

updated to ensure the accuracy and quality of the data we collect. Updated information provides a more meaningful approach to causal, trend, or risk assessment analysis. We are adopting the proposal to require updated incident reports for up to one year after the date of an incident for the following: (1) Death resulting from injuries caused by a hazardous material; (2) corrections to the identification of the hazardous material or package information; and (3) certain updated damage costs as additional information becomes available. Cost information would be updated when: (1) costs not known at the time the report was filed became known; or (2) original damage/cost estimates were revised by more than \$25,000 or 10% of the original estimate, whichever is greater. In some cases, certain costs (such as decontamination and cleanup) may not be known within 30 days of the incident's occurrence, and would not be included in the initial incident report. In other cases, some costs (such as property damage) may be significantly higher than the original estimate. We estimate that about 800 incidents reported each year would require an update.

CHP mentions that updating the report should be streamlined for more accurate reporting. It is possible that in the future, with the advent of electronic data management systems, performing an update to the form may not require the re-submission of the DOT Form F 5800.1 form. Until that time, we will retain the current requirements for submitting updates.

Under § 171.21, persons required to report an incident are required to cooperate with any further investigation of that incident. In particular, incidents that we categorize as significant may require further investigation, or reports that are incomplete may require a follow-up.

#### *H. Reporting When No Hazardous Material Is Released During an Incident*

In the NPRM, we proposed to require certain incidents involving bulk packagings that do not result in release of a hazardous material to be reported. We stated that such information could provide a broader base for risk management in more critical transportation situations and that additional information could be used to gauge the performance and integrity of certain packagings. This proposal was in response to NTSB recommendation H-92-6, which requested that DOT implement a program to collect information necessary to identify patterns of cargo tank equipment failure, including the reporting of all accidents

involving a DOT specification cargo tank. This request stems from the February 4, 1992 special investigation report on cargo tank rollover protection (PB92-917002). NTSB examined seven highway accidents in which cargo tanks overturned and hazardous materials were released through damaged closures or fittings on top of the tanks; none of the cargo tank shells had been breached. Among its conclusions were the following:

\* There is inadequate information about the forces that can be encountered in a rollover accident and the extent to which rollover protection devices for cargo tanks can reasonably be designed to withstand these forces because neither the RSPA, the FHWA [Federal Highway Administration, now Federal Motor Carrier Safety Administration, or FMCSA], nor the industry has provided engineering modeling or other analysis to determine the magnitude of forces acting upon a cargo tank under different accident conditions, and

\* The FHWA [now FMCSA] and the RSPA accident data bases are not adequate to identify important trends of potential problems related to the design and construction of bulk liquid cargo tanks.

Subsequently, in its report, NTSB recommends that RSPA "implement, in cooperation with the FMCSA, a program to collect information necessary to identify patterns of cargo tank equipment failures, including the reporting of all accidents involving a Department of Transportation specification cargo tank." In an effort to minimize duplicative reporting of much of the same information, discussions with FMCSA and RSPA resulted in agreement that the F 5800.1 form would be suitable and appropriate to collect this type of information.

Most commenters oppose data collection for an incident that does not result in a release of hazardous materials. Commenters cite a number of reasons, the main ones being an increase in burden, an ambiguity in when a report was required, and the limited usefulness of the data collected under this proposal. The commenters made it clear that specific guidelines would be required to avoid what the National Tank Truck Carriers (NTTC) describe is a possible "compliance trap" due to varying definitions of "damage" from company to company and inspector to inspector. This point was raised numerous times. Utility Solid Waste Activities Group comments " \* \* \* that a specific definition of 'damage' is needed to evaluate the impact of this proposal." PMMA adds " \* \* \* the language of the proposed rule is vague."

TFI and NPGA argue not only that the requirement " \* \* \* is vague and fails to give regulated parties the requisite certainty to enable compliance" but also that the proposal " \* \* \* does not accomplish the desired goals of NTSB Recommendation H-92-6." The last comment seems to contradict NTSB's opinion, as NTSB was one of only two commenters agreeing with the proposal. The other was the Nuclear Energy Institute.

RSPA believes there is a need to collect this information as recommended by NTSB. The potential burden on operators is offset by the safety information that will be provided. For example, such reporting can provide information concerning packaging integrity, particularly the circumstances under which a packaging is able to withstand a collision or accident without releasing its contents. The incident data base is expanded to include "near miss" or "close call" incidents which, because of the quantity and type of hazardous materials present, have the potential for significant consequences.

Additionally, collecting this information allows for examination of the circumstances (packaging, procedures, training) to determine if there may be ways to avoid the actual set of incidents that pose the greatest risk. This information also provides an indication of a packaging's ability to survive forces encountered in the transportation environment. Finally, this data would provide "success stories" and illustrations of a packaging's robustness. The converse is also true. If most times that a packaging is in an accident and its damage results in a hazardous materials release, it may point to the inadequacy of the packaging requirements. Accurate data will prevent safety gaps as well as aid in determining how to allocate limited funds of the regulated community to provide the greatest safety benefits.

However, RSPA also agrees with some of the concerns of the commenters. For example, the ONEDO-Nalco Company argues that smaller bulk packagings, such as IBCs, are handled, loaded, and unloaded more frequently than larger containers so that minor damage " \* \* \* is relatively common." TFI and NPGA noted that the NTSB recommendation focused only on cargo tanks, while RSPA's proposal expanded the concept to other bulk packagings. Therefore, in this final rule, RSPA is adopting the proposal only in regards to reporting damage to specification cargo tanks over a 1000-gallon capacity. In addition, we clarify what is reportable damage. Structural damage is damage considered