

How to Prepare for, Manage and Survive a DOT Inspection

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About the Speaker



Isaac Powell:

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Managed 3E's Regulatory Reporting,
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Currently Product Manager for 3E Technical Services which includes Emergency Response, Hazardous Waste Management, Transportation, Classification & Regulatory Reporting Services

CHMM and a current member of the AWMA, ACHMM, National Fire Protection Association & International Code Council.

BA in Economics from at the Univ. of Michigan, Ann Arbor

Agenda

- Enforcement Agencies
- Inspections and Enforcement
- Selection of companies
- Scope of review
- Preparing for an inspection
- Penalties
- Common Mistakes to Avoid

Major Transportation Regulations

- **DOT** – U.S. Department of Transportation
 - **HMR** – Hazardous Materials Regulations
- **IMDG** - International Maritime Dangerous Goods Code
- **IATA** - International Air Transport Association Dangerous Goods Regulations
 - **ICAO** – International Civil Aviation Organization
- **TDG** – Canadian Transportation of Dangerous Goods

Common Shipping Terms

- **Carrier** - a person engaged in the transportation of passengers or property by land, water, or air via common, contract, or private carriage or civil aircraft.
- **Shipper** - Offeror of a hazardous material for transportation, aka Consignor
- **Receiver** - Intended/final recipient of a hazmat shipment, aka Consignee
- **Incident** – Unintentional release of a hazardous material from a package in any quantity

Enforcement Agencies



Under delegations from the Secretary (49 CFR Part 1)



Other Enforcement Agencies

- **TSA** – Transportation Safety Administration
- **CBP** – US Customs & Border Protection
- State Highway Patrol
- Local Police

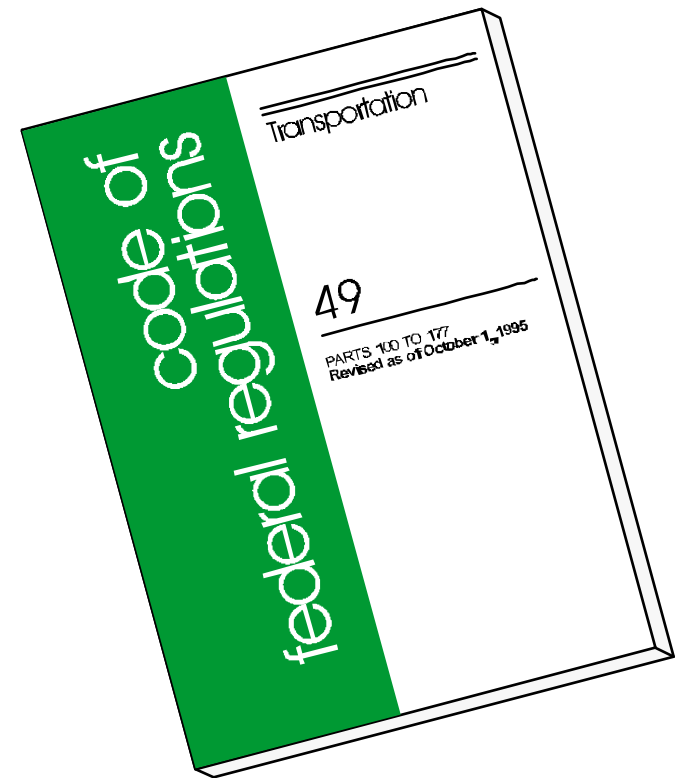
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- Carriers (Undeclared Hazmat Report)

PHMSA Programs

- Hazmat Standards
- Exemptions and Approvals
- **Inspection and Enforcement (OHME)**
- Publications and Training
- Information Analysis and Planning
- Technical Support
- International and Interagency Coordination

OHME Mission

- Investigate Hazmat accidents / incidents involving package failure.
- Inspect Hazmat packaging manufacturers and shippers.



