



U.S. Department
of Transportation

Pipeline and Hazardous Materials
Safety Administration

1200 New Jersey Ave., SE
Washington, DC 20590

DEC 18 2008

Mr. Scott A. Mugno
Managing Director
Corporate Safety, Health and Fire Prevention
FedEx Express
3670 Hacks Cross Road
Building G, 2nd Floor
Memphis, TN 38125-8800

Ref. No.: 08-0213

Dear Mr. Mugno:

This responds to your August 18, 2008 request for clarification of the incident reporting requirements specified in the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you ask if an immediate notification to the National Response Center (NRC) is required if a package of radioactive material is damaged during transportation but the radioactive material itself has not been released from its inner packaging, which provides shielding, and the damage does not result in radioactive contamination or excessive radiation exposure.

The answer is yes. Section 171.15 requires the person in physical possession of a Class 7 (radioactive) material package to immediately notify the NRC by telephone as soon as practical when fire, breakage, spillage, or suspected radioactive contamination occurs involving a Class 7 (radioactive) material. "Breakage" is clearly differentiated in the HMR from the terms "spillage" and "suspected radioactive contamination" by the use of the word "or." Therefore, if a radioactive material package is broken, even if the inner packagings remain intact, an immediate notification of the NRC is required.

I hope this answers your inquiry.

Sincerely,

Susan Gorsky
Acting Chief, Standards Development
Office of Hazardous Materials Standards



Eichenlaub
§171.15
Immediate Hazardous Materials
Incidents
08-0213

August 18, 2008

Ms. Susan Gorsky, Acting Chief
Standards Development
Office of Hazardous Materials Standards
Pipeline and Hazardous Materials Safety Administration
U.S. Department of Transportation
1200 New Jersey Avenue SE
Washington, D.C. 20590

Dear Ms. Gorsky:

RE: 49 CFR 171.15(b)(2)

An interpretation of 49 CFR 171.15(b)(2) is requested to clarify if an immediate report to the National Response Center is only required when a radioactive material package is damaged to the extent that radioactive material has been released which may result in contamination or excessive radiation exposure.

Pursuant to 49 CFR 171.15(b)(2) an immediate telephone report is required to the National Response Center when during the course of transportation there is fire, breakage, spillage, or suspected contamination occurs involving a radioactive material.

Consider a radioactive material package which has been damaged or comes open during the course of transportation, but the radioactive material contents remain in their shielding or primary inner containers. Radioactive material has not been released, there is no radioactive contamination and there is no excessive radiation exposure. Clearly there is no fire, no spillage and no suspected radioactive contamination.

The question concerns the interpretation of breakage. What broke? The outer package may have had a tear or dent or broke open, but the inner shielded containers did not break and were not breached, thereby resulting in no release of radioactive material, no contamination and no excessive radiation exposure.

Is this an immediate reportable incident? If so, then it is a report of a package failure, a package handling failure or an accident which is certainly not commensurable with the other reporting criteria in 171.15(b), a person is killed, a person is injured requiring admittance to a hospital, the general public is evacuated for one hour or more, a major transportation artery or facility is closed or shut down for one hour or more, or the operational flight pattern or routine of an aircraft is altered.

The purpose of the immediate telephone report to the National Response Center appears to be so that appropriate federal, state and local agencies can be notified of a significant incident to protect the public and provide response as indicated. Clearly no such action is required in this instance.

When a call is made to the National Response Center the introductory messages states:

"If this is regarding an actual or potential release of hazardous material, an oil spill, maritime security or a railroad incident please stay on the line and the next available watchstander will be with you momentarily."

Thus, it appears that the subject incident does not meet the criteria for reporting since there was no actual or potential release of radioactive material. Also, Slide 5 in the NRC 101 Slide Show on the National Response Center website states that a primary function of the National Response Center is the Collection and Dissemination of Radiological/Biological Releases (emphasis added).

Again the subject incident is not applicable since there was no radiological release.

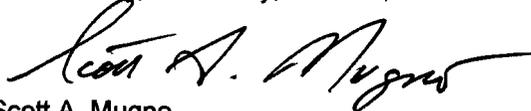
The requirement to immediately report to the Department of Transportation fire, breakage, spillage or suspected radioactive contamination occurring involving shipment of radioactive materials first appeared November 4, 1971, 36 FR 210200, notice of final rule making to become effective on December 31, 1971. Review of that Federal Register notice and the preceding notice of proposed rulemaking, July 9, 1971, 36 FR 12913, clearly indicates that the focus of the rulemaking was on radioactive contamination and excessive radiation exposure, and not the failure of a packaging system when it did not result in radioactive contamination or excessive radiation exposure. Fire relates to melting of the inner container usually lead which in turn leads to potential excessive radiation exposure, melting of the primary container, usually a glass or syringe vial, which then leads to loss of primary containment of the radioactive material resulting in potential contamination. Spillage directly refers to the release of radioactive material and potential contamination and/or potential excessive radiation exposure.

