

systems in place * * * (FedEx Express)

Commenters representing shippers and carriers of hazardous materials used in agricultural applications note that many of the locations to which they deliver do not have street addresses, making it difficult to complete a shipping paper as proposed in the NPRM. "[Agricultural retailers] often deliver their product to farm fields that don't have addresses, or to farms with rural addresses, and in some cases in one State, no addresses. * * * Many applicators intimately know the customer's fields they are delivering to and thus don't need addresses. Some use maps or air photos that show the fields or sections of fields that need the products applied." (Agricultural Retailers Association) Representatives of shippers and carriers of hazardous materials used at construction sites have similar concerns. Shippers and carriers of compressed gas cylinders used in medical care and heating oil, diesel fuel, propane, gasoline, and similar materials that use individual motor vehicles to deliver product to multiple locations point out that drivers frequently make changes to their delivery schedules or make emergency or unscheduled deliveries in the course of a single day, so that a shipping paper with a list of delivery locations completed in the morning would have to be significantly altered by the driver during the course of the day as his delivery schedule is modified. "It is common practice to have multiple deliveries of fuel throughout the day. The shipment locations may be known for some deliveries, but there are numerous instances where the location of a particular delivery is not known until the truck has already begun its route. In other words, not every gallon of petroleum is accounted for when loaded at the bulk plant." (BOC Oil Company and others) Finally, shippers of so-called "blind shipments" of hazardous materials suggest that they would be adversely affected by the proposal. Blind shipments are transported under product trading transactions in which the receiving person is not provided information about the true origin of the shipments delivered to them and the shipper may not know the true destination of the shipment. "Thousands of shipments are made from unnamed locations or from shippers acting as agents for suppliers who do not wish to be identified for business reasons. Perhaps an equal number of shipments are made to unnamed consignees. This NPRM would eliminate this practice resulting

in the loss of millions of dollars in revenue annually for shippers with no increase in security." (Compressed Gas Association)

We do not agree with commenters that the proposed requirement for consignor and consignee names on shipping papers would provide little or no security benefit. In the absence of requirements for route plans or electronic tracking, the name and address of the shipment consignor and consignee can help law enforcement personnel determine whether a shipment has been unreasonably diverted and, thus, whether further investigation is warranted. However, having considered the adverse comments received on this proposal, we are not adopting it in this final rule. Instead, we are considering modified procedures for making consignor and consignee information available to law enforcement personnel. A modified procedure may be proposed in a future rulemaking. We note in this regard that the UN Recommendations on the Transport of Dangerous Goods require the name and address of both the shipment consignor and consignee to be included on shipping papers (chapter 5.4.1.3). A similar requirement is also in the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air (chapter 4.1.6). Moreover, a provision to require the consignor and consignee name and address has been adopted by the International Maritime Organization for inclusion in Amendment 3.1 of the International Maritime Dangerous Goods Code. We also note that the U.S. Customs Service has issued a final rule to require consignor/consignee information on bills of lading for all cargoes entering the United States (67 FR 66318; October 31, 2002).

F. Security Plans

The NPRM proposed a new subpart I in part 172 to require persons subject to the registration requirements in subpart G of part 107 and persons who offer or transport select agents and toxins regulated by CDC in 42 CFR part 73 to develop and implement written security plans. Those persons required to register under subpart G of part 107 include persons who offer for transportation or transport: (1) A highway route-controlled quantity of a Class 7 (radioactive) material; (2) more than 25 kg (55 lbs) of a Division 1.1, 1.2, or 1.3 (explosive) material; (3) more than 1 L (1.06 qt) per package of a material poisonous by inhalation in Hazard Zone A; (4) a shipment in a bulk packaging with a capacity equal to or greater than

13,248 L (3,500 gal) for liquids or gases or greater than 13.24 cubic meters (468 cubic feet) for solids; (5) a shipment in a non-bulk packaging of 2,268 kg (5,000 pounds) gross weight or more of one class of hazardous materials for which placarding is required; and (6) a shipment that requires placarding. Select agents and toxins are materials regulated by CDC because they have the potential to pose a severe threat to the public health and safety. We suggested that a security plan should focus not only on the potential threats posed by the material being transported, but on personnel, facility, and en route security issues, as well. The NPRM did not include a prescriptive list of actions that must be included in a security plan. Rather, we proposed that a company should implement a plan that is appropriate to its individual circumstances, considering the types and amounts of hazardous materials shipped or transported and the modes used for transportation.

Commenters generally support the proposed requirement. However, commenters are concerned about certain details of the proposal. A major concern for many commenters is the language used in the NPRM to describe the security plan and its purpose. In the words of one commenter, "The written plan requirement is too strongly worded. [We are] deeply concerned with much of the language in the security plan component of the NPRM. The purpose of any planning, whether for security or safety, is to reduce and mitigate risks. However, the NPRM as worded mandates 'assurance' of 100% risk-free operations. This is not possible." (National Propane Gas Association) Other commenters express similar reservations. "The security plan should 'address' various subjects, but no requirement of the regulations should require that the plan 'assure' that unauthorized or unlawful actions will not take place. The word 'assure' has a strong legal content, and would serve to impose undue strict liability on anyone who had the misfortune to experience a security incident, no matter how unavoidable that incident was." (Sulfur Dioxide Mutual Assistance Response Team) We agree that the term "assure," as used in the NPRM to describe the purposes and goals of a security plan, was inappropriate. No plan, no matter how comprehensive and detailed, can provide absolute assurance that each shipment of hazardous materials to which it applies will be transported without incident. In this final rule, we are modifying subpart I, as suggested by commenters, to more properly