

DEPARTMENT OF TRANSPORTATION**Research and Special Programs Administration****49 CFR Part 172****[Docket No. HM-126C; Notice 87-10]****Emergency Response Communication Standards****AGENCY:** Research and Special Programs Administration (RSPA), Department of Transportation (DOT).**ACTION:** Notice of proposed rulemaking.

SUMMARY: In this notice, RSPA solicits comments on proposed requirements for additional emergency response information on shipping papers and placement of response action information in all places, including vehicles, where hazardous materials are transported in commerce. This action is necessary because RSPA believes there is a need to improve the communication of accurate information concerning hazardous materials when they are involved in incidents during transportation. This proposal is intended to improve emergency response communication and the availability of information concerning the handling of hazardous materials during incidents.

DATE: Comments must be received on or before September 21, 1987.

ADDRESSES: Comments: Address comments to Dockets Branch (DHM-33), Office of Hazardous Materials Transportation, RSPA, U.S. Department of Transportation, Washington, DC 20590. Comments should be submitted, when possible, in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard. The Dockets Branch is located in Room 8426 of the Nassif Building, 400 Seventh Street SW., Washington, DC. Dockets may be reviewed between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Lee Jackson (202) 366-4488, Office of Hazardous Materials Transportation, RSPA, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:**I. Background**

On March 16, 1984, RSPA published an advance notice of proposed rulemaking [ANPRM; Notice No. 84-2] and a notice of public hearing under Docket No. HM-126C [49 FR 10048]. This ANPRM, entitled "Required Use of Emergency Response Guidebooks and Material Safety Data Sheets" requested 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 while they are moving in commerce. The ANPRM was intended to address communication needs during emergencies which involve the release of hazardous materials as well as what must be known about hazardous materials when they are in transport vehicles or in-transit storage facilities. The ANPRM was prepared as a result of a safety recommendation issued by the National Transportation Safety Board (NTSB) and a petition RSPA received from the American Trucking Association (ATA). Based on an accident involving hazardous materials which occurred near Odessa, Delaware on October 13, 1982, the NTSB recommended that 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." The acronym "n.o.s." is an abbreviation for "not otherwise specified". If the hazardous materials tables, i.e., 49 CFR 172.101 or 172.102, do not specifically list the name of a material and the material satisfies the definition of a hazardous material under the Hazardous Materials Regulations (HMR), the shipper is required to select an appropriate proper shipping name from the general descriptions which appear in those tables. A detailed discussion of the background and conclusions of the NTSB recommendation is contained in the ANPRM.

Prior to NTSB's issuance of the Safety Recommendation, RSPA received a petition from the ATA which requested "... DOT to require, by rule, motor carriers involved in the transportation of hazardous materials maintain a copy of the Emergency Response Guidebook (Guidebook), DOT P 5800.3, at each motor carrier facility where hazardous materials shipments are loaded or unloaded from vehicles." The ATA petition (P-922), appeared in its entirety in the ANPRM.

Since the Odessa, Delaware incident, there have been other incidents where emergency response personnel have encountered problems identifying the hazards and composition of the hazardous materials involved. In 1984, the NTSB investigated an incident in Orange County, Florida, where "... vapors escaping from a cargo tank

containing waste acids caused the evacuation of a 3-square-mile area and the injury of 12 persons." The shipper of this material had used the shipping name "Waste, acid liquid, n.o.s." for the waste material. During this incident, emergency response personnel experienced problems obtaining specific information about the composition of the waste acids being transported. As a result of its investigation of this incident, the NTSB issued Safety Recommendation I-85-10 to RSPA on May 16, 1985:

Determine the adequacy of general shipping names on shipping papers for hazardous wastes and the need for additional information, such as technical and chemical group names, to better inform emergency response personnel about the composition and the hazards of the material being shipped.

In 1985, a similar incident occurred in Fairfax County, Virginia when a leak was discovered in a cargo tank that was transporting corrosive hazardous waste on the Washington, DC beltway. As a result of this leak, a large section of the beltway was closed for nine hours to all traffic, several thousand vehicles were stranded for hours and an estimated thirty-four thousand vehicles were rerouted. As a precaution, the fire department evacuated about 600 people who were located within a half-mile radius of the leaking vehicle. In response to this incident, the NTSB made some technical recommendations and also reiterated Safety Recommendation I-85-10 which was issued for the Orange County, Florida incident.

The purpose of the ANPRM (Docket No. HM-126C) was to not only solicit comments on the benefits and consequences of requiring the use of the ERG or MSDS to communicate information on the hazards of materials while they are moving in commerce, "... but also to ascertain what must be known about them when they are present in transport vehicles (including vessels and aircraft), and facilities associated with transportation such as terminals, piers, warehouses and other places where hazardous materials may be kept during the course of transportation." In addition to requesting comments on these matters, RSPA requested that commenters respond to several questions which are repeated as follows:

1. What material specific information is provided by a MSDS that would mitigate the potential consequences of a discharge beyond the type of information provided by the ERG and CHEMTREC, and how quickly would that information be needed? In

commenting, please take into account that the information on file at CHEMTREC is based on MSDS's provided by manufacturers and that CHEMTREC can provide information that is not contained in the ERG e.g., flash-point, boiling point, flammable limits, and vapor density. Also, CHEMTREC has access to shippers and the CIS for more detailed information on hazardous materials. If comments are presented concerning the value of TLV (threshold limit value) data, it is requested that supporting information be provided in support of how such data (TWA—time weighted average; STEL—short-term-exposure limit; C—ceiling) can be effectively applied in the transportation environment. For example, what type of monitoring equipment could be reliably used to make an assessment of a spill area? Should MTP imply that confidence may be placed in use of such equipment? Up to the present time, it has been MTB's opinion that this approach would not be appropriate; therefore, current ERG guidance for any cargo (not only regulated hazardous materials) is "Move And Keep People Away From Incident Scene; Do Not Walk Into Or Touch Any Spilled Material; Avoid Inhaling Fumes, Smoke And Vapors Even If No Hazardous Materials Are Involved; Do Not Assume That Gases Or vapors Are Harmless Because Of Lack Of Smell".

