

enforcement action against a person who accepted or handled an undeclared hazardous material when it had no reason to know of the presence of the hazardous material.

J. Notifying Shippers of Incidents

We proposed to require the person responsible for completing an incident report to provide a copy of the report to the shipper whose packages were the subject of the report. This proposal responded to NTSB Recommendation R-89-52, that recommends requiring carriers reporting hazardous materials incidents under the provisions of § 171.16 to notify shippers whose hazardous materials shipments are involved. NTSB is concerned that shippers are not receiving information about packages that are prone to failure during transportation.

Some commenters who supported the proposal cited the importance this information could provide for the shipper in identifying problem packagings or methods. The Glidden Company indicated notification would provide it “* * * with valuable information into possible reasons how and why packages are damaged in transport.” This reasoning is echoed by BASF who stated that the notification would “* * * provide valuable information into possible reasons for package failure or damage during transport,” and also by Utility Solid Waste Activities Group who expressed “* * * such notification could provide a strong safety incentive and would help prevent additional incidents where the offeror’s packaging is at fault.”

Many other commenters opposed the proposal for a number of different reasons. One commenter stated that the incident report may not be forwarded to the appropriate company or person within that company, essentially eliminating the opportunity for corrective action. The Air Transport Association (ATA) stated that if there is a shipper’s name and address on the shipping paper, it may not be the location from which the material was originally shipped. In addition, as VOHMA noted, “Often, the carrier accepts the freight container from [a] forwarder listing that party as the shipper of record or consignor” thus, making the original shipper impossible to find by the reporter of the incident. NTTCC observed that carriers may not know the identity of the true shipper of a given product due to the intervention of forwarders, brokers, and third party logistics providers.

Other commenters stated that the reports were an increased burden for the reporter and many reports may be of

little or no interest to shippers. Safety-Kleen asserted that “* * * the majority of hazardous waste generators do not want to be notified when small amounts of material have leaked * * * this [proposal] places an unfair burden on the hazardous waste carriers.”

We believe that some type of shipper notification is incorporated into most standard business practices to account for shipment tracking, product loss, or damage reporting by carriers and consignees, and may be replicated by the proposed notification. The comments of several shippers supported this view. For example, Norfolk Southern Railway Company stated it “* * * already voluntarily provides copies to its shippers * * *” and that “* * * reports are sent to the shippers at the same time they are submitted to RSPA.” Chevron/Phillips noted that companies “* * * already support this activity and have detailed reporting requirements in contracts and service agreements.”

We agree with NTSB and others that there are benefits to shippers being made aware of incidents involving their packages; however, for the reasons discussed above we believe it is not appropriate to impose the burden of notification on incident reporters. We believe that RSPA, along with FAA, FMCSA, Federal Railroad Administration (FRA) and the United States Coast Guard (USCG) can do a better job of ensuring appropriate corrective action by selective notification of shippers and others, as warranted by analysis of incidents, and by working towards making incident report information generally available on RSPA’s website. Notification from DOT would carry more weight and prompt a more immediate response from shippers. Also, enhanced analysis of incidents, as enabled by this final rule, will allow us to better identify problems involving packagings, including those problems that may occur at different locations of a company, or among different companies.

How incident data can be analyzed was demonstrated in 2001, when the Intermodal Hazardous Materials Program (IHMP) office reviewed incident data for companies whose shipments were involved in a high proportion of incidents relative to other shippers. Incident data from January 1998 to October 2000 served as a basis of the review. The analysis of this data revealed that a large number of incidents reported by carriers during this 34-month period involved shipments from a small number (less than 40) companies. The IHMP Director

sent letters to these companies, informing them of their incidents and detailing the results of the IHMP incident analysis. Each letter included information on the numbers of yearly incidents, reporting carriers, types of commodities and packages involved, locations where the shipments originated, reported incident casual factors, and reported monetary damages.

The IHMP letters generated significant positive feedback from shippers and heightened their awareness to potential internal problem areas. Several companies expressed appreciation to DOT for notifying them about these incidents. Some shippers stated that they were unaware of these incidents, others that they had received only partial notifications from their carriers, and others were surprised to discover that summary incident data was readily available on RSPA’s Office of Hazardous Materials Safety website. Where appropriate, shippers took action to reduce the likelihood of reoccurrence of incidents.

RSPA believes that this type of review and contact by DOT better serves the affected parties. We anticipate conducting ongoing analyses to detect problems, and are working closely with the modal administrations to improve analysis and information sharing capabilities.

The modal administrations will have access to incident data and information and may conduct similar reviews if they elect to do so. RSPA has provided FAA’s Office of Internal Security and Hazardous Materials an electronic summary of all hazardous materials incidents reported since 1993. As FAA special agents conduct hazmat shipper inspections and shipper outreach visits, they will individually review a summary of relevant incident histories with each shipper. FAA and RSPA will develop a system to electronically share information concerning incidents, discrepancies, inspections, enforcement, exemptions, and registrations. This will assist in the identification and analysis of problems and trends related to transportation of hazardous materials and will be used to notify shippers, or others, when problems become evident. Until this system is developed and implemented, FAA will provide copies of incidents related to the air mode to the relevant shippers.

As previously indicated, summaries of incident information are currently available to all shippers and carriers at our website. Increasing awareness of this option and increasing ease of data access are additional avenues we will explore to ensure shippers are aware of