



U.S. Department  
of Transportation

# Memorandum

**Pipeline and Hazardous  
Materials Safety Administration**

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## **POLICY MEMORANDUM**

**From:** R. Ryan Posten,  
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**To:** PHH-40, Office of the Director  
PHH-41, Special Investigations  
PHH-42, Eastern Region  
PHH-43, Central Region  
PHH-44, Western Region  
PHH-45, Southwest Region  
PHH-46, Southern Region

**Date:** February 29, 2008

**Subject:** **Systems Integrity Safety Program Introduction, Guidelines and Eligibility Criteria**

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## **PROGRAM STATEMENT**

The Systems Integrity Safety Program (SISP) is a PHMSA Office of Hazardous Materials Enforcement (OHME) operation to enhance and improve safety and security outcomes thru stakeholder collaborations.

## **SUMMARY**

The Pipeline and Hazardous Materials Safety Administration's (PHMSA) Office of Hazardous Materials Enforcement (OHME) (herein PHMSA) is implementing a risk-based enforcement program to focus our resources in a manner that will allow us to prioritize whom we inspect/investigate, what avenues we explore with the regulated entity to bring about compliance, and how we review our business data. The primary goal of this strategy is to focus our resources on those companies posing the greatest risk to transportation safety and security.

As part of this strategy, PHMSA implements this innovative enterprise inspection/investigation program called Systems Integrity Safety Program (SISP). SISP

serves as a new avenue to ensure full compliance. Rather than engaging in an adversarial process, PHMSA will provide in-depth analyses, observations, and cooperative follow-up investigations to identify the root causes of the entity's safety problems. Through the agreement, SISP will encourage continuous improvement and quality assurance programs to ensure sustained compliance and improved safety performance. SISP is designed to achieve PHMSA's goal of enhancing the safe transportation of hazardous materials while collaborating with our stakeholders to achieve compliance.

## **DEFINITIONS**

- (A) Regulated Entity – A person who—(i) transports hazardous material in commerce; (ii) causes hazardous material to be transported in commerce; (iii) designs, manufactures, fabricates, inspects, marks, maintains, reconditions, repairs, or tests a package, container, or packaging component that is represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce; (iv) prepares or accepts hazardous material for transportation in commerce; (v) is responsible for the safety of transporting hazardous material in commerce; (vi) certifies compliance with any requirement under chapter 51 of Title 49 of the United States Code; or (vii) misrepresents whether such person is engaged in any activity under clause (i) through (vi) (49 U.S.C. § 5103(b)(A)(i-vii)).
- (B) Systems Integrity Safety Program (SISP) – A new risk-based approach that serves as an alternative to the standard enforcement review, prosecution, and sanction program currently in existence. The primary focus of this program will be broader in-depth analyses, observations, and cooperative follow-up investigations through the use of an agreement concept.
- (C) SISP Agreement – The signed agreement between PHMSA and the regulated entity entering into the SISP. The agreement spells out the legal operating terms under the program that both parties must adhere to during the term of the agreement.
- (D) Probable Violations – Any issues identified that appear to fail to comply with the Hazardous Materials Regulations (HMR) (49 C.F.R. Parts 171-180 or the Hazardous Materials Statutes (49 U.S.C. Subtitle III, Chapter 51).
- (E) Corrective Action – Actions taken to eliminate any probable violations, to ensure compliance and to eliminate harm resulting from the probable violations.
- (F) Imminent Hazard – The existence of a condition relating to hazardous material that presents a substantial likelihood of death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment.
- (G) Serious Incident – Any event resulting in death, serious illness, severe personal injury or resulting in a substantial endangerment to health, property or the environment. (For the full definition see [http://hazmat.dot.gov/pubs/inc/serious\\_incident\\_new\\_def.pdf](http://hazmat.dot.gov/pubs/inc/serious_incident_new_def.pdf).)

(H) Person – An individual, corporation, company, association, firm, partnership, society, joint stock company; or a government or tribe offering a hazardous material for transportation in commerce or transporting a hazardous material to support a commercial enterprise. This term does not include the United States Postal Service or, for purposes of 49 U.S.C. § 5123 and 5124, a Department, agency, or instrumentality of the government (49 C.F.R. § 171.8).