2. (a) Should DOT consider discontinuing distribution of the ERG in favor of MSDS's accompanying shipments of hazardous materials? (b) Should consideration of MSDS's be limited to bulk shipments as suggested by NTSB? In commenting, please consider the possibility of undesirable results in applying both systems to transportation, e.g., the different language contained in basic health threat information as well as differing response information. In preparing for issuance of this notice, MTB reviewed 29 CFR 1915.97 relative to preparation of U.S. Department of Labor Form OSHA 20 and the Occupational Safety and Health Administration's (OSHA) final rule amending 29 CFR Part 1910 [48 FR 53280; November 25, 1983]. The information specified for inclusion in MSDS's (§ 1910.1200(g)) does not require manufacturers and importers to use standard language for either the communication of risk or the mitigation of risk. To a significant degree this is overcome by training (§ 1910.1200(h)) required to be given by employers in Standard Industrial Classification Codes 20 through 39. (c) To what extent could and should DOT rely on training of emergency response and transportation personnel in use of MSDS information rather than the ERG, taking into account that more than 180,000,000 shipments of hazardous materials are made annually in the United States?

3. If, following review of the comments on this notice, MTB decides to propose a mandatory placement of ERG's in transportation facilities: (a) How should MTB describe (define) those facilities in the regulations? (b) Should ERG's be required in vehicles used to transport hazardous materials, as suggested by IBT? (c) What would be the means of acquisition of the ERG's? (d) How much time should be provided for acquisition and implementation?

(e) Could such a requirement be implemented without having an effect on necessary revisions and updates of the ERG? (f) In order for MTB to assess the cost of such a program in a regulatory analysis, how many vehicles (including rail), vessels, aircraft, and terminal facilities would be subject to such a requirement (taking into account the last quoted paragraph of IBT's comments above)?

4. (a) Is there another way to deal with "... emergency response problems posed by n.o.s. commodities ..." as discussed by NTSB in Recommendation I-83-2? On May 22, 1980 MTB published a final rule under Docket HM-126B (preamble page—45 FR 34565) setting forth requirements for more specific identification of poisons, including those covered by n.o.s. entries in § 172.101. The purpose of the rule, which is set forth in § 172.203(k), is to make identification of poisons more specific for immediate response purposes. (b) Should MTB consider expanding the requirements to hazardous materials of all classes? Commenters should note that the present rule does not require the technical names of compounds or principal constituents if the entry on a shipping paper (in association with the n.o.s. entry coming from § 172.101) is a name in the NIOSH Registry (RTECS—Registry of Toxic Effects of Chemical Substances) which contains more than 59,000 substance entries. The reason for providing this option is the problem emergency response personnel could have in dealing with long and complex chemical names (with dozens of letters and numbers in some cases) and the fact that RTECS is a component of the NIH/EPA CIS computer system that may be accessed by CHEMTREC at any time specific identification of a material is necessary. At the time the rule was promulgated, MTB had determined that it was only essential for materials meeting the definition of a Class B poison (regardless of class precedence). Also, a different rule for identification of hazardous substances in mixtures was issued at the same time under Docket HM-145B. (c) What would be the burden of such a requirement? and (d), Can or should such a requirement be construed as deriving the same benefit as possession of a MSDS during transportation?

Comments Made to the ANPRM

RSPA received more than seventy comments to the advance notice of Docket HM-126C. Comments were received from all segments of the transportation and chemical industries as well as from some Federal and State agencies. Several fire departments and three emergency response organizations also submitted comments. Of the comments received, only two commenters supported the NTSB recommendation that an MSDS accompany every bulk shipment of hazardous materials. Several commenters stated that some of the information contained on a MSDS might be useful; however, they believed that the ERG should be maintained as the primary reference. It was stated that n.o.s. descriptions frequently pose

particular problems to emergency response efforts during hazardous materials incidents because difficulties occur in identifying the specific properties of the hazardous materials involved. Discussion of these points, as well as RSPA's response to the comments, follows.

There was widespread support expressed in the comments for use of the ERG. Most of the commenters stated that the ERG is a very effective way of communicating fundamental hazard information to emergency response personnel. Because of this, many commenters thought the ERG should be required in transportation facilities. One commenter pointed out that if RSPA does require the placement of the ERG in transportation facilities, these facilities should be narrowly defined so that copies of the ERG are only required in motor carrier facilities where freight is processed through the terminal as part of the delivery function and in terminals of bulk and package carriers.

RSPA received comments concerning the MSDS from the Occupational Safety and Health Administration (OSHA) of the U.S. Department of Labor. In their comments to the ANPRM, OSHA made the following statement about the MSDS:

... while material safety data sheets are frequently available, practices are not uniform, and the quality of the information on the MSDS varies significantly.

