Media Bureau at (202) 418–7200, TTY (202) 418–7172, or via Internet at *pcorea@fcc.gov*.

SUPPLEMENTARY INFORMATION:

Correction

In rule FR Doc. 02–28894 published on November 14, 2002 (67 FR 68944), make the following corrections. On page 68951 in the second column, in the amendment to § 76.127, revise paragraph (c) as follows:

* * * * *

(c) Notifications given pursuant to this section must be received by the satellite carrier:

(1) With respect to regularly scheduled events, within forty-eight (48) hours after the time of the telecast to be deleted is known; or, for events that comprise a season or pre-season period, fifteen (15) days prior to the first event of the season or pre-season, respectively; and no later than the Monday preceding the calendar week (Sunday-Saturday) during which the program deletion is to be made.

(2) As to events not regularly scheduled and revisions of notices previously submitted, within twenty-four (24) hours after the time of the telecast to be deleted is known, but in any event no later than twenty-four (24) hours from the time the subject telecast is to take place.

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List of Subjects in 47 CFR Part 76

Cable television, Satellite carriers, Television broadcast stations.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–6970 Filed 3–24–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171 and 175

[Docket No. RSPA–00–7762 (HM–206C)]

RIN 2137–AD29

Hazardous Materials: Availability of Information for Hazardous Materials Transported by Aircraft

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: RSPA is amending the Hazardous Materials Regulations to require an aircraft operator transporting a hazardous material to: Place a telephone number, on the notification of pilot-in-command or in the cockpit of the aircraft, that can be contacted during an in-flight emergency to obtain information about any hazardous materials aboard the aircraft; retain and provide upon request a copy of the notification of pilot-in-command, or the information contained in it, at the aircraft operator's principal place of business, or the airport of departure, for 90 days, and at the airport of departure until the flight leg is completed; and make readily accessible, and provide upon request, a copy of the notification of pilot-in-command, or the information contained in it, at the planned airport of arrival until the flight leg is completed. The intent of these amendments is to increase the level of safety associated with the transportation of hazardous materials aboard aircraft.

DATES: Effective Date: The effective date of these amendments is October 1, 2003.

Delayed Compliance Date: Compliance with the amendments adopted in this final rule is required beginning on October 1, 2004.

FOR FURTHER INFORMATION CONTACT: John A. Gale or Gigi Corbin, Office of Hazardous Materials Standards, telephone (202) 366–8553, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180), an offeror of a hazardous material must prepare a signed shipping paper containing the quantity and a basic shipping description of the material being offered for transportation (*i.e.*, proper shipping name, hazard class, UN or NA identification number, and packing group); certain emergency response information; and a 24-hour emergency response telephone number. (49 CFR part 172, Subparts C and G). Additional information may be required depending on the specific hazardous material being shipped. (49 CFR 172.203).

When hazardous material is transported by air, a copy of the shipping paper must accompany the shipment during transportation, and the aircraft operator must provide the pilot-in-command of the aircraft written information relative to the hazardous materials on board the aircraft. (49 CFR 175.33 and 175.35). For each hazardous materials shipment, the information in the notification of pilot-in-command (NOPC) must include:

(1) Proper shipping name, hazard class, and identification number;

(2) technical and chemical group name, if applicable;

(3) any additional shipping description requirements applicable to specific types or shipments of hazardous materials or to materials shipped under International Civil Aviation Organization (ICAO) requirements;

(4) total number of packages;

(5) net quantity or gross weight, as appropriate, for each package;

(6) the location of each package on the aircraft;

(7) for Class 7 (radioactive) materials, the number of packages, overpacks or freight containers, their transport index, and their location on the aircraft; and

(8) an indication, if applicable, that a hazardous material is being transported under terms of an exemption.

This information must be readily available to the pilot-in-command during flight. In essence, the NOPC provides the same information to emergency response personnel as a shipping paper for transportation by public highway. In addition, emergency response information applicable to the specific hazardous materials being transported by aircraft must be available for use at all times the materials are present on the aircraft, and must be maintained on board in the same manner as the NOPC. (*See* Subpart G of part 172 for requirements relating to emergency response information.) In an emergency situation, the flight crew may be able to transmit information concerning the hazardous materials aboard the aircraft to air traffic control, or emergency responders may be able to retrieve the information from the aircraft after it lands. However, retrieval of the information from the flight crew may not be practical during an in-flight emergency because the flight crew may be attending to more pressing tasks. Also, in many emergencies the aircraft is damaged or destroyed, making retrieval of this information from the aircraft difficult or impossible.

