

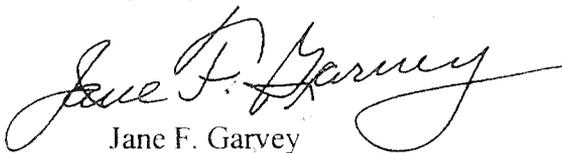
11/15/01

SUBJ: COMPLIANCE AND ENFORCEMENT PROGRAM

1. PURPOSE. This change amends Appendix 6, Policy on Enforcement of Hazardous Materials Regulations: Penalty Guidelines, issued on April 14, 1999.
2. EXPLANATION OF CHANGES. This amends the "Definitions" section of the Penalty Guidelines to eliminate ambiguities and clarify the application of the Penalty Guidelines to certain cases. The change:
  - a. Amends the definition of "Declared Shipment" by removing the last sentence of the present definition in order to clarify that a declared shipment must comply with one or more of the communicative regulatory requirements of the HMR to be considered a declared shipment for purposes of these guidelines.
  - b. Amends the definition for a shipment that falls "Within Hazmat Quantity limitations" to provide that an undeclared shipment is within hazmat quantity limitations if the material is within the hazmat quantity limitations for passenger aircraft as provided in the §172.101 Table (49 C.F.R. § 172.101). This change eliminates the link to the particular aircraft upon which the shipment traveled, which with respect to an undeclared shipment is often fortuitous. It also eliminates disparity in determining the appropriate sanction for violations involving a shipment that was offered for air transportation but was not transported on an aircraft.
3. DISPOSITION OF TRANSMITTAL. After filing the attached pages, this transmittal should be retained.

## PAGE CONTROL CHART

Remove Pages	Dated	Insert Pages	Dated
15-18	4/14/99	15	4/14/99
		16	11/15/01
		17	11/15/01
		18	4/14/99



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AIR CARRIER AND OTHER AIRCRAFT OPERATOR VIOLATIONS	E. Group I & II Air Carriers and Other Aircraft Operators	F. Group III & IV Air Carriers and Other Aircraft Operators
Failure to comply with Parts 171, 172, or 173 requirements of the HMR as an offeror of Hazmat.	Use main Matrix.	Use main Matrix.
Improper acceptance of Hazmat for air transportation. (i.e., quantity, labeling, marking, packaging, and shipping papers) See 49 CFR §§ 175.30(a)(1) – (4)	5,000-27,500	2,500-15,000
Failure to inspect Hazmat shipment properly. See 49 CFR §§ 175.30(b), (c), (d), (e)	10,000-27,500	5,000-15,000
Improper storage/securing of Hazmat aboard aircraft	10,000-27,500	5,000-15,000
Failure to provide Hazmat training, maintain records of training, or meet minimum requirements for Hazmat training.	10,000-27,500	5,000-15,000
Failure to notify FAA properly of incident/discrepancies in Hazmat shipment.	5,000-15,000	1,000-5,000
Failure to provide notice to the pilot-in-command.	5,000-15,000	1,000-5,000
Other Part 175 violations	5,000-15,000	1,000-5,000

**DEFINITIONS:**

- (a) **Air Carrier and Other Aircraft Operator Groups (I, II, III, IV)** – Air carriers and other aircraft operators are divided into two categories for purposes of determining an appropriate sanction. These categories track the air carrier groups established in FAA Order No. 2150.3A, Appendix 1, Compliance/Enforcement Bulletin 92-1, but also includes any operator of an aircraft that is operated “in commerce” as defined in the Federal hazardous materials law, including Part 129 Foreign Air Carriers, Part 125 Operators, and Part 91 Operators. Group I is comprised of air carriers and other aircraft operators with annual operating revenue of \$100,000,000 or more. Group II is comprised of air carriers and other aircraft operators that hold Part 121 certificates or have 50 or more pilots or operate 25 or more aircraft, with annual operating revenue of less than \$100,000,000. Group III is comprised of air carriers and other aircraft operators that do not meet the criteria for Group II with (1) 6 to 49 pilots, or (2) 6 to 24 aircraft. Group IV is comprised of all other air carriers or aircraft operators not meeting the criteria for Groups I, II, or III.

