UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

In the Matter of: SCOTT NOVAK

FAA Order No. 2014-1

FDMS No. FAA-2012-0206[1]

Served: January 2, 2014

DECISION AND ORDER[2]

I. Introduction

Complainant Federal Aviation Administration ("Complainant") has appealed the written initial decision of Administrative Law Judge ("ALJ") Richard C. Goodwin.[3] The ALJ determined that Complainant failed to prove that Respondent Scott Novak ("Respondent") *"knowingly"* offered an undeclared shipment of hazardous materials for transportation by air in violation of: (1) the hazardous materials transportation statute, 49 U.S.C., Subtitle III, Chapter 51, §§ 5101-5128; and (2) the hazardous materials regulations ("HMR"), 49 C.F.R. Parts 171-178 (2011).[4]

This decision finds that Respondent did in fact act "knowingly" within the

[1] Materials filed in the FAA Hearing Docket (except for materials in security cases or materials under seal) are also available for viewing at the following Internet address: *www.regulations.gov*.

[2] The Administrator's civil penalty decisions, along with indexes of the decisions, the rules of practice, and other information, are available on the Internet at the following address: *www.faa.gov/about/office_org/headquarters_offices/agc/pol_adjudication/AGC400/Civil_Penalty*. In addition, Thomson Reuters/West Publishing publishes Federal Aviation Decisions. Finally, the decisions are available through LEXIS (TRANS library) and WestLaw (FTRAN-FAA database). For additional information, see the Web site.

[3] A copy of the ALJ's decision, served on April 13, 2013, is attached.

[4] The text of the specific provisions allegedly violated are included in the Appendix to this decision.

meaning of the hazardous materials transportation statute and regulations, and that a civil penalty of $1,200 is appropriate under all the facts and circumstances of this case.

II. Facts

Respondent flew to Anchorage, Alaska, to help his daughter and her husband move from Anchorage to Juneau, Alaska. (Tr. 175, 184.)[5] His daughter and son-in-law planned to put all their belongings in the back of their pickup truck and drive it to Juneau.[6] (Tr. 176, 181, 185.) When Respondent realized that everything would not fit in the pickup truck, he offered to bring some of their belongings to an Alaska Airlines cargo facility to ship by air. (Tr. 176, 181, 185.)

On December 22, 2011, Respondent drove the pickup truck filled with some of their belongings to the Alaska Airlines cargo facility and backed the truck onto the ramp. An Alaska Airlines ramp agent asked him what he had to ship, and he replied that he had "some furniture and household stuff." (Tr. 186, 192.) In a letter written to FAA Special Agent and Dangerous Goods Specialist Jeffrey Deitz, dated January 3, 2012, and attached to Complainant's First Set of Interrogatories as Exhibit D, at page 1, Respondent wrote, "I did not pack any of the boxes and was under the assumption that we were shipping clothes, dishes, and furniture." The Alaska Airlines ramp agent helped Respondent place the goods, which included a mattress, cardboard boxes, and a grill, onto pallets. (Tr. 59, 187.) The shipment consisted of 11 pieces on four pallets, together weighing

[5] Citations to the Hearing Transcript are as follows: "Tr. [page number(s)]."

[6] Complainant has noted that it would have been necessary for Respondent to have taken a ferry as part of the trip, by truck, from Anchorage to Juneau.

556 pounds. (Tr. 60; Exhibit A-9.)[7] An Alaska Airlines employee used a forklift to move the pallets into the building. (Tr. 187.)

The Alaska Airlines ramp agent completed a company form called a "half-sheet." (Exhibit A-9.) On the half-sheet, the ramp agent indicated that the shipment consisted of "Furniture/Household Supplies." (*Id.*) The ramp agent also placed check marks next to "Boxes checked for dangerous goods[8] markings," and "Went over DG [dangerous goods] trigger terms with customer." (Exhibit A-9; Tr. 71-72.)

For Alaska Airlines, terms like "household goods," "camping goods," "hunting gear," and "toolbox" are "trigger terms." If an offeror refers to goods by a trigger term, then the Alaska Airlines employee receiving the goods should ask questions designed to uncover whether the shipment contains any hazardous materials. (Tr. 47, 73, 147, 148.) For example, the Alaska Airlines employee could ask:

- "Do you have any hazardous materials?"
- "Do you have any aerosols?"
- "Do you have anything that could start a fire?"
- "Do you have anything that is under pressure?"
- "Do you have anything explosive, radioactive, or corrosive?"
- "Do you have any chemicals?"

(Tr. 62, 79.) Respondent testified, however, that at no point did an Alaska Airlines employee ask him what was in the boxes. (Tr. 199.)

[7] The exhibits from the hearing are labeled as follows. The agency's exhibits – *i.e.*, Complainant's exhibits – are labeled "Exhibit A-[number]." Respondent's exhibits are labeled "Exhibit R-[number]."

[8] Technically, the international term is "dangerous goods" and the U.S. term is "hazardous materials," but the terms are used interchangeably. (Tr. 33, 63, 159.)

The ramp agent handed a copy of the half-sheet to Respondent, and Respondent took it inside the glass doors to the agent at the counter in the cargo service office. There was a hazardous materials poster inside the cargo service office that read as follows:

Dangerous Goods Notice
Hazardous Material Warning

> *Cargo containing hazardous materials* (dangerous goods) for transportation by aircraft must be offered in accordance with the Federal Hazardous Material Regulations (49 CFR Parts 171 through 180).
>
> *A violation can result in five years' imprisonment* and penalties of $250,000 or more (49 U.S.C. § 5124).
>
> *Hazardous materials* (dangerous goods) includes explosives, compressed gases, flammable liquids and solids, oxidizers, poisons, corrosives, and radioactive materials.

(Exhibit A-29, italics in the original; Tr. 82, 84.) Respondent testified, however, that he did not recall seeing any signs addressing dangerous goods or hazardous materials. (Tr. 197-98.)

Inside the cargo service office, an Alaska Airlines employee prepared an air waybill for Respondent's shipment. (Tr. 187.) Under "Nature of Goods," the air waybill stated, "Furniture, Mattress." (Exhibit A-7.) Like the half-sheet, the air waybill indicated that the shipment consisted of 11 pieces together weighing 556 pounds. (Exhibit A-7.)

Respondent paid Alaska Airlines by credit card. As part of the electronic transaction, he selected the button that read, "This shipment DOES NOT contain dangerous goods." (Exhibit A-18; Tr. 50.) The next screen stated, "This shipment DOES NOT contain hazardous materials. Please initial in the box below and press DONE when complete." (Exhibit A-19; Tr. 50.) Respondent initialed in the box and pressed DONE. (Exhibit A-7.)

