# MOTOR CARRIER SAFETY

## A Guide to Regulatory Compliance

E. Scott Dunlap

Occupational Safety and Health Guide Series

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# Occupational Safety and Health Guide Series

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# *Preface*

Motor carrier safety is an issue that affects not only business, but also the public at large. The need to understand and follow applicable governmental regulations is critical in providing safety for all of those affected by the transportation industry. This includes workers preparing shipments, drivers delivering the product, and motorists on public highways.

This text will provide the reader with information concerning various areas of legal compliance. The goal is to draw simplicity out of complexity. Information will be given concerning only those regulations and standards that affect motor carrier safety. Agencies involved include the Department of Transportation (DOT), U.S. Environmental Protection Agency (EPA), Occupational Safety and Health Administration (OSHA), and National Fire Protection Association (NFPA). This text is intended as a guide to legal compliance, not a substitute for legal compliance.

Information provided in the text highlights general points of compliance and practical application. Regulations are addressed individually and examined to determine the issues and requirements that are relevant, and options for compliance are given. Bulleted lists enable the reader to more clearly understand what is being communicated in the regulations. This text guides the reader toward full regulatory compliance by providing the tools and focus to further study applicable regulations to determine what exceptions or special provisions may apply to a particular situation.

In the case of hazardous materials, it is impractical in this text to undertake a close examination of every requirement of each possible variation of hazardous materials shipments. Instead, the material presented creates an awareness of the general compliance issues relevant to particular regulations. The reader will then be able to better investigate the actual regulations to determine specific regulatory requirements that might affect one's place of business.

In addition to summaries of appropriate regulations and standards, points of training and sample recordkeeping forms are provided which will be helpful in launching in-house training programs. Suggestions for annual audits and follow-up training are also included. Case studies that relate to various regulations assist the reader in understanding the impact of violating or complying with regulatory requirements. These case studies include the

geographical location of the company involved, a summary of the situation, and the initial proposed penalty, if pertinent. In each case, these proposed penalties illustrate a company's exposure for noncompliance. Though companies mentioned in the various case studies may have been successful in their attempts to have the penalty lowered, there is no guarantee that the reader will have the same success.

# *Contents*

**Federal motor carrier safety regulations**

**Assorted Department of Transportation topics**

**Occupational Safety and Health Administration**

**Other issues**

*section one*

# *Introduction*

What is our liability? Where do I look for regulatory information? What information do I include in the program? Who will do the training? How do I get the support of upper management as well as hourly employees? What will the implementation process cost the company? These are only a few of the questions being asked by professionals in the transportation industry who have realized the requirement to implement a safety program in their place of business. The road to regulatory compliance can be a long and complex journey. Though motor carriers will deal primarily with the Department of Transportation, other governmental agencies must also be considered. Additional organizations that touch transportation safety include the Environmental Protection Agency, the Occupational Safety and Health Administration, and the National Fire Protection Association. Other agencies may also be involved, depending on the specific type of business. It is critical to understand how to navigate the regulations of the agencies when establishing a safety program.

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*chapter one*

# *The creation of a safety program*

## *Where do I look?*

Any safety program begins with a look at the Code of Federal Regulations (CFRs). These are regulations published by different federal government agencies, such as the Occupational Safety and Health Administration (OSHA) and Environmental Protection Agency (EPA). Each area of regulation is given a different numeric "title", each title is broken down into specific topical areas called "parts", and each part is further divided into "sections". An example of this is "29 CFR 1910.1200":

- "29" refers to Title 29, which contains regulations dealing with labor.
- "CFR" is the abbreviation for Code of Federal Regulations.
- "1910" is the part within Title 29 that deals with occupational safety and health.
- ".1200" is a section within Part 1910 that deals with a specific occupational safety and health issue (i.e., Hazard Communication).

