

Analysis of FAA Hazardous Material Shipping Regulations and Strategies for Compliance

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Abstract: Mr. Gering will discuss Federal Aviation Administration civil enforcement matters involving the shipment of hazardous materials by air carriers. This discussion will include a general analysis of the federal hazardous material shipping regulations that apply to air shipments, FAA enforcement efforts in this area, including the application of the FAA penalty policy for hazardous material shipping regulation violations, and strategies to minimize exposure with respect to such enforcement matters.

**ANALYSIS OF FAA HAZARDOUS MATERIAL SHIPPING
REGULATIONS AND STRATEGIES
FOR COMPLIANCE**

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ENFORCEMENT

- **U.S. Department of Transportation--
general enforcement authority**
- **Federal Aviation Administration--
Enforces all regulations applicable to air
carriers and air shippers**

ENFORCEMENT SANCTIONS

- **Compliance orders**
- **Civil penalties**
 - **Minimum of \$250 per violation**
 - **Maximum of \$27,500 per violation per day**
- **Criminal penalties (willful violations)**
 - **Up to \$500,000 and five years' imprisonment**
- **Injunctive relief**
- **Hearings**
 - **Available at option of alleged violator**
 - **Not required by federal hazmat law**

ENFORCEMENT PROCEDURES

- **Notice of probable violation**
- **Opportunity to respond**
 - **Copies of applicable MSDSs**
 - **Training records for involved employees**
 - **Statement explaining incident including any extenuating or mitigating circumstances that relate to the incident**

ENFORCEMENT PROCEDURES, cont.

- **Notice of proposed civil penalty (must be issued within 2 years of violation)**
- **Election among procedural options within 30 days**
 1. **Submit amount of civil penalty specified in notice**
 2. **Submit written information and evidence demonstrating that no violation occurred or that reduced penalty or no penalty at all is warranted under the circumstances**
 3. **Submit written information and records indicating financial inability to pay proposed penalty or that payment would prevent continuation of business**

ENFORCEMENT PROCEDURES, cont.

- 4. Request that penalty be assessed in a specific amount other than proposed amount**
- 5. Request informal conference with FAA enforcement attorney**
- 6. Request formal hearing in accordance with section 13.16 of FAR--complaint will be filed**

PENALTY POLICY

- Provides general framework for penalty consideration
- Used by FAA to promote relative consistency in determining civil penalties
- Stated goal: penalty that is sufficiently deterrent but not excessive
- Applies to "knowing" violations, *i.e.*, where person acts with knowledge of facts giving rise to violation or where reasonable person would have knowledge

PENALTY POLICY, cont.

- **Provides uniform means of evaluating violation in light of statutory penalty criteria**
 - 1. Nature, circumstances, extent, and gravity of violation**
 - 2. Degree of culpability of violator**
 - 3. History of past violations**
 - 4. Ability to pay**
 - 5. Effect on ability to continue in business**
 - 6. "Other matters as justice requires"**

APPLICATION OF PENALTY POLICY

- **Case Analysis--Evaluation of statutory factors**
 - **Nature, circumstances, extent, and gravity of violation (factors concerning shipment)**

What material was offered, transported, or accepted for air transportation:

Hazardous materials divided into three risk categories based on classes, divisions, and packing groups

Stated goal: assign weighting factor based on inherent risk of danger to air transportation posed by material

APPLICATION OF PENALTY POLICY, cont.

Category A materials assigned maximum weight

Materials whose release in an aircraft could potentially have catastrophic effect on aircraft's ability to continue in safe flight, e.g., explosives

Category B materials assigned moderate weight

Materials whose release in an aircraft would not pose immediate threat to flight safety, but could cause death or injury to persons, or damage aircraft structure over time, e.g., spontaneously combustible materials and infectious substances

APPLICATION OF PENALTY POLICY, cont.

Category C materials assigned minimum weight

Materials that present minimal risk to transportation system, e.g., ORM-D and Consumer Commodity

What quantity of the material was offered, transported, or accepted for air transportation

Did the package exceed the authorized quantity limitations by a significant amount

APPLICATION OF PENALTY POLICY, cont.

Degree to which volume limitation was exceeded, number of packages in shipment, and total amount of hazardous material being shipped may result in moderate or maximum weight

Did the shipment cause damage or harm to persons or property or interfere with commerce

If yes, moderate or maximum weight depending on degree of damage

Fact that no damage occurred is not mitigating factor

APPLICATION OF PENALTY POLICY, cont.

Violator's degree of culpability

**Is the violator the manufacturer of the
hazardous material**

**Expected to have complete
knowledge of nature of hazardous
material**

High degree of culpability

APPLICATION OF PENALTY POLICY, cont.

Did someone other than violator prepare shipment for transportation

If yes, consider minimum or moderate weight

Reshipper of hazardous material in same package in which received has lesser degree of culpability than original shipper

Did violator reasonably rely on incorrect information from another source

If yes, consider minimum weight

***E.g.*, reliance on inaccurate MSDS**

APPLICATION OF PENALTY POLICY, cont.

Does violator have history of previous violations of hazmat regulations

If yes, consider moderate or maximum weight depending on number and age of violations

Prior violation must be actual finding of violation pursuant to legal enforcement action to establish violation history

Violations more than 5 years old carry less weight unless continuing pattern of violations exists

APPLICATION OF PENALTY POLICY, cont.

Other factors

Catch-all

Determine final aggregate weight of case

Aggregate weight determined as result of analysis of various weighting factors, not mathematical averaging

Single weighting factor may outweigh all others

APPLICATION OF PENALTY POLICY, cont.

- **Use matrix to determine sanction ranges**

Identify appropriate category for type of entity and nature of offense

Box where entity type and nature of offense intersect provides applicable sanction range

Apply aggregate weighting factor to assign sanction amount within range

Sum of sanctions for each violation group is recommended civil penalty

APPLICATION OF PENALTY POLICY, cont.

Departure from matrix ranges

Upward or downward departure is permitted

Agents must consult with FAA enforcement attorney prior to upward departure, but need not do so for downward departure

APPLICATION OF PENALTY POLICY, cont.

- **Consider other statutory factors**

Ability to pay/continue in business

Corrective action

Must exceed minimum legal requirements

Extent and timing are primary factors that determine appropriate amount of penalty reduction

APPLICATION OF PENALTY POLICY, cont.

Systemic change intended to prevent future violations given greater consideration

Immediate action given greater credit than corrective action initiated after notice of proposed penalty issued