The ATA supported use of the ERG rather than the MSDS. In a statement presented a public hearing held on HM-126C, ATA stated:

... In the normal course of transportation services, our terminal people are not exposed directly to hazardous materials being transported. Their contact is at most indirect and for many materials occurs infrequently and sporadically. Their situation is significantly distinct, therefore, from workers in most other industries who, in using such commodities in the performance of their occupational tasks, come into actual contact with the hazardous materials. Because of this, the routine informational needs of the respective worker groups regarding hazardous materials are also distinct.

The International Brotherhood of Teamsters has submitted a letter to DOT, dated January 12, 1984, which was made a part of this Advance Notice of Proposed Rulemaking. In their letter, the Teamsters extended their support of ATA's petition, for which we are most grateful. However, the Teamsters have called upon DOT to refrain from preempting state and local requirements which call for Material Safety Data Sheets, or similar documents, to be made available to terminal workers who handle hazardous materials as part of a transportation movement. While the Teamsters expressly acknowledge that acute health hazard

information is provided in the Emergency Response Guidebook, they state that unlike the DOT Guidebook, "MSDS provide information on chronic and long latency health effects from exposure to a hazardous material." Several comments in response are warranted here.

First, it should be understood that our terminal workers are not, as some would believe, involved in the business of emergency response. Whenever an incident involving hazardous materials does occur, our workers have been instructed to secure the accident scene, to identify the material involved, to notify the appropriate emergency response personnel and, most importantly, to avoid all direct contact with the materials.

Direct contact does, however, occasionally occur. In such instances, information concerning the acute hazards posed by the materials is what is required. The Emergency Response Guidebook provides this information in a format which is much more effective and efficient than any Material Safety Data Sheet, and this is what is critical to the facilitation of prompt and effective first-aid . . .

. . . The question posed by our petition is not whether the worker is entitled to receive such information—our industry agrees that such information should be available—but whether it should be provided routinely with every shipment. For exposure to spills, only acute hazard information needs to be immediately available. Subsequent contact directly with the shipper or with any of the several support services of industry and government will generate information regarding the chronic health effects, which can then be provided to the worker in the form of a Material Safety Data Sheet or any other means the shipper elects to make it available. This can occur today. Thus to suggest that Material Safety Data Sheets be present at each motor carrier terminal for any hazardous materials that may pass through in the course of a year is costly, burdensome and completely unnecessary.

Additionally, the Teamsters have asked DOT to require motor carriers to provide an Emergency Response Guidebook on board each vehicle transporting hazardous materials. Aside from the excessive costs this would impose upon motor carriers, we do not believe that the availability of an Emergency Response Guidebook on board each vehicle is conducive to safety. Our drivers receive the same instructions governing accidents as do our terminal workers: secure the accident scene; identify the hazardous materials being transported; notify the emergency response personnel; and avoid contact with the materials. By making the Guidebook readily available, a driver may be encouraged to initiate some sort of direct emergency response rather than wait for the trained experts.

With respect to Safety Recommendation I-83-2, issued November 29, 1983 by the National Transportation Safety Board, we do not see any justification for it.

We agree with DOT that the acute health hazard information contained in the Emergency Response Guidebook and the Materials Safety Data Sheet are virtually the same. Therefore, we cannot see how the

presence of the Materials Safety Data Sheet would be of any greater assistance than the Emergency Response Guidebook for dealing with this accident. If any fault can be attributed to the handling of the onscene response in Odessa, Delaware, it must be directed at the emergency responders rather than a failing of the DOT system or the lack of a Material Safety Data Sheet.

Each guide in the Emergency Response Guidebook directs attention to the Chemical Transportation Emergency Response Center—CHEMTREC. This service of the Chemical Manufacturers Association provides emergency response information developed by the chemical industry and also establishes a direct link between the responders at the accident scene and the manufacturer of the product involved in the accident. This approach is far more effective than depending on the presence of Material Safety Data Sheets . . .

In their comments to Docket No. HM-126C, the Chemical Manufacturers Association stated:

. . . The use of an MSDS as an emergency response guide is inappropriate for four reasons. First, the MSDS was not developed for that purpose and does not contain all the information necessary for the first responder. (The hazard communication standard recently promulgated by the Occupational Safety and Health Administration specifies the information manufacturers must provide on the MSDS—29 CFR 1910.1200(g), 48 Federal Register 53343). For example, recommendations to cool containers or knock down vapors are rarely found on an MSDS. Second, much of the information on a typical MSDS is not used in emergency response. It would complicate the responder's job at the scene if he had to determine which part of an MSDS to use. Third, the MSDS requires knowledgeable interpretation of technical data, which could increase the possibility of misinterpretation under stress conditions—such as during an incident. Fourth, the probability of using the wrong MSDS in an emergency is high because there may be a number of them in the cab (perhaps from previous loads or from a multiproduct load), and because the MSDS uses a trade or chemical name for the product instead of the Department of Transportation (DOT) shipping description.

We acknowledge that in some cases personnel at the scene of an incident need more information than is provided in the ERG. That is precisely why CHEMTREC was established and why DOT recommends a call to CHEMTREC for detailed information and assistance. The information provided by CHEMTREC to the caller includes the essential information extracted from the MSDS, put in consistent terminology and language. Since CHEMTREC synthesizes the best information from a number of similar MSDS's it may receive from several producers of the same product, the responder obtains the best combined information from the individual sheets by calling CHEMTREC. Since CHEMTREC provides detailed, synthesized information, the use of this service should be encouraged rather than seeking to establish a new system that would

require the transporter or first responder to cull the information from the MSDS's (which sometimes do not contain sufficient response advice).

