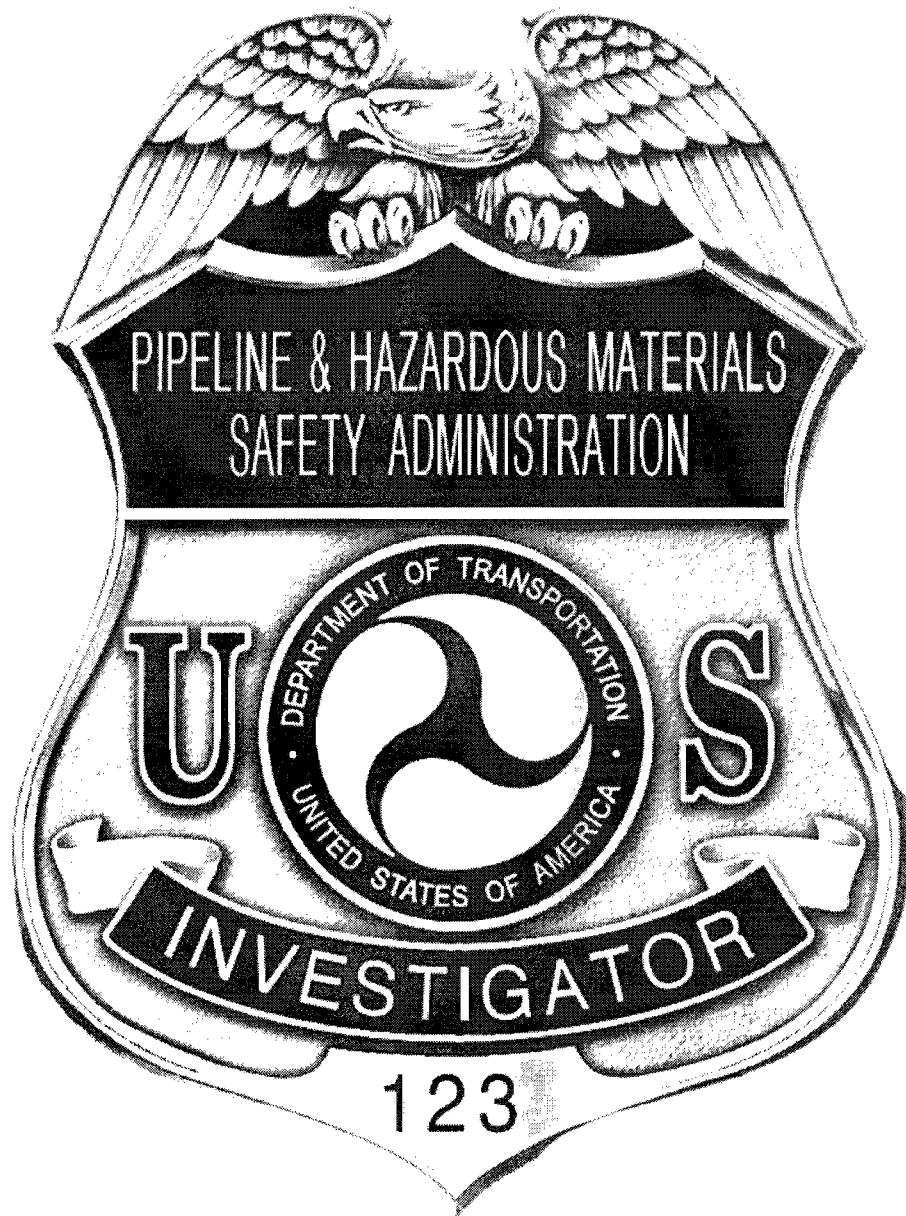


# Pipeline and Hazardous Materials Safety Administration



## Office of Hazardous Materials Enforcement Operations Manual

(Version Date: June 2007)

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## **CHAPTER 1**

### **ABOUT THIS MANUAL**

#### **SECTION 1.1 - INTRODUCTION**

This manual is an instrument of program management issued solely for the guidance of Office of Hazardous Materials Enforcement personnel. It neither creates nor abridges any private right or obligation. The guidance provided by this manual may be revoked or modified without prior notice by memorandum of the Associate Administrator for Hazardous Materials Safety.

This manual has been prepared by and designed for the Office of Hazardous Materials Enforcement (OHME), Associate Administrator for Hazardous Materials Safety (AAHMS), Pipeline and Hazardous Materials Safety Administration (PHMSA). The manual prescribes the manner in which you, as a Transportation Specialist (Enforcement) with the functional title of Hazardous Materials Investigator (HMES), shall engage in inspection and enforcement activities to assure compliance with rules, regulations, standards, orders, special permits, and approvals issued by PHMSA, and such other activities as may be assigned.

The policies, directives, procedures, and guidelines contained in this manual are designed to assure effective use of available resources. By adhering to these policies, directives, procedures, and guidelines, you will uniformly and consistently apply and enforce the Hazardous Materials Regulations (HMR) throughout the nation. This uniformity is necessary for effective program management and execution.

You should refer to this manual as often as necessary to obtain a clear understanding of your role in carrying out the OHME mission. You are encouraged to review this manual thoroughly, and report any errors or unclear statements promptly to your supervisor and the Director, OHME.

This manual is Government property and must be treated as such. Comments and suggestions for future changes and additions are invited and should be forwarded to the Director, OHME, through your supervisor.

## SECTION 1.2 - PURPOSE OF THE MANUAL

The purpose of this Operations Manual is to describe the policies and procedures to be used for inspections and investigations conducted by OHME. This manual addresses the entire spectrum of procedures and policies, in addition to focusing on more field-oriented aspects of a compliance inspection or investigation. It is intended as a training manual, desk reference, and field manual for trainees, field investigators, unit supervisors, and program management personnel. Although not specifically written for them, the manual will also be of assistance to legal personnel.

- A. TRAINING MANUAL - This manual serves as complimentary text for the investigator training program. Although this manual is primarily designed for OHME's staff, States planning to institute hazardous materials enforcement programs may also use the manual in the orientation and training of their personnel.
- B. REFERENCE MANUAL - This manual serves as a reference guide for the professional enforcement staff in carrying out its responsibilities in field surveillance, facility inspections, and enforcement activities. It contains the authorities, objectives, responsibilities, policies, and procedures required by enforcement staff to do its job.
- C. FIELD MANUAL - You may choose to carry this manual in its entirety into the field or may remove only selected portions (e.g., safety, observation reports, etc.). The manual contains sample forms that should be used in investigations to supplement documentation in field notes and particularly to assure that all important areas of an investigation have been covered.

Forms are divided into two different types: (1) general (covering requirements that apply to all facilities), and (2) specific (shipment observation, cylinder observation, radioactive materials observation, IM portable tank, cylinder retester inspection report). You should carry general forms, and specific forms appropriate to the facility being inspected or investigated. For example, a facility might be a shipper and a cylinder retester. In such a case, the general forms as well as the cylinder retester inspection report and cylinder observation reports should be used. Forms are located in Appendix A of this manual.

## SECTION 1.3 - INTENDED AUDIENCE OF THE MANUAL

This manual is designed as a guide for PHMSA's professional enforcement staff. Users of this manual are encouraged to offer suggestions, revisions and constructive criticism to keep the manual a useful working tool.

#### SECTION 1.4 - COMMENTS FROM INTERESTED PERSONS

As required by the Freedom of Information Act (5 USC 552), this manual is available for public review. Interested persons are invited to submit constructive comments regarding the content of this manual and to make recommendations regarding any material they believe should be added.

#### SECTION 1.5 - UPDATING THE MANUAL

As changes, revisions, or deletions occur in the manual, revised pages will be sent to manual holders with an Operations Manual transmittal notice. The notice will identify and describe the new information being issued.

Each page of the manual is identified at the top with the name of this manual and the date. At appropriate intervals, a checklist of current pages will be issued to show each page number and its latest issue date. When a check list is received, manual holders should check the dates of the pages in their manual and file the checklist at the front of the manual.

## CHAPTER 2

### HM PROGRAM OVERVIEW

#### SECTION 2.1 - AUTHORITY

On January 3, 1975, The Hazardous Materials Transportation Act of 1974 (HMTA), Title 1 of Public Law 93-633 (49 U.S.C. App 1801 et seq), was signed into law. The act enabled the Secretary of Transportation to draw together previously fragmented regulatory and enforcement authority governing the movement of hazardous materials in commerce into one consolidated and coordinated body of law. The HMTA was significantly amended by the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA), Public Law 101-615, signed on November 16, 1990, and was editorially revised and codified in 1994 in 49 U.S.C. §§ 5101-5127 as the Federal hazardous material transportation law (Federal hazmat law).

While 49 U.S.C. §§ 5101-5127 provides the primary legislative authority for the Department's hazardous materials programs, other relevant statutes are, for the most part; mode-specific. Among these are 49 U.S.C. § 20101 et seq., formerly the Federal Railroad Safety Act of 1970, 45 U.S.C. § 421 et seq.; 49 U.S.C. § 40101 et seq., formerly the Federal Aviation Act of 1958, 49 U.S.C. § 1301 et seq.; and marine transportation laws at 33 U.S.C. § 1221 et seq. and 46 U.S.C. § 3701 et seq. The Department's modal administrations -- Federal Aviation Administration (FAA), Federal Motor Carrier Safety Administration (FMCSA), and Federal Railroad Administration (FRA) -- retain responsibility for enforcement actions relating to transportation by water, air, highway, and rail, respectively. The United States Coast Guard (USCG) became part of the Department of Homeland Security, but still retains its authority regarding hazardous materials by the water mode.

A number of other authorities underlie the Department's regulation of hazardous materials transportation -- the Federal Water Pollution Control Act Amendments of 1972; the Resource Conservation and Recovery Act of 1976; the Comprehensive Environmental Response, Compensation, and Liability Act of 1980; and the Sanitary Food Transportation Act of 1990. Both HMTUSA and the Hazardous Materials Transportation Authorization Act of 1994 imposed on the Department additional responsibilities not codified in the Federal hazmat law. These laws have influenced and will continue to greatly influence the hazardous materials programs of PHMSA and the modal administrations.

49 U.S.C. § 5103 empowers the Secretary of Transportation to issue and enforce regulations deemed necessary to ensure the safe domestic and international movement of hazardous

materials. With certain exceptions related to modal-specific enforcement activities, this authority has been delegated to the Administrator, Pipeline and Hazardous Materials Safety Administration (PHMSA). PHMSA develops and issues regulations governing hazardous materials definition and classification, shipper and carrier operations, and packaging and container specifications. Its regulatory responsibilities also extend to enforcement of all regulations other than those applicable to a single mode, with primary emphasis on enforcement of those regulations governing the manufacture, reconditioning, requalification, and retesting of DOT specification and UN standard packaging, and multi-modal shipment of hazardous materials.

## SECTION 2.2 - THE HAZARDOUS MATERIALS SAFETY PROGRAM

The Associate Administrator for HMS is responsible for carrying out the HMS mission. The organizational chart for HMS is shown in Appendix A of this manual. HMS is composed of seven offices: the Office of Hazardous Materials Standards (OHMS); the Office of Hazardous Materials Technology (OHMT); the Office of Hazardous Materials Special Permits and Approvals (OHMSPA); the Office of Hazardous Materials Enforcement (OHME); the Office of Hazardous Materials Initiatives and Training (OHMIT); the Office of Hazardous Materials Planning and Analysis (OHMPA), and the International Standards Coordinator(OHMISC).

### **Office of Hazardous Materials Standards (OHMS)**

Regulations addressing the transportation of hazardous materials are published under the authority of Federal hazmat law and are contained in 49 CFR, Parts 100-180. OHMS develops rulemaking proposals and interprets the Hazardous Materials Regulations (HMR). Amendments to the HMR are issued under Part 106 of 49 CFR. Rulemaking documents published in the Federal Register include Advanced Notices of Proposed Rulemaking (ANPRM), Notices of Proposed Rulemaking (NPRM), and Final Rules.

### **Office of Hazardous Materials Technology (OHMT)**

OHMT's primary mission is to support the rulemaking, special permit, and approval activities of OHMS and OHMSPA, and to support enforcement. It is staffed with engineers and chemists, who conduct technical review and analysis of notices of proposed rulemaking and final rules, special permit applications, and approval requests. It represents the Department at meetings of standard-setting, scientific, and technical organizations.

If you need assistance on technical issues, contact OHMT and, if required, OHMT staff may accompany you on field assignments where advanced technical expertise is required.

### **Office of Hazardous Materials Special Permits and Approvals (OHMSPA)**

The HMR may lag behind technological innovation, particularly in the area of packaging. Persons who wish to use a packaging or process not currently authorized may apply for a special permit by submitting data or information showing that the packaging or process would provide

an equivalent or greater level of safety than that required by the HMR. Persons may also apply for status as a party to existing special permits. OHMSPA processes all such applications. Persons who obtain authority to operate under a special permit are issued a special permit or party status identified by the letters "DOT-SP" followed by a four- or five-digit number. All original documents remain in OHMSPA files; special permit holders or parties to a special permit are issued copies. The special permit then becomes the regulatory document with which the person must comply.

The HMR contain a number of regulations requiring persons to perform some other action to comply; these regulations require such persons to obtain an approval. For example, companies wishing to requalify cylinders under 49 CFR 180.201 through 180.215 must be approved. Likewise, all manufacturers of new explosives must have the explosive examined and classified, and approved by the Department. OHMSPA is the focus for all approval activities.

### **Office of Hazardous Materials Initiatives and Training (OHMIT)**

OHMIT manages PHMSA's federal/state/private sector outreach program. OHMIT, through sponsorship of the State and Local Education (SALE) program, provides a mechanism for state enforcement agencies and public safety agencies to exchange information and to address issues about hazardous materials transportation and the HMR. National multimodal seminars and local workshops are scheduled annually and provided free of charge by OHMIT.

OHMIT addresses training issues and develops hazardous materials training. It maintains liaison with the Transportation Safety Institute (TSI), in Oklahoma City. OHMIT develops, publishes, and disseminates hazardous materials transportation safety publications, including the Emergency Response Guidebook (ERG), Safety Alerts, and electronic training media.

### **Office of Hazardous Materials Planning and Analysis (OHMPA)**

OHMPA provides staff support for the HMS program and the PHMSA Administrator in a number of key areas. OHMPA provides economic analysis of major rulemaking projects. OHMPA provides oversight and coordination of HMS budget planning activities. OHMPA provides issue papers on major issues and initiatives of interest to HMS and PHMSA. OHMPA manages the hazardous materials registration program and the emergency response grants program, which is funded by the registration fees.

OHMPA also manages the HMS information systems program. It provides management and guidance to an on-site contractor responsible for data entry and maintenance of the Hazardous Materials Information System (HMIS). Investigators may directly access the HMIS, through procedures provided by the supervisor.

### **Office of Hazardous Materials International Standards Coordinator (OHMISC)**

The Associate Administrator for Hazardous Materials Safety is the competent authority for hazardous materials transportation. Another term used in place of competent authority is appropriate authority. The International Standards Coordinator represents the Associate Administrator in meetings of the United Nations Committee of Experts for Hazardous Materials Transportation and in other international forums. The International Standards Coordinator also develops the United States proposals for changes to international transportation regulations.

If, during inspections, an Investigator discovers deficiencies in the HMR, regulatory issues not presently covered by the HMR, or defective or unenforceable special permits or approvals, he or she should prepare an enforcement recommendation and submit it along with supporting documentation to the appropriate HMS office, through his/her supervisor for signature. The Director, OHME should be copied.

### SECTION 2.3 - COORDINATION WITH DOT MODAL ADMINISTRATIONS

In August 1990, the five operating administrations within the Department of Transportation responsible for conducting inspection and enforcement programs under Federal hazmat law adopted the "Coordination Guidelines for Hazardous Materials Inspection and Enforcement". This document established general coordination guidelines that foster cooperation and sharing of information, while preserving each administration's specific responsibilities for overseeing the safe transportation of hazardous materials. A copy of the coordination guidelines is included in Section A.1 of the Appendix.

AIR - Enforcement of the hazardous materials regulations for air transportation (including 49 CFR 175) is carried out by FAA. FAA conducts inspections of hazardous materials shipments on domestic and foreign carriers at U.S. airports and airport cargo facilities. The agency also develops and enforces general safety regulations for aircraft manufacture, operation, and maintenance.

WATER - USCG enforces the DOT hazardous materials regulations for the water transportation of non-bulk shipments (including 49 CFR 176). It also regulates bulk shipments by water under 46 CFR. Inspections are conducted in port areas and on domestic and foreign ships and barges operating in the navigable waters of the United States.

RAIL - FRA is responsible for enforcing the hazardous materials regulations for rail transport (including 49 CFR 174), along with the general rail safety regulations (49 CFR 209 to 236). Federal officials have inspection authority and enforcement responsibility for the entire U.S. rail system.

HIGHWAY - Federal responsibilities for inspecting highway shipments by interstate motor carriers and enforcing the Federal Hazardous Materials Regulations pertaining to highway transportation of hazardous materials (49 CFR 177) are carried out by the FMCSA. FMCSA enforces the vehicle and driver safety regulations (49 CFR 390 et seq)

in cooperation with the states under its Motor Carrier Safety Assistance Program (MCSAP).

PHMSA has broad authority to enforce the hazardous materials regulations. PHMSA recognizes that no agency is sufficiently staffed to monitor all of the hazardous materials transportation activities that occur in the United States each day. Current estimates suggest that approximately 1.2 million shipments of hazardous materials are made in this country every day. Therefore, it is the policy of the Director, OHME to leverage resources by coordination and cooperation with other DOT modes, other Federal agencies and state and local authorities. Regional Supervisors are responsible to facilitate inter-modal activities.