On February 13, 2002, RSPA issued a notice of proposed rulemaking (NPRM) to amend the HMR to assure that information on the hazardous materials carried aboard the aircraft is available to emergency responders through sources other than the flight crew (67 FR 6669). The NPRM proposed to amend the HMR to require an aircraft operator to: Place a telephone number on the notification of pilot-in-command that can be contacted during an in-flight emergency to obtain information about any

hazardous materials aboard the aircraft; retain a copy of the notification of pilot-in-command at the aircraft operator's principal place of business for one year; retain and make readily accessible a copy of the notification of pilot-in-command, or the information contained in it, at the airport of departure until the flight leg is completed; and make readily accessible a copy of the notification of pilot-in-command, or the information contained in it, at the planned airport of arrival until the flight leg is completed.

The amendments adopted in this final rule respond to a recommendation of the National Transportation Safety Board (NTSB) and are consistent with recent changes to the ICAO Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions). The NTSB recommends that RSPA:

> Require, within two years, that air carriers transporting hazardous materials have the means, 24 hours per day, to quickly retrieve and provide consolidated specific information about the identity (including proper shipping name), hazard class, quantity, number of packages, and location of all hazardous material on an airplane in a timely manner to emergency responders. (A–98–80).

This recommendation is contained in NTSB's August 12, 1998, letter to RSPA, which has been placed in the public docket.

The ICAO Dangerous Goods Panel also considered additional steps that could be taken to improve the availability of information in the event of an aircraft incident. As a result, the Panel revised the ICAO Technical Instructions to: (1) Require the NOPC to be readily accessible at the airports of departure and arrival; and (2) allow an aircraft operator to provide a phone number where a copy of the NOPC could be obtained. In an emergency, the pilot would relay the phone number instead of the specific hazardous materials aboard the aircraft to an air traffic controller (*see* ICAO Technical Instructions 7;4.3). For informational purposes, we placed in the Docket an excerpt from the reports of the ICAO Dangerous Goods Panel reflecting discussions on this topic and relevant changes for inclusion in the 2001–2002 and 2003–2004 editions of the ICAO Technical Instructions.

On August 15, 2000, we issued an advance notice of proposed rulemaking (ANPRM) requesting comments and suggestions on ways to implement the NTSB recommendation and the need for this or other changes to the HMR (65 FR 49777). The ANPRM solicited comments on past incidents; practices and procedures currently in use and their costs; information needed by emergency responders; and the benefit, feasibility, and funding of a centralized reporting system (CRS).

II. Discussion of Comments

A. Place a Telephone Number on the NOPC

Two commenters supported our proposal to place a telephone number on the NOPC that can be contacted during an in-flight emergency to obtain information about any hazardous materials aboard the aircraft. Emery Forwarding stated that it is reasonable to provide such a telephone number on the NOPC, and aircraft operators should have a single point of control that could be contacted for hazmat information. Emery went on to say the telephone number would take little space on the NOPC and the primary cost would be in the modification of internal computer systems. The International Pilots Association (IPA) stated that, in an emergency, the telephone number relieves the crew from having to ''read off a lot of information at a time when they probably have more urgent matters to attend to''. The commenter pointed out that providing a telephone number instead of detailed information about the hazardous materials is consistent with ICAO Technical Instructions 7;4.3. At the same time, IPA questioned who would be staffing this telephone number. IPA stated that the point of contact at United Parcel Services (UPS) is the Dispatcher. IPA opposed the Dispatcher as the contact point and suggested the telephone number should be another department in order to allow the dispatcher to work with the crew to resolve the immediate situation.

The Air Line Pilots Association (ALPA) commented that the requirement for a telephone number on the NOPC that could be contacted during an in-flight emergency to obtain information about any hazardous materials aboard the aircraft would have limited safety benefits. Due to the nature of most in-flight emergencies, the flight crew may have insufficient time to transmit any information from the NOPC. Even if the crew had time to transmit information from the NOPC to Air Traffic Control (ATC), the presence of two telephone numbers (emergency response and hazmat information) could be potentially confusing. ALPA conceded that the addition of the phone number is a slight improvement over the present system, but the situation addressed by the telephone number would be better addressed by a more robust hazardous materials tracking system.