In summary, we do not believe that an MSDS is a good or efficient substitute for the ERG. We do believe that the ERG, used in conjunction with the CHEMTREC system, can provide properly trained personnel with necessary information to handle an emergency. CMA is committed to that approach and is actively working to improve the understanding of the emergency response community about the CHEMTREC service.

Comments received in response to the question of whether RSPA should require mandatory placement of the ERG in transportation facilities were mixed. Some commenters expressed support for requiring the ERG in vehicles as well as in transportation facilities. A few commenters thought it was unnecessary to require copies of the ERG in vehicles (see ATA comments quoted herein) or in facilities that handle hazardous materials. These commenters stated that proper utilization of CHEMTREC and well trained emergency response personnel should suffice when responding to emergency situations involving hazardous materials. Some commenters stated that the ERG should only be required in facilities and that requiring the placement of the ERG in each vehicle would be cost-prohibitive and contrary to safety. One of these commenters stated that unless advance instruction on use of the ERG was provided to each driver, the possibility exists that a driver may take improper actions during a hazardous material incident. RSPA intends to address the training of transportation workers in a separate rulemaking.

Most of the comments received regarding the source of acquisition for the ERG stated that the ERG should be available through Government Printing Office Bookstores and commercial suppliers. These commenters also stated that if use of the ERG was required by RSPA, it would take approximately twelve months to acquire ERG's and comply with this requirement.

Most commenters believed that RSPA could require use of the ERG without affecting the necessary revisions which have to be made continually to the guide to keep it current. Two commenters stated that if the ERG becomes a regulatory document, problems may occur revising it because all revisions would have to be accomplished under the purview of the Administrative Procedure Act. This might hamper RSPA's current ability to make timely revisions and amendments to the ERG. Another commenter suggested that

RSPA consider establishing a two-volume ERG. The first volume of the ERG would contain a cross-reference of ID numbers, shipping names and guide numbers, and the second volume would contain the detailed procedures which should be followed during emergencies.

Concerning the number of facilities that would require copies of the ERG if such a requirement were implemented, the ATA stated in their comments that "... It would be impossible to identify the exact costs of compliance with a requirement for maintaining ERGs at each transportation facility. The Bureau of Motor Carrier Safety estimates that there are approximately 190,000 motor carriers ...". ATA estimates that if a copy of the ERG were required in each facility involved in hazardous materials transportation, half of the carriers and many of their terminals would have to purchase the ERG. They stated that the cost to comply with such a requirement could approach one million dollars. ATA opposed RSPA requiring a copy of the ERG in each vehicle.

Several comments were received concerning the NTSB recommendation that particular attention be given to the emergency response problems posed by n.o.s. commodities in transit. For those commodities, more than half of the comments received to this question supported RSPA requiring that the technical name of a material be shown in parentheses on the shipping paper in association with the proper shipping name. Many commenters thought that showing the technical name on shipping papers was better than an MSDS accompanying the shipment. One commenter, who opposed RSPA requiring the technical name be shown on the shipping paper for n.o.s. commodities, stated that imposing such a requirement would result in a significant increase in paperwork burdens and that taking such action could actually decrease the level of safety because it may increase the number of errors and omissions on shipping papers.

II. Proposed Rule

Based on RSPA's review of the comments received to the ANPRM of Docket No. HM-126C and its own initiative, RSPA proposes improved emergency response communication requirements in three general areas. First, RSPA proposes to require that certain emergency response information be available concerning hazardous materials during their transportation. This information must be provided to all persons involved with the hazardous materials during their transportation. As a minimum, a copy of the ERG, or other

appropriate guidance, must be maintained which communicates what immediate emergency action should be taken in the event of an incident. RSPA believes that providing this information should increase the level of safety of persons involved in hazardous materials transportation and will enhance emergency response efforts during hazardous material incidents. Second, RSPA is proposing to require that shipping papers for hazardous materials include display of a 24-hour emergency response telephone number. The number provided could be the number of an individual or an organization that is fully cognizant of the hazards of the particular hazardous materials being transported. Under certain conditions, displaying the CHEMTREC number on the shipping paper may satisfy this requirement. Third, RSPA is also proposing that "n.o.s." descriptions on shipping papers for hazardous materials include the technical name of the material in parentheses immediately following the proper shipping name. Currently, a technical name must be shown on the shipping paper immediately following the proper shipping name if (1) the material is being offered for transportation by vessel to any country outside the United States (see § 172.203(i)(2)), (2) the material is a hazardous substance (see § 172.203(c)) or, (3) the material is a poison (see § 172.203(k)). In addition, corresponding markings would be required on all non-bulk packagings.

RSPA believes that each of the proposals for improved identification of materials will enhance emergency response efforts during hazardous material incidents. A discussion of each proposal follows.

A. Emergency Response Information

RSPA proposes to establish a new Subpart G in Part 172. The rules in this Subpart will be entitled "EMERGENCY RESPONSE INFORMATION" and will specify who is required to maintain emergency response information and what type of emergency response information will be required.

