

## CHAPTER 9 CONTAINER INSPECTION PROGRAM

### A. Introduction.

1. Purpose. Recognizing the potential for incidents resulting from the improper shipping of hazardous materials in intermodal transportation, the Coast Guard is establishing a standardized container inspection program. The establishment of a Coast Guard container inspection program for hazardous materials was recommended by the Secretary of Transportation's Safety Review Task Force and endorsed by the Secretary in 1988. This chapter establishes procedures and documentation requirements for the inspection of hazardous materials in intermodal freight containers and portable tanks offered for shipment on vessels.
2. Background. The 1980's witnessed a significant shift in cargo carriage practices in the United States, as the transportation of goods in intermodal freight containers and the construction and renovation of facilities and vessels to handle them increased dramatically. Intermodal transportation or "intermodalism" refers to the common use of a freight container by several modes of transportation from shipment origin to destination. Innovations such as double-stack rail cars and other improvements to intermodal transport aided the rapid interchange of containers between modes and contributed directly to the steady growth in intermodal commerce. By 1992, more than 17 million twenty-foot equivalent units (TEUs) of containers were being shipped through the United States annually, nearly double the amount of a decade earlier. At the same time, the volume of hazardous materials in transportation has been increasing significantly, and is estimated to comprise up to 10 percent of all containerized cargo that is shipped.
  - a. During a 6 month trial program in 1985, COTPs and MSOs in 21 ports conducted random inspections of intermodal freight containers to determine the degree of compliance with the hazardous materials regulations. Although the number of containers inspected was limited, the results of these inspections indicated an alarming degree of noncompliance. Almost 25 percent of the containers inspected had one or more discrepancies, most of which involved improper blocking and bracing, placarding and documentation. Although the number of discrepancies posing an immediate and serious threat to life and property was relatively low, there were nonetheless, many violations which presented potential hazards. Results of 1993 Pilot Container Inspection Programs conducted in the port areas of New York and Los Angeles/Long Beach offered further evidence that non-compliance with hazardous materials transportation regulations remains high.
  - b. The Department of Transportation's packaged hazardous materials programs were audited by the General Accounting Office in 1985, and the Secretary of Transportation's Safety Review Task Force in 1988. These audits focused attention on the need to upgrade the amount of Coast Guard inspection and enforcement activity, and the need for improved cooperation and communication among the Department's modal administrations. Recognizing the important link that the Coast Guard provides in the interface between land, water and air transport, the Secretary's Safety Review Task Force specifically recommended that the Coast Guard establish a dedicated container inspection program for hazardous materials.

- c. On January 3, 1992, the M/V SANTA CLARA I lost 21 containers overboard during a storm off the New Jersey coast, including 4 containers loaded with drums of toxic arsenic trioxide. A Coast Guard investigation revealed inadequate on-deck securing to be the primary cause, and cited numerous other safety violations. The incident generated a great deal of public and Congressional interest and placed Coast Guard hazardous materials enforcement programs under considerable scrutiny. One significant recommendation made by the Marine Board of Inquiry investigating the incident was that the Coast Guard establish a national Container Inspection Program.

3. Responsibilities

- a. COTPs. Commanding Officers of Marine Safety Offices and Captains of the Port shall conduct inspections of hazardous materials in intermodal freight containers and portable tanks (tank containers) following the procedures set forth in this chapter. Captains of the Port shall notify industry and the maritime community of the establishment of a container inspection program in their zone via COTP newsletters, press releases and other appropriate media.
- b. Districts. District Commanders shall coordinate implementation of hazardous materials inspection programs at field units to ensure consistency within their district.

4. Definitions. The term "container," as used in this chapter, includes intermodal freight containers and tank containers. All other terms in this chapter are the same as those defined in 49 CFR 171.8.

B. Authority. The Captain of the Port has broad authority to conduct container and hazardous materials inspections in intermodal freight containers and portable tanks at waterfront facilities under three statutes and implementing regulations:

1. The Ports And Waterways Safety Act (PWSA) The PWSA, as amended (33 U.S.C. 1221, et seq.) and 33 CFR 126 and 160. The PWSA authorizes the COTP to take such action as necessary to "prevent damage to, or destruction of, any bridge or structure on or in the navigable waters of the United States...". Such action includes but is not limited to establishing procedures, measures, and standards for the handling, unloading, storage, stowage and movement on the structures of explosives or other dangerous articles.
2. The Hazardous Materials Transportation Act (HMTA) The HMTA, as amended (49 U.S.C. 1801, et seq.) and 49 CFR 171-180. The Coast Guard has been delegated the authority in 49 U.S.C. 1808(c) to inspect freight containers and other property used in the transportation of hazardous materials on water. The COTP's authority is not limited to shipments which are on board or have been on board vessels. Inspections of freight containers or portable tanks may be conducted by the COTP for compliance with 49 CFR 171-180 at facilities away from the waterfront area if it can be determined by credible paperwork that the cargo is destined to or has been shipped by a vessel.
3. The International Safe Container Act (ISCA) (46 U.S.C. 1503) and 49 CFR 450-453. 49 CFR 453 authorizes the COTP to detain containers used for international transport which

do not meet the material conditions detailed in the Act and the requirements in 49 CFR 450-452 which implement the International Convention for Safe Containers (CSC).

C. Jurisdiction. COTP enforcement of the waterfront facility regulations in 33 CFR 126 is geographically limited by the definition of a waterfront facility in 33 CFR 126.01. This may, depending on the configuration of a particular facility, include certain buildings along a wharf but not others nearby which are used for handling packaged hazardous materials (see section 22.B of volume II of the Marine Safety Manual). There are, however, no such limitations to the COTP's authority to enforce the Hazardous Materials Regulations in 49 CFR 171-180, and under these regulations those areas may be inspected by the COTP. As the DOT operating administration for the water mode of transportation, the Coast Guard has the authority and responsibility to enforce compliance with the HMTA and 49 CFR 171-180 whenever violations are noted.