The Alaska Airlines employee printed the air waybill, which contained the following statement:

> Shipper certifies that the particulars on the face hereof are correct and that insofar as any part of the consignment contains dangerous goods, such part is properly described by name and is in proper condition for carriage by air according to the applicable Dangerous Goods Regulations. I consent to the inspection of this cargo.

(Exhibit A-7.) The air waybill contains Respondent's signature indicating his assent to this statement. It also contains his initials next to the statement that, "THIS SHIPMENT DOES NOT CONTAIN DANGEROUS GOODS." (Exhibit A-7; Tr. 71.) His initials and signature were derived from the electronic transaction. (Tr. 71.)

Sometime after Respondent completed the transaction and left the Alaska Airlines facility, an Alaska Airlines employee found hazardous materials in Respondent's shipment. (Tr. 30, 151.) When the employee opened the grill, she found a 32-ounce bottle of Safeway odorless charcoal lighter fluid and a 6.5-ounce can of Repel insect repellent, both hazardous materials. (Exhibits A-1 through A-6.) This discovery triggered a physical search of the rest of the shipment, uncovering additional materials that were classified as hazardous materials under the HMR.

Specifically, the following hazardous materials were found inside one of the cardboard boxes: one 10-ounce can of Moroccanoil hairspray; one bottle of nail polish; one bottle of Safeway nail polish remover, and one 7-ounce can of Gillette Fusion Hydra shaving gel. (Tr. 30-31.) There were 15 bottles of nail polish in another cardboard box.[9] (Exhibits A-1 through A-6.) The proper shipping names, hazard classes, packing groups,

[9] One bottle of perfume, which may be a hazardous material, was included in the shipment, but Complainant did not include it in the complaint. (Exhibits A-1, A-6.)

and identification numbers for these hazardous materials, which are derived from the Hazardous Materials Table in 49 C.F.R. § 172.101, are set forth in the chart below:

Hazardous Material	**Proper Shipping Name**	**Hazard Class**	**Packing Group**	**Identification Numbers**
Safeway charcoal lighter fluid	Petroleum Distillates, N.O.S.	3 (Flammable Liquids)	III	UN 1268
Repel insect repellent	Aerosols, Flammable	2.1 (Flammable Gases)	Not applicable	UN 1950
Moroccanoil hairspray	Aerosols, Flammable	2.1 (Flammable Gases)	Not applicable	UN 1950
Nail polish	Paint	3 (Flammable Liquids)	II	UN 1263
Nail polish remover	Acetone Solutions	3 (Flammable Liquids)	II	UN 1090
Gillette Fusion Hydra shaving gel	Aerosols, Flammable	2.1 (Flammable Gases)	Not applicable	UN 1950

The HMR (*see* the Appendix) require offerors to provide shipping papers that appropriately describe and certify the hazardous materials. *See, e.g.*, 49 C.F.R. §§ 172.200(a), 172.202(a), 172.204 (containing some of the requirements for shipping papers). Offerors must place hazardous materials markings on the packages. 49 C.F.R. §§ 172.300(a), 172.301(a). They must place hazardous materials labels on the packages. 49 C.F.R. § 172.400(a). And they must provide emergency response information. 49 C.F.R. § 172.604(a). UN identification numbers and proper shipping names must be on all packages, and they are used in an emergency by first responders to determine what firefighting and first aid measures to use. (Tr. 113-14.) In the instant case, Respondent did not provide the required shipping papers, labels, markings, and emergency response information for the shipment.

Respondent stated in paragraph 1 of his response to Complainant's request for admissions that, "To the best of my knowledge, all the stuff my daughter asked me to ship was just household goods and not anything that was serious." Respondent also wrote in paragraph 3 of that response that the air waybill stated that "the shipment was furniture, mattress and GEN SOA (sic),[10] which is what I was told was in the containers." In paragraph 1 of Respondent's response to interrogatories, he wrote, "I didn't have a clue that there was any fingernail polish in the shipment. The contents were described by my daughter as household goods, including a mattress and other stuff she needed moved to Juneau. There wasn't any discussion about anything being dangerous in the boxes."

At the hearing, Respondent's daughter testified that she packed everything, and because they originally did not intend to ship any of their goods by air, she was not concerned about any possible hazardous materials. (Tr. 176.) She also testified that she was unaware that any of the items would be considered hazardous and thus could not be shipped. (Tr. 179.) Everyone she knew took hairspray on vacation, she stated. (*Id*.)

She also testified that her father did not know that any of the items in question were present because she packed everything and "he was not there when I packed it." (Tr. 176.) At another point, however, she testified that her father was indeed present when she was taping up the boxes, but that he did not look inside any of the boxes or ask what was in them. (Tr. 180.) She said that he never asked her if there were any hazardous materials and she never told him. (Tr. 176, 180.)

Respondent testified that at no point did an Alaska Airlines agent ask him what was in the boxes. (Tr. 199.) He testified that after he walked in and handed the air

[10] "GEN SOA" indicated that Respondent was a general, unknown shipper in the state of Alaska. (Tr. 40.)

waybill to the Alaska Airlines employee, the latter keyed the information into the computer and asked, "Are you ready to swipe your credit card?" He testified that after he swiped his card, a series of questions appeared on the credit card machine. (Tr. 199.) He testified that he checked "No," and signed his initials in response to one question, "Are there any dangerous materials?" (*Id.*) Respondent also testified that he indicated on the computer screen that the shipment did not contain hazardous materials, initialed, accepted the price, and signed. (Tr. 202.)

When asked during direct examination why he selected the box that states, "Does not contain any hazardous materials," Respondent testified that he did so because, to the best of his knowledge at the time, there were no hazardous materials. (Tr. 200.) He testified that he thought that his daughter and son-in-law were shipping clothes, dishes, dirty laundry, and furniture. (*Id.)*

Respondent testified that he never knowingly offered materials that were hazardous or dangerous. (Tr. 203.) To the best of his knowledge, there was nothing hazardous or dangerous. (Tr. 204, 208.) He testified that he had no way of knowing what was in the shipment because he did not pack the things. Instead, he just pulled items out of the pickup truck and put them on the pallet, as directed by the Alaska Airlines ramp agent. (Tr. 203-04.) Respondent testified that if he had known the hazardous materials were in the shipment, he still probably would have declared that they were not hazardous, with the possible exception of the lighter fluid, because he did not know that nail polish, nail polish remover, hairspray, shaving cream, and insect repellent were hazardous materials. (Tr. 205, 206, 208.)