Pipeline and Hazardous Materials Safety Administration (PHMSA)

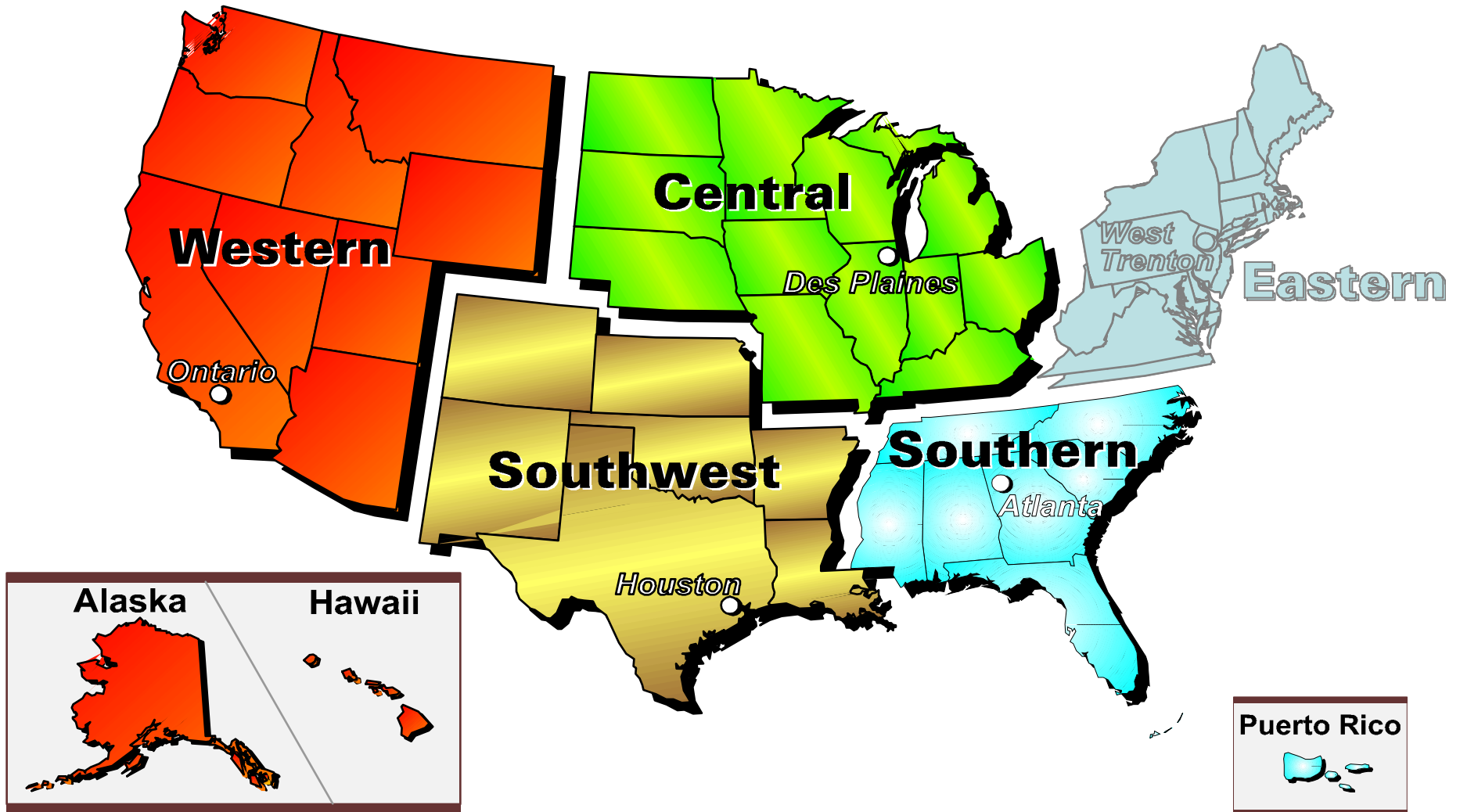
- Multi-Modal Oversight Program
- Risk based - data driven organization
- Enhancing safety by reducing risk
- Prioritize enforcement activity based on risk
- Swift and aggressive enforcement action against negligent violators

OHME Structure

- 5 Regional Offices
 - 42 Investigators
 - Special Investigations Unit
-
- Packaging a fundamental component of the inspection program



PHMSA Hazmat Safety Enforcement Regional Offices



Enforcement

Who must comply with the 49 CFR
Hazardous Materials Transportation
Regulations?