Based on the comments RSPA received to the ANPRM, which emphasized how important it is to have first-hand, up-to-date, technical and emergency response information during hazardous material incidents, RSPA is proposing that written emergency response information be maintained in vehicles and facilities by all carriers and other businesses that handle hazardous materials during the course of transportation. During the first few minutes following a hazardous material accident or incident, the presence of

information on the hazards of the material and the immediate precautions and actions to be taken could make the difference between a minor and a major event.

B. Telephone Contact for Emergency Response Information

RSPA proposes to include in the new Subpart G to Part 172 a requirement that the person offering hazardous material for transportation provide a twenty-four hour telephone number of a person having detailed knowledge, or having immediate access to a person with detailed knowledge, of the hazardous characteristics of the hazardous material being shipped. This person must have the knowledge and ability to communicate and assist in mitigation of an incident to a much greater degree than could be expected of the immediate information carried in a vehicle or placed in a facility. As proposed, a telephone number such as that of CHEMTREC could be used on the shipping paper to satisfy this requirement if the shipper has previously provided CHEMTREC with information on the properties and hazards of the hazardous materials being shipped. RSPA believes that allowing the use of an alternate telephone number to satisfy the requirement should not detract from the intended purpose of this proposed requirement, since the alternate number provided must also be manned at all times by an individual with detailed knowledge, or having immediate access to a person with detailed knowledge, of the hazard characteristics of the hazardous material being offered for transportation.

C. N.O.S. Descriptions/Generic Descriptions

RSPA also proposes to require that shipping papers for hazardous materials which are described under n.o.s. descriptions include the technical name of the material in parentheses immediately following the proper shipping name. For mixtures which are described under n.o.s. descriptions and which contain two or more hazardous materials, it is proposed to require that shipping papers display the technical names of the two components most predominantly contributing to the hazard or hazards of the mixture. These technical names would have to be shown in parentheses immediately following the proper shipping name. RSPA believes that requiring identification of no more than two components on the shipping paper for materials described under n.o.s.

descriptions will be effective in virtually all transportation incidents and will not be a substantial burden on shippers when compared with the recommendation that each constituent and its percentage of concentration be shown on the shipping paper.

It should be noted that RSPA published an NPRM under Docket HM-181 on May 5, 1987 [52 FR 16482]. In Docket HM-181, RSPA also proposes to require that shipping papers contain the name of the constituent or constituents of the material when an n.o.s. description is used. Readers should note the similarity between what is proposed in this rulemaking regarding display of technical names for materials described under n.o.s. descriptions and what is being proposed for these materials in Docket HM-181. RSPA intends to take action via this rulemaking, due to the subject matter specifically addressed herein.

The hazardous materials tables in §§ 172.101 and 172.102 do not contain the specific names of all hazardous materials. Therefore, many hazardous materials are described on shipping papers under generic or n.o.s. descriptions. Although use of a generic or an n.o.s. description is necessary, for practical reasons, RSPA recognizes that there may be problems during emergencies identifying the composition and special hazards of materials which are shown on the shipping paper under these descriptions. Recognizing this, RSPA believes that requiring the technical name of the material to be shown on the shipping paper for a hazardous material described under an n.o.s. description will improve emergency response communication when a hazardous material incident occurs. RSPA also proposes to require that the technical name of the material be marked on non-bulk packagings which contain hazardous material described under n.o.s. descriptions. Currently, this marking is required on packages of hazardous materials which are offered for transportation by vessel.

III. Relationship to SARA

Relationship to SARA

RSPA believes that use of the emergency response information proposed in this NPRM, in association with shipping paper information presently required, will provide a means for compliance in part with Titles I and III of the Superfund Amendments and Reauthorization Act (SARA) of 1986.

There is no doubt that large numbers of persons in the transportation industry are, or will be, involved in activities subject to section 126 of SARA (Title I)

and OSHA implementing regulations found in 29 CFR, Part 1910. Section 1910.1200 of the OSHA interim final rule (51 FR 45654; December 19, 1986) states, *inter alia*, "This section covers employers and employees engaged in the following operations . . . (v) Emergency response operations for releases of or substantial threats of releases of hazardous substances and post-emergency response operations for such releases." Included in the definition of hazardous substance in the same section is ". . . any substance listed by the U.S. Department of Transportation and regulated as hazardous materials under 49 CFR 172.101 and appendices . . ." It should be noted that OSHA refers to the ERG and CMA's CHEMTREC as resources for the development of emergency response plans in Appendix C to § 1910.120.

The emergency notification requirements of section 304 of SARA Title III apply to transportation, and storage incident to such transportation (e.g. at terminals, warehouses, pier facilities, railyards and sidings, and airport terminals), as well as fixed or stationary facilities that are not (all or in part) transportation facilities. Since the listing of materials subject to section 304 notification requirements is going to be amended to include all hazardous substances presently (and in the future) subject to the HMR, RSPA is not providing a detailed discussion of the materials subject to the notification requirements. Interested persons should review the final rule issued by EPA on April 22, 1987 (52 FR 13391) for this information.

Concerning transportation, and storage incident to transportation, EPA's rule implementing section 304 of SARA for all facilities (transportation and non-transportation) is quoted from 40 CFR 355.40 (52 FR 13396) in part as follows:

(b) *Notice requirements.* (1) The owner or operator of a facility subject to this section shall immediately notify the community emergency coordinator for the local emergency planning committee of any area likely to be affected by the release and the State emergency response commission of any State likely to be affected by the release. If there is no local emergency planning committee, notification shall be provided under this section to relevant local emergency response personnel.

