UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

In the Matter of: CARY RATNER, PRESIDENT, EAST HILLS INSTRUMENTS

FAA Order No. 2009-2

Docket No. CP06EA0009
FDMS No. FAA-2006-24655[1]

Served: January 12, 2009

DECISION AND ORDER[2]

Respondent Cary Ratner has appealed the determination of Administrative Law Judge (ALJ) Isaac D. Benkin that Ratner committed 11 violations of the hazardous materials regulations (HMR)[3] and that a civil penalty of $2,750 was appropriate.[4] This decision affirms the ALJ's decision, including the civil penalty amount.

I. Facts

On April 1, 2005, Ratner offered a box to JetBlue Airways (JetBlue) as checked baggage for transportation aboard a passenger-carrying flight from John F. Kennedy

[1] Materials filed in the FAA Hearing Docket (except for materials filed in security cases) are also available for viewing at the following Internet address: *www.regulations.gov*. For additional information, see *http://dms.dot.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/West 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] The violations alleged in the complaint are included in the Appendix to this decision. The ALJ found that Ratner violated 11 of the 12 alleged violations. He found that Ratner did not violate one regulation, 49 C.F.R. § 171.2, because it was a general, introductory clause and was "multiplicitous for purposes of assessing a civil penalty." (Initial Decision at 17.)

[4] A copy of the ALJ's order is attached. (The ALJ's order is not attached to the electronic versions of this decision nor is it included on the FAA Web site.)

International Airport (JFK) in New York, New York to San Juan, Puerto Rico (SJU). (Tr. 383.) Ratner testified that he gave the box to a JetBlue skycap and told him that the box contained a nitrogen pressure source. (*Id*.) Ratner did not declare it to contain a hazardous material. JetBlue did not accept hazardous materials. (Tr. 89-92.) The skycap accepted the box, which was sealed with tape bearing the name and telephone number of Ratner's pressure equipment supply company, East Hills Instruments, Inc. (East Hills). (Tr. 77.) Ratner is both the president and an employee of East Hills. (Tr. 366; FAA Exhibit C-8 at 1.) He is also an engineer. (Answer, Count II, ¶ 2.)

The box contained a demonstration unit of an industrial device, a pressure source called a "Source 3000 Portable Pneumatic Pressure Source," which Ratner planned to sell in Puerto Rico. (Tr. 228, 375, 438, 445, 448; FAA Exhibit C-3 at 3.) Ratner received the demonstration unit on loan from its manufacturer, Condec. (Tr. 261-62.) The two gauges on the device are intended to show the amount of pressure in the large-capacity nitrogen cylinder. (Tr. 234; FAA Exhibit C-3 at 3; FAA Exhibit C-6 at 3.) Ratner testified that after he received the box, he opened it to ensure that the hoses were there, but he did not check the gauges. (Tr. 426, 439.)

Before the flight departed, Transportation Security Administration (TSA) personnel opened the box and saw that the gauges read above 1500 pounds per square inch (psi). (Tr. 53, 110, 215.) A container of nitrogen under such pressure is a hazardous material (compressed gas, n.o.s. [not otherwise specified]) under the Department of Transportation's hazardous materials regulations (49 C.F.R. § 172.101, Hazardous Materials Table), and the offeror must comply with the regulations' requirements for labeling, marking, shipping papers, and emergency response information. (49 C.F.R.

§§ 171-173, 175.)

TSA did not permit the box to fly, but instead returned it to JetBlue. (FAA Exhibit C-1 at 1.) JetBlue consulted a company called 3E, which confirmed that the item was a "no-fly" item. (Tr. 338; FAA Exhibit C-7 at 3; FAA Exhibit C-10 at 1.) JetBlue put the box in a locked storage room containing hazardous materials at its luggage facilities at JFK. (FAA Exhibit C-1 at 1.)

