

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

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

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

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

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

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

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

Administrative Notices

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

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

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

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

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

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

List of Subjects

49 CFR Part 171

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

49 CFR Part 175

Hazardous materials transportation, Carriage by aircraft.

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

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

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

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

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

§ 171.15 Immediate notice of certain hazardous materials incidents.

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

(1) As a direct result of hazardous materials—

(i) A person is killed; or

(ii) A person receives injuries requiring his or her hospitalization; or

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

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