

that occur during loading operations conducted by a shipper prior to a carrier's arrival at its facility to pick up the hazardous material or during unloading operations conducted by consignee personnel after the hazardous material has been delivered and the carrier has departed the premises are not required to be reported under §§ 171.15 and 171.16. Note in this regard that the HM-223 final rule changes the applicability of the HMR to rail tank car unloading operations conducted by consignee personnel, which are currently subject to the provisions of § 174.67. Under HM-223, such rail tank car unloading operations are not transportation functions and, thus, are not subject to incident reporting requirements.

Other commenters opposed the requirement in total. In addition to Docket HM-223 concerns, the Fertilizer Institute (TFI) and The National Propane Gas Association (NPGA) “\* \* \* contend that this change will increase the burden on industry.” Additionally, they claim the “\* \* \* change will decrease the efficiency of RSPA's data collection” because it is possible that more than one person will report the same incident. The Petroleum Marketers Association of America (PMMA) sees an increase in burden for industry and RSPA by “\* \* \* requiring procedural changes, additional training, and time” for industry and the confusion caused by duplicative reporting will “\* \* \* decrease the efficiency of RSPA's data collection efforts and will not benefit its risk assessment.”

RSPA already receives duplicate reports and currently has a system for identifying duplicative reporting, thus the impact to RSPA should be minimal. In our Regulatory Evaluation, available in the HM-229 Docket (RSPA-99-5013-87), we discuss the additional cost to industry by adopting this proposal. We anticipate a minimal increase in the number of reports concerning incidents that occur during loading and unloading because these activities are already reported by carriers. Given the volume of handlings, however, we conservatively estimate a 2% increase in the number of reports concerning incidents that occur during loading and unloading.

RSPA also expects an increase in the number of reported incidents occurring in facilities where hazardous materials are stored incidental to transportation. An RSPA study conducted in 1998 estimates that many of the 800,000 daily shipments of hazardous materials involve consolidations, intermodal or intramodal transfers and in-transit

storage, resulting in 1.2 million daily hazardous materials movements. We estimate that extending reporting requirements to in-transit storage facilities will increase the overall total number of reports by 10%.

The intent of this rule change is to collect spill information on incidents that occur while the hazardous material is in transportation. Since RSPA has jurisdiction over hazardous materials in transportation, excluding reporting on incidents that occur during in-transit storage creates an incomplete data set of hazardous materials incidents. In the past, RSPA has discovered such incidents only from sources such as press reports of the most serious incidents. The information will provide a more complete picture of incidents occurring throughout the transportation system.

In this final rule, we are requiring each person in physical control of a hazardous material while it is in transportation in commerce to report any incident that occurs while the material is in that person's possession. For example, an in-transit storage facility owner would have to report any event that meets the provisions of §§ 171.15 or 171.16 and that occurs during the time that a hazardous material is stored in transportation. Consistent with the definitions adopted in the HM-223 final rule, storage incidental to movement is 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. Reports of incidents or releases that occur during incidental storage will provide more accurate and complete information regarding hazardous materials incidents.

In addition, we are revising § 171.21 to require the person responsible for reporting the incident, rather than the “carrier,” to make available all records and information pertaining to the incident.

#### *E. Exceptions to Incident Reporting*

As proposed in the NPRM, an incident meeting all of the following criteria would not be required to be reported:

- (1) The shipment has not been offered for transportation or transported by air;
- (2) None of the criteria in § 171.15(a) apply;
- (3) The material is not a hazardous waste;

(4) The material is properly classed as—

- (i) ORM-D; or
- (ii) A Packing Group III material in Class or Division 3, 4, 5, 6.1, 8, or 9;
- (5) Each package has a capacity of less than 20 liters (5.2 gallons) for liquids or less than 30 kg (66 pounds) for solids;
- (6) The total aggregate release is less than 20 liters (5.2 gallons) for liquids or less than 30 kgs (66 pounds) for solids; and
- (7) The material does not meet the definition of an undeclared hazardous material in § 171.8.

In the NPRM, we proposed to except small spills of low hazard materials from the reporting requirements. We wanted to require that an aggregate spill of 20 liters (5.2 gallons) or over for liquids or 30 kg (66 pounds) or over for solids of otherwise excepted hazardous materials be reported. For example, if twelve 5-gallon containers of a flammable liquid hazardous material in PG III are spilled, no incident report would be required unless the aggregate amount released from the twelve containers of the hazardous material is at least 5.2 gallons or one of the conditions in § 171.15(a) is met. Based on reports received over the past five years, we expect that the proposed exceptions would result in a sizeable net reduction of the total number of incident reports filed each year.

Most commenters agreed with the proposed new exceptions and suggested that we include additional reporting exceptions. The Reusable Industrial Packaging Association (RIPA) suggested that non-bulk packagings and IBCs containing residues should not be reported if a spill of the residue occurs. Safety-Kleen requested that hazardous wastes be included in the reporting exceptions. RSPA does not agree with either commenter. Since this information is used to determine the effectiveness of packagings, excluding packagings larger than what was proposed, even if they only contain a residue of a hazardous material, leaves out incidents we wish to include in our data set. In addition, hazardous wastes are generally not included in most exceptions, even if the regulations for materials only meeting the definition of a hazardous waste and no other hazard class are relatively minimal.

Some commenters were against expanding the reporting exceptions or noted that we risk limiting the data we collect concerning spills. Chevron/Phillips warns “\* \* \* the inclusion of many of the exceptions noted in HM229 [sic] may further reduce data that can be used to further risk management efforts.” The International Brotherhood