When Ratner arrived in Puerto Rico, he found that the box was not there. (Tr. 384.) He returned to the airport several times to see if the box was on a later flight, but he did not find it. (Tr. 385.) According to a JetBlue record, he called JetBlue, whose personnel explained that TSA would not let the box fly. JetBlue offered to deliver the box to Ratner's residence. (FAA Exhibit C-7 at 2-3.) Ratner threatened to sue JetBlue. (FAA Exhibit C-7 at 2.) He told the JetBlue personnel that the material in the unit was pressurized dry nitrogen, but that it was not hazardous. (*Id.*)

On April 4, 2005, FAA Special Agent William Bobko went to the JetBlue baggage facility at JFK regarding another case and while he was there, he took several photographs of the box's contents. (Tr. 168, 177; FAA Exhibit C-1; FAA Exhibit C-6 at 2-3.) In the photographs, each gauge shows a pressure of almost 1,700 psi. (Tr. 177; *see also* FAA Exhibit C-6 at 2-3.) Agent Bobko tapped on the gauges to see if the needles would move, but they would not. (Tr. 180-81.)

After a week in Puerto Rico without doing any business, Ratner returned to the United States "quite angry," in his words, that he did not have the box in Puerto Rico. (Tr. 386.) He believed that he had lost business and blamed JetBlue. (Tr. 387.) On April 7, 2005, he went to the air carrier to retrieve the box and, according to a JetBlue

record, was verbally abusive to JetBlue's personnel. (FAA Exhibit C-7 at 3.) Ratner testified that the JetBlue personnel responded, "[W]e'll get the last word, we'll get you." (FAA Exhibit C-7 at 3.) Ratner testified that he took the box and, without opening it, returned it to the manufacturer via UPS. (Tr. 88, 392-93, 471.)

On April 8, 2005, JetBlue reported the hazardous materials incident to the FAA, as it was required to do under 49 C.F.R. § 175.31.[5] (FAA Exhibit C-10 at 1.) The Manager of the FAA's New York Security Field Office in the Office of Hazardous Materials, John Bogel, assigned the case to FAA Special Agent Monika Borsy. (Tr. 43, 46.) She went to the airline's baggage facility to examine the device, but JetBlue had already released it to Ratner. (Tr. 49.) She then obtained the photographs that Special Agent Bobko had taken of the shipment. (Tr. 50.)

Special Agent Borsy's office sent a letter of investigation to Ratner offering him an opportunity to explain the circumstances. (FAA Exhibit C-2 at 1.) Borsy also spoke with Frank Page, the Director of Sales and Service at Condec, the device's manufacturer. (Tr. 123.) Page told Borsy that there was no Material Safety Data Sheet for the unit because it was not considered to contain hazardous materials. (FAA Exhibit C-1.) He also told Borsy that Condec shipped the unit with an empty cylinder. (Tr. 123-24.) James Welsh, Senior Product Engineer at Condec, also testified that the Source 3000 is not shipped with gas in it. (Tr. 286.)

On April 14, 2005, Ratner called Special Agent Borsy and stated that the gas inside the unit was dry nitrogen. (Tr. 76-77; FAA Exhibit C-1 at 2.) On the same day, Ratner faxed Borsy a letter responding to the letter of investigation. (FAA Exhibit C-3 at

[5] This regulation provides that each person who discovers a discrepancy involving shipment of a hazardous material must notify the nearest FAA regional or field office.

1-2.) In it, he wrote: "The item contained no flammable materials and the gas was dry nitrogen. I didn't think it would be a problem because it is used in shaving cream and hair spray cans." (*Id*. at 2.) He also wrote, "It was an honest mistake and I am truly sorry." (*Id*.)

On April 28, 2006, the FAA filed a complaint alleging that Ratner violated the hazardous materials regulations when he knowingly offered to JetBlue for transportation by air a box containing the Source 3000. The FAA alleged that the Source 3000 contained a hazardous material called "Compressed gas, n.o.s.," which was in hazard class 2.2 and had the identification number UN1956. The alleged violations fell into the basic categories of failure to label, mark, provide shipping papers, and provide emergency response information.[6] The complaint sought a civil penalty of $6,000. Ratner denied the allegations of the complaint.

