

**203.1003 Requirements.**

(b) *Notification of possible contractor violation.* Upon notification of a possible contractor violation of the type described in FAR 3.1003(b), coordinate the matter with the following office: DoD Inspector General, Investigative Policy and Oversight, Contractor Disclosure Program, 400 Army Navy Drive, Suite 1037, Arlington, VA 22202-4704; Toll-Free Telephone: 866-429-8011.

**203.1004 [Amended]**

■ 3. Section 203.1004 is amended in paragraph (b)(2)(ii) by removing “Washington, DC 22202-2884” and adding in its place “Arlington, VA 22202-4704”.

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**DEPARTMENT OF DEFENSE****Defense Acquisition Regulations System****48 CFR Parts 225 and 252**

RIN 0750-AG33

**Defense Federal Acquisition Regulation Supplement; Restriction on Research and Development—Deletion of Obsolete Text (DFARS Case 2009-D005)**

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to remove obsolete text addressing a restriction on awards to foreign entities for DoD research and development. The restriction implemented a statutory provision that is no longer in effect.

**DATES:** *Effective Date:* October 19, 2009.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Williams, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone 703-602-0328; facsimile 703-602-7887. Please cite DFARS Case 2009-D005.

**SUPPLEMENTARY INFORMATION:****A. Background**

This final rule removes DFARS 225.7016, Restriction on Research and Development, since the underlying statutory provision (Section 744 of the DoD Appropriations Act for Fiscal Year

1973 (Pub. L. 92-570)) is no longer in effect. Section 744 of Public Law 92-570 prohibited the use of DoD appropriations to make an award to any foreign corporation, organization, person, or entity, for research and development in connection with any weapon system or other military equipment, if a U.S. corporation, organization, person, or entity was equally competent and willing to perform at a lower cost.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**B. Regulatory Flexibility Act**

This rule will not have a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of DoD. Therefore, publication for public comment under 41 U.S.C. 418b is not required. However, DoD will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 2009-D005.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

**List of Subjects in 48 CFR Parts 225 and 252**

Government procurement.

**Amy G. Williams,**

*Editor, Defense Acquisition Regulations System.*

■ Therefore, 48 CFR Parts 225 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR Parts 225 and 252 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

**PART 225—FOREIGN ACQUISITION****225.7016 [Removed]**

■ 2. Section 225.7016 is removed.

**225.7017, 225.7017-1, 225.7017-2, 225.7017-3, and 225.7017-4 [Redesignated]**

■ 3. Sections 225.7017, 225.7017-1, 225.7017-2, 225.7017-3, and 225.7017-4 are redesignated as sections 225.7016, 225.7016-1, 225.7016-2, 225.7016-3, and 225.7016-4 respectively.

**225.7016-3 [Amended]**

■ 4. Newly designated section 225.7016-3 is amended in paragraph (b), in the second sentence, by removing “225.7017-3” and adding in its place “225.7016-3”.

**PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES****252.225-7018 [Amended]**

■ 5. Section 252.225-7018 is amended in the introductory text by removing “225.7017-4” and adding in its place “225.7016-4”.

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**DEPARTMENT OF TRANSPORTATION****Pipeline and Hazardous Materials Safety Administration****49 CFR Parts 172 and 174**

[RSPA Docket No. 2006-26322 (HM-206F)]

RIN 2137-AE21

**Hazardous Materials: Revision of Requirements for Emergency Response Telephone Numbers**

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** Final rule.

**SUMMARY:** In this final rule, PHMSA is amending the Hazardous Materials Regulations to clarify requirements governing emergency response information services provided by arrangement with hazardous materials offerors (shippers). In order to preserve the effectiveness of these arrangements for providing accurate and timely emergency response information, PHMSA is requiring basic identifying information (offeror name or contract number) to be included on shipping papers. This information will enable the emergency response information provider to identify the offeror on whose behalf it is accepting responsibility for providing emergency response information in the event of a hazardous materials incident and obtain additional information about the hazardous material as needed.

**DATES:** *Effective Date:* The effective date of this final rule is November 18, 2009.

*Voluntary Compliance Date:* PHMSA is authorizing immediate voluntary compliance beginning November 18, 2009.

**FOR FURTHER INFORMATION CONTACT:** Joan McIntyre, Office of Hazardous Materials

Standards, telephone (202) 366-8553, Pipeline and Hazardous Materials Safety Administration.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On July 2, 2007, PHMSA issued a notice of proposed rulemaking (NPRM; 72 FR 35961) proposing to make a narrow, clarifying change to the requirements of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to emergency response telephone numbers on shipping papers. With limited exceptions not applicable here (refer to §§ 172.600(d) and 172.604(c)), the HMR require shipments of hazardous materials to be accompanied by shipping papers and other documentation designed to communicate to transport workers and emergency responders the hazards associated with a specific shipment. This information must include the immediate hazard to health; risks of fire or explosion; immediate precautions to be taken in the event of an accident; immediate methods for handling fires; initial methods for handling spills or leaks in the absence of fire; and preliminary first aid measures. The information must be in writing, in English, and presented on a shipping paper or related shipping document (*see* § 172.602).

In addition to written emergency response information, § 172.604(a) of the HMR requires a person who offers (offeror) a hazardous material for transportation in commerce to list an emergency response telephone number on the shipping paper. The emergency response telephone number must connect a caller to the offeror or to a person capable of and accepting responsibility for providing detailed information about the hazardous materials shipment. The emergency response telephone number is used by emergency responders and transport workers to obtain detailed, product-specific information, including directions for remedial measures to be taken in the event of an incident during transportation.

The telephone number must be answered by a person who is knowledgeable about the material being shipped and possesses comprehensive emergency response and incident mitigation information for that material, or has immediate access to a person who possesses such knowledge. Under this standard, "immediate access" requires the emergency response information to be provided to the emergency responder or transportation worker promptly and with no undue delay. Additionally, the emergency

response telephone number must be active, with no limitations, during the entire time a shipment is in transportation, including storage incidental to movement and intermodal shipments that are transferred from one carrier to another for continued transportation. Simply stated, the term "storage incidental to movement" means storage occurring between the time a hazardous material is offered for transportation and the time it is delivered to the consignee (*see* § 171.8 for complete definition for "storage incidental to movement").

As currently required in § 172.604(b), if the offeror uses the services of an emergency response information provider (ERI provider), the offeror must ensure that the ERI provider has up-to-date information on the hazardous material and that the ERI provider is capable of and has accepted responsibility for providing detailed emergency response information applicable to the hazardous material.