#### SECTION 2.4 - COORDINATION WITH OTHER FEDERAL, STATE, AND LOCAL GOVERNMENTAL AGENCIES

- A. In addition to the cooperation and exchange of information with the various DOT modal administrations' enforcement personnel, OHME provides assistance to and conducts joint inspections with other Federal agencies and state enforcement personnel. DOT has established formal working agreements with two Federal agencies as follows:
1. Nuclear Regulatory Commission (NRC)
    - a. Generally, the DOT is responsible for regulating safety in transportation of all hazardous materials, including radioactive materials, and the NRC is responsible for regulating safety in receipt, possession, use, and transfer of by-products, sources, and special nuclear materials.
    - b. On June 8, 1979, the DOT and the NRC executed a Memorandum of understanding (MOU) which delineates the respective responsibilities of each agency for the regulation of safety in transportation of radioactive materials. It also provides for the establishment of working arrangements between the agencies.
    - c. Formal working arrangements with respect to Section IV and V of the MOU between the DOT and the NRC are incorporated in an agreement titled "Working Arrangements Between the DOT and NRC with Respect to Inspection/Enforcement and Accident/Incident Investigation". The agreement was executed by the NRC on September 9, 1986, and by DOT on September 10, 1986. A copy of these documents are on file at OHME, Headquarters. The document is reviewed periodically to insure continued applicability.
    - d. The Special Investigations Radioactive Materials Program Manager is the primary point of contact for enforcement coordination with NRC.

2. Environmental Protection Agency (EPA)

- a. The Resource Conservation and Recovery Act of 1976 (RCRA) (42 U.S.C. 6901 et seq) in Section 3002 and Section 3003 requires EPA to regulate hazardous wastes to protect human health and the environment.
- b. The MOU between the EPA and the DOT was executed by the agencies on May 2, 1980 and June 24, 1980, respectively. The MOU delineates the areas of responsibility of the DOT and the EPA for the enforcement of standards applicable to the shipment and transportation of hazardous waste. This MOU also sets forth those areas of joint responsibility and cooperation between the two agencies. The agreements are on file at OHME Headquarters for review.

3. MOU with TSA

The Annex to the MOU was signed by PHMSA and TSA on August 7, 2006 and August 9, 2006 respectively. The MOU with respect to OHME requires that, "The parties will explore opportunities for collaboration in inspection and enforcement activities, with the objective of maximizing the use of available resources and targeting enforcement resources on the basis of systems risks. The parties will immediately develop procedures for referral of safety and security issues to PHMSA and TSA, respectively; will inventory existing inspection and enforcement resources; and will develop specific plans for closer coordination in the development and use of inspectors, including any necessary additional training." The Annex is attached in appendix A.

B. In addition to the EPA and NRC working agreements, OHME has provided assistance to and conducted joint inspections with numerous other Federal agencies. Some of these Federal agencies are listed below.

1. Department of Defense - Explosives Safety Board  
- Military Traffic Management Command
2. Department of Energy
3. Department of Justice - Federal Bureau of Investigation  
- Bureau of Alcohol, Tobacco & Firearms
4. Consumer Products Safety Commission
5. Department of Homeland Security - U.S. Customs Service  
- U.S. Coast Guard
6. General Services Administration
7. U.S. Postal Service
8. National Transportation Safety Board

9. Chemical Safety Board
  10. Drug Enforcement Administration
- C. In 1986, PHMSA then Research and Special Programs Administration (RSPA) established the Cooperative Hazardous Materials Enforcement Development (COHMED) program. This program encouraged the states to uniformly enforce the hazardous material regulations. The states have primarily focused their enforcement efforts on shipments of hazardous materials by highway and, to a lesser degree, on rail shipments. One of the primary ways Federal and state programs have been improved is through the exchange of information among the states and federal agencies responsible for all aspects of hazardous materials. This is presently being accomplished by having regional and national meetings that focus on current and future regulatory and enforcement activities and serve as a forum for discussion of various problems and needs. PHMSA ended its formal involvement in COHMED in 2002, and it is now overseen by the Commercial Vehicle Safety Alliance. OHME Investigators continue to support its goals by attending meetings.
- D. For many years, the Bureau of Alcohol, Tobacco and Firearms (ATF) chaired and coordinated a quarterly meeting of all Federal agencies with any type of regulatory, oversight, and enforcement authority for explosives. The agencies included most of those listed above in B. With the retirement of the ATF staff involved in this, the meetings were discontinued. In 1996 PHMSA decided to revive the meetings and took over responsibility for planning and coordinating them. They are well-attended and provide a convenient forum for all agencies involved with explosives to provide briefings to the other members on their programs and to disseminate and discuss issues related to explosives.

## CHAPTER 3

### OFFICE OF HAZARDOUS MATERIALS ENFORCEMENT

#### SECTION 3.1 - ENFORCEMENT PROGRAM MISSION

The mission of the Office of Hazardous Materials Enforcement (OHME) is to promote safety in hazardous materials transportation through inspections, enforcement, and outreach to reduce incidents, accidents, deaths, injuries, and property damage attributed to the unsafe manufacture or maintenance of hazardous materials packaging or shipments thereof. Adherence to the guidelines specified in this manual will enhance your ability to accomplish this important mission.

#### SECTION 3.2 - PHMSA MISSION

PHMSA's primary mission under the Federal hazmat law is "to protect the Nation adequately against the risks to life and property which are inherent in the transportation of hazardous materials in commerce". [49 U.S. C. 5101]. To accomplish this mission, it is not enough that safety regulations be developed; there must be compliance. It is the task of PHMSA's investigators to determine compliance with safety standards by inspecting commercial entities that offer hazardous materials for transportation; manufacture, rebuild, repair, recondition, or retest packaging used to transport hazardous materials; and handle inter-modal transfers of hazardous materials. To do this in a most effective manner, PHMSA enforcement uses internal and external data to evaluate risk and prioritize its efforts according to the risk to the general public.

While the primary mission of PHMSA's hazardous materials enforcement program is to gain compliance with the hazardous materials regulations, PHMSA is committed to having the regional offices serve as contact points for state and local enforcement organizations. PHMSA regional staff are available to provide training and technical assistance to states, when requested, in conducting hazardous materials compliance inspections of shippers and other similar facilities. In addition, PHMSA regional investigators engage in various outreach activities with Federal, state, and industry organizations to foster compliance with the regulations. Investigators appear at industry meetings to provide information and answer questions. Finally, investigators conduct seminars and workshops to specific industry groups on particular compliance issues.

### SECTION 3.3 - OHME MISSION STATEMENT

Under the direction of the Director, OHME:

- Advises the Associate Administrator for HMS on policy development and program requirements for safety, inspection, and enforcement of hazardous materials regulations.
- Evaluates data from internal and external sources to identify risk in hazardous materials transportation and advises the Associate Administrator for HMS of proposed actions to mitigate risks.
- Coordinates with other agencies to leverage resources to accomplish safety objectives.
- Conducts inspections and investigations to determine compliance with the Federal hazmat law and the HMR, including special permits and approvals issued there-under.
- Investigates incidents to determine if noncompliance with the HMR was a contributing factor in the incident or if modification to the HMR is necessary.
- Prepares reports and evidence, and recommends enforcement action to the Office of the PHMSA Chief Counsel; assists the Office of the Chief Counsel in the preparation of civil and criminal enforcement actions; provides technical expertise in administrative and judicial proceedings.
- Establishes and maintains liaison with other Administrations in the Department, Federal agencies, and state and local enforcement organizations concerning inspection and enforcement matters pertaining to hazardous materials transportation.
- Advises the Office of Hazardous Materials Standards concerning the enforceability of proposed and existing regulations.

## CHAPTER 4

### OHME STAFFING AND FUNCTIONS

#### SECTION 4.1 - ORGANIZATION

OHME is one of seven offices under the executive leadership of the Associate Administrator for Hazardous Materials Safety. The office and its mission are managed by a Director, who is located in PHMSA headquarters in Washington, D.C. Also in headquarters and assisting the Director is an Enforcement Officer, whose primary duties are oversight of the OHME inspection program, including liaison with the six organizational units in OHME, and liaison with the Office of the Chief Counsel for the enforcement program. They are assisted by an administrative assistant.

The six OHME units are: (1) Special Investigations, Washington, D.C.; (2) Eastern Region, West Trenton, New Jersey; (3) Southern Region, Atlanta, Georgia; (4) Central Region, Des Plaines, Illinois; (5) Southwest Region, Houston, Texas; and (6) Western Region, Ontario, California. Within the six OHME units there are 14 satellite office, investigators working from remote duty locations (home), that serve to maximize the presence of OHME within the regulated public.

Special Investigations is staffed by a supervisory investigator, six investigators, and an investigative assistant. One investigator specializes in explosives transportation; two investigators specialize in radioactive materials transportation; two specialize in the manufacture, rebuilding, and repair of compressed gas cylinders, and one specializes in United Nations packaging. The transportation assistant handles the expired special permit program, the HMI failure to report program, and the undeclared shipment program.

Each regional office is staffed by a supervisory investigator and normally five investigators. These five investigators are proficient in the inspection of package manufacturers, package certifiers, cylinder retesters, drum reconditioners, shippers, freight forwarders, and other types of inspections. They also participate in Multi-Agency Strike Force Operations (MASFOs) and joint activities with other federal and state agencies.

#### SECTION 4.2 - SPECIAL INVESTIGATIONS

- o Conducts inspections and investigations necessary to ensure compliance with the HMR

with emphasis on the manufacture of compressed gas cylinders, the transportation of explosives, the transportation of radioactive materials, and the design and certification of United Nations packaging.

- o Investigates hazardous materials transportation incidents in cooperation with other federal and state agencies, when directed.
- o Serves as the Department's technical experts, providing assistance and training to the Department's modal administrations, Federal agencies, and state and local agencies in hazardous materials enforcement activities.
- o Maintains liaison with the Nuclear Regulatory Commission; Bureau of Alcohol, Tobacco and Firearms; U.S. Customs Service; and other Federal, state and local agencies regarding enforcement of the HMR.
- o Investigates referrals from OHMSPA concerning persons who continue to operate under the terms of special permits which have expired.
- o Investigates referrals from OHMPA concerning persons who fail to file telephonic and/or written notifications of unintentional releases of hazardous materials during transportation.
- o Assists in training other members of OHME in inspection of facilities involved in the transportation of radioactive materials, compressed gas, explosives, and certification of United Nations packaging.
- o Develops enforcement cases based on established policies and procedures.
- o Purchase packages in the field for testing.
- o Conducts regulatory review and analysis of proposed and existing hazardous materials transportation regulations to ensure enforceability.
- o Assists the DOT modal administrations, other Federal agencies, state enforcement agencies, industry, and the public in understanding and/or complying with the regulations through telephone calls, during inspections, in training activities, and in meetings, seminars and workshops.

#### SECTION 4.3 - REGIONAL OFFICES

- o Conduct inspections and investigations necessary to ensure compliance with the HMR with emphasis on packaging manufacturers, drum reconditioners, cylinder retesters, and shippers subject to the HMR.

- o Conduct inspections of special permits and approvals issued by OHMSPA.
- o Investigate hazardous materials transportation incidents in coordination with other Federal and state agencies, when directed.
- o Investigate undeclared shipments reported through the incident reporting system.
- o Develop enforcement cases based on established policies and procedures.
- o Provide advice and technical guidance to the modal administrations within the Department.
- o Develop and implements policies to increase the effectiveness of the hazardous materials enforcement program.
- o Participate in intermodal and interdisciplinary task forces and teams.
- o Conduct regulatory review and analysis of proposed and existing hazardous materials transportation regulations to ensure enforceability.
- o Monitor data bases for compliance with the requirements for obtaining or in renewing an approval from OHMSPA to perform specific functions.
- o Maintain liaison with Federal, state and local agencies on enforcement of the HMR.
- o Purchase packaging in the field for the Container Compliance Testing Program.
- o Purchase hazardous material in the field for laboratory testing as part of the Product Testing Program.
- o Assist the DOT modal administrations, other Federal agencies, state enforcement agencies, industry, and the public in understanding and/or complying with the regulations through telephone calls, during inspections, in training activities, and in meetings, seminars and workshops.

Personnel assigned to satellite offices are under the direction of a regional office and share in the regional office duties and responsibilities as assigned by the regional supervisor.

#### SECTION 4.4 - ASSIGNMENT OF STAFF AND DETACHED OFFICE CODES

- A. As delegated by the Director, OHME, the unit supervisor is responsible for the assignment of code numbers to staff members. Assigned code numbers will remain with the person for the duration of his or her employment. If changes are required to be made, the unit supervisor will promptly notify the Director. The notification will include: the name of the staff member, the code number assigned, and the date the action was

effective.

- B. Staff code and unit code numbers must be shown on all inspection or investigation report forms as provided in the instructions for preparation of such forms. No other identification code number will be used to identify the member performing a given work item.
- C. A series of code numbers has been designated for each work unit. The designated codes were taken from Department's routing symbols.

<u>Work Unit</u>	<u>Routing Symbol</u>	<u>Code</u>	<u>Series</u>
Director & Staff	PHH-40	40	.1 - .10
Special Investigations	PHH-41	41	.1 - .10
Eastern Region	PHH-42	42	.1 - .10
Central Region	PHH-43	43	.1 - .10
Western Region	PHH-44	44	.1 - .10
Southwest Region	PHH-45	45	.1 - .10
Southern Region	PHH-46	46	.1 - .10

Personnel assigned to satellite offices will be assigned a code and series by the regional supervisor to whom they are assigned.

## CHAPTER 5

### GENERAL INSPECTION PROCEDURES

#### SECTION 5.1 - DEFINITIONS

For purposes of this chapter, the following definitions apply:

- (1) **INSPECTION** - The term "inspection" includes inspections authorized under Section 5121(c) and investigations authorized under Section 5121(a) of the Federal hazmat law (49 U.S.C. 5101 et seq.).
- (2) **PERSON** - The term "person" as defined in the Federal hazmat law means an individual, firm, co-partnership, corporation, company, association, joint-stock association, including any trustee, receiver, assignee, or similar representative thereof, includes a government, Indian tribe, or authority of a government or tribe that offers a hazardous material for transportation in commerce, transports a hazardous material to further a commercial enterprise, or designs, manufactures, fabricates, inspects, marks, maintains, reconditions, repairs, or tests a package, container, or packaging component that is represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce; but such term does not include the United States Postal Service, and, for purposes of imposing civil or criminal penalties, a department, agency, or instrumentality of the Federal Government. 49 U.S.C. Section 5102(9)
- (3) **IMMINENT HAZARD** - The term "imminent hazard" means the existence of a condition relating to hazardous material that presents a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur before the reasonably foreseeable completion date of a formal proceeding begun to lessen the risk of that death, illness, injury, or endangerment. 49 U.S.C. Section 5102(5).

#### SECTION 5.2 - INVESTIGATOR'S DUTY

Your primary duty is to determine compliance with the safety standards by inspection or investigation of a person who offers a hazardous material for transportation; manufactures, reconditions, or retests packaging used to transport hazardous materials; or facilitates or handles inter-modal transfers of hazardous materials.

### SECTION 5.3 - ADVANCE NOTICE OF INSPECTION

You are not required to give a person advance notice of an inspection. Moreover, the policy of the PHMSA hazardous materials enforcement program is to conduct unannounced inspections. This affords the investigator a candid view of normal business operations. Thus you shall avoid giving advance notice of an inspection. If advance notice is necessary in order to conduct an effective inspection, prior approval must be obtained from your supervisor or the Director, OHME. Advance notice of inspections may be given only in the following situations:

- (a) In cases of apparent imminent danger to enable the company to correct the danger as quickly as possible;
- (b) When the inspection can most effectively be conducted after regular business hours or when special preparations are necessary;
- (c) To ensure the presence of records, equipment, officials, or other appropriate personnel who, as determined by your supervisor, are needed to aid in the inspection; and
- (d) In any circumstance, including those in (a), (b), and (c), when your supervisor or Director, OHME, determines that giving advance notice would enhance the probability of an effective and thorough inspection.

### SECTION 5.4 - ENTRY ON THE PROPERTY OF OTHERS

Inspections will be conducted during the regular working hours of the facility inspected, except in special circumstances.

Your official credential is your authority to enter upon, to inspect, and examine lands, buildings and equipment and to inspect and copy records and papers of shippers and other persons, in performance of your duties as authorized by Federal hazmat law. Upon entry, immediately identify yourself in a courteous manner, state the purpose of the visit and present a business card. You shall display your official credentials when requested by the facility, or when you determine that it is necessary to carry out your official duties. Your credentials may not be reproduced, so do not allow anyone to make a photocopy, photograph, or any other reproduction of them.

### SECTION 5.5 REFUSAL TO PERMIT INSPECTION

If a person refuses to allow an inspection, you should tactfully but firmly advise the person that Federal hazmat transportation law authorizes such inspections, and you should present the Letter of Introduction which was prepared for this purpose. A copy of the Letter of Introduction is located in Appendix A. If permission is still denied, you shall, when possible, ascertain the reason for such refusal and shall then leave the premises and immediately report the circumstance to your supervisor. The supervisor shall consult with the Director, OHME, and the Assistant Chief Counsel for Hazardous Materials Law, or their staff. Under no circumstances are

you to engage in a dispute after being denied permission to conduct an inspection.

If the Director, OHME, and the Assistant Chief Counsel determine that an inspection must transpire, the Assistant Chief Counsel or his staff will prepare documentation to support a warrant to inspect the facility, and will provide instructions to you about how to obtain the warrant. After the warrant has been obtained, you shall return to the facility with the original Letter of Introduction and the warrant. If entry is still denied, you shall leave the premises immediately and notify your supervisor. Your supervisor shall consult with the Director, OHME.

#### SECTION 5.6 - INTERFERENCE WITH AN INSPECTION

In a case where entry to the premises has been allowed and the person interferes with or limits an important aspect of the inspection (failure to produce vital records or other documents, failure to answer material questions, or failure to give statements or be interviewed), you should determine whether to complete or discontinue the inspection. You shall notify your supervisor of the circumstances and include the information in the Enforcement Report.

If the Director, OHME, and the Assistant Chief Counsel determine that additional information is necessary to complete an inspection, the Office of Chief Counsel will prepare documentation to support a warrant or subpoena, as appropriate.

If you encounter forcible resistance in performance of your duties or are threatened in any manner, you should immediately withdraw from the scene and report the circumstances to your supervisor immediately.

#### SECTION 5.7 - WAIVER OF RESPONSIBILITY

You shall not sign any form of release or waiver. This applies either before or after entering the premises of each person who is subject to the Hazardous Materials Regulations. You may sign statements in which you agree to abide by the safety rules established by the company, which could include attending a safety briefing, viewing safety films or videotapes, or wearing specified safety equipment. You may sign a visitor or guest register used to control entry to the premises, provided that this signature does not constitute any form of release or waiver of responsibility, and does not limit or prohibit your access to the areas that you must enter to conduct official business. If you are unsure of the legal effect of the document to be signed, consult with your supervisor prior to signing the document. If warranted, your supervisor shall consult with the Director, OHME.

When a person expresses concern over proprietary considerations, you may indicate that results of an inspection are disclosed only as required by law. In addition, any request for documents under a Freedom of Information Act (FOIA) request is screened for proprietary information prior to release. The person who provides the information to the government is advised of the request and given an opportunity to state why the material should not be released to the requester.

#### SECTION 5.8 - STRIKE OR LABOR DISPUTE

Do NOT conduct an inspection on the property of a person during a strike, work stoppage, or picketing at that property except under the guidance of your supervisor.

#### SECTION 5.9 - UNUSUAL PROBLEM OR OCCURRENCE

Notify your supervisor of any unusual problem or occurrence related to an inspection. If required, your supervisor shall consult with the Director, OHME. Unusual occurrences should be documented on the "Internal Summary" portion of your Enforcement Report in the HMIS.

#### SECTION 5.10 - IMMINENT HAZARD/POTENTIAL VIOLATIONS

- \* DO: Advise parties of regulatory requirements and penalty consequences of non-compliance. If no one else has advised an emergency response agency of an imminent hazard, do so.
  
- \* DO NOT: Order or direct a party to take or not take any specific action.

Occasionally you may encounter a situation involving an imminent hazard or the possibility that someone intends to violate, or continue to violate, the regulations. You need to take appropriate action to promote safety but be careful to do so in an appropriate manner. If an imminent hazard exists and no one else has advised an appropriate emergency response agency, you should do so immediately.

You should ensure that involved parties are aware of their responsibilities under the regulations, but you should not take charge or attempt to carry out the responsibilities of regulated parties. Although you may advise involved parties of applicable regulatory requirements and prohibitions, be very careful not to order, direct, instruct, or mandate that particular actions be taken or not taken. Ordering, directing, instructing, or mandating that an action be taken or that an action not be taken is beyond the scope of your authority and could result in personal legal liability for you.

Instead of giving orders or directions, advise involved parties what the regulations require to enable those parties to comply with the regulations. You may advise a party that failure to comply with the regulations could result in the imposition of civil penalties. Where a party appears to need additional reasons for complying with the regulations, you may certainly state that, because the party has now been advised about what the regulations require or prohibit, the party's subsequent violation of those regulations could be considered "willful" and thus subject to possible criminal prosecution. There is a significant difference between (1) telling someone what the regulations require or prohibit, and (2) ordering someone to do something or prohibiting someone from doing something. The latter actions carry much greater risk of lawsuit or liability for alleged damages.

The following example demonstrates the difference. Assume that you discover hazardous materials on a company's shipping dock in non-UN standard packaging that do not comply with the regulations and it appears that a shipment of them is likely. You should advise the company

(1) of the shipping requirements for the hazardous materials involved, (2) that failure to comply with those regulations could result in a substantial civil penalty for the shipper and carrier, and (3) (if necessary) advise that the company and its individual employees may be subject to criminal prosecution if they proceed to violate the regulations---because you have just told them what the regulations require and any violation thus would be willful. On the other hand, you should not prohibit the company from shipping the hazardous materials until they are properly packaged. The distinction between advising and ordering is so critical that you should even say that you are not ordering or prohibiting a specific action.

In the example, therefore, you might say: "The regulations, specifically 49 CFR\_\_\_\_, require these hazardous materials to be shipped and transported in UN standard packaging, specifically \_\_\_\_\_. If they are shipped or offered for transportation in packaging that does not meet those requirements, the company, you, and others involved may be subject to a civil penalty of up to \$50,000 per violation, \$100,000 if someone is injured or killed. Also, the carrier is likely to be subject to similar civil penalties. In addition, because I have now told you what the regulations require, if you go ahead and ship these hazardous materials in this packaging, you personally and the company may be subject to criminal penalties involving up to five years' imprisonment and fines of a quarter to half million dollars. I am not telling you what to do or ordering you; I am simply telling you what the regulations require and what the penalties prescribed by law could be for violating them. Do you understand?" Any listener should clearly understand that you are not ordering anything to be done or not done.

Because of the importance of what you say, write down your statement just before or just after making it. Also, you should attempt to make these statements in front of another Investigator, a law enforcement official, or some neutral party because a witness other than affected parties may later prove to be useful.

## CHAPTER 6

### PLANNING AND PRIORITIZING ACTIVITIES

#### SECTION 6.1 – PURPOSE

The purpose of this chapter is to provide guidance for planning and prioritizing your work. Regional supervisors (Chiefs) are responsible for providing current guidance to their assigned investigator staff for planning and prioritizing the regional activities

#### SECTION 6.2 – POLICY

PHMSA's Hazmat enforcement team (OHME) is small when compared to the vast number of hazardous materials activities that occur in industry every day. In order to maximize the value of its limited resources OHME focuses its activity in a risk-based data driven manner,. The objective is to prioritize who is inspected and investigated, what avenues are explored with the regulated entity to bring about compliance, and how OHME reviews relevant data. One of OHME's primary goals is to improve the quality and availability of the data used and to re-focus its resources on those companies posing the greatest risk to transportation safety and security.

Specifically, OHME conducts extensive reviews and analysis of internal and external data and focuses more than ever on using the data to drive the program. In an effort to improve the process and re-focus its resources on those activities posing the greatest risk, the Office ranks inspection priorities within each region. OHME targets serious risks and considering both likelihood and consequence. Some include companies involved in serious incidents or high risk/high consequence transportation related activities, companies that have been involved in repeated incidents or have poor safety records, and companies against which complaints have been filed.

Some of the most valuable external data sources come from your state and local partners such as State Fire Marshals, State Police, State Emergency Response Agencies, etc. Some of the things a supervisor will consider when reviewing data include but are not limited to:

**Exposure:** How often is a hazardous material shipped by the same company? What is the volume being shipped. Are many companies engaged in shipping the same or similar hazardous materials within a concentrated area? (Example: gasoline.) Is the community where the shipments occur densely populated?

**Consequence:** Will an incident involving small or moderate quantities of the hazardous material be likely to cause injury, death, damage to the environment, or disruption of normal social activities? (Example explosives, Poison by Inhalation, High activity radioactive materials.)

**Incident History:** Does a single person or carrier within your region have a history of incidents that is abnormally high? Is there a trend or pattern with certain types of hazardous materials involved in incidents?

**Compliance History:** Is there a person or industry within your region that has a history of serious noncompliance? Even frequent noncompliance of a less serious nature may be a leading indicator of more serious issues that are developing.

### SECTION 6.3 – PRIORITY INSPECTION LIST

As a planning tool each regional supervisor shall prepare a priority inspection list organized in order of risk, with the highest risk (highest hazard activity) being number one. The list will differ greatly from region to region because the hazardous materials industry is different in each region. The list will contain your top 100 priorities by order of risk. Special Investigations will maintain 4 lists of the 25 top priorities in each of the 4 areas of concentration. The priority inspection list will be updated as often as operations dictate, but not less than monthly. This tool will be utilized in planning assignment of resources and prioritizing activities.

### SECTION 6.4 – ORDER OF PRECEDENCE

The order of precedence for handling the various types of investigations is set by OHME management and the OHME National Business Strategy.

A description of and instructions for each category of inspection activity are contained in the following paragraphs. Priority of accomplishment and assignment of resources shall be as follows:

<u>Priority</u>	<u>Category</u>
1	Accident Investigations
2	Complaint Investigations
3	Fitness Inspections
4	Priority Inspections List
5	Joint Inspection Activities
6	Re-inspections
7	Routine Inspections

\*Note: The priority of any activity may vary given unusual circumstances. Adjustments to the priority lists may be made by OHME management according to changing circumstances.

Accident Investigations – Since OHME does not generally inspect carriers, we don't conduct accident investigations in the usual sense, i.e. first response, on-scene investigations. We usually become involved after the accident in an effort to determine if noncompliance with the HMR contributed to the accident, or if the HMR are deficient and need to be addressed. Accident investigations will be assigned by your supervisor. Following the accident investigation you will generally need to prepare an Inspection/Investigation Report.

Complaint Investigations – Complaints are received in many forms. You may receive complaints via telephone, letter mail, e-mail, or in person when conducting an inspection or investigation or attending meetings or seminars. Anyone has the right to file a complaint. The complaint may come from a private citizen, a company, a local or state government, other Federal agencies, or a colleague within the Department of Transportation. Many persons filing a complaint may request anonymity.

When you receive a complaint, it must be entered in the Complaints data table in HMIS. If the complainant has requested anonymity, in place of the name enter Mr. or Ms. Anonymous. When entering the complaint it is assigned to the region where the investigation will take place. The Region Chief will assign a specific investigator. Usually the HMIS will send an e-mail to the Region Chief where the complaint is assigned. However, it is a good practice to make a copy of the complaint after you have filled in the HMIS and fax it to the region responsible for the complaint.

Generally you have 6 months to act on a complaint when it is assigned to you. However, circumstances may require that the complaint be given more expeditious handling. Your supervisor will advise you when this is the case.

When you receive a complaint do a complete interview of the complainant to obtain as much information about the complaint as possible. Usually if you try and answer the Who, What, Where, When, How, and Why questions you will be well on your way to obtaining good information. Try and obtain a means of further contact, telephone number or e-mail address, so the assigned investigator can conduct further interview if necessary.

When you receive a written complaint, forward it to the region handling the complaint.

Fitness Inspections – Fitness inspections are usually conducted on behalf of, or in conjunction with the Office of Hazardous Materials Special Permits & Approvals. They are conducted to determine a person's ability to comply with a special permit or hold an approval such as cylinder re-qualification or drum re-conditioner. Requests for fitness inspections are made by the Director, OHMSPA (PHH-30) to the Director, OHME. The Director, OHME assigns fitness inspections to the appropriate staff member.

Priority Inspection List – Most of the activity (inspections and investigations) you are assigned will originate from a Region or Program priority inspection list. A list of entities and activities in rank order by their significance of risk or hazard, the Priority List drives OHME's business targeting the high risk, high hazard activity. The list is compiled by supervisors after a detailed review of many data sources thereby providing them a sound baseline and understanding of the hazardous materials activities within the region of their responsibility. Supervisors consider compliance history, incident history, type hazmat shipped (including high consequence materials), volume of hazmat shipped and frequency (high exposure), and mode of shipment. The lists are updated monthly or more often if circumstances warrant. The lists enable PHMSA's Hazmat enforcement team to take a risk based – data driven approach to enforcement and compliance and thereby maximizes its business value of its limited resources..

Joint Inspection Activities – PHMSA OHME is a multi-modal operation and specializes exclusively in hazardous materials. A PHMSA and OHME strategic goal, OHME leverages its resources and HM expertise by fostering partnerships with the modal administrations, other federal agencies, and state and local authorities. This is accomplished in many ways. One way is through participation in Multi Agency Strike Force Operations (MASFOs). Another is to work jointly with another mode or agency on areas of mutual interest. By working together we can build on the concept of shared responsibility with our partners and provide training and assistance in the areas of HM enforcement . Leveraging our resources with our partners increases our efforts as a force multiplier in enforcement, compliance, outreach and education. OHME also receives valuable and unique training and experience from our partners while conducting joint inspection activities.

Re-inspections – Re-inspections are inspections of entities previously subject to a civil penalty case or ticket. The purpose of the re-inspection is to verify compliance by an entity known to have violated the Federal hazardous materials transportation law in the past, in order to determine the effectiveness of PHMSA's hazardous materials enforcement program. Unless directed by management, or arising from a complaint or accident warranting a shorter duration, an entity involved in a civil penalty case becomes eligible for re-inspection one year after issuance of an uncontested final order or, if contested, one year after the decision on appeal. An entity involved in a ticket for noncompliance becomes eligible for re-inspection 6 months after the ticket action is closed.

Routine Inspections – In addition to responding to known or suspected problems or noncompliance, OHME inspects companies involved in the hazardous materials transportation industry on a routine basis to monitor their compliance with the HMR. Some of the inspections you perform may fall into this category. The key difference between these and other inspections/investigations is that OHME has little or no information about the entity or its compliance or activity profile. OHME will make use of its data sources to schedule inspections of packaging manufacturers and certifiers, retesters, reconditioners, repairers, rebuilders, NVOCCs, and shippers.

## SECTION 6.5 – Preparing the Inspection/Investigation

You will want to know as much as you can about an entity before physically showing up for an inspection or investigation. The HMIS contains information on registration, special permits, approvals, incidents, and prior enforcement history. The Inter-modal portal will give you a profile of the entity with respect to the modal administrations. The more you know about an entity, the better your chances of conducting a thorough inspection or investigation. Regional supervisors will guide you to additional sources of information for entities in your region.

Planning Your Itinerary – Your field inspection destination within your region or program area is determined by the Priority List from your region or program area. The entry with the highest priority ranking (that has not had action) will often determine your primary location of inspection travel for a given week. Often, that activity will not take an entire week. Therefore, in order to maximize our financial allocations, you will fill in the inspection week with some of the other activities listed above. You must select activities in the order of precedence listed above. Fill in the itinerary with re-inspections and routine inspections. You will get a feel for how long a particular inspection/investigation will take as you do more of them. But it is always wise to have alternatives on your itinerary list. Unless directed by management, an inspection travel week is 4 full days of inspection/investigation, allowing a half day to travel to and from the area you are working in. This may not always be possible. Your supervisor will guide you. Normal travel itineraries are due to the supervisor 1 week prior to travel beginning.

Travel Authorization – Once your itinerary is approved by your supervisor, you will need a travel authorization. We use trip-by-trip authorizations generated in GovTrip. You will receive training in GovTrip and will be instructed in how to obtain access. You need travel authorization anytime you are conducting inspections/investigations. Print a copy of the travel authorization and keep it with you during travel.

Travel Equipment – You must arrive ready to conduct the inspection. Be prepared. You must have your credentials, a current copy of 49 CFR, the inspection forms related to your inspection i.e. cylinder retester inspection form or drum observation form, and a camera. You will supplement the equipment and regulatory material listed above depending on the type inspection/investigation you intend to conduct. Unusual circumstances may dictate additional equipment. For those of you conducting radioactive materials or explosives inspections, the Special Investigations program manager will assist you in obtaining the right equipment.

## CHAPTER 7

### CONDUCTING THE INSPECTION

#### SECTION 7.1 - OPENING INTERVIEW

At the beginning of each inspection you will conduct an opening interview. This interview will be conducted with a responsible person, preferably a supervisor, who the business assigns to you as your point of contact. Briefly describe the purpose of the inspection and outline the inspection procedure to include any of the following that are applicable:

- (1) Areas to be inspected - manufacturing, filling, shipping, retest, etc.
- (2) Testing to be observed - type test, type container
- (3) Records to be examined - shipping, billing, receiving
- (4) Personnel to be interviewed - production manager, retest operator
- (5) Exit interview - results of the inspection and possible sanctions

Obtain background information concerning the firm and record it on the Inspection/Investigation report Form provided in Appendix A of this manual. Some important information you should obtain includes, the mailing address if different than the physical address, telephone and fax numbers, tax identification number, and corporate headquarters mailing address and contact name if different than the inspected location.

If, during the inspection, you are to be accompanied by one or more parties, identify yourself to all present and obtain their names and titles.

If company officials refuse entry, or, having consented to the start of an inspection, suddenly call a halt to it, consult Section 5.5 of the manual for instructions.

#### SECTION 7.2 - THE INSPECTION

Conduct the inspection and record your findings on the inspection and observation forms in accordance with the procedures prescribed in the manual. Copies of forms are located in Appendix A.

If a situation arises during an inspection which is not adequately addressed in the manual, suspend the inspection and immediately contact your supervisor for instructions before resuming it.

### SECTION 7.3 - INTERVIEWS

Most inspections involve subject or witness interviewing. Interviewing is particularly important because it assists in describing the operation, providing leads, identifying evidence and establishing knowledge or lack thereof. When conducting an interview, the Investigator should be interested in what the interviewee did, saw, or heard, rather than his opinion or conclusion as to what occurred. Remember, a conclusion without an adequate basis is useless. If there is an adequate basis, the conclusion will be self-evident. Effective interviewing can often reveal contradictions which may indicate or eliminate probable violations upon further investigation. The result of an effective interview should be a clear description of physical evidence such as shipping papers, defective equipment, improperly sealed containers etc. Investigators must carefully document explanations and statements relating to probable violations. These may provide evidence supporting the "Knowing" or "Willful" legal standard. Evidence, oral and physical, may also provide insight to the extent and gravity of an alleged violation. These may in turn have significant and wide ranging safety and enforcement implications.

Generally, one can establish the basis for most conclusions by asking the following questions:

1. What? (What happened?)
2. When? (When did it happen?)
3. Where? (Where did it happen?)
4. Why? (Why did it happen?)
5. How? (How did it happen?)
6. Who? (Who was involved?)
7. Which? (Which one did the testing?)
8. How Many? (How many were involved?)

#### SECTION 7.3.1 - GENERAL INTERVIEW RULES

- (1) Listen more than talk - keep your eyes and ears open. Allowing the subject to do most of the talking will yield most necessary information.
- (2) Do not ridicule, bully, or belittle the interviewee or his information. Do not become angry, argumentative, or antagonistic - this could lead to a complaint of bias. Be frank, knowledgeable and assertive. (3) Ask simple direct questions that involve but one subject or item under investigation - if the answer is vague or evasive, you may have touched on an area that requires further investigation. It may also be helpful to ask the same question several times.
- (4) Follow up questions requiring a yes or no response with more open-ended ones, such as "How often do you calibrate your equipment? How do you calibrate it?" Avoid leading

questions which will allow a simple response, such as "You do calibrate your equipment, don't you?"

- (5) Avoid personal discussions as well as discussions about religion, politics, and similar controversial matters.
- (6) Avoid creating an impression that you are only interested in a confession or conviction. Impress the interviewee with the fact that you only desire the truth.

