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Responsible Care
A Public Commitment

Baker Petrolite

June 18, 1999

Dockets Management System
U.S. Department of Transportation
Room PL 401
400 Seventh St., SW.,
Washington, DC 20590-0001

RE: RSPA-99-5013 (HM-229)
Request for comments on the merits of revising the current incident reporting requirements of the Hazardous Materials Regulations and the Hazardous Materials Incident Report Form (DOT Form F5800.1).

The following comments on HM-229 are provided on behalf of Baker Petrolite Corporation.

General Comments:

We would ask RSPA to clarify the intent and purpose of DOT Form F5800.1. and how it intends to utilize the information it collects. It would appear that RSPA is moving away from the form's original intent, which was to monitor the performance of packagings manufactured to UN Performance Orientated Packaging standards.

We maintain that completion of DOT Form 5800.1 should only be required when (1) an unintentional release of a hazardous material from a package occurs while (2) the package is "in transportation" and (3) the release meets or exceeds the hazardous material's reportable quantity (Appendix A to § 172.101). Reporting all leaks or drips consumes too many valuable resources and potentially diminishes the impact of significant spills.

General Issues

1. *Should the hazardous materials incident reporting requirements be extended to persons other than carriers?*

   Comment: Yes. **We suggest that the reporting requirements should be amended to place the burden of reporting on the party who has physical control of the activities at the time the release takes place. If the release occurs while the material is being loaded, the offeror would be required to report. If the release occurs while the product is being unloaded, the consignee would be required to report. If the release occurs while the material is being transported or when it is in temporary storage, the carrier would be required to report.**

2. *Should RSPA require reporting of any incident involving discovery of an undeclared shipment of a hazardous material whether or not there is* **a** *release of the hazardous material? Should the expanded requirement apply only to incidents discovered by a carrier during transportation? Should the expanded requirement apply to discovery by a consignee or other person during or following delivery of the material?*

Comment: *At 49 CFR 707.3, incident is defined as an event that results in the unintended and unanticipated release of a hazardous material or an event meeting incident reporting requirements in § 777.75 or § 777.76 of this chapter.*

Placing an undeclared shipment of a hazardous material in transportation is definitely a violation of the regulations, but it does not qualify as an incident. Incident-reporting requirements should be limited to those incidents that occur while packagings are "in transportation".

Telephonic Notification

3. *Currently, immediate notification is required for incidents where estimated carrier or other property damage exceeds $50,000. Is this monetary reporting threshold reasonable? Should it be modified or eliminated? Why?*

Comment: **We believe that the current monetary reporting threshold for immediate notification is reasonable and appropriate.**

4. *Should any other current requirements for immediate notification be modified or eliminated? If so, explain your suggested modification, the reasons for the modification, and anticipated impacts.*

Comment: Yes. **We believe that RSPA should provide a clear and concise definition of what is meant by "immediate" notification. We would suggest that the time frame for immediate notification take into account the fact that the carrier will first have to deal with the immediate consequences of the incident prior to making a notification.**

5. *Should RSPA require immediate telephonic notification for any other type of incident?*

Comment: **No. Immediate notification should only be required for serious incidents as described at 49 CFR 171.15.**

6. *In addition to notifying the NRC, should a carrier also be required to give immediate telephonic notification of an incident to the person who offered the hazardous material for shipment?*

Comment: **We believe that the carrier should give prompt notification to the offeror in the event of an incident involving the offeror's packages. We believe that this can best be accomplished through contractual agreements rather than through a regulatory requirement.**

7. *If an incident requiring immediate telephonic notification occurs at the location of an offeror or consignee, should the offeror or consignee be required to provide the notification? Should such notification be in addition to, or instead of notification from the carrier? What would be the usefulness and burdens associated with such a requirement?*

Comment: **This question is directly related to question #1. We believe that the party in physical control of the activities at the time of the release should be responsible for making both the telephonic notification and the written report.**

Written Reports

8. *Is the current regulatory language clear as to when a written incident report is required? If not, what changes should RSPA make?*

Comment: **We believe that the regulatory language is clear with respect to the circumstances set forth in 171.15(a). However, regarding an unintentional release from a package, we believe that the regulations should be clarified and stipulate that the release must meet or exceed the material's reportable quantity before a written report is required. This would then be in agreement with the EPA regulations under 40 CFR 302.6.**

