

handle the entire incident and nearly every instance bears the initial response burden and often the greatest opportunity to mitigate the adverse consequences." We reiterate that the one-call for reporting to the NRC is for incident reporting. In the case of any incident involving hazardous materials that requires immediate emergency response, the local authorities should be immediately notified. In addition, adoption of this requirement does not relieve a person from reporting discrepancies of hazardous material shipments transported by air. Discrepancies are those air shipments involving hazardous materials which are improperly described, certified, labeled, marked, or packaged, in a manner not ascertainable when accepted. Section 175.31 of the HMR requires, as soon as practical, a person to report by telephone to the nearest FAA Security Field Office a discrepancy relative to the shipment of a hazardous material following the shipment's acceptance for transportation aboard an aircraft.

The United Parcel Service (UPS) indicated its support for continuing reporting to the FAA Security Field Office in place of reporting to the NRC. UPS stated that " * * * direct notification to the FAA by the person in physical possession of the hazardous material will result in more accurate notification * * * " than notification to the NRC. UPS notes that " * * * nothing in the administrative record provides a reasoned discussion of why elimination of direct FAA notification would result in more accurate incident reporting." A Presidential review of Federal release prevention, mitigation, and response authorities, conducted under the requirements of section 112(r)(10) of the Clean Air Act, as amended in 1990, found that the current reporting system was complex and confusing. In 1993, the National Response Team (NRT), comprised of multiple federal agencies, submitted a Report to Congress entitled "A Review of Federal Authorities for Hazardous Materials Accident Safety." In this report the NRT recommended that streamlining the accident notification reporting requirements be further examined. The NRT found that the duplicative reporting requirements imposed by the various agencies was a burden.

The one-call reporting system is an attempt to streamline the process for federally mandated reporting of accidental discharges of hazardous materials. There are a variety of incident scenarios, that, under current Federal regulations, would require the reporting party to call multiple Federal agencies

to notify them of an accidental release. Under the one-call system, the NRC receives all Federal telephonic notifications of hazardous materials incidents and then notifies all appropriate parties, ensuring that incident data is collected and maintained. Centralizing the collection of release notifications will result in improved data quality by ensuring that all release notification data is collected in a consistent and comprehensive manner.

D. Expansion of Reporting Requirements to Persons Other Than Carriers

Currently, the requirements for telephonic and written reporting of transportation incidents apply to carriers only. Operators of transportation facilities, such as marine terminals, who may not perform carrier functions are not required to report transportation incidents involving hazardous materials. Most commenters to the NPRM agree that the person in physical control of a hazardous material when an incident occurs during transportation should be responsible for reporting that incident. The Norfolk Southern Railway Company supports the proposal and notes "the person in control * * * would be the person most knowledgeable about the incident."

Many commenters note that a pending RSPA rulemaking that will define when a material is "in transportation in commerce" (Docket HM-223, NPRM published on January 27, 2001; 66 FR 59220) is an important factor in determining when and what entities would be required to report incidents. DuPont comments " * * * this issue cannot be resolved until the DOT publishes a final rulemaking on Docket HM-223 Applicability of the Hazardous Materials Regulations to Loading/Unloading and Storage." A commenter associated with the F 5800.1 Task Force supports " * * * the idea that the party having physical control of the material is the one who should be required to complete the report * * * " but notes the relationship of Docket HM-223. "If the final rule in HM-223 is promulgated as proposed, it would relieve parties, other than carriers from having to execute incident reports" notes the commenter. He continues "This would mean that consignors and consignees would not have to report incidents occurring during loading or unloading." The International Vessel Operators Hazardous Materials Association, Inc. (VOHMA) expands the concept further by questioning " * * * who will actually be required to report an incident that occurs during the course of activities that might not be considered

to be 'in transportation' and in fact, [we] wonder if the responsibility might then fall back on the last carrier."

On October 30, 2003, we published a final rule under Docket HM-223 (68 FR 61906). Among other issues, the final rule clarifies the applicability of the HMR to specific functions and activities, including loading, unloading, and storage operations. Consistent with the Federal hazardous materials transportation law (49 U.S.C. 5101 *et seq.*), the final rule defines "transportation" to mean the movement of property and loading, unloading, or storage incidental to the movement. Transportation in commerce begins when a carrier takes physical possession of a hazardous material for the purpose of transporting it and continues until delivery of the package to its consignee or destination as evidenced by the shipping documentation under which the hazardous material is moving. The final rule defines "loading incidental to movement" to mean the loading by carrier personnel or in the presence of carrier personnel of packaged or containerized hazardous material onto a transport vehicle, aircraft, or vessel; for a bulk packaging, "loading incidental to movement" means the filling of the packaging with a hazardous material by carrier personnel or in the presence of carrier personnel. The final rule defines "unloading incidental to movement" to mean the removal of a packaged or containerized hazardous material from a transport vehicle, aircraft, or vessel or the emptying of a hazardous material from a bulk packaging after the hazardous material has been delivered to the consignee and prior to the delivering carrier's departure from the consignee facility or premises. Under the final rule, "storage incidental to movement" means storage by any person of a transport vehicle, freight container, or package containing a hazardous material between the time that a carrier takes physical possession of the hazardous material until the package containing the hazardous material is physically delivered to the destination indicated on a shipping document.

This final rule requires reporting of incidents under §§ 171.15 of 171.16 that occur during the time that the material is in transportation. Consistent with the definitions adopted in HM-223, incidents that occur during loading operations conducted by carrier personnel or in the presence of carrier personnel must be reported, as must incidents that occur during unloading operations conducted prior to a carrier's departure from the consignee's premises. Hazardous materials incidents