## SECTION 7.4 - WRITTEN STATEMENTS

### 7.4.1 - Written Statements

The statement provides written documentation of the results of an interview or request for information. The quality and usefulness of the statement depends on the quality of the interview on which it is based.

#### (a) Techniques of Preparing a Statement

- (1) Whenever possible, have the interviewee make the statement in his or her own handwriting and have him or her sign it. This precludes him or her from later saying that it was not his or her own statement.
- (2) Instruct the interviewee to limit his statement to elements of the violation(s) and the facts the interviewee can contribute to prove those elements. As in the case of the interview, instruct the interviewee to limit the statement to what he or she did, saw, or heard, and avoid opinions and conclusions.

#### (b) Statement Format

- (1) Introductory data - the date, time, location, and names and titles of the interviewer and interviewee, and a declaration that the statement is voluntarily made without promises, threats, or coercion of any kind.
- (2) Body - the narrative statement should provide the facts that will prove the elements of the violation(s) and will answer any or all of the seven basic questions: Who? What? When? Where? Why? How? And Which?
- (3) Conclusion - a declaration that the interviewee has read the statement, that it is correct to the best of his or her knowledge, and it is voluntarily given without promises, threats, or coercion of any kind.
- (4) Signature - the interviewee should sign the statement and initial each page and correction. If the interviewee refuses to sign the statement, ask if the statement is incorrect or untrue in any respect. Make a note of the reply and the reasons for

his refusal to sign, and include this as an exhibit with the enforcement report. All signatures should be witnessed.

(c) **Distribution**

The Signed Statement should be attached to the Enforcement Report as an Exhibit in accordance with the procedure prescribed in this manual. A Statement Form is found in Appendix A of this manual.

7.4.2 - Oral Statements

Personal interviews throughout the compliance inspection provides for Oral Statements.

- (a) Oral statements are paraphrased in the inspection report to support the violation.
- (b) When used, provide an Oral Statement Exhibit in a question and answer format to support the violation.

**SECTION 7.5 - PHOTOGRAPHS**

The use of photography is the most accurate method of recording evidence of violations or conditions that may change during the inspection or shortly thereafter. Photographs are generally admissible in a court of law, providing they are true and representative of the scene as it existed at the time the photograph was taken. Photographs substantiate violations, confirm observations and provide visual details for review during preparation of Enforcement Reports, informal meetings, conferences or hearings. Photos should not replace a narrative description of the violation but should be used as a detailed complement to it.

(a) **Planning the Photograph**

- (1) Pre-plan your photos when possible. Determine what you want the finished photo to show prior to taking it. Detail markings, stamps, and embossments must be accompanied by an observation form.
- (2) Show the relationship of scene, situation, violation or accident components or variables.
- (3) Include a reference to size in your photographs such as a ruler, coin, pen, clipboard, etc. This will tie the specific item into the overall scene and emphasizes the size and the distortion, or lack of distortion, of the item photographed.
- (4) Do not try to show too much in each picture. Use as many additional photos as necessary to illustrate important details that may be difficult to see. Be sure to photograph all sides of a package even if they are blank. Failure to do so leaves

the reader to wonder if the required markings or labels were on the side not photographed.

- (5) Take a series of shots from far to near and/or wide to narrow. A series of photos will help to explain the violation.
- (6) Be sure that flash or spark-producing equipment can be used in the area you are photographing. Do not use flash equipment around employees using machinery or operating equipment without their knowledge (e.g., explosives, flammable gases or liquids, etc.). Employees can also be startled by an unexpected flash of light.

You are highly encouraged to develop a filing system that permits the retrieval of photographs at a later date. Photographs are sometimes needed years after an inspection/investigation to support an enforcement action under appeal. In some instances a photograph not incorporated in an ININREPT at the time of submission may contain a crucial element of evidence. Photographs can also serve as invaluable training aids.

#### SECTION 7.6 - EXIT BRIEFING

Following the inspection, complete the Exit Briefing Form in accordance with the procedures prescribed in the manual. After you do, confer with the owner, supervisor or company representative(s), and discuss the findings of the inspection and inform such persons of the sanctions that may result. At the conclusion of the exit briefing, request that the official(s) sign the Exit Briefing Form as verification that the results of the inspection were discussed and then provide the company official(s) with a copy of the completed Exit Briefing Form. If the signature request is denied, please note this on the form. Note the printed name of those receiving the exit briefing on the first page of the exit briefing and record the printed name of the person refusing to sign on your enforcement report. Always make yourself available to help the inspected parties understand what the HMR requires. Remember, our goal is compliance. Take as much time as you need to set the inspected party on the right path to correct their deficiencies.

If, after you return to the office, discussions between you, your supervisor, and/or the Enforcement Officer result in deletions from, additions to, or modifications of the exit briefing, please send a revised exit briefing to the appropriate company official.

#### SECTION 7.7 - FOLLOW-UP INSPECTIONS

The primary purpose of a follow-up inspection is to determine if an observation at another location constitutes a probable violation of the Hazardous Materials Regulations. When sufficient evidence exists at the observation site to support an enforcement action, the decision as to whether to proceed with an enforcement action or schedule a follow-up inspection will be made by the unit supervisor. This decision is based on the level of risk involved.

In general, the routine follow-up inspection is conducted to determine whether a company is in

compliance with the safety standards and regulations required by the Federal hazmat law.

The inspection of a company with a prior enforcement action is considered a “reinspection.” OHME’s reinspection program is discussed in Chapter 14.

## CHAPTER 8

### RECORDING INSPECTIONS AND INVESTIGATIONS

#### SECTION 8.1 - REPORTING REQUIREMENTS

Reporting inspections and investigations is an important element of an enforcement program. The usefulness of the information that is collected in the field depends to a large extent on how well the inspection or investigation is documented. The information must be recorded in a manner that provides a permanent easy to understand record; furnishes an accurate assessment of conditions at the time of inspection or investigation; makes information readily available for a variety of uses; and is easily verified and updated.

(a) Reports should be written in the following manner:

- (1) Single Subject - Each Inspection/Investigation Report should reflect the results of a single enforcement action. If a single investigation will result in enforcement action against two entities, two reports must be written, one for each party involved. The reports will contain unique report numbers. If two investigations are conducted of the same entity at separate locations, as part of the same inspection or investigation, one report detailing the facts and circumstances of the case is prepared.
- (2) Facts - Reports should present tangible factual material supported by necessary evidence; i.e., photos, statements, shipping papers, interviews, etc. Do not theorize, speculate or hypothesize. Reports should be objective rather than subjective. Each violation must stand alone, based on the evidence presented.
- (3) Thoroughness - A report should be detailed but concise. It should include everything pertinent and nothing more. Avoid general, abstract or vague discussion. Include documentation to support the findings.
- (4) Style - Reports should be written with a formal tone using an appropriate subject rather than the first-person-singular point of view. Write in the active voice as much as possible. (Example: Mr./Ms Jones examined and photographed.. He/She observed that...)
- (5) Coherence - Write in chronological order and to the general audience. A report should flow; the reader should be able to move smoothly from paragraph to paragraph and section to section. Signal the continuity of your thought from

paragraph to paragraph within a section. Use transition words like, next, and for example. Repeat important words and pronouns to create links.

- (6) Grammar - Check punctuation, capitalization, and spelling.

## SECTION 8.2 - INSPECTION/INVESTIGATION REPORT (General)

Information concerning each field inspection or investigation whether or not non-compliance was found, must be recorded and promptly submitted. The basic document used is called an inspection/investigation report. If violations are discovered, the inspection report with attached evidentiary exhibits is called an enforcement report. If it is necessary to provide supplemental reports, they should be attached to the report as an exhibit in accordance with the procedures prescribed in this manual.

The report(s) should contain sufficient detail to completely describe and support the inspection/investigation activity. Data contained on the report will be entered in the HMIS system to permit the generation of management and field reports. Such information is vital for determining the effectiveness of the enforcement program and the degree of voluntary compliance.

### Preparation of the Inspection/Investigation Report

#### (a) General Instructions

- (1) Make sure that all markings which are stamped, printed, embossed, or labeled are recorded including dashes (-), dots (.), and slashes (/);
- (2) Narrative portions of the report must be understandable to person(s) who may not have a knowledge of the transportation or industry practices;
- (3) Hand drawings should be used in conjunction with narratives to better explain packaging configurations (See shipment observation reports in appendix A);
- (4) Documentation concerning the inspection, such as shipping papers, purchase orders for containers, invoices, container specification sheets, container test reports, chemical analysis of materials, photos, etc., should be attached to the report as exhibits supporting the evidence. Calculations in support of a violation should be shown and explained. Show the math.

#### (b) Definition of Legal Entity

- (1) There are three basic entities which conduct business and are recognized by the law, which can enter into contracts, sue, be sued, be held responsible for

compliance with the regulations, and be cited for noncompliance.

These entities are:

- (i) Individual - business conducted by a single natural person.
- (ii) Partnerships - business conducted usually by several natural persons under an agreement (written or oral) in which each owns a predetermined portion of the business. A corporation may also be a partner in a partnership.
- (iii) Corporation - sometimes referred to as unnatural person which can only exist or be created by a political subdivision (State or Federal Government) through issuance of a charter which authorizes it to conduct a particular type of business.

Other types of organizations, such as cooperatives or authorities, may be encountered. For our purposes, they may be considered as similar to corporations.

- (2) If a business is operating as a sole proprietor (a natural person), the sole proprietor is the only one who is cited for non-compliance if the action is to be brought against the business entity.
- (3) In a partnership, which conducts business as a manufacturer, carrier or shipper, the partners may be cited individually or collectively for violation of the regulations. Usually, the action is brought against all partners collectively. The name of every partner must be included in either the name and address block or the summary of operations.
- (4) If a corporation is the business being inspected, then the corporation would be cited, not the stockholders who are the owners or, in most cases, the corporate officials who act on behalf of the stockholders.
- (5) Investigators must not be confused by the names and other identifications used by these legal entities, such as branches, divisions, and subsidiaries:
  - (i) Branches are part of legal entities, but usually do not have any independent standing separate from that entity.
  - (ii) Divisions are the same as branches; however, occasionally the Investigator may find the word "division" used to describe a separate legal entity, such as a corporation wholly owned or controlled by another corporation. In that case, the wholly owned or controlled corporation does exist

independently of the owning corporation and is a separate legal entity and must be cited if it is the violating company.

- (iii) Subsidiaries are separate corporations either wholly owned or controlled by another corporation. Subsidiary corporations that are manufacturers or shippers are responsible for compliance and are cited for non-compliance. The owning corporation cannot be held responsible for the acts of the subsidiary except in unusual instances. Those instances would be when it can be shown that the subsidiary exists in name only, and was created to escape some lawful duty and in truth and in fact, the owning corporation is the carrier or shipper. These instances would occur rarely. The Investigator should advise the Office of the Chief Counsel if he or she believes the subsidiary is fraudulent, and seek legal advice as to what the report should include.

### SECTION 8.3 - INSPECTION/INVESTIGATION REPORT (Specific)

All reports are prepared in the Hazardous Materials Information System (HMIS). However, you are advised that the HMIS does not possess the features of a word processor. It is strongly recommended that you write your reports in Microsoft Word and cut and paste them into the report.

#### **Company Page**

Report Number: An individual identification number will be assigned to each inspection or investigation that is conducted. The number need only be entered once. This number is automatically recorded on each page of the report.

- (1) CALENDAR YEAR - Enter the last two-digits of the year.
- (2) CODE NUMBER & SERIES - Enter the three digit routing number assigned to the investigator.
- (3) REPORT NO. - Each report will receive a separate sequential number reverting to the number "001" at the beginning of each calendar year (January 1).

For example, 99423052 (This would represent the 52nd ININREPT prepared by Investigator, 42.3, in 1999).

**A. Company Name & Address:**

**Name:** Enter the complete and correct name of the entity which is the subject of the report. This entry must be the name recognized as the legal name of the business exactly, to include Inc., Corp. LLC, or other identifiers that are part of the legal company name.

**Address:** Enter the exact location of the company using street name and number, name of intersection or rural route number, as appropriate. If a Post Office Box is known it should be in mailing address section immediately following the company contact information on the form.

**City, State and Zip Code:** Enter the name of the city, town or village and select the state from the drop down list. If the company is not located in a city, town or village, enter the name of the Post Office that is responsible for delivery of the mail to that address. Enter the complete nine number zip code, if known.

**Telephone:** Enter the telephone number including the area code.

**Fax Number:** Enter the fax number including the area code.

**B. Company Contact:** Enter the name and title of the person the company has designated as their contact for the purpose of your investigation. This is generally the person that was assigned to escort you during the inspection. Be sure to include the prefix such as Mr., Ms., Dr., etc.

**C. Company Mailing Address:** If company has a post office box list that information here. Be sure to list the proper zip code since that may differ from the zip code for the physical address.

**D. Type of Operation:** Enter the type of business the company is involved in, i.e., Steel Drum Manufacturer, Cylinder Manufacturer or Retester, Shipper, etc. Up to 3 codes can be selected. The first code is the primary code and identifies the primary function of the entity that is the subject of the report.

**E. Initial Contact Date:** Enter the date the inspection or investigation began. In the case of activities lasting 2 or more days, this is the first day of the inspection or investigation. The completion date for multi day inspections will be listed in the summary field of the report.

**Follow-up Date:** This date is the first day of follow-up activity done at a location

other than the initial inspection or investigation site. In cases where several follow-up activities were required, this is the date the last follow-up activity began. The remaining dates will be listed in the summary field of the report.

- Inspection Date:** The Inspection Date field is automatically populated by the HMIS system. Unit supervisors have the authority to change the default date which is by default the initial contact date. The unit supervisor will discuss the total activity required for the investigator to complete a thorough inspection/investigation and will, from that discussion, ascertain when it is reasonable that the investigator could have begun work on the inspection/investigation report in earnest. That date will be entered as the inspection date.
- F. **DOT Exemptions:** Enter all of the DOT Special Permits Number(s) that the company has in effect. Enter expired DOT Special Permit numbers only when they are pertinent to the report.
- G. **Principal Office:** This entry is used only when the parent office is located somewhere other than the inspection or investigation site. When the inspection location is the principal office leave this section blank.
- H. **Principal Office Contact:** Whenever possible ask for a name of the person at the principal office that we should contact for information.
- I. **Tax ID #:** Always try to obtain the Tax ID # of the company being inspected.

### **Interviews/Investigators Page**

- A. **Persons Interviewed:** List the name, title, and organization of each person interviewed or participated in the inspection, i.e., Mr. John Doe, President, XYZ, Inc. Then click on the "add" button. You may repeat this process for as many names as you need to enter.
- B. **Investigator:** Below the persons interviewed block you will find 2 places for Investigator information, Insp1 and Insp2. The primary Investigator will always be listed as Insp1. If there was a second investigator add their name in Insp2. Select the name from the drop down list and the rest will auto populate. If there were other personnel that participated in the inspection/investigation, list their names in the Summary section of your report.
- C. **Action:** Select the resulting action agreed upon by you and your supervisor during

preliminary discussions. The supervisor retains the right to change the action after reviewing the final report and supporting evidence.

### Attributes Page

- A. **Carriers Used:** Check the box for Air, Water, Rail, and Highway for each mode of transportation used. Check as many boxes as are applicable.
- B. **Additional Company Information:** This list provides additional information about the inspected entity. The choices include “hazmat offered under the terms of an exemption” (Special Permit); “Foreign Carrier”; “Small Business”; “Greater than 10 employees”; “Packaging Manufacturer (not specified by code number”); and “**Priority Activity.**” Priority activity is selected when the entity was listed on the priority inspection list.
- C. **Reinspect/Joint Activity:** The left column offers a selection of “Reinspect”, “Joint Inspection”, and “Complaint.” Select any that apply. The right Column “Prior Case/Ticket” and “Joint Inspection Agency Organization.” If you selected “Reinspect” in the prior column you must enter the prior case or ticket number in the area provided. If you selected “Joint Inspection” you must list the agency or organization that participated in the inspection.

### Summary Page

- A. **Summary of Inspection:** Tell a short general summary to orient the reader. This is the executive summary of your report. The reader should get a general idea of what the report is all about and what happened during the inspection/investigation. The following is an example of what might go in the summary field. (You have 80,000 characters or approximately 20 pages so write as much as you need.)

(a) On (Date)\_\_\_\_\_, Hazardous Materials Enforcement Specialist (Name) \_\_\_\_\_, conducted a compliance inspection at (Company Name/Address)\_\_\_\_\_. Mr/Ms. (Name(s))\_\_\_\_\_ represented the company and provided necessary documentation. (Explain what the company does) Ex: (ABC Resin Company)\_\_\_\_\_ is a (ex: shipper/retester/manufacturer of hazardous materials; manufacturer of hazardous materials packagings,etc). (They ship hazardous materials, classed as 3, 8, etc, in 5, 35, 55 gallon drums, IBC's, etc). The packaging is obtained from\_\_\_\_\_. ABC Resin Company makes approximately ### hazardous materials shipments per (week/month/year).

- (b) Probable violations noted during the inspection were discussed with Mr./Ms. \_\_\_\_\_ during the Exit Briefing (exhibit 1). Violations concerned (ex: shipping papers, non-UN packaging, retest records, etc).
- (c) A letter of corrective action was received (exhibit xx), dated \_\_\_\_\_, from Mr./Ms. \_\_\_\_\_ addressing the probable violations.

- B. Internal Inspection Investigation Summary: This page is intended to communicate anything about the inspection/investigation that you did not want to print in the final report such as advisory information for future investigators, i.e. “the building is not visible from the main road. Turn on A Street and go 150 yards and you will see a drive way.”

### **Package Testing Page**

The package testing page is self explanatory. The data requested is information describing the packaging you purchased. You will have most of the information you need to complete this page at the time you purchase the packaging. However, be certain to go back and finish your data entry once you receive the package test report. A full explanation of the package testing program is contained in Chapter 12 of this manual.

### **Product Testing Page**

The product testing page is nearly identical to the package testing page. The data you will need to complete the entries on this page you will know at the time you purchase the product. Once again, be certain to go back and complete the data entry when you receive the product testing report. The product testing program is described in detail in Chapter 11 of this manual.

