

serious enough to bring into question the integrity of the cargo tank. A cargo tank that requires subsequent replacement or repair due to the damage sustained in the accident for other than cosmetic reasons falls into this category.	Lading retention system consists of the basic containment (e.g., tank) and any associated appurtenances or equipment (e.g., piping and valves) that, if seriously damaged, could result in the release of the contents of the cargo tank. Examples	of when an incident report is required and when one is not required follow. If there is doubt, the incident should be reported.
Incident report required	No incident report required	
Damage to an outlet valve that affects seating and requires replacement.	Handle broken or knocked off valve—but otherwise undamaged.	
Serious damage that, if worse, could have resulted in the loss of the contents of the cargo tank. Damage to outlet lines that contain hazardous materials during transportation are in this category.	Serious damage that, even if worse, would not have resulted in the loss of the contents of the cargo tank. Damage to outlet lines that are normally not charged during transportation are in this category.	
Cargo tank damage that requires professional inspection or recertification to ensure it is capable of meeting requirements..	Minor damage that obviously will not affect continuation of the cargo tank in service.	
Cargo tank damage that requires immediate or subsequent repair because of questions about cargo tank integrity.	Cargo tank damage that requires repair for cosmetic reasons only.	

RSPA may address this issue in a future rulemaking if it determines that data needs require additional information for other bulk packagings. For instance, it is our understanding that AAR maintains extensive accident data that could be correlated to damage and releases. Access to this data or reports based on the data may negate future need for its collection via DOT F 5800.1. We will explore options in this area with the rail industry. In addition, information on damage to certified cargo tanks of 1000 gallons or more capacity that do not result in a release will be analyzed over the next several years to determine its usefulness in practice and if further rulemaking is needed.

*I. Undeclared Shipments of Hazardous Materials That Do Not Result in a Release*

Reducing undeclared shipments of hazardous materials is a high priority of the Department. Undeclared shipments are apt to be in substandard packages and undermine hazard communication that is vital in an emergency. Undeclared shipments, particularly when offered for transportation or transported by air, pose a significant safety problem because of the potential for improper packing, handling, and failure to communicate the hazard. Emergency responders and transportation workers are unaware of the presence of undeclared hazardous materials. Certain hazardous materials that are forbidden for air transportation may make their way onto a passenger-carrying or cargo-only aircraft, and may inadvertently be handled in an unsafe manner by transportation workers. In a hazardous material release from an undeclared shipment, the crew does not know what the hazardous material is, or what response measures to take.

Commenters agreed that undeclared shipments posed a great danger,

however, many commenters did not support this proposal. While VOHMA agrees that undeclared shipments are “\* \* \* one of our most significant problems,” it notes that carriers “\* \* \* lack the resources to remove such seals, unpack the container to inspect the cargo within \* \* \*” VOHMA also notes in its comments that “[t]he carrier should not be held responsible by the regulations for declaring dangerous cargoes \* \* \*” Others supported the concern that this could put the carriers in a difficult position of being responsible to ensure that all shipments were prepared properly. Some commenters state that a reporting requirement specific to undeclared hazardous materials would expose their companies to undue liability and possible enforcement actions for accepting an undeclared shipment. Other commenters state that this requirement would place carriers in an enforcement role.

A number of commenters, including the Air Line Pilots Association, International (ALPA), CHP, and the NTSB support reporting undeclared shipments when discovered in transportation. ALPA states this problem is “\* \* \* one of, if not the greatest potential risks to passengers, aircraft, and crew.”

We believe that information on undeclared shipments should be collected and that the incident report form is the most accessible method for collecting such data. Requiring reports of undeclared hazardous materials discovered in transportation can help in several ways. For example, problem shippers can be identified, and outreach and enforcement can be used to reduce the chance of recurrence. In addition, reporting can also help define the extent of the problem, establish trends, and help gauge the effectiveness of efforts to reduce undeclared shipments. Such a

requirement is consistent with the current emphasis by the Department on this area. Accordingly, RSPA is adopting, as proposed, the requirement to submit an incident report when an undeclared shipment of hazardous materials is discovered. This requirement applies to parties who are likely to discover undeclared shipments and who will benefit greatly from a reduction of such shipments, which is a goal of this rulemaking.

RSPA is sensitive to problems noted by commenters concerning the amount of information that is considered sufficient to give a person (other than the original offeror) actual or constructive knowledge of the presence of a hazardous material. In a separate proceeding (Docket No. RSPA-01-10380), RSPA is formulating additional guidance on the factors that enforcement agencies consider relevant to a determination whether a carrier knew or should have known that an “undeclared” shipment contained a hazardous material, based on comments submitted in writing and at a June 19, 2002 public meeting.

This rule does not change the “knowingly” standard for civil penalty liability in 49 U.S.C. 5123, nor does it create any increased duty to examine all packages for the presence of hazardous material or affect the responsibility of a carrier or other person to refuse to transport a package that it knows or should know contains a hazardous material. The requirement to report the discovery of an undeclared hazardous material is not intended to create a “compliance trap.” Enforcement action is focused on the person who initially offered the undeclared hazardous material for shipment, not the person who subsequently received a shipment that was not properly marked, labeled, placarded, and described on shipping papers. In addition, there is no basis for