As discussed in the preamble to the NPRM, we have become aware of a number of problems associated with emergency response telephone numbers on shipping papers, specifically related to the increasing use by offerors of ERI providers to comply with the requirements of § 172.604. In such situations, the original offeror enters into a contract or agreement with an agency or organization (industry associations may offer this service to their members) accepting responsibility for providing detailed emergency response information in accordance with § 172.604(b). The telephone number on the shipping paper is the telephone number of the ERI provider, but the original offeror is not required to include a notation to this effect on the shipping paper, nor is the name of the original offeror required to appear on the shipping paper. Thus, the identity of the person who arranged with the ERI provider is not readily available through shipping documentation.

This problem is exacerbated because, under the HMR, a carrier or freight forwarder preparing a shipping paper for the continued movement of a hazardous material in commerce may rely on information provided by the original offeror for the preparation of the new shipping paper (for example, the classification of the material, the compatibility of the material with the packaging being used, or the emergency response telephone number), so long as the carrier or freight forwarder exercises due care. For example, a carrier or freight forwarder may rely on an emergency response telephone number provided by a preceding offeror unless

it is aware (or should be aware) of facts indicating the emergency response telephone number is not operative (such as when the offeror has not contracted with the ERI provider) and does not meet the requirements of § 172.604(b).

The initial shipment of hazardous materials may be handled by several entities before reaching its final destination. For example, a motor carrier may accept a shipment from the originating offeror for transportation and deliver the material to a freight forwarder to arrange continued transportation. The freight forwarder may prepare shipping papers using the emergency response telephone number provided by the originating offeror. The freight forwarder may then arrange for continued shipment of the hazardous material by rail; a rail carrier may prepare shipping documentation using the information, including the emergency response telephone number, provided by the freight forwarder. The shipping documentation accompanying the shipment may or may not include the name of the originating offeror. In cases where the originating offeror arranges with an emergency response service to provide telephone service, the nexus between the offeror and ERI provider may be lost as new shipping papers are prepared at each stage of transportation. For example, when new shipping papers are prepared for continued transportation of the hazardous materials, the original offeror's name is typically removed and replaced with the subsequent offeror's name. When the initial offeror is also the ERI registrant, that information is no longer available when the emergency responder calls the ERI provider.

Without the name of the offeror who arranged for an emergency response service, an ERI provider may not be able to communicate the product-specific information that was provided by the original offeror. This could result in a serious problem if transportation workers or emergency response personnel must use the telephone number to request assistance in handling an accident or emergency. Most ERI providers will attempt to provide assistance whether or not they can verify that an offeror arranged for emergency response service. However, without the identification of the particular offeror who has made arrangements with the service, it may not be possible for the emergency response service to quickly access information specific to the material involved in an incident, thereby defeating the purpose of the requirement in § 172.604 to enable transport workers and emergency

response personnel to expeditiously obtain detailed information about a hazardous materials shipment. A delay or improper response due to lack of accurate and timely emergency response information may place emergency response personnel, transportation workers, and the general public at increased risk. Expeditious identification of the hazards and direction for appropriate handling and clean up associated with specific hazardous materials is critical in mitigating the consequences of hazardous materials incidents.

To remedy this problem, in the NPRM we proposed to require that when an ERI provider is used to comply with the requirements of § 172.604, the offeror must be identified on the originating shipping paper and any subsequent shipping papers that use the ERI provider's emergency response telephone number. Specifically, we proposed to:

1. Require the offeror who made the arrangement with the ERI provider to be identified on the shipping paper. Any party preparing a shipping paper would be required to identify the original offeror, by name or contract number, with the emergency response telephone number indicated on the shipping paper, and clearly note the identification in association with the emergency response telephone number, or insert and identify its own emergency response telephone number conforming to the requirements in Subpart G of Part 172.

2. Clarify that any person preparing a subsequent shipping paper for continued transport of hazardous materials must include the original offeror's name if that offeror is the registrant for the emergency response telephone service. Again, the name of the original offeror or its contract number with the ERI provider would be required to be included on the shipping paper, or the person preparing subsequent shipping papers must insert and identify by name its own valid emergency response number conforming to the requirements in Subpart G of Part 172.

3. We also proposed the following clarifications:

- To clarify that international telephone numbers used to comply with the emergency response telephone number requirement must include the country code, and city code as appropriate.

- To clarify that the emergency response telephone number requirements do not apply to transport vehicles or freight

containers containing lading that has been fumigated and displays the FUMIGANT marking, as required by § 173.9 of the HMR, unless other hazardous materials are present in the cargo transport unit.

## II. Comments to the NPRM

A total of 23 persons submitted comments to the NPRM, representing industry associations, emergency responders, emergency response information services, offerors, carriers, and the general public. The comments may be accessed via <http://www.regulations.gov> and are as follows:

1. Arkema, Inc.—PHMSA-2006-26322-02.
2. The FPL Group—PHMSA-2006-26322-04.
3. Jerry Shipman—PHMSA-2006-26322-06.
4. Institute of Makers of Explosives (IME)—PHMSA-2006-26322-07.
5. International Vessel Operators Hazardous Materials Association (VOHMA)—PHMSA-2006-26322-08 and 09.
6. American Trucking Associations (ATA)—PHMSA-2006-26322-10.
7. United Parcel Service (UPS)—PHMSA-2006-26322-11.
8. Air Products and Chemicals (Air Products)—PHMSA-2006-26322-12.
9. Aviation Suppliers Association (ASA)—PHMSA-2006-26322-13.
10. Council on Radionuclides and Radiopharmaceuticals, Inc. (CORAR)—PHMSA-2006-26322-14.
11. Association of American Railroads (AAR)—PHMSA-2006-26322-15.
12. Council on Safe Transportation of Hazardous Articles (COSTHA)—PHMSA-2006-26322-16.
13. National Association of Chemical Distributors (NACD)—PHMSA-2006-26322-17.
14. Veolia ES Technical Solutions LLC (Veolia)—PHMSA-2006-26322-18.
15. The Chemical Emergency Transportation Center (CHEMTREC)—PHMSA-2006-26322-19.
16. Fed Ex Express (Fed Ex)—PHMSA-2006-26322-20.
17. American Pyrotechnics Association (APA)—PHMSA-2006-26322-21.
18. Utility Solid Waste Activities Group (USWAG)—PHMSA-2006-26322-22.
19. International Association of Fire Chiefs (IAFC)—PHMSA-2006-26322-23.
20. National Paint & Coatings Association (NPCA)—PHMSA-2006-26322-24.
21. Veolia Environmental Services (Veolia)—PHMSA-2006-26322-25.
22. Lighter Association, Inc.—PHMSA-2006-26322-26.