1. General Provisions. The provisions of 49 CFR 171-173 apply to all hazardous materials shipments in all modes of transportation, from the time they are offered for transportation until the time they arrive at their final destination or consignee. 49 CFR Parts 174, 175, 176 and 177, on the other hand, are modal-specific and their applicability is therefore more narrowly defined. The provisions of part 176 apply to shipments on board, consigned to be transported by, or that have been transported by vessel. For example, consider the investigation of violations noted in a container on a waterfront facility, in the case where the container has been carried by truck and rail and which a dock receipt indicates is to be loaded onto a vessel for further transportation. Violations could potentially result in civil penalty action being initiated by the COTP against the shipper, the rail and highway carriers, the freight forwarder (if any) and/or the waterfront facility, for violations of part 176. Penalty action should be taken against the person(s) responsible for the violation. Hazardous materials packages need not be on board a vessel for Dart 176 to be applicable.
2. Violation Reports. Reports of violations of 49 CFR Parts 171, 172, 173 and 176 may be initiated and adjudicated by the Coast Guard. Evidence of violations of parts 174, 175, and 177 should be referred to the Regional Administrator of the applicable DOT modal administration, and evidence of violations of part 178 should be referred to the Research and Special Programs Administration, Office of Hazardous Materials Enforcement (DHM-40). Questions regarding the appropriate agency to prosecute a particular case should be referred to the District Commander (m)

D. Program Coordination. The Department of Transportation's hazardous materials programs are coordinated by the Research and Special Program Administration's (RSPA) Office of Hazardous Materials Safety (OHMS). Each modal administration (the Federal Highway Administration (FHWA), Federal Aviation Administration (FAA), Federal Railroad Administration (FRA), and Coast Guard) is responsible for enforcing applicable regulations within its area of jurisdiction. OHMS chairs bimonthly meetings of a headquarters-level Intermodal Hazardous Materials Coordination Committee where issues of mutual interest are discussed. Additionally, although the drafting of the modal regulations is accomplished by the cognizant modal administration, OHMS coordinates and publishes all regulations in 49 CFR 171-180.

1. Resources. It is recognized that in most ports there are several program areas competing for finite resources. Cooperation should be sought from industry members, local and state police, fire departments, port authorities, shippers, the National Cargo Bureau, the U.S. Customs Service and other agencies in establishing and executing the program. Use of Reservists to support the container inspection program is also highly encouraged.

2. RSPA/USCG Coordination. OHMS' Enforcement Division (DHM-40) conducts frequent field inspections, often to port areas, to conduct compliance inspections at shippers' facilities and intermodal terminals such as freight consolidators. OHMS enforcement personnel are full-time hazardous materials inspectors, and have an in-depth familiarity with the regulations which can be a valuable asset to Coast Guard personnel. It is OHMS' policy to always contact the cognizant COTP, either directly or through Commandant (G-MPS), when they will be working in a port area, and COTPs are encouraged to cooperate with OHMS enforcement personnel whenever possible. Although training is not OHMS's primary mission, units consistently report that their personnel benefit from working with OHMS inspectors.
3. Intermodal Cooperation. Congressional and departmental emphasis on improved intermodal liaison has resulted in a substantial increase in cooperation among the DOT operating administrations; specifically OHMS, the Federal Highway Administration's Office of Motor Carrier Safety (OMCS), FRA, FAA, and the Coast Guard. Intermodal cooperation, including national, regional and local working groups, and multi-modal field inspections is encouraged. Intermodal hazardous material "task force" operations, involving resources of various federal, state and local enforcement agencies can be particularly effective tools for determining compliance by shippers and carriers in and around port areas. Joint task force operations, inspections, and assessments serve to optimize the use of available resources, improve interagency liaison, and afford good training opportunities for inspectors.
4. Competition Among Ports. It is imperative that this program be applied consistently at all ports which handle container traffic. There is a great deal of competition for business among U.S. ports. Even the perception that the Coast Guard is enforcing the regulations more aggressively in one port than another could unfairly place that port at a competitive disadvantage by providing incentive for shippers and carriers to use other ports, where there might be less chance of their cargoes being examined and detained. This should not prevent the COTP from conducting an aggressive program which targets flagrant or habitual violators. Also, consistent with the need to ensure U.S. competitiveness in international trade, COTPs should aggressively inspect import as well as export shipments of hazardous materials.
5. Hazardous Materials At Waterfront Facilities. Inspections conducted in accordance with this chapter are intended to be dedicated hazardous materials inspections which target cargoes rather than facilities. Hazardous materials inspections need not be conducted solely in conjunction with waterfront facility inspections required by MSM volume I, chapter 2.
6. Coordination With Customs In 1988, the Coast Guard and the United States Customs Service (USCS) signed a Memorandum of Understanding (MOU) governing the inspection of containerized hazardous materials at waterfront areas. Customs has expressed concern that Coast Guard inspectors opening freight containers on waterfront facilities could inadvertently compromise Customs surveillance of a container suspected of containing contraband. The purpose of the MOU is to avoid misunderstandings between the two agencies regarding our respective goals and authorities. In addition, the MOU ensures that jurisdictional issues are clear and interagency inspection activities are coordinated.

a. Summary Of Interagency Agreement.

- (1) The USCG and USCS will work in close cooperation and support each other with respect to the suppression of violations of customs and transportation safety laws in intermodal freight containers.
- (2) All special dockside enforcement operations that impact drug interdiction or hazardous materials transportation will be coordinated locally by Customs and the Coast Guard. Routine meetings are highly recommended.
- (3) Customs will assist the Coast Guard in arranging for the examination of cargo, although they will not normally place a "Customs Hold" on cargo for another agency. The Coast Guard is responsible for making examination arrangements with the carrier.
- (4) If the Coast Guard discovers evidence of possible contraband and/or other Customs enforced violations, the Coast Guard will immediately contact Customs and provide support as requested by Customs. Similarly, Customs will immediately contact the Coast Guard upon discovering evidence of any possible hazardous materials violations.
- (5) The Coast Guard will contact carriers or their representatives when seals are broken. The Coast Guard will ensure that all seals removed from containers are noted, that the containers are re-sealed with Coast Guard seals after examination, and that this seal information is made available to Customs, upon request.
- (6) When Customs and the Coast Guard both have an interest in a container, Customs will coordinate a Centralized Examination Station (CES) examination. However, shipments that pose transportation hazards will be examined at a site determined by the Coast Guard.
- (7) Cross-training will be provided by each agency at the local level.
- (8) Reference is made to the MOU regarding the use of Coast Guard Group Commanders in enforcement operations. The intent of the MOU was to include Group Commanders where there are units that are a combination MSO/Group. However, in those areas where the MSO and Group are separate, and the Group is involved in hazardous materials enforcement, the Commanding Officer of the MSO will have the lead in all hazardous material enforcement operations.
- (9) The USCG/USCS MOU can be found in MSM volume X in its entirety. It is important to recognize that Customs' primary aim in inspecting containers is to ensure the suppression of violations of customs laws, including preventing the introduction of illegal contraband and ensuring tariff compliance. Enforcement of hazardous materials transportation safety regulations is not a primary Customs responsibility.

