

were received and evaluated. Furthermore, comments to other pending rulemaking actions, such as Docket HM-181, dealing with similar topics addressed in this rulemaking (i.e., additional requirements for technical names for n.o.s. descriptions), were evaluated. RSPA does not believe that a public hearing on the proposals contained in the NPRM would have provided substantive additional information beyond the comments already received, evaluated, and discussed in responses to the ANPRM and NPRM.

In specific response to the ATA and RSCC request, RSPA fully appreciates the necessity for uniform and non-conflicting requirements, to the maximum extent possible, between various agencies of the Government. In order to provide compliance flexibility, thereby limiting the potential for duplicative or conflicting requirements, RSPA has not required a specific form or document which would be necessary in order to comply with the requirements of this final rule. Emergency response information must be in a form or document that permits reference to the hazardous materials being shipped and provide guidance relative to the hazards, risks, precautions and mitigation methods necessary. This information can be transmitted using an MSDS, the ERG, or any other document that provides the information prescribed.

ATA also expressed concern about the potential overlap of DOT and OSHA regulations and suggested a memorandum of understanding (MOU) to delineate respective authorities. RSPA agrees that it should coordinate with OSHA officials on a continuing basis, but a formal MOU only could constitute an agreement to coordinate interagency activities. Matters related to resolution of jurisdictional issues (e.g., the meaning of the "exercise" provision of the Occupational Safety and Health Act; 29 U.S.C. 653(b)(1)) must be handled in the manner specified by law (e.g., review and decision by the Occupational Safety and Health Review Commission). In order to facilitate interagency coordination, RSPA solicits information on hazardous materials issues that should be discussed with OSHA officials on an ongoing basis.

The IAFF also requested that a public hearing be held regarding the proposals contained in the NPRM and, in addition, stated the following:

The IAFF strongly disagrees with the position of the DOT that material safety data sheets (MSDSs) not be provided and maintained in those locations as required in 172.600(a). We believe that the MSDS, the primary vehicle for transmitting chemical

information, should be required and available for use by fire fighting and other emergency response personnel during a hazardous materials emergency. We believe that the reasons provided by the DOT in the Notice of Proposed Rulemaking are not only based on special interest (industry and/or those being regulated) but are significantly rhetorical and unsubstantiated. While we agree that MSDS were not originally developed for the purpose of providing information for emergency response, they are now in fact the most utilized vehicle for providing such information. As you are well aware, the Federal Hazard Communication Standard, most State Right-to-Know standards, SARA and many other federal, state and local regulations require the utilization of the MSDS. Fire fighters and emergency response personnel utilize this information at fixed facilities and would obviously be able to utilize this information equally as well when responding to transportation incidents.

We also strongly disagree with the proposal that the DOT Emergency Response Guidebook be used to satisfy the proposed requirements. The DOT ERG has never had public review other than through an "unofficial" and very unbalanced advisory committee. If the ERG is to be utilized, we propose that it receive full review in accordance with the Administrative Procedures Act. Accordingly, we also do not agree with the allowance of the use of the CHEMTREC telephone to satisfy the requirements of 172.604, especially without further definition of what "accepting responsibility for" would mean and without public review of the CHEMTREC operation and their legal responsibilities. If a telephone number is to be included, aside from the responsible shipper, we propose the telephone number of the National Response Center be utilized. As you are aware, the NRC telephone number is a toll-free number that is staffed seven days a week, 24 hours a day. While the NRC has the capability to immediately patch the caller into CHEMTREC's information and referral service as well as into governmental agencies, utilizing the NRC has other valuable functions not performed by CHEMTREC. Notification of the NRC serves many vital functions, including permitting federal involvement to proceed in a timely and effective manner. We believe this would greatly assist fire fighters in handling hazardous materials incidents.

RSPA has not required nor prohibited the use of the MSDS as a means of providing information to workers covered by the Right-to-Know legislation and Superfund Amendment and Reauthorization Act of 1986 (SARA). We recognize the importance and use of the MSDS in providing information to employees and in planning functions. However, as has been made evident in the course of this rulemaking action, no single standard exists for the preparation of MSDS to provide emergency response information for transportation incidents. While an MSDS may provide

information during an incident involving hazardous materials, the MSDS may not, in all instances, provide specific information relative to response actions to be taken during transportation related incidents. Conceivably, for "less-than-truckload" and "less-than-carload" shipments, a carrier would possess numerous MSDS for the different materials being transported. In the event of a hazardous materials emergency, they may not be the most appropriate means to ascertain the appropriate emergency response action to be taken. Additionally, a number of different MSDS may exist for the same material when shipped by different individuals. Information on these multiple MSDS may in fact vary, thus potentially leading to confusion during initial emergency response actions.

The requirements issued in this final rule are intended to provide specific information relative to the hazards of the materials being transported and provide immediate initial emergency response guidance until further specific information can be obtained from the shipper or others relative to long term mitigation actions. To date, only the ERG and similar documents such as those published by ICAO and IMO have consolidated this initial response information into a single, multimodal, easily understood, and recognizable document directly correlated with identification numbers and emergency response guidance. However, RSPA has not imposed a requirement that the ERG be carried on each transport vehicle and be maintained at facilities involved with the transportation of hazardous materials. Rather, this final rule requires that specific emergency response information accompany shipments of hazardous materials and be present at transportation facilities. This information may be in any format, including an MSDS, the ERG, or other similar document, so long as that document provides information, which at a minimum, provides the description of the hazardous material, immediate health hazard information, risks of fire and explosion, immediate precautions to be taken in the event of an accident or incident, immediate methods of handling large and small fires, initial methods for handling of spills or leaks, and preliminary first aid measures.

The IAFF asserts that the ERG has never had a public review other than through an "unofficial" and very "unbalanced" advisory committee. The ERG is not a regulatory document. There is no requirement currently in the HMR nor in this final rule which mandates the use of the ERG. The ERG was developed