Respondent testified that no one specifically asked him whether he had packed the boxes or determined the contents. (Tr. 204.) He also testified that if someone had asked him to certify on any of the forms that he had "personally inspected the contents of the boxes," he would not have done so. (*Id.)*

Respondent testified that he was not shown any pictures of examples of dangerous goods. (Tr. 209-11.) He stated that there was no hazardous materials poster or sign near the credit card machine. (Tr. 210.) Respondent testified that during the credit card transaction he was standing at a desk and looking back out of the Alaska Airlines garage door, not in the direction of any hazardous materials posters. (Tr. 213.)

Respondent testified that he did not understand how he was supposed to know he was shipping something dangerous or hazardous because there were no questions, photographs, or drawings. (Tr. 213.) Respondent stated that he was never quizzed, educated, or interrogated about what might be in the boxes or what could be hazardous. (Tr. 192, 195.) There was only the simple question on the credit card machine, "Are you shipping dangerous materials?" (Tr. 213-14.) He testified that there was nothing to help him decide if anything was dangerous. (*Id*.)

After Respondent dropped off the shipment, an Alaska Airlines employee called to advise him that the airline had removed hazardous materials from his shipment, and that he could pick them up. (Tr. 202.) Respondent told the employee that Alaska Airlines could dispose of the hazardous materials. (Tr. 203.)

III. ALJ's Initial Decision

The ALJ found that the evidence was "clear and undisputed" that Respondent offered an undeclared shipment of hazardous materials consisting of six items (charcoal

lighter fluid, insect repellent, hairspray, nail polish, nail polish remover, and shaving gel). (Initial Decision at 3.) The ALJ found, that as the parties agreed, Respondent was unaware of the contents of the shipment he had offered. (*Id.* at 4.) The ALJ held that Complainant failed to prove that a civil penalty should be assessed against Respondent because Complainant did not prove that Respondent acted "knowingly."

The hazardous materials transportation statute provides that a person who knowingly commits a violation is subject to a civil penalty. 49 U.S.C. § 5123. The statute provides that a person acts knowingly when:

> (A) The person has actual knowledge of the facts giving rise to the violation; or
>
> (B) A reasonable person acting in the circumstance and exercising reasonable care would have that knowledge.

(Id.) The ALJ wrote that Respondent did not have actual notice that he tendered hazardous materials. Thus, the ALJ wrote, the question was whether a reasonable person acting in the circumstances and exercising reasonable care would have known the facts giving rise to the violation. (*Id.)*

The ALJ stated that the statute's mandate to exercise reasonable care created a duty for Respondent to inquire sufficiently into the materials he was shipping, and the ALJ found that Respondent did make sufficient inquiry. (*Id.)* The ALJ wrote that the evidence showed that Respondent reasonably believed that he was shipping household goods. (*Id.)* The ALJ stated that goods customarily associated with household moves, such as furniture, bedding, and the like, are considered innocuous from an air transport standpoint and Respondent had no cause to suspect otherwise. (*Id.)* The ALJ stated that as a helper and facilitator, Respondent had the right to rely on his daughter's general description of the shipment's contents, and he had "no reason to inquire further." (*Id.)*

The ALJ wrote that while it is true that "some personal effects often transported as part of a household move are considered hazardous materials," Respondent was unaware of that, and he may not be charged with that knowledge. (Initial Decision at 5.)

The ALJ wrote further that Respondent could still be found liable if he knew, or should have known, that the materials at issue – whether or not they were considered hazardous – were part of his daughter's effects. (Initial Decision at 5.) But, the ALJ stated, liability may not be imputed in this case because that would amount to strict liability, and the statute does not impose strict liability. (*Id.)*

The ALJ stated that there were no other factors that should have caused Respondent to inquire further. (*Id.*) The ALJ found that Respondent "credibly" testified that he did not see any signs in Alaska Airlines' cargo area or elsewhere, and that no Alaska Airlines employee asked him if he was tendering hazardous materials. (*Id*.) The ALJ wrote that Complainant introduced evidence showing that ramp agents as a matter of policy ask shippers if they are shipping hazardous materials, but did not offer any evidence showing that the ramp agents actually posed such questions to Respondent. (*Id.)* The ALJ wrote that he discounted, as hearsay, evidence that ramp agents discussed trigger terms with Respondent. (*Id*.)

The ALJ wrote that he was well aware that the items in question, customarily characterized as household goods, are considered dangerous in air transportation because they were flammable. (*Id.)* But the ALJ emphasized that the dangers inherent in shipping undeclared hazardous materials do not mean that a shipper must always be charged with the knowledge that he or she is offering such items, because the statute does not set such an inflexible standard. (*Id.)* The ALJ found that the circumstances of this

case show that Respondent did not reasonably know what he was shipping and as a result, Respondent was not liable under the statute. (*Id.)* Concluding that the agency failed to prove that Respondent "knowingly" offered hazardous materials in air transportation, the ALJ dismissed the complaint. (Initial Decision at 6.)

IV. Discussion

A. "Knowingly"

On appeal, Complainant argues that the ALJ erred in finding that Respondent did not violate the HMR "knowingly" within the meaning of 49 U.S.C. § 5123(a)(1). Complainant contends that the ALJ erred in finding that Respondent made sufficient inquiry into the contents of the shipment. Complainant also contends that there was no duty to warn Respondent about violations of the HMRs.

The hazardous materials transportation statute provided as follows: "A person that *knowingly* violates this chapter or a regulation … issued under this chapter is liable to the United States Government for a civil penalty …." 49 U.S.C. § 5123(a)(1) (2011) (italics added). The HMR likewise provided: "Each person who *knowingly* violates a requirement of the Federal hazardous material transportation law … is liable for a civil penalty ….." 49 C.F.R. § 171.1(g) (2011) (italics added). Similarly, the FAA regulations provided: "The FAA may assess a civil penalty against any person who *knowingly* commits an act in violation of 49 U.S.C. chapter 51 [entitled, "Transportation of Hazardous Material"] or a regulation prescribed … under that chapter, under 49 U.S.C. 5123 and 49 C.F.R. 1.47(k)." 14 C.F.R. § 13.16(c) (2011) (italics added).

The hazardous materials transportation statute defined the term "knowingly" as follows:

A person acts *knowingly* when –

(A) the person has actual knowledge of the facts giving rise to the violation; or

(B) a reasonable person acting in the circumstances and exercising reasonable care would have that knowledge.

49 U.S.C. § 5123(a)(1)(A) & (B) (2011) (italics added).

Complainant does not allege that Respondent had actual knowledge of the facts giving rise to the violation. Respondent did not know what the contents of the boxes or the grill were, and therefore, did not know that he was offering hazardous materials. Hence, he did not act knowingly under 49 U.S.C. § 5123(a)(1)(A). To determine whether the evidence shows that Respondent acted knowingly, as that term is defined in Section 5123(a)(1)(B), it is necessary to consider whether a reasonable person acting in the circumstances and exercising reasonable would have known the facts giving rise to the violation.

To be liable, it is not necessary for a person to know that the items that he or she is offering are classified as hazardous materials. *Aero Continente*, FAA Order No. 2003-8 at 14 n.22 (September 12, 2003); *Smalling*, FAA Order No. 1994-31 at 6-7 (October 5, 1994); *TCI Corp.*, FAA Order No. 1992-77 at 8 (December 22, 1992).) Under Section 5123(a)(1)(B), shippers are subject to civil penalties as long as they know *the facts giving rise to the violations*.

The statute "requires inquiry and treats a person as possessing whatever knowledge inquiry would have produced …." *Interstate Chemical Company, Inc. (ICC)*, FAA Order No. 2002-29 at 13 (December 6, 2002), quoting *Contract Courier Services, Inc. v. Research & Special Programs Administration, United States Department of*

Transportation, 924 F.2d 112, 114 (7th Cir. 1991).) "Because it is wise on occasion to require persons to acquire knowledge, and to treat them as if they have done so, statutes frequently provide that a person 'knows' whatever a reasonable inquiry would have turned up." *Contract Courier Services, Inc. v. Research & Special Programs Administration, United States Department of Transportation*, 924 F.2d 112, 114 (7th Cir. 1991).

Respondent complains that he received no warning about hazardous materials, but he cites to no authority establishing a duty to warn. Complainant is correct that there is no duty to warn.

Respondent should not have assumed that all of his daughter's household goods were innocuous. A reasonable person would know that the contents of a household include goods that range from the innocuous (*i.e.*, towels, dishes) to the hazardous (*i.e.*, paint, bleach). If a reasonable person would know that household goods may include hazardous materials, then a reasonable person would be expected to ask for some specifics – *e.g.*, what did you put in the boxes? A reasonable person would not assume that it is acceptable to ship all of the goods by air without any inquiry.

Respondent claims that he was just helping his daughter. However, when he gave the shipment to Alaska Airlines, he took on the responsibilities of a shipper. Shippers are generally responsible, within reason, for what they introduce into the stream of air transportation. Likewise, a reasonable person would not initial and sign a certification that there were no hazardous materials contained in a shipment if he or she did not know whether any were present or had not made a reasonable inquiry as to the contents. A reasonable person acting in the circumstances and exercising reasonable care *makes*

reasonable inquiry. What constitutes a "reasonable inquiry" may vary depending upon the circumstances, and, consequently, must be determined on a case-by-case basis.

The ALJ found that Respondent made reasonable inquiry, when in fact he made no inquiry at all. Respondent may not have been present during the packing, but he was present when his daughter was sealing the boxes. It would not have been difficult for him simply to ask his daughter what was in the boxes. At the very least, he should have asked his daughter and son-in-law what types of household goods the shipment contained, but his daughter testified that he asked her nothing. Regarding the unwrapped propane grill, all Respondent had to do was open its drawers and he would have found the charcoal lighter fluid.

Having failed to make reasonable inquiry, Respondent cannot be said to have acted as a reasonable person acting in the circumstances and exercising reasonable care, and thus, Respondent acted "knowingly." The ALJ's determination to the contrary is therefore reversed.

B. Violations

Having determined that Respondent acted "knowingly" within the meaning of the hazardous materials statute, it still must be determined whether Respondent violated the hazardous materials regulations, as alleged.

In its answer to the complaint, Respondent "conditionally admitted" the following statements:

- Respondent initialed the block on the waybill declaring that the shipment did not contain hazardous materials.
- The shipment included 16 bottles of nail polish, one bottle of nail polish remover, one 32-ounce bottle of Charcoal Lighter Fluid, one 10-ounce can

of Moroccanoil Hairspray, one 7-ounce can of Gillette Fusion Hydra Gel, and one 6.5-ounce can of Repel Insect Repellent.

- Nail polish is classified as a hazardous material under 172.101 of the HMR. Its proper shipping name is Paint. It is in Hazard Class 3 (Flammable Liquids) and Packing Group II, and has an assigned identification number of UN 1263.

- Nail polish remover is classified as a hazardous material under 172.101 of the HMR. Its proper shipping name is "Acetone Solutions." It is in Hazard Class 3 (Flammable Liquids) and Packing Group II, and has an assigned identification number of UN 1090.

- Charcoal lighter fluid is classified as a hazardous material under 172.101 of the HMR. Its proper shipping name is "Petroleum Distillates, NOS." It is in Hazard Class 3 (Flammable Liquids) and Packing Group III, and has an assigned identification number of UN 1268.

- Moroccanoil hairspray, Gillette Fusion Hydra gel, and Repel insect repellent are classified as hazardous materials under 172.101 of the HMR. Their proper shipping name is "Aerosols, Flammable." They are in Hazard Class 2.1 (Flammable Gas) and have an assigned identification number of UN 1950.

These "conditionally admitted" allegations are deemed admitted under 14 C.F.R. § 13.209, which provides that "[a]ny statement or allegation … in the complaint that is not specifically denied in the answer may be deemed an admission of the truth of that allegation."

Added to these admissions are the ALJ's findings, which Respondent did not challenge, that: (1) Respondent offered the items into the stream of air transportation; (2) the items were hazardous materials; and (3) the shipment was undeclared (no markings, labels, shipping papers, or emergency response information). (Initial Decision at 3.)

Given these admissions and findings, it is clear that Respondent violated the HMR, as alleged. Hence, it is unnecessary to remand this case to the ALJ for further

determinations regarding whether Respondent violated the regulations.

C. Civil Penalty Amount

On appeal, Complainant argues that a $2,700 civil penalty would be appropriate under 49 U.S.C. § 5123(c) and agency sanction guidance.

In 2011, when the violations occurred, the hazardous materials statute provided that the maximum civil penalty was $50,000 per violation in case not involving death, serious illness, severe injury, or substantial destruction of property. 49 U.S.C. § 5123(a)(1) (2011). The minimum civil penalty for any violations other than training violations was $250 per violation.[11] 49 U.S.C. § 5123(a)(1), (3).