In his answer to the complaint, Ratner stated, among other things, that he received the instrument from the manufacturer and it "was supposed to be charged." (Answer, Count I, ¶ 3.) However, he also stated that, "Some time later, it was discovered that the instrument did not have any charge of nitrogen or any other gas. It was empty." (*Id*. at ¶ 9.) He further averred that, "The gauge which indicated the pressure inside the instrument showed 1500 psi pressure, and was found to be defective." (*Id*. at ¶ 10.) Ratner failed to respond to an interrogatory asking what he meant by his averment that the gauge "was found to be defective." When the ALJ ordered Ratner to respond to the interrogatory, Ratner finally stated that his averment that the gauge "was found to be defective" was vague and unintelligible and he did not know from where he had excerpted it. The ALJ found that Ratner had failed to comply with his duty to respond to

[6] The specific regulations allegedly violated may be found in the Appendix.

the FAA's interrogatory in an honest, forthright manner.

II. Analysis[7]

A. Was Ratner's Notice of Appeal Timely?

The FAA moved to dismiss on the ground that Ratner's notice of appeal was untimely. In response, Ratner submitted a certificate of service that is signed and dated before the deadline for filing the notice of appeal. The certificate of service indicates that Ratner served the notice of appeal on the Hearing Docket, the FAA's present counsel, and the FAA's prior counsel on February 27, 2007. The deadline for filing the notice of appeal was March 7, 2007.[8]

However, for some reason only the FAA's prior counsel received the notice of appeal. The envelope containing the notice of appeal that FAA's former counsel received was postmarked March 16, 2007, 9 days after the deadline. Nevertheless, the rules of practice provide that the date of service, if mailed, is "*the mailing date shown on the certificate of service*, the date shown on the postmark if there is no certificate of service, or other mailing date shown by other evidence if there is no certificate of service or postmark." 14 C.F.R. § 13.211(d) (emphasis added). Given that Ratner's certificate of service is dated before the deadline, the notice of appeal was timely and the FAA's motion to dismiss is denied.

B. Did the FAA Name the Wrong Entity?

Ratner argues that he was the wrong respondent and that the FAA should have

[7] Any arguments not addressed have been considered, rejected, and found unworthy of discussion.

[8] Under 14 C.F.R. § 13.233(a), the deadline was 10 days after service of the written initial decision on February 20, 2007. There was an additional 5 days under 14 C.F.R. § 13.211(e) ("the mailing rule") because the ALJ served the initial decision by mail.

named his corporation, East Hills, instead.[9] The specific hazardous materials regulations that Ratner allegedly violated hold responsible a "person who offers" hazardous materials for transportation.[10] The regulations define "person" to include an individual as well as a corporation. 49 C.F.R. § 171.8. Additionally, the regulations define "person who offers" to mean:

> (1) Any person who does either or both of the following:
>
> (i) Performs, or is responsible for performing, any pre-transportation function required under this subchapter for transportation of the hazardous material in commerce.
>
> (ii) Tenders or makes the hazardous material available to a carrier for transportation in commerce.

(Id.) Ratner was responsible for preparing the box containing an alleged hazardous material for transportation in commerce. He also tendered and made available to JetBlue the alleged hazardous material for transportation in commerce. Thus, under the hazardous materials regulations, although East Hills could have been named as a respondent either in addition to or in place of Ratner, the FAA did not err in naming Ratner.[11]

C. Were the Exhibits and Procedures Unacceptable?

1. Hearsay

Ratner argues as follows: "Given that this proceeding accepts as evidence 'hearsay,' all of the exhibits and procedures are unreliable, totally not probative and

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[9] On November 28, 2006, the FAA amended the complaint so that references to Ratner would read "Cary Ratner, President, East Hills Instruments." Ratner remained the respondent.

[10] See the Appendix for the text of the regulations allegedly violated.

[11] Civil penalties are generally lower for individuals than for businesses. (FAA Exhibit C-11 at 14.)

totally unsubstantiated, and fail to meet any criteria for acceptability." (Appeal Brief at 2.) The rules of practice provide, however, that: "Hearsay evidence is admissible in proceedings governed by this subpart. The fact that evidence submitted by a party is hearsay goes only to the weight of the evidence and does not affect its admissibility." 14 C.F.R. § 13.222(c).[12] It has also been held that "administrative agencies are not bound by the hearsay rule …." Niam v. Ashcroft, 354 F.3d 652, 659 (7th Cir. 2004). The ALJ did not err in admitting hearsay evidence and, as discussed below, the specific hearsay that Ratner has challenged was worthy of consideration.