These federal regulations will delineate the requirements that must be met with regard to any safety program. The Code of Federal Regulations can be obtained through a variety of avenues. Titles can be accessed through the government printing office at their web site (www.gpo.gov). CFRs may also be accessed by visiting individual government agency web sites, such as:

- www.osha.gov
- www.epa.gov
- www.dot.gov

If the capability to access CFRs through the Internet is not readily available at a given workplace, hard copies can be purchased by contacting the state office of the governmental agency involved or the U.S. Government Printing Office in the local area. Independent vendors, such as J.J. Keller and Government Institutes, also sell copies of the CFRs and/or CFR guides, while standards published by the National Fire Protection Association (NFPA) must be purchased directly from the NFPA. In each of the situations where vendors are involved, subscriptions are available which provide an initial copy of the CFRs and subsequent periodic updates. This will enable an employer to stay abreast of the most recent regulatory changes. The subscription services are generally available in both hard copy and CD-ROM formats.

The first step in creating a transportation safety program is knowing how to look in the right places. Due to the unique tasks involved in transportation, regulations published by the Department of Transportation will be the starting point. These regulations are listed as Title 49 in the Code of Federal Regulations. At the beginning of each title will be a table of contents. Scanning the table of contents will alert you to those items that may apply to your place of business. This process can be repeated with the OSHA, EPA, and NFPA regulations.

## *What do I include in a safety program?*

Once all aspects of regulatory compliance have been identified, the second step will be to begin the creation process. A safety program is comprised of what is written on paper as company policy (the written program) and what is carried out in the workplace (program implementation).

The written program is an important piece of documentation that delineates how you comply with a particular regulatory requirement. Programs should be written clearly so that they are easily understood by a member of a given federal agency or an hourly employee on the production floor. In essence, a company safety program is comprised of many specific smaller programs. Throughout this text, we will identify many of the specific areas required to have an individual written program. First, however, we will examine the various components of a written safety compliance program.

### *Purpose*

A good beginning for a written compliance program is a statement of purpose. This statement should be clear and concise as to what is hoped to be achieved as a result of implementing the procedures that will follow. The purpose in any written program will be to provide for the safety of each employee and to comply with a specific regulation or possibly a group of similar regulations. Using the example of Hazard Communication, the following is a sample statement of purpose:

> This program is intended to satisfy the regulatory requirements of 29 CFR 1910.1200 with regard to Hazard Communication. The implementation of and adherence to this program should assist in lowering the probability of accidents related to the use of hazardous materials in the workplace.

Though brief, this statement clearly illustrates the intention of the written program.

## *Responsibilities delineated*

The second section to be included in the written program is the delineation of responsibilities. At this point it is important to brainstorm each area of responsibility within the program. Those positions within the company (or contractors, if applicable) affected by the involved program should be listed. Beside each position, record in detail what will be expected of the individual with regard to the program. Responsibilities to consider would include:

- Program approval and support from upper management
- Modeling of safe behavior by line supervisors
- Auditing and revising the program
- Ordering equipment/merchandise necessary to implement or promote the program
- Training employees
- Coaching employees
- Disciplining those who are noncompliant
- Recognition

## *Training*

Training is the third section to include in a written program. This section will specify the content of the training, the level of training that will be given to each employee, when the training will be conducted, and the intervals at which refreshers will be given. If tests are to be administered, details concerning the exam should also be included. Two pieces of documentation, or recordkeeping, that are useful to include are

1. Training log
2. Certificate of completion

Training logs are useful in that they provide an accurate list of those who received a given session of training. Training logs should include each student's name, the date the training was administered, and the name of the trainer. All entries on the training log should be handwritten in order to

support the authenticity of the document. The student should sign and date in the appropriate columns, and the trainer should also sign.

A certificate of completion is a document that each student should be given to review at the completion of the training session. The form should list the title of the training and the main points that were covered in the session. If the student agrees that the listed information was covered then he or she will sign and date the form. The instructor will also provide a signature and date to verify that the student was in attendance and passed, if applicable. Examples of both a certificate of completion and training log are included in the Appendix. This information should satisfy training documentation requirements; however, care should be taken when evaluating regulations to determine what precise information must be included in documentation. Hazardous materials training required by the Department of Transportation is one example of regulations that specify certain pieces of information that must be recorded.