23. Dangerous Goods Advisory Council (DGAC)—PHMSA-2006-26322-27.

## III. Revisions to the HMR Adopted in This Final Rule

In this rulemaking we are requiring the offeror who is registered with the ERI provider, as reflected by the provider's telephone number on shipping papers, to be identified on the shipping paper. Specifically, we are revising the HMR to:

1. Require an offeror who has made an arrangement with an ERI provider to be identified on the shipping paper in clear association with the emergency response telephone number. In response to comments, we are clarifying that if the name of the offeror is prominently and clearly listed elsewhere on the shipping paper, it need not also be listed in association with the emergency response telephone number.

2. Clarify that any person preparing a subsequent shipping paper for continued transport of a hazardous materials shipment must include the offeror's name (whether the original or subsequent offeror) that is the registrant for the ERI provider and that will be in use for the continued transportation of the shipment. The name of the original or subsequent offeror or its contract number with the ERI provider must be included on the shipping paper. If the original or subsequent offeror is not continuing as the registrant with the ERI provider, the person preparing subsequent shipping papers must insert and identify by name its own valid emergency response telephone number conforming to the requirements in Subpart G of Part 172.

3. Clarify that the person answering the ERI provider's telephone number transmits all written information in English.

4. Clarify that international telephone numbers used to meet the emergency response telephone number requirement must include the international access code or a "+" sign as a placeholder for the international access code, country code, and city code as appropriate.

5. Clarify the term "clear association" with respect to the placement of the identity of the registrant of the ERI provider.

6. Clarify the current requirement for the emergency response telephone number to be provided on the shipping paper in a "clearly visible" location.

7. Clarify that the emergency response telephone number requirements do not apply to transport vehicles or freight containers containing lading that has been fumigated and displays the FUMIGANT marking, as required by

§ 173.9 of the HMR, unless other hazardous materials are present in the cargo transport unit.

The amendments in this final rule are intended to fill a gap that was unforeseen when we initially adopted these requirements in 1989 under Docket HM-126C (54 FR 27138, 06/27/89). The amendments in this final rule will help to ensure that transportation workers and emergency response personnel are provided with accurate and timely information about the hazardous materials involved in a transportation accident or other emergency. This final rule will also serve to eliminate delays in transportation due to lack of such information, and eliminate problems created when compliance personnel are not able to verify emergency response telephone numbers.

#### IV. Discussion of Comments

As discussed in detail below, we received comments that are mostly supportive of our proposal to require basic identifying information to be included on shipping papers and some that are not supportive. However, some comments express concerns on certain provisions and request additional revisions. Some comments, such as defining the term “interlining carrier” and adopting authorization to use electronic data information are beyond the scope of this rulemaking and, therefore, are not addressed in this final rule.

DGAC agrees that it is necessary to have a clear linkage between the offeror making arrangements with an ERI provider and the provider's emergency response telephone number, but recommends that we address this issue as part of our ongoing initiative to identify ways to promote faster, more efficient communication among shippers, carriers, and emergency responders through the use of electronic data exchange technologies. This initiative is a long-term project that may not be completed for several years. This final rule is intended to minimize delay or improper response resulting from a lack of accurate and timely emergency response information. Absent regulatory action, emergency response personnel, transportation workers, and the general public could be placed at increased risk. Thus, we do not believe delaying this rulemaking is justified.

Of the commenters supporting the intent of this rulemaking, VOHMA comments that valuable time is lost when shipments are delayed while emergency responders or enforcement officers are attempting to obtain or verify emergency response information

and their efforts are obstructed because the party who arranged with the ERI provider is not noted on the shipping papers. CHEMTREC, an ERI provider, comments that for the arrangement between the registrant and CHEMTREC to work effectively, the registrant must be identified on the shipping paper. The IAFC comments that first responders can prevent or reduce the amount of damage or injury at the scene if they have specific information on the hazardous materials and also states that the safety of the public and emergency responders, and the impact on business operations can depend on quickly obtaining comprehensive and correct information.

A detailed discussion of comments to the NPRM follows.

##### *A. Reliance on Original Information*

Several commenters, including FedEx and UPS, ask us to restate the clarification that was published under Docket HM-223A (70 FR 43638) and reiterated in the HM-206F NPRM. The clarification addressed a carrier relying on information provided by the original or previous offeror of the hazardous material.

As stated in the NPRM's preamble (72 FR 25962), the definition of a “person who offers or offeror” includes “any person who performs, or is responsible for performing, any pre-transportation function required under this subchapter for transportation of the hazardous material in commerce.” The definition further provides that a carrier is not an offeror when it performs a function as a condition of accepting a hazardous material shipment for continued transportation without performing a pre-transportation function (see definition for “pre-transportation function” in § 171.8). In accordance with § 171.2(f), an offeror and carrier may rely on information provided by a previous offeror or carrier unless it knows or a reasonable person acting in the circumstances and exercising reasonable care would know, that the information provided is incorrect. Under § 5123(a)(1) of the Federal hazardous materials transportation law (Federal hazmat law, 49 U.S.C. 5101 *et seq.*), a person acts knowingly when the person has actual knowledge of the facts giving rise to the violation; or a reasonable person acting in the circumstances and exercising reasonable care would have that knowledge.

An offeror or an interconnecting carrier who knowingly or willfully provides incorrect information to a subsequent carrier, or a subsequent carrier who knowingly accepts and continues to use inaccurate information,

is in violation of the HMR. A civil or criminal penalty (see §§ 107.329 and 107.333) may be assessed against any person subject to the HMR who knowingly or willfully offers for transportation or transports a hazardous material in a manner not complying with the HMR.

To reiterate, a carrier, freight forwarder, or other entity may rely on the previous information *unless* the entity has knowledge that the information is incorrect. Ensuring correct information is the responsibility of the person preparing shipping papers, and *any* person with knowledge of incorrect information may not continue to use that information. Communication between the original and subsequent offeror before the shipment reaches the subsequent offeror may be warranted in cases when confusion exists on whether the original offeror's ERI provider will continue to be used.