9. *To provide* **a** *broader perspective for risk management in more critical hazardous material transportation situations, should additional information be collected through the incident reporting system to document successful performance and better* **gauge** *the* ***integrity*** *of packaging? For instance, should information be collected on* **certain** *highway accidents whether or not a hazardous material has been released? Would an appropriate definition of "accident" for reporting purposes be "any collision, rollover, jack-knife, or departure from the roadway***"?** *Should additional reporting be limited to certain packagings or materials such as--*

- *Cargo tanks, portable tanks, and IM portable tanks with a capacity greater than 7000 gallons;*
- *Cylinders containing* ***flammable*** **gas** *with a water capacity greater than 100 pounds;*
- *Explosives in* **packaging** *greater than 50 pounds; or*
- *Toxic-by-inhalation liquids or gases in any quantity and packaging?*

Should such additional reporting be limited to situations where there is exposure to fire or damage to the packaging? Should reporting be required for railway accidents that do not involve the unintentional release of hazardous materials, or do mechanisms exist to adequately capture this information **apart** *from DOT Form F 5800.* ***1*** *?*

Comment: **We believe that additional reporting requirements are not necessary as DOT Form F 5800.1 allows adequate information to be collected on package integrity and performance.**

We don't believe that information should be collected through the incident reporting system on highway accidents if a hazardous material has not been released.

We believe that the proposed definition of an accident would be appropriate for highway transportation.

We believe that the use of DOT Form F 5800.1 should only be required when there has been an unintentional release of hazardous material from a package that meets or exceeds a reportable quantity. Other mechanisms (Federal, State, and Local accident investigation teams) exist that adequately and accurately capture information relating to more critical hazardous material transportation situations.

70. *Should RSPA expand the exceptions in Sec. 1 77.76(c) to include any other hazardous material; class, division, or packing group; or quantity limitations? If so, indicate the exception and why.*

Comment: Yes. **The exceptions in § 171 .16© should be modified to include:**

Release of a hazardous material that does not meet or exceed its reportable quantity (RQ).

7 1. *Is there a spill quantity of an excepted material that should trigger incident reporting? For example,* **a** *spill of paint from a packaging with* **a capacity** *of less than 5 gallons is not reportable. Should a spill of a* **certain** *quantity of hazardous material be reportable regardless of the capacity of the packaging in which it* **was** *contained (e.g.,* **a** *release from numerous small packagings) ?*

Comment: **The trigger for reporting should be when the amount of a spill from a package equals or exceeds the material's reportable quantity. If the spill involves a material which is not a hazardous substance, or if the spill does not meet or exceed the material's reportable quantity, the incident should not be reported through the incident reporting system.**

DOT Form F 5800.1

72. *Should RSPA develop an abbreviated incident report form for incidents of low severity? What criteria could be used as a threshold? What minimal information should be required for a low severity incident?*

Comment: **Yes, if reporting will continue to be required for releases of any amount. We believe that Form F5800.1 should only be required if a release from a package occurs in transportation and the release meets or exceeds the material's reportable quantity. If the RQ concept were adopted by DOT, it might be possible for the DOT and EPA to share this information and thus eliminate duplicate reporting requirements to government agencies.**

73. *Should DOT Form F 5800.7 be structured to more accurately describe the cause and manner of* **a** *packaging failure? How could this be done to better capture human causal factors?*

Comment: **No. DOT Form F 5800.1 adequately describes the cause and manner of a packaging failure, including human causal factors.**

74. *Would replacing the current check boxes on DOT Form F 5800.7, sections V 24 and VI 25 thru 29, with numerically coded responses or other means to better identify how the incident occurred, increase the difficulty or lengthen the time it takes to complete the report?*

Comment: **Yes. Replacing the current check boxes with numerically coded responses would increase the difficulty and length of time required to complete the form.**

15. *Would replacing the boxes on DOT Form F 5800.7, section VIII parts 4 7 thru 45, with numerically coded responses or other means to identify the reasons why the packaging failed, increase the difficulty or lengthen the time it takes to complete the report?*

Comment: **Yes. Replacing the current check boxes with numerically coded responses would increase the difficulty and length of time required to complete the form.**

76. What additional fields, if any, should be included on the report form to indicate the amount of hazardous material that was initially in the package?

Comment: **We don't believe that additional fields are necessary to report the amount initially in the package. This information would be difficult for the carrier to obtain, especially for bulk packagings.**

7 7. Would the information required by section VII of the report form **be easier** *to understand if column C was removed, column A was renamed "Inner Package", and column B was renamed "Outer Package"? Why?*

Comment: **Yes. This would clarify the information required and make the form easier to complete and more user-friendly.**

78. Should there be either separate sections on DOT Form F 5800.7 for reporting bulk and non-bulk packagings or a separate incident report form for these packagings?