Telephone reports to the National Response Center, although stating no assistance required, result in numerous calls from many agencies who have no concept of what has been reported nor what their role should or is expected to be. Typically each telephone report to the National Response Center results in approximately five to fifteen calls from various agencies. These calls are unnecessarily time consuming and unwarranted. As examples the last telephone report made to the National Response Center resulted in one call asking if the report was a drill and the other asking if the Memphis Fire Department had remediated the spill. Also updates to a reported incident are not accepted by the National Response Center.

The term "breakage" in the reporting criteria is extremely subjective, lacks precision and is subject to significant variance. It is requested that the Office of Hazardous Materials Standards issue an interpretation which removes the ambiguities in the "breakage" criteria and base the reporting requirements on definitive criteria, such as release of the radioactive material from its shielded and primary inner container which may result in radioactive contamination and/or excessive radiation exposure.

It is also requested that appropriate revision of 171.15(b)(2) be address in the earliest possible rulemaking.

Think Safety, Act Safely, Be Safe,



Scott A. Mugno
Managing Director
Corporate Safety, Health and Fire Prevention
FedEx Express



U.S. Department
of Transportation

Pipeline and Hazardous Materials
Safety Administration

1200 New Jersey Ave., SE
Washington, DC 20590

DEC 18 2008

Mr. Lloyd A. Gray
Chairman
Government and Industry Affairs Committee
Nondestructive Testing Management Association
P.O. Box 470338
Celebration, FL 34747

Ref. No.: 08-0213

Dear Mr. Gray:

This responds to your August 22, 2008 request for clarification of the incident reporting requirements specified in the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you ask if an immediate notification to the National Response Center (NRC) is required if a package of radioactive material is damaged during transportation but the radioactive material itself has not been released from its inner packaging, which provides shielding, and the damage does not result in radioactive contamination or excessive radiation exposure.

The answer is yes. Section 171.15 requires the person in physical possession of a Class 7 (radioactive) material package to immediately notify the NRC by telephone as soon as practical when fire, breakage, spillage, or suspected radioactive contamination occurs involving a Class 7 (radioactive) material. "Breakage" is clearly differentiated in the HMR from the terms "spillage" and "suspected radioactive contamination" by the use of the word "or." Therefore, if a radioactive material package is broken, even if the inner packagings remain intact, an immediate notification of the NRC is required.

I hope this answers your inquiry.

Sincerely,

Susan Gorsky
Acting Chief, Standards Development
Office of Hazardous Materials Standards



NONDESTRUCTIVE TESTING MANAGEMENT ASSOCIATION

PO Box 470338 • Celebration, FL 34747 • Telephone 985.785.5271 • Fax 321-939-0277

August 22, 2008

Eichenlaub
§ 171.15(b)(2)
Immediate Hazardous Materials
Incident
08-0213

Ms. Susan Gorsky, Acting Chief
Standards Development
Office of Hazardous Materials Standards
Pipeline and Hazardous Materials Safety Administration
U.S. Department of Transportation
1200 New Jersey Avenue SE
Washington, D.C. 20590

Dear Ms. Gorsky:

RE: 49 CFR 171.15(b) (2)

Please allow me to introduce myself and the organization I am representing. NDTMA is an organization designed to address and communicate issues which are relevant to our industry. This association was formed to provide a forum for the open exchange of managerial, technical, and regulatory information critical to the successful management of non-destructive testing (NDT) personnel and activities. As a board member, I sit as Chairman of the Government and Industry Affairs Committee, (GIAC).

Our membership includes a large majority of the industrial radiography companies in the United States, and involves the shipping and transportation of different types of radionuclides in exposure devices and over packs (shipping containers).

After the Order for Increased Controls of Radionuclide's of Concern (EA-05-090) was issued by the USNRC in December 2005, it became the responsibility of the licensee to verify and confirm the carriers we use for shipping our radioactive materials, met the requirements imposed by the Order. We subsequently discovered a very limited number of trucking companies could or would provide the industry with the necessary confirmation letter acknowledging and accepting the components outlined in the Order. In early 2006, it became apparent that FedEx would be the primary carrier for shipments of radioactive materials relative to our industry needs because of their commitment to the NRC Order.