(2) The notice required under this section shall include the following to the extent known at the time of notice and so long as no delay in notice or emergency response results:

- (i) The chemical name or identity of any substance involved in the release.
- (ii) An indication of whether the substance is an extremely hazardous substance.

(iii) An estimate of the quantity of any such substance that was released into the environment.

(iv) The time and duration of the release.

(v) The medium or media into which the release occurred.

(vi) Any known or anticipated acute or chronic health risks associated with the emergency and, where appropriate, advice regarding medical attention necessary for exposed individuals.

(vii) Proper precautions to take as a result of the release, including evacuation (unless such information is readily available to the community emergency coordination (sic) pursuant to the emergency plan).

(viii) The name and telephone number of the person or persons to be contacted for further information.

(3) As soon as practicable after a release which requires notice under (b)(1) of this section, such owner or operator shall provide a written follow-up emergency notice (or notices, as more information becomes available) setting forth and updating the information required under paragraph (b)(2) of this section, and including additional information with respect to:

(i) Actions taken to respond to and contain the release.

(ii) Any known or anticipated acute or chronic health risks associated with the release, and,

(iii) Where appropriate, advice regarding medical attention necessary for exposed individuals.

(4) Exceptions. (i) Until April 30, 1988, in lieu of the notice specified in paragraph (b)(2) of this section, any owner or operator of a facility subject to this section from which there is a release of a CERCLA hazardous substance which is not an extremely hazardous substance and has a statutory reportable quantity may provide the same notice required under CERCLA section 103(a) to the local emergency planning committee.

(ii) An owner or operator of a facility from which there is a transportation-related release may meet the requirements of this section by providing the information indicated in paragraph (b)(2) to the 911 operator, or in the absence of a 911 emergency telephone number, to the operator. For purposes of this paragraph, a "transportation-related release" means a release during transportation, or storage incident to transportation if the stored substance is moving under active shipping papers and has not reached the ultimate consignee. [RSPA Note: the 40 CFR 355.20 definition of facility states "For purpose of emergency release notification, the term includes motor vehicles, rolling stock and aircraft." pursuant to SARA Section 329.]

The rules proposed in this NPRM will, if adopted, greatly assist carriers in complying with the notification requirements of section 304 of SARA. While the various information elements proposed herein are not identical to those in section 304 of SARA and the EPA rule quoted above, for all practicable purposes compliance can be achieved taking into account that

several of the SARA reporting elements are qualified to require information based on a person's knowledge at the time of, and following, a release. Some knowledge is required to accomplish the intent of section 304 of SARA (e.g. the chemical name or identity of any substance involved in the release, the names and telephone numbers of persons to be contacted for further information) and some will only be acquired during the notification process (e.g. the time and duration of the release).

Since section 304 of SARA requires notification be made to the "community emergency coordinator", RSPA firmly believes that the approach it is taking in this NPRM will be effective in carrying out the intent of the requirement as it relates to transportation. An alternative would be to require carriage of Material Safety Data Sheets (MSDS) with all shipments, thereby removing the flexibility provided in this proposal. Considering the complex and dynamic nature of our transportation system, such a requirement would not only be extremely burdensome but would likely fail in accomplishing the main purpose of this rulemaking action (i.e., providing immediate emergency response information and quick access to more detailed information), and the main purpose of section 304 of SARA (i.e., reporting). The basis for this view is (1) the divergence of information that may be presented in a MSDS for the same material, which may mislead or confuse transportation workers when they handle the same material for different consignors, (2) the resulting generation of millions of MSDS copies that would be necessary for an estimated 200 million hazardous materials shipments per year raising serious doubt as to their utility in individual cases when really needed, and (3) the fact that MSDS are primarily intended for use in fixed facilities (in association with required training as required by OSHA; 29 CFR 1910.1200(h)). In a fixed facility, an employer may exercise some discretion as to the appropriate MSDS to use when more than one is available for the same material. In addition, while RSPA is not in a position to comment on the difficulties some employers at fixed facilities have experience in providing material-specific training pertaining to the materials consumed, produced or processed in their facilities, it is inconceivable that equivalent training could be provided to transportation workers since it is estimated that more than 30,000 different hazardous materials are offered in commercial quantities for transportation in

commerce. For these reasons, in addition to those presented in the CMA comments quoted earlier in this preamble, RSPA is not proposing adoption of the MSDS as the mechanism for immediate emergency response communication.

IV. Burden of Proposal

RSPA is aware of the potential burdens of this proposal and believes there are a number of opportunities available to offset those burdens. For example, primary producers of hazardous materials (and their trade associations) could provide significant assistance to their customers (e.g., distributors) in providing them with the appropriate emergency response information, including identification of a 24-hour telephone number of an organization that has detailed information on a particular material. Carrier associations could assist their members by making the information available in the form of DOT's Emergency Response Guidebook or in any other form suitable for compliance with the proposed requirements.

Another aspect relates to the thousands of small entities that transport single products such as gasoline, propane, ammonia, refrigerant gas, ammonium nitrate fertilizer, and explosives in private motor vehicle transportation. Several years ago, RSPA advised a trade association that a permanent (plastic coated) shipping paper may be carried in propane delivery vehicles to satisfy the requirement for having a shipping paper. RSPA intends to follow this same policy for the emergency response information proposed in this notice (§ 172.602). For example, rather than requiring carriage of DOT's Emergency Response Guidebook, you could satisfy this requirement by displaying a reprint of Guide 22 from DOT's Emergency Response Guidebook on the reverse side of a shipping paper for propane to accomplish compliance with the proposed rule. However, reference to this method of compliance assumes conformance with the requirement to provide telephone numbers, as proposed in § 172.604.