Under the statute, the Administrator[12] must consider the following factors in setting the sanction amount:

> (1) the nature, circumstances, extent, and gravity of the violation;
>
> (2) with respect to the violator, the degree of culpability, any history of prior violations, the ability to pay, and any effect on the ability to continue to do business; and
>
> (3) other matters that justice requires.

49 U.S.C. § 5123(c); *see also* 14 C.F.R. § 13.16(c) (to the same effect).

The agency has issued sanction guidance to implement the statute. This guidance

[11] Congress has also provided for periodic adjustments for inflation, to maintain the deterrent effect of civil penalties and promote compliance with the law. 28 U.S.C. § 2461 (note), as amended by Public Law 104-134 (April 26, 1996). Any applicable adjustments would be found in 14 C.F.R. Subpart H, entitled "Civil Monetary Penalty Inflation Adjustment." No such adjustments are present here.

[12] The FAA Administrator has the authority to enforce the statute and the HMR regarding the shipment of hazardous materials by air. 49 C.F.R. § 1.47(j) ("[t]he Federal Aviation Administrator is delegated authority to: …(j)(1) … carry out the functions vested in the Secretary by 49 U.S.C. § 5123 …, with particular emphasis on the transportation or shipment of hazardous materials by air").

is found in FAA Order No. 2150.3B, "FAA Compliance and Enforcement Program," Appendix C, "Sanction Guidance, Hazardous Materials Enforcement" (October 1, 2007).[13]

Past decisions have held that "although [ALJs] are not agency personnel, and therefore are not bound by internal agency orders [such as FAA Order No. 2150.3B, which contains the sanction guidance], [the ALJs] are nonetheless subject to agency policy." *E.g.*, *[Air Carrier]*, FAA Order No. 1996-19 at 4 (May 3, 1996). "If the ALJ does not follow agency policy, the agency may impose that policy by reversing the ALJ's decision on appeal." (*Id.*) As previously stated, "[t]he Administrator has both the authority and duty to impose the agency's policy on appeal." *Warbelow's Air Ventures*, FAA Order No. 2000-3 at 9 (February 3, 2000).

The sanction guidance "provides … a systematic way to evaluate a case and arrive at an appropriate penalty, considering all the relevant statutory criteria, including mitigating and aggravating circumstances, if any." (FAA Order No. 2150.3B, Appx. C-2.) The sanction guidance is "designed to promote better consistency so that similar penalties are imposed in similar cases." (*Id.)*

The sanction guidance requires the following:

(1) *weighing the case* by answering certain questions to arrive at a weight of minimum, moderate, or maximum;

(2) *using the Matrix* to find the appropriate sanction amount *range*; and

(3) *considering any other pertinent factors*.

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[13] The ALJ took judicial notice of this sanction guidance (Tr. 121), which was marked as Exh. A-26 but was not admitted. Presently, FAA Order No. 2150.3B, Appx. C, is available on the FAA's Web site at http://www.faa.gov/regulations_policies/orders_notices/.

The FAA published this sanction guidance in the Federal Register as "[FAA] Policy on Enforcement of the [HMR]: Penalty Guidelines," 64 Fed. Reg. 19443 (April 21, 1999).

(FAA Order No. 2150.3B, Appx. C, ¶¶ 2, 8; italics added.)

To determine the weight of the violations – whether Minimum, Moderate, or Maximum – the sanction guidance instructs agency personnel to consider a number of factors, including the nature of the hazardous material involved.

The nail polish and nail polish remover were in Hazard Class 3 (Flammable Liquids), Packing Group II. As a result, under the guidance, they fell into Risk Category A, which is defined as:

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

(FAA Order No. 2150.3B, Appx. C-17.) The hairspray, shaving gel, and insect repellent were in Hazard Class 2.1 (Flammable Gas) and also are included in Risk Category A. (*Id*.) Under the guidance, Risk Category A materials receive a Maximum weight when determining the appropriate civil penalty. (*Id*.)

The charcoal lighter fluid was in Hazard Class 3 (Flammable Liquids) and Packing Group III, which is in Risk Category B. Risk Category B materials are defined as:

> 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.

(FAA Order No. 2150.3B, Appx. C-17.) Risk Category B materials receive a Moderate weight. (*Id.*)

The sanction guidance provides that a violation may only warrant a Minimum or Moderate weight if the offeror did not pack the items himself or herself. (FAA Order

No. 2150.3B, Appx. C-7.) Under that guidance, a Minimum or Moderate civil penalty should be considered in this case because Respondent did not prepare the shipment himself.

Under the sanction guidance, all the responses/weights regarding individual factors are evaluated to determine a final aggregate weight for the case – whether Minimum, Moderate, or Maximum. In its sanction evaluation, Complainant used the most hazardous category of material found in the shipment, which was Hazard Class 2.1 (Flammable Gas) and received a Maximum weight. (Tr. 123.) However, because someone else packed the shipment, Complainant assigned a Moderate rather than a Maximum, final aggregate weight.

The most hazardous materials that Respondent offered were the Risk Category A items: nail polish, nail polish remover, hairspray, shaving gel, and insect repellent. According to the guidance, as discussed, violations involving Risk Category A items ordinarily, absent other factors, would receive a Maximum weight.

In contrast, the charcoal lighter fluid is a Risk Category B item that receives a Moderate weight. Also, as Complainant wrote in its closing argument, "the total quantities … were relatively small, and, in fact, under Section 175.10 of the HMR [49 C.F.R. § 175.10], all but the charcoal lighter fluid would have been eligible for transportation by air if they had been in a checked bag."[14] (Complainant's Closing Argument at 15.)

This decision finds that because Respondent did not pack or own the items, and

[14] Section 175.10 provides exceptions to Subchapter C of the HMR (49 C.F.R. §§ 171.1 – 175.706) for passengers, crewmembers, and air operators. In particular, 49 C.F.R. § 175.10(a)(1)(i) provides an exception for "non-radioactive medicinal and toilet articles for personal use (including aerosols) carried in carry-on and checked baggage" as long as release devices on aerosols are protected by a cap or other means to prevent inadvertent release.

because the total quantities were relatively small, a Minimum final aggregate weight is appropriate in this case.

Having thus established the final aggregate weight of Minimum for the violations, the next step is to turn to the Matrix in the sanction guidance, which includes recommended penalty ranges for different categories of offenses, depending upon the violator's characteristics (*i.e.*, whether the violator is an individual or a business). The Matrix recommends the lowest sanction ranges for individuals and higher penalty ranges for various types of business entities. The weight of a particular violation determines whether a penalty at the bottom, middle, or top of the appropriate penalty range should be imposed.