Two commenters disagreed with the proposal. FedEx contended that it should be sufficient for the flight crew to inform ATC whether or not hazardous material is aboard the aircraft as it would allow the crew to continue with the more pressing tasks of the emergency. FedEx stated that ATC would contact the aircraft operator with the flight number and obtain the required hazardous materials information from a single contact of the operator. The Air Transport Association (ATA) also stated that the flight crew should be able to contact a single telephone contact known to flight crews and that many air carriers have already identified a single location to become responsible for this function, and airlines should be permitted to designate the location.

RSPA continues to believe that each airline that is transporting hazardous materials should maintain a phone number that is monitored at all times the aircraft is in flight by a person from whom the information in the NOPC can be obtained. In the NPRM, RSPA stated that one of the problems faced by emergency responders in an aviation emergency is that a flight crew may not have time or otherwise be able to provide information on the hazardous material aboard an aircraft. A phone number that is monitored by a person from whom the information in the NOPC can be obtained could be used in those incidents where a pilot does not have time to provide an air traffic controller the information on the NOPC. However, RSPA does agree with the commenter who requested that the telephone number be allowed to be placed in a centralized location on the aircraft and not the NOPC. Therefore, RSPA is adopting the proposal to require aircraft operators to monitor a telephone number while the aircraft is in flight by a person whom the information in the NOPC can be obtained, but is allowing the phone number to be placed on the NOPC or in a location on the aircraft that is known to the flight crew.

B. Retention of NOPC During Flight

In the NPRM, we proposed to require aircraft operators to retain and make readily accessible a copy of the NOPC, or the information contained in it, at the airport of departure until the flight leg is completed and make readily accessible a copy of the NOPC, or the information contained in it, at the airport of arrival until the flight leg is complete. Most commenters supported retaining and making readily accessible

''the information contained in the NOPC'' at the airport of departure. They agreed that the hazardous material information must be readily available and in a format that is easily understood by emergency personnel.

While the commenters generally agreed with the proposal that the information contained in the NOPC must be retained and readily accessible at the airport of departure, several of them pointed out that in an emergency, the aircraft most likely will not land at the planned destination airport. The commenters stated that having copies of the NOPC at the planned airport of arrival would not be useful. ATA stated that in all likelihood, the flight will divert ''to the nearest suitable airport''. The information would have to be obtained from the last departure airport.

The ATA stated that air carriers may have no choice but to automate in order to comply with the requirements in this rulemaking and that it is unrealistic to expect large-scale air carriers to duplicate the NOPC, file the copied form, and transmit it by fax. ATA stated that if carriers did utilize a fax system to manage this information, it is reasonable to assume that these requirements will add 10 minutes of additional work to each flight. ATA went on to say that if we estimate that one-third of the 19,000 daily flights carry hazardous materials, utilizing the $18 per hour labor rate yields a total cost of almost $7,000,000 per year.

ALPA questioned when the required hazardous materials information must be accessible at the destination airport. ALPA asked if the departure of a flight from Chicago to Tokyo would need to be delayed if station personnel in Tokyo had not yet received the required information. ALPA stated that with long transcontinental or international flights, the destination airport may not be staffed at the time of departure from the originating station. Requiring personnel to remain at an otherwise closed station for the purpose of accessing hazardous material information appears to create significant expense with very little, if any, safety benefit.

ALPA stated the best way to make improvements in the availability of the hazardous material information is through a tracking system based around an airline's dispatch or operations control center, not the airports of departure or arrival. ALPA pointed out that in the U.S. all airline flight operations must maintain a flight following system capable of tracking an airplane through its entire flight, including intermediate stops and diversions. The dispatcher and pilot-in-command share operational authority for the flight. ALPA stated that the dispatch or operations control center is the natural location for the hazardous material information. The dispatcher is required to monitor the flight and would most likely be the first person within the airline to be aware of a flight diversion due to an emergency. Dispatchers would work closely with corporate emergency response to an accident. ALPA pointed out that dispatchers are certificated, highly trained individuals, and often have access to a multitude of advanced communications equipment and contact information for a variety of emergency response situation.