2. JetBlue Reservation Record

Ratner challenges the JetBlue reservation record[13] that reported that Ratner stated that the unit was pressurized. He argues that Special Agent Borsy never identified the JetBlue employee who wrote that the Source 3000 was pressurized. (Appeal Brief at 3.) Even if hearsay were not admissible in civil penalty proceedings, which it is, Ratner's statement that the Source 3000 was pressurized was an admission. This admission fell within the exception to the hearsay rule for statements against interest. *See*, *e.g.*, Williamson v. United States, 512 U.S. 594, 611 (1994) (stating that "[t]he rationale of the hearsay exception for statements against interest is that people seldom 'make statements … damaging to themselves unless satisfied for good reason that they are true'"). Also, the entire document may well have fallen within the business records exception to the

[12] The rules of practice governing FAA civil penalty proceedings are not unique in allowing the admission of hearsay evidence when appropriate. "[I]t is well established that hearsay evidence is admissible in administrative proceedings, if it is deemed relevant and material." Otto v. Securities and Exchange Comm'n, 253 F.3d 960, 966 (7th Cir. 2001) (citing other cases).

[13] The reservation record included notations from JetBlue agents as to what transpired relating to Ratner's flights and the box containing the Source 3000.

hearsay rule. The hearsay exception for business records is found in FEDERAL RULE OF EVIDENCE 803(6).

Ratner argues that Special Agent Bobko stated in his deposition[14] that the reservation record was suspect. (Appeal Brief at 4.) However, Bobko did not state that the reservation record was suspect. Instead, he stated, "I don't believe I've ever seen this document myself nor have I seen one like it, but that doesn't mean you can't have one like it." (Ratner Exhibit R-3 at 56.)

Ratner challenges the following item in the JetBlue reservation record: "I contacted 3E and they calculated the PSI and concurred it is a NO FLY ITEM." (FAA Exhibit C-7 at 3; emphasis in original.) Ratner argues that 3E was never identified and that no one knows who it is. This is incorrect. FAA Manager Bogel testified that 3E is "an environmental contractor retained by JetBlue." (Tr. 338.) Special Agent Borsy testified that she concluded, based on her investigation, that the unit was pressurized and therefore the hazardous materials regulations applied. (Tr. 83-84.)

3. JetBlue Report of Incident

Ratner challenges the JetBlue e-mail report of the incident sent to the FAA on April 8, 2005. The report appears to have been sent from the computer of a Diane Tobias at JetBlue. The e-mail's signature block, however, states, "Suzanne G. Berman, Manager Environmental Services, JetBlue Airways, Safety Crew." (FAA Exhibit C-10 at 1.) Ratner makes much of the fact that the e-mail was not sent from the computer of the person whose name was in the signature block. The ALJ was not concerned. He stated

[14] The ALJ stated: "I will receive these documents for the record but only so much of them as has been specifically called out during the examination of the people whose deposition (sic) have been taken during their testimony; so these depositions are received but for a limited purpose and that disposes of and receives on a limited basis exhibits for identification R-1, R-2, R-3 and R-4." (Tr. 504.)

that presumably Tobias was one of Berman's subordinates. (Initial Decision at 4 n.2.) There is no reason to suspect that someone fabricated the report. Moreover, as the ALJ wrote, the information in the report was "very reliable" because JetBlue was required to file it and a false report could result in the imposition of severe sanctions. (*Id*. at 12.) The ALJ's admission of the e-mail report was not error.

4. Photographs of the Unit

The photographs of the Source 300 that were introduced at the hearing depicted the front side of the unit inside the box. Ratner argues that FAA Manager Bogel testified that the photographs did not meet FAA standards for accuracy. To support this argument, he relies on the following testimony at Bogel's deposition prior to the hearing:

> Q: Does this meet the FAA standards for investigative standards for depicting the outside, the six outside sides of this box?
>
> A: No, it doesn't. I never said it depicts six sides shown.

