

2002 at 1 p.m. at the Mezzanine, 405 Capitol Street, Charleston, West Virginia, to provide small business owners and representatives of trade associations with an opportunity to share information concerning the federal regulatory enforcement and compliance environment.

Anyone wishing to attend or to make a presentation must contact Stephen M. Glass in writing or by fax, in order to be put on the agenda. Stephen M. Glass, District Counsel for the U.S. Small Business Administration, West Virginia District Office, 320 West Pike Street, Suite 330, Clarksburg, WV 26301, phone 1 (800) 767-8052 press 8 for West Virginia and then ext. 229, fax (304) 623-0023, e-mail: [stephen.glass@sba.gov](mailto:stephen.glass@sba.gov).

For more information, see our Web site at [www.sba.gov/ombudsman](http://www.sba.gov/ombudsman).

Dated: March 29, 2002.

**Michael L. Barrera,**  
National Ombudsman.

[FR Doc. 02-8458 Filed 4-8-02; 8:45 am]

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## SMALL BUSINESS ADMINISTRATION

### Public Federal Regulatