that the notice as written would require that emergency response information be maintained on each rail car or "transport vehicle." They stated that there is no place on a rail car for this information to be placed and that there is no reason for this information to be placed on each individual rail car.

To clarify our intent in regard to maintenance of and accessibility to emergency response information on "transport vehicles", the requirement addressing carriers' responsibility for maintenance of written emergency response information on transport vehicles, such as trucks, rail cars or vessels and barges, has been restated to require that emergency response information be carried in the same manner as prescribed for shipping papers.

The AAR stated that additional written emergency response information (e.g., ERG) is unnecessary for rail shipments because they have the "Hazardous or Dangerous Commodity Reports" for each hazardous material in a train, which they feel satisfies the emergency response information requirements. Although having the ERG available would satisfy the emergency response information requirements, other documents, for shipments by aircraft, vessel and rail, such as the ICAO "Emergency Response Guidance for Aircraft Incidents Involving Dangerous Goods", the IMO "Emergency Procedures for Ships Carrying Dangerous Goods", and the

"Hazardous or Dangerous Commodity Reports", respectively, may be used to satisfy the requirements for emergency response information, as long as they contain the required emergency response information and are present on the transport vehicle for each commodity.

Representative of commenters supportive of carrying the ERG on-board vehicles was the National Private Trucking Association (NPTA). NPTA stated:

There are several sound reasons for carrying a copy of the ERG on-board transit vehicles. First, even though a significant number of ERGs have been distributed to emergency response organizations and personnel throughout the country, it is extremely unlikely that every emergency responder has one, or that one would always be on-scene. The presence of an ERG on each transport vehicle should effectively remedy this. Second, and perhaps more important, currently when most incidents involving hazardous materials occur, there is a period of time between the occurrence and the arrival of trained first responders with, presumably, copies of an ERG and/or other essential information to enable them to initiate an effective response. Consequently, as a rule for the majority of shipments currently taking place, during that critical period of time, the truck driver, as well as any other passers-by who may happen on the scene, are without essential information concerning the risk(s) which the materials being transported may pose to them and the public generally, or how to provide immediate and effective first aid should contact with a material have occurred.

RSPA agrees with NPTA that having a copy of the ERG immediately available during a hazardous material emergency would be useful. However, compliance with a requirement that emergency response information be immediately available for responders' use may also be accomplished in a number of other ways, such as by having emergency response information printed on the shipping paper or use of an MSDS (if it contains all of the required information).

Several commenters suggested that DOT require the ERG to be carried on all emergency response vehicles. DOT does not have statutory authority to require carriage of the ERG on emergency response vehicles operated by public entities. However, it has been the goal of RSPA, since the early 1990's, that all emergency response vehicles carry a copy of the ERG. To this end, approximately 2.5 million copies of the ERG have been distributed, without charge, to emergency response organizations by RSPA.

Widespread support was expressed in the comments to the NPRM for requiring additional emergency response information to accompany hazardous

materials in transportation. Most commenters stated the ERG was the preferred source for obtaining emergency response information. In this final rule, RSPA adopts a requirement essentially as proposed in the NPRM, that emergency response information be maintained on transport vehicles, in the same manner as prescribed for shipping papers, and at facilities involved in the transportation of hazardous materials. While use of the ERG would be one method of compliance, flexibility is provided to afford use of other means to satisfy this requirement.

B. N.O.S. Descriptions/Generic Descriptions

The Chemical Waste Transportation Council (CWTC) supported showing the technical name for n.o.s. descriptions. However, CWTC stated that the requirement poses special administrative problems for non-bulk shipments of wastes. The CWTC stated:

Keep in mind that non-bulk shipments of hazardous waste, as opposed to hazardous pure product, are normally comprised of a variety of waste stream packages. The extent of this variety becomes most complex with regard to the shipment of waste material packaged in accordance with 49 CFR 173.12(b). Yet, the risk presented by these divergent but compatible waste streams is no greater, and for the most part is less hazardous, than its source material. Waste, after all, is often the dilute by-product or residue of a pure hazardous material product. This is especially true of wastes with an n.o.s. status.

The CWTC requested that DOT allow shippers of hazardous wastes to show waste stream numbers in place of technical names for n.o.s. entries as provided under the requirement in § 172.203(c) for hazardous substances. CWTC petitioned RSPA (petition number P-1033) to amend the HMR at 49 CFR 172.203(c)(1) and 172.324(a) to exclude materials packaged in accordance with the lab pack provisions in § 173.12 from the requirement of showing technical names for n.o.s. entries.

RSPA did not intend to make the additional description and marking requirements for emergency response information for hazardous waste materials, packaged in accordance with the lab pack provisions, more burdensome to the hazardous waste industry. On the contrary, RSPA agrees with CWTC comments that for hazardous waste materials, packaged in accordance with the lab pack provisions, inclusion of waste stream numbers rather than technical names for n.o.s. descriptions would meet the additional emergency response

information requirements. Consequently, in § 173.12, a new paragraph (f) has been added to allow the use of waste stream numbers, instead of the required technical name description, for hazardous waste packaged in lab packs. It should be noted, however, that there is no exception in § 173.12, or elsewhere, from identifying the names of constituents contained in lab packs, if the constituent is a hazardous substance or a poison.

Most commenters supported including the technical name for n.o.s. or generic descriptions on shipping papers. However, because many technical names are quite lengthy or complicated, and commenters are concerned about the disclosure of proprietary information or trade secrets, they recommended including chemical family or generic names, common names, registered trade names, or other names in the NIOSH registry in place of technical names for n.o.s. entries. Trade secrets include chemical formulations, and the commenters believe that this information would not be protected if they were required to include the technical names of these constituents on shipping papers. RSPA believes that in emergency response situations, the addition of technical names for n.o.s. entries is the best way to identify the primary and subsidiary hazards associated with a material. RSPA also realizes that some chemical technical names are extremely complex. In order to accommodate the use of chemical names that are more readily recognizable and usable to emergency responders, the definition in § 171.8 for "technical name" includes chemical names designated or recognized by the International Union of Pure and Applied Chemistry (IUPAC), the Chemical Abstracts Service, or in the Registry of Toxic Effects of Chemical Substances (RTECS). However, trade names may not be used as technical names.

Further, RSPA believes there is sound reasoning to require improved identification of chemical constituents. Commenters' concerns that "trade secret" information may be disclosed by showing these constituents on shipping papers for "n.o.s." descriptions have not been substantiated. As required by this final rule, if a hazardous material is a mixture or solution of two or more hazardous materials, only the technical names of at least two components most predominately contributing to the hazards of the mixture or solution are required to be entered on the shipping paper. Furthermore, this final rule does not impose mandatory revelation of an exact formulation, only disclosure of

valuable safety related information to be used in the transportation network. Additionally, it is our belief that identifying the two major constituents which contribute to the hazards of a material will result in only limited, if any, instances where proprietary information would be revealed. Current provisions of the HMR for identifying constituents in poisons, hazardous substance mixtures and solutions, and any n.o.s. description for water shipments have not revealed a problem regarding the release of proprietary information.

Recently, RSPA has been made aware of a potential problem concerning the identification of constituents of materials that are subject to the provisions of 21 CFR 1301.74, as administered by the Drug Enforcement Administration (DEA). Paragraph (e) of that section states: " * * * In addition, the registrant shall employ precautions (e.g., assuring that shipping containers do not indicate that contents are controlled substances) to guard against storage or in-transit losses." RSPA is not aware that the current constituent identification requirements of the HMR have resulted in violations of the DEA requirements by persons shipping hazardous materials that are also controlled substances. The requirements of this final rule should not cause any significant compliance difficulties. Of the controlled substances reviewed by RSPA, each has a general or other technical name which may be used to identify the controlled substance in accordance with the requirements of this final rule, but which do not use terminology which readily identifies the hazardous material as a controlled substance.

C. Telephone Contact for Emergency Response Information

Comments to the notice generally supported RSPA's proposal to require that shipping papers contain the twenty-four hour telephone number of a person with detailed knowledge of the hazardous characteristics of the materials being shipped. The Chemical Manufacturers' Association (CMA) indicated support for the provision that allows shippers to list CHEMTREC, or other organizations, with similar capabilities, as the initial contact point for emergency response information. CMA pointed out that it would be impractical for an individual or small company to provide a phone number in the absence of this provision.

CHEMTREC is a public service of the CMA. CHEMTREC has the capability to provide immediate advice by telephone for the on-scene commander at a

chemical emergency, and can then promptly contact the shipper of the hazardous material for detailed assistance and an appropriate response follow-up. CHEMTREC operates 24-hours a day, seven days a week to receive toll-free calls. CHEMTREC notifies the National Response Center (NRC) of significant incidents. If requested, they will connect a caller directly to the NRC, as required by Federal law and regulation. Other industry or government organizations may exist or be established which may provide similar services for specified categories of materials. RSPA recognizes the difficulty experienced by small companies, who may not always have a 24-hour telephone number or have an individual available to respond to inquiries on a 24-hour basis. This final rule allows for the use of an emergency response telephone number other than the shipper's, provided the shipper has furnished an agency or organization with detailed information concerning the hazardous material, and that the agency or organization is capable of, and has accepted responsibility for, providing such information. This option will provide a shipper the flexibility of selecting a name and number which will ensure a 24-hour availability of knowledgeable assistance.

Although most commenters supported the proposal to require a 24-hour emergency response telephone number on shipping papers, several expressed concern about the requirement in § 172.604(a)(2) for the telephone number to appear on the shipping paper "in association with the basic description". These commenters requested that the phone number be allowed anywhere on the shipping paper, as long as it is noted that the number is shown for the purpose of emergency response. In this final rule, the requirements in § 172.604(a)(2) (i) and (ii) have been modified to require shippers to: (1) enter the emergency response telephone number on shipping papers "following the description of the hazardous material", or (2) entered once on the shipping paper when the number applies to each material entered on the shipping paper, it is clearly highlighted for easy identification, and it is indicated that the telephone number is to be used to obtain emergency response information.

In the NPRM, RSPA proposed, as an option for a package having a gross weight of 30 kilograms or less, that the 24-hour emergency response telephone number may be displayed on the outside of the package in association with the proper shipping name rather than on the shipping paper. The United Parcel

Service (UPS) and the Air Transportation Association of America supported the requirement that shipping papers contain a 24-hour emergency response telephone number to obtain emergency response information concerning hazardous materials, but suggested that the 24-hour emergency response telephone number should not be placed on packages instead of being placed on shipping papers for packages of 30 kilograms or less. This suggestion was based on their concern that, if a package is found to be damaged or leaking, emergency response personnel should not jeopardize their safety by coming into contact with a leaking or damaged package to obtain the emergency response telephone number.