##### *B. Use of Emergency Response Number by Subsequent Offerors*

Some commenters read the NPRM as proposing to require the original offeror to maintain its emergency response information telephone number for subsequent offerors when no agreement has been authorized by the original offeror. For example, IME requests that we correct or confirm its understanding that the “option” to use the originating offeror's emergency response number applies only to that offeror's shipment. The commenters state that they support the intent of the rule, but that we appear to be expanding the requirement for originating offerors to provide and monitor emergency response information telephone numbers beyond the delivery of the shipment to the destination on the original offeror's shipping papers.

The commenters have misread the NPRM. We did not propose to require the original offeror to maintain an emergency response telephone number throughout subsequent offerors' movements of hazardous materials. We proposed only that the existing requirement for the notation of an emergency response telephone number be augmented by the inclusion of the registrant's name or contract number with the ERI provider. This rulemaking was prompted, in part, because some subsequent carriers when preparing new shipping papers were omitting the initial registrant's name, inserting their own name, but retaining the initial offeror's ERI provider for which the initial offeror was the registrant. Whether in cases where the previous offeror's ERI provider was intended to end upon acceptance of the shipment by

the subsequent offeror or was intended to be active for the subsequent offeror, the identifying link to the ERI provider was lost and the telephone number was no longer operative for the shipment.

Whether the original or previous offeror's ERI provider's telephone number remains active for a subsequent offeror is a matter of agreement between the two parties. A subsequent offeror may not assume that it has authorization to use the original or previous offeror's emergency response telephone number.

*C. Use of the Terms "Emergency Response Service Provider" and "Emergency Response Information Provider"*

DGAC and CHEMTREC comment that our use of the term "emergency response service provider" connotes a range of emergency services beyond that required by the emergency response telephone number and may lead to confusion. The commenters suggested the use of the term "emergency response information provider." We agree the term provides clarity and have made the revision.

Veolia states that the term "emergency response information" is defined in § 172.602(a) as the minimum information that must be made available, but that in § 172.604(a)(2), when describing the information that must be maintained by the emergency response information provider, we use the phrase "comprehensive emergency response and incident mitigation information." Veolia requests that we remove the latter phrase in § 172.604 and replace it with "emergency response information." We note concerning this comment that the two sections are intended for two different purposes. Section 172.602 refers to the emergency response information that must be printed on or attached to the shipping paper, while § 172.604 is specific to the emergency response telephone number. The person manning the emergency response information telephone number must be able to provide specific and detailed information about the hazardous material (for example, characteristics of the material and comprehensive emergency response information) to supplement and expand on the written emergency response information provided with the shipping paper, such as the Emergency Response Guide (ERG), including comprehensive emergency response and incident mitigation information. The person should have the capability of contacting the shipper for additional information and/or have immediate access to such

information. For this reason, we are not making the requested change.

*D. Comprehensive Knowledge of the Shipment and Needs of Emergency Response Personnel*

Some commenters express concern about obtaining the most comprehensive knowledge regarding the specific hazardous materials being shipped, stating that the only way to do this is through direct access to the offeror. ATA states that the NPRM does not directly address the problem of ensuring that emergency responders will have direct access to the offeror. Air Products suggests that if a subsequent carrier or freight forwarder prepares its own subsequent shipping papers and uses an "outside" ERI provider, the subsequent offeror and provider may not have the necessary information to properly advise emergency responders on the scene. APA states that the emergency response telephone number, hazardous materials description and manifests should carry over throughout an intermodal shipment from the initial offeror to the final consignee. (**As a note:** APA contracts with a third party emergency response provider who provides detailed emergency response information conforming to § 172.604. APA members may participate in the service and register through APA, and APA submits the participant list to the ERI provider; thus, each member is individually registered.) IAFC states that general reference materials are not substitutes for direct contact with the offeror who has the most knowledge of the product.

We agree with the commenters that the offeror will have the most comprehensive knowledge about a specific hazardous material. That is why the HMR requirement for the emergency response telephone number allows for and, indeed, anticipates that the number provided by the original offeror will often be utilized throughout transportation from the original offeror to the consignee. We remind offerors and ERI providers that § 172.604(a)(2) requires the telephone number to be that of a person who is either knowledgeable of the hazardous material being shipped and has *comprehensive* emergency response and incident mitigation information for that material, or has immediate access to a person who possesses such knowledge and information. We agree with IAFC's point that knowledgeable contacts require more than a rote reading from general reference materials, such as the ERG. Offerors must meet the existing comprehensive emergency response requirement by supplying the ERI

provider and subsequent offerors, as applicable, with complete and detailed information relevant to the hazardous material, and subsequent offerors must also supply any ERI provider that they engage for themselves with the additional information supplied to them by the original or previous offeror. We remind the reader that § 172.604(b) currently requires the ERI provider to have detailed information concerning the hazardous material and specifies that "the person offering a hazardous material for transportation who lists the telephone number of an agency or organization shall ensure that the agency or organization has received current information on the material as required by paragraph (a)(2)," *which specifies comprehensive and incident mitigation information for the material*. Again, a rote reading alone is not sufficient.

COSTHA contends that the existing emergency response telephone number requirement fully meets the needs of emergency response personnel and that we should only clarify the existing requirement that all hazardous materials shipping documentation must include an emergency response contact number representing the number supplied by the offeror. The Lighter Association also questions the advantage of the identification of the party who is registered with the provider, stating that products such as lighters go through many hands (sales agents, distributors, retailers and other third parties) and that often the identity of the party registered with the provider is not known. The Lighter Association asserts that identification of the material by hazard class on the shipping paper and the marking and placarding requirements are sufficient and states that the registrant most likely is "not going to be readily available."

These commenters appear to have misread the NPRM. The purpose of the NPRM proposals is to enable emergency responders and transportation workers to readily obtain information from a third-party provider, not for them to obtain the information from the registrant. When the provider is called and the registrant cannot be matched with the product, the provider attempts (with no obligation when an offeror is not registered) to respond with general information applicable to the shipping description, but the *product specific* information cannot be obtained because the identity of the registrant is not known. Providing comprehensive information for any hazardous material is critical to ensure that emergency response personnel and transportation workers are equipped with the means to

respond appropriately and as swiftly as possible to a hazardous material situation. Such information is particularly important if the hazardous material is shipped under a generic shipping name (e.g., flammable liquid n.o.s.) where complete emergency response information may depend on an in-depth knowledge of the hazardous constituents of the material. If the emergency response information provider cannot identify the registrant, then the complete and product specific information about the hazardous material cannot be provided to the emergency responders.