NTSB stated the NPRM fails to ensure that the air carrier has the ability to quickly provide emergency responders with a consolidated list that not only identifies each hazardous material on board the aircraft but also the quantity and location of each hazardous materials package on the aircraft. Maintaining the NOPC at the departure and arrival points of an aircraft does not ensure that air carriers will provide the consolidated list in a timely manner. If an aircraft diverts, the aircraft operator would still have to transmit a copy of the NOPC or assemble a list and then transmit it. Neither is timely. If the air carrier has the consolidated list prior to the departure of each flight, the air carrier could easily transmit a consolidated list to emergency responders at the scene.

NTSB pointed out that for many carriers the NOPC is a multi-part form with the hazardous materials information on the individual shipping papers. In an emergency, when the onboard NOPC is not available or accessible, the carrier must retrieve a copy of the NOPC at the point of origin and collect the shipping papers for the individual hazardous material shipments. The carrier must then transmit copies of the individual shipping papers or consolidate the information into a list before transmitting to emergency responders. The NTSB stated that this unnecessarily delays the accurate transmission of the hazardous materials information. NTSB stated that the final rule under this docket should include an explicit requirement that an air carrier must have the capability to provide emergency responders with a consolidated list of hazardous materials on any of its aircraft and appropriate information about those materials.

Several commenters stated that the requirements in the NPRM are only manageable with an automated tracking system. FedEx agreed with the proposal to have the NOPC accessible at the airports of departure and arrival until the flight leg is completed, but only if RSPA requires aircraft operators to fully automate or computerize the required hazmat information. FedEx emphasized how burdensome the task would be if not automated. FedEx cited its Memphis hub with 160 flights departing within a matter of hours and stated that, without an automated system, the company would be required to fax paper copies to the destination airports so that the information would be available prior to the scheduled arrival time.

As we stated in the NPRM, emergencies involving hazardous materials transported by aircraft provide difficulties to emergency responders not usually encountered in other modes of transportation. The flight crew may not have time or otherwise be able to provide information during or immediately after the emergency. An aircraft involved in an accident may be damaged to such an extent the information cannot be retrieved from it. In such instances, emergency responders may not know what, if any, hazardous materials are aboard the aircraft. These difficulties cause us to shift our focus away from retrieving hazardous materials information aboard the aircraft or from air crew members. We continue to believe that these problems support a requirement for information to be accessible from a source other than the aircraft flight crew. We also agree with the comment to the ANPRM that stated that the additional risk posed during an emergency by properly prepared hazardous materials shipments may not be significant considering the standard fuel capacity of commercial aircraft. A system that utilizes the information contained in the NOPC can appropriately address these problems without the need for costly new computer or paper tracking systems.

Therefore, as proposed, we are amending the HMR to require an aircraft operator to: (1) Retain and make readily accessible a copy of the NOPC, or the information contained in it, at the airport of departure until the flight leg is completed; and (2) make readily accessible a copy of the NOPC, or the information contained in it, at the planned airport of arrival until the flight leg is completed. Nothing in the rule requires, however, that an aircraft operator has to fax every NOPC to its final destination before a flight takes-off or lands. The airport of arrival must only have the means available to retrieve the NOPC. With facsimile machines and email capabilities, companies can easily store the information at the airport of departure

and then, when necessary, transmit it to the airport of arrival very quickly. Therefore, a flight would not have to be held on the ground to wait for a NOPC to be faxed to its airport of arrival. In addition, we are not mandating that airlines retain staff at both airports of arrival and destination while an aircraft is in flight. However, the airport of departure and arrival must be able to receive and transmit the information to appropriate government personnel in such a timely manner that emergency responders can make response mitigation decisions. It is our belief that the act of filing and maintaining this information in a manner that is readily available should impose a marginal cost on each flight since (1) the NOPC is already being created at the airport of departure; and (2) the airport of arrival only requires the information be readily available, which should permit the faxing of the information when requested by appropriate authorities, not after each flight.

In response to commenters who concluded that a computerized tracking system is the only opportunity to comply with this NPRM, we agree that a computer tracking system would enhance the transmission of the hazmat information on the NOPC and believe that it is an acceptable method for complying with the amendments. However, we disagree with the conclusion that it is the only method for compliance. We believe that the hazmat information contained on the NOPC can be managed without a computerized tracking system. Mandating all aircraft operators to install such a system would greatly disadvantage smaller air carriers. Air carriers who already have a computerized tracking system or are in the process of developing such a system, may use or modify their existing system to have the capability to transmit the hazmat information to other locations as required by this final rule.