- b. Customs Automated Commercial System (ACS) Data Base. ACS is the comprehensive tracking system of the U.S., Customs Service. Anyone who moves or releases cargo, makes entries, files protests, incurs penalties, pays duties, exports merchandise, or conducts any other international business may access ACS. At this time, the ACS data base only records import shipments into the U.S. Customs has agreed to allow the Coast Guard access to this data base through the local Customs field offices. In order to input the system, there must be an associated Harmonized Schedule Number for every commodity in the system. While Marine Safety Offices will not have direct computer links to the data base, they can provide information to the local Customs offices regarding specific commodities that will be targeted.
  - c. Procedures For Accessing ACS. (To Be Developed)
7. Coordination With National Cargo Bureau (NCB). Under 49 CFR 176.18, the NCB is authorized to assist the Coast Guard in administering the hazardous materials regulations. Additional information regarding NCB functions and NCB/USCG coordination can be found in MSM volume I; Chapter 11, section A.14.

E. Container Inspection Procedures.

- 1. General. Marine safety personnel shall adhere to the procedures and documentation requirements in this chapter for the inspection of intermodal freight containers, containerized hazardous materials, and portable tanks shipped or offered for shipment by vessel. Container inspections will normally be conducted at waterfront facilities. Inspections may also be performed at Centralized Examination Stations (CES) operated by Customs or facilities operated by freight forwarders, consolidators, Non-Vessel Operating Common Carriers (NVOCC), and other intermediaries.
- 2. Safe Work Practices Intermodal freight containers and portable tanks are used to transport a wide assortment of hazardous materials. It is important that Safe Work Practices (SWP) be followed to minimize potential hazards and health risks during inspections for containerized hazardous materials. SWP for inspections of containerized hazardous materials can be found in MSM volume I, chapter 10.
- 3. Use Of Security Seals Intermodal containers reduce vulnerability to pilferage and theft and eliminate multiple handling of individual items of cargo. Accountability and proper use of security seals is necessary to maintain integrity in the chain of custody for these containers. Each Coast Guard marine safety unit will maintain a supply of security seals for use during inspections. When not in use, all Coast Guard security seals shall be stored in a locked cabinet, safe or drawer. Each Coast Guard seal will be marked with an alphanumeric identifier which consists of the unit's five digit MSIS Port Code, followed by a sequential number (i.e., USCG BALMS 00019). All information pertaining to seals removed from containers and Coast Guard replacement seals shall be recorded in a permanent unit log. Unit seal logs must contain, at a minimum, the following information:
  - Date and time existing seal was broken.
  - Serial number or identifier of existing seal.
  - ID number of the container or transportation unit being inspected.
  - Serial number or identifier of replacement seal.

- Name/rate/rank of Coast Guard inspectors.
- Name/title of witnesses.

Seals shall be applied and logs maintained in numerical order. If, during the course of transportation, a container is breached, the seal log and other records may help to pinpoint where in the chain of custody the container was compromised, who was responsible, and other information necessary to prevent future occurrences.

4. Scope Of Inspection The scope of this policy is intended to be limited to the shoreside inspection of containers. Containers shall be inspected for compliance with the Hazardous Material Regulations in 49 CFR 171-180 and the Safety Approval of Cargo Containers Regulations in 49 CFR 450-453. Internal inspections of containers aboard vessels are to be discouraged under normal circumstances. Hazardous materials cargo may not be accessible in a container under all circumstances. For full container loads, inspectors should not normally require a container to be devanned (unloaded) unless there is evidence of an unsafe condition or gross incidence of non-compliance. If devanning is required, a facility representative shall be notified so that appropriate arrangements for devanning can be made. All devanning will be conducted by facility or marine cargo handling personnel. Under no circumstances shall devanning be conducted by Coast Guard personnel.
  
5. Selecting Containers For Inspection. In selecting containers for inspection, care must be taken to limit the possibility of arbitrariness and to ensure a fair and reasonable distribution of inspections among shippers and between COTP zones. For that reason, the following sections require that certain inspections be conducted according to random selection criteria. This "randomness" requirement exists only to ensure that the container inspection program is conducted equitably, and is not an essential element of the legality of the inspections themselves.
  - a. Placarded Containers. The following pertains to selection of containers placarded or manifested as carrying hazmat:
    - (1) Most container inspections will be random inspections of placarded containers. COTPs have flexibility in determining specific selection criteria to be followed and should establish written guidelines to make inspections as random as possible. For example, inspectors could be directed to review facility paperwork and select every 5th placarded container. Or, inspectors could be directed to inspect each container whose last identifying numeral is a certain random number (i.e., 3 or 6).
    - (2) While every effort will be made to ensure random inspections, nothing shall prevent inspectors from examining any placarded container where an obvious discrepancy (i.e., leaking container, conflict between paperwork and container markings, etc.) or other articulable suspicion of a violation exists.
    - (3) "Sting" operations which target particular hazardous commodities or shippers with poor compliance records may also be acceptable under certain conditions. Contact the District Commander's legal staff prior to conducting such an operation to ensure that appropriate legal concerns are addressed.