We cannot emphasize enough that lack of complete information applicable to the hazardous material being transported impacts the ability of emergency response personnel to properly, safely and expeditiously take action when an incident occurs. Crucial delays can occur with the response and clean up process when the identity of the offeror registered with the ERI provider is not reflected on the shipping paper. The delays may result in serious risks to people and the environment, and may also disrupt the continued transportation of shipments when emergency responders and transportation workers are pressed to take valuable time on the scene of an incident to obtain emergency response information. CHEMTREC asks us to inform the regulated community that it makes it known to each person registering with CHEMTREC that either the previous offeror should be indicated on the shipping paper (if continuing to maintain an emergency response telephone number), or the party that has taken on the offeror function should itself be registered.

#### E. Format on Shipping Papers

Several commenters request that we provide a specific format for the identification of the registrant of the ERI provider, stating that, as proposed, it may not always be clear who is registered with the ERI provider. For example, COSTHA notes that shipments being consolidated into one freight container may contain materials from more than one offeror, with each providing a separate emergency response telephone number and that many less-than-truckload (LTL) carriers create manifests or delivery receipt documents that provide the original offeror's name and emergency response contact information. COSTHA states that to create shipping documents to include the offerors' name or contract number registered with the ERI provider would be confusing to emergency personnel and create more errors.

With respect to multiple shipments being consolidated into one freight container, currently, when more than one emergency response telephone number is needed for consolidated hazardous materials, the various emergency response telephone numbers are required to be noted following the applicable shipping descriptions. We do not agree that the addition of registrant information in association with the applicable telephone number will create confusion.

Veolia is supportive of the rulemaking, but requests that when the offeror noted on the shipping paper is the registrant of the ERI provider, no need exists to reenter the offeror's name near the emergency response telephone number. Similarly, DGAC states its assumption that the offeror's identity is not required to be repeated if the identification is noted "elsewhere" on the shipping document, particularly with international shipments.

We continue to be concerned that if the registrant with an ERI provider is not clearly identified, the nexus between the registrant and the provider will be lost. However, we agree with the commenters that if the registrant is *prominently, clearly and readily identified* elsewhere on the shipping paper—e.g., the offeror listed on the shipping paper is also the registrant and clearly identified—then the registrant need not also be listed in association with the emergency response telephone number. Subsequent entities in the transportation chain (carriers, freight forwarders, etc.) that prepare new shipping papers must ensure that the name or the contract number of the original offeror, if that offeror's ERI telephone number remains in effect, is provided in association with the emergency response telephone number, unless prominently identified elsewhere.

CHEMTREC states that precious time is lost when the caller on the scene of an incident is having trouble identifying the registered offeror because of the lack of uniformity of the information on shipping papers. CHEMTREC also comments (and we agree) about the necessity of taking care when preparing new shipping papers with regard to ensuring that the name or contract number is not inadvertently altered, which can create problems and delays in correctly identifying the registered offeror. We received complaints that the telephone number is also difficult to quickly identify when its positioning on the shipping paper is located near other text in a manner that blends the telephone number with other text (such as when using small, difficult-to-read

font size), thereby rendering the number difficult to locate and/or to read.

Based on the comments received concerning the necessity of a standard format for the registrant information, we are revising the regulatory text to read that the identification of the registrant of the emergency response telephone number provider must be placed immediately before, after, above or below the telephone number, unless the registrant is prominently, clearly and readily identified elsewhere on the shipping paper as discussed earlier in this preamble. This should provide sufficient flexibility for the creation of a shipping paper while ensuring that the registrant is clearly identified. In addition, considering the exception being incorporated in this final rule and based on the comments specific to being unable to quickly identify the registered offeror as well as identify and easily read the telephone number itself, we are revising the regulatory text by clarifying the meaning of "clearly visible" and "prominently, clearly and readily identifiable" in § 172.604(a)(3)(ii) and (b)(2), respectively. We are making this clarification so that there is no question as to the intent of the requirement, including that it encompasses the readability of the information (registered offeror and telephone number), as well as the location.

#### F. International Access Codes

Several commenters request clarification in the regulatory text regarding the use of international emergency response telephone numbers. DGAC suggests an expansion of the text to make clear that the international access code, country code and city code must be included when the emergency response telephone number is an international call. We agree and in this final rule have revised the regulatory text in § 172.604(a) accordingly. Additionally, we are adding the use of the "+" (plus) sign, which we understand is already commonly used in international commerce, as an option to noting the specific international access code. Each country has an international access code used to dial out of the country and a country calling code used to dial into a country. Generally, the international access code is replaced with a "+" (plus) sign for telephone numbers published for international calling. The plus sign is a universal prefix and means that the caller must use the specific prefix assigned to his or her country. Many telephones allow the plus sign to be entered, although the method may vary. For example, most GSM (global system for mobile communications) mobile

phones allow the plus sign to be entered by either holding the “0” (zero) key or striking the “\*” (asterisk) key twice; the plus sign is automatically converted to the correct international access code.

UPS asks whether requiring country and city codes prohibits the use of a toll-free telephone number. This requirement does not prevent the use of a toll-free telephone number, provided an emergency responder can dial the number as it appears on the shipping paper without stopping to look up international access, country and city codes, and provided the toll-free telephone number meets the requirements in Subpart G of Part 172, including the current requirement in § 172.604(a)(2) that specifies a telephone number may not entail a call back (such as an answering service, answering machine, or beeper device) and identity provision adopted in this final rule.

#### G. Notification of the Pilot-in-Command

UPS is concerned that the requirements for the Notification of Pilot-in-Command (NOTOC) contains “extraneous” information and cites a petition for rulemaking (P-1487) in which UPS requests a thorough review of the NOTOC requirements. We will address the UPS petition in a future rulemaking.

#### H. Costs and Time Needed To Implement

Some commenters believe that the provision in this final rule will impose significant costs and be difficult and time consuming to implement for carriers and offerors. UPS states that the requirement will impact: (1) The design of shipping papers by impinging on scarce available space, (2) the programming of computer systems by requiring reprogramming of countless systems used to print the information, (3) communication protocols between UPS’s customers and UPS’s internal systems, and (4) enforcement protocols used by inspectors. UPS estimates its costs will be between \$1 million to \$1.5 million and entail 40–60 weeks of work to make the change. UPS states that programming resources will need to be allocated and system changes will need to be tested. COSTHA requests a review of expenses associated with adopting the requirement and an extension of the compliance date if we proceed with the final rule.