We agree with the commenter that stated that an air carrier should have the capability to provide emergency responders with a consolidated list of hazardous materials aboard their aircraft, however, we did not propose such a requirement and, therefore, is beyond the scope of this rulemaking. We note that in order to provide emergency responders the required information without any undue delay it may be necessary for some carriers to use a consolidated list.

We are also revising the HMR to clarify that the NOPC must identify all hazardous materials carried on the plane, even those loaded at earlier departure points. These changes to the HMR will provide emergency responders with timely and consolidated information about the identity (including proper shipping name, hazard class, quantity, and number of packages), and location of all hazardous material on an airplane.

C. Retention of NOPC After Completion of the Flight

Most commenters objected to the proposal to retain a copy of the NOPC or an electronic image thereof for one year after completion of the flight. Two commenters (UPS and ATA) suggested that ''the information contained in'' the NOPC is important, not the form itself. The commenters stated an aircraft operator should be allowed to retain the ''information contained in'' the NOPC rather than the actual NOPC and went on to say that for emergency responders, the essential information consists of the hazardous materials shipping description for each material loaded on the aircraft, the amount of hazardous material in the shipment, and its location on the aircraft. These elements should be available away from the aircraft and presented to emergency responders. The commenters stated that the other information on the NOPC will not provide an emergency responder with information necessary to respond to an incident and could in fact easily distract from the emergency response. The ATA commented that if RSPA requires the retention and provision of copies of the NOPC itself, emergency responders will criticize the results as distracting. RSPA should not require an operator to retain and transmit superfluous information. The less complicated the information, the easier the retrieval in an emergency.

UPS stated that RSPA lacks justification for permitting an operator to make the information contained in an NOPC accessible at the airports of departure and arrival, but require the actual written NOPC for all other purposes specified in the proposed § 175.33(c). UPS went on to request that RSPA should specify what information contained in the NOPC must be retained.

FedEx stated that the information currently required is redundant, confusing and in some cases encumbers the very process it was intended to support and improve. Fed Ex urged RSPA to consider using a summary of the total hazardous materials by hazard class on board the aircraft in lieu of the current and proposed NOPC. British Airways stated that we should not require NOPCs to be stored at the principal place of business. The commenter went on to say that they retain their NOPCs at each of its stations and that no safety benefit would result from requiring that notification be transferred to a central repository.

The majority of commenters objected to the proposed one year retention period. Three commenters (UPS, ALPA and IPA) supported a 90-day retention period, two commenters (FedEx and ATA) a 30-day period, while another (Emery) favored a retention period in the 30–90 day range. ATA conceded that in the event of an incident the NOPC should be retained for 90 days. Two commenters (IPA and ALPA) who favor a 90-day period pointed out that this is consistent with the current requirements to retain shipping papers for 90 days in 49 CFR 175 as well as in the ICAO Technical Instructions. Other commenters (ATA, Emery) stated that requiring an aircraft operator to retain the NOPC for one year has no bearing on the ability of first responders to react to an accident.

Several commenters objected to the proposal to require retention of the NOPC at the operators' principal place of business. Three commenters (ATA, UPS and FedEx) commented that RSPA should allow the aircraft operator to designate the location. ALPA expressed concern over the requirement to retain a copy of the NOPC (not just the information contained in it) at the operator's principal place of business for one year and stated that the only apparent benefit of retaining a copy of the NOPC at the principal place of business appears to be for enforcement opportunities, and as such, has no place within the context of this rulemaking.

Several commenters (UPS, FedEx, ATA) objected to the proposal to require aircraft operators to make the NOPC available, upon request, to any representative of a Federal, State, or local government agency. The commenters stated RSPA should limit the scope of § 175.33 to a government representative who is either responding to a hazardous material incident or is conducting an investigation which involves a hazardous material, consistent with the requirements in § 172.600(c)(2). Without such limitation, an agency at any level of government could request sensitive information concerning an operator's business, customer base or transportation of hazardous materials. ATA stated that the proposal empowers such a variety of authorities to demand and receive NOPC information that unmanageable circumstances might arise. The ATA urged RSPA to restrict access of this information, in an emergency, to an incident commander or other duly empowered representative of an agency.

