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Reference: **HM 229 (Advanced Notice of proposed Rulemaking (ANPRM)**
RIN 2137-AD21

Farmland Industries, Inc. 33 15 Farmland Trafficway, Kansas City, MO. 64116-0005 wishes to submit the following in comments regarding the above referenced docket.

Identity of respondent

Farmland Industries, Inc. is the largest farmer-owned cooperative in North America and one of the top 200 Fortune 500-listed companies. In 1998, company sales of $8.8 billion encompassed all 50 states and 90 countries. When including Farmland's share of the sales of its affiliated businesses sales were $11.9 billion. Focused on meeting the need of its 600,000 farmer-owners in the United States, Canada and Mexico, Farmland is a highly diversified company with major business lines in crop production, crop protection products, livestock feeds, petroleum, grain processing and marketing, and in the processing and marketing of pork and beef products. Farmland operates a fleet of commercial vehicles as a private and common carrier in interstate and intrastate commerce serving the needs of our customer owners.

Comments

Farmland Industries, Inc. has long been a proponent of the enhancements made through the regulations which will positively affect public safety. Historic recording of incidents involving release of hazardous materials may or may not have any affect, let alone positive.

The request for comments under "General Issues" 2 questions:

1. "Should the hazardous materials incident reporting requirements be extended to persons other than carriers. . . "
   A. It is our opinion that persons, other than transporters, perform such diverse functions that a requirement to report incidents involving the release of hazardous materials or hazardous waste might result in duplicate reporting, or reporting incidents which are not directly involved with transportation.

2. Should RSPA require reporting of any incident involving discovery of an undeclared shipment of a hazardous materials whether or not there is a release of the hazardous material? Should the expanded requirement apply only to incidents discovered by a carrier

2. Should RSPA require reporting of any incident involving discovery of an undeclared shipment of a hazardous materials 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?
    A. RSPA's agenda with regard to undeclared shipments of hazardous materials is unclear. Requiring reporting of undeclared Hazardous Material shipments with or without release is inconsistent with the purpose of the incident reporting. Given this position on the first question in this group, the other two become mute.

Under "Telephone Notification" there are 4 questions:

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? If modified, to what amount? Why?
    A. Damages for release of hazardous materials or hazardous wastes can quickly fill this $50,000 threshold. However, there are incidents when it is difficult to determine, in a timely manner, the dollar amount of a remediation. For reporting purposes, using the $50,000 threshold may be the most reasonable approach to addressing this requirement. Modification or elimination of this threshold reporting amount could create greater confusion with when reporting is required.

4. Should any other current requirement for immediate notification be modified or eliminated? If so, explain your suggested modification, the reasons for the modification, and anticipated impacts.
    A. Modification of this requirement is not warranted.

5. Should RSPA require immediate telephonic notification for any other type of incident?
    A. The defined incidents should continue to satisfy the needs for immediate notification.

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.
    A. The real world practice will frequently get the shipper/offeror involved. The information that these persons can add to mitigating an incident is invaluable. Placing a requirement for telephonic communication with the person offering a hazardous material for shipment might well create one more unenforceable regulation on the book. It would be difficult to track or trace whether a company made contact with a shipper/offeror without the benefit of recorded conversations.

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?

A. Offerors of hazardous materials shipments are typically registered with RSPA as such, and are subject to regulation. Thus it is reasonable to expect an offeror to make notification of a release, when the release is related to the offering for transportation. Under regulations of other agencies, there are notification requirements which may affect them. There would not necessarily be the 5800.1 reporting requirement on non transportation releases. Consignees, on the other hand, may or may not be registered and/or subject to regulation. Thus, creating a requirement for consignees to make telephonic notification might well be and expansion of authority. Notification from a consignee might well be a duplication of the notification process. The carrier now has that responsibility and that is how it should remain. Duplication of reporting requirement, will clog the system with paperwork which may be very difficult to match up. This will create additional costs for agencies involved.

