

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**.