In 1994, Congress amended the Federal hazardous material transportation law (Federal hazmat law) to require that, after a hazardous material ''is no longer in transportation,'' each offeror and carrier of a hazardous material must retain the shipping paper ''or an electronic image thereof for a period of one year to be accessible through their respective principal places of business.'' 49 U.S.C. 5110(e), added by Pub. L. 103–311, Title I, § 115, 108 Stat. 1678 (Aug. 26, 1994). That section also provides that the offeror and carrier ''shall, upon request, make the shipping paper available to a Federal, State, or local government agency at reasonable times and locations.'' On July 12, 2002, RSPA issued a final rule under Docket HM–207B amending the HMR to conform with § 5110(e) (67 FR 46124). As stated in the NPRM, the NOPC provides the same information to emergency response personnel as the shipping paper for transportation by rail or public highway. RSPA believes, therefore, that it is consistent with the statutory intent of Congress to require aircraft operators to maintain a copy of the NOPC, or the information contained in it for a reasonable period of time. RSPA does agree, however, with those commenters indicating that 90 days is a sufficient period of time for the NOPC to be maintained; operators should be allowed the option of maintaining the information in the NOPC and not just a copy of the NOPC itself; and, the NOPC should be allowed to be stored at their stations (*i.e.*, airport of departure). Therefore, RSPA is amending § 175.33 to require aircraft operators to maintain a copy of the NOPC, or the information contained in it, for 90 days at the airport of departure or principal place of business. The information required to be maintained is the information required on the NOPC as specified in § 175.33(a), including confirmation that no damage or leaking packages have been loaded on the aircraft. However, information on the NOPC that is pertaining to non-hazardous material is not required to be maintained. In addition, if the NOPC is also the shipping paper, as provided by § 175.35(b), a copy of the NOPC (*i.e.*, the shipping paper), or an electronic image thereof, must be retained for 375 days.

Consistent with changes to the shipping paper retention requirements published under the response to appeals to Docket HM–207B (July 12, 2002; 67 FR 46123) and comments received to the NPRM issued under Docket HM–206C, RSPA is also modifying proposed § 175.33(c). Except when requests are from government representatives responding to an incident, RSPA is not requiring that the NOPC be provided ''immediately'' to an authorized official of a Federal, State, or local government agency. RSPA has revised § 175.33 to require that the information be provided ''at reasonable times and locations.'' Because of the appeals received in response to Docket HM–207B, RSPA also reevaluated the terminology of ''immediately available'' with regard to providing the NOPC, or the information contained therein, to government personnel responding to an incident. RSPA believes that government personnel, such as emergency response personnel, that are responding to an incident involving an aircraft must receive information regarding the hazardous materials aboard the aircraft in such a time and manner that will allow them to take appropriate emergency response actions. RSPA believes that, for the time being, the term ''immediately available'' best describes this need. The term is intended to indicate that the information must be provided to an emergency responder with no undue delay. Though a few minutes may elapse between the request and the information being transmitted, the NOPC information must be transmitted to the responder as quickly as possible. By providing this information in as quick, legible and consolidated fashion as possible emergency response personnel may be able to take adequate action to minimize loss of the content within the aircraft versus losing the aircraft and its contents in its entirety. RSPA may propose in a future rulemaking an alternative phrase for ''immediately available'' in order to define how quickly an aircraft operator must provide this information to government personnel responding to an aviation incident.

The revisions contained in this final rule are consistent with the changes recently adopted into the ICAO Technical Instructions, with one exception. Our amendments require an aircraft operator to provide a phone number for where a copy of the NOPC can be obtained. The ICAO Technical Instructions do not contain this requirement.

III. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not subject to formal review by the Office of Management and Budget (OMB). This final rule is not considered significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). A regulatory evaluation is available for review in the docket.

B. Executive Order 13132

This final rule was analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This final rule preempts State, local, and Indian tribe requirements, but does not adopt any regulation with substantial direct effects on: the States; the relationship between the national government and the States; or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazardous materials transportation law, 49 U.S.C. 5101–5127, contains an express preemption provision (49 U.S.C. 5125(b)) preempting State, local, and Indian tribe requirements on certain subjects. These subjects are:

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

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

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

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

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

This final rule addresses subject item (3) above and preempts State, local, and Indian tribe requirements not meeting the ''substantively the same'' standard. Federal hazardous materials transportation law provides at § 5125(b)(2) that, if RSPA issues a regulation concerning any of the subjects, RSPA 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 the final rule and not later than two years after the date of issuance. The effective date of preemption is 90 days from publication of this final rule in the **Federal Register**.

C. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this final rule does not have tribal implications, and does not impose direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve this principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions. Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act. However, if an agency determines a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides the head of the agency may so certify, and an RFA is not required.

The Small Business Administration criterion specifies an air carrier is ''small'' if it has 1,500 or fewer employees. For this rule, small entities are part 121 and part 135 air carriers, approved to carry hazardous materials, with 1,500 or fewer employees. We identified 729 air carriers meeting this standard.

As mentioned in the Paperwork Reduction Act section of this preamble, it is estimated that the cost to the airline industry of this final rule will be $450,000 per year. This estimate comes from an examination of the data in the U.S. Department of Transportation's Air Carrier Traffic Statistic Monthly. From that data we also were able to estimate that small business airlines undertake no more than 25% of all aircraft departures, and thus 25% of the total cost. The average small business is expected to incur a cost of no more than $150 per year. Therefore, I certify this final rule does not have a significant economic impact on a substantial number of small entities.

E. Unfunded Mandates Reform Act of 1995

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more, in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector.

F. Paperwork Reduction Act

This rule results in an increase in the annual paperwork burden and costs. We currently have an approved information collection under OMB No. 2137–0034, ''Hazardous Materials Shipping Papers & Emergency Response Information''. These revisions regarding the maintenance of copies of notification of pilot-in-command were submitted under the NPRM to OMB for review and approval.

Section 1320.8(d), Title 5, Code of Federal Regulations required that RSPA provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. The NPRM identified a new information collection requirement that RSPA submitted to OMB for approval. RSPA estimated that the new total information collection and recordkeeping burden for OMB No. 2137–034 would be as follows:

''Hazardous Materials Shipping Papers & Emergency Response Information'' OMB No. 2137–0034

Total Annual Number of Respondents: 250,000.

Total Annual Responses: 260,000,000.

Total Annual Burden Hours: 6,523,611.

Total Annual Burden Cost: $6,925,000.

RSPA specifically requested comments on the information collection and recordkeeping burdens associated with developing, implementing, and maintaining these requirements. We received three comments regarding this information collection. Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it displays a valid OMB control number. OMB approved the revised information collection requirement on February 27, 2003.

G. Environmental Assessment

This final rule will improve emergency response to hazardous materials incidents involving aircraft by ensuring information on the hazardous materials involved in an emergency is readily available. By improving emergency response to aircraft incidents, this should help lessen environmental damage associated with such incidents. We find there are no significant environmental impacts associated with this rule.

H. Regulation Identifier Number (RIN)

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

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 175

Air carriers, Hazardous materials transportation, Radioactive materials, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Chapter I is amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

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

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

2. In § 171.14, paragraph (f) is added to read as follows:

§ 171.14 Transitional provisions for implementing certain requirements.

* * * * *

(f) 49 CFR 175.33 sets out requirements regarding the availability of information for hazardous materials transported by aircraft. Until October 1, 2004, a person may elect to comply with either the applicable requirements of 49 CFR 175.33 in effect on September 30, 2003, and contained in 49 CFR Part 175 revised as of October 1, 2002, or the requirements of that section contained in 49 CFR Part 175 revised as of October 1, 2003. On October 1,2004, all applicable regulatory requirements in 49

CFR 175.33 in effect on October 1, 2003 must be met.

PART 175—CARRIAGE BY AIRCRAFT

3. The authority citation for part 175 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

4. In § 175.33, paragraph (a)(1) introductory text is revised, paragraphs (a)(7) and (a)(8) are redesignated as paragraphs (a)(9) and (a)(10), respectively, and new paragraphs (a)(7), (a)(8), (c) and (d) are added to read as follows:

§ 175.33 Notification of pilot-in-command.

(a) * * *

(1) The proper shipping name, hazard class, and identification number of the material, including any remaining aboard from prior stops, as specified in § 172.101 of this subchapter or the ICAO Technical Instructions. In the case of Class 1 materials, the compatibility group letter also must be shown. If a hazardous material is described by the proper shipping name, hazard class, and identification number appearing in:

* * * * *

(7) The date of the flight;

(8) The telephone number of a person not aboard the aircraft from whom the information contained in the notification of pilot-in-command can be obtained. The aircraft operator must ensure the telephone number is monitored at all times the aircraft is in flight. The telephone number is not required to be placed on the notification of pilot-in-command if the phone number is in a location in the cockpit available and known to the flight crew.