- b. Unplacarded Containers. The following pertains to selection of containers not placarded or manifested as carrying hazmat:
- (1) Where paperwork indicates that a container contains general cargo, and there is no reason to suspect that hazmat is present, the container may only be inspected with the consent of the container custodian. If the custodian withholds consensual inspection authority, the container should not be opened. Similarly, if the custodian grants consensual inspection authority, but during the inspection withdraws it, the inspection must be terminated.
  - (2) As a general rule, however, COTPs should encourage personnel to make reasonable use of consensual inspections, as under most circumstances consent will be given. Moreover, random consensual inspections of unplacarded containers serves the very important purpose of increasing detection as well as deterrence of illegally disguised hazmat shipments. Consensual inspections of "non-suspicious," unplacarded containers shall be governed by random selection criteria discussed in paragraph 9.E.5.a.
  - (3) Where there is articulable suspicion that undeclared hazmat may be present within an unplacarded container (because of paperwork inconsistencies, information received from outside sources, etc.), the container may be inspected under the following conditions. First, attempt to obtain consensual inspection authority. If such authority cannot be obtained, and if the COTP has reason to believe that the container may be moved or tampered with before a search warrant can be obtained, then the container may be inspected immediately. However, if no such belief exists, a warrant should be obtained. Warrants can be obtained with the assistance of the cognizant U.S. Attorney's office. Any warrantless inspection conducted pursuant to this section should cease once the articulable suspicion giving rise to the inspection has been satisfied.
  - (4) Any container used in international transportation, placarded or unplacarded, may be inspected for structural serviceability if the inspector has reason to believe that the container does not comply with the requirements of the International Safe Container Act (see section 9.E.6.c). This authority includes opening containers to inspect the interior structural components when necessary.
  - (5) All container inspections should be conducted within the constraints of the legal considerations further discussed in section 9.F of this chapter.
6. Inspection Procedures. Upon arrival at a facility where containers are handled, proceed to the facility manager's office to explain the purpose and scope of your inspection. Request that a facility representative accompany you on the inspection. Select the containers to be inspected. This may be done by examining relevant paperwork, visually looking for certain placarded containers, or similar means.
- a. Shipping Papers. After selecting the containers to be inspected, obtain copies of the shipping papers and documentation for each. Review the shipping papers and

the vessel cargo manifest/loading plan (if applicable) for completeness and to determine the nature of the cargo.

- b. Safety Approval Plate If the container is used in international transportation, check for the presence of a CSC Safety Approval Plate required by 49 CFR 451 and note the maximum gross weight. This plate is evidence that a freight container was designed, constructed, and tested under international rules incorporated into 49 CFR parts 450 through 453. Ensure that all maximum gross weight markings on the container are consistent with the gross weight information on the safety approval plate in accordance with 49 CFR 450.07. Also, to the extent possible, ensure that the combined gross weight of cargo indicated on the shipping papers for the container does not exceed the maximum gross weight on the safety approval plate. If the container is over 5 years old and has a CSC Safety Approval Plate, check for the presence of a CSC examination marking required by 49 CFR 452. A container may be examined under a periodic examination program for which a marking will indicate the next examination due date, or an approved continuous examination program (ACEP) for which the marking must read "ACEP/Country Code/(Year Program was approved). Markings must be on or next to the approval plate and should be a decal, sticker, stencil or other marking.
  
- c. External Examination Of Freight Containers. After checking the container markings, conduct an external examination of the container for structural serviceability. Ensure that the container does not have major defects in its structural components, such as top and bottom side rails, top and bottom end rails, door sill and header, floor cross members, corner posts, and corner fittings. Note any serious structural damage to the container, such as holes, cuts, tears, cracks or deterioration which may make it unfit for use. If there is evidence that the container is weakened, it should not be used. Normal wear including mild rust, slight dents and scratches, and other damage that does not affect serviceability or the weather-tight integrity of the container is not prohibited. Doors should work properly and be capable of being securely locked and sealed in the closed position. Door gaskets and weather strips should be in good condition. In examining containers for suitability to transport hazardous materials (other than explosives) Coast Guard inspectors shall refer to the repair criteria set forth in the Guide for Container Equipment Inspection, published by the Institute of International Container Lessors. While this guide is designed for containers used in international transportation, it may be applied to domestic-use containers as well. Freight containers used for transport of Class 1 (explosive) materials must meet the specific requirements of 49 CFR 176.170 and 176.172.
  
- d. Hazard Communication (Placarding). Examine placards. Ensure that the container bears the appropriate type and number of hazardous materials placards. Require replacement of any placards that are damaged or missing.
  
- e. Removal Of Security Seals Removal and replacement of seals shall be conducted in accordance with the Coast Guard/Customs Memorandum of Understanding of December 1988. Note the seal numbers securing the doors of the container in the block provided on the form. Have the facility representative remove the seal and carefully open both container doors. Personnel should remain alert and stand to the side as the doors are opened in the event that unsecured cargo should fall out.

- f. Internal Examination Of Freight Containers. Prior to inspecting hazardous materials cargo, conduct an internal examination of the container for structural serviceability. Next, verify that information on the shipping papers is accurate. Be alert for any hazardous materials not listed on the shipping papers. Hazardous materials cargo may not be accessible in the container under all circumstances. For full container loads, inspectors will normally conduct a "tailgate" examination of the container and cargo. Inspectors should not normally require a container to be devanned (unloaded) unless there is evidence of an unsafe condition or gross incidence of non-compliance.
- g. Hazard Communication (Marking And Labeling). Ensure that packages are marked and labeled in accordance with 49 CFR 172.
- h. Stowage. Ensure that all of the general stowage requirements for hazardous materials in 49 CFR 176.69 and 176.76 are met. In particular, ensure that packages of hazardous materials are stacked and secured to prevent movement in any direction. Because 49 CFR 176.76(a)(2) is a "performance requirement," cargo securing may be achieved by any number of reliable and suitable means. Packages may be secured by wooden blocking and bracing, banding or strapping, inflatable cushions, or other restraint systems. Any of these securing methods may be acceptable, if, in the opinion of Coast Guard inspectors, they will effectively prevent the shifting or movement of cargo and will not fail during transportation. Also ensure that the weight of the cargo is evenly distributed and that the maximum permissible weight of the container is not exceeded. For each hazardous material within the container, check column (10) of the Hazardous Materials Table (49 CFR 172.101) which identifies special stowage provisions and authorized stowage locations on vessels. Also, for stowage of marine pollutants on vessels, ensure that the provisions of 49 CFR 176.70 are met.
- i. Segregation. Ensure that hazardous materials are properly segregated from incompatible materials, cargo and foodstuffs. Hazardous materials for which any segregation is required by the General Segregation Table in 49 CFR 176.83(b) may not be stowed in the same freight container.
- j. Packaging. Check one or more packages containing hazardous materials for compliance with the packaging requirements in 49 CFR 173.
- k. General Packaging Considerations. The type of packaging authorized to be used for each hazardous material are prescribed by column (8) of the Hazardous Materials Table (49 CFR 172.101). The entry in this column will direct you to the appropriate section of 49 CFR 173. Each packaging must meet the applicable general requirements for packagings and packages contained in Subpart B of 49 CFR 173, the performance level requirements of 49 CFR 178 as appropriate for the packing group being packaged, and must also comply with the packaging requirements of any applicable special provisions listed for the entry in column (7) of the Hazardous Materials Table. The general requirements contained in 49 CFR 173.24 apply to all specification or non-specification non-bulk packages and bulk packages. This section emphasizes that all hazardous materials packaging "shall

be so designed, constructed, maintained, filled, its contents so limited and closed" that the package will remain intact under normal transportation conditions.