## **PROGRAM DESCRIPTION**

PHMSA is implementing a risk-based enforcement system to focus our resources by prioritizing whom we inspect and investigate, what avenues we explore with the regulated entity to bring about compliance, and how we review our business data. The primary goal of this strategy is to focus our resources on those companies posing the greatest risk to transportation safety and security.

The first part of this risk-based enforcement system involves targeting our current enforcement activities covered in 49 CFR Part 107. PHMSA reviews our business data to determine what entities pose the highest risk, performs inspections and brings civil penalty actions to encourage compliance. This practice will continue to be PHMSA's primary means of ensuring compliance. However, PHMSA is now implementing a new program called Systems Integrity Safety Program (SISP) to provide an alternative mechanism to bring about compliance.

Using criteria similar to those used to select companies for inspection, PHMSA will identify entities as candidates for SISP based on a history of non-compliance and other indications of risk. These high-risk entities likely would be selected for a traditional enforcement inspection under Part 107 but will be offered the unique opportunity to participate in SISP in an effort to ensure better compliance through the implementation of safety processes. Participation in SISP is entirely voluntary. The decision of any party not to participate in SISP is NOT a selection factor for enforcement inspections; however, a decision not to participate will return that party to the traditional enforcement inspection pool.

The SISP program will be implemented through a SISP Agreement. Each Agreement will be comprised of three phases. During the first phase, the participant will provide comprehensive systems information and PHMSA will provide data analysis. The goal of the first phase is to identify probable causes of the participant's safety problems. The second phase will involve site visits, interviews and implementation of corrective action. The third phase is designed to provide long-term solutions to ensure continued compliance and safety.

PHMSA may use the information, data and analyses gathered or developed during the SISP process to identify other regulated entities who present a high level of risk but have not been identified using the data currently available. PHMSA will not take enforcement action against third parties based on observations or probable violations discovered solely

during SISP activities; however, PHMSA may conduct a separate investigation of the third-party.

PHMSA and the SISP participant will provide cooperative education and will apply best practices to promote the integrity of hazardous materials transportation systems. Not only will the program allow PHMSA to disseminate best practices to SISP participants and to other regulated entities, the program also will allow PHMSA to gain insight into the business processes of the regulated community. PHMSA will apply this knowledge in its development and implementation of future regulatory activities.

A company successfully completing the SISP program as specified in the SISP Agreement will not be subject to PHMSA enforcement actions for probable violations discovered during the term of the Agreement. PHMSA will exercise this enforcement discretion only if the participant comes into full compliance. The participant may also develop and implement a suitable quality control plan to avoid the recurrence of similar problems.

However, PHMSA will pursue its enforcement options for probable violations that present an imminent hazard or that demonstrate a criminal (willful) intent. Any breach of the SISP agreement will constitute a condition for termination of the agreement, and all benefits of program participation may be forfeited. Any probable violation discovered after the SISP agreement has expired may be submitted to the Office of Chief Counsel for prosecution or appropriate action.

## **I. SISP Eligibility**

PHMSA will analyze its business data on an approximately semi-annual basis to determine eligibility for the program and to determine which entities are selected as SISP candidates. Participation by regulated entities in SISP is limited by specific eligibility criteria. The criteria are designed to maximize the efficient use of agency resources by sharing our expertise with high risk stakeholders. PHMSA will incorporate and review new data as it is received.

While PHMSA reserves the right to use its discretion in the allocation of its resources when selecting and engaging an eligible candidate for a SISP participant, the following criteria are a basic requirement.

A person (49 C.F.R. § 171.8) must meet at least one of the following criteria within the prior three (3) year period:

- (1) More than 50 hazardous materials incidents of a Section 172.504 Table 2 material in non-bulk packaging;
- (2) More than 3 hazardous materials incidents of a Section 172.504 Table 2 material in an intermediate bulk or portable tank packaging;
- (3) More than 1 hazardous materials incidents of a Section 172.504 Table 1 material in a packaging other than a cargo tank motor vehicle or railroad tank car;

- (4) More than 1 “serious incident” as defined by Section 171.8 or any hazardous material in a packaging other than a cargo tank motor vehicle or railroad tank car; or
- (5) Has been ordered or recommended by PHMSA to perform a safety recall of a DOT specification, UN Standard, or DOT Special Permit packaging.