Comment: No. **The current form is adequate to describe either bulk or non-bulk packaging failures.**

7 9. Should we require more specific incident location **data,** *such* **as** *mile-post or street address, if available? How difficult would it be to obtain and report this information? What additional benefit would the information provide?*

Comment: **No. We believe that the incident location information currently required is adequate. More specific incident location data would not provide additional benefit.**

20. How **can** *better information be provided on DOT Form F 5800.7* **as** *to the transportation* **phase of** *an incident (e.g., when the incident most likely occurred?)*

Comment: **We believe that DOT Form F 5800.1 currently provides adequate information on the transportation phase of an incident.**

27. Should RSPA require updates to Section V 7 8 through V 23, the incident consequences fields, if additional or better data are available after the incident report form **was** *submitted to DOT? Should RSPA set an amount or percentage change to trigger filing of a supplemental report?*

Comment: **We believe that RSPA should clarify their intent and purpose behind Form F5800.1 If the purpose of this form is to determine why a package release occurred, additional post-incident data or incident consequences won't be beneficial or relevant unless it is related specifically to the package.**

22. Should better information on release duration be collected (for example, the length of time a vapor is dispersed)? How could this be done?

Comment: **We believe that this information might be useful in determining packaging standards for materials that require a long time to naturally disperse. However, this kind of information may be available from local or state air quality monitoring agencies.**

23. How can RSPA acquire better information on failures, such as estimated dimensions of cracks or punctures?

Comment: **Form F5800.1 provides adequate information on packaging failures and we do not believe that additional information on estimated dimensions would be of value in determining the cause of the failure.**

24. What burden would you incur from a requirement to submit copies of photographs in your possession when specified criteria are met?

Comment: **We believe that requiring the carrier to provide photographs of an incident would create a significant financial burden for the carrier. Most carriers do not carry cameras.**

25. Should reporting of information concerning duration of an evacuation be included on the incident report form?

Comment: **No. This is post-incident information that should not be included on Form F 5800.1. If RSPA considers this information to be of value, it should consider conducting a post-incident investigation.**

26. Should RSPA add an additional section to the incident report form to include information regarding who was injured or required hospitalization (e.g., general public, employees, or emergency response personnel)?

Comment: No. **Again, this is post-incident information that, if deemed necessary, should be gathered through a post-incident investigation, not through Form F5800.1.**

27. Should RSPA add **a** *section to the incident report form to identify the UN packing group, if any, of the hazardous material and the packaging?*

Comment: Yes. **This additional information could be useful in determining whether or not the hazardous material was properly packaged.**

28. *Are you* **aware** *of other Federal reporting forms that duplicate information required by DOT Form F 5800.* ***1?*** *If so, how could RSPA link the necessary transportation data to other required Federal reporting forms?*

Comment: Yes, **CERCLA, NRC, FRA, Coast Guard as well as State and Local emergency response agencies. We are not aware of what resources are available to RSPA to link duplicate information. We would recommend that one report form be developed that could be submitted to all affected Federal Agencies.**

29. What data and information do you use from the incident report form and for what purpose?

Comment: **Our company does not utilize the information from Form F5800.1. We utilize an internal incident reporting form that was in place prior to Form F5800.1. Our internal form duplicates most of the information contained in Form F5800.1. , but it is more consistent with our Company structure and operations.**

30. *What additional data not now collected on the incident report form should be collected and for what purpose would it be used?*

Comment: **We believe that the current Form F5800.1 actually requires the collection of more data than is necessary. Additional data on this form is neither warranted nor necessary.**

37. *Should access to incident data be available via the Internet? If only select data could be provided because of cost or technology considerations, what data would be most useful to you?*

Comment: Yes. **Carrier names, reasons for packaging failures and types of packagings exhibiting high failure rates.**

32. *RSPA is considering optional electronic filing of incident reports by facsimile (fax), electronic mail (e-mail), and Internet. Do you have recommendations concerning implementation of electronic filing? Are there other means of electronic filing that RSPA should consider?*

Comment: **We support electronic filing of incident reports utilizing any of the three methods mentioned above.**

33. *How would you use a tracking system for DOT Form F 5800. Isubmissions and processing status?*

Comment: **More information on the proposed tracking system would be necessary before an informed comment can be made.**

We appreciate the opportunity to offer our comments and suggestions. We place a high priority on transportation safety and we are aggressively working on ways to reduce transportation-related accidents and incidents.

John Mundhenk
SR Regulatory Transportation Specialist
Baker Petrolite Corporation