As stated in Mr. Mugno's letter to you dated August 18, 2008, FedEx has immediate concerns relevant to the verbiage used in 49 CFR 171.15(b) (2) as do the membership of NDTMA and GIAC.

Our concern is the potential for negative impact on our industry if carriers such as FedEx are exposed to a potential scenario i.e. "breakage" identified under this part. It is certainly not unusual for items of any nature to be broke during shipment, but in this case, if the outer container is damaged or broke, it doesn't necessarily indicate a situation where radioactive materials are of an immediate danger to the public.

GIAC respectfully request a detailed interpretation of 49 CFR 171.15 (b) (2) and clarification as to the extent which any breakage or damage occurring to the container in which no radioactive contamination or radiation exposure exists.

Best Regards,

A handwritten signature in black ink, appearing to read "Lloyd A. Gray". The signature is written in a cursive style with a large initial "L".

Lloyd A. Gray, Chairman
Government and Industry Affairs Committee
lgray@acuren.com



U.S. Department
of Transportation

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Safety Administration

1200 New Jersey Ave., SE
Washington, DC 20590

DEC 18 2008

Mr. Lawrence W. Bierlein
General Counsel
Radiopharmaceutical Shippers and Carriers Conference
1101 30th Street, N.W.
Suite 500
Washington, DC 20007

Ref. No.: 08-0213

Dear Mr. Bierlein:

This responds to your August 27, 2008 request for clarification of the incident reporting requirements specified in the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you ask if an immediate notification to the National Response Center (NRC) is required if a package of radioactive material is damaged during transportation but the radioactive material itself has not been released from its inner packaging, which provides shielding, and the damage does not result in radioactive contamination or excessive radiation exposure.

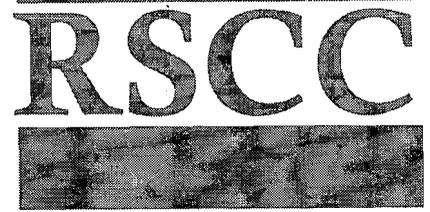
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I hope this answers your inquiry.

Sincerely,

Susan Gorsky
Acting Chief, Standards Development
Office of Hazardous Materials Standards

Radiopharmaceutical Shippers and Carriers Conference



GENERAL COUNSEL & SECRETARY
Lawrence W. Bierlein, Esq.
Attorney At Law
Ph: 202-625-8355

1101 30th Street, N.W.
Suite 500
Washington, D.C. 20007

Eichenlaub

August 27, 2008

*Immediate § 171.15
Hazardous Materials
Incidents
08-0213*

Dr. Ted Willke
Associate Administrator for
Hazardous Materials Safety
Pipeline & Hazardous Materials Safety Administration
U.S. Department of Transportation
Washington, DC 20590

Attn: Standards

**Re: Interpretation of Sec. 171.15,
Immediate notice of certain hazardous
materials incidents**

Dear Dr. Willke:

The Radiopharmaceutical Shippers & Carriers Conference (RSCC) is the only group combining the interests of both the manufacturers and the transporters of radioactive materials for urgent medical needs. Included among our membership is Federal Express, and we have received a copy of Scott Mugno's letter of August 18 to Susan Gorsky in Standards Development.

RSCC shares the concern expressed in that letter, with unnecessary immediate reporting. When the reporting requirements first were implemented, it was recognized that certain incidents were sufficiently dire to alert a range of people as well as the political levels of the Department. Necessarily these incidents were of a nature requiring immediate action and immediate awareness on the part of an increasingly wider array of federal, State, and local entities.

A properly required report triggers a number of responsive actions, as outlined in the Federal Express letter.

The reporting obligation falls to the carrier handling the material, and must be done when "Fire, breakage, spillage, or suspected contamination occurs involving a radioactive material." The terms such as fire, breakage and spillage must be read in the context of contamination

suspected by the reporting carrier. If the carrier is aware of issues involving the package but knows that there is no contamination, it would be irresponsible to trigger all of the actions prompted by an immediate incident report.

We ask that this section be interpreted to cover only those incidents of fire, breakage, or spillage as a result of which the carrier has reason to suspect that there may be radioactive materials contamination, and not to cover incidents when the carrier knows no contamination has occurred.

We believe such an interpretation is consistent with the original intent of the immediate notification provision, and would provide a measure of practicality in the process.

Please let me know if you have any questions on this request for interpretation.

Sincerely,

Lawrence W. Bierlein
RSCC General Counsel

cc: Scott Mugno, Federal Express Co.