

## 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 Action of 1970, 45 U.S.C. § 421 et seq.; 49 U.S.C. § 40101 et seq., formerly the Federal Aviation Action 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) – have responsibility for enforcement actions relating to transportation by air, highway, and rail, respectively. The United States Coast Guard (USCG) became part of the Department of Homeland Security, but still retains its enforcement 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, 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 Hazardous Materials Safety is responsible for carrying out the OHMS mission. The organizational chart for OHMS is shown in Appendix A of this manual. OHMS is composed of seven divisions: Hazardous Materials Standards Division (HMSD); Hazardous Materials Technology Division (HMTD); Hazardous Materials Approvals and Permits Division (HMSPAD); Hazardous Materials Enforcement Division (HMED); Hazardous Materials Initiatives and Training Division (HMITD); Hazardous Materials Program Development Division (HMPDD), and the International Standards Coordinator (HMISC).

**NOTE: This description is reflective of current Offices within OHMS with an proposed organizational name change to reflect Divisions.**

### **Hazardous Materials Standards Division (HMSD)**

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. HMSD develops rulemaking proposals and interprets the Hazardous Materials Regulations (HMR). Amendments to the HMR are issued under Part 106 of 49 CFR. International Standards develops the United States proposals for changes to international transportation regulations.

Rulemaking documents published in the Federal Register include Advanced Notices of Proposed Rulemaking (ANPRM), Notices of Proposed Rulemaking (NPRM), and Final Rules.

### **Hazardous Materials Technology Division (HMTD)**

HMTD's primary mission is to support the rulemaking, approvals, permits, and enforcement activities of the Office of Hazardous Materials Safety. It is staffed with engineers and scientists, who conduct technical review and analysis of notices of proposed rulemaking and final rules, special permit applications, approval requests and enforcement inquiries. It represents the Department at meetings of standard-setting, scientific, and technical organizations. If assistance on technical issues is needed, contact HMTD and, if required, their staff may accompany investigators on field assignments where advanced technical expertise is required.

### **Hazardous Materials Approvals and Permits Division (HMAPD)**

Technological innovations, particularly in the area of packaging always occur. Persons who wish to use a packaging or process not currently authorized by the HMR may apply for a 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 permits as long as they can meet the same standards as the original applicant. HMAPD processes all such applications. Persons who obtain authority to operate under a permit are issued a permit or party status identified by the letters "DOT-SP," followed by a four- or five-digit number. All original documents remain in HMAPD files; special permit holders or parties to a permit are issued copies. The permit becomes the regulatory document with which the person must comply and is enforceable by the agency.

The HMR contain a number of regulations requiring persons to perform some other action to be in compliance; 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. HMAPD is the division for all approval activities.

### **Hazardous Materials Initiatives and Training Division (HMITD)**

HMITD manages PHMSA's training and outreach program. HMITD, through sponsorship of the State and Local Education (SALE) program, provides a mechanism for public safety agencies to exchange information and to address issues about hazardous materials transportation and the HMR. HMITD also manages the hazardous materials registration program and the emergency response grants program, which is funded by HM registration fees.

HMITD addresses public sector training issues and develops hazardous materials training materials. HMITD develops, publishes, and disseminates hazardous materials transportation safety publications, including the Emergency Response Guidebook (ERG), Safety Alerts, and electronic training media.

### **Hazardous Materials Program Development Division (HMPDD)**

HMPDD provides staff support for the HMS program and the PHMSA Administrator in a number of key areas. HMPDD provides oversight and coordination of HMS budget planning activities. HMPDD provides issue papers on major issues and initiatives of interest to HMS and PHMSA. HMPDD provides economic analysis of major rulemaking projects.

HMPDD is also the project office for the Hazmat Information Portal (HIP). It provides management oversight 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.

### **Hazardous Materials International Standards Coordinator (HMISC)**

The Associate Administrator for Hazardous Materials Safety is the competent authority for hazardous materials transportation in the United States. The International Standards Director represents the Associate Administrator in meetings of the United Nations Committee of Experts for Hazardous Materials Transportation and in other international forums.

## 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.

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

AIR - Enforcement of the hazardous materials regulations for air transportation (including 49 CFR Part 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 Part 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.

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 Part 177) are carried out by the FMCSA. FMCSA enforces the vehicle and driver safety regulations (49 CFR Part 390 et seq) in cooperation with the states under its Motor Carrier Safety Assistance Program (MCSAP).

PHMSA has broad authority to enforce all of the hazardous materials regulations, approvals and permits (issued by our office). 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. Approximately, 1.2 million shipments of hazardous materials are made in this country every day. Therefore, it is the policy of the Director of Field Operations 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, OHMS Enforcement Division provides assistance to and conducts joint inspections with other Federal agencies and state enforcement personnel. DOT has established formal working agreements with three Federal agencies as follows:

### Nuclear Regulatory Commission (NRC)

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.

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.

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 this document is on file at OHMS Field Operations Headquarters. The document is reviewed periodically to insure continued applicability. The Radioactive Materials Program Manager is the primary point of contact for enforcement coordination with NRC.

### Environmental Protection Agency (EPA)

The Resource Conservation and Recovery Act of 1976 (RCRA) (421 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.

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 OHMS Field Operations Headquarters for review.

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 investigators, 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.

Department of Defense  
 Department of Energy  
 Department of Justice  
     Drug Enforcement Agency  
     Federal Bureau of Investigation  
     Bureau of Alcohol, Tobacco & Firearms  
 Consumer Products Safety Commission  
 Department of Homeland Security  
     U.S. Customs Service  
     U.S. Coast Guard  
 General Services Administration  
 U.S. Postal Service  
 National Transportation Safety Board  
 Chemical Safety Board  
 Department of Labor  
     Occupational Health and Safety 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.

COHMED is now an external hazmat conference being overseen by the Commercial Vehicle Safety Alliance. OHMS field investigators continue to support its goals by attending meetings and providing enforcement training.

- 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, Section 2.4. The ATF staff involved retired which resulted in these meetings being 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.