### **Violations Pages**

- (1) Violation Number: This entry will auto populate. It is a sequence number listing the order of violations within the report.
- (2) 49 CFR Section: Enter the specific section number(s) covering the violation being reported. For example: 172.202(c)(1) and 171.2(a). Enter only 1 section number per space provided for a maximum of 5 section numbers.
- (3) Number Discovered: Enter the number of times the violation was repeated. This must be supported by the evidence. An asterisk indicates that the

violation process violation. Process violations are usually associated with packaging manufacturers and indicates that the violation occurs repeatedly as a result of an error in the manufacturing process.

- (4) **Severity Range:** This entry is subjective. Select high, medium, or low from the drop down menu to communicate your opinion of how severe the violation was in reference to the total operation.
- (5) **Exhibit Numbers:** Enter the specific exhibit numbers being used to support this violation.
- (6) **Citation Summary:** Enter the citation for the violation being reported. Example: *Offering hazardous materials for transportation in unauthorized, non-standard packaging in violation of 49 CFR §§ 173.150 and 171.2(c).*
- (7) **Evidence Summary:** Write a detailed narrative describing the violation. Include reference to supporting exhibits, i.e. The drum was rusted. See the photograph in exhibit 1.

### **Internal Leads Page**

The internal leads page is intended to permit on investigator to communicate a lead observed or obtained to other investigators. However, this page is rarely if ever used. PHMSA finds the use of other forms of communication more effective.

### **AAHMS/OHME Page**

This page is designed to auto populate information about the subject of your report from other parts of the HMIS. The types of information include approvals, special permits, and prior enforcement history.

### **Narrative Page**

The narrative page is used for a multitude of purposes. It is additional space to write information in your report which may not fit in other areas of the report. For example, Special Investigations uses this page to describe the manufacturing process for cylinders and explosives. You may choose to use this section to write an evaluation of corrective action submitted.

### **Exhibits Page**

The Exhibits page shall be used to identify witnesses, evidence and other documents submitted

with an enforcement report. These documents are the facts that a witness can testify to, and to describe violations. Documentary evidence may consist of bills of lading, freight bills, invoices, production reports, test records, etc., which are obtained from the company files, or copies of Government reports and files and statements taken from witnesses.

Submit originals, if available, and/or legible photocopies of documents in preparing enforcement reports. The copies should be carefully prepared and should be complete, including all notations or remarks. Do not make any notes or entries on the face of the copy. If a copy cannot be reproduced that is legible, either make an additional copy for touching up illegible portions, prepare a hand written copy, or make a photograph.

Hard copy documents obtained during the investigation are scanned into the system and imported into the report. Photographs are usually digital and are imported directly into the report. However, if you have a conventional photograph you may scan it and import it into the report. Each page of every document submitted as evidence must be identified with the following information:

U.S.D.O.T./PHMSA/OHME  
 Report # \_\_\_\_\_  
 Exhibit # \_\_\_\_\_  
 Page \_\_\_\_\_ of \_\_\_\_\_

Some regions have a stamp for this purpose. Others use Avery labels printed from Microsoft Word.

The Exhibits page is divided into 3 parts, the provider, the exhibit information, and the digital picture information section.

- (A) **Provider:** In this section you are asked to list the source of the exhibit. Specifically, you must enter the name of the company, city, state, first name, middle initial, last name and job title of the person providing the exhibit to you. This field will remain populated until you make a change so it is a good idea to group your exhibits by where they were obtained.
- (B) **Exhibit Information:** In this section you list the exhibit number you assigned to the exhibit. Under exhibit type select regular size image, legal size image, or digital picture. Image orientation is the orientation of the scanned image, portrait or landscape. Image file name is a bit misleading. Click on the "Browse" button and select the file you are importing as an exhibit. Description tells the reader what the exhibit is. This should be a brief general description i.e. Ocean Bill of Lading dated July 12, 2006 from Maersk Lines.

- (C) **Digital Picture Information:** This section is intended to identify photographs. Leave the section blank when importing documents. The information required is camera type, location, date, city and state where the photo was taken, and name of the photographer.

Remember to click on the save button after you have filled out all blocks. Repeat the process for each exhibit. The system will compile a list of your exhibits at the bottom of the page.

### **Document Links Page**

Not all data that you have entered into the system will print in the final report. This page will allow you to view your report in draft in the manner it will print. There are 2 choices. You can view your report with or without exhibits.

### **Submit Report Page**

On this page you submit the report to your supervisor by clicking the button. You can unsubmit the report on this same page. You may also make notes to your supervisor in the space provided. The system automatically e-mails your supervisor that your report is ready and includes any notes you have entered.

The following reports are considered supplemental reports and are submitted as exhibits in the Inspection/Investigation Report.

### **SECTION 8.4 - SHIPMENT OBSERVATION REPORT**

The purpose of this form is to record, in an orderly fashion, data concerning shipments of hazardous materials or containers suitable or used for the shipment of hazardous materials. The form may be used alone during shipment observations at carrier freight facilities, NVOCC facilities, consignee locations, and container user facilities, or may be used in conjunction with the General Inspection Form during container manufacturer, reconitioner, rebuilder, repairer, or shipper inspections. This form may also be used to record information concerning carrier violations observed so that they can be forwarded to the proper modal administration. The Shipment Observation Report is found in Appendix A of this manual.

### **SECTION 8.5 - BOX OBSERVATION REPORT**

The purpose of this form is to record, in an orderly fashion, data concerning boxes used in the shipment of hazardous materials. The form may be used in conjunction with the General Shipment Observation Report Form during shipment observations at carrier freight facilities, NVOCC facilities, consignee locations, or shipper inspections. A Box Observation Report Form is found in Appendix A of this manual.

### SECTION 8.6 - DRUM OBSERVATION REPORT

The purpose of this form is to record, in an orderly fashion, data concerning drums used in the shipment of hazardous materials. The form may be used alone during drum manufacturer inspections or in conjunction with the General Shipment Observation Report Form during shipment observations at carrier freight facilities, NVOCC facilities, consignee locations, or shipper inspections. A Drum Observation Report Form is found in Appendix A of this manual.

### SECTION 8.7 - IM PORTABLE TANK OBSERVATION REPORT

The purpose of this form is to record, in an orderly fashion, data concerning IM Portable tanks used in the shipment of hazardous materials. The form may be used alone during IM Portable Tank manufacturer inspections or in conjunction with the General Shipment Observation Report Form during shipment observations at carrier freight facilities, NVOCC facilities, consignee locations, or shipper inspections. An IM Portable Tank Observation Report Form is found in Appendix A of this manual.

### SECTION 8.8 - RAM OBSERVATION REPORT

The purpose of this form is to record, in an orderly fashion, data concerning Radioactive packages used in the shipment of hazardous materials. The form may be used in conjunction with the General Shipment Observation Report Form during shipment observations at carrier freight facilities, NVOCC facilities, consignee locations, or shipper inspections. A RAM Observation Report Form can be obtained from DHM-41.5.

### SECTION 8.9 - CYLINDER OBSERVATION REPORT

The purpose of this form is to record, in an orderly fashion, data concerning compressed gas cylinders used for the shipment of hazardous materials. The form may be used alone during shipment observations at carrier freight facilities, NVOCC facilities, consignee locations, and cylinder filling facilities or may be used in conjunction with the Enforcement Report Form during cylinder manufacturer, retester, rebuild, repair, or shipper inspections. A Cylinder Observation Report Form is found in Appendix A of this manual.

### SECTION 8.10 - CYLINDER RETESTER INSPECTION REPORT

The purpose of this form is to record, in an orderly fashion, data concerning inspections of cylinder requalification facilities subject to the Hazardous Materials Regulations. This report outlines the equipment, documentation and reference material required by the regulations in performing visual and hydrostatic testing required by the HMR. Testing personnel must be able to demonstrate their knowledge of testing requirements set forth in the HMR and the Compressed Gas Association Pamphlets which are incorporated by reference. They must also be able to demonstrate the capability of the testing equipment to perform the required tests to the degree of accuracy required by the regulations. A Cylinder Retester Inspection Report Form is found in

Appendix A of this manual.

### SECTION 8.11 - CYLINDER REPAIR & REBUILD FACILITY INSPECTION REPORT

The purpose of this form is to record, in an orderly fashion, data concerning inspections of cylinder repair or rebuild facilities subject to the Hazardous Materials Regulations. This report outlines the equipment, documentation and reference material required by the regulations in repairing or rebuilding cylinders as required by Section 173.34 of Titles 49, Code of Federal Regulations. Testing personnel must be able to demonstrate their knowledge of Section 173.34 and the Compressed Gas Association Pamphlets C-1, C-6, C-6.1 and C-6.2. They must also be able to demonstrate the capability of the testing equipment to perform the required tests to the degree of accuracy required by the regulations. A Cylinder Repair & Rebuild Facility Inspection Report Form can be obtained from the Cylinder Program Manager.

### SECTION 8.13 - DOT 39 CYLINDER MANUFACTURER INSPECTION REPORT

The purpose of this form is to record, in an orderly fashion, data concerning inspections of DOT 39 specification cylinder manufacturers subject to the Hazardous Materials Regulations. This report outlines the equipment, testing, and documentation required by Section 178.65 of Title 49, Code of Federal Regulations. A DOT 39 Cylinder Manufacturer Inspection Report can be obtained from the Cylinder Program Manager.

## CHAPTER 9

# ENFORCEMENT PROCEDURES

### SECTION 9.1 - PURPOSE

This chapter provides the necessary information for you to properly prepare the appropriate actions resulting from inspections or investigations. It is not to be construed as a modification, alteration, or revision of the Hazardous Materials Regulations. Any legal proceeding instituted against a person must be based on the official regulations found in the Code of Federal Regulations, Title 49, Parts 100-180, published annually by the Government Printing Office. If supervisors are unsure of the appropriate action in a given situation they should consult with the Director, OHME or the Assistant Chief Counsel for Hazardous Materials Law.

Because the primary purpose of PHMSA's enforcement activities is to bring about compliance with the regulations, you must encourage apparent violators to take remedial actions for the immediate situation and corrective actions to avoid future violations. This encouragement should include answering questions and providing information to assist companies and individuals in understanding the regulations and determining what remedial and corrective actions might be taken. You should explain what satisfactory remedial or corrective actions have been taken in similar cases and should refer the involved parties to other appropriate sources of information, such as the Office of Hazardous Materials Standards, the Office of Hazardous Materials Special Permits & Approvals, the Office of Hazardous Materials Initiatives & Training, the Office of Hazardous Materials Technology, industry associations, and standards-issuing organizations.

The basic principle is that the manufacturer, retester, reconditioner, repairer or reconditioner of DOT specification or UN standard packaging and the shipper of hazardous materials (as well as anyone else subject to the HMR) is fully responsible for knowing and complying with the regulations. Therefore, your responsibility is to assist the company or individual in doing so. To avoid allegations or lawsuits contending that an Investigator seized someone's property or violated someone's rights, you should make it very clear that you are merely providing advice on compliance and are not ordering anyone to do anything (See Section 5.10, Imminent Hazard/Potential Violation ).

## SECTION 9.2 - GENERAL

Following the inspection, you shall meet with the supervisor to discuss the outcome of the inspection or investigation, summarizing the areas of non-compliance, if any were noted. You will prepare an Inspection/Investigation Report (ININREPT) in the HMIS and submit it to your supervisor, and receive final approval for accuracy from the supervisor within 60 days. The ININREPT shall be prepared in accordance with the procedures prescribed in the manual.

Upon receiving the report, your supervisor will review the report for accuracy of regulatory, policy, and procedural issues and verify that the report has been prepared in accordance with the manual. If probable violations were noted, your supervisor will review the evidence submitted in support of the allegations. If the report is found to be incomplete, inaccurate, or not to meet the desired quality standards, your supervisor shall return it to you for revision.

## SECTION 9.3 - NO VIOLATION REPORT

When no discrepancies are discovered during an inspection or investigation, you will complete an ININREPT minus the violation pages in the HMIS. You must complete the report. It is the only record of your inspection or investigation. Upon receiving an inspection report that cites no violations, your supervisor will review the report to determine that your judgment was correct and that no further action should be taken. If your supervisor concurs with your report, the report will be closed.

## SECTION 9.4 - ADVISORY LETTER

On occasion, you may encounter a situation during an inspection where the company is not actually in violation of a regulation, but is performing some action or procedure which, if not corrected, could lead to a violation. Such a situation is usually termed as a quality control (QC) item. Upon obtaining evidence from observations or other sources or upon completion of an inspection or investigation where only quality control items were noted, you should prepare an Advisory Letter for your supervisor's signature. The HMIS system will generate a template automatically or you may use a free form template also found in HMIS. A copy of the Exit Briefing and QC page(s) of the ININREPT will be enclosed with the letter. An example of an Advisory Letter is shown in Section A-3 of the Appendix.

## SECTION 9.5 - WARNING LETTER

When you have evidence resulting from observations or other sources or upon completion of an inspection or investigation where probable violations were noted of a less serious nature, your supervisor may advise you to prepare a Warning Letter. For your purposes, you prepare this in the same manner as you would prepare a civil penalty case. The HMIS system will generate the Warning Letter upon approval of your report by your supervisor. A copy of the Exit Briefing and the violation pages of the ININREPT will be enclosed with the letter. An example of a Warning Letter is shown in Section A-3 of the Appendix.

## SECTION 9.6 – TICKET FOR NONCOMPLIANCE

When you have evidence that a violation has occurred that has an indirect effect on safety, your supervisor may advise you to prepare a report for a Ticket for Noncompliance. A ticket is issued for a penalty that is 50% of the penalty stated in the penalty guidelines listed in 49 CFR, Part 107, Subpart D, Appendix A. A ticket may not be issued when the Office of the Chief Counsel has declined to issue a civil penalty in a civil penalty case, unless the Office of the Chief Counsel specifically instructs you to do so. The ticketing program is discussed in detail in Chapter 14 of this manual.

## SECTION 9.7 – CIVIL PENALTY CASE

When your inspection or investigation has resulted in probable violations of a serious nature your supervisor will refer the report directly to the Office of the Chief Counsel accompanied by a memorandum with the supervisor's recommendations. Chief Counsel has the final authority to issue or decline a civil penalty action. You will work closely with the attorney assigned to handle the civil penalty action, providing technical advice and in the capacity of a factual witness. All original documents are to be retained until the Office of the Chief Counsel has completed their action. Civil penalty case procedures are discussed in detail in Chapter 10 of this manual.

## CHAPTER 10

### ENFORCEMENT ACTION PROCEDURES

#### SECTION 10.1 - GENERAL INFORMATION

PHMSA's enforcement procedures for preparation and initiation of civil penalty enforcement and other actions are found in 49 CFR, Part 107, Subpart D, Sections 107.301-339. Included in Section 107.310 is the ticketing program, which will be discussed in detail in Chapter 14. This chapter of the Operations Manual will focus on your involvement in the enforcement process.

#### SECTION 10.2 - COMPLIANCE ORDERS AND CIVIL PENALTIES

PHMSA's Associate Administrator for Hazardous Materials Safety (AAHMS) and the Office of the Chief Counsel (PHC) have the authority to take action for knowing violations of the Hazardous Materials Regulations. The AAHMS has authority to issue warning letters and tickets, and has delegated this authority to OHME. PHC has authority to issue compliance orders and/or civil penalties.

#### SECTION 10.2.1 - NOTICE OF PROBABLE VIOLATION

If, following an inspection or under other circumstances, OHME believes that a person has committed substantive and/or serious violations of the regulations, OHME refers these violations to PHC for action, either to initiate proceedings to assess penalties or to seek a remedy. PHC receives a case referral and assigns it to an attorney. The attorney, in most cases, will contact you and confer with you about the case, asking questions, clarifying issues, and perhaps asking for additional information and/or documentation. You will cooperate with PHC attorneys. You should contact the OHME Enforcement Officer regarding any issues concerning this process.

After review and clarification of the referral package, the attorney prepares and issues a Notice of Probable Violation (NOPV). This is the basic document used by PHMSA to bring civil penalty enforcement actions. The NOPV provides information about the violations, the maximum penalties authorized, and the penalties proposed by PHMSA. It will also contain a handout describing the courses of action available to the recipient of the NOPV, known in the procedures as the respondent. If the NOPV also proposes a compliance order, the NOPV will include a statement of the proposed actions to be taken by the respondent to achieve compliance. Note that the violations at this point are only allegations and that the penalty is only proposed; the case

could still be modified or even withdrawn, if subsequent facts warrant it.

The respondent has 30 days to respond to the NOPV and has three choices: pay the penalty, submit an informal response, or request a formal hearing before an Administrative Law Judge (ALJ). If the respondent pays the penalty, you have no further involvement in the case, which is closed out by PHC. Requests for ALJ hearings will be discussed in Section 10.2.3.

If the respondent elects to submit an informal response, the respondent may submit a written response to PHC, request an informal conference, or both. If a written informal response is submitted, the attorney will provide a copy to you for your evaluation and input. This will normally be accomplished via e-mail or a telephone call.

#### SECTION 10.2.2 - CONFERENCE

If an informal conference is scheduled, you and the attorney shall arrange to talk about it in advance, and you will go over any major issues that might arise. Informal conferences are usually conducted over the telephone; occasionally they will be conducted face-to-face.

The attorney is the moderator of an informal conference and shall lead the discussion. You are present to provide factual statements about the inspection itself and to address statements made by the respondent about the inspection or any other matter of which you are aware. You and the attorney will conduct a post-conference debriefing to go over the conference and any issues needing resolution.

#### SECTION 10.2.3 - ADMINISTRATIVE LAW JUDGE HEARINGS

If a respondent requests an ALJ hearing, PHC will determine whether or not the alleged violations and the regulatory or other issues involved in the case warrant the time and expense of a formal hearing and whether or not there is an issue of legal interpretation which requires decision. Before making a formal request for the services of an ALJ, PHC will attempt to resolve the issues informally. If this cannot be accomplished, then PHC will request an ALJ and the parties will prepare for a hearing. Your role in a hearing is largely the same as in an informal conference, except that you may be called to appear as a witness for the government and testify under oath. In the event that a hearing is scheduled, the attorney shall inform you of what you need to do.