(Ratner Exhibit R-3 at 17.) It should be noted, however, that the ALJ did not admit that deposition testimony into evidence at the hearing. The ALJ ruled that the depositions, including the above-quoted one, were inadmissible other than "so much of them as has been specifically called out during the examination of the people whose depositions have been taken during their testimony ...." (Tr. 504.)[15] At the hearing, when Ratner asked whether the photographs accurately depicted the equipment and its container, the ALJ ruled as follows:

> Q: As a supervisor, do you feel these pictures accurate (sic) depict the equipment and the container it's in?
>
> [FAA COUNSEL]: Objection.
>
> JUDGE BENKIN: Sustained. The pictures show what they show.

[15] *See* note 14 *supra* for a more complete quote from the ALJ.

(Tr. 344.) Because the portion of the deposition that Ratner relies on was not called out during the hearing, it was not admitted.

If Ratner's point is that the box could have been dropped, and that photographs showing all sides of the box might have shown damage, it is still true that Ratner received the box back from JetBlue and did not report that the box was damaged in any way. There is no evidence in the record that the box was dropped or otherwise damaged. As a result, Ratner's claim that the box may have been dropped and the gauges may have been damaged is speculative and it is an affirmative defense that Ratner had the burden of proving. 14 C.F.R. § 13.224(c) ("[a] party who has asserted an affirmative defense has the burden of proving the affirmative defense").

D. Was the Evidence Sufficient?

Ratner argues that the FAA's evidence was insufficient to prove the violations by the required preponderance of the reliable, probative, and substantial evidence in the record. 14 C.F.R. § 13.223(b) ("[i] n order to prevail, the party with the burden of proof shall prove the party's case or defense by a preponderance of reliable, probative, and substantial evidence"). According to Ratner, the FAA's only evidence was a photograph that "did not depict the item totally." (Appeal Brief at 13.) This is not so. There is other compelling evidence supporting the FAA's case against Ratner. Specifically, Ratner admitted that the Source 3000 was pressurized in a telephone call to JetBlue. (FAA Exhibit C-7 at 2.) He also admitted that the Source 3000 contained dry nitrogen gas in a telephone call to Special Agent Borsy and in his response to the FAA's letter of investigation. (FAA Exhibits C-1 at 2 and C-3 at 2.) As an engineer and seller of the Source 3000, Ratner was not unsophisticated. His statements that the Source 3000

contained dry and pressurized or compressed nitrogen, consequently, carry greater weight than those of a layperson.

Ratner also argues that the following evidence supports his case:

- Condec's Vice President, Frank Page, and its Product Manager, Jim Welsh, testified that the cylinder was shipped empty;
- Welsh, according to Ratner, testified that "the only absolute, positive way to find out if there is compressed nitrogen in the unit is to open a valve or test it with a calibrator" (Appeal Brief at 13);
- Welsh and Ratner testified that one cannot calculate pressure or volume from a photograph;
- Ratner testified that he had no gas handling equipment in his business; and
- Special Agent Bobko testified that he had seen many defective gauges when he was in the U.S. Air Force. (Tr. 183.)

Although two of the manufacturer's employees testified that the Source 3000 ordinarily was shipped empty, their testimony can be seen as self-serving because their employer would have been in violation of the regulations had it not been empty. Moreover, their testimony is outweighed by Ratner's admissions that the cylinder contained dry nitrogen.

Contrary to Ratner's claim, Welsh did not testify that "the only absolute, positive way" (Appeal Brief at 13) to determine if there was compressed nitrogen in the unit was to open a valve or test it with a calibrator. Instead, he testified that opening a valve was "definitely the simplest way" of doing it. (Tr. 292.) In any event, the standard of proof in this case is not beyond a shadow of a doubt;[16] instead, it is a simple preponderance of the reliable, probative and substantial evidence. To sustain its burden of proof, the FAA did not have to subject the unit and its gauges to the most precise scientific testing

[16] In the Matter of Envirosolve, FAA Order No. 2006-2 at 9 (February 7, 2006); In the Matter of High Exposure, FAA Order No. 2003-7 at 13 (September 12, 2003).

possible.

Welsh and Ratner testified that one cannot calculate pressure or volume from a photograph. However, the purpose of the gauges was to show the cylinder's internal pressure, and there is no evidence that they were not working.

