

Further exacerbating this problem is the increasing involvement of transportation intermediaries, such as non-vessel operating common carriers forwarders, brokers, trading companies, and consolidators. In many foreign trades these entities control the routing and booking of large portions of total trade FCL and consolidated cargo, including hazardous cargo. In fact, the ocean carrier may be several layers removed in the transportation chain from the actual manufacturer. Intermediaries may often be "telephone and desk" operations with little capital investment or staffing, let alone any hazardous cargo expertise. As a result, the intermediaries will generally not be able to provide the ER information themselves. Unfortunately, in many cases it is also likely that they will not require production of the information from their underlying customers (who themselves may be trading companies or other intermediaries). Moreover, these intermediaries will often have a very strong commercial interest in preventing the ocean carrier from identifying the underlying manufacturer-exporter. They may view providing the HM-126C information (for example, the telephone number) to the carrier as inconsistent with this interest.

The Coalition stated that they do not oppose the basic methodology or the objective of the final rule, at least in the domestic market. However, the Coalition is concerned with the implementation of the final rule relative to meeting the effective date as it applies to all-water and intermodal hazardous cargoes moving under single bills of lading (e.g., issued by NVOCC's) in international ocean commerce. It is concerned with the applicability of the emergency response information requirements to hazardous materials shipments by vessels originating outside of the U.S., transiting U.S. ports in the course of being shipped between destinations outside of the U.S., and particularly with the 24-hour emergency response telephone number required on shipping documents.

The emergency response information requirements are intended to improve and enhance the communication of hazard information and the identification of hazardous materials involved in transportation incidents. RSPA is concerned about the views expressed by the Coalition relative to alleged intentional noncompliance with the Hazardous Materials Regulations (HMR). In recent years, RSPA has initiated 19 civil penalty cases and completed 14, with collection of civil penalties from various businesses located outside of the United States in Canada, England, Hong Kong, China, Venezuela, Japan, Scotland and West Germany. The argument that shippers, foreign or domestic, may intentionally attempt to evade or defeat the requirements under the HMR (e.g.,

misdescription, false telephone numbers, or nondeclaration of dangerous goods) does not, in itself, substantiate or justify indefinite delay of the effective date of the final rule with respect to hazardous materials shipments moving between origin and destination in international ocean commerce. In addition, the Coalition is reminded of the requirements of 49 CFR 171.12(a) that importers of hazardous materials into the U.S. provide shippers and forwarding agents with information concerning not only the requirements of the amendments under this Docket, but other requirements that have been applicable to international ocean shipments for many years, including documentation requirements. Therefore, this portion of the Coalition's petition is denied.

The Coalition also requested reconsideration and/or clarification of the scope of the final rule as it applies to the movement of hazardous materials by vessel from a point of origin outside of the U.S. to a destination outside of the U.S., which transit U.S. ports in vessels or are offloaded between ocean vessels within a U.S. port facility, and are not moved on a public highway. The petitioner stated:

* * * These cargoes have always moved under IMO requirements, both because of the foreign-to-foreign and essentially maritime nature of the transportation, as well as the minimal contact with the U.S.* * *

RSPA currently provides requirements, in §§ 171.12(d) and 176.11(a), regarding hazardous materials shipped by vessel from the point of origin outside of the U.S., destined for places outside of the U.S., and which transit U.S. ports, or are offloaded between ocean vessels at port facilities. Hazardous materials transported solely under, and in full compliance with, the requirements of the International Maritime Organization's (IMO) International Maritime Dangerous Goods Code (IMDG Code), are excepted from compliance with the corresponding requirements in the HMR pertaining to packaging, marking, labelling, classification, description, certification, placarding, stowage and segregation, including transportation by motor vehicles used in connection with the discharge or loading of vessels, if they are not operated on a public highway. Also, following present international practice under the IMDG code, technical names of materials described by n.o.s. entries are required on the dangerous cargo manifest for international shipments by vessel. In the event of an incident, the IMO "Emergency Procedures for Ships Carrying

Dangerous Goods (EMS)" provides detailed advice and guidance for mitigating incidents involving hazardous materials on board vessels.

RSPA agrees with the Coalition that a hazardous material conforming to the provisions of paragraph (a) of § 176.11, in the course of being shipped from a point of origin outside of the U.S. to a destination outside of the U.S., when transiting U.S. ports, or being transhipped between vessels at a single U.S. port facility, would not be subject to the emergency response telephone number requirement specified in § 172.201(d). Accordingly, a new paragraph (a)(3) is added to § 176.11 to clarify that materials shipped by vessel, solely in accordance, and in full compliance, with the IMDG Code, and not moved on a public highway, are excepted from compliance with the requirements for an emergency response telephone number.

In regard to the Coalition's concerns for providing a 24-hour emergency response telephone number for international shipments imported into the U.S., RSPA has similar concerns regarding the effectiveness of an overseas 24-hour emergency response telephone number contact for foreign shippers, and that there could be some difficulty in obtaining emergency response information for import shipments. However, adoption of alternative approaches, such as requirements that a representative in the U.S. be designated as the 24-hour contact is beyond the scope of this rulemaking. RSPA anticipates addressing this issue in future rulemaking.

IV. Availability of the DOT Emergency Response Guidebook (ERG) and Delay of the Effective Date of the Final Rule Under Docket HM-126C

In the correction final rule published January 10, 1990 (55 FR 870), the effective date of Docket HM-126C was extended from April 2, 1990 to June 4, 1990 to give carriers, who elect to place the DOT Emergency Response Guidebook (ERG) on their vehicles, the necessary time to equip their vehicles with the latest edition of the ERG. Since publication of the correction final rule, RSPA experienced further difficulties in making camera-ready copies of the 1990 ERG available to commercial sources. Subsequently, based on RSPA's anticipation of the unavailability of the 1990 ERG, on May 21, 1990 (55 FR 20796), RSPA again extended the effective date of the final rule from June 4, 1990 to September 17, 1990, to allow additional time for complying with the emergency