1. Securing The Container. Upon completion of each container inspection, ensure that the doors are closed securely. Affix a Coast Guard seal to the doors so that they cannot be reopened without breaking the seal. Record the replacement Coast Guard seal number on the (CG-5577) form. [NOTE: Coast Guard replacement seals shall only be affixed to containers opened by, or in the presence of, Coast Guard personnel.]
  - m. Other Actions. Upon completion of all applicable sections of the inspection form, advise the vessel or facility representative of any discrepancies noted, corrective action required, and allowable time frame for action. Discuss with the vessel or facility representative any necessary interruption of cargo operations, possible holds on containers, etc. It may be necessary for the actual shipper or owner of the container to be contacted to correct discrepancies. For overweight or structurally unsafe containers, the COTP can issue a detention order to restrict movement of the container(s). Follow local procedures to immediately report any major discrepancies which may require immediate action by the COTP. Prior to departing the facility, complete the Hazardous Materials Inspection Report (CG-5577A). Explain to the facility representative that this form is not a report of violation, but is provided for information purposes only. Violations, if any, will be processed and notification made to the responsible party. Be sure to identify and cite the actual party responsible for the violation. In many cases, this might not be the carrier or facility, but the original shipper, freight forwarder or other intermediary. Upon returning to the unit, ensure that all applicable MSIS products (PSAR, Discrepancy reports, operational controls) are completed in a timely and accurate fashion.
7. Detention Of Uninspected Or Unsafe Containers. 49 CFR 453 outlines situations which may warrant placing an international container shipment on hold or the use of a detention order by the COTP.
- a. Container On Hold. A container that does not have a valid Safety Approval Plate or, has a valid Safety Approval Plate but is in a condition that creates an obvious risk to safety, should be removed from service by detention order until restored to a safe condition. Container damage which exceeds the criteria set forth in 49 CFR or the Guide for Container Equipment Inspection, by the Institute of International Container Lessors, is cause for action. Figure 9-1 represents a sample detention order which may be used. A placard may also be applied by the Coast Guard to indicate that a container has been detained and is "out of service."
  - b. Re-Inspection Requirements. If a container has a valid safety approval plate, but has not been periodically examined and marked in accordance with 49 CFR 452, COTPs may affix a tag requiring that it be examined prior to reloading and/or reuse in international transport. Containers tagged in this manner are not necessarily detained nor removed from service. In accordance with 49 CFR 453.1(c), if such a container is reloaded and used or offered for international transport, a detention order may be issued causing the container to be removed from service until brought into compliance.

- c. Notification. In any case where a container is placed under detention, immediate notification shall be given to the facility representative or other person having control over that container. Also, the owner and/or agent of the container should be notified. It is the responsibility of the facility (or other custodian of the container at the time of the inspection), not the Coast Guard, to contact the owner, shipper, consignee or other appropriate party to arrange for any required resolution of discrepancies.
  - d. Shipment On Hold. The requirements and procedures of 49 CFR 450-453 extend only to containers used in international transportation. COTPs, however, may control or direct the handling and movement of any containerized hazardous materials shipments, whether in foreign or domestic commerce, under the authorities of 33 CFR 126.29, 33 CFR 160.109, and 49 CFR 171-180. A placard may be used in this situation to signify that the shipment has been placed on hold for outstanding cargo discrepancies or other problems not involving serviceability of the container itself.
8. Safety Approval Of Freight Containers The Coast Guard has authority to oversee the safety approval of freight containers regulated under the International Safe Container Act. A number of private firms have been delegated authority by the Coast Guard to approve containers which comply with the International Safe Container Act (in accordance with 49 CFR 450). Containers used in international transportation must be tested and found to comply with the technical conditions set out in Annex II to the International Convention for Safe Containers. A list of Coast Guard authorized approval authorities for containers appears in section 9.H of this chapter. The approval authorities would be excellent points of contact for questions involving structural requirements for freight containers. The requirements cited above apply to containers used for international transportation. Other standards, including the American National Standards Institute's (ANSI) Basic Requirements for Cargo Containers (ANSI MH5), exist for containers used in domestic commerce.
9. Container Examination Stations (CES). CES' are operated by Customs in all ports of entry, where selected imported freight containers are taken for devanning and thorough examination. CES' vary in size and number from port to port. In one port, for example, Customs operates 5, the largest having 24 bays where up to 48 containers are devanned and examined per day. In addition to examining cargo for tariff compliance, Customs inspectors are also looking for contraband and may drill and/or x-ray containers. Containers at a CES are completely devanned. A Coast Guard inspector observing CES operations may see considerably more cargo per day than one conducting tailgate examinations on a waterfront facility. However, Customs targets shipments by a variety of criteria, none of which are based on DOT hazard classification, so it is possible that none of the containers examined in a given day at a particular CES will contain hazardous materials.
- a. Cargo Handling Cargo handling at a CES is conducted by a Customs contractor. After checking in with the senior Customs official present, Coast Guard inspectors should check the structural condition of the container, whether it is overweight, and observe cargo being unloaded from the containers. Complete a form CG-5577 for each container which is carrying hazardous materials. Since some DOT

violations will also be Customs violations, bring any violations noted to the attention of the Customs representative. Examples would include undeclared hazardous materials or materials incorrectly represented, which may lower the duty owed to the government.

- b. Deficiencies. If deficiencies are noted of sufficient gravity to require correction before the container continues in transportation, notify the Customs representative immediately so that arrangements satisfactory to both agencies may be made. This may entail temporary reloading which will allow the container to be moved from the CES bay to another location on the property, where it will again be devanned, brought into compliance to the satisfaction of the COTP and local officials (such as the fire and/or police departments), reloaded and released.