### *Procedures*

This section is the heart of a written program. Whereas the purpose section was short and to the point, this section will spell out in great detail the steps to be taken in achieving in-house compliance with a regulation. It is important to include how items for the program will be procured, how the various components of the program will be carried out, and how the various responsibilities will be executed.

### *Discipline/corrective action*

Human error and volitional disobedience are two factors that should be considered with regard to any safety program that is to be implemented in a place of work. There will be those who have received required training yet selectively choose not to follow the program. Due to human error, there will also be those times when even the best employee will fall short of the demands of a given safety program. In either case, it is the responsibility of the employer to establish a plan of action that will be consistently administered to all employees who are in violation of the program. The phrase "corrective action" may be best suited for these situations, because the interaction between a supervisor and an employee when a safety violation has occurred should be positive. The employee should not feel that they have been "written up" or punished. It is important to sit down with the employee in a private area to explain what violation has occurred and what needs to happen in order for the person's performance to improve. This meeting should be documented and the documentation placed in the employee's file in the event of future violations.

In the event that an employee feels that he or she has been unjustly accused of a violation, an avenue should be left open for them to address the

situation with upper management. Unsafe acts resulting in the corrective action should either be verified by an eyewitness or determined by a documented investigation.

### *Audit*

After a given safety program is implemented, a necessary step will be to analyze its effectiveness. It may be necessary to do this on a more frequent basis during the first year of implementation, such as each quarter or semi-annually. At the time of the program audit, both the positive and negative aspects of the impact of the program should be evaluated. Changes should be made to the program as a result of the evaluation if deficiencies are found. Changes may be more necessary during the first several months due to working the "bugs" out of the system. A statement should be made in the written program as to the frequency of audits throughout the implementation process.

### *Appendices*

At the end of the written safety program, appendices should be attached that include various pieces of information relevant to the program, including:

- Training logs
- Copies of applicable standards
- Magazine articles
- Newspaper articles
- Copies of paperwork that accompany the program

## *Summary*

In conclusion, a written program is designed to comply with a specific law and should include the following sections:

1. *Purpose:* What you plan to accomplish by implementing the program
2. *Responsibilities:* Duties to be carried out
3. *Training:* How, when, and at what intervals training will be conducted
4. *Procedures:* What the program is comprised of
5. *Discipline/corrective actions:* Action taken when violations occur
6. *Audit:* Evaluating and revising the program at specified intervals
7. *Appendices:* Other relevant information

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*section two*

# *Hazardous materials*

The issue of hazardous material handling provides one of the greatest areas of exposure to legal liability for any motor carrier. Of the two primary areas of discussion regarding the Department of Transportation (DOT) in this book — hazardous materials and federal motor carrier safety regulations — the topic of hazardous materials sometimes presents the most complex issues of regulatory compliance. This section will look exclusively at various DOT regulations found in 49 CFR Parts 100–180. Regulations are developed and maintained by the Research and Special Programs Administration (RSPA), a department of the DOT that provides research services and regulatory guidance in standards development and application. We will primarily examine:

- Part 107. Hazardous Materials Program Procedures
- Part 130. Oil Spill Prevention and Response Plans
- Part 171. General Information, Regulations, and Definitions
- Part 172. Hazardous Materials Table, Special Provisions, Hazardous Materials Communications, Emergency Response Information, and Training Requirements
- Part 173. Shippers — General Requirements for Shipments and Packagings
- Part 177. Carriage by Public Highway
- Part 178. Specifications for Packagings
- Part 180. Continuing Qualifications and Maintenance of Packagings

Parts of the hazardous materials regulations that are not covered in this section are those that pertain to some other form of transportation, such as by rail or vessel.

