

issuing a formal interpretation of the Hazardous Materials Regulations (HMR) identifying when: (1) An airline passenger "offers" hazardous materials in carry-on baggage (including items on his/her person) or checked baggage for transportation under Federal hazardous materials transportation law and the HMR, and (2) when an air carrier accepts carry-on baggage (including items on a passenger's person) or checked baggage for transportation under the Federal hazardous materials transportation law and the HMR.

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SUPPLEMENTARY INFORMATION: RSPA issues the HMR (49 CFR parts 171 through 180) as part of its implementation of the Federal hazardous materials transportation law, 49 U.S.C. 5101 *et seq.* From time to time, RSPA's Chief Counsel issues formal interpretations of the HMR which are published in the **Federal Register**. Publication of these interpretations promotes a better understanding of the HMR and improves compliance.

In addition to formal and informal interpretations issued by the Chief Counsel, RSPA's Office of Hazardous Materials Standards provides information and informal clarifications of the HMR on an ongoing basis through a telephonic information center (800-467-4922 or 202-366-4488) and informal written interpretations or clarifications in response to written inquiries. RSPA's informal letters of clarification (and additional information concerning the HMR) are also available through the Hazmat Safety Homepage at <http://hazmat.dot.gov>. The Chief Counsel's formal and informal interpretations are available through the Chief Counsel's homepage at <http://rspa-atty.dot.gov>. In addition, some of RSPA's interpretations and clarifications may be reproduced or summarized in various trade publications. Further information concerning the availability of informal guidance and interpretations of the HMR is set forth in 49 CFR 105.20.

Anyone is able to search the electronic form of all documents received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association,

business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78), or you may visit <http://dms.dot.gov>.

Background

In general, a hazardous material subject to the HMR is prohibited in the cabin of a passenger-carrying aircraft (49 CFR 175.85) and may only be carried in the cargo compartment of a passenger-carrying aircraft when it fully conforms to the hazard communication, packaging and stowage requirements of the HMR. In order to accommodate the needs of the traveling public, exceptions are provided in 49 CFR 175.10 to allow passengers to carry certain quantities and types of articles, such as medicines and toiletries, in their checked and carry-on baggage (including on one's person). See 49 CFR 175.10 for a detailed listing of the materials which passengers are permitted to carry.

Hazardous materials in carry-on baggage and checked baggage are subject to the HMR when offered for transportation in commerce. Section 171.2(a) of 49 CFR provides that "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 [the HMR], or an exemption, approval or registration issued under [the HMR] * * *." The Secretary of Transportation has delegated to certain agencies within the Department the authority in 49 U.S.C. 5123 to assess a civil penalty against any person who "knowingly violates" a requirement in the HMR, including the provision in § 171.2(a) which is discussed above. Section 5123 (a) 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.

Security concerns have led to enhanced screening of air passengers and their baggage for weapons, explosives, and incendiaries. As a result of this increased focus on passenger carry-on baggage (including items on one's person) and checked baggage, screening personnel are discovering hazardous materials during the screening process. Consequently, there is a need to identify, for purposes of compliance with the HMR, when a passenger "offers" a hazardous material for transportation by aircraft in carry-on

or checked baggage and when an air carrier "accepts" a hazardous material for transportation by aircraft in carry-on or checked baggage.

Interpretation

This formal interpretation identifies, for purposes of the HMR, the point at which: (1) An airline passenger "offers" hazardous material in carry-on baggage (including items on his/her person) or checked baggage for transportation in commerce, and (2) an air carrier "accepts" hazardous material in carry-on baggage (including items on a passenger's person) or checked baggage for transportation in commerce. This interpretation addresses only passenger carry-on and checked baggage and does not address or apply to cargo shipments. The Federal Aviation Administration (FAA), which has the primary responsibility for enforcing the HMR with regard to air transportation, concurs with this interpretation. Prior advice given by FAA that may be inconsistent with this interpretation is superseded by this formal interpretation. RSPA has coordinated this interpretation with the Transportation Security Administration, which has responsibility for aviation security.

Carry-on items: A passenger in control of carry-on baggage (including items on his/her person) containing a hazardous material offers and represents that the baggage is fit for transportation by aircraft when the passenger tenders the baggage to screening personnel at an airport security screening checkpoint or otherwise attempts to proceed through the checkpoint with the hazardous material on his/her person. A passenger offers carry-on baggage for transportation by placing the baggage on the X-ray machine conveyor belt, handing the baggage to screening personnel, placing the baggage in a bin or tray for examination by screening personnel, or when the passenger physically passes through the security checkpoint with the baggage (including items on his/her person). Screening personnel at the security screening checkpoint do not need to have physical control of the carry-on baggage for an offer to have occurred; simply presenting the baggage for screening at a security screening checkpoint or passing through the checkpoint with the baggage (including items on a passenger's person) is sufficient to constitute an offer.

Carry-on baggage is accepted by an air carrier when the airline accepts the boarding pass of the passenger while boarding the flight. The passenger is responsible for ensuring compliance