10. Freight Forwarders And Intermediaries Intermediaries such as domestic and international freight forwarders, non-vessel operating common carriers (NVOCCs), and freight consolidators play an important role in intermodal freight transportation. They serve both shippers and carriers by performing such functions as palletizing and containerizing goods for intermodal movement, and consolidating small less-than-container load (LCL) and less-than-truck load (LTL) shipments into larger loads.

- a. Freight Forwarders. Freight forwarders are carriers that collect small shipments from shippers, consolidate the shipments, and transport them to a destination where the freight forwarder delivers the individual shipments to the consignee.
- b. Consolidators. Consolidators include warehouse operators, brokers or other firms who take LCL and LTL shipments and consolidate them into larger trailer and container shipments destined for more than one consignee. They also breakdown full truck load and container load shipments and distribute them.
- c. Non-Vessel Operating Common Carriers (NVOCCs). Although non-vessel operating common carriers (NVOCCs) have been operating in the foreign commerce of the U.S. for many years, the term NVOCC was first defined in section 3 of the Shipping Act of 1984 as CH-2 9-18 "a common carrier that does not operate the vessels by which the ocean transportation is provided and is a shipper in its relationship with an ocean common carrier. As common carriers, NVOCCs make themselves available to the public to provide transportation by water between the U.S. and foreign countries, utilizing vessels operating on the high seas. NVOCCs do not own vessels, but use reserved space on vessels of other carriers. NVOCCs enter into agreements with their underlying shippers, issue bills of lading or equivalent documents, and assume full responsibility for the shipments they handle, from point of origin to point of destination. NVOCCs serve as "shippers" for both full-container load (FCL) and less-than-container load (LCL) shipments. NVOCCs often arrange for the consolidation and transport of small, less-than-container load (LCL) shipments for small export companies. In essence, the NVOCCs serve as middlemen between originators of the shipment and carrier companies. They are often used by shippers who do not want the extra cost of repacking containers at the port area. Like other intermediaries, most NVOCCs have little or no expertise in handling packaged hazardous materials for ocean transport. As a result, this inexperience may lead to non-compliance with the hazardous materials regulations.

- d. Authority. Title 49 CFR 1.46 (u) states the Secretary of Transportation has delegated authority to the Commandant to carry out functions vested in the Secretary by 49 U.S.C. 1808(a), (b) and (c) and 1809 and 1810 (HMTA), relating to investigations, records, inspections, penalties, and specific relief as they apply to the transportation or shipment of hazardous materials by water. The broad authority in Title 49 CFR 1.46 (u) is not geographically limited. Consequently, marine safety units have the authority to inspect hazardous materials at facilities operated by freight forwarders, consolidators and NVOCCs away from waterfront areas. (These facilities may be found in the vicinity of port areas or may be located at points inland.) However, the Coast Guard may only exercise that authority if hazardous materials are destined to be transported or shipped by the water mode. COTPs are encouraged to identify and conduct hazardous material inspections at intermediaries who are known to have offered hazardous materials for transportation by vessel. RSPA's Office of Hazardous Materials Enforcement and RSPA field personnel are also available to assist the Coast Guard in targeting intermediaries.
  - e. Inspection Procedures. When inspecting freight forwarders and other intermediaries, determine if the Coast Guard has jurisdiction. If hazardous materials are present and they will be exported or have been imported by water, the Coast Guard has jurisdiction. Inspection procedures to be followed are similar to those performed for hazardous materials at waterfront facilities. Inspection will normally be limited to enforcing the provisions of the Hazardous Materials Transportation Act (HMTA) and the Safe Container Act (SCA). If there are any discrepancies, determine if other parties besides the intermediaries are responsible. In many instances a violation case can be made against them and/or other parties involved in the shipment of the hazmat freight including the original shipper, carriers, other intermediaries and any other parties involved with that shipment.
11. Portable Tanks. The regulations governing the design, approval, and use of portable tanks are found in 49 CFR Chapter I, Subchapter C. Although applicable regulations are found throughout 49 CFR, specific requirements are in sections 173.24, 173.32a through 173.32c, and 178.270 through 178.272. Also, regulations pertaining to the approval of the container frame structure are found in 49 CFR 450-453, Subchapter B, "Safety Approval of Cargo Containers."
12. Investigations. Intermodal shipments of hazardous materials' may involve a shipper (or offeror), freight consolidators, freight forwarders, several carriers in various modes of transportation, waterfront facilities, and import or export brokers and agents. When violations are discovered, each party's role in the shipment should be investigated. Investigations of international shipments are likely to be more complex than domestic shipments due to the involvement of foreign shippers and import and export agents and brokers.
- a. Responsibilities Of The Shipper. Each shipper is required by 49 CFR 172.204 to certify on the shipping paper that the shipment is in compliance with the Hazardous Materials Regulations. The shipper is the person who offers the commodity for transportation, and could be the manufacturer or, as is common in containerized freight, a consolidator who combines several smaller shipments with

similar destinations into one or more freight containers. That person is then offering the container(s) as one "shipment" and assumes responsibility for preparing shipping papers, including signing the certification. When a dispute arises as to who the shipper is in a given case, the issue may be resolved by looking to the signature on that certification, or to the shipper's name required to be on the shipping papers by 49 CFR 172.201(b).

- b. Container Packing Certificate. International container shipments of hazardous materials prepared in accordance with the IMDG Code must be accompanied by a container packing certificate. (See IMDG Code Vol. I, section 12.3.7.) This certificate, prepared by persons responsible for the packing of dangerous goods into a container, certifies that the container has been inspected prior to use, and that cargo within has been prepared, segregated and stowed in accordance with the IMDG Code. The Container Packing Certificate requirement was adopted under Amendment 24 to the IMDG Code and became effective worldwide on January 1, 1994, as mandated under the SOLAS Convention. RSPA has issued a Competent Authority Ruling (See Federal Register Vol. 58, No. 249 of 30 Dec 93) stating that Container Packing Certificates must accompany all IMDG Code container shipments offered in the U.S. under 49 CFR 171.12(b). Container Packing Certificate information may be provided by either a separate document or in a signed statement provided on the dangerous goods shipping document. For civil penalty cases involving Container Packing Certificates, both 49 CFR 171.2 (charge) and 49 CFR 171.12(b) (specification) should be referenced.