Any person, individual or company who:

- * Offers or Accepts
- * Transports
- * Packages or provides packaging for

A hazardous material in commerce.

Inspection and Enforcement

- Inspections can be unannounced.
- Over 3,000 inspections are performed per year.
- In 2006:
 - 420 civil cases closed
 - \$2.23 mil in penalties collected

How Companies are Selected

- Ranked in priority based on the risk of endangerment to the public, property and the environment.
- The risk assessment model defines five main color coded priority categories.
- Each category of activities is ranked by precedence of risk and hazard posed.

Priority Assessment Categories

- 1) **DARK RED** – Maximum Priority
- 2) **RED** – High Priority
- 3) **ORANGE** – Medium Priority
- 4) **YELLOW** – Priority
- 5) **WHITE** – Undetermined Activities

Activity Areas For Selection

15 Activity Areas Identified Including:

- Accident Investigations
- Allegation or complaint
- Undeclared Hazardous Materials Incident Reports
- Re-inspection of previous enforcement action
- High Risk - High Consequence Inspections
- Registration (shipper, approval, cylinder re-tester, etc.)
- Manufactures certified packaging
- Routine Inspections

Region Priority List Example:

Company	Data Type	Activity	City	State
AE Chemical	Accident	Shipper	Salt Lake	UT
Jims Transport	Complaint	Retester	Billings	MT
Quick Express	Air Incident	Shipper	Portland	OR
Esso	Incident	Shipper	Phoenix	AZ
Capco Inc	Undeclared	Shipper	Richmond	CA
Rouche	Serious In	Shppr/Carr	Salt Lake	UT
Containers Inc	High Mark	Pkg Manuf	Salem	OR
Billy-Bob Inc	Reinspect	FreightFwd	Los Angeles	CA
Stoney's Air	NvrInspected	Retester	San Fran	CA
Zip-Line Ex	SP Holder	Propane	Seattle	WA
Cleaner Chem	Registered	TIH Shipper	Tacoma	WA
ABC Inc	Undetermined	Shipper	Tacoma	WA
ACME	Undetermined	Recondition	Olympia	WA
ACELTER	Undetermined	Chem shipper	Longview	WA

Violation Determination

PHMSA must find either that:

- 1) You had actual knowledge of the **facts** giving rise to the violation, or
- 2) A reasonable person acting in the circumstances and exercising reasonable care would have that knowledge.

PHMSA does not need to find that you actually knew about, or intended to violate, requirements in the Federal hazardous material transportation law or the HMR

Enforcement Penalties

Two Penalty Types:

- Civil
- Criminal



Civil Penalties

- \$275 - \$50,000 per violation/ per day
- Up to \$100,000 if the violation results in death, serious illness, severe injury or substantial destruction of property
- Minimum \$450 penalty for training violations

Criminal Penalties

For willful or reckless violations:

- Individuals: Up to \$250K & 5 yrs imprisonment
- Corporations: Up to \$500K and 5 yrs imprisonment
- Criminal penalty of up to 10 yrs imprisonment for willful violation resulting in the release of a hazardous material that results in death or bodily injury

PHMSA Criteria for Penalties

Baseline Penalty + or - :

- ✓ Nature and circumstances of violation
- ✓ Extent and gravity of violation
- ✓ Degree of respondent's culpability
- ✓ Respondent's history of prior violations
- ✓ Respondent's ability to pay
- ✓ Effect of penalty on respondent's ability to stay in business
- ✓ Such other matters as justice may require (especially corrective actions).