V. Review by Sections

Section 172.203. It is proposed to revise this section by removing paragraph (i)(2) and redesignating paragraph (i)(3) as paragraph (i)(2). Paragraph (i)(3) of this section would be reserved. The requirements of paragraph (i)(2) would be incorporated into a revised paragraph (k) which would require that n.o.s. descriptions and generic descriptions for certain

poisonous materials, show the technical name of the hazardous material in parentheses on shipping papers. A new paragraph (m) would be added to this section, incorporating some of the requirements for poisonous materials which previously appeared in paragraph (k) of this section.

Section 172.301. It is proposed to revise this section by redesignating paragraph (c) as paragraph (d). A new paragraph (c) would be added to this section to require the 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 cases, the technical name would be shown in parentheses, immediately following the proper shipping name.

Section 172.302. This section would be rendered obsolete by the changes proposed for § 172.301. Therefore, this section would be removed and reserved.

Subpart G to Part 172. It is proposed to establish a new Subpart G in Part 172. This Subpart would be entitled "Emergency Response Information" and would contain the following three sections:

Section 172.600. This section would set forth the applicability and general requirements for emergency response information. Paragraph (a) contains the applicability of the requirement to provide and maintain emergency response information. Paragraph (b) specifies that emergency response information must be available whenever hazardous materials are present and specifies to whom this information must be provided. Paragraph (c) states that the requirement to have emergency response information does not apply to materials which are excepted from the requirements which pertain to shipping papers.

Section 172.602. Paragraph (a) of this section states the type of emergency response information that must be provided. Paragraph (b) of this section specifies the form of this information and where it must appear. Paragraph (c) of this section specifies who must maintain the emergency response information required by paragraph (a) and where this information must be maintained.

Section 172.604. Paragraph (a) of this section states that an emergency response telephone number must be provided when offering a hazardous material for transportation. This paragraph also specifies the qualifications required of the persons

monitoring the telephone and contains certain exceptions to the requirements of entering a telephone number on the shipping paper. Paragraph (b) of this section states that the telephone number provided in accordance with paragraph (a) of this section must be the number of the person offering the hazardous materials for transportation or the number of an agency or organization capable of, and accepting responsibility for, accomplishing the requirements of this section.

VI. Administrative Notices

A. Paperwork Reduction Act

The information collection requirements contained in this proposal will be submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511).

B. Executive Order 12291

RSPA has determined that this proposed rule does not meet the criteria specified in section 1(b) of the Executive Order 12291 and is therefore, not a major rule or considered to be a "significant" rule under DOT Regulatory Policies and Procedures [44 FR 11034; February 26, 1979]. This proposal does not require a Regulatory Impact Analysis or 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. Impact on Small Entities

Based on limited information concerning size and nature of entities likely affected by this proposed rule, I certify this proposal will not, if promulgated, have a significant economic impact on a substantial number of small entities. This certification is subject to modification after review of comments received in response to this proposal.

List of Subjects in 49 CFR Part 172

Hazardous materials transportation, Shipping papers, Emergency response information.

In consideration of the foregoing, it is proposed to amend Part 172 of Title 49 of the Code of Federal Regulations as follows:

1. The authority citation for Part 172 would be revised to read as follows:

Authority: 49 U.S.C. App. 1803, 1804, 1806, 1808; 49 CFR 1.53(e), 1.53, App. A to Part 1.

2. The title of Part 172 would be revised to read as follows:

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

3. In § 172.203, paragraph (i)(2) would be deleted and paragraph (i)(3) would be redesignated as paragraph (i)(2).

4. In § 172.203, paragraph (k) would be revised and paragraph (m) would be added to read as follows:

§ 172.203 Additional description requirements.

(k) *Technical names for n.o.s. descriptions.* If a material is described on the shipping paper by an n.o.s. description in § 172.101 or § 172.102 of this subchapter, the technical name of the hazardous material must be entered in parentheses immediately following the proper shipping name. For example, "Corrosive liquid, n.o.s. (Caprylyl chloride), UN 1760." In addition to n.o.s. descriptions, the requirements of this section apply to generic entries for poisonous materials which are subject to the requirements of paragraph (m) of the section, and for which the shipping name does not specifically identify the poisonous constituent by technical name. For example: "Motor fuel antiknock compound (tetra-ethyl-lead), Poison B, UN 1649". If the hazardous material is a mixture of two or more hazardous materials, the names of at least two components most predominantly contributing to the hazard or hazards of the mixture must be entered in parentheses. For example, "Flammable liquid, corrosive, n.o.s. (Methanol, Potassium hydroxide), UN 2924." The provisions of this paragraph do not apply—

(1) If the n.o.s. description for the hazardous material (other than a mixture of hazardous materials of different classes meeting the definition of more than one hazard class) contains the name of the chemical element or group which is primarily responsible for the hazardous material being included in the hazard class indicated. For example: "Mercury compound, solid, n.o.s., Poison B, UN 2025"; or

(2) If the n.o.s. description for the hazardous material (which is a mixture of hazardous materials of different classes meeting the definition of more than one hazard class) contains the name of the chemical element or group responsible for the material meeting the definition of one of these classes. In such cases, only the technical name of the component that is not appropriately identified in the n.o.s. description must be entered in parentheses. For example:

"Carbamate pesticide, liquid, n.o.s. (contains Xylene), Poison B, UN 2757".

