

incidents involving materials they have offered for transportation.

Miscellaneous Issues

Publishing Reports on the Internet

RSPA received several comments concerning the availability of completed incident report forms through the internet via RSPA's website. Several commenters voiced concern about this issue, mainly citing privacy concerns. Currently, any completed incident report is considered a public document and available through RSPA. Making these public documents available through the internet would meet initiatives in the government to facilitate information collection through electronic means. However, any information that is currently withheld under existing law would remain withheld if incident reports are made available through the internet. RSPA will be reviewing this issue in the future; however, no additional rulemaking action is necessary to make these documents electronically available.

New Definitions

We are adopting a new definition in § 171.8 for "unintentional release". We are revising the definition for "undeclared hazardous material shipment" for further clarification.

Hazardous Waste Manifest

We are removing the requirement in § 171.16 to attach a hazardous waste manifest to the incident report form when a release involves a hazardous waste. The revised incident report form requires the hazardous waste manifest number to be reported and provides a field for entering the number. Through this reference, we will be able to access the hazardous waste manifest, if needed, through the appropriate officials. In addition, we are removing the requirements for: (1) An estimate of the quantity of waste removed from the scene; (2) the name and address of the facility to which it was taken; and (3) the manner of disposition of any removed waste. This information is already available as a result of EPA's hazardous waste manifest regulations; thus, continued reporting of this information to RSPA is unnecessary. Removing these requirements eliminates reporting information that is obtainable through other sources. Therefore, RSPA has adopted these amendments as proposed.

Record Retention Location

This final rule requires that an incident report must be retained for two years at either the reporter's principal

place of business or another record retention site provided the report is available at the reporter's principal place of business within 24 hours of request. We are adopting this amendment as proposed, which removes the requirement to seek an approval to store the report at a place other than the reporter's principal place of business. Adopting this proposal will provide flexibility in maintaining records without the need for an approval from DOT. In addition, this allows electronic versions to be retained, even though the server the document is located on is outside the principal place of business.

Incidents at Registered Cargo Tank Facilities

In the NPRM, we asked a series of questions concerning fatalities that may occur at registered cargo tank repair facilities during cargo tank inspection and repair operations. Such fatalities generally result because hazardous materials residue in the cargo tank is not removed before work is done on the tank. We did not propose any changes specific to this issue in the NPRM, but asked for comments to assist us in determining whether we should propose to collect information concerning such accidents in a future rulemaking. Most of the commenters that addressed this issue, including NTTC and the International Brotherhood of Teamsters, supported collecting data on these accidents. One commenter, Farmland Industries, suggested that RSPA does not have the authority to require reporting of incidents that are not related to the actual transportation of a hazardous material.

On December 29, 1970, Congress enacted the Occupational Safety and Health Act of 1970 (OSH Act) for the purpose of assuring safe and healthy workplaces. Under the OSH Act, every employer engaged in a business affecting commerce has a general duty to furnish each of its employees a workplace free from recognized hazards causing, or likely to cause, death or serious physical harm. In addition, employers are required to comply with all safety and health standards issued under the OSH Act that are applicable to working conditions involved in their businesses. In accordance with OSHA standards, cargo tank repair facilities must report accidents to OSHA or to a state agency responsible for occupational safety and health, if appropriate. OSHA data for the period 1985–1997 indicate that there were 17 fatalities during the period resulting from repair work performed on cargo tanks. The OSHA incident reports

clearly conclude that the cause of these incidents was a failure to comply with existing OSHA and/or HMR requirements. Because OSHA already collects fairly detailed reports concerning accidents at cargo tank repair facilities, we do not believe that imposing an additional reporting requirement is necessary or appropriate.

State Notification

We were contacted by a state official who requested that we require incidents meeting the immediate notification criteria in § 171.15 to be reported to the State in which the incident occurred. We disagree. A State may require immediate, oral accident/incident reports for local emergency response purposes. Further, any State may request that NRC notify it of incidents occurring within the State.

IV. Summary and Conclusion

The following are the major changes to the current HMR reporting requirements and to DOT Form F 5800.1 that we are making in this final rule:

(1) Reporting of incidents involving a specification cargo tank with a capacity of 1,000 gallons or greater that receives structural damage that may adversely affect the cargo tanks' ability to retain lading even when no hazardous material is released.

(2) Reporting discoveries of undeclared hazardous material shipments.

(3) Updating incident reports when significant new information becomes available.

(4) Requiring the person in physical control of a hazardous material during transportation to report an incident.

(5) Excepting small releases of specified materials that pose the least hazard from reporting requirements.

(6) Restructuring the form to utilize failure codes to obtain information on packaging failures.

V. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not a significant regulatory action under Section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This rule is not a significant regulatory action under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). A regulatory evaluation that considers various regulatory alternatives is available for review in the public docket.

The costs of these regulations identified in the regulatory evaluation