#### SECTION 10.2.4 - ORDER

Following the evaluation of an informal response, the information provided in an informal conference, or the testimony in an ALJ case, an Order will be issued formally finding that violations have or have not occurred and assessing a civil penalty and/or compliance order. An Order issued after the informal process is issued by the Chief Counsel; following a formal hearing, the Order is issued by the ALJ. The respondent has two alternatives in response to an Order--pay it or appeal the decision.

Your involvement in a case normally concludes with the issuance of an Order.

#### SECTION 10.2.5 - APPEAL

A respondent may elect to appeal an Order. The appeal is directed to the PHMSA Administrator. In the case of an Order issued by an ALJ, PHMSA may also appeal the decision. A case involving an appealed Order will be assigned to an attorney in PHC other than the attorney who handled the case up to the Order. This attorney represents the Administrator and conducts an independent review of the entire case file.

You will only be involved in an appeal if requested by PHC if the respondent is challenging material facts or issues related to the inspection or other matters which directly involve the inspector. Otherwise, PHC will provide OHME an information copy of the respondent's appeal.

The Administrator's decision in an appealed case is called an Action on Appeal. The Administrator may uphold the Order, modify the order by eliminating violations and/or reducing the assessed penalty, or may dismiss the case entirely. If not dismissed, the respondent's only option, under the regulations, in response to the Administrator's decision is to pay the penalty.

#### SECTION 10.3 - CRIMINAL PENALTIES

From time to time, you may encounter a situation which involves very serious violations of the regulations and apparent willful intent on the part of the violator. In such situations, PHMSA has the discretion to initiate a criminal investigation. However, since you do not have criminal investigative authority, PHMSA's recourse is to request involvement of the Department of Transportation's Inspector General.

OHME and PHC management will work together to decide on a course of action for a criminal investigation. You will participate in the development of actions plans and will receive instructions regarding how to proceed.

#### SECTION 10.4 - INJUNCTIVE ACTION

The PHMSA Administrator may seek relief from the Department of Justice for persons engaged in or about to engage in any act or practice involving a violation of the Federal hazardous materials transportation law or regulations issued there-under. This relief could be in the form of mandatory or prohibitive injunctive relief, interim equitable relief, and punitive damages. Relief of this type would most often be sought when PHC determines that there is a substantial likelihood that death, serious illness, or serious personal injury will result from the transportation of particular hazardous material or hazardous materials container. Such a situation is usually termed to be an imminent hazard situation. Relief could be sought prior to any other action or proceeding to reduce the risk of harm of the situation.

You should be alert during your field activities to the possibility of such events and report them to your supervisor immediately if you believe such a situation to exist. PHC and OHME management will provide guidance and direction to you as necessary in the event of such a situation.

#### SECTION 10.5 - PROCEDURE FOR REMOVAL OF NONCONFORMING PACKAGING FROM SERVICE

When a nonconforming packaging is identified, including during the course of an inspection or investigation, OHME will collect all available data on the manufacturing process and the performance of the packaging. In consultation with the Office of Hazardous Materials Technology (OHMT) and the Office of Chief Counsel (PHC), OHME will make an initial assessment of the hazard and risk presented by the nonconforming packaging using criteria in Section 10.5.1. Should inadequate information be available to make an initial assessment, OHME will request that the alleged violator take immediate action to develop the information necessary to make an assessment of the hazard and risk presented by the nonconforming packaging. At a minimum, such actions must include testing of random samples of the nonconforming packaging and analyses of potential variance in packaging properties and performance. Based upon the initial assessment of hazard and risk, OHME will determine the appropriate action that will be taken, based on the following:

1. If an "imminent hazard" exists (i.e., there is a substantial probability that death or serious injury will occur from frequent worker or public exposure to hazardous materials or frequent packaging failures), OHME will request immediate action by the alleged violator to remove the packaging from service or other action to ameliorate the hazard presented by the suspect packaging. PHC will initiate action under Section 49 U.S.C. 5122 of the Federal hazmat law if necessary to eliminate or ameliorate the imminent hazard. In addition, PHMSA will publish an appropriate notice in the Federal Register and other appropriate publications about the defective packaging, if deemed necessary to protect the public. Finally OHME will initiate appropriate enforcement action, through PHC, as described below in paragraphs 2 and 3.
2. If a "lesser hazard" exists, OHME will request that the alleged violator take appropriate and timely corrective action. Such action may include additional analysis and/or testing to determine the nature and extent of the problem and costs and consequences of actions including removal of packaging from service, retrofitting, derating, operational controls and notification to customers. Publication in the Federal Register and other publications will be determined on a case-by-case basis. OHME will initiate appropriate enforcement action, through PHC, which may include a compliance order under Section 109(a) of the Federal hazmat law or withdrawal of an exemption or approval (if applicable).
3. If "very minimal or no hazard" exists, OHME will initiate appropriate action through PHC.

## SECTION 10.5.1 - ASSESSMENT GUIDELINES FOR NONCONFORMING PACKAGINGS

Based upon the type of noncompliance and its consequence, packaging manufactured in noncompliance with a marked standard specification may or may not be unsafe for service. DOT Specifications and U.N. standards often contain substantial factors of safety to provide a margin of safety, allow for unknown and unexpected factors and unintentional variations in manufacture, and provide for long package life. In addition, many packages are often operated below their design conditions which provide an additional factor of safety and reduced public risk when operated in such a manner. For example, welded low pressure cylinders are often used to transport materials with a vapor pressure well below the service pressure of the cylinder, thus adding an additional factor of safety to that built into the specification. For these reasons, a hazard and risk assessment must be performed on a case-by-case basis. In consideration of safety factors built into specification packaging, a variation of 5% or less from values for material properties, test conditions, acceptance criteria, minimum wall thickness, or marked values are of very minimal or no safety hazard.

Recalls of packaging or removal of standard, specification, or special permit markings from a large group of packaging, thereby prohibiting their use in hazardous materials service, is a very serious action with potentially very large economic and safety consequences. Such actions should be taken only when the impact of such actions is understood and taken into consideration. Such actions can often bankrupt a manufacturer and a number of its customers or create health and safety problems greater than they alleviate. A risk assessment matrix and a risk index are provided to give guidance in relating failure consequence and frequency of occurrence and in ranking the resultant risk (see Figure 10.1, at the end of the chapter). The following are factors that must be considered when assessments of hazard, risk and recall or safety countermeasures are performed:

1. What is the expected failure mode? Rupture, leakage, permanent expansion or reduced performance in an accident environment?
2. What are the hazards and consequences of the expected package failure mode and of the release of the hazardous materials transported?
3. How many packages are involved and in what service are they used?
4. What is the worker and public exposure to the subject packaging?
5. What is the likely packaging failure rate resulting from the package defect? How does this rate compare to other package and transportation system failure rates?
6. Are alternative packaging available? Alternative packaging are often not available for many special permit or specialized packaging.
7. What are the safety consequences of removing packaging from service? Many hazardous materials and packaging provide health and safety benefits for society. Removal of such materials or packaging, particularly when no or few alternatives are available, may create greater health and safety risks than those alleviated by removing nonconforming packaging. A large increase in trips or the number of alternative packaging can increase the probability of deaths and injuries from increases in transportation, loading, and unloading accidents.

8. What are the economic impacts of removing packaging from service on packaging manufactures, shippers and end users of the packaging or materials transported?
9. What other options are available? De-rating, operational controls, retrofit, or phased removal from service?
10. What are the best methods of reaching persons who possess nonconforming packaging? What is the probability of success? A defect should be considered an "imminent hazard" when there is a substantial probability that death or serious injury will occur from frequent worker or public exposure and frequent packaging failures. An imminent hazard requires immediate public notification of the hazard and initiation of actions to eliminate or ameliorate the imminent hazard.

A defect should be considered an "imminent hazard" when there is a substantial probability that death or serious injury will occur from frequent worker or public exposure and frequent packaging failures. An imminent hazard requires immediate public notification of the hazard and initiation of actions to eliminate or ameliorate it.

#### SECTION 10.6 - PENALTY GUIDELINES

At the end of Subpart D of Part 107 there is an appendix which provides extensive information about how PHMSA goes about recommending and setting penalties for the violations described in civil penalty enforcement cases. You will review the guidelines and be familiar with both their theory and application.

Figure 10.1

## RISK ASSESSMENT MATRIX

Frequency of Occurrence Categories	Consequence of Occurrence Categories				
	(I) Catastrophic	(II) Critical	(III) Marginal	(IV) Minor	(V) Negligible
(A) Frequent	(IA) U	(IIA) U	(IIIA) U	(IVA) C-MDR	(VA) A-MRR
(B) Probable	(IB) U	(IIB) U	(IIIB) C-MDR	(IVB) A-MRR	(VB) A-MRR
(C) Occasional	(IC) U	(IIC) C-MDR	(IIIC) A-MRR	(IVC) A-MRR	(VC) A
(D) Remote	(ID) C-MDR	(IID) A-MRR	(IIID) A-MRR	(IVD) A	(VD) A
(E) Improbable	(IE) A-MRR	(IIE) A-MRR	(IIIE) A	(IVE) A	(VE) A

### RISK INDEX:

IA,IB,IC,IIA,IIB,IIIA	U	UNACCEPTABLE
ID,IIC,IIIB,IVA	C-MDR	CONDITIONAL - MANAGEMENT DECISION REQUIRED
IE, IID, IIIC, IVB, IVC VA, IVB, VB,	A-MRR	ACCEPTABLE - MANAGEMENT REVIEW REQUIRED
IIIE, IVD, IVE, VC, VD, VE	A	ACCEPTABLE

## CHAPTER 11

### PURCHASING HAZARDOUS MATERIALS FOR TESTING

#### SECTION 11.1 - PURPOSE

The purpose of this chapter is to provide you with guidance for implementation of the OHME Hazardous Materials Testing Program: the safety considerations you need to take into account; how much you need to buy for testing; how you will pay for samples you want; how you maintain the chain of custody for samples; and other information.

#### SECTION 11.2 - SCOPE

OHME purchases or obtains samples of materials by three methods: (1) directly from a vendor at origin, with OHME taking physical possession of the samples and delivering them to laboratory facilities; (2) directly from a vendor at origin, with OHME identifying and tagging the samples it wants, and having the vendor ship them to laboratory facilities; or (3) indirectly from a vendor, by arranging with a company in the same business to order samples on OHME's behalf. In determining which method to use, you need to consider the relative risks to the public of different types of suspected violations; those risks are reflected in the baseline penalties prescribed for different types of violations in OHME's Guidelines for Civil Penalties (Appendix A to Subpart D of 49 CFR Part 107).

#### SECTION 11.3 - PROCEDURES

##### 11.3.1 - Safety

You should exercise reasonable care and discretion in selecting materials for testing. When you are selecting materials for testing, you must consider the following:

- \* Potential risk during transportation or storage incident to transportation due to the nature or quantity of the material involved.
- \* Previous experience with the hazardous material or regulated entity.
- \* Ability to safely transport the product in question to a laboratory.

\* Cost of testing.

You may ask any regulated entity to provide a sample of one or more hazardous materials it offers for transportation. You may request a sample which we believe may not be in compliance or you may request a sample solely to check the identified classification. You may choose to either obtain a sample at the manufacturer's facility or purchase a sample of the product at a customer location.

Prior to accepting a hazardous material for testing, thoroughly review the Material Safety Data Sheet (MSDS) and any other available safety data concerning the material. If you have any doubt in regard to transporting the specimen safely in a government vehicle, **don't**. Under no circumstances will you offer or cause to be introduced a hazardous material for transportation in commerce, unless authorized to do so in writing by the Associate Administrator for Hazardous Materials Safety. In those instances involving commercial transportation and where the subject entity is alleged or suspected to be in violation of any applicable rule, regulation or civil/criminal statute involving hazardous material, OHME will evaluate the nature of the suspected offense, the investigatory steps anticipated, and the associated risk prior to any indirect purchase.

If purchasing materials through another entity is the only feasible way to purchase a material, and such purchases potentially involve the commercial transportation of hazardous material, inform your supervisor, who will notify the Enforcement Officer or the Director in OHME Headquarters.

All parties will discuss the logistics of the planned purchase to assure that the transportation risk is acceptable and that all safety precautions are taken.

### 11.3.2 - Quantity

In purchasing samples for testing, obtain only the minimum amounts necessary to conduct valid testing. Make sure that you obtain materials which are packaged as they ordinarily are shipped. You may purchase the material in question from a shipper or distributor, in gallon, quart, or pint quantities, packaged as sold by the shipper.

Once a product is identified for testing, request the smallest possible sample sufficient to facilitate accurate testing (usually 100 grams for solids or 100 ml for liquids is sufficient). A product packaged in the supplier's original packaging is preferred as long as the quantity is reasonable. One gallon or one pound are the maximum quantities that you should obtain for most testing. Disposal charges are usually included in the testing contract, so large quantities of excess material are discouraged. Never draw or extract raw samples themselves since specialized clothing and safety training covering hazardous materials handling is required.

### 11.3.3 - Reimbursement

A company may provide the material at no cost to the government. If reimbursement is requested, you may pay for the material and later make a claim for reimbursement on a travel or taxi voucher. Please document all transactions and obtain clearly verifiable receipts. You may also pay for a sample by using the regional office's I.M.P.A.C. (credit) card. In this situation, you

should follow regional access and security policies relating to its I.M.P.A.C. accounts. With prior coordination, a purchase order can be arranged. Purchases may never be made using your personal Government credit card.

#### 11.3.4 - Chain of Custody

Once the sample is turned over to you, treat it as evidence. Secure and seal the closure device with OHME standard evidence tape. Identify each product with the report number and, if several products are involved, add a unique suffix, e.g. 96422050-A, 96442050-B, etc. Make sure to shield the material from extremes in temperature and light and deliver it to the lab as soon as possible. Take a photograph of the material prior to departing the inspection site, and obtain a Material Safety Data Sheet (MSDS) and sample Bill of Lading. Provide a copy of the MSDS to the testing lab for its reference and safe handling of the material.

#### 11.3.5 - Notification

For accounting and tracking purposes, please notify your supervisor about the purchase as soon as possible. Prepare any other tracking forms according to your unit's Standard Operating Procedures (SOP). Once the contract lab performs its tests and the results indicate the material to be in probable violation, you should send the results to the company using the approved notification letter provided (see example below). If the material does not comply with the regulations, you should make arrangements with the testing lab to store the remaining material to facilitate additional or subsequent testing should the test results be challenged.

#### SECTION 11.4 - POLICY REGARDING ANIMAL TESTING FOR CORROSIVITY

When arranging for testing of materials for corrosivity, please inform the prospective laboratory that you want testing to be conducted using the Corrositex® testing protocol, when testing using animals is not required. Advise the laboratory that testing using animals is to be conducted only when absolutely necessary.

#### SECTION 11.5 - REMINDER

Keep in mind that the purpose of this program is to safely purchase packaged samples of hazardous materials. Never deliberately expose yourself to raw chemicals of any kind if at all possible.



U.S. Department  
of Transportation

XXXXXXX Region  
Office of Hazardous  
Materials Enforcement

Region Street Address  
Suite XXX  
City, St 00000

**Pipeline and Hazardous  
Materials Safety Administration**

April 8, 2008

Via Certified Mail - Return Receipt Requested

Mr./Ms.  
Title  
Organization  
Address  
City, ST Zip

Dear:

On \_\_\_\_\_, an Investigator from this office conducted a compliance inspection in accordance with 49 U.S.C. Section 512<sup>®</sup> at your manufacturing facility. In question was the classification, packing group assignment, and packaging for [several of your products] one of your products. Following the inspection, the Investigator obtained a sample [samples] of this product[s] and submitted them to an independent testing laboratory for analysis. The results of those tests are attached and forwarded for your information, comment and action.

Your company classified the product XXXXXXXXX, as a Packing Group \_\_\_ material. Laboratory analysis of the product indicates the packing group for XXXXXXXX is Packing Group \_\_\_.

Please provide this office with your justification and methodology for classifying the product[s] referenced above. You may submit any documentation to support your classification, including laboratory test results and any other information you believe relevant to the matter. If you agree that your packing group classifications are incorrect, please take immediate corrective action to prevent any further violation of the Hazardous Materials Regulations and provide us with information and documentation concerning that corrective action. Please respond within five working days of receipt of this letter.

You may direct any questions concerning this correspondence to the Investigator at (---)\*\*\*-\*\*\*\*/FAX (\*\*\*)\*\*\*-\*\*\*\*.

Sincerely,

XXXXXXXXXXXXXXXXXXXX  
Chief, XXXXXXXX Region

OpnsMan-07/01/07

Enclosures:

(Letterhead)

June 1, 1997

[Laboratory POC Name here]

[Laboratory Name Here]

[Laboratory Street Address]

[Lab City, ST Zip]

**REQUEST FOR LABORATORY SERVICES**

In accordance with the Blanket Purchase Agreement (BPA) no. 000-0000, request you perform the following laboratory analysis of the product(s) specified and return your completed report to the address above, ATTN: XXXXXXX X. XXXXXXX, Chief, XXXXXXX Region.

<b>PRODUCT NAME:</b>	<b>CURRENT CLASSIFICATION/HAZARD CLASS/ID NO./PACKING GROUP:</b>
<b>QUANTITY:</b>	<b>DESCRIPTION OF CONTAINER/PACKAGING:</b>
<b>REPORT NUMBER:</b>	
<b>DELIVERED BY:</b>	<b>BILL OF LADING/AIRBILL NO.:</b>
<b>TEST(S) REQUESTED:</b>	<b>IAW 49 CFR Section:</b>
<b>DETERMINATION OF FLASH POINT (TCC) (ASSIGNMENT OF PACKING GROUP):</b>	173.120/173.121
<b>CORROSIVITY (ASSIGNMENT OF PACKING GROUP):</b>	173.136/173.137
<b>DERMAL AND ORAL TOXICITY (ASSIGNMENT OF PACKING GROUP):</b>	173.132/173.133/173.134
<b>ACCOMPANYING DOCUMENTATION:</b>	<b>IDENTIFYING MARKS BY COMPANY:</b>
<input type="checkbox"/> MSDS	

OpnsMan-07/01/07

<input type="checkbox"/> SHIPPING PAPERS	
<input type="checkbox"/> LAB REPORT	IDENTIFYING MARKS BY INVESTIGATOR:
<input type="checkbox"/> OTHER _____	
PHOTOGRAPHS TAKEN: YES NO	RECEIPT ACKNOWLEDGED:
DATE COMPLETED:	
COMMENTS:	

## CHAPTER 12

### PACKAGING COMPLIANCE TESTING PROGRAM

#### SECTION 12.1 - PURPOSE

The purpose of this chapter is to provide you with guidance for implementation of the Office of Hazardous Materials Enforcement's (OHME) Packaging Compliance Testing Program. Please consult with your Region Chief (RC) and the Packaging Program Manager (PPM) prior to all packaging purchases.