If You Receive a Violation

Respond within 30 Days by:

- 1) Paying the proposed assessment
 - On-line payment available through www.pay.gov
 - 2) Sending an informal response, which can include a request for an informal conference
 - 3) Request a formal hearing
-
- ✓ You can appeal to the PHSMA Administrator
 - ✓ You can propose a compromise offer

Common Hazmat Violations

- Failure to register as a Hazmat shipper
- Failure to provide training: General Awareness, Function Specific or Security Awareness
- Not preparing or retain of shipping papers
- Use of improper packaging for shipment
- Failure to follow manufacturer packaging requirements
- Offering packages for that were not marked or labeled appropriately
- Failed to develop and adhere to a security plan

Enforcement Examples:

1. Freight Forwarder: Failed to register with PHMSA
 - Penalty: \$275

2. Distributor: Failed to register with PHMSA
 - Penalty: \$825

Inspections- Scope of Review:

- Classification & Identification
- Packaging
- Hazard Communication
- Training
- Security Plans



Shipper's Responsibilities

Before a hazardous material is offered for transportation, it must be:

- ➔ **Properly classified**
- ➔ **Properly described**
- ➔ **Properly packaged**

Primary Responsibility:

- The original packager/shipper bears primary responsibility for packaging compliance
- Subsequent shippers, however, are also held responsible for compliance
- Carriers which accept and transport hazmat are also responsible—drivers must be able to recognize non-compliance when readily visible and apparent.

Choice of transportation mode

- Shipper determination
- Cost factors
- 49 CFR establishes restrictions

Classification and Identification

- Ensure hazardous materials are identified properly
- Testing products and blends as necessary
- Samples shipped in accordance with DOT guidelines

Enforcement Examples:

1. Shipper: Offered batteries, wet, non-spillable, 8, as undeclared, without shipping papers, package markings, and hazard warning labels
 - Penalty: \$12,000
2. Shipper: Offered dangerous goods in apparatus, 9, as undeclared by air by failing to declare the material as hazardous on a shipping paper, failing to mark the package with the proper shipping name and UN identification number for the material, and failing to label the package
 - Penalty: \$11,250

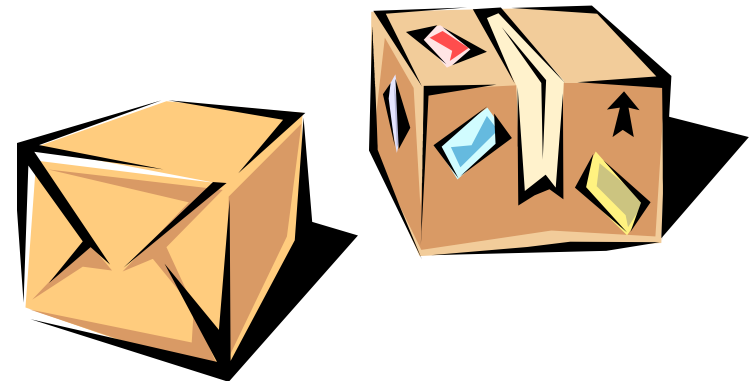
Packaging

The key to recognizing a DOT authorized packaging is to:

- Determine packaging type: non-bulk, bulk, DOT Exemption or other that is appropriate.
- Identify proper shipping description in 172.101 table and verify packaging is authorized in referenced section of Column 8(a), 8(b) or 8(c).
- Interpret UN markings in order to verify compliance

Package Selection

- Intermediate Bulk Containers (IBCs) or “Totes” (bulk= +119 gal)
- Non-Bulk: Drums, pails, jerricans & fiberboard boxes
- DOT specification cylinders (compressed gases)



Packaging examples, all of which represent certified packaging options.



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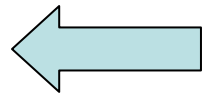


Packaging

Typical steel and plastic drums. Both types must be closed to manufacturer's specifications (see closure notification provided by supplier):



Drum closure tools:



Right! A pre-set torque wrench.

Wrong! Plain non-torque wrenches.