Upon further consideration, RSPA agrees with the commenters. Consequently, the exception, as proposed in the NPRM, to allow shippers to place the emergency response telephone number on packages instead of being placed on shipping papers for packages of 30 kilograms or less has not been adopted.

D. Additional Considerations

Applicability of emergency response information requirements to international shippers. The NPRM did not propose to except persons importing or exporting hazardous materials from compliance with requirements for written emergency response information. To clarify the applicability of emergency response information requirements to import/export shipments of hazardous materials, § 171.11, applicable to shipments of hazardous materials conforming to the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions), is revised in this final rule to require compliance with emergency response information requirements in Subpart G of Part 172 of this subchapter. It should be noted that no change in the requirements of § 171.12 have been adopted in this final rule. therein, shipments of hazardous materials made in accordance with the provisions of this section are not excepted from the shipping paper or emergency response information requirements. RSPA notes that both ICAO and the International Maritime Organization (IMO) publish documents containing emergency response information which could be used to satisfy the written emergency response information requirements specified in this final rule, when used in conjunction with a properly prepared shipping paper.

With regard to providing a 24-hour emergency response telephone number, the Hazardous Materials Advisory Council (HMAC) strongly urged RSPA to require foreign shippers that ship hazardous materials into the United States to designate a representative in the U.S., and to ensure that the contact is supplied with sufficient emergency response information to adequately assist emergency responders. Other commenters, such as the Air Transport Association of America and the International Air Transport Association (IATA) were concerned that overseas telephone numbers would be of little use in an emergency in the U.S., and that there could be some difficulty in obtaining emergency response information for import shipments of hazardous materials. RSPA has similar concerns regarding the effectiveness of an overseas 24-hour emergency response telephone number contact for foreign shippers. Although HMAC's proposal to require that foreign shippers designate a representative in the U.S. appears to have merit, it is beyond the scope of this rulemaking. RSPA anticipates addressing this issue in future rulemaking. Until that time, the emergency response information requirements of this final rule apply to all shippers of hazardous materials. Accordingly, the appropriate sections of the HMR, §§ 171.11, and 171.12a, have been revised to require that import shipments of hazardous materials, subject to the provisions of these sections, must conform to the requirements for emergency response information as prescribed in Subpart G of Part 172 of this subchapter.

Applicability of the emergency response information requirements to Canadian shipments of hazardous materials. The requirements under § 171.12a allow hazardous materials shipments from Canada to be transported in the United States, which are transported in accordance with the Canadian "Transport of Dangerous Goods Regulations" (TDG). The TDG regulations contain requirements for the use of certain emergency response information for shipments of hazardous materials. The requirements for completion of the "Emergency Response Form" are set out in the Canadian "Regulations for the Transportation of Dangerous Commodities by Rail." However, the Canadian "Emergency Response Form" only applies to carload, trailerload, truckload or containerload quantities of hazardous materials transported by rail. These Canadian requirements do not, in all instances, fulfill the requirements specified in this

final rule. Therefore, § 171.12a has been revised by the addition of paragraph (a)(7) which requires compliance with the emergency response information provisions of Subpart G of Part 172.

Applicability of emergency response information requirements to empty packagings. The requirements under 49 CFR 173.29, for empty packagings that contain any residue of a hazardous material, specify that unless a packaging is cleaned and purged of all residue, or filled with materials not regulated under 49 CFR, it must be transported in the same manner as required when it previously contained a greater quantity of hazardous materials. This provision also applies to conformance with emergency response information requirements.

Requests for public hearing. Three commenters, the ATA, the Regular Common Carrier Conference (RCCC), and the International Association of Fire Fighters (IAFF) requested that RSPA conduct a public hearing on the merits of the proposals contained in the NPRM. ATA and RCCC requested a joint hearing with DOT and OSHA to address the nature and extent of hazardous materials incidents in the trucking industry and the information necessary to protect employees and others in the event of such incidents. ATA stated:

(This hearing will allow both agencies to hear from the affected industries and to better understand the conflict which will arise as a result of the lack of delineation of regulatory authority of the two agencies. It would also provide DOT and OSHA with the opportunity to hear suggestions which could help to promote national uniformity and increased safety through practical and a realistic communication standard.

RSPA conducted a public hearing on certain aspects of this rulemaking action after issuance of the ANPRM. Comments received during the hearing and the comment period on the ANPRM generally supported the proposal to require that additional emergency response information be included on the shipping paper, such as a 24-hour emergency response information telephone number, and additional shipping descriptions. A majority of the commenters supported the use of the ERG as the document for providing emergency response information in the event of an incident involving hazardous materials. RSPA received over seventy responses to the ANPRM. Based on the responses received to the ANPRM, RSPA issued an NPRM proposing specific regulatory requirements dealing with emergency response communications. In response to the NPRM, more than seventy comments

were received and evaluated. Furthermore, comments to other pending rulemaking actions, such as Docket HM-131, dealing with similar topics addressed in this rulemaking (i.e., additional requirements for technical names for n.o.s. descriptions), were evaluated. RSPA does not believe that a public hearing on the proposals contained in the NPRM would have provided substantive additional information beyond the comments already received, evaluated, and discussed in responses to the ANFRM and NPRM.