Under 'Written Reports" there are 4 questions:

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

A. RSPA is looking for language which will simplify or make clearer the meaning of the regulations. In paragraph (a) of 171.16 the addition of the word "any" immediately prior to "hazardous materials in the will add clarity, i.e. ". . . 171.15(a) occurs or there has been an unintentional release of any hazardous materials from a package (including a tank). . . "

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 purposed be " any collision, rollover, jack-knife, or departure from the roadway"? Should additional reporting be limited to certain packagings or materials such as... Should 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 F5800.1?

A. The first part of this complex question points to a reinstitution of the accident reporting process eliminated in 94 by FHWA. The release of a hazardous material as a result of an accident will trigger the requirements of 171.15 or 16, thus there is no need to expand the reporting requirement. If RSPA is seeking "success stories" on HM packagings, comparison should be made between accidents reported to FHWA by government agencies, and incidents reported on the 5800.1 form.

Accidents are defined by FHWA which require recording and are typically reported through the existing contracts with the states and local government agencies. Expanding the definition of "Accident" or placing this definition under RSPA will add to yet another duplicate effort by two government agencies who are operating under one umbrella, and thus should be able communicate within.

No additional reporting should be created. If a package fails or a release is the result of a loading or unloading incident, the report will be created, Further reporting only creates a burden for industry and a job for one more person in Washington.

Reporting of incidents of non accident release (NAR's) by railroads is suspect, at best. Current efforts of the Association of American Railroads to track NAR's is constantly reviewed by committee and as reports are issued verified by companies that are reportedly involved. Our experience has shown that there are NAR's that are not reported by the railroads to the committee or to RSPA. There are reports issued to RSPA and the NAR committee that are not reported to the company. A procedure should be established with responsible parties having direct accountability to notify and/or report to RSPA.

10. Should RSPA expand the exceptions in 171.16 (c) to include any other hazardous material; class, division, or packing group; or quantity limitations? If so, indicate the exception and why.
    A. Many states have reporting thresholds, particularly in the area of refined fuel releases. RSPA should establish a reporting threshold for releases of refined fuels consistent with thresholds established by the majority of states. This will clearly define the incidents which must be reported, while not flooding the files with reports of small quantities lost during coupling and uncoupling hoses, and/or minor overfills, i.e. less than 25 gallons total product loss.

11. Is there a spill quantity of an excepted materials 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)
    A. To be consistent throughout the industry, hazardous materials releases should be reported. Allowing exceptions, i.e. batteries wet with acid (sulfuric acid) is advantageous to the battery industry while being unfair to the acid industry. Similar or like quantities of battery acid can be spilled on the ground from batteries and not reported while the acid transporter is required by the same set of regulations to report the incident fully. Creating a quantity threshold for all hazardous materials incident will create consistency. A quantity of 25 gallons of most products is easily cleaned up and disposed of. Quantities of many hazardous materials in quantities of 25 or less gallons pose little risk to life or environment.

Under DOT form F5800.1 (see appendix) there are 17 questions.

12. Should RSPA develop an abbreviated incident report form for incidents of low severity? What criteria could be used as a threshold?
    A. Yes. Quantity of reporting threshold 25 gallons. Who, what, when, where, and how should be captured.

13. Should DOT for F 5800.1 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?
    A. Our experience with necessity to report an incident are related to loading or unloading releases. Seldom do our reports reflect a package failure. The release is the direct result of tank overfilling or hose failure type problems. These are not "package" failures. Blocks 41, 43, 44 and 45 should be recaptioned to reflect "release" rather than failure (i.e. Action contributing to release). Require description of human causal factors to be related in Section IX.

14. Would replacing the current check boxes on DOT Form F5800.1, section 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?

    A. Changes of this nature should not affect the time necessary to complete the report

15. Would replacing the boxes on DOT Form F 5800.1 section VIII parts 41 thru 45 with numerically coded responses or other means to identify the reason why the packaging failed increase the difficulty or lengthen the time it takes to complete the report.