#### SECTION 12.2 - SCOPE

OHME engages in independent confirmation testing of UN standard packagings intended for hazardous materials transportation. Independent testing ensures that UN standard packagings are capable of passing all tests prescribed in the Hazardous Materials Regulations (HMR), 49 Code of Federal Regulations.

OHME utilizes the U.S. Army Materiel Command, Packaging, Storage and Containerization Center, Logistics Support Activity (LOGSA) laboratory at Tobyhanna, PA, to conduct the testing. OHME and LOGSA have had an interagency agreement since 1996. Designs submitted by OHME to LOGSA are subjected to design qualification testing as prescribed in the HMR. The testing is digitally recorded, available via web. A formal written report and access to the recording are provided for each project.

The PPM will periodically provide the RC's with a list of designs of interest for purchase. Purchases will be based on data driven, risk-based principles. However, you may make unscheduled purchases during the course of an inspection or investigation if you feel the situation warrants. All purchases must be driven by risk principles. Please consult with your RC and the PPM. Contact information for the PPM, Anthony Lima, is as follows: (856) 265-3054 (mobile), (775) 307-4971 (e-fax) and [anthony.lima@dot.gov](mailto:anthony.lima@dot.gov).

#### SECTION 12.3 - PROCEDURES

##### 12.3.1 - Sources

UN-rated non-bulk and intermediate bulk (IBC) packagings may be purchased from a number of sources, including packaging manufacturers and reconditioners, self-certifiers, and end-use customers. The preferred source is from manufacturers, preferably during a facility inspection.

Packagings purchased from manufacturers or reconditioners should be obtained from existing inventory or pulled from production. If a design of interest is not in inventory or production

during the inspection, do not request production of the design. Precautions should be taken to ensure that packaging pulled from production meet standard design specifications for sale to customers. Specification sheets, production records and test reports should be obtained and carefully reviewed to determine that no design changes have been made for compliance testing purposes.

The second preferred source for packagings would be from distributors or end users. If an inspection of the distributor or end-user is not warranted or possible due to pending enforcement action, the investigator may attempt to schedule a visit for the sole purpose of purchasing packaging. Note that end-users are not required to sell packaging to PHMSA. You may ask for them to sell packagings, but you may not force sale. If packaging is obtained from an end-user, advise them that they are not responsible for design compliance, only the manufacturer or certifying party are held responsible. In the case where the end-user is the certifying party, such as when they have contracted for the manufacture and testing of the design for their own use then they are the responsible party. The HMR provides that the manufacturer or certifying party must either submit packaging samples for testing or demonstrate performance testing.

Regardless of source for purchases, the investigator must determine that each unit is identical in all respects to the current test report and closure notification statement, including marked ratings, thicknesses of steel, closure, inner parts and pieces for combination packaging, absorbent material, etc. The design must be compared against the current test report and closure instructions to ensure that no changes have been made after testing and certification. The test report and assembly and closure instructions must be provided to LOGSA for review before the purchase will be executed.

For other than reconditioned drums, each unit must be identical in all respects. For reconditioned drums, the marked certification may not be higher than the manufacturer's certification. Each reconditioned drum must be permanently embossed with the original UN certification. The reconditioner's marked certification may not be higher than the permanently embossed certification on the bottom of the drum.

### 12.3.2 - Quantities

Single packaging - 24 units

Combination packaging - 20 units

Intermediate bulk containers – 5 units

Regulated medical waste poly bags (red bags) – 20 units

**When a packaging has multiple marked certifications, e.g., X1.8, Y1.4 and Z1.2, etc., purchase one complete set for every certification. LOGSA will conduct testing for each mark. Separate report numbers should be assigned for each certification. Separate inspection reports should be prepared for each certification.**

### 12.3.3 – Evidence collection

Photographs of the entire lot of packaging must be taken. Detailed photographs of one or more

individual units must be taken. Photographs of individual units should capture all markings and design details. A detailed observation report for each design must be created. The observation report should include the investigator's name, report number, date of observation, location, packaging manufacturer or certifier, total number of units, all available package markings, dimensions, and all component parts.

Each set of packaging must have a report number assigned to it by the investigator. Each unit must have the report number applied on evidence tape, preferably near the UN certification.

#### 12.3.4 - Documentation

The investigator must obtain a valid test report and closure instructions for each design prior to purchase commitment. For reconditioned drums, closure instructions must be obtained from the vendor. If the vendor is not the reconditioner, e.g., a distributor, ensure that the reconditioner's original closure instructions are obtained prior to purchase commitment.

For new packaging, the test report must match the design in question. Assembly and closure instructions must be obtained. If the test report does not provide sufficient detail to replicate the design as it was tested by the certifying party, the design must not be purchased. Contact the PPM if necessary for guidance. If the current test report can not be obtained from the manufacturer or certifying party, the design must not be purchased. If the test report is for periodic testing, obtain the original design qualification test report for comparison to the periodic report. The investigator may ask the vendor to hold the packaging for a short period of time while the test report and closure are obtained. The vendor is not obligated to do so.

The investigator may not commit to purchase, or mark the units with evidence tape, until a valid test report and closure instructions are obtained and reviewed for completeness. The investigator must ensure that LOGSA will be able to replicate the assembly and closure and conduct design qualification based on the design qualification (and periodic retest if applicable) test report. If the current test report indicates that the design was subjected to periodic retesting, obtain the original design qualification test report to determine if any changes were made that would invalidate the certification. Supply the periodic test report and the original design qualification test report to LOGSA. Consult with the PPM if guidance is necessary.

The investigator must obtain a written quote from the vendor at the time of purchase commitment, or shortly thereafter if transportation charges must be determined. The quote must provide the U.S. DOT/PHMSA as the customer. The investigator's name and report number should be identified on the quote for LOGSA tracking purposes. The total quantity of units must be detailed along with the manufacturer's name, the design type and UN certification string. If more than one design is to be purchased, the investigator shall instruct the vendor to detail each design separately on the quote. Transportation charges should be a separate line item.

The quote must be provided to LOGSA as soon as possible. Facsimile transmission is acceptable. The vendor may forward the quote to LOGSA on the investigator's behalf. The primary point of contact at LOGSA is Ms. Charlotte Lent. LOGSA's facsimile number is (570) 895-7823. Ms. Lent's direct-dial phone number is (570) 895-7160.

As soon as possible, but no longer than 5 business days after the quote as been obtained, the investigator shall forwarded the quote, test report, closure instructions and a written request for purchase and transportation arrangements to LOGSA. LOGSA will not, without permission from the PPM, arrange for purchase and transportation without a complete quote, valid test report(s), closure instructions and written request from the investigator to purchase the design. Additional information on LOGSA notification can be found in Chapter 12, Section 12.3.7.

### 12.3.5 - Reimbursement

All packaging purchases must be made by LOGSA on behalf of OHME. Two methods for reimbursement are available to the vendor. For purchases under \$3,000, including transportation charges, LOGSA will arrange for payment via credit card, or check if the vendor does not accept credit cards. If the purchase totals more than \$3,000, including transportation charges, a purchase order will be prepared by LOGSA.

**If multiple designs are purchased and the total cost is greater than \$3,000, the vendor may prepare separate quotes. In this case the transportation charges should be split between the quotes to keep the total expense for each quote at or below \$3,000.** If the vendor is unwilling to prepare multiple quotes, a purchase order will be necessary. Purchase orders can take several weeks to prepare and execute.

### 12.3.6 - Packing and Shipping

The investigator must notify the vendor to hold the packagings until LOGSA contacts them for release authorization.

The investigator shall advise the vendor that all integral components for the packagings, including locking rings, nuts and bolts, gaskets, bungs, inner bottles, caps, absorbent material, tape, etc., must be included in the shipment. When the vendor has the ability to consolidate packagings with shrink-wrap, stretch-wrap, banding, etc., they should take these additional precautions to protect the packaging for transportation. **Packagings should be transported on pallets when available.**

The packagings must be consigned to:

U.S. Army Material Command (LOGSA-PSCC)  
ATTN: AMXLS-AT (Charlotte Lent)  
Warehouse 2, Bay 5  
11 Hap Arnold Boulevard  
Tobyhanna, PA 18466-5097  
(570) 895-7160

### 12.3.7 – LOGSA notification by Investigator

Once the investigator makes a commitment to purchase packagings, a written request to arrange for purchase, transportation and testing must be forwarded to LOGSA within 5 business days. The correspondence (e-mail is sufficient) must include the vendor quote, test report, closure notification and observation report. The supporting documentation should be attached as Adobe Acrobat files. Ms. Charlotte Lent's e-mail address is, [Charlotte.lent@us.army.mil](mailto:Charlotte.lent@us.army.mil).

The following is an example of the correspondence to LOGSA -

March 13, 2007,

Charlotte A. Lent  
HAZMAT Pkg Testing Team Leader  
USAMC LOGSA PSCC  
Logistics Testing & Applications Division  
11 Hap Arnold Blvd., Building 2  
Tobyhanna, PA 18466-5097

Dear Ms. Lent,

On March 13, 2007, I made arrangements with Drum Manufacturer Co., Inc. (DMC), Washington, D.C., for the purchase and transportation of twenty-four, 55-gallon, tighthead, steel drums, each marked UN1A1/1A1/Y1.2/100/USA/06/M0000. The quote was provided to you via facsimile on February 11, 2007 (attachment). The report number is 06471001. The report number is marked on each packaging. An observation report was prepared that provides additional information about the design (attachment).

Please arrange for purchase, transportation and testing in accordance with our agreement, DTPH56-05-X-0009. Please review the design qualification test report, compare the packages described versus the packaging received, document the packages and components, fill, close and test the packages per the required regulations, and prepare reports documenting the specific details of the tests performed. Operative non-bulk packaging directives are found in 49 CFR, Sections 173.24 and 173.24a. Actual test requirements are found in Section 178.600.

The point of contact at DMC is... Ms. can be reached at... If I can be of any assistance, please contact me at (office), (cell), or (e-mail).

### 12.3.8 – Hazardous Materials Information System (HMIS) entry

Within 7 business days from the LOGSA notification, an HMIS entry must be created by the investigator. The entry should identify the vendor as the company of record. The primary inspection code is "41". The secondary primary code should correspond to the business of the vendor – manufacturer (type), distributor, shipper (type), etc. The HMIS entry must provide all available design information in the Package Testing area. The summary must detail the number

of samples purchased, the UN certification, manufacturer's name and location (plant where applicable), size, closures and all other available information. A separate entry for the manufacturer or certifying party, as appropriate, should be prepared when the vendor is not the responsible party for marking and certification.

#### 12.3.9 – Testing Documentation

At the completion of testing, LOGSA will forward a copy of their test report to the investigator as a Word document attached to an e-mail. The investigator shall forward the test report to the respondent with the exit briefing. The test report should be provided to the respondent even when the design passes all tests.

LOGSA will also upload video of the testing, and a copy of the test report to OHME's website – <ftp://phmhqnas005.ad.dot.gov/>. LOGSA will notify the investigator and the PPM in an e-mail that the video and test report are available for download. The investigator must notify the manufacturer or certifying party as soon as possible that the video and test report are available for download. Provide the PPM with the responsible party's name for credentials to be issued for the video and test report download. Access to the website will be provided for a limited time. The investigator should also download the video for storage on the region's network drive. The PPM will arrange for indefinite credentials for the investigator. If an enforcement action is taken, the Office of Chief Counsel attorney assigned the case will also be given credentials for video download. Note that the videos must be downloaded for viewing to ensure that the regional office and customer take ownership of the clips. Each separate test will be its own video clip. Each video clip or file will be stored in a folder named for the report number assigned to the purchase. Credentials provided to customers will allow them to view and download only the folder and files they are given permission to access. A physical copy of the video will not be provided by LOGSA to the respondent, investigator, PPM or counsel. The original video will be maintained by LOGSA and the PPM on network drives.

#### 12.3.9 - Cite

If packaging failures are determined, please use the following basic format for the probable violation summary:

“Represented, marked, certified, sold and offered steel drums (combination packagings, composite packagings, intermediate bulk containers, etc., as appropriate) marked UN1A1/X1.3/250/05/USA/+ZZ0123 when the containers were not capable of passing the drop test prescribed in Sections 178.\*\*\* in violation of the Hazardous Materials Regulations (HMR), 49 CFR, Sections 171.2(c) and (g), 178.2(b), and 178.601(b).”

## 12.4 – Corrective Action Testing

The goal of the compliance testing program is to ensure hazardous materials packaging safety. In certain circumstances, respondents should be offered the opportunity to submit an improved or replacement design for additional testing, if the original design fails LOGSA testing. The PPM and Enforcement Officer receive copies of LOGSA's test reports and will make the determination if corrective action testing is appropriate based on the number of total failures, severity of failures, type of failures (hydrostatic, leak, drop, etc.) and corrective action correspondence. Reconditioned drums and reconditioned IBC's are not suitable for corrective action testing.

Corrective action testing will only be offered after the respondent has been provided the test report and video and has had an opportunity to correspond. If the respondent fails to respond to the exit briefing, corrective action testing will not be offered. If the respondent argues that the failures are due to issues regarding LOGSA testing or testing methods, or because of the length of time between production and testing at LOGSA, the enforcement officer will determine if the respondent will be offered corrective action testing. If the respondent corresponds that the failures can be attributed to design, production, packaging components or quality control issues, and they have taken steps to correct the issue(s), corrective action testing should be offered.

The investigator should advise the respondent that if the improved or replacement design fails any of the required design qualification tests, a separate enforcement action will not be taken. The goal of corrective action testing is to work with the respondent to improve the design. Regardless of the outcome of the corrective action testing, the results will be forwarded to counsel. If the design passes all required tests, the results will serve as mitigation.

The respondent must provide a written affidavit that the improved or replacement is intended for sale to customers. If OHME determines after the fact that the respondent has produced the packaging for LOGSA testing only, OHME may take civil and or criminal action against the respondent. The respondent should be advised why the affidavit is required.

A compliance inspection at the manufacturer's production facility should be conducted in conjunction with submission of the packagings for corrective action testing, when possible. If the manufacturing facility was inspected at the time of the original purchase, and no violations were noted, or an inspection can not be arranged, the manufacturer may ship the packaging directly to LOGSA. In that case the PPM will mark the packagings for the investigator.

The respondent should be asked to submit the second set of packaging and transportation charges at no cost to the government. The investigator will assign a new report number for the corrective action testing. The investigator must notify LOGSA per the requirements in Chapter 12, Section 12.3.7 that a design will be submitted for corrective action testing. LOGSA must be told to reference the original test report number in the corrective action test report. LOGSA will closely examine the second set of packagings and detail any noticeable differences.

Regardless of LOGSA's test results, the investigator will prepare a second report for the corrective action test results. The report should include the first report, in its entirety, as an

exhibit. A reference to the first report should be included in the summary, along with a statement that the report is for informational purposes only and is being submitted in support of the original report. No probable violation write-up is necessary. Background information and other necessary details to explain the situation should be included in the summary. See HMIS report 06415001 for an example.

An HMIS entry for the corrective action testing should be created. All required fields should be populated, including testing details. The codes should be the same as the first entry. The action status should be "NFA" for no further action. The entry will be used to identify that the respondent participated in corrective action testing and to provide the results of the tests.

If a respondent declines to participate in corrective action testing, consideration by the enforcement officer may be given to purchase the design from another source.

#

## **CHAPTER 14**

### **TICKETING PROGRAM**

#### **§107.310**

#### **SECTION 14.1 - PURPOSE**

The OHME ticketing program was created to streamline administrative procedures, cut costs, and reduce regulatory burdens on persons subject to the Federal hazardous materials transportation law. It currently covers certain violations, most of which have no substantial or direct impact on safety, but which involve regulatory requirements mandated by Federal hazmat law. However, OHME has discretion to modify violation criteria based on programmatic and other considerations.

The ticketing program affords a respondent the opportunity to respond to a violation of the HMR by agreeing to pay a significantly reduced penalty and waiving the right to full adjudication by the PHMSA Office of the Chief Counsel via the civil penalty process described in 49 CFR Part 107, Sections 107.311-107.327.

#### **SECTION 14.2 - SCOPE**

Some violations which may be addressed under the Ticketing Program are listed below:

- Failure to conduct hazardous materials training or maintain records thereof.
- Manufacture of certain packaging with DOT specification markings after October 1, 1994, when no longer authorized to do so.
- Use of certain DOT specification packaging after October 1, 1996, when such packaging are no longer authorized.
- Failure to register as a shipper of hazardous materials when required.
- Continuing to operate under an expired special permit.
- Failure to file a hazardous material incident report.
- Failure to provide closure instructions for closing a packaging

- Failure to follow a manufacturer's closure instructions

Processing of any other violations under this program or in conjunction with one of the violations indicated above must first be approved the OHME Enforcement Officer or the Director, OHME. Such violations are authorized for incorporation only when there is little or no direct impact on the safe transportation on hazardous materials.

### SECTION 14.3 - PROCEDURES

#### 14.3.1 - Investigator Actions

Once you confirm authorization to process an ININREPT as a Ticket, the actions you take are very similar to those for an Enforcement Report, with the following modifications:

- Select the "Ticket" option on the Interview/Investigator page in the HMIS where the drop down list is labeled Action.
- Continue with your report as directed in Chapter 8 of this manual.