In specific response to the ATA and RSCC request, RSPA fully appreciates the necessity for uniform and non-conflicting requirements, to the maximum extent possible, between various agencies of the Government. In order to provide compliance flexibility, thereby limiting the potential for duplicative or conflicting requirements, RSPA has not required a specific form or document which would be necessary in order to comply with the requirements of this final rule. Emergency response information must be in a form or document that permits reference to the hazardous materials being shipped and provide guidance relative to the hazards, risks, precautions and mitigation methods necessary. This information can be transmitted using an MSDS, the EFG, or any other document that provides the information prescribed.

ATA also expressed concern about the potential overlap of DOT and OSHA regulations and suggested a memorandum of understanding (MOU) to delineate respective authorities. RSPA agrees that it should coordinate with OSHA officials on a continuing basis, but a formal MOU only could constitute an agreement to coordinate interagency activities. Matters related to resolution of jurisdictional issues (e.g., the meaning of the "exercise" provision of the Occupational Safety and Health Act, 29 U.S.C. 653(b)(1)) must be handled in the manner specified by law (e.g., review and decision by the Occupational Safety and Health Review Commission). In order to facilitate interagency coordination, RSPA solicits information on hazardous materials issues that should be discussed with OSHA officials on an ongoing basis.

The IAFF also requested that a public hearing be held regarding the proposals contained in the NPRM and, in addition, stated the following:

The IAFF strongly disagrees with the position of the DOT that material safety data sheets (MSDSs) not be provided and maintained in those locations as required in 172.600(a). We believe that the MSDS, the primary vehicle for transmitting chemical

information, should be required and available for use by fire fighting and other emergency response personnel during a hazardous materials emergency. We believe that the reasons provided by the DOT in the Notice of Proposed Rulemaking are not only based on special interest (industry and/or those being regulated) but are significantly rhetorical and unsubstantiated. While we agree that MSDS were not originally developed for the purpose of providing information for emergency response, they are now in fact the most utilized vehicle for providing such information. As you are well aware, the Federal Hazard Communication Standard, most State Right-to-Know standards, SARA and many other federal, state and local regulations require the utilization of the MSDS. Fire fighters and emergency response personnel utilize this information at fixed facilities and would obviously be able to utilize this information equally as well when responding to transportation incidents.

We also strongly disagree with the proposal that the DOT Emergency Response Guidebook be used to satisfy the proposed requirements. The DOT ERG has never had public review other than through an "unofficial" and very unbalanced advisory committee. If the ERG is to be utilized, we propose that it receive full review in accordance with the Administrative Procedures Act. Accordingly, we also do not agree with the allowance of the use of the CHEMTREC telephone to satisfy the requirements of 172.604, especially without further definition of what "accepting responsibility for" would mean and without public review of the CHEMTREC operation and their legal responsibilities. If a telephone number is to be included, aside from the responsible shipper, we propose the telephone number of the National Response Center be utilized. As you are aware, the NRC telephone number is a toll-free number that is staffed seven days a week, 24 hours a day. While the NRC has the capability to immediately patch the caller into CHEMTREC's information and referral service as well as into governmental agencies, utilizing the NRC has other valuable functions not performed by CHEMTREC. Notification of the NRC serves many vital functions, including permitting federal involvement to proceed in a timely and effective manner. We believe this would greatly assist fire fighters in handling hazardous materials incidents.

RSPA has not required nor prohibited the use of the MSDS as a means of providing information to workers covered by the Right-to-Know legislation and Superfund Amendment and Reauthorization Act of 1986 (SARA). We recognize the importance and use of the MSDS in providing information to employees and in planning functions. However, as has been made evident in the course of this rulemaking action, no single standard exists for the preparation of MSDS to provide emergency response information for transportation incidents. While an MSDS may provide

information during an incident involving hazardous materials, the MSDS may not, in all instances, provide specific information relative to response actions to be taken during transportation related incidents. Conceivably, for "less-than-truckload" and "less-than-carload" shipments, a carrier would possess numerous MSDS for the different materials being transported. In the event of a hazardous materials emergency, they may not be the most appropriate means to ascertain the appropriate emergency response action to be taken. Additionally, a number of different MSDS may exist for the same material when shipped by different individuals. Information on these multiple MSDS may in fact vary, thus potentially leading to confusion during initial emergency response actions.

The requirements issued in this final rule are intended to provide specific information relative to the hazards of the materials being transported and provide immediate initial emergency response guidance until further specific information can be obtained from the shipper or others relative to long term mitigation actions. To date, only the ERG and similar documents such as those published by ICAO and IMO have consolidated this initial response information into a single, multimodal, easily understood, and recognizable document directly correlated with identification numbers and emergency response guidance. However, RSPA has not imposed a requirement that the ERG be carried on each transport vehicle and be maintained at facilities involved with the transportation of hazardous materials. Rather, this final rule requires that specific emergency response information accompany shipments of hazardous materials and be present at transportation facilities. This information may be in any format, including an MSDS, the ERG, or other similar document, so long as that document provides information, which at a minimum, provides the description of the hazardous material, immediate health hazard information, risks of fire and explosion, immediate precautions to be taken in the event of an accident or incident, immediate methods of handling large and small fires, initial methods for handling of spills or leaks, and preliminary first aid measures.