    A. See response to question 13.

16. 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?

    A. Under section VII the capacity of the package may not accurately reflect the quantity of product loaded. Additional information should be added to address the quantity originally placed in the package (this is of particular import for bulk packaging.)

17. 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?

    A. Altering the column titles would remove doubt about what information should be recorded in that column.

18. Should there be either separate sections on DOT Form F 5800.1 for reporting bulk and non-bulk pa&agings or a separate incident report form for these packagings?

    A. No. Additional forms will only complicate the filing procedure and require additional inventories of forms. Complication of the recording at RSPA is also added to this.

19. 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?

    A. This information is currently provided in Section III question 10. No additional benefit is seen, and determining this information is a problem, at times, now.

20. How can better information be provided on DOT Form F 4800.1 as to the transportation phase of an incident (e.g., when the incident most likely occurred?)

    A. The current form addresses, en route opportunities, loading, unloading and storage in transit. There are few other "in transportation" opportunities to address. No change is recommended to this information.

21. Should RSPA require updates to Section V 18 thru V 23, the incident consequences field, 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?

    A. RSPA's agenda or intent for this data is unclear. Since it appears that this data is now just filed, and no outside reporting is done (except when special studies are performed or penalty actions are pursued) there is no known reason to provide updated information.

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

    A. Due to the varied number of detection opportunities there might be, recording the length of time recorded is an estimate at best. Current operations do not provide a means of detection beyond sensory detection.

23. How can RSPA acquire better information on failures, such as estimated dimensions of cracks or punctures?
    A. Requiring a description of these types of failures in section XI is the logical place to record the information. Notes in section VIII question 43 requiring description could be added.

24. What burden would you incur from a requirement to submit copies of photographs in your possession when specified criteria are met?
    A. Additional copies of photographs and additional postage, as well as, additional indirect time to define/describe the photographic representation of the incident could range from minimal to expensive depending on the nature and degree of the incident. Without guidance by RSPA on their intent for this information, good cause to submit this information cannot be established.

25. Should reporting of information concerning duration of an evacuation be included on the incident report form?
    A. Yes. It is important to identify the type, cause, source, etc. of an incident. Consequence involving evacuation should also be recorded including term of evacuation.

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)?
    A. Identification of "who" was injured or required hospitalization serves little purpose. Identification of the fact that individual(s) required attention should suffice.

27. Should RSPA add a section to the incident report form to identify the UN packaging group, if any of the hazardous material and the packaging?
    A. No. Package markings are required to be recorded now in Section VII RSPA should be able to ascertain the packaging group by this information.

28. Are you aware of other Federal reporting forms that duplicate information required by DOT Form F5800. 1? If so, how could RSPA link the necessary transportation data to other required Federal reporting forms?
    A. I am not aware of other Federal reporting forms.

Under Customer Uses and Need there are 4 question:

29. What data and information do you use from the incident report form and for what purpose.
    A. We currently use no information from the form. All data is recorded in other report forms.

30. What additional data not now collected on the incident report form should be collected and for what purpose would it be used?
    A. Additional data collected reflects contractor information, costs for disposal, recycling customer billing/credits, responsible operations personnel, insurance information, etc.

31. 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?

A. If information is made available via the Internet, it should be limited to only that information readily available from publications. Information beyond that typically found in the newspaper should not be made available on an incident via the Internet. Companies generally find these incidents detrimental to their operations. Making this information widely available could provide litigation opportunities to uninjured/uninvolved parties. Sufficient liability exists in today's society without providing other parties with ammunition for litigation.

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?

A. See answer to question 3 1. Privacy of information remains important. If secure channels can be established to file these reports via Internet or other electronic means, then support for this method is possible. No recommendation can now be given.

Farmland Industries, Inc. respectfully submits these comments for your consideration of this Advanced Notice of Proposed Rulemaking and establishment of future rulemaking activities on this issue.

Respectfully,

Jack Curry

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Manager, Safety/Hazardous Materials

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