

**Enforcement**

Regional Workshop/Seminar on the Safe Transport of Dangerous Goods

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**Enforcement**

- States are required to establish appropriate penalties for violations relating to the transport of dangerous goods.
- If deficiencies are identified during the conduct of inspections, enforcement actions should be taken in a reasonable period of time.

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**Enforcement Actions**

- If deficiencies or concerns are identified during the oversight responsibilities of the CAA, including dangerous goods, the organization should have established a process for their resolution.

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## Types of Enforcement Cases

- There are two basic types of enforcement cases.
  - Civil
  - Criminal
- Civil Cases have two basic types.
  - Administrative Enforcement Action
  - Legal Enforcement Action

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## Enforcement Decisions

- When administrative enforcement action may be taken
- When legal enforcement is used, what type of legal enforcement is appropriate?
- What sanction amount is appropriate?
- General enforcement discussion

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## Responses to Violations

- There can generally be three responses to violations.
  - No Action
  - Counseling
  - Enforcement Action

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## No Action

- No action means that during the course of your investigation you determined that there was no violation and therefore no action was warranted.

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## Counseling

- Counseling can be used in lieu of an administrative action to address a violation.
  - The regulated party is performing at or above established national performance standards, and performance is accurately measured;
  - Immediate correction is achieved;
  - Known past performance is taken into account.

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## Administrative Actions

- If legislation and regulations allow administrative enforcement actions, the purpose is to respond to violations of the regulations when the violation was not serious enough to warrant legal action.

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## Administrative Enforcement

- Administrative Enforcement – A Warning Letter or a Letters of Correction is issued when specific enforcement criteria are not evident.
- The most relevant of these criteria, in the case of hazmat infractions, is whether the violator exhibited a *substantial disregard* for safety. If they did, administrative enforcement is not appropriate and the policy calls for the recommendation of a civil penalty.

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## Legal Enforcement

- Legal Enforcement – Should the violator exhibit substantial disregard for safety or should the risk assessment point to legal action, the Agent must prepare a case to recommend a civil penalty amount. In the case of hazmat, FAA Order 2150.3B provides our specific guidance concerning the sanction amount appropriate in typical hazmat situations.

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## ITEMS OF PROOF

- Evidence
  - Documents
  - Statements
  - Interviews
  - Photos

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## CONTENT AND ORGANIZATION OF ENFORCEMENT CASES

- Who, What, When and Where
- Criteria or components
  - I. Statement of Case – Agent statement
  - II. Factors affecting sanction
  - III. Other information
  - IV. Risk Assessment
  - V. Penalty Recommendation
- Items of Proof

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## Factors affecting sanction

- 1.) Nature and Circumstances of the Violation
- 2.) Extent & Gravity of Violation
- 3.) Degree of Culpability of Violation
- 4.) Violation History
- 5.) Ability to Pay and to Continue Business
- 6.) Other Matters as Justice Requires
- 7.) Evidence of Corrective Action

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## Other Information

- Evaluate the reliability of the evidence
- Address any conflicting evidence
- Reference specific supporting items of proof
- Include opinions, provided they are labeled as such
- State a conclusion
- Make a recommendation for sanction (if appropriate)

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## Risk Assessment

- A Risk Assessment Matrix aids agents to determine if administrative or legal enforcement action is appropriate in a particular situation.

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## Determining Sanction

- A person acts knowingly when the person has actual knowledge of the facts giving rise to the violation; or a reasonable person acting in the circumstances and exercising reasonable care would have that knowledge. 49 U.S.C. 5123(a)(1)(A).

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## Determining Sanction

- Congress prescribed criminal penalties for a willful violation of the Federal hazardous material transportation law or the CFR 49 (HMR); willful violations require evidence of both knowledge of the laws and regulations and intent to violate them.

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## Determining Sanction

- Hazmat violations may be dismissed by an administrative law judge (ALJ) if a Notice of Proposed Civil Penalty has not been issued within 2 years of the violation, unless good cause for delay has been shown.

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## Determining Sanction

- In determining the sanction to be assessed, penalty criteria set forth in 49 U.S.C. 5123 must be considered. These criteria are the nature, circumstances, extent, and gravity of the violation, the degree of culpability of the violator, any history of past violations, the ability to pay, any effect on the ability to continue to do business, and other matters as justice requires.

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## Determining Sanction

- The statutory factors are further considered under the weighting analysis that is performed to indicate the amount of civil penalty within the appropriate range, i.e., at the minimum, moderate, or maximum portion of the sanction range.
- To comply with the underlying purposes of the Federal hazardous material transportation law and HMR, a sanction should be imposed that is sufficiently deterrent but not excessive.

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## Determining Sanction

- The Hazardous Materials Sanction Guidance is designed to promote better consistency so that similar penalties are imposed in similar cases. (FAA Order 2150.3B)
- The Matrix ranges are intended to reflect the nature, circumstances, extent, and gravity of the case as compared with other types of cases.

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## Determining Sanction

- Violations of the operator requirements of the HMR, which establish particular requirements for air carriers and other aircraft operators, are contained in a separate matrix.
- However, such operators often offer hazardous materials for air transportation, as well as accept and transport them. For this reason, such operators may be liable for violations both as a business entity within the Hazardous Materials Sanction Guidance Matrix, as well as specific air carrier violations.

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## Determining Sanction

- First, the weighting analysis is performed. Agency personnel respond to a series of questions to determine the aggregate weight of the case.
- Evaluation of the case is based on the totality of the facts and circumstances. It is not a mathematical calculation.
- The agent then considers other relevant factors, including evidence of corrective action.

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## Determining Sanction

- Final determination of the sanction amount proposed in the Notice of Proposed Civil Penalty is ordinarily a product of joint decision making and approval of the investigating agent and the legal office.

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## Enforcement Decisions

- Oxygen generator violations
  - Risk
  - Violation history
  - Compliance posture
  - Compliant attitude
  - Should they have known?

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## Enforcement Decisions

- Toxic by Inhalation
  - Material is used in vaccines
  - Shipment has been made for decades under a different classification
  - Properties of the chemical have been determined to meet the TIH criteria by the National Authority
  - MSDS for both classifications have been presented

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## Enforcement Decisions

- Shipment of hazardous materials that has the required hazardous communication markings on the inner packaging and no indication that the shipment is hazardous on the outer packaging. Offered undeclared.
- An undeclared shipment "could have been reclassified" using a regulatory exception. Lower risk??

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## Violation Sources

- Incidents – leaks or spills
- Inspections produce a very low percentage of enforcement cases
- Operator observance
- Package is opened and hazmat is discovered by consignee
- Employee reports on company
- Multiple refusals by operators

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## Alternative Resolutions

- Have the company be proactive in the line of business related to the enforcement case.
  - Articles
  - Posters
  - Movies

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## Incidents and Accidents

- Do be aware...when an incident or accident occurs, the enforcement history of the company, substance and the CAA will be under public scrutiny.
- We have to strike the balance of mitigating the risk of transporting dangerous goods in aircraft to protect the public while not being excessive.

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## FAA Enforcement History

	1998	1999	2000	2001	2002	2003	2004	2005	2006
Cases Investigated	1643	2225	2789	2114	1887	2165	9742	3888	2345
Cases Closed CP	483	540	621	434	453	414	439	598	423
Amount Collected in Millions	\$6.22	\$7.76	\$7.94	\$5.73	\$6.63	\$7.1	\$4.5	\$6.9	\$4.94

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## QUESTIONS – GENERAL



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