The IAFF asserts that the ERG has never had a public review other than through an "unofficial" and very "unbalanced" advisory committee. The ERG is not a regulatory document. There is no requirement currently in the HMR nor in this final rule which mandates the use of the ERG. The ERG was developed

in an effort to fulfill RSPA's responsibilities to provide for a safe transportation environment for hazardous materials, and in an effort to provide better information to emergency responders in the event of an incident involving hazardous materials in transportation.

The ERG, first published in 1980 and republished in 1984 and 1987, was developed in cooperation with representatives from a number of diverse groups. Representatives include members of the DOT, firefighters, the International Association of Fire Chiefs, the International Association of Chiefs of Police, The Fire Marshal Association of North America, the National Fire Protection Association, a cross-section of major manufacturers of hazardous materials, including representatives from Dow Chemical, DuPont de Nemours, and Union Carbide, CHEMTREC and the International Association of Fire Fighters. Each participant in the development of the ERG was invited to present suggestions, recommendations and other information relative to the guidance presented in the ERG. A number of participants, including the IAFF, presented issues relative to the development of information and recommendations contained in the ERG. All issues were discussed and decisions made by RSPA relative to the final content of the ERG.

Since the issuance of the 1980 and subsequent editions of the ERG, more than 2.5 million copies have been distributed, without charge, to emergency response organizations. Thousands of other copies of the ERG have been purchased by others from commercial sources. Such wide distribution has provided extensive review by a large audience and constructive comments have been solicited, especially comments concerning its use in handling incidents involving hazardous materials. For example, the current edition of the ERG specifically requests such comments and provides an address to which such comments should be forwarded. RSPA maintains an open log on comments relative to the ERG, each comment is evaluated and an attempt is made to address each issue during development of subsequent editions.

The IAFF also objected to the allowance of the use of the CHEMTREC telephone number to satisfy the requirements of § 172.604 and recommended use of the National Response Center's telephone number. RSPA has not mandated the use of the CHEMTREC number, nor the specific use of any organization's number.

Therefore, the CHEMTREC telephone number, or any other agency's or organization's telephone number may only be used if the shipper has supplied the required information, and the agency has accepted the responsibility for providing information relative to the shipper's hazardous material.

The NRC has generally not been provided with information relative to a specific shipper's hazardous materials shipments, and usually cannot identify a specific shipper contact, nor has it "accepted responsibility for" providing information relative to a specific shipper's hazardous materials shipments. A requirement that an emergency response telephone number be provided for each shipment of hazardous materials is an attempt to provide emergency responders with more product-specific information relative to the hazards of the materials being transported. Nothing in the current regulations or this final rule prohibits or limits an emergency responder's efforts in obtaining information from all available sources. This position is in fact borne out by a statement in the ERG which states, "As a first responder at the scene of a hazardous materials incident, you must seek additional and more specific information about any material in question as soon as you are able." RSPA certainly encourages those involved in responding to hazardous materials incidents to use all available sources of information in order to make better informed judgments on how to handle them.

III. Relationship to Requirements Under Other Federal Statutes

On August 24, 1987, OSHA published a final rule (52 FR 31852) which amended their Hazard Communication Standard (HCS). The amended HCS requires virtually all employers to establish hazard communication programs to provide information to employees on the hazards of chemicals in the workplace. The amended HCS recognizes a variety of work situations, including those where employees only handle chemicals in sealed containers that are not opened under normal conditions of use (e.g., trucking terminals, warehousing, marine cargo handling and retail sales). Under the HCS, such employees must be provided information and training to protect them in the event of a spill or leak. The emergency response communication requirements of this final rule complement those of the HCS.

In addition, RSPA believes that the use of the emergency response information required under this rule, in

association with the shipping paper information, will also assist carriers in complying with portions of the emergency notification requirements of section 304 of Title III of the Superfund Amendments and Reauthorization Act (SARA). The emergency notification requirements of SARA, Title III, apply to transportation, and storage incident to transportation, as well as fixed or stationary facilities that are not transportation facilities.

IV. Review by Sections

Section 171.8. In § 171.8, the definition for "technical name" is revised to include chemical names recognized in scientific and technical journals and handbooks.

Section 171.11. In § 171.11, paragraph (d) is revised to require compliance with the emergency response information requirements for international shippers who import hazardous materials into the United States aboard aircraft.

Section 171.12a. In § 171.12a, a new paragraph (a)(7) is added to require shipments of hazardous materials being imported into the United States from Canada to be in compliance with the requirements for emergency response information specified in the new Subpart G of Part 172.

Section 172.202. This section is revised by adding a new paragraph (d) to require that shipping papers must contain an emergency response telephone number for the description of the hazardous material being shipped as specified in the new Subpart G of Part 172.

Section 172.203. This section is revised by moving paragraph (i)(2) and redesignating paragraph (i)(3) as paragraph (i)(2). Paragraph (i)(3) is removed. The requirements from paragraph (i)(2) are incorporated into a revised paragraph (k) to require that the "technical name" must be shown on shipping papers that contain "n.o.s. and generic" descriptions for hazardous materials. A new paragraph (m) is added to this section incorporating some of the requirements for poisonous materials which previously appeared in paragraph (k) of this section.