We disagree with the commenters who state that the adoption of the revision to the HMR would be too costly and time consuming to implement. The emergency response telephone number is currently required on shipping papers. Adding a notation to identify

the person who contracted with the ERI provider and reprogramming the shipping papers should not add the significant time and cost to the degree these commenters suggest. Also, it is our understanding that the notation for the identity of the person registered with an ERI provider is currently relatively common industry practice. The costs associated with this rulemaking are considerably outweighed by the safety benefits resulting from faster and more efficient responses to accidents and emergencies. Moreover, the final rule will reduce transportation delays incurred when emergency responders must spend time to obtain product specific information.

UPS and Fed Ex request a two-year extended compliance date. We believe the revision in this rulemaking addresses a critical safety issue and that a two-year extended compliance date is an excessive amount of time to implement the notation on shipping papers. However, to minimize costs associated with reprogramming computer systems and implementing the notation, we agree to provide an extended compliance date until October 1, 2010 to minimize the costs for those businesses that have not already incorporated the identity of the emergency response telephone number provider’s registrant into their shipping paper format. A one-year extended compliance date will also allow sufficient time to include this revision into training programs, complete changes to systems supporting shipping papers, and deplete current stocks of shipping papers if necessary.

UPS asked that the revisions in this final rule be made effective at the same time as the next publication of the International Civil Aviation Organization’s (ICAO) Technical Instructions for the Safe Transportation of Dangerous Goods by Air (ICAO Technical Instructions). We plan to submit the revision for US Variation 12 (emergency response telephone number) to ICAO before its next publication, which is scheduled to be effective on January 1, 2010.

#### I. Editorial Correction and Additional Revisions

UPS asked us to explain our reason for deleting the word “or” in § 172.604(a)(3)(i). The proposed deletion was an error and has been corrected in this final rule.

ASA and UPS state that the wording in § 172.201(d) is not consistent with the “fuller requirement” in § 172.604(b) and request that we repeat the § 172.604(b) text in § 172.201(d). UPS’ objection is that in the NPRM,

§ 172.201(d) referred to identification of the “person” and did not reference “or contract number.” The proposed § 172.201(d) clearly stated: “\* \* \* a shipping paper must contain an emergency response telephone number and, if utilizing an emergency response information telephone number service provider, identify the person who has a contractual agreement with the service provider, *as prescribed in subpart G of this part.*” Identifying the person in accordance with Subpart G is a clear statement and consistent with the treatment of references throughout the HMR. Repeating the particulars is redundant, but in this final rule we are adding a parenthetical “(by name or contract number)” following the word “person.”

VOHMA requests that we revise § 174.26 to clarify that the requirement to include the identifying information adopted in this final rule applies. We have made the clarification.

#### IV. Rulemaking Analyses and Notices

##### A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and was not reviewed by the Office of Management and Budget. This proposed rule is a non-significant rule under the Regulatory Policies and Procedures of the Department of Transportation [44 FR 11034].

The amendments in this final rule should not result in significant costs to add the required information to shipping papers. The emergency response telephone number is currently required on the shipping paper. Adding a notation to identify the person who arranged with an ERI provider should not add any significant time to the process of completing a shipping paper or to the cost of providing it. Moreover, the notation on a shipping paper of the identity of the person who made arrangements with an emergency response information telephone service is currently common industry practice for the initial offeror. Additionally, we are providing an exception from the requirement where the name of the initial offeror is prominently and clearly shown elsewhere on the shipping paper.

As discussed earlier in this preamble, UPS estimates that it will incur costs between \$1 million to \$1.5 million and entail 40–60 weeks of work to make the change. UPS asserts that programming resources will need to be allocated and the system changes will need to be tested. We recognize that the provisions of this final rule will result in additional

compliance costs. Therefore, we are adopting a one-year transition period for offerors and carriers to implement the changes adopted in this final rule. This extended transition period will help to offset costs by providing ample time for offerors and carriers to modify systems and otherwise adapt their processes by implementing the changes during a phase-in mode. Such a phase-in implementation method will afford offerors and carriers the opportunity to incorporate the revision into training programs and complete changes to systems supporting shipping papers (and deplete current stocks of shipping papers if necessary) during a period of time that may coincide with scheduled training programs and routine or upcoming upgrades and revisions to computer systems.

As a further note, considering that the notation is already relatively common industry practice for the initial offeror, and considering that we are also providing an exception from the requirement (which was not included in the NPRM), the implementation of the revision will not be applicable to the greater numbers of responsible parties as presented in the NPRM.

Given the importance of complete and detailed information to swift and effective response to hazardous materials incidents and mitigation of the potentially harmful consequences of those incidents, we believe the benefits of the provisions of this final rule will substantially outweigh the costs that may result. The benefits include saving lives, preventing injuries, avoiding damage to property and the environment, averting costly cleanup, evacuations, closures (such as roads and businesses) and damage mitigation, and reducing associated transportation delays. The availability of accurate, complete and quickly obtained information significantly improves response efforts during transportation incidents and emergencies, and benefits offerors, carriers, emergency personnel and the public.

#### B. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria set forth in Executive Order 13132 ("Federalism"). This final rule will preempt State, local and Indian Tribe requirements but will not have substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazmat law contains an express preemption provision (49 U.S.C. 5125(b)), preempting State, local, and Indian Tribe requirements on covered subjects, as follows:

(1) The designation, description, and classification of hazardous materials;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials; or

(5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule addresses covered subject item (3) above and would preempt State, local, and Indian Tribe requirements not meeting the "substantively the same" standard. Federal hazmat law provides at section 5125(b)(2) that, if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of a final rule and not later than two years after the date of issuance. The effective date of Federal preemption for this rule is 90 days from the publication date of this final rule.

#### C. Executive Order 13175

This final rule was analyzed in accordance with the principles and criteria set forth in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this final rule does not have Tribal implications, and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

#### D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines the rule is not expected to have a significant impact on a substantial number of small entities. In this case, although the requirements of this final rule will apply to a substantial number of small entities, none would

sustain significant economic impact as a result of the rule.

*Identification of potentially affected small entities.* Businesses likely to be affected by this final rule are persons who offer for transportation or transport hazardous materials in commerce, including hazardous materials manufacturers and distributors; freight forwarders, transportation companies, including air, highway, rail, and vessel carriers and hazardous waste generators.

Unless alternative definitions have been established by the agency in consultation with the Small Business Administration (SBA), the definition of "small business" has the same meaning as under the Small Business Act. Since no such special definition has been established, we employ the thresholds published by SBA for establishments that will be subject to the proposed amendments if adopted. Based on data for 2002 compiled by the U.S. Census Bureau, more than 95 percent of persons that would be affected by this rule are small businesses.