The applicable offense category in this case is Undeclared[15] Shipment within Hazmat Quantity Limitations. (FAA Order No. 2150.3B, Figure C-1.) Each offense category is divided further into subcategories of violations involving: (1) shipping papers; (2) labels; (3) markings; (4) packaging; (5) training; (6) emergency response information; (7) release into environment; and (8) other. (*Id.*) The four violation subcategories at issue in the instant case are: shipping papers, labels, markings, and emergency response information. According to the Matrix, for an Undeclared Shipment Within Hazmat Quantity Limitations, the sanction range for an individual violator is $250 to $1,000 for each subcategory of violations.

Because the final aggregate weight of the violations in this case is Minimum, a civil penalty towards the bottom of the sanction range in the Matrix (*i.e.*, $250 to $1,000) is warranted for each of the four subcategories of violations (shipping papers, labels, markings, and emergency information). This decision assesses a total civil penalty of

[15] It is well settled that undeclared or hidden shipments pose a special danger. *Envirosolve*, FAA Order No. 2006-2 at 14 (February 2, 2006), citing *Toyota Motor Sales*, FAA Order No. 1994-28 at 12 (September 30, 1994). They are thus deserving of higher sanctions.

$1,200 for the four violations in this case. This amount will have sufficient "bite" or deterrent effect. It appropriately reflects the sanction guidance, the statutory factors, and the totality of the circumstances. It will promote compliance and deter future violations by Respondent and others.

Conclusion

Complainant's appeal is granted as to the violations but not as to the sanction. In lieu of the $2,700 civil penalty sought by Complainant, this decision assesses a civil penalty of $1,200. [16]

[Original signed by Michael P. Huerta.]

MICHAEL P. HUERTA
ADMINISTRATOR
Federal Aviation Administration

[16] This order shall be considered an order assessing civil penalty unless Respondent files a petition for review within 60 days of service of this decision with the U.S. Court of Appeals for the District of Columbia Circuit or the U.S. court of appeals for the circuit in which Respondent resides or has its principal place of business. 14 C.F.R. §§ 13.16(d)(4), 13.233(j)(2), 13.235 (2009). *See* 71 Fed. Reg. 70460 (December 5, 2006) (regarding petitions for review of final agency decisions in civil penalty cases).

APPENDIX

Below are the specific provisions allegedly violated.

Section 171.2(e)[17] provided:

> (e) No person may offer or accept a hazardous material for transportation in commerce unless the hazardous material is properly classed, described, packaged, marked, labeled, and in condition for shipment as required or authorized by applicable requirements of this subchapter ….

Section 172.200(a) provided:

> (a) *Description of hazardous materials required*. … [E]ach person who offers a hazardous material for transportation shall describe the hazardous material on the shipping paper in the manner required by this subpart.

Section 172.201(d) provided:

> (d) *Emergency response telephone number.* … [A] shipping paper must contain an emergency response telephone number ….

Sections 172.202(a)(1)-(5) provided:

> (a) The shipping description of a hazardous material on the shipping paper must include:
> (1) The identification number prescribed for the material …;
> (2) The proper shipping name prescribed for the material …;
> (3) The hazard class or division number prescribed for the material …;
> (4) The packing group in Roman numerals, as designated for the hazardous material in Column (5) of the § 172.101 table
> (5) … the total net mass per package …;

Section 172.203(f) provided:

> (f) *Transportation by air.* A statement indicating that the shipment is within the limitations prescribed for either passenger and cargo aircraft or cargo aircraft only must be entered on the shipping paper

Section 172.204(a) provided:

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[17] All citations are to the October 1, 2011, edition of Title 49 of the Code of Federal Regulations (C.F.R.), which was in effect at the time, as the violations occurred on December 22, 2011, and the regulations were not revised again until October 1, 2012.

> (a) General. … [E]ach person who offers a hazardous material for transportation shall certify that the material is offered for transportation in accordance with this subchapter by printing … on the shipping paper … the certification contained in paragraph (a)(1) of this section or the certification … in paragraph (a)(2) of this section.
>
> (1) "This is to certify that the above-named materials are properly classified, described, packaged, marked and labeled, and are in proper condition for transportation according to the applicable regulations of the Department of Transportation." ….
>
> (2) "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."

Section 172.204(c)(2) provided:

> (c)(2) *Certificate in duplicate*. Each person who offers a hazardous material to an aircraft operator for transportation by air shall provide two copies of the certification required in this section. ….

Section 172.204(c)(3) provided:

> (c) *Additional certification requirements*. … (3) [E]ach person who offers a hazardous material for transportation by air must add to the certification required in this section the following statement:
>
> "I declare that all of the applicable air transport requirements have been met."

Section 172.300(a) provided:

> (a) Each person who offers a hazardous material for transportation shall mark each package, freight container, and transport vehicle containing the hazardous material in the manner required by this subpart.

Section 172.301(a) provided:

> (a) [E]ach person who offers a hazardous material for transportation in a non-bulk packaging must mark the package with the proper shipping name and identification number (preceded by "UN" or "NA," as appropriate) for the material as shown in the § 172.101 Table….

Section 172.400(a) provided:

> (a) … [E]ach person who offers for transportation or transports a hazardous material in any of the following packages or containment devices shall label the package or containment device with labels specified for the material in the § 172.101 table and in this subpart ….

Section 172.604(a) provided:

> (a) A person who offers a hazardous material for transportation must provide an emergency response telephone number, including the area code or international access code, for use in the event of an emergency involving the hazardous material. ….
>
> The regulations also provided: "Each person who *knowingly* violates a requirement of the Federal hazardous material transportation law … is liable for a civil penalty of not more than $55,000 and not less than $250 for each violation, except the maximum civil penalty is $110,000 if the violation results in death, serious illness or severe injury to any person or substantial destruction of property, and a minimum $495 civil penalty applies to a violation relating to training." 49 C.F.R. § 171.1(g) (2011).

SERVED: APRIL 11, 2013

UNITED STATES DEPARTMENT OF TRANSPORTATION
OFFICE OF HEARINGS
WASHINGTON, D.C.

FEDERAL AVIATION ADMINISTRATION,	
Complainant,	FAA DOCKET No. [TO BE ASSIGNED]
v.	(Civil Penalty Action)
SCOTT NOVAK,	
Respondent.	DMS No. FAA-2012-0206

INITIAL DECISION
OF ADMINISTRATIVE LAW JUDGE RICHARD C. GOODWIN

Found: Complainant failed to prove a violation. The Complaint will be dismissed.