Section 172.301. In § 172.301, paragraph (c) is redesignated as paragraph (d), and a new paragraph (c) is added to require marking of the technical name of the hazardous material on non-bulk packages which contain hazardous materials described under n.o.s. descriptions, and on non-bulk packages of certain poisonous materials described under generic descriptions. In both instances, the technical name must be shown in

parentheses, immediately following the proper shipping name.

Section 172.302. This section on marking requirements for export shipment of hazardous materials by water is rendered obsolete by the changes in § 172.301. Therefore, this section is removed.

Subpart G to Part 172. A new Subpart G is added to Part 172 containing requirements for emergency response information.

Section 173.12. This section is revised to add a new paragraph (f) which provides an exception from showing the technical name for n.o.s. descriptions in shipping papers and package markings for hazardous waste materials packaged in accordance with the lab pack provisions, unless the hazardous material is a hazardous substance or meets the definition of a poison.

Section 176.30. This section is revised to require that a dangerous cargo manifest contain a 24-hour emergency response telephone number.

V. Administrative Notices

A. Paperwork Reduction Act

The changes and new requirements for information collection in §§ 172.201, 172.203, 172.602, and 172.604 have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) under OMB control numbers 2137-0034 and 2137-0580 (expiration dates: June 30, 1992).

B. Executive Order 12291

The RSPA has determined that this final rule (1) does not meet the criteria specified in section 1(b) of Executive Order 12291 and is, therefore, not a major rule; (2) is not considered to be a "significant" rule under DOT Regulatory Policies and Procedures (44 FR 11034); (3) will not affect not-for-profit enterprises or small governmental jurisdictions; and (4) does not require a Regulatory Impact Analysis or an Environmental Impact Statement under the National Environmental Policy Act (49 U.S.C. 4321 et seq.) A regulatory evaluation is available for review in the Docket.

C. 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.

D. Impact on Small Entities

Based on limited information concerning size and nature of entities likely affected by this final rule, I certify this regulation will not have a significant economic impact on a substantial number of small entities. A regulatory evaluation is available for review in the Docket.

E. Regulatory Information Number (RIN)

A regulatory information 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 year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 171

Hazardous materials transportation, Definitions.

49 CFR Part 172

Hazardous materials transportation, Shipping papers, Markings and Emergency response information.

49 CFR Part 173

Hazardous materials transportation, Packagings.

49 CFR Part 176

Hazardous materials transportation, Maritime carriers.

In consideration of the foregoing, 49 CFR Parts 171, 172, 173 and 176 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. 1603, 1804, 1805, 1808; 49 CFR Part 1.

§ 171.8 [Amended]

2. In § 171.8, the definition of "technical name" is revised to read as follows:

§ 171.8 Definitions and abbreviations.

"Technical name" means the scientific designation of a chemical in accordance with the nomenclature system developed by the International Union of Pure and Applied Chemistry (IUPAC) or the Chemical Abstracts Service (CAS) rules of nomenclature, or a name currently recognized in the Registry of Toxic Effects of Chemical Substances

(RTECS). The term does not include trade names.

3. In § 171.11, a new paragraph (d)(10) is added to read as follows:

§ 171.11 Use of ICAO Technical Instructions.

(d) * * *

(10) Shipments of hazardous materials under this section must conform to the requirements for emergency response information as prescribed in Subpart G of Part 172 of this subchapter.

4. In § 171.12a, a new paragraph (a)(7) is added to read as follows:

§ 171.12a Canadian shipments and packagings.

(a) * * *

(7) Shipments of hazardous materials subject to the requirements of this section must conform to the requirements for emergency response information as prescribed in Subpart G of Part 172 of this subchapter.

5. The heading of Part 172 is revised to read as follows:

PART 172—HAZARDOUS MATERIALS TABLES, HAZARDOUS MATERIALS COMMUNICATIONS REQUIREMENTS AND EMERGENCY RESPONSE INFORMATION REQUIREMENTS

6. The authority citation for Part 172 is revised to read as follows:

Authority: 49 U.S.C. App. 1603, 1804, 1808; 49 CFR Part 1.

7. In § 172.201, a new paragraph (d) is added to read as follows:

§ 172.201 General entries.

(d) *Emergency response telephone number.* A shipping paper must contain an emergency response telephone number, as prescribed in Subpart G of Part 172 of this subchapter.

8. In § 172.203, paragraph (i)(2) is removed, paragraph (i)(3) is redesignated as paragraph (i)(2), paragraph (k) is revised and paragraph (m) is added to read as follows:

§ 172.203 Additional descriptions requirements.

(k) *Technical names for "n.o.s." and other generic descriptions.* Unless otherwise excepted, if a material is described on a shipping paper by one of the proper shipping names listed in paragraph (R)(3) of this section, the technical name of the hazardous material must be entered in parentheses in association with the basic

description. For example "Corrosive liquid, n.o.s. (Caprylyl chloride), UN1760" or "Corrosive liquid, n.o.s., UN1760 (contains caprylyl chloride)". The word contains may be used in association with the technical name, if appropriate.

(1) In addition to the n.o.s. descriptions listed herein, the requirements of this section apply to all shipping descriptions for poisonous materials which are subject to the requirements of paragraph (m) of this section, and for which the proper shipping name does not specifically identify the poisonous constituent by technical name. For example, "Motor fuel antiknock compound (Tetraethyl lead), Poison B, UN1649" or "Motor fuel antiknock compound, Poison B, UN1649, (Tetraethyl lead)".