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*chapter two*

# *Definitions and applicable legislation*

## *What is a hazardous material?*

As defined in 49 CFR 171.8, a hazardous material is

> ... a substance or material, which has been determined by the Secretary of Transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and which has been so designated. The term includes hazardous substances, hazardous waste, marine pollutants, and elevated-temperature materials as defined in this section, materials designated as hazardous under the provisions of 172.101 of this subchapter, and materials that meet the defining criteria for hazard classes and divisions in part 173 of this subchapter.

It is interesting to note that this definition includes two things about hazardous materials: what they are and what they include. In the first part of this definition, we come to understand that a hazardous material is anything that has been designated as such by the Department of Transportation, the three key points of consideration being an unreasonable risk to:

- Health
- Safety
- Property

The Department of Transportation is concerned with the health and safety of individuals, including drivers, warehouse workers, emergency response personnel, motorists, and pedestrians. The third item listed — property — demonstrates a concern for the environment as well as maintaining the integrity of privately owned property. We can see that this simple definition has a wide range of impact.

The second aspect of the definition (what the term "hazardous materials" includes) is extremely complex. As we progress through the balance of this section, it will become clear as to what is involved by the following:

- Hazardous substances
- Hazardous waste
- Marine pollutants
- Elevated-temperature materials
- Hazard classes
- Hazard divisions

## *Legislation and applicability*

One issue of hazardous materials regulatory compliance hinges on specific hazardous materials topics becoming law, and 49 CFR 106 contains information as to how this occurs. A second issue pertaining to hazardous materials compliance is the applicability of these regulations. For this purpose, Part 107 of Title 49 serves as a launching pad for what will be spelled out in the regulations to follow. Part 107 contains all of the relevant procedures for the Department of Transportation's hazardous materials program and includes:

- General provisions of the legislation
- Who is exempt
- Other legislation that preempts DOT hazardous materials regulations
- Regulatory enforcement
- Designation of approval and certification agencies for different types of packagings
- Registration of issues related to cargo tanks
- Registration of those who offer to transport or actually do transport hazardous materials
- Approvals, registrations, and submissions to carry hazardous materials

For assistance in complying with the hazardous materials regulations, the RSPA has a toll-free number (provided in Part 107.14): 1-800-467-4922, or they can be contacted in the Washington D.C., area at (202) 366-4488. These numbers are staffed from 9:00 a.m. to 4:00 p.m. EST, Monday through Friday, and an answering machine is available during evenings, weekends, and government holidays. Assistance may also be obtained through the Internet at www.hazmat.dot.gov/.

The DOT has outlined hazardous materials program issues in 49 CFR 107. Though it is not listed first in this regulation, a key requirement in the transportation of hazardous materials is becoming registered to do so. Part 107.601 outlines the requirements for submitting the registration form (5800.2), which is provided in the Appendix of this text. The form must be filled out annually to ensure that proper hazardous materials carrying status is maintained.

Section 107.1 identifies the hazardous materials responsibilities of three entities covered by the section:

- Research and Special Programs Administration
- Associate Administrator for Hazardous Materials Safety
- Office of Chief Council

Each of these three bodies is responsible in some way for ensuring that hazardous materials are being properly transported within the U.S. 49 CFR 107 identifies how they make this happen within the judicial system, and the regulation identifies procedures for such things as issuing subpoenas, hearings, and appeals. Of particular interest to an employer would be Subpart D of this regulation, which deals with the direct enforcement of hazardous materials regulations.

Section 107.305 addresses investigations to determine the level of hazardous materials compliance. Individuals conducting these inspections are properly referred to in any one of three ways:

1. Hazardous Materials Enforcement Specialists
2. Hazmat Inspectors
3. Inspectors

Throughout an inspection or investigation, these inspectors are permitted by this regulation to gather information in a number of ways. These methods may include:

- Interviews
- Statements
- Photocopying material
- Photography
- Audio-/videotaping

As with any investigation, confidentiality becomes a critical issue. Any information that is produced as a result of the investigation will be maintained in a confidential manner which allows employees to communicate freely with inspectors without fear of repercussions.

Employers who are being inspected have specific rights that may be exercised during the investigation. Employers may ask inspectors for