A person meets these criteria irrespective of whether it was directly or indirectly involved. For example, the carrier, the freight forwarder and the original shipper could all be identified with a hazardous material incident. In addition, a person is eligible if it

- (6) Is identified through adverse trends based on data analysis of accidents and/or investigations, or
- (7) Has more than three (3) separate closed PHMSA civil enforcement case actions or five (5) separate closed PHMSA enforcement actions and/or Warning Letters within the prior five (5) year period.

PHMSA will use the following criteria to prioritize the entities meeting the eligibility criteria:

- (1) Regulated entity meets the requirements of more than one eligibility criteria;
- (2) Regulated entity’s operations include multiple facilities;
- (3) Documented OHME investigations identifying safety related trends;
- (4) Regulated entity is engaged in high risk/high consequence functions relating to the transportation of hazardous materials;
- (5) Regulated entity is registered as a shipper of TIH, radioactive, and/or explosive materials; and
- (6) Resource availability.

## **II. The Agreement**

Once a person is selected as a candidate for the program, PHMSA will contact the entity to solicit participation in SISP. If the entity chooses to participate, then PHMSA and the entity (the participant) will enter into a SISP agreement that conveys the operational and legal terms and limitations of the program. Throughout the agreement, PHMSA will provide guidance for the purpose of enhancing safety and compliance. The SISP Agreement will explain the SISP process and legal limitations, including, but not limited to, the requirement for full disclosure and production of data, processes, systems and operations by the SISP participant in order to facilitate a complete and accurate assessment.

NOTE: The SISP program or SISP agreement does not authorize non-compliance activity or allow transportation in violation of the Hazardous Materials Regulations.

The SISP Agreement describes the basic framework for participation in the program, but is designed to give both parties flexibility as the agreement progresses. Accordingly, a minimum of three (3) addenda to the SISP Agreement are contemplated which will detail

the requirements and responsibilities of each party. These addenda will be negotiated between PHMSA and the participant. An addendum will be created at the beginning of each of three Phases.

**Phase 1** – PHMSA will discuss the basis for the participant’s selection to participate in the program. Based on that information, PHMSA and the participant will identify the documents and information PHMSA investigators need to conduct an initial analysis of the participant’s systems (e.g., operations, quality assurance). The Phase 1 Addendum will detail the information participant will provide to PHMSA and will set timetables for the production and the analysis of that information.

**Phase 2** – PHMSA and the participant will cooperatively determine sites (facilities, locations) for inspection based on the probable causes of the participant’s transportation safety problems identified in Phase 1. The sites for inspection will be identified in the Phase 2 Addendum. Phase 2 may be an iterative process and may require the adoption of multiple addenda.

Site visits will provide the opportunity for the participant and PHMSA to observe jointly the current operations and any improvements resulting from prior site visits. PHMSA will conduct an exit briefing following each site visit and will identify any probable violations. PHMSA will also provide feedback to the participant regarding quality assurance items and best business practices.

**Phase 3** – PHMSA will prepare a recommendation report summarizing its findings throughout the Agreement. In addition, PHMSA will suggest actions the participant could take to ensure continued compliance with the Hazardous Materials Regulations. PHMSA may also suggest actions the participant could take that would promote safety beyond the minimum regulatory requirements; however, the participant is under no obligation to implement the latter actions.

## **V. APPLICABILITY/LEGAL STATEMENT**

(1) This Policy sets forth factors for consideration that will guide the Agency in the exercise of its enforcement discretion. It states the Agency’s views as to the proper allocation of its enforcement resources. The Policy is not final agency action and is intended as guidance. This Policy is not intended, nor can it be relied upon, to create any rights enforceable by any party in litigation with the United States. PHMSA may decide to follow guidance provided in this document or to act at variance with it based on its analysis of the specific facts presented. This Policy may be revised without notice to reflect changes in PHMSA’s approach to providing incentives under the SISP program, or to clarify and update text.

(2) Entities considering whether to take advantage of this SISP Policy should review this Policy and seek relevant legal advice from private counsel. No attorney for PHMSA, the Department of Transportation, or the United States will render legal advice on whether or not any company should take advantage of this Policy.

## **VI. PUBLIC AVAILABILITY**

Upon mutual agreement of the parties, certain details regarding participation in the SISP agreement may be publicized. PHMSA retains the right to release information regarding outcome of the SISP agreement.

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### Attachments:

- Template SISP Agreement
- Template Exit Briefing
- Template Recommendation Report