

# Handle with care!

■ Here, Lindsay W McGuire of McBreen & Kopko looks at the perils awaiting the unwary in the transportation of hazardous materials.

The Pipeline and Hazardous Materials Safety Administration (PHMSA) is a US Department of Transportation agency that regulates hazardous materials (so-called HazMats) transportation in the US. It promulgated the Hazardous Materials Regulations (HMR), which defines HazMats and the rules for transporting them. The PHMSA is also responsible for administrative enforcement actions for improper transportation of HazMats by ground, whereas the Federal Aviation Administration takes responsibility for administrative enforcement actions for improper transportation of HazMats by air.

Bear in mind that the PHMSA does not regulate international HazMats transportation. The international transportation of HazMats, known internationally as dangerous goods, is co-ordinated by the Economic and Social Council, the Committee of Experts on the Transport of Dangerous Goods and on the Globally Harmonised System of Classification and Labelling, which produces the *Recommendations on the Transport of Dangerous Goods*, also known as the Orange Book, and the Globally Harmonised System of Classification and Labelling of Chemicals.

This year, the PHMSA announced that it closed a record number of enforcement orders for three consecutive years.<sup>1</sup> A few days later, PHMSA released a budget, including increased funds for enforcement efforts.<sup>2</sup> The message is clear: PHMSA is stepping up its enforcement actions. Since a single shipment can violate a number of different HMR provisions, the penalty amounts can quickly add up. For example, in 2008, PHMSA fined one large retailer US\$360,000.

To avoid a PHMSA penalty action, you must first understand what HazMats your company may use. Fixed based operators and other ground handling companies commonly use hazardous materials such as paint, alcohol and jet fuel. Less obvious examples include certain aircraft survival kits and batteries.

While FBOs and handlers often use these materials, they do not often need to ship them. However, that need does sometimes arise. For example, an engine part may need to be serviced off station. If the part has been used before, it will almost certainly have fuel residue in it. That renders it hazardous, which triggers HMR requirements.

If an item is not clearly hazardous, it can be difficult to determine whether the HMR applies. In an enforcement action, lack of knowledge is no defence. Thus, properly training employees, which helps avoid confusion and inadvertent violations, is one of the most important investments a company can make. Furthermore, the HMR requires training for certain employees, which generally includes general awareness and familiarisation; function-specific safety; security awareness; in-depth security training and OSHA, EPA and other training.

Once the need to ship these materials arises, compliance with the HMR becomes critical. The shipper must ensure that the shipment is accompanied by shipping papers; marked, labelled and, if necessary, placarded. It also has to be packaged and in an authorised receptacle.

Shipping papers essentially function as a bill of lading and describe the HazMats being transported, including the proper shipping name, hazard class, identification number and packaging group. In addition, the shipper must certify HMR compliance and provide emergency response information, including a telephone number that is staffed for the period that the shipment remains in transit.

Marking, labelling, and placarding are all ways of easily identifying the type of hazardous materials contained within a shipment. Markings may provide information on package handling requirements, (such as indicating if the package must be kept upright or away from heat) if a particular category of HazMats is enclosed (such as a marine pollutant), or if the HazMats present a specific risk to health (such as an inhalation hazard). It may also provide a descriptive name or UN identification number for the product.

A label is basically a tag on covered packaging that identifies the class of the HazMats contained within the package (for example, Class 3 Flammable Liquid) and certain additional instructions, such as whether it is prohibited on aircraft. Most packages require a label, although some exceptions do exist. Like a label, a placard identifies the class of HazMats contained within the package, except that is affixed to a vehicle or railway wagon, bulk packaging, a freight container or a unit load device.

The HMR specifies what type of packaging is acceptable for each category of HazMats. Packaging requirements are

based on the nature of the HazMats, including their packing group (which describes the degree of danger presented by the material); vapour pressure and chemical compatibility. The primary purpose is to ensure containment during transportation.

Failure to abide by any of these requirements can result in significant penalties; indeed companies in doubt may wish to consider enlisting the help of a HazMats and HMR expert.

<sup>1</sup> [http://www.phmsa.dot.gov/staticfiles//PHMSA/DownloadableFiles/Press%20Releases/Record%20Enforcement%20Orders%20Closed\\_02-08-12.pdf](http://www.phmsa.dot.gov/staticfiles//PHMSA/DownloadableFiles/Press%20Releases/Record%20Enforcement%20Orders%20Closed_02-08-12.pdf)

<sup>2</sup> <http://www.phmsa.dot.gov/staticfiles//PHMSA/DownloadableFiles/Press%20Releases/PHMSA%20Release%20on%202013%20Budget%20Request%20-%20Feb%202012.pdf>



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**Footnote:** Leonard D Kirsch is a partner of McBreen & Kopko and a co-founder of its aviation law practice. He is regularly called upon to advise US and foreign FBOs and GHCs in a wide range of corporate, commercial and regulatory issues. Lindsay W McGuire is an associate with McBreen & Kopko. She has successfully handled numerous PHMSA and FAA administrative enforcement actions, resulting in substantially reduced and even eliminated civil penalties, and helped companies obtain special permits that reduce the cost of transporting HazMats.