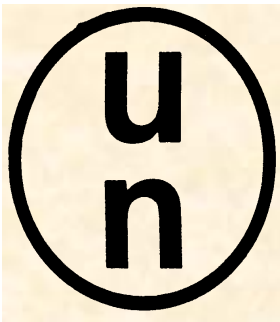
Package Details:

- Valid Certification
- Maximum Weights & Compatibility
- Package Closure & Components
- Unauthorized Variations

Interpreting UN Markings

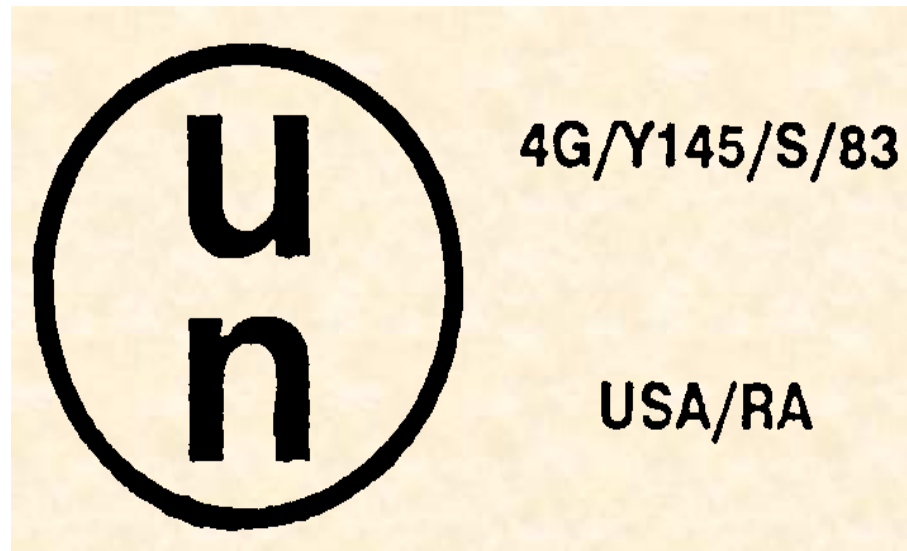
49CFR 178.503(a)(1-11)

- 1 - UN symbol as illustrated
- 2 - Packaging ID code designating type
- 3 - Letter identifying packing group - X, Y, Z
- 4 - Specific gravity (solids = max. gross mass in kg.)
- 5 - Single composite for liquid = test pressure in kPa
- 6 - Last two digits of manufacture year



1H1/Y1.4/200/98...

Interpreting UN Markings



For Packing Groups:

- X meets PG I, II and III requirements
- Y meets PG II and III requirements
- Z meets PG III requirements

Interpreting UN Markings

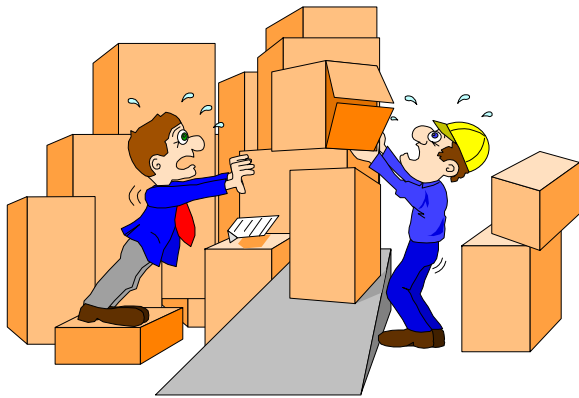


Design Qualification Test

(written report required)

- Includes:**
- * Drop Test (varies on height according to PG)
 - * Leak-proofness
 - * Hydrostatic pressure
 - * Stack Test (min. of 10 feet in height)
 - * Cooperage test (wooden barrels)
 - * Closures

Periodic retest: Single/composite = 12 months
combination = 24 months



Be sure of your product's packing group

- Often raw materials are blended with water or other non-hazardous material to create a new product.
- What was shipped to you as a packing group I or II material could now be a PG II or III, allowing different packaging choices. A PG III product could be exempt from certain regulations.