*Related Federal rules and regulations.* There are no related Federal rules or regulations governing the transportation of hazardous materials in domestic or international commerce.

*Consideration of alternate proposals for small businesses.* The Regulatory Flexibility Act directs agencies to establish exceptions and differing compliance standards for small businesses, where it is possible to do so and still meet the objectives of applicable regulatory statutes. In the case of hazardous materials transportation, it is not possible to establish exceptions or differing standards and still accomplish our safety objectives.

*Conclusion.* While the amendments in this final rule would apply to a substantial number of small entities, there will not be a significant impact on those entities. This final rule revises the HMR's emergency response telephone requirements to enable ERI providers and others providing such service to supply the required HMR emergency response information to first responders. The impact of this new requirement is not expected to be significant; the indication of the emergency response telephone number on shipping papers is a current requirement and the notation of the identity of the emergency response information telephone provider's registrant is currently common industry practice for the initial offeror. We are providing an exception that will include a number of offerors, and we are providing a one-year delayed compliance date. The problem, as discussed in the preamble of this

rulemaking, primarily arises from subsequent carriers omitting the registrant's name when preparing new shipping papers for a shipment continuing on to its final destination. Our amendment to add the identification of the telephone number's registrant to shipping papers will eliminate an obstruction that could interfere with the transmission of crucial emergency response information to first responders on the scene of an incident. Additionally, the amendment will serve to eliminate delays in transportation due to lack of information, and eliminate enforcement problems stemming from possible invalid emergency response telephone number violations.

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

#### *E. Paperwork Reduction Act*

By requiring that additional information be included on certain shipping papers, this final rule may result in an increase in annual paperwork burden and costs under OMB Control No. 2137-0034. PHMSA currently has an approved information collection under OMB Control Number 2137-0034, "Hazardous Materials Shipping Papers and Emergency Response Information" expiring on May 31, 2011.

Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it has been approved by OMB and displays a valid OMB control number. Section 1320.8(d), Title 5, Code of Federal Regulations requires that PHMSA provide interested members of the public and affected agencies an opportunity to comment on information and recordkeeping requests.

This notice identifies a revised information collection request that PHMSA submitted to OMB for approval based on the requirements in this final rule. PHMSA has developed burden estimates to reflect changes in this final rule. PHMSA estimates that the total information collection and recordkeeping burden, including the revisions resulting from this final rule, would be as follows:

OMB Control No. 2137-0034

*Annual Number of Respondents:*  
250,000.

*Annual Responses:* 260,000,000.

*Annual Burden Hours:* 6,609,167.

*Annual Costs:* \$6,675,258.67.

Requests for a copy of this information collection should be directed to Deborah Boothe or T. Glenn Foster, Office of Hazardous Materials Standards (PHH-10), Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue, SE., East Building, 2nd Floor, PHH-10, Washington, DC 20590-0001, Telephone (202) 366-8553.

#### *F. Unfunded Mandates Reform Act*

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of \$120.7 million or more to either State, local or Tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

#### *G. Environmental Assessment*

The National Environmental Policy Act (NEPA), §§ 4321-4375, requires Federal agencies to analyze proposed actions to determine whether the action will have a significant impact on the human environment. The Council on Environmental Quality (CEQ) regulations order Federal agencies to conduct an environmental review considering (1) the need for the proposed action, (2) alternatives to the proposed action, (3) probable environmental impacts of the proposed action and alternatives, and (4) the agencies and persons consulted during the consideration process. 40 CFR 1508.9(b).

*Purpose and Need.* As discussed elsewhere in this preamble, we have become aware of a number of problems associated with emergency response telephone numbers on shipping papers, specifically related to the increasing use by offerors of ERI providers to comply with the requirements of § 172.604. In such situations, the original offeror enters into a contract or agreement with an agency or organization (industry associations may offer this service to their members) accepting responsibility for providing detailed emergency response information in accordance with § 172.604(b). The telephone number on the shipping paper is the telephone number of the ERI provider, but the original offeror is not required to include a notation to this effect on the shipping paper, nor is the name of the original offeror required to appear on the shipping paper. Thus, the identity of the person who arranged with the ERI provider is not readily available through shipping documentation. Without the name of the offeror who arranged for an

emergency response service, an ERI provider may not be able to communicate the product-specific information that was provided by the original offeror. This could result in a serious problem if transportation workers or emergency response personnel must use the telephone number to request assistance in handling an accident or emergency. Most ERI providers will attempt to provide assistance whether or not they can verify that an offeror arranged for emergency response service. However, without the identification of the particular offeror who has made arrangements with the service, it may not be possible for the emergency response service to quickly access information specific to the material involved in an incident, thereby defeating the purpose of the requirement in § 172.604 to enable transport workers and emergency response personnel to expeditiously obtain detailed information about a hazardous materials shipment. A delay or improper response due to lack of accurate and timely emergency response information may place emergency response personnel, transportation workers, and the general public at increased risk. Expeditious identification of the hazards and direction for appropriate clean up associated with specific hazardous materials is critical in mitigating the consequences of hazardous materials incidents.

*Alternatives.* PHMSA considered the following alternatives:

*No action*—Under this alternative, we would continue to permit shippers to provide an emergency response telephone number for an ERI provider with no indication of the entity that arranged for the ERI provider's services. This alternative does not address the identify safety problem. Thus, it was not selected.

*Require the shipping paper to include the name or contract number of the person arranging for the ERI provider's services*—Under this alternative, we would require a shipper who utilizes an ERI provider to comply with the provisions of § 172.604 to include his name or contract number so that the ERI provider can readily retrieve and provide shipment-specific information in the event of an accident or emergency. This will allow for faster, more efficient emergency response to incidents. This is the selected alternative.

*Analysis of Environmental Impacts.* Hazardous materials are substances that may pose a threat to public safety or the environment during transportation

because of their physical, chemical, or nuclear properties. The hazardous material regulatory system is a risk management system that is prevention-oriented and focused on identifying a safety hazard and reducing the probability and quantity of a hazardous material release. Hazardous materials are categorized by hazard analysis and experience into hazard classes and packing groups. The regulations require each shipper to classify a material in accordance with these hazard classes and packing groups; the process of classifying a hazardous material is itself a form of hazard analysis. Further, the regulations require the shipper to communicate the material's hazards through use of the hazard class, packing group, and proper shipping name on the shipping paper and the use of labels on packages and placards on transport vehicles. Thus the shipping paper, labels, and placards communicate the most significant findings of the shipper's hazard analysis. A hazardous material is assigned to one of three packing groups based upon its degree of hazard—from a high hazard Packing Group I to a low hazard Packing Group III material. The quality, damage resistance, and performance standards of the packaging in each packing group are appropriate for the hazards of the material transported.

