



U.S. Department  
of Transportation

**Pipeline and  
Hazardous Materials Safety  
Administration**

400 Seventh Street, S.W.  
Washington, D.C. 20590

JUL 24 2007

Mr. Thomas P. Lynch  
National Tank Truck Carriers, Inc.  
2200 Mill Road  
Alexandria, VA 22314

Ref. No. 07-0131

Dear Mr. Lynch:

This is in response to your June 28, 2007 letter requesting clarification of the hazardous materials incident reporting requirements under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you request clarification concerning incidents that are excepted from reporting requirements under § 171.16(d).

There are three separate exceptions from the incident reporting requirements. As specified in § 171.16(d), unless a telephone report is required under § 171.15, the incident reporting requirements do not apply to any of the following:

- 1) A release of a minimal amount of hazardous material from a vent, for materials for which venting is authorized; the routine operation of a seal, pump, compressor, or valve; **or** connection or disconnection of loading or unloading lines, provided that the release does not result in property damage (**See § 171.16(d)(1)**).
- 2) An unintentional release of hazardous material when the material is properly classed as ORM-D or as a Packing Group III material in Class or Division 3, 4, 5, 6.1, 8, or 9; each package has a capacity of less than 20 liters (5.2 gallons) for liquids or less than 30 kg (66 pounds) for solids; the total aggregate release is less than 20 liters (5.2 gallons) for liquids or less than 30 kg (66 pounds) for solids; **and** the material is not offered for transportation or transported by aircraft, a hazardous waste, or an undeclared hazardous material (**See § 171.16(d)(2)**).
- 3) An undeclared hazardous material discovered in an air passenger's checked or carry-on baggage during the airport screening process (**See § 171.16(d)(3)**).

The text for exceptions from reporting in the current Guide for Preparing Hazardous Materials Incidents Report (PHH50-0038-0604) may be misleading. We will address



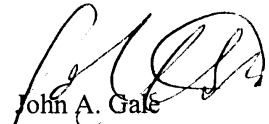
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171.16(d)

confusion presented by the guidance by clarifying the language in the guide to indicate the three options that are available.

I hope this information is helpful. Please contact us if you require additional assistance.

Sincerely,



John A. Gale

Chief, Standards Development  
Office of Hazardous Materials Standards

Der Kinderen  
§171.16 (d)  
Incidents Reports Exceptions  
07-0131



June 28, 2007

Mr. John Gale  
Pipelines and Hazardous Materials Administration  
U.S. Department of Transportation  
1200 New Jersey Ave. SE  
Washington, DC 20590

RE: 49 CFR 171.16(d) Exceptions to Hazmat Spill Reporting Requirements

Dear Mr. Gale:

Confusion regarding the Sec. 171.16(d) exceptions criteria from the hazmat spill reporting requirements exists. This confusion arises out of an apparent discrepancy between the actual language of the regulation and guidance language that PHMSA has provided. The regulation seems to indicate that an exception is triggered when any one individual stipulated condition is met; however, rulemaking preamble language and a PHMSA guidance document seem to suggest that an entire series of conditions must be met for the exception to apply.

The use of the plural word *incidents* in Sec. 171.16(d) would seem to suggest that none of the different possible incidents noted under Sec.171.16 (d)(1), (d)(2) or (d)(3) requires reporting.

Sec.171.16(d) states:

d) Exceptions. Unless a telephone report is required under the provisions of Sec. 171.15 of this part, the requirements of paragraphs (a), (b), and (c) of this section do not apply to the following

**incidents** (emphasis added):

- (1) A release of a minimal amount of material from--
  - (i) A vent, for materials for which venting is authorized;
  - (ii) The routine operation of a seal, pump, compressor, or valve;or
  - (iii) Connection or disconnection of loading or unloading lines, provided that the release does not result in property damage.
- (2) An unintentional release of hazardous material when:
  - (i) The material is properly classed as--
    - (A) ORM-D; or
    - (B) a Packing Group III material in Class or Division 3, 4, 5, 6.1, 8, or 9;
  - (ii) Each package has a capacity of less than 20 liters (5.2 gallons) for liquids or less than 30 kg (66 pounds) for solids;
  - (iii) The total aggregate release is less than 20 liters (5.2 gallons) for liquids or less than 30 kg (66 pounds) for solids; and
  - (iv) The material is not--
    - (A) Offered for transportation or transported by aircraft,

- (B) A hazardous waste, or
  - (C) An undeclared hazardous material.
- (3) An undeclared hazardous material discovered in an air passenger's checked or carry-on baggage during the airport screening process. (For discrepancy reporting by carriers, see Sec. 175.31 of this subchapter.)

However, in the preamble to the rulemaking that established the current Sec.171.16(d) (*See* 68 *Federal Register* 67745, 67751 (December 3, 2003)), PHMSA offers guidance on when reporting is not required by saying:

As proposed in the NPRM, **an incident** (emphasis added) meeting **all** (emphasis added) 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 Sec. 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 Sec. 171.8.

In this instance, the singular number of *incident*, combined with the modifier *all* for the provided criteria as well as the use of the conjunction *and* at the end of subparagraph (6), seem to suggest that an incident meeting merely one of the provided criteria would not qualify as an exception.

In addition, a January 2004 PHMSA Guidance Document, *Guide for Preparing Hazardous Materials Incident Reports*, repeats the Preamble language and appears to indicate that each one of the listed criteria must be present for the exception to apply.

Standards of regulatory construction would lead the reader to rely on the regulatory language and not to depend on the guidance language. However, industry personnel are interpreting the standard both ways, especially because of the January 2004 Guidance Document.

For this reason, NTTC urges PHMSA to issue an interpretation that will eliminate confusion. If PHMSA has previously addressed this discrepancy, we apologize for revisiting it. An online search of PHMSA interpretations did not resolve the matter, and we aver that confusion still exists in industry. Your guidance in this matter is greatly appreciated.

Sincerely,

/s/

Thomas P. Lynch  
Vice President and General Counsel