Enforcement Examples:

1. Shipper: Offered corrosive liquids, n.o.s., 8, in unauthorized non-UN standard packaging; offered corrosive liquid, n.o.s., 8, accompanied by a shipping paper that listed additional information before the basic shipping description labels
 - Penalty: \$4,930
2. Shipper: Offered regulated medical waste, 6.2, in packagings that were not securely closed resulting in a release of material and in a packaging that was not certified to the required ASTM standards
 - Penalty: \$5,250

Hazard Communication

- Shipping Papers

“Regulated Medical Waste, 6.2, UN3291, PG II”

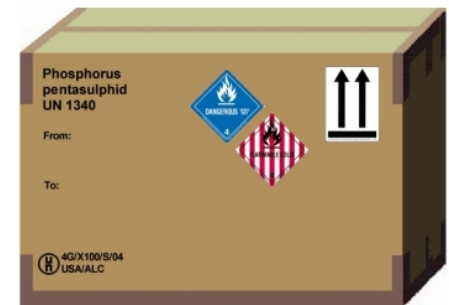
- Marking

“Regulated Medical Waste, UN3291”

- Labeling

“Biohazard Symbol”

- Emergency Response Information



Shipping Papers

- Required Information
- Shippers Certification
- Additional Information
- Record Retention
 - Min 2 yrs or 3 yrs waste manifests
 - Can be retained electronically

Figure 9-4. Example of Shipping Paper

"RQ" means that this is a reportable quantity.				Proper shipping name from Column 2 of the Hazardous Materials Table.				Hazard Class from Column 3 of the Table.				ID Number from Column 4 of the Hazardous Materials Table.			
SHIPPING PAPER												Page 1 of 1			
To:		Waters R Us 88 Valley Street Silicon Junction, CA				From:		Essex Corporation 5775 Dawson Avenue Goleta, CA 93117							
QTY		HM		DESCRIPTION				WEIGHT							
1 cyl		RQ		Phosgene, 2.3, UN1076, Poison Inhalation Hazard, Zone A				25 lbs							
This is to certify that the above named materials are properly classified, described, packaged, marked, and labeled, and are in proper condition for transportation according to the applicable regulations of the Department of Transportation.															
Shipper:		Essex Corp				Carrier:		Knuckle Bros.							
Per:		Shultz				Per:									
Date:		6/27/94				Date:									
SPECIAL INSTRUCTIONS: 24 Hr. Emergency Contact, Ed Shultz, 1-800-555-5555															

Marking

- Communicate Shipping Name and ID number
- Includes address, handling requirements
- Must match shipping paper
- Cannot indicate presence of hazmat in a package where no hazmat is present



Labeling



- Specific to size, color, shape, and images on label
- Communicates the hazard of the material, or any special warnings
- Cannot be torn, written on, or photocopied
- Other "labels" (marketing, etc) cannot look like hazmat labels

Placarding

- Communicates the hazards on a vehicle
- Designed to be seen by emergency responders from a safe distance of a vehicle
- Responsibility of OFFERER to provide placards to carrier
- Can't indicate hazardous materials on vehicle if none are present



Enforcement Examples:

1. Freight Forwarder: Failed to register with PHMSA; offered extracts flavoring liquid, 3, without describing the hazardous material on a shipping paper
 - Penalty: \$2,800
2. Shipper/Carrier: Offered flammable liquid, n.o.s. (petroleum distillates), 3, in an unauthorized non-UN standard 5-gallon open-head plastic pail; failed to properly label a package containing hazardous material
 - Penalty: \$5,600

Hazmat Training

- Complete Training
 - General Awareness, Safety, Function Specific and Security Training
- Testing
 - Commensurate with the duties performed
- Certification
 - Employer Certification of Hazmat Employees
- Records
 - Complete, Current & Function Specific

Transportation Security



(HM-232) Hazardous Materials: Security Requirements for Offerors and Transporters of Hazardous Materials;

