



U.S. Department
of Transportation

**Research and
Special Programs
Administration**

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MAY 29 2001

Mr. Joel R. Hoiland
President & CEO
International Warehouse
Logistics Association
1300 West Higgins Road
Suite 111
Park Ridge, IL 60068-5764

Dear Mr. Hoiland:

This responds to your May 25, 2001 letter to RSPA's Acting Chief Counsel. You asked for clarification of what constitutes a "knowing" violation of the Hazardous Materials Regulations (HMR), 49 C.F.R. Parts 171-180, by a public warehouse as an offeror or shipper of hazardous materials.

You appear to understand the several interpretations issued by this office as they pertain to a warehouse operator who receives packaged materials for storage and further shipment, accompanied by information concerning these materials provided by the owner of the materials (i.e., the person who caused the materials to be delivered to the warehouse). Because the warehouse operator would not normally open the closed packages, or test the contents of the packages, its knowledge would be limited to (1) the information provided by the owner (in written or verbal form, including shipping papers), (2) any additional information on the outside of the packages (such as markings or labels), and (3) the condition of the packages themselves (leaks, odors, etc.).

As explained in our published interpretations, a "knowing" violation occurs when a 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. § 5125(a)(1); 49 C.F.R. § 107.3. There is no requirement that the person actually knew of the legal requirements in the HMR or intended to violate those requirements.

Therefore, when a warehouse operator reasonably relies on the information available to him, as provided by the owner of hazardous materials or marked on the outside of the package, and complies with the requirements in the HMR that apply to a state of facts consistent with that information, the warehouse operator will not commit a knowing violation of the HMR. In the case of a hidden shipment, the warehouse operator will not commit a knowing violation when the information available to the warehouse operator is not sufficient to put it on notice that hazardous materials are contained in the packages.

As a general matter, RSPA considers that the person who originally selects the packaging for a hazardous material, marks and labels the packaging, and prepares the shipping paper bears the primary responsibility for any noncompliance in these regards. Even when a person in the distribution chain (such as a reshipper, including the warehouse operator) has actual or constructive knowledge of noncompliance, RSPA generally proposes and assesses lower penalties against the reshipper (as compared to the original shipper of hazardous materials). See Section IV.B. to Appendix A to 49 C.F.R. Part 107, subpart D.

I hope that this guidance is helpful and provides the clarification you desire without the need for a meeting. However, if you have further questions or believe that a meeting would be productive, please do not hesitate to call me at 202-366-4400.

Sincerely,



Edward H. Bonekemper, III
Assistant Chief Counsel for
Hazardous Materials Safety and
Research and Technology Law