Ratner testified that he had no gas handling equipment in his business, but the ALJ stated that he did "not attach much credence to Respondent's story and that he gave "little weight to his testimony because [he] concluded that he [Ratner] was largely dissembling." (Initial Decision at 14-15.) An ALJ's credibility determinations are entitled to deference on appeal because the ALJ had the opportunity to observe the witnesses' demeanor, and such determinations will not be overturned lightly.[17] In the Matter of Siddall, FAA Order No. 2008-9 at 6 (October 7, 2008); In the Matter of Gotbetter, FAA Order No. 2000-17 at 9 (August 11, 2000). Ratner has provided no reason to overturn the ALJ's credibility determinations.

Finally, while Special Agent Bobko testified that he had seen many defective gauges when he was in the Air Force, Ratner's argument that the two gauges at issue were broken was speculative. There is no evidence that the gauges were broken. As stated above, this argument was an affirmative defense that Ratner failed to prove.

E. Did the ALJ Err in Ruling on the FAA's Motion to Preclude?

The FAA moved to preclude evidence relating to the gauges on the ground that Ratner failed properly to respond to its interrogatories. Ratner argues that the ALJ ruled on the FAA's motion to preclude without allowing Ratner to submit opposition papers. First, it is unclear that the ALJ ruled on the FAA's motion before Ratner submitted his

[17] The ALJ did not find credible Ratner's testimony that his prospective customers would have compressed gas in their facilities.

opposition. The ALJ's decision on the motion is dated December 19, 2006, a day after Ratner filed his opposition on December 18, 2006. Second, even if the ALJ did rule on the motion before receiving Ratner's opposition, he did not rule against Ratner. He refused to grant the FAA's motion, explaining, "[t]o grant the Complainant's motion and impose the sanction it requests would largely decide these issues, based not on what actually happened, but on a point of pleading." (Decision Order Disposing of Various Pre-Hearing Issues at 3.) He wrote, however, that he would decide the question of whether Ratner deserved to be sanctioned "at a later date, after hearing from the Respondent on the record at the hearing." (*Id*.) The ALJ ultimately admitted evidence regarding the gauges at the hearing. For these reasons, Ratner's argument that he was unfairly prejudiced is rejected.

Conclusion

For the reasons stated above, this decision denies Ratner's appeal and affirms the $2,750 civil penalty assessed by the ALJ.[18]

[Original signed by Robert A. Sturgell]

ROBERT A. STURGELL
ACTING ADMINISTRATOR
Federal Aviation Administration

[18] This decision 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 the respondent resides or has its principal place of business. 14 C.F.R. §§ 13.16(d)(4), 13.233(j)(2), 13.235 (2007). *See* 71 Fed. Reg. 70460 (Dec. 5, 2006) (regarding petitions for review of final agency decisions in civil penalty cases).

APPENDIX

Section 171.2(e)[19] provides:

> 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) provides:

> *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) provides:

> *Emergency response telephone number.* … [A] shipping paper must contain an emergency response telephone number, as prescribed in subpart G of this part.

Sections 172.202(a)(1)-(3) and (5) provide:

> (a) The shipping description of a hazardous material on the shipping paper must include:
>
> (1) The proper shipping name prescribed for the material in Column 2 of the § 172.101 Table;
>
> (2) The hazard class or division number prescribed for the material as shown in Column 3 of the § 172.101 Table.
>
> (3) The identification number prescribed for the material as shown in Column 4 of the § 172.101 Table;
>
> (4) …; and
>
> (5) The total quantity of hazardous materials covered by the description ….

Section 172.204(a) provides:

> (a) … [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 containing the required shipping description the certification contained in paragraph (a)(1) of this section or the certification (declaration) containing the language contained in paragraph (a)(2) of this section.

[19] All citations are to Title 49 of the Code of Federal Regulations.

(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 labeled/placarded, and are in all respects in proper condition for transport according to applicable international and national governmental regulations."

...

Section 172.300(a) provides:

> 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) provides:

> *Proper shipping name and identification number* … [E]ach person who offers for transportation a hazardous material in a non-bulk packaging shall 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) provides:

> [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 the labels specified for the material in the § 172.101 Table and in this subpart ….

Section 172.600(c) provides:

> *General requirements*. No person to whom this subpart applies may offer for transportation … a hazardous material unless:
>
> (1) Emergency response information conforming to this subpart is immediately available for use at all times the hazardous material is present ….