The nearest U.S. equivalent to this certificate is the Shipper's Certification required by 49 CFR 172.204. In it's wording, each person who offers a hazardous material for transportation, must certify on the shipping paper that he or she is offering hazardous materials that are properly prepared for shipment in the manner prescribed by Title 49 CFR.

- c. Discrepancies. In all cases, consideration must be given to the nature of a discrepancy when deciding whom to hold responsible. If a package, label, etc. was incorrect when the shipment was originally offered and accepted for transportation, the original shipper should be held accountable. If the discrepancy was such that a consolidator or carrier should have noticed it, action could be considered against both. We must avoid taking action against the vessel, carrier, or waterfront facility simply because they are the most accessible party.
- d. Civil Penalty Action. Units shall adhere to the guidelines in COMDTINST 16200.3A, Civil Penalty Procedures and Administration, when submitting violation cases to Coast Guard Hearing Officers. That instruction offers guidelines for selecting an appropriate recommended civil penalty and identifying the party or parties against whom the penalty should be imposed.
- e. Multiple Potential Parties. All incidents of noncompliance must be examined carefully for circumstances where separate civil penalty cases can and should be brought at the same time against liable parties. Select the party who can most effectively bring about compliance. If this can be achieved with equal effectiveness by two or more parties, select those parties whose failure to comply requires the greatest degree of correction.

- f. Violations Involving IMDG Code Shipments. 49 CFR 171.12(b) allows certain hazardous materials shipments prepared in accordance with the IMDG Code to be transported within the United States. For civil penalty cases involving IMDG Code shipments, both 49 CFR 171.2 (charge) and the closest equivalent 49 CFR cite (specification) should be referenced.
- g. Criminal Penalty Action For knowing or willful violations of the HMTA, criminal penalties may be appropriate. Examples of such violations would include deliberate misrepresentation of hazardous materials cargo, falsification of shipping papers, or tampering with hazardous materials packages. Potential criminal violations of the HMTA should be handled in the manner prescribed in MSM volume I, chapter 5. In cases where the COTP deems that criminal penalty action may be appropriate, the COTP shall forward such cases to the district commander for review. The district commander shall determine whether or not a criminal penalty is warranted. If the evidence is sufficient and the circumstances are such that a criminal penalty is appropriate, the case shall be referred to the U.S. attorney for action.

13. Use Of Inspection Forms.

- a. General. To ensure consistent enforcement of the regulations governing the transportation of containerized hazardous materials throughout the Coast Guard, CG-5577, Hazardous Materials Inspection Form and CG-5577A, Hazardous Material Inspection Report shall be used. The forms standardize the scope and detail of containerized hazardous materials inspections, discrepancy reporting and notification, and facilitate gathering and entering information required by the Port Safety product of the Marine Safety Information System (MSIS).
- b. CG-5577. Hazardous Materials Inspection Form. This form is to be completed during the inspection of a freight container, portable tank, or break-bulk packaged hazardous materials. A separate Hazardous Materials Inspection form (CG-5577) shall be completed and filed for each container, tank, or package inspected. Only one form need be prepared for containers with multiple packages.
- c. CG-5577A. Hazardous Materials Inspection Report. The Inspection Report is to be completed following the inspection of a freight container, portable tank, or break-bulk packaged hazardous materials. This form is prepared by the inspection team and a copy is given to the facility or vessel representative upon completion of the inspection. This form is not a report of violation and a signature or other acknowledgment is not required. The sole purpose of the inspection report is to advise the facility or vessel representative of discrepancies noted and action required to correct those discrepancies.

14. Reporting Requirements. Report container inspection activities in the MSIS Port Safety Activity Report (PSAR). Associate the Activity Report with the facility where the inspections were conducted.

- a. Non-Compliance. Report significant violations and patterns of non-compliance to Commandant (G-MPS-1). G-MPS-1 will evaluate this information from a

nationwide perspective, identify industry trends, and alert units and districts to those trends. This information will also be shared with OHMS and the other DOT modal agencies. It is very rare for a shipment to enter the U.S. by vessel and not be transferred to another mode for further transportation. Patterns of non-compliance are therefore of interest to the other modal agencies.

- b. Public Notice. Status reports on the program, as well as information on recently closed significant penalty actions, should be published in unit newsletters and other appropriate media. There is considerable deterrent value to industry awareness that the Coast Guard is actively examining the contents of freight containers and enforcing compliance with the regulations.

F. Legal Considerations.

1. General. COTPs have broad authority to inspect hazardous materials shipments and waterfront facilities for compliance with various regulations. However, when opening freight containers, consideration must be given to Fourth Amendment protections against unreasonable search and seizure, to limiting agency liability for missing or damaged contents of a container opened by the Coast Guard, and to ensuring that the container inspection program is conducted fairly and reasonably.
2. Field questions. Due to the complex nature of Fourth Amendment standards and other relevant legal matters, field questions regarding a search in a particular case should be coordinated with the District Commander's legal staff.
3. Inspections Without A Warrant. Inspecting the contents of a freight container, as envisioned by this program, constitutes a search under the Fourth Amendment. A container marked or manifested as containing hazardous materials, however, may be inspected without a warrant under the "pervasively regulated business exception" to the Fourth Amendment. Furthermore, a container located in a customs area, and just having been imported or intended to be exported, whether or not marked or manifested as containing hazardous materials, may be inspected under the border search exception to the Fourth Amendment. (See section 9.E.5.a.) [NOTE: This latter exception is an exercise of customs authority and is not to be relied upon by COTPs without prior consultation with the District Commander's legal staff.]
4. Inspections Which May Require A Warrant. The authority to inspect containers not manifested or marked as containing hazardous materials, and not in a customs area is not so clear. The HMTA does not apply to shipments which do not include hazardous materials. Absent articulable suspicion to believe that the container contains hazardous cargoes, the expectation of privacy likely outweighs the desire of the government to ensure that the shipper is not falsely shipping hazardous materials. A container that is not marked or manifested as containing hazardous materials, and is not in a customs area or being imported or intended for export, should only be inspected in accordance with the provisions found in section 9.E.5.b.
5. Emergency Situations Any freight container may be inspected without a warrant if there is reason to suspect an emergency situation exists, (e.g., leaking packages in the freight container, obvious damage to the container and/or its contents) under the exigent circumstances exception. The inspector must reasonably believe that the leaking or damage

involves hazmat, or otherwise poses a significant risk of injury to persons or damage to property.