(2) If a hazardous material is a mixture or solution of two or more hazardous materials, the technical names of at least two components most predominately contributing to the hazards of the mixture or solution must be entered on the shipping paper as required by this paragraph. For example, "Flammable liquid, corrosive, n.o.s. (contains Methanol, Potassium hydroxide), UN2924".

(3) Proper shipping names for which the provisions of this paragraph apply are as follows:

- Acid, liquid, n.o.s.
- Alcohol, n.o.s.
- Alkaline liquid, n.o.s.
- Cement, adhesive, n.o.s.
- Combustible liquid, n.o.s.
- Compressed gas, n.o.s.
- Corrosive liquid, n.o.s.
- Corrosive liquid, poisonous, n.o.s.
- Corrosive solid, n.o.s.
- Dispersant gas, n.o.s.
- Etching acid, liquid, n.o.s.
- Etiologic agent, n.o.s.
- Flammable gas, n.o.s.
- Flammable liquid, corrosive, n.o.s.
- Flammable liquid, n.o.s.
- Flammable liquid, poisonous, n.o.s.
- Flammable solid, corrosive, n.o.s.
- Flammable solid, n.o.s.
- Flammable solid, poisonous, n.o.s.
- Hazardous substance, liquid or solid, n.o.s.
- Hazardous waste, liquid or solid, n.o.s.
- Infectious substance, human, n.o.s.
- Insecticide, dry, n.o.s.
- Insecticide, liquid, n.o.s.
- Irritating agent, n.o.s.
- Nonflammable gas, n.o.s.
- Organic peroxide, solid, n.o.s.
- Organic peroxide, liquid or solution, n.o.s.
- ORM-A, n.o.s.
- ORM-B, n.o.s.
- ORM-E, n.o.s.
- Oxidizer, corrosive, liquid, n.o.s.
- Oxidizer, corrosive, solid, n.o.s.
- Oxidizer, n.o.s.
- Oxidizer, poisonous, liquid, n.o.s.
- Oxidizer, poisonous, solid, n.o.s.
- Poisonous liquid or gas, flammable, n.o.s.

- Poisonous liquid or gas, n.o.s.
- Poisonous liquid, n.o.s.
- Poison B liquid, n.o.s.
- Poisonous solid, corrosive, n.o.s.
- Poisonous solid, n.o.s.
- Poison B, solid, n.o.s.
- Pyrophoric liquid, n.o.s.
- Pyroforic liquid, n.o.s.
- Refrigerant gas, n.o.s.
- Water reactive solid, n.o.s.

(4) The provisions of this paragraph do not apply—

(i) To a material that is described using the proper shipping name "Hazardous Substance, liquid or solid, n.o.s." provided the material is described in accordance with the provisions of § 172.203(c) of this part; or

(ii) To a material that is described using the proper shipping name "Hazardous Waste, liquid or solid, n.o.s." that is also a hazardous substance and which is described in accordance with the provisions of § 172.203(c) of this part.

(m) *Poisonous materials.* Notwithstanding the hazard class to which a material is assigned—

(1) If a liquid or solid material in a package meets the definition of a poison according to this subchapter, and the fact that it is a poison is not disclosed in the shipping name or class entry, the word "Poison" shall be entered on the shipping paper in association with the shipping description.

(2) If the technical name of the compound or principal constituent that causes a material to meet the definition of a poison (according to this subchapter) is not included in the proper shipping name for the material, the technical name shall be entered on the shipping paper in the manner prescribed in paragraph (k) of this section.

(3) If the inhalation toxicity of any material falls within the criteria specified in § 173.3a(b)(2) of this subchapter (subject to definitions and implementation conditions of paragraphs (c) and (d) of the same section), the words "Poison-Inhalation Hazard" shall be entered on the shipping paper in association with the shipping description. However, the word "Poison" need not be repeated if it is entered as part of the basic description or in conformance with paragraph (m)(1) of this section. This paragraph does not apply to packagings containing inner receptacles of one liter capacity or less.

9. In § 172.301, paragraph (c) is redesignated as paragraph (d) and paragraph (c) is added to this section to read as follows:

§ 172.301 General marking requirements.

(c) *Technical names.* Each non-bulk packaging containing hazardous materials subject to the provisions of § 172.203(k) of this part must be marked with the technical name of the hazardous material in parentheses immediately following the proper shipping name, in accordance with the requirements and exceptions specified for the display of technical descriptions on shipping papers in § 172.203(k) of this part.

§ 172.302 [Removed]

10. Section 172.302 is removed.
11. A new Subpart G is added to Part 172 to read as follows:

Subpart G—Emergency Response Information

- Sec.
- 172.600 Applicability and general requirements.
- 172.602 Emergency response information.
- 172.604 Emergency response telephone number.

Subpart G—Emergency Response Information

§ 172.600 Applicability and general requirements.

(a) *Scope.* Except as provided in paragraph (d) of this section, this subpart prescribes requirements for providing and maintaining emergency response information during transportation and at facilities where hazardous materials are loaded for transportation, stored incidental to transportation or otherwise handled during any phase of transportation.

(b) *Applicability.* This subpart applies to persons who offer for transportation, accept for transportation, transfer or otherwise handle hazardous materials during transportation.

