

of Teamsters “* * * fears that RSPA will be relinquishing its authority to collect information about hazardous materials releases that can, and often do, lead to workers being exposed to hazardous materials.”

These expanded exceptions, as noted by several commenters, actually reduce some of the exceptions for paint and paint-related materials, and for limited quantities in Packing Group II. The Glidden Company calculates “* * * the significant increase in reporting will require * * * an additional 175 to 180 reports per year.” BASF states “* * * this proposed change will significantly increase the burden on the paint manufacturing industry * * *” and DuPont adds that the change “* * * would escalate the cost with no corresponding increase in safety.” Indeed, the exceptions presented in this final rule eliminate exceptions based on specific shipping names for paint and batteries. Instead, the exceptions in this final rule are based on the hazards the materials pose and quantities of those materials.

The original exceptions to spill reporting were implemented under Docket HM-36A (45 FR 73682) in 1980, before Packing Groups for materials were developed in Docket HM-181 (55 FR 57402 and 56 FR 66124). When Packing Groups were incorporated into the regulations, we did not revise § 171.16 to update the reporting exceptions in light of the Packing Group changes. In 1996, under a broad regulatory review, exceptions for limited quantities of Packing Group II and III materials were added under Docket HM-222B (61 FR 27166), but we did not conduct a thorough review of incident reporting, and the basis for reporting exceptions.

In reviewing the reporting requirements and the exceptions to reporting, we have determined that the data needs for releases of small amounts of low-hazard materials is low. We now have ample data from incidents over the past 20 years involving small releases of Packing Group III hazardous materials in small quantities to warrant a reporting exception. However, we have determined that incidents involving Packing Group II materials warrant reporting, even in these smaller quantities. These materials pose a greater hazard than Packing Group III materials, so packaging failures and other incidents will continue to be required to be reported in order to monitor and improve regulations. Thus, we have adopted the proposed exceptions published in the NPRM.

In addition, we are clarifying that the incident report requirements do not

apply to minimal amounts of hazardous materials escaping: (1) Due to disconnecting a loading or unloading line or from the operation of venting devices (for which venting is authorized); or (2) from the manual operation of seals in equipment such as pumps, compressors, and valves during the normal course of transportation if the release does not trigger any of the provisions for a telephonic notification described in § 171.15 of this subpart and does not result in property damage.

F. Criteria for Telephonic Notification

Under current § 171.15 requirements, one of the criteria that triggers the requirement for immediate notification is property damage that exceeds \$50,000. RSPA proposed removing this requirement. There were not many comments on this point. The CHP supported the proposal because “quite often the true total costs associated with an incident will not be determined for a substantial period of time following an incident.” We agree and are removing the monetary criterion.

We proposed to clarify the requirements for “immediate notification” by specifying that telephonic notification must be made as soon as practicable following the occurrence of an incident and in all instances within 12 hours after an event requiring notification. This revision also responds to NTSB recommendation H-99-58 to provide a specific time period to report an incident by telephone. NTSB recommended that a 2-hour time frame was preferable. Commenters note the difficulties in complying with a 2-hour response time. The Conference on Safe Transportation of Hazardous Articles, Inc. notes that “* * * immediate reporting requirements should focus on obtaining response services that are required to gain control of an incident.”

RSPA understands contacting emergency response entities may be of primary concern immediately following an incident; however, notification of federal authorities through the NRC is also essential. The NTSB comments that railroads, under 49 CFR 840.3, are required to provide telephonic notification to NRC within 2 hours in the event of an accident resulting in a fatality, release of hazardous materials, or evacuation of the public, and within 4 hours after an accident resulting in damages exceeding certain limits. RSPA understands the circumstances involving remote highway incidents may be more difficult to address in the constrained time frame. We do not want to detract from the immediate

emergency response efforts focused on amelioration of a spill, therefore we have clarified the requirements of “immediate” telephonic notification to be as soon as practical but no later than 12 hours after the occurrence of any incident.

G. Updates to Reports

In the NPRM, we proposed to require updates to the incident report form within one year under the following conditions:

- (1) A death results from injury caused by a hazardous material;
- (2) There was a misidentification of the hazardous material or package information on the incident report;
- (3) Damage, loss or related cost that was not known when the initial report was filed becomes known; or
- (4) Damage, loss, or related cost changes by \$25,000 or more.

RSPA received several comments on updating reports. UPS commented that the requirement would be a “* * * substantial burden for any carrier such as UPS * * *” because it would have to monitor thousands of incidents per year to determine if any developments trigger an update. In addition, it noted that the requirement would “* * * require a submitter to constantly update an incident report for one-year [sic] following its submission.” Farmland Industries, Inc. mentions that if RSPA removes “* * * cost as a requirement for telephonic reporting, consideration should be given to removing updated costs from an incident.”

DuPont does not support the proposal to update the report, even though the actual number of updates would be small. It does not believe “* * * that a majority of the hazardous materials incidents reported would require updating because the quantities released are minimal.” DuPont thinks the number of reports that would require updating are so minimal and “* * * question if the small percentage that would qualify warrant a regulatory requirement for updating the reports.”

Other entities supported an updating requirement, with caveats. The Norfolk Southern Railway Company does not oppose the proposal, but feels the requirement to update based on a change of \$25,000 in the costs of the incident would “* * * serve no real purpose” and would be burdensome to industry. Ashland, Inc. suggests that the costs requirement for updating the report be a \$250,000 change and only if the cost changes by more than 10%. The F5800.1 Task Force also suggested including a 10% threshold.

We believe that substantive changes to the outcome of an incident should be