G. References. The following is a list of references that may be used by marine safety personnel in implementing local inspection programs for containerized hazardous materials:

1. Hazardous Materials Transportation Act (HMTA) (49 U.S.C. 1801, et seq.) as amended
2. Ports and Waterways Safety Act (PWSA) (33 U.S.C. 1221, et seq.)
3. The International Safe Container Act (ISCA) (46 U.S.C. 1503)
4. International Convention for Safe Containers (ISC) including 1981 and 1983 amendments
5. International Maritime Dangerous Goods (IMDG) Code, by the International Maritime Organization
6. 49 CFR Parts 100 - 180
7. 49 CFR Parts 450 - 453
8. 33 CFR Part 126
9. 33 CFR Part 160
10. Competent Authority Notice on Container Packing Certificates, published by the Research and Special Programs Administration (RSPA), Department of Transportation, Federal Register Vol.58, No.249, December 30, 1993
11. COMDTINST 16200.3A, Civil Penalty Procedures and Administration
12. "A Shipper's Guide for Proper Stowage of Intermodal Containers in Ocean Transport," by the National Cargo Bureau
13. "A Shipper's Guide to Stowage of Cargo in Marine Containers," by the U.S. Maritime Administration
14. "Guide for Container Equipment Inspection" (Fourth Edition), by the Institute of International Container Lessors, LTD., Bedford, N.Y.
15. "IMO/ILO Guidelines for Packing Cargo in Freight Containers or Vehicles," by the International Maritime Organization
16. "IMO Code of Safe Practice for Cargo Stowage and Securing" by the International Maritime Organization
17. Bureau of Explosives Pamphlet No. 6c, "Approved Methods for Loading and Retaining Shipments of Hazardous Materials for Trailer/Container on Flat Car Movements"

18. "Cargo Containers - Their Storage, Handling and Movement," by Herman D. Tabak, Cornell Maritime Press Inc.
19. "Ocean Container Transportation: An Operational Perspective," by Mark L. Chadwin, James A. Pope, and Wayne K. Talley, Taylor & Francis, New York, NY (1990)
20. "Intermodal Freight Transportation," by Gerhardt Muller, Eno Foundation for Transportation, Inc.

H. Delegate Approval authorities For Containers. The below organizations have been delegated authority by the Commandant (G-MSO), U.S. Coast Guard, to approve containers as complying with the International Safe Container Act in accordance with Title 49, U.S. Code of Federal Regulations, Part 450. This list is current as of August 9, 1996.

	<u>ORGANIZATION</u>	<u>CODE</u>	<u>APPROVAL DATE</u>
1.	American Bureau of Shipping ATTN: Mr. Aris Antoniou 16855 Northchase Dr. Houston, TX 77060-6008 Tel: (713) 873-5200 Fax: (713) 874-9553	AB	6 Jun 78
2.	ABS Industrial Verification Services, Inc. ATTN: Mr. Aris Antoniou 16855 Northchase Dr. Houston, TX 77060-6008 Tel: (713) 873-5200 Fax: (713) 874-9553	AT	6 Jun 78
3.	International Cargo Gear Bureau, Inc. ATTN: Mr. Charles G. Visconti 17 Battery Place New York, NY 10004 Tel: (212) 425-2750 Fax: (212) 269-9469	IB	6 Jun 78
4.	Marine Container Equipment Certification Corp ATTN: Capt. M. W. Allen 160 Squankum Yellowbrook Road Farmingdale, NJ 07727 Tel: (908) 938-6622 Fax: (908) 938-6972	MC	6 Jun 78
5.	B. A. Bodenheimer & Co., Inc. ATTN: Mr. Bert A. Bodenheimer 456 Glenbrook Rd. Stamford, CT 06906	BA	17 Nov 78

Tel: (203) 324-1188  
Fax: (203) 324-6993

6. Container Transport Technology CT 27 Dec 79  
ATTN: Mr. P. W. Shahani  
P. O. Box 99  
Annandale, NJ 08801  
Tel: (908) 735-6676  
Fax: (908) 735-2160
7. Intermodal Transportation IT 15 Sep 80  
Services, Inc.  
ATTN: Mr. E. Matthew Marks  
Linden Plaza  
9 Campus Drive  
Parsippany, NJ 07054-4476  
Tel: (201) 993-3634  
Fax: (201) 993-5749
8. C. R. Cushing & Co., Inc. CR 8 Sep 81  
ATTN: Mr. Charles R. Cushing  
18 Vesey Street  
New York, NY 10007  
Tel: (212) 964-1180  
Fax: (212) 285-1334
9. R. J. Del Pan & Co., Inc. DP 10 Mar 82  
ATTN: Mr. Lee A. Del Pan  
No. 501 Don Alfonso Sycip Bldg.  
U.N. Avenue Corner L. Guerrero Street  
Ermita, Manila  
Philippines  
Tel: 5220066; 5210178; or 5210180  
Fax: (632) 5210367
10. Hodges Transportation, Inc. NA 24 Oct 88  
Nevada Automotive Test Center  
ATTN: Mr. Henry C. Hodges, Jr.  
P. O. Box 234  
Carson City, NV 89702  
Tel: (702) 882-3261  
Fax: (702) 882-3264
11. Silver Inspection Services SI 29 Jun 95  
ATTN: Mr. James R. Silver  
2810 Todville Road  
P. O. Box 1124  
Kemah, TX 77565  
Tel: (713) 474-7968  
Fax: (713) 474-7840

12.	The Hartford Steam Boiler and Insurance Company ATTN: Mr. Timothy C. Healy One State Street Hartford, CT 06102 Tel: (203) 722-5150 Fax: (203) 722-5530	HB	11 Dec 95
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I. Rescinded Delegation Approval Authority For Containers The below organization has had its delegation authority rescinded by the Commandant(G-MSO), U.S. Coast Guard, to approve containers as complying with the International Safe Container Act in accordance with Title 49, U.S. Code of Federal Regulations, Part 450. This list is current as of August 9, 1996.

	<u>ORGANIZATION</u>	<u>CODE</u>	<u>DATE APPROVAL RESCINDED</u>
1.	Omnimodal, Inc. ATTN: Mr. Peter Canellis 1A Boxwood Road Port Washington, NY 11050 Tel: (915) 597-8641	OM	13 Dec 95