

## NEWSLETTERS

# Three Things To Know When Shipping Hazardous Materials By Air

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## **Barnes & Thornburg, *Logistically Speaking*, February 2018**

The transportation of hazardous material is governed by Title 49 of the United States Code. Title 49 and its associated regulations comprise an intricate structure for anyone who needs to transport hazardous materials, with an endless array of schedules breaking down products by class and setting out specific packaging and reporting requirements based on the quantities shipped. There are also placarding and notice requirements to shippers and, last but certainly not least, penalties of up to \$75,000 per violation. Those stakes make identifying potential problems much easier than dealing with a notice of violation. Here are three hints to help you identify and avoid potential violations.

### **1. It Takes (at Least) Two Qualified People**

A recurring theme involves companies who receive a notice of violation during the absence of a properly qualified shipping manager. If your business involves the shipping of hazardous materials, you need to have at least two qualified shipping managers and must ensure that at least one of those individuals oversees all shipping. Quite often, a company who has been served with a notice of proposed penalty finds that the shipment in question was made by a temporary or substitute employee. It may be prudent to have more than one employee capable of overseeing those operations in order to ensure that all shipments are reviewed by a properly trained person before being tendered to a carrier.

If you have only one qualified employee to oversee your shipping of hazardous material your entire company is subject to that employee's availability. If that employee is out of the office for any reason the company is subject to considerable exposure during that absence.

### **2. Know Your Shipping Software**

Another area that routinely surfaces in a post-notice of violation investigation involves the default provisions of vendor-provided software. The complimentary suite of software that your preferred shipper provides to you can contain defaults that do not take into account the hazardous materials transportation regulations. Rather, the defaults are often geared to providing the most economical or efficient shipping route based only on the recipient's address provided. Frequently, when the mode of transportation has changed from ground to air as a result of a default written into your shipping software, the change is not obvious to the operator. If the product you are shipping can safely be shipped by ground, but is subject to additional packaging or placarding requirements if shipped by air, a misstep can prove costly.

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Because the regulations provide that any violation occurs when a non-conforming package is tendered for shipment, the carriers who provide the shipping services are not responsible for ensuring a shipment's compliance with the regulations. This aspect of regulations is counterintuitive, as the shipping company's customers ordinarily expect the shipper to advise of any problems with a tendered shipment. The shipping company will check for compliance, but it will notify the FAA – not the customer – if it spots a problem.

### 3. Be Mindful of Extraordinary Circumstances

The hardest recurring theme to avoid in these situations is an extraordinary circumstance. An extraordinary circumstance involves a business doing something outside of its normal scope of operations that results in the shipment of hazardous materials. My favorite example of this is a matter in which a technology company, wishing to show gratitude to its salesforce for a great year, arranged to ship them artisanal ice cream. The ice cream was packed in dry ice at the creamery so that it could be shipped overnight to the deserving employees and arrive frozen. When none of the tendered shipments arrived on time, the sales manager was disappointed.

When the general manager received a letter from the FAA claiming 19 separate violations of the Hazardous Materials Transportation Regulations exposing the company to potential fines in the amount of \$1.425 million, it is fair to say his Christmas was ruined. Dry ice is considered a hazardous material as it generates carbon dioxide (CO<sub>2</sub>) as it "melts." If the CO<sub>2</sub> is contained, it can become an explosive. If the CO<sub>2</sub> is vented into a sealed airplane, it can consume the available oxygen in the plane. For these reasons - that nobody who is trying to ship ice cream gifts is thinking about - dry ice is subject to regulation when transported by air.

Because these extraordinary circumstances are by their very nature not within the day-to-day competencies of the company, the best defense here is to have an employee who is generally aware of the regulations and also aware of any special operations the company has undertaken. Knowing when to ask for help in these situations can be as important as knowing exactly what help you need.

### Conclusion

Air transportation of hazardous materials involves tight regulations and significant penalties. This is in keeping with the danger inherent in transporting hazardous materials by air. Training your employees to properly ship hazardous materials can alleviate headaches – and potential fines.

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