* * * * *

(c) The aircraft operator must retain at the airport of departure or the operator's principal place of business a copy of each notification of pilot-in-command, an electronic image thereof, or the information contained therein for 90 days. Except as provided in paragraph (d) of this section, the aircraft operator must make this information available, upon request, to an authorized official of a Federal, State, or local government agency at reasonable times and locations.

(d) The aircraft operator must have the information required to be retained under paragraph (c) of this section readily accessible at the airport of departure and the intended airport of arrival for the duration of the flight leg and, upon request, must make the information immediately available, in an accurate and legible format, to any representative of a Federal, State, or local government agency (including an emergency responder) who is responding to an incident involving the flight.

Issued in Washington, DC on March 20, 2003 under the authority delegated in 49 CFR part 1.

Ellen G. Engleman,

Administrator.

[FR Doc. 03–7070 Filed 3–24–03; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 020409080–3061–08; I.D. 031003C]

RIN 0648–AP78

Fisheries of the Northeastern United States; Northeast Multispecies Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce.

ACTION: Final rule; amendment to an interim final rule.

SUMMARY: NMFS announces a correction to the August 1, 2002, interim final rule implementing restrictions specified in the Settlement Agreement Among Certain Parties (Settlement Agreement), which was ordered to be implemented by the U.S. District Court for the District of Columbia (Court) in a Remedial Order (Order) issued on May 23, 2002. The Interim Final Rule contained an inadvertent error in the coordinates defining the seasonal Gulf of Maine (GOM) Rolling Closure Area II under the Northeast (NE) Multispecies Fishery Management Plan (FMP). The intent of this action is to correct the inadvertent error to the GOM Rolling Closure Area II coordinates. This action is being taken by NMFS under the authority of section 305(c) and (d) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Effective March 25, 2003.

FOR FURTHER INFORMATION CONTACT: Douglas W. Christel, Fishery Management Specialist, 978–281–9141.

SUPPLEMENTARY INFORMATION:

Background

Regulations implementing the seasonal (April) GOM Rolling Closure Area II were published on May 5, 1999 (64 FR 24066), as part of the final rule implementing regulations in Framework Adjustment 27 of the NE Multispecies FMP. Since that time, no formal adjustments to this area have been approved by NMFS.

On May 23, 2002, the Court issued an Order in the case of *Conservation Law Foundation, et al.* v. *Evans et al.* (Case No. 001134 GK)(D.D.C. May 23, 2002) that the Settlement Agreement be implemented according to its terms to reduce overfishing, until the implementation of Amendment 13 to the FMP.

On August 1, 2002, NMFS published an interim final rule implementing the additional restrictions specified in the Settlement Agreement. These restrictions were intended to reduce overfishing and bycatch on species managed under the FMP, under the authority of section 305(c) of the Magnuson-Stevens Act. The August 1, 2002, interim final rule contained an inadvertent error in the coordinates defining the GOM Rolling Closure Area II at § 648.81(g)(1)(ii). The final two coordinate points for the GOM Rolling Closure Area II were erroneously defined as GM6, at 42°30' N. lat. and 68°30' W. long.; and GM9, at 42°30' N. lat. and the intersection with the Massachusetts shoreline. The correct coordinate points are GM13, at 43°00' N. lat. and 68°30' W. long.; and GM10, at 43°00' N. lat. and the intersection with the New Hampshire shoreline.

The text of the Settlement Agreement, as well as the preamble to the August 1, 2002, interim final rule, stated that all measures that were in effect prior to May 1, 2002, and that were not amended by the August 1, 2002, interim final rule, would remain in effect. The Settlement Agreement identified several measures to be undertaken to reduce fishing mortality in the NE multispecies fishery, including additional inshore closure areas during the months of May and June. However, the Settlement Agreement did not specify any changes to the April closure area as defined in Framework Adjustment 27 to the FMP. Accordingly, the August 1, 2002, interim final rule only specified that changes were made to the GOM Rolling Closure Areas III and IV, for the months of May and June, respectively. The inadvertent error regarding the GOM Rolling Closure Area II occurred in the drafting of the section of the proposed rule to implement the changes to Areas III and IV. In the proposed rule, the subparagraph relating to Area II was included merely to provide the full context of the changes to Areas III and IV. In the process of including the Area II subparagraph, the incorrect coordinates were inadvertently specified.