Releases of hazardous materials, whether caused by accident or deliberate sabotage, can result in explosions or fires. Radioactive, toxic, infectious, or corrosive hazardous materials can have short- or long-term exposure effects on humans or the environment. Generally, however, the hazard class definitions are focused on the potential safety hazards associated with a given material or type of material rather than the environmental hazards of such materials.

Under the HMR, hazardous materials may be transported by aircraft, vessel, rail, and highway. The potential for environmental damage or contamination exists when packages of hazardous materials are involved in accidents or en route incidents resulting from cargo shifts, valve failures, package failures, loading, unloading, collisions, handling problems, or deliberate sabotage. The release of hazardous materials can cause the loss of ecological resources and the contamination of air, aquatic environments, and soil. Contamination of soil can lead to the contamination of ground water. For the most part, the adverse environmental impacts associated with releases of most hazardous materials are short-term impacts that can be reduced or

eliminated through prompt clean-up/decontamination of the accident scene.

The amendments in this final rule will improve the effectiveness of the HMR by enabling emergency responders on the scene of a hazardous materials incident to quickly and efficiently identify hazards and mitigate potential risks to the environment. There are no significant environmental impacts associated with amendments in this final rule.

*Consultation and Public Comment.* As discussed above, PHMSA published an NPRM to solicit public comments on our proposal. A total of 23 persons submitted comments, including industry associations, shippers, carriers, ERI providers, emergency responders, and private citizens.

#### *H. Privacy Act*

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), which may also be found at <http://dms.dot.gov>.

#### **List of Subjects**

##### *49 CFR Part 172*

Education, Hazardous materials transportation, Hazardous waste, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

##### *49 CFR Part 174*

Hazardous materials transportation, Radioactive materials, Rail carriers, Railroad safety, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, we are amending 49 CFR Chapter I as follows:

#### **PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS**

■ 1. The authority citation for part 172 continues to read as follows:

**Authority:** 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45 and 1.53.

■ 2. In § 172.201, revise paragraph (d) to read as follows:

#### **§ 172.201 Preparation and retention of shipping papers.**

\* \* \* \* \*

(d) *Emergency response telephone number.* Except as provided in § 172.604(c), a shipping paper must contain an emergency response telephone number and, if utilizing an emergency response information telephone number service provider, identify the person (by name or contract number) who has a contractual agreement with the service provider, as prescribed in subpart G of this part.

\* \* \* \* \*

■ 3. Revise § 172.604 to read as follows:

#### **§ 172.604 Emergency response telephone number.**

(a) A person who offers a hazardous material for transportation must provide an emergency response telephone number, including the area code, for use in the event of an emergency involving the hazardous material. For telephone numbers outside the United States, the international access code or the “+” (plus) sign, country code, and city code, as appropriate, must be included. The telephone number must be—

(1) Monitored at all times the hazardous material is in transportation, including storage incidental to transportation;

(2) The telephone number of a person who is either knowledgeable of the hazardous material being shipped and has comprehensive emergency response and incident mitigation information for that material, or has immediate access to a person who possesses such knowledge and information. A telephone number that requires a call back (such as an answering service, answering machine, or beeper device) does not meet the requirements of paragraph (a) of this section; 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; or

(ii) Entered once on the shipping paper in a prominent, readily identifiable, and clearly visible manner that allows the information to be easily and quickly found, such as by highlighting, use of a larger font or a font that is a different color from other text and information, or otherwise setting the information apart to provide for quick and easy recognition. 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 –

(1) The number of the person offering the hazardous material for transportation when that person is also the emergency response provider. The name of the person identified with the emergency response telephone number must be entered on the shipping paper immediately before, after, above, or below the emergency response telephone number unless the name is entered elsewhere on the shipping paper in a prominent, readily identifiable, and clearly visible manner that allows the information to be easily and quickly found; or

(2) The number of an agency or organization capable of, and accepting responsibility for, providing the detailed information required by paragraph (a)(2) of this section. The person who is registered with the emergency response provider must ensure that the agency or organization has received current information on the material before it is offered for transportation. The person who is registered with the emergency response provider must be identified by name or contract number on the shipping paper immediately before, after, above, or below the emergency response telephone number in a prominent, readily identifiable, and clearly visible manner that allows the

information to be easily and quickly found.

(c) A person preparing shipping papers for continued transportation in commerce must include the information required by this section. If the person preparing shipping papers for continued transportation in commerce elects to assume responsibility for providing the emergency response telephone number required by this section, the person must ensure that all the requirements of this section are met.

(d) The requirements of this section do not apply to—

(1) Hazardous materials that are offered for transportation under the provisions applicable to limited quantities; and

(2) Materials properly described under the following shipping names:

Battery powered equipment.  
Battery powered vehicle.  
Carbon dioxide, solid.  
Castor bean.  
Castor flake.  
Castor meal.  
Castor pomace.  
Consumer commodity.  
Dry ice.  
Engines, internal combustion.  
Fish meal, stabilized.  
Fish scrap, stabilized.  
Refrigerating machine.  
Vehicle, flammable gas powered.  
Vehicle, flammable liquid powered.  
Wheelchair, electric.

(3) Transportation vehicles or freight containers containing lading that has been fumigated and displaying the FUMIGANT marking (*see* § 172.302(g)) as required by § 173.9 of this subchapter, unless other hazardous materials are present in the cargo transport unit.

#### PART 174—CARRIAGE BY RAIL

■ 4. The authority citation for part 174 continues to read as follows:

**Authority:** 49 U.S.C. 5101–5128; 49 CFR 1.53.

■ 5. In § 174.26, revise paragraph (b) to read as follows:

##### **§ 174.26 Notice to train crews.**

\* \* \* \* \*

(b) A member of the crew of a train transporting a hazardous material must have a copy of a document for the hazardous material being transported showing the information required by part 172 of this subchapter, including the requirements in § 172.604(b) applicable to emergency response information.

Issued in Washington, DC, on October 6, 2009 under authority delegated in 49 CFR part 1.

**Cynthia Douglass,**

*Acting Deputy Administrator.*

[FR Doc. E9–24799 Filed 10–16–09; 8:45 am]

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