

LabelMaster's

DANGEROUS GOODS SYMPOSIUM FOR INSTRUCTORS

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**MITIGATING CIVIL PENALTIES ISSUED BY
THE FAA FOR HAZMAT VIOLATIONS**

By

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OUTLINE

I. Introduction

The Federal Aviation Administration (FAA) has the authority to enforce the Hazardous Materials Regulations (HMR) at 49 CFR Parts 171 to 185, including issuing civil monetary penalties against violators. An understanding of the HMR, the procedures used by the FAA to issue the violation notices, the alternative procedures to respond to a proposed penalty notice, and the factors used by the FAA in determining the amount of the penalties will assist shippers, carriers, and other companies which are involved in the logistics of transporting hazardous materials to mitigate such penalties.

II. Legal Sources

A. Federal Hazardous Materials Transportation Law, 49 U.S.C. §§ 5101-5127

1. 49 U.S.C. § 5123 – civil penalty

a. “knowing” violation. A person acts knowingly –

i. when the person has actual knowledge of the facts giving rise to the violation; or

ii. a reasonable person acting in the circumstances and exercising reasonable care would have that knowledge.

NOTE: A carrier knowingly violates the HR. when the carrier accepts or transports a hazardous material with actual or constructive knowledge that a package contains a hazardous material not properly packaged, marked, labeled, or described on a shipping paper as required by the HMR.

b. Amount of penalty –

i. up to \$50,000 per violation for violations occurring on or after August 10, 2005

ii. up to \$100,000 per violation if the violation results in death, serious illness, or severe injury to any person or substantial destruction of property.

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2. 49 U.S.C. 5124 - criminal penalty up to \$500,000 and 5 years in prison

Requires evidence of both knowledge of the hazardous materials laws and regulations and an intent to violate them.

B. Hazardous Materials Regulations (HMR), 49 CFR Parts 171-178

1. * Common Shipper Violations
 - a. Undeclared HAZMAT aboard an aircraft.
 - b. Misdeclared HAZMAT aboard an aircraft.

NOTE: Shipper's Declaration for Dangerous Goods states:

"I hereby declare that the contents of this consignment are fully and accurately described above by the proper shipping name, and are classified, packaged, marked and labelled/placarded, and are in all respects in proper condition for transport according to applicable international and national governmental regulations."

2. Common Air Carrier Violations
 - a. Improper acceptance of HAZMAT for air transportation
 - b. Failure to notify FAA properly of incident/discrepancies in HAZMAT shipment. See 49 CFR 175.31. Must notify nearest FAA Civil Aviation Security Field Office by telephone as soon as practicable.

NOTE: 49 CFR Part 175 violations certainly apply to "aircraft operators", but also to air freight forwarders, even ground handling crews

C. FAA Investigative and Enforcement Procedures, 14 CFR Part 13

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III. Criteria Used by FAA to Assess Amount of Penalty

A. Nature, circumstances, extent, and gravity of the violation, the degree of culpability of the violator, any history of past violations, the ability to pay, any effect of the ability to continue to do business, and other matters as justice requires.

B. Hazardous Materials Sanction Guidance Matrix

Similar penalties should be imposed in similar cases, yet each case must be evaluated on its own facts.

C. Guidelines for Civil Penalties, 49 CFR Part 107, Subpart D, Appendix A

D. Good Arguments

1. Prompt, corrective action is critical!
2. Violation occurred because of reasonable reliance on incorrect information from another source.
3. Small Business Regulatory Enforcement Fairness Act.

IV. FAA Penalty Procedures

A. Notice of proposed civil penalty.

B. Not later than 30 days after receipt of the notice of proposed civil penalty, the person charged with a violation shall respond.

1. Pay in full, or.
2. Submit written information, including documents and witness statements, demonstrating that a violation of the regulations did not occur or that a penalty or the amount of the penalty is not warranted by the circumstances, or.

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3. Request informal, telephonic conference with an attorney from the Office of Chief Counsel, FAA. or.
4. Make a written monetary counter-offer, or
5. Request a formal hearing with an Administrative Law Judge.

NOTE: All contact regarding the proposed penalty and penalty will be with an attorney from Regional Counsel's Office of the FAA, who acts on behalf of the Federal Agency.

V. Conclusion

With 1.2 million daily movements of HAZMAT in the United States and 100,000 daily shipments by air in the United States, even with the best of intentions by most companies, there are bound to be companies that intentionally, recklessly, or negligently violate the HMR. Even the most diligent companies will inevitably violate the HMR, even only accidentally and in a minor way.

The May 1996 crash of ValuJet here in Miami in May 1996 is a reminder of the seriousness with which the international HAZMAT organizations, the United States Government, and the HAZMAT private industry must continue to make the transportation of hazardous materials safe and secure for all of us. Not committing a violation is the best thing to do, but once a violation occurs, properly explaining all the facts and circumstances to the FAA investigator and to the attorney from the Regional Counsel's Office of the FAA may get the penalty cancelled or significantly reduced.