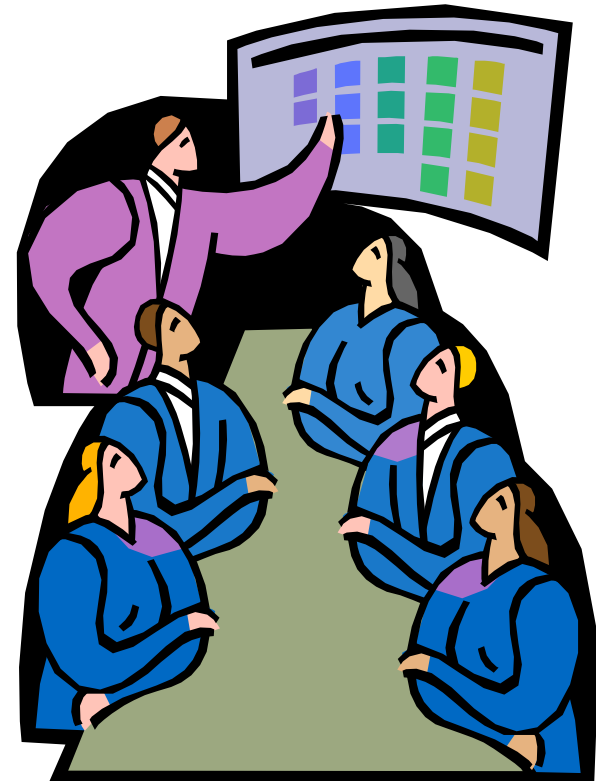
- Proposed Rule Published 5/2/2002
- Final Rule Published 3/25/2003

Security Training

Security Plans

Security Training

- ALL hazmat employees subject to training
- All training must include:
 - Awareness to security threats
 - Methods to improve transportation security
 - Recognition and response
- If required, Security Plan specifics must be covered



Security Plans



- Required for offerors of hazmat for certain materials
- Security Plans must address:
 - Assessment of Risk
 - Personnel Security
 - Unauthorized Access
 - En Route Security

Security Plans Must Also

- Be in writing
- Retained as long as in effect
- Made available to appropriate employees for implementation
- Revised and Updated as necessary for the circumstances
- If revised, all copies must be current to most recent revision



Enforcement Examples:

1. Freight Forwarder: Failed to develop and adhere to a security plan; failed to provide recurrent general awareness, function-specific, and safety training and initial security awareness training
 - Penalty: \$4,200
2. Shipper/Carrier: Failed to develop and adhere to a security plan; offered and transported fuel aviation, turbine engine, 3, with no hazardous material shipping paper; failed to provide recurrent hazmat and security awareness training
 - Penalty: \$6,705

Prepare for Your Inspection

1. Retain copies (electronic or paper) shipping papers for at least 375 days, per 49 CFR 172.201(e). Haz-waste three years.
2. Keep training records for all hazmat employees.
3. Make sure you have "closure notifications" for all UN certified packaging in use.
4. Have a copy of your security plan available.
5. Manufacturers: have copies of design qualification and periodic tests.
6. Copy of current registration

Common Mistakes to Avoid

- Be aware of modal exceptions
- ORM-D is still Hazmat
- Know who does what in your company
- Know your products, identify your hazards
- Maintain documentation
- Offer recurrent training
- Be honest with inspectors
- If your not sure, ask

PHMSA Support

Hazardous Materials Information Center (HMIC)

- Obtain answers to questions on the Hazardous Materials Regulations 49 CFR Parts 100-185
- Receive recent copies of Federal Register publications, copies of DOT special permits or letters of interpretation
- Receive copies of training material, such as Chart 12 or information packages
- Report violations of the HMR
- Leave a voice mail message concerning a question

9:00 am to 5:00 pm EST

Phone: 1-800-HMR-4922 (1-800-467-4922)

E-Mail: phmsa.hm-infocenter@dot.gov

Useful Enforcement Links

- PHSMA - www.phmsa.dot.gov
- FAA - www.faa.gov
- FRA - www.fra.dot.gov
- FMSCA - www.fmcsa.dot.gov
- USCG - www.uscg.mil
- TSA - www.tsa.gov
- CBP - www.cbp.gov

Questions?



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