(c) *General requirements.* No person to whom this subpart applies may offer for transportation, accept for transportation, transfer, store or otherwise handle during transportation a hazardous material unless:

(1) Emergency response information conforming to this subpart is immediately available for use at all times and hazardous material is present; and

(2) Emergency response information required by this subpart is immediately available to any person who, as a representative of a Federal, state or local government agency, responds to an incident involving a hazardous material, or is conducting an investigation which involves a hazardous material.

(d) *Exception.* The requirements of this subpart do not apply to hazardous materials which are excepted from the shipping paper requirements of this subchapter.

§ 172.602 Emergency response information.

(a) *Information required.* For purposes of this subpart, the term "emergency response information" means information that can be used in the mitigation of an incident involving hazardous materials and, as a minimum, must contain the following information:

- (1) The description of the hazardous material required by §§ 172.202 and 172.203;
- (2) Immediate hazards to health;
- (3) Risks of fire or explosion;
- (4) Immediate precautions to be taken in the event of an accident or incident;
- (5) Immediate methods for handling small or large fires;
- (6) Initial methods for handling spills or leaks in the absence of fire; and
- (7) Preliminary first aid measures.

(b) *Form of information.* The information required for a hazardous material by paragraph (a) of this section must be:

- (1) Printed legibly in English;
- (2) Available for use away from the package containing the hazardous material; and
- (3) Presented—
 - (i) On a shipping paper;
 - (ii) In a document, other than a shipping paper, that includes both the basic description of the hazardous material as specified in § 172.101, and the emergency response information required by this subpart, (e.g., a material safety data sheet); or
 - (iii) In conjunction with a shipping paper, in a separate document, such as an emergency response guidance manual, in a manner that cross-references the basic description for the hazardous material on the shipping paper with the emergency response information contained in the document. For example, the ICAO "Emergency Response Guidance for Aircraft Incidents Involving Dangerous Goods" and the IMO "Emergency Procedures for Ships Carrying Dangerous Goods", for shipments by air and water respectively, could be used in association with a shipping paper to satisfy the requirements of this paragraph, if the document contains the information specified in paragraph (a) of this section.

(c) *Maintenance of information.* Emergency response information shall be maintained as follows:

(1) *Carriers.* Each carrier who transports a hazardous material shall maintain the information specified in paragraph (a) of this section in the same manner as prescribed for shipping papers (including dangerous cargo manifests). This information must be immediately accessible to a transport vehicle operator or crew in the event of an incident involving a hazardous material.

(2) *Facility operators.* Each operator of a facility where a hazardous material is received, stored or handled during transportation, shall maintain the information required by paragraph (a) of this section whenever the hazardous material is present. This information must be in a location that is immediately accessible to facility personnel in the event of an incident involving the hazardous material.

§ 172.604 Emergency response telephone number.

(a) A person who offers a hazardous material for transportation must provide a 24-hour emergency response telephone number (including the area code or international access code) for use in the event of an emergency involving the hazardous material. The telephone number must be—

- (1) Monitored at all times;
- (2) The number of a person who is knowledgeable of the hazards and characteristics of the hazardous material being shipped, has comprehensive emergency response and accident mitigation information for that material, or has immediate access to a person who possesses such knowledge and information; and
- (3) Entered on a shipping paper, as follows:

(i) Immediately following the description of the hazardous material required by Subpart C of this Part 172; or

(ii) Entered once on the shipping paper in a clearly visible location. This provision may be used only if the telephone number applies to each hazardous material entered on the shipping paper, and if it is indicated that the telephone number is for emergency response information (for example: "EMERGENCY CONTACT: ***").

(b) The telephone number required by paragraph (a) of this section must be the number of the person offering the hazardous material for transportation or the number of an agency or organization capable of, and accepting responsibility for, providing the detailed information concerning the hazardous material. A person offering a hazardous material for

transportation who lists the telephone number of an agency or organization shall ensure that agency or organization has received current information on the material, as required by paragraph (a)(2) of this section before it is offered for transportation.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS:

12. The authority citation for Part 173 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1808; 49 CFR Part 1.

13. In § 173.12, a new paragraph (f) is added to read as follows:

§ 173.12 Exceptions for shipment of waste material.

(f) *Technical names for n.o.s. descriptions.* The requirements for the inclusion of technical names for n.o.s. descriptions on shipping papers and package markings, §§ 172.203 and 172.301 of this subchapter, respectively, do not apply to packagings prepared in accordance with the requirements of this section, except as follows:

- (1) Packages containing materials meeting the definition of a hazardous substance must be described as required in § 172.203(c) and marked as required in § 172.324 of this subchapter; and
- (2) Packages containing hazardous materials subject to the provisions of § 172.203(m) of this subchapter must be described in accordance with § 172.203(m) of this subchapter.

PART 176—CARRIAGE BY VESSEL

14. The authority citation for Part 176 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1808; 49 CFR Part 1.

15. In § 176.30, a new paragraph (a)(3)(i) is added to read as follows:

§ 176.30 Dangerous cargo manifest.

- (a) * * *
- (3) * * *

(i) An emergency response telephone number as prescribed in Subpart G of Part 172 of this subchapter.

Issued in Washington, DC on June 22, 1989, under authority delegated in 49 CFR Part 1.

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

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