## Appendix 6

- (b) **Business Entity** – The violator is a business, corporation, partnership, Sub-S Corporation, sole proprietor, association, or any type of commercial entity. An individual who offers a Hazmat shipment in air transportation in the course of his/her self-owned business falls into this category. Includes all entities defined under the HMR's definition of "person," (49 C.F.R. § 171.8) with the exception of an individual as defined herein.
- (c) **Business Entity that Regularly Offers, Accepts, or Transports Hazardous Materials in the Course of Its Business** - A manufacturer or distributor of Hazmat falls into this category. A freight forwarder would also fall into this category. The aspect of "regularly" offering covers a business entity that offers Hazmat with some anticipated frequency or purports to do so; e.g., a catalogue company that offers hazardous material to its customers would fall into this category, even though its actual sale or transportation of the Hazmat is infrequent or limited.
- (d) **Business Entity that Uses, Handles Hazmat in the Course of Its Business** – This category encompasses the business that utilizes Hazmat in its business but does not offer it for transportation on a regular basis, as described above. For example, a manufacturer of a non-Hazmat product that uses Hazmat in the manufacturing process could fall into this category. It must be established that the company ordinarily does not offer the Hazmat it utilizes for transportation, and the shipment in this instance represents an isolated incident. This type of business is held to a higher standard than the business entity that has no regular involvement with Hazmat. The described business entity receives the subject hazardous material in transportation and uses it in its business; thus, it is clearly on notice of the hazardous nature of the material and the regulatory requirements to which the Hazmat is subject.
- \*
- (e) **Declared Shipment** - A declared shipment, for purposes of this matrix only, is one that complies with one or more of the communicative requirements of the HMR, i.e., it has markings, labels, and/or partially-correct shipping papers. A package that has shipping papers that declare the contents as hazardous material but is otherwise not marked or labeled falls into this category. Similarly, a properly marked and labeled package that lacks shipping papers also falls into this category. \*
- (f) **Forbidden or Exceeds Quantity Limits for Passenger Aircraft** – A shipment falls into this category if the quantity of Hazmat per package exceeds the quantity limitations for passenger-carrying aircraft or if the particular hazardous material is forbidden in air transportation on passenger aircraft.

- (g) **Forbidden on or Exceeds Quantity Limits for All Aircraft** – A shipment falls into this category if the quantity of hazardous material per package exceeds the allowable amount for both passenger and cargo aircraft or the Hazmat is absolutely forbidden in air transportation.
- (h) **Hazmat** – A “hazardous material,” as defined in 49 C.F.R. § 171.8, includes and is interchangeable with the term “dangerous goods,” as used in the International Civil Aviation Organization (ICAO) Technical Instructions.
- (i) **Individual** – An individual who offers a shipment of hazardous material in his/her personal capacity without any business purpose or as part of a commercial enterprise on the part of the individual.
- (j) **Intentional or Deliberate Violation** – A shipment falls into this category when there is evidence that the offeror, acceptor, air carrier, or aircraft operator had knowledge of the requirements of the HMR and willfully circumvented or attempted to circumvent those requirements. For example, an offeror who places a properly marked and labeled Hazmat shipment along with properly completed shipping papers, into an overpack marked as “printed material,” has committed an intentional or deliberate violation. In this type of case, the investigating agent shall consult with FAA legal counsel and follow agency guidance for potential criminal violations of the HMR.
- (k) **Undeclared Shipment** – This is a shipment that has no indication of its Hazardous material contents and/or no indication that the offeror communicated the hazardous nature of the shipment’s contents to persons who accept or transport.
- \*
- (l) **Within Hazmat Quantity Limitations** – The amount is within the quantity limitations per package for passenger aircraft as established in the § 172.101 table (49 C.F.R. § 172.101). \*

**RISK CATEGORIES**  
**(Figure 2)**

**CATEGORY "A"**

**{Maximum Weight}**

Category "A" materials are materials that when released in the confines of an aircraft can potentially have a catastrophic effect on an aircraft's ability to continue safe flight, resulting in a crash or emergency landing causing injury or death to passengers and flightcrew, as well as persons on the ground.

- Class 1 Explosives: Division 1.1, 1.2, 1.3,
- Class 2 Compressed Gases All 2.1, 2.2 with Subsidiary Risk 5.1 and All 2.3 PIH Zones A-D
- Class 3 Flammable Liquids PG I, II, and (PIH)
- Class 4 Division 4.1 Flammable Solids PG I, & (Matches)  
Division 4.2 Spontaneously Combustible Materials PG I (Pyrophoric)  
Division 4.3 Dangerous When Wet PG I
- Class 5 Division 5.1 Oxidizing Liquids and Solids PG I, II, e.g., "Chemical Oxygen Generators"  
Division 5.2 Organic Peroxides PG II (Type A,B,C,D)
- Class 6 Division 6.1 Poisonous Liquids PG I (PIH)
- Class 7 Cargo Aircraft Only Quantities on Passenger Aircraft
- Class 8 Corrosive Material Liquid PG I and (PIH)
- Forbidden Materials (See 49 CFR 173.21 & ICAO Technical Instructions)
- Forbidden Hazmat listed in Dangerous Goods Table 49 CFR § 172.101

**CATEGORY "B"**

**{Moderate Weight}**

The materials listed in Category "B" are materials that may not pose an immediate threat to the safety of a flight, but can cause death or injury to persons due to unintended releases in aircraft cabin areas, and potential damage to aircraft structures over a longer period of time due to undiscovered releases on aircraft structural components.

- Class 1 Division 1.4, 1.5, 1.6, All Compatibility Groups
- Class 3 PG III Flammable Liquids
- Class 4 Division 4.1 Flammable Solids PG II, III  
Division 4.2 Spontaneously Combustible Materials PG III  
Division 4.3 Dangerous When Wet PG II, III
- Class 5 Division 5.1 Oxidizing Liquids or Solids PG III  
Division 5.2 Organic Peroxides (Type E,F,G)
- Class 6 Division 6.1 Poisonous Liquids PG I, II (NON-PIH)  
Division 6.2 Infectious Substances
- Class 7 Radioactive Materials, yellow label II, white label I
- Class 8 Liquids PG II, III Solids PG I, II, III