I. Background

The Complaint of the Federal Aviation Administration ("Complainant," "FAA," or "the agency") alleges that on December 22, 2011, Respondent Scott Novak ("Novak" or "Respondent") "knowingly offered" to Alaska Airlines an 11-piece shipment for air transportation from Anchorage, AK, to Juneau, AK which included hazardous materials. The hazardous materials ("hazmats"), it is charged, consisted of nail polish, nail polish remover, charcoal lighter fluid, hairspray, shaving cream, and insect repellent (*see* Tr. 13-14). Hazardous materials tendered for air transportation obligate the shipper to place certain information on and with the shipment to alert those who might come in contact with it. The requirements are accomplished through detailed marking, labeling, and similar actions. Respondent's tender in this respect failed completely, the Complaint states.

As a result of the circumstances described above, the agency charged Respondent with sixteen Hazardous Materials Regulations ("HMRs") violations, namely: 49 C.F.R. 1) §171.2(e) (offering hazardous materials for shipment not properly classed, described, marked, labeled, and in condition for shipment); 2) §172.200(a) (offering hazmats not properly described on the shipping papers); 3) §172.201(d) (offering hazmats without an emergency response number); 4) §172.202(a)(1) (offering hazmats without the proper identification number for the material); 5) §172.202(a)(2) (offering hazmats without the proper shipping name); 6) §172.202(a)(3) (offering hazmats lacking the hazard class or division number prescribed for the material); 7) §172.202(a)(4) (offering hazmats lacking the designated packing group, or PG); 8) §172.202(a)(5) (failing to include in the shipping papers the total quantity of the hazmat); 9) §172.203(f) (failing to include in the shipping papers a statement that the shipment is within limitations prescribed for passenger or cargo aircraft); 10) §172.204(a) (offering hazmats without the required shipper's certification); 11) §172.204(c)(2) (failing to provide two copies of the required shipper's declaration); 12) §172.204(c)(3) (offering hazmats without the required declaration); 13) §172.300(a) (offering hazmats without marking the shipment with the proper shipping name and identification number); 14) 172.301(a) (offering hazmats in a package not marked with proper shipping names and identification numbers); 15) §172.400(a) (offering a package containing hazardous material improperly labeled); and 16) §172.604(a) (failing to provide an emergency response telephone number).

Complainant asked for a civil penalty of $2,700. Respondent, denying that he "knowingly offered" the shipment, denies the charges.

I held a hearing on September 25, 2012, in Juneau. At the conclusion of the hearing I determined that a written decision would be reasonable and appropriate. Briefs have been filed and the matter now is ready for decision.

II. Discussion

I find and conclude that the agency failed to prove its case. The Complaint will be dismissed.

A. Review of the Event

The incident forming the basis of Complainant's charges grew out of a household move by Respondent's daughter and her husband. Respondent testified that he had traveled to Anchorage specifically to help his daughter and son-in-law move from there to Juneau. When he realized that their household goods would not all fit in their pickup truck, he offered to take some of the items to Alaska Airlines for shipment. On December 22, 2011, Mr. Novak took some goods formerly loaded in the pickup and brought them to Alaska Airlines' air cargo ramp at the Anchorage airport (Tr. 174-76, 184-87). He told ramp personnel, he stated, that he was loading "furniture and household stuff." The air waybill he signed listed only "furniture, mattress." Mr. Novak acknowledged that he had

initialed and signed the waybill's box indicating that he was not shipping "dangerous goods." Respondent's signature and initials on the air waybill actually were derived from a subsequent electronic credit-card transaction in which he had clicked "no," and had signed and initialed, a statement assuring that the shipment contained neither "dangerous goods" (Exh. A-18) nor "hazardous materials (Exh. A-19)." [1]

Alaska Airlines customer service representative Jocelyn Juul appeared as the agency's first witness. She worked at the carrier's cargo facility in Anchorage. When she reported for duty on the afternoon of December 22, 2011, a ramp service agent – such agents are the first point of contact for a shipper -- told her of finding some "dangerous goods" in a shipment. The agent had opened a grill and had observed lighter fluid and bug spray inside. That finding triggered a thorough search of the rest of the shipment. Ramp service agents then also found hairspray, nail polish, nail polish remover, insect repellent, and shaving cream (Tr. 29-33, 41, 48, 58, 61-62; Exhs. A-1 through A-6 and A-10 through A-14).

Ericka Liddelow, Mr. Novak's daughter, had (along with her husband) initially packaged and packed the items. She testified that they consisted of 16 bottles of nail polish; a 32-ounce bottle of charcoal lighter fluid; a 10-ounce can of hairspray; a 7-ounce can of shaving cream; and a 6.5-ounce can of insect repellent, as well as nail polish remover (Tr. 177-79). FAA special agent and dangerous-goods specialist Jeffrey Deitz, the agency's second witness, testified more specifically about the nature of the substances and the proper marking and labeling the HMRs require. The nail polish, he stated, properly is classified as "Paint, class 3, UN 1263, packing group II." Nail polish remover is "Acetone Solutions, class 3, UN 1090, packing group II." Class 3 refers to flammable liquids. The "UN" (for United Nations) number is a number assigned to the substance. Charcoal lighter fluid properly is classified as "Petroleum Distillates, NOS [which stands for "not otherwise specified"], class 3, UN 1268, packing group III;" and the hairspray, shaving cream and insect repellent must each be marked and labeled (as appropriate) as "Aerosols, Flammable, class 2.1, UN 1950." Class 2.1 substances are flammable gases (Exhs. A-15 and A-20 through A-25; Tr. 109-15, 123; *see* Hazardous Materials Table following 49 C.F.R. §172.101).

B. Findings

The evidence is clear and undisputed that Mr. Novak offered the six items discussed above into the stream of air transportation. It is also clear that the items each are defined under applicable regulations as hazardous materials, and, additionally, that the shipment was offered undeclared – that is, without any warning or notice of the

[1] *See also* Tr. 38, 49-52, 68, 71, 192-93, 199-201; Exhs. A-7 and A-17. The term "dangerous goods" as used in the International Civil Aviation Organization ("ICAO") Technical Instructions is interchangeable with the term "hazardous material" as defined in 49 C.F.R. §171.8. *See* Tr. 158-59. The terms "dangerous goods" and "hazardous materials" also are used interchangeably in a warning poster at the Alaska Airlines shipping facility. Exh. A-29; Tr. 159-60, 164.

hazardous nature of its contents. *See Midtown Neon Sign Corporation,* FAA Order No. 96-26 (August 13, 1996), p. 2. The parties also agree that Respondent was unaware of the contents of the boxes he had offered (*see* Tr. 150), and I so find. What Respondent challenges is Complainant's contention that he "knowingly offered" these materials. He states that he did not. And if he did not knowingly offer the materials, Respondent's argument goes, then he cannot have violated any of the HMRs with which he is charged.