#### 14.3.2 - Unit Chief Actions:

After reviewing and approving an ININREPT for a ticket, the unit chief, or his or her designee, prepares the Ticket. As a minimum this includes:

- Adding the issue date to the ticket form.
- Selecting a company type designator and the OHME unit designator on the Approval page in HMIS. The first two sections of the ticket number (05T-0001) are automatically provided by HMIS.
- Verifying the respondent name, address and "Attn" party printed on the form by HMIS.
- Preparing a narrative of the violation[s], individual penalties and total penalty assessed.
- Indicating the full guideline penalty.
- Signing the ticket electronically.

#### 14.3.3 - Notification

Notification involves mailing the original ticket along with a copy of the signed enforcement

report to the company involved. The ticket is mailed via certified mail with a return receipt attached. If new information becomes available which necessitates a change in a ticket, a superseding ticket may be issued (see page 14-6). When this occurs the issuing unit must notify the FAA and the Enforcement Officer of the amount of the superseding ticket and any adjustment in suspense. It is recommended that the sequence number on the superseding ticket's tracking number have the letter "S" added as a suffix to eliminate confusion in ticket tracking.

#### 14.3.4 - Tracking

Tracking of a ticket involves ensuring that the HMIS has been properly completed. PHH-40.1 will enter the appropriate information in the enforcement data sets. When the return receipt is received at the issuing unit, the respondent has 45 days to respond to the ticket. Once the return receipt is received scan a copy into the HMIS and proceed as follows.

#### Tracking Begins

#### Response Options

#### OHME Actions

	Company elects to pay the ticket	Ticket and payment are sent by the company to the FAA. FAA in turn notifies PHC, which then notifies PHH-40.1, who then notifies the issuing OHME unit
Ticket receipt date noted on U.S. Mail return receipt	Company elects to submit an informal response to PHMSA's Office of the Chief Counsel.	Issuing unit notifies the FAA so FAA does not begin collection efforts. The original ticket, signed by the company, and enforcement report are forwarded to PHH-40.1
	No response received by the issuing unit w/I 55 days of ticket receipt.	Issuing unit notifies the company that failing to respond they have waived their right to a hearing and admitted the violation. The office then provides a copy of the letter to the FAA and collection efforts are initiated.

#### 14.3.5 - Nonresponse

When a company fails to respond to a ticket the issuing unit will send a letter via certified mail, return receipt requested, which informs the party involved that by not responding it has waived the right to a hearing and has admitted the violation[s] as set forth in the Ticket. A copy of this letter is forwarded to the FAA. This action alerts the FAA to commence collection efforts.



**U.S. Department of Transportation  
Pipeline and Hazardous Materials Safety Administration  
Office of Hazardous Materials Enforcement**

## TICKET FOR NONCOMPLIANCE

**DATE:** April 8, 2008

**TICKET NUMBER:** 05T-0001-XX-XX

**RESPONDENT:** [Company Name Here]  
[Company Street Address Here]  
[City, St, Zip 08215  
Attn.: Mr.

### STATEMENT OF VIOLATION AND PENALTY

[Company Name, City, State], failed to conduct safety, general awareness or function specific training for twenty hazmat employees in violation of 49 CFR, §§ 172.704(a) and 171.2(a) and is assessed a penalty of \$1,200. Xxxxxx also failed to register as a shipper of hazardous materials in violation of 49 CFR §§ 107.608 and 171.2(a) and is assessed a penalty of \$500. Xxxxxx is assessed a total combined penalty of \$1,700.00

If, within 45 days of receipt of this ticket, you pay the penalty, this matter will be closed. If you submit an informal response or request a formal hearing, you may be subject to the full guideline penalty of \$ ~~3,400.00~~. If, within 45 days, you do not remit the ticket amount, submit an informal response, or request a formal hearing, you will have admitted the violation and will owe the ticket penalty to the Department of Transportation. RSPA encourages you to submit a statement, which may be included with your response, about corrective action which has been taken to remedy the stated violation.

XXXXXXX X. XXXXXXXXXXX  
Chief, XXXXXXX Region

### RESPONSE OPTIONS

**Within 45 days of receipt of this ticket, please choose one of the following options:**

1. I choose to pay the amount stated above for this ticket by submitting a certified check or a money order and waive my right to a formal hearing.
2. I wish to make an informal response as authorized under 49 CFR §107.317.
3. I am requesting a formal administrative hearing as authorized under 49 CFR §107.319.

**If you choose to pay the ticket, make certified check or money order payable to the "U.S. Department of Transportation" and send with a copy of this ticket to Chief, Financial Operations Division, Federal Aviation Administration, Mike Monroney Aeronautical Center, AMZ-300, P.O. Box 25770, Oklahoma City, OK 73125.**

**Regardless of option selected, please sign below and attach any information, including a statement of corrective action, you believe relevant to the matter and mail to the Region Chief, 820 Bear Tavern Road Suite 306, W. Trenton, NJ 08628. If you have any questions, call the Region Office, 609-989-2256.**

Signature and Date

Printed Name and Title

### PENALTY AUTHORITY

**Administrative assessment of civil penalties is authorized under 49 U.S.C. §5132, which provides for a penalty of not more than \$32,500 and not less than \$275 for each violation of the Hazardous Materials Regulations.**

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## **CHAPTER 15**

### **REINSPECTION PROGRAM**

#### SECTION 15.1 - PURPOSE

OHME conducts reinspection of entities previously assessed a civil penalty via Ticket for Noncompliance or Civil Penalty Case to determine the current level of compliance and to measure its own effectiveness. A reinspection is conducted in the same manner as any other inspection, without prejudice or special emphasis in any area. All functions subject to the requirements of 49 CFR are evaluated with respect to the regulations in effect at the time of the inspection.

The results of our reinspections measure the effectiveness of our efforts in gaining compliance with the regulations. The statistics provided by the reinspection program have been recognized by the Department as an intermediate outcome measure for reporting under the Government Performance and Results Act (GPRA). Each year the PHMSA performance plan includes a percentage goal of compliance reinspection leading to enforcement actions (cases and tickets), with the aim to lower the percentage. For this reason, among others, it is imperative that each of us give emphasis to obtaining corrective action when violations to the HMR are discovered.

The GPRA measure applies only to reinspections of companies with prior civil penalty cases. Although we are also reinspecting companies who have been issued tickets, those statistics are not included in the GPRA measure.

#### SECTION 15.2 - SCOPE

An organization with a prior civil penalty enforcement action becomes eligible for reinspection no earlier than one year following the issuance by the PHMSA Chief Counsel of an uncontested Order. An organization with a prior ticket action becomes eligible for reinspection no earlier than six months following the close-out of the ticket. Normally, the Director, OHME, will oversee preparation and distribute to the six units a list of eligible reinspection candidates which is updated periodically. You will not conduct reinspections of companies with appeals pending or with open enforcement actions, except as directed by the Director, OHME, or his representative. An exception to the open case prohibition is companies who are paying penalties on payments plans; they are eligible to be reinspected provided they meet all of the remaining requirements. An enforcement action pending against one facility of a corporation would not preclude you from conducting an inspection or reinspection of one of the corporation's other facilities.

### SECTION 15.3 - PROCEDURES

Each unit chief will determine the percentage of reinspection to be conducted in a given quarter based on enforcement priorities in the region and guidance from the Director. Wherever possible, as you prepare to conduct reinspections, you should familiarize yourself with the previous enforcement action in order to verify compliance. During the entrance interview you will inform the company representative that the inspection is being conducted under OHME's reinspection program. The inspection does not differ from a routine compliance inspection. The inspection is recorded in the HMIS as a reinspection on the "Attributes" page and the previous case or ticket number is recorded. Due to the nature of the reinspection program, it is essential for you to thoroughly document all hazardous material functions observed during the inspection.

# CHAPTER 16

## Enforcement Recommendations

### SECTION 16.1 – PURPOSE

The Office of Hazardous Materials Enforcement is the office within PHMSA that has the most contact with the regulated in their operating environment. OHME staff not only engage the public in detailed conversation, but have the opportunity to scrutinize their operations thoroughly. Because of this we have the responsibility of being the eyes and ears of PHMSA. It is not enough that we report when the regulated public may not be complying with the HMR, we also have the responsibility of advising the appropriate office when we observe that a regulation or special permit may be deficient or obsolete. For this purpose, the Director, OHME has established the Enforcement Recommendation program.

### SECTION 16.2 – PROCEDURES

When in the course of your inspections and investigations you observe a situation which appears to indicate that the HMR or a special permit may be deficient, outdated, or that they simply do not address and should address, you are to document that situation just as you would document noncompliance on the part of the regulated public. You shall take photographs, obtain documentation, prepare observation reports, and take detailed notes supporting what you have seen.

Upon returning to your office you will prepare a memorandum for your supervisor's signature, through the Director, OHME, to the appropriate Office Director. The memorandum will as a minimum include the following:

- A detailed description of what you observed, when you observed it, where you observed it, and who was present when you observed it.
- A statement of what you believe is deficient or obsolete.
- Supporting evidence that helps the staff in the Headquarters office responsible to understand the issue. Remember, they were not with you and must rely on you for all the detail they have to understand the problem and initiate corrective measures.

- Recommendations on what you actions you believe are necessary to correct the problem. Your recommendations should be specific. It is not enough to say change the HMR. State how you would recommend that the HMR be changed or the special permit modified. Be part of the part of the correction, not just the discoverer of the problem.
- Your memorandum will be numbered for easy reference and tracking purposes. A spread sheet is located on the “P” drive to facilitate numbering. The spread sheet is named Enforcement Recommendations.

There is an example of an Enforcement Recommendation in Appendix A to this manual to assist you with format.

## CHAPTER 17

### Investigator Safety

#### SECTION 17.1 – INTRODUCTION

By the very nature of your employment you are frequently exposed to an environment where safety is paramount. You work with **hazardous materials**, materials that have been found to present some level of inherent risk to safety of personnel and/or the environment. Further, you are a representative of the agency responsible for safety of hazardous materials in transportation. It is, therefore, incumbent on you to set a good example for those who observe your actions.

No single chapter in any manual could possibly address all of the safety issues that an investigator should know about in the hazardous materials field. Volumes of safety material have been written and you will continue to train and learn about safety for as long as you are active in this field. Therefore, this chapter will endeavor to provide some basic rules and get you thinking about the subject.

The Office of Hazardous Materials Enforcement has not had a hazmat related injury to any of its staff in the long history of the program. Exercise caution and follow some basic safety rules and you will enjoy a healthy rewarding career.

#### SECTION 17.2 – BASIC SAFETY PRACTICES

The safety practices which follow are mandatory and may not be waived without the permission of the Director, OHME.

- At no time will OHME personnel knowingly open hazardous materials packaging to the point where hazardous materials are exposed. OHME personnel may open combination packaging to view the inner packaging. However, the inner packaging may not be breached for any reason without prior permission of the Director, OHME. This practice will be done only when you have the ability to restore the package to its original condition, i.e. close the outer packaging in a manner consistent with the manufacturer's instructions. If absolutely necessary that you confirm what condition a hazardous material is in, you may request that the owner open the package for you if proper facilities are available. If the owner does not feel the package can be opened safely, you are not to force the issue.
- At no time are OHME personnel to open any level of packaging containing explosives, radioactive materials, poison by inhalation materials, or infectious substances.
- When opening vans, freight containers, box trailers, and other enclosed transport vehicles that contain hazardous materials, first secure the doors with a safety strap prior to opening to ensure the load has not shifted against the door and prevent spillage if load

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shifting has occurred, after the doors have been opened and secured, wait several minutes for an air exchange to take place within the vehicle. Some hazardous materials give off vapors that permeate through the package. You may be overcome if you enter the freight container or vehicle immediately after opening.

Van, freight container, box trailer and other enclosed transport vehicle inspections requiring entry into the container should always be conducted as a two investigator team with one investigator always positioned at the doorway, never enter the unit alone and NEVER allow yourself to be shut inside of a unit even to determine the leakproofness of seals.

When exiting a van, freight container, box trailer and other enclosed transport vehicle, or leaving a freight dock area, always climb down using stairs, ladder rungs and /or ladders; never jump down from the unit or the dock.

- Never handle leaking packages of hazmat without the benefit of protective gear and guidance from someone who is technically qualified.
- No person is to conduct explosives or radioactive materials inspections without having received the appropriate training and prior permission from the Special Investigations Program Manager.
- No person is to conduct explosives manufacturer inspections without having received the appropriate training from the Explosives Program Manager and prior permission from the Special Investigations Program Manager and Chief, Special Investigations.
- No person is to conduct radioactive materials inspections without an approved form of dosimetry monitoring device.

The safety practices listed below are provided as guidance. OHME staff are to give these practices due consideration whenever they are working in a hazardous materials environment.

- Use caution when climbing on top of cargo tanks, tank cars, or portable tanks. Surfaces may be slippery from water, oil, ice or snow. Do not proceed if you know the surface is not safe.
- Wear leather work gloves when handling freight.
- Observe the safety practices employed by the entity you are visiting. If they wear hard hats, they can often provide one to you. If they wear lab coats, they can often provide that to you. They know their environment.
- When lifting, bend your knees and keep your back relatively straight. Do not bend over at the waist and lift. You can quickly injure your back by improper lifting. Ask for assistance when moving freight around. The company is experienced and equipped for the job.

- Do not jump from loading docks. Use the stairs or ramps to get down to ground level.
- Always wear eye protection in manufacturing environments.
- Ear protection is necessary in many manufacturing and shipping facilities.
- Be aware of vehicles operating in the area. Ports and warehouses have heavy vehicle traffic activity.

These are but some of the safety practices you must be aware of in the course of your daily activities. Always be aware of your surroundings and use good judgment. When you are not sure, check with your supervisor.

### SECTION 17.3 – MANDATORY SAFETY EQUIPMENT

At a minimum, each OHME Investigator will have the following safety equipment with them during field activities:

- ANSI approved Safety glasses. If you wear prescription glasses, PHMSA will reimburse you for one pair each time your prescription changes, or after the glasses become unserviceable due to fair wear and tear.
- Ear plugs, 2 sets. Remember to clean them frequently, or use disposable ear plugs.
- Leather work gloves, 1 pair. These should be made of heavy leather to protect hands during freight handling or puncture resistant mechanics gloves.
- Steel toed shoes, ANSI approved. You are working in an environment where proper foot protection is a must, PHMSA will reimburse you for one pair each time the shoes/boots become unserviceable due to fair wear and tear.

PHMSA will provide or reimburse you for the above equipment. Check with your supervisor before purchasing the equipment to verify the procedures for obtaining the equipment.

### SECTION 17.4 – ADDITIONAL SAFETY EQUIPMENT

Some of the activities you will become involved in will warrant the use of additional safety equipment. Port activities, MASFOs, and Boarder Crossing operations all have additional requirements for safety equipment. Some of the equipment that may be required is as follows:

- Rubber gloves
- Reflective vests
- Polypropylene shoe covers

- Work boots
- Coveralls or lab coats
- Plastic face shields
- Hard hats
- Flashlights

The list is endless. Check with your supervisor before engaging in special activities. Your supervisor will assist you in obtaining the right equipment.

#### SECTION 17.5 – ACCIDENT/INJURY REPORTING

You are to report even the smallest injury, cuts, scrapes, etc. to your supervisor immediately. In a chemical environment even the smallest cut can become infected. Reporting injury will preserve your right to workers compensation and other employee benefits you may be entitled to receive.

#### SECTION 17.6 – PERSONAL SAFETY

By the very nature of our business, enforcement, people are not always happy to see us. This is especially true if they know they have not been conducting business in accordance with the Hazardous Materials Regulations, or if they have previously been cited for violations of the HMR. That being said, most people behave professionally. However, there are some who become overly emotional.

If you encounter a situation where someone becomes overly aggressive or threatens you with violence, get out! Go to a safe place and contact your supervisor. Supervisors will consult with the Director, OHME to determine how to proceed.

If you are struck or molested in any way, contact the local law enforcement agency and your supervisor immediately. Supervisors will contact the Director, OHME and the Office of the Chief Counsel.

Always maintain vigilance regarding your surroundings, the environment and the inspected individual's bearings towards you as an investigator and as an individual (profession, gender and/or race). Be aware of what is going on around you so you can react appropriately. Never attempt to remain and engage an overly aggressive individual.

#### SECTION 17.7 – VEHICLE SAFETY

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In the course of your duties you will have occasion to operate government owned vehicles (GOVs) and rental vehicles. A rental vehicle that is being rented on behalf of the government, for which the government is reimbursing you, is a government vehicle. You will always operate these vehicles in a manner which is safe and in compliance with local laws and ordinances.

Some rules to remember when operating a GOV (or rental car) are as follows:

- **ALWAYS WEAR YOUR SEATBELT.** The Department of Transportation mandates serious penalties for employees who fail to wear seatbelts. After all, you are a DOT representative and must set the example.
- The government self insures itself. You are not permitted to allow non-government personnel to ride in or drive a GOV or rental car (except under the most exigent circumstances) unless you have received clearance from the Director, OHME.
- You are not to operate a GOV or rental car when you have consumed alcohol or are under the influence of drugs, legal or illegal. Prescription and over the counter drugs have advisory labels warning you when you should not operate vehicles while taking the medication. If taking these drugs causes impairment, you are to advise your supervisor when you are taking medication that precludes driving.
- You must be aware of road conditions and drive within the limits of the road conditions. Rain, snow, ice, fallen leaves, and high winds all affect how your vehicle will behave on the road.
- You should conduct a walk around inspection of your vehicle each day before operating it. Give special attention to lights, directional signals, tires, brakes, wipers, steering, and any other safety features.
- You must obey local laws and ordinances. As the operator, you are responsible for violation citations. Further, you can be personally liable if you have an accident as a result of violations you have committed. You must have a driver's license to do your job. If you lose your license, you may not be able to perform your duties and could be discharged.
- Cell Phone and/or Blackberry usage while operating a motor vehicle is highly discouraged and should only be done until the operator can reach a point of safety off the roadway (some cities and states only allow hands free operation of cell phones while driving). Additionally, text messaging while driving is forbidden as an office policy.

Safety is a full time job. Your job! Be aware and be safe. Refer all safety concerns to your supervisor for guidance.