

# Hazardous Materials Regulations Compliance: Jail Time May Be Waiting

AUGUST 29, 2019

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The transportation of hazardous materials (hazmat) is an subject that holds significant safety implications for carriers, shippers, intermediaries and the general public. Compliance programs and their requirements vary widely across roles, modes and commodities, yet at the core of all responsible programs are those dedicated professionals charged with managing the hazardous materials supply chain. Today all professionals that influence hazardous materials compliance must remain ever vigilant to ensure that shipping documents are correctly produced and maintained, and hazmat shipments are labeled, packaged and transported in full compliance.

The cost of failure for compliance with the Hazardous Materials Regulations (HMR) has risen dramatically in recent years as regulatory enforcement agencies, and even courts, look to penalize those deemed to be in violation of applicable laws and regulations. The potential enforcement actions against a company can have a profound impact on business operations despite the cost of compliance. In addition to supply chain interruption, individuals that commit violations can be exposed to various criminal penalties that include lengthy jail time and millions of dollars in fines. This article explores those basic HMR compliance obligations and the steep cost of self-blinding to regulatory violations that impact hazardous materials safety.

The HMR are found at 49 CFR Parts 171 to 180. They are applicable to the transportation of hazardous materials in commerce and: (1) their offering to interstate, intrastate and foreign carriers by rail car, aircraft, motor vehicle and vessel; (2) the representation that hazmat is present in a package, container, rail car, aircraft, motor vehicle or vessel; (3) the manufacture, fabrication, marking, maintenance, reconditioning, repairing or testing of a package or container which is represented, marked, certified or sold for use in the transportation of hazardous materials. See 49 CFR 171.1(a).

HMR compliance activities range from registration with the DOT's Pipeline and Hazardous Materials Administration (PHMSA) to required training to ensuring that hazmats are "properly classed, described, packaged, marked, labeled, and in condition for shipment " 49 CFR 171.2(a). Responsibilities vary depending upon a party's role in the transportation transaction. Shipper obligations include: determining whether a material is a "hazardous material," determining the proper shipping name of the hazmat, properly classifying the hazmat, hazard warning labeling, packaging, marking, and employee training.<sup>[i]</sup> Carrier obligations include: hazmat shipping papers, placarding and marking vehicles, blocking and bracing hazmat, incident reporting, and employee training.<sup>[ii]</sup> In essence, compliance through the supply chain requires both shippers and carriers bearing their fair share of load in the interest of public safety.

A number of hazardous materials incidents over recent years have resulted in truly outstanding consequences that should give pause to all those involved in HMR compliance. On November 9, 2018, the U.S. Attorney's Office announced that Donald E Wood, Jr., and his trucking company, Woody's Trucking LLC were sentenced to multiple charges related to violations of the HMR. According to the U.S. Attorney's Office, Woody's shipments were falsely identified as not containing hazardous materials when in fact they contained drip gas. These fraudulent activities directly resulted in an explosion at a processing facility. Mr. Wood received 12 months in prison and three years of supervised release in addition to \$1.29 million in penalties. In another instance, an Ohio company was ordered to pay \$1.5 million in fines to the U.S. EPA, and its CEO received jail time.<sup>[iii]</sup> The violations occurred during transportation of several million pounds of hazardous waste between cities in Missouri. The transportation activities wantonly disregarded both state and federal laws.

Companies, their principals and employees can endure significant financial and reputational harm from both egregious violations of the HMR as well as those even slight violations that may contribute to serious injuries to persons and property. Compliance is the responsibility of all participants in the hazardous materials supply chain, because an error at tender may impact safe transportation and an error during transportation may impact safe receipt. Implementation of top-down compliance programs within enterprises, and awareness of risks during supplier and customer management, is essential to mitigating all forms of adverse consequence to which those in the hazardous materials supply chain are exposed.

Acceptance of one's responsibility for HMR compliance is a must, but an array of resources and outside advisors often contribute to ensuring the efficacy of those compliance programs. Assessments of hazardous-materials-related activities, extant training programs and materials, compliance organization structure, and violation or incident history are often the first steps to launching a new program or assessing gaps for further improvement. While those efforts are ultimately cost saving in their nature, it always remains the possibility that technical errors and accidents will happen causing investigations and regulatory enforcement action. Mitigation and strong corrective actions are often available in those instances to limit monetary exposure and escalation, and to appreciably reduce recurrence.

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<sup>[i]</sup> <https://www.fmcsa.dot.gov/regulations/hazardous-materials/how-comply-federal-hazardous-materials-regu>

<sup>[ii]</sup> *Id.*

<sup>[iii]</sup> <https://www.justice.gov/usao-edmo/pr/several-individuals-and-corporation-plead-guilty-shipping-hazardous>  
*see also*  
<https://www.stltoday.com/news/local/crime-and-courts/ohio-company-stored-million-pounds-of-hazardous>