The statute governing this case is the Hazardous Materials Transportation Act, 49 U.S.C. 49 U.S.C. §§5101-5127 ("the Act"). In pertinent part the Act provides that "[a]ny person . . . who is determined by the Secretary . . . to have *knowingly* committed an act which is a violation . . . of a regulation issued under this title, shall be liable to the United States for a civil penalty." (emphasis supplied). The Act further provides that a person acts knowingly when -

> (A) the person has actual knowledge of the facts giving rise to the violation; or
>
> (B) a reasonable person acting in the circumstances and exercising reasonable care would have that knowledge.

49 U.S.C. §5123(a)(1).

It has been determined that Respondent had no actual knowledge that he had tendered hazardous materials. The critical question then becomes whether, as a reasonable person in the circumstances, he would have known that in the exercise of reasonable care. He is charged with the knowledge that the exercise of reasonable care in the circumstances would have produced.

The statutory mandate to exercise "reasonable care" created a duty upon Mr. Novak to make some kind of inquiry into the material he was shipping. The nature of the inquiry required depended on the surrounding circumstances. Did Mr. Novak make sufficient inquiry? I find that he did.

The evidence shows that Respondent believed that he was shipping household goods. This belief was reasonable. It was based on the surrounding facts: Mr. Novak's daughter and son-in-law were moving their personal effects from Anchorage to Juneau. Respondent believed that goods customarily associated with household moves, such as furniture, bedding, and the like, constituted the contents of the shipment. Such goods generally are considered innocuous from an air transport standpoint. They do not as a rule raise an alarm. Mr. Novak had no cause to suspect otherwise. He was a helper and facilitator. Under the circumstances he had the right to rely on his daughter's general description of the contents of the shipment. He had no reason to inquire or look further.

While it is true that some personal effects often transported as part of a household move are considered hazardous materials in air travel, Respondent was unaware of that. And he may not be charged with that knowledge. The law does not require shippers to know or inquire about which products may be considered dangerous goods for purposes of air transportation.

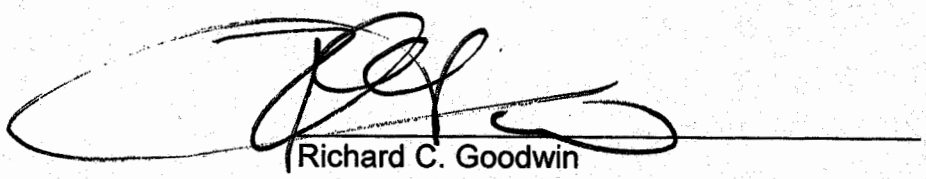
Respondent nonetheless may be found liable if he knew, or should have known, that the materials at issue -- whether they were in fact considered hazardous or not -- were part of his daughter's effects. *Scott H. Smalling,* FAA Order No. 94-31 (October 5, 1994). But liability in these circumstances of this case may not be imputed. Such a finding would amount to a determination that because Mr. Novak generated the shipment, he is accountable for the legal consequences. That amounts to a standard of strict liability. The statute does not go so far. *See Contract Courier Services, Inc., v. Research and Special Programs Administration,* 924 F.2d 112 (7 Cir. 1991).

Nor do any other factors suggest that Mr. Novak should have inquired further. He credibly testified that he did not see any signs in Alaska Airlines' cargo area, or elsewhere, warning about the dangers of shipping hazardous materials or dangerous goods. Nor had any Alaska Airlines employee asked him if he was tendering such goods. Complainant did show that ramp agents as a matter of policy ask passengers if they are shipping dangerous or hazardous goods, but the agency offered no evidence tending to show that such a question was posed to Mr. Novak (Tr. 175-76, 179-80, 191-98, 203-06, 208, 214; Exh. A-16). Evidence that ramp agents discussed "trigger terms" – shipper descriptions of merchandise which trigger agents' additional, more specific inquiry into whether the shipment may contain hazmats – with Respondent is discounted as hearsay.[2]

I am well aware that the items in question, customarily characterized as household or consumer goods, are nonetheless considered dangerous in air transportation. They each are flammable. Each, under the proper conditions, could produce a grave situation aboard an aircraft. But it must be emphasized that the dangers inherent in tendering an undeclared shipment of dangerous goods do not mean that a shipper, as a consequence of the shipper's duty to inquire, must in every situation be charged with the knowledge that he or she is tendering such items. The statute simply does not set such an inflexible standard. The particular circumstances of this case show that Mr. Novak reasonably did not know what he was shipping: they warrant a finding that Respondent may not be held liable under the statute.

[2] Such triggering terms, Complainant witnesses testified, include "household goods" and "camping gear." Tr. 71-73, 78-79.

I find and conclude that the agency failed to prove that Respondent Scott Novak knowingly offered hazardous materials in air transportation. As such, the Complaint is dismissed.[3]



Richard C. Goodwin
U.S. Administrative Law Judge

Attachment – Service List

[3] This decision may be appealed to the Administrator of the FAA. The notice of appeal must conform to sections 13.210, 13.211(e) and 13.233 of the Rules of Practice, which require that a notice of appeal 1) be filed not later than 10 days (plus an additional five days if mailed) from the service date of this decision, and 2) be perfected with a written brief or memorandum not later than 50 days (plus an additional five, if mailed) from the service date of this decision. The notice of appeal and brief or memorandum must either be a) mailed to the Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, DC 20591, Attn: Hearing Docket Clerk, AGC-430, Wilbur Wright Building—Suite 2W1000, or b) delivered personally or via expedited courier service to the Federal Aviation Administration, 600 Independence Avenue, S.W., Wilbur Wright Building—Suite 2W1000, Washington, D.C. 20591, Attn: Hearing Docket Clerk, AGC-430. A copy of the notice of appeal and brief or memorandum also must be sent to agency counsel. Service upon the presiding judge is optional.

FDMS No. FAA-2012-0206
(Civil Penalty Action)

SERVICE LIST

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[1] Service was by U.S. Mail. For service in person or by expedited courier, use the following address: Federal Aviation Administration, 600 Independence Avenue, S.W., Wilbur Wright Building—Suite 2W1000, Washington, DC 20591; Attention: Hearing Docket Clerk, AGC-430.