(m) *Poisonous materials.*

Notwithstanding the class to which a materials 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 (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 having primary containment units of one liter capacity or less.

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

§ 172.301 General marking requirements.

(c) *Technical names.* In addition to the marking required by paragraph (a) of this section, for a non-bulk package that contains a hazardous material described under an n.o.s. description in § 172.101 or § 172.102 of this subchapter, the technical name of the hazardous material shall be marked in parentheses on the package immediately following the proper shipping name. For example: "Corrosive liquid, n.o.s. (Caprylyl chloride)". In addition to n.o.s. descriptions, the requirements of this section also apply to generic entries for poisonous materials when the shipping name does not specifically identify the poisonous constituent by technical name. For example: "Motor fuel antiknock compound (tetra-ethyl-lead)"

If the hazardous material is a mixture of two or more hazardous materials, the technical name of at least two or more hazardous materials, the technical name of at least two components most predominantly contributing to the hazard or hazards of the mixture must be marked in parentheses immediately following the proper shipping name. For example: "Flammable liquid, corrosive, n.o.s. (Methanol, Potassium hydroxide)." The provisions of this paragraph do not apply:

(1) If the "n.o.s." description for the hazardous material (other than a mixture of hazardous materials of different classes meeting the definition of more than one hazard class) contains the name of the chemical element or group which is primarily responsible for the hazardous material being included in the hazard class indicated. For example: "Mercury compound, solid, n.o.s., Poison B."

(2) If the "n.o.s." description for the hazardous material (which is a mixture of hazardous material of different classes meeting the definition of more than one hazard class) contains the name of the chemical element or group responsible for the material meeting the definition of one of these classes. In such cases, only the technical name of the component that is not appropriately identified in the "n.o.s." description must be entered in parentheses. For example: "Carbamate pesticide, liquid, n.o.s. (contains Xylene), Poison B, UN 2757."

* * * * *

§ 172.302 [Removed and Reserved]

6. Section 172.302 would be removed and reserved.

7. A new Subpart G would be added to Part 172 to read as follows:

Subpart G—Emergency Response Information

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

Subpart G—Emergency Response Information

§ 172.600 Applicability and general requirements.

(a) *Applicability.* This subpart prescribes requirements for providing and maintaining emergency response information—

(1) In transport vehicles, aircraft and vessels used for the carriage of hazardous materials; and

(2) In facilities where hazardous materials are loaded for transportation, stored incidental to transportation or otherwise handled during any phase of transportation.

(b) *General.* A person performing any function subject to the provisions of this subchapter—

(1) May not offer, transport, or transfer (or otherwise handle during transportation), a hazardous material unless emergency response information conforming to this subpart is immediately available for use at all times the hazardous material is present; and

(2) Shall make emergency response information required by this subpart immediately available to any person who, in an official capacity, responds to an incident involving the hazardous material or is conducting an inspection investigation which involves the hazardous material.

(c) *Exceptions.* the requirements of this subpart do not apply to hazardous materials which are excepted from the requirements of this subchapter which pertain to shipping papers.

§ 172.602 Immediate emergency response information.

(a) *Information required.* Emergency response information for a hazardous material must, as a minimum, 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 printed legibly in English, available for use away from the package containing the hazardous material, and—

(1) Presented in a document that includes the basic description of the hazardous material as specified in § 172.101; or

(2) Presented in a document in a manner that permits association of that information with the basic description for the hazardous material on the shipping paper as required by § 172.202, and the shipping paper must be present at all times as part of the emergency response information required by this subpart. The DOT Emergency Response Guidebook may be used in association

with the shipping paper to satisfy the requirements of this paragraph.

(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 on the transport vehicle, aircraft or vessel in which the hazardous material is loaded. This information must be in a location that is immediately accessible to the vehicle operator or crew in the event of an accident or incident involving the 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 accident or incident involving the hazardous material.

(d) *Aircraft exception.* ICAO Document 9481-AN/928 entitled "Emergency Response Guidance For Aircraft Incidents Involving Dangerous Goods" (March 1987) may be carried aboard an aircraft in place of the information specified in this section.

§ 172.604 Emergency response telephone number.

(a) A person who offers a hazardous material for transportation must provide a telephone number (including the area code), for use in the event of an emergency involving the hazardous material, as follows:

(1) The telephone number provided must be the number of a telephone which is monitored at all times by a person who has knowledge, or has immediate access to a person with knowledge, of the hazards of the material and the detailed emergency response and accident mitigation information for that material.

(2) The telephone number must be entered on a shipping paper in association with the description of the hazardous material required by Subpart C of this part, except as follows:

(i) If more than one hazardous material is described on a shipping paper and only one emergency response telephone number is used, the telephone number may be entered once on the shipping paper, if it is clearly indicated that the number is for emergency response information (for example: "EMERGENCY CONTACT: ****").

(ii) For a package having a gross weight of 30 kilograms or less, the

telephone number may be displayed on the outside of a package in association with the proper shipping name rather than on the shipping paper.

(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 detailed information concerning the hazardous material.

Issued in Washington, DC, on August 14, 1987 under authority delegated in 49 CFR Part 106, Appendix A.

Alan I. Roberts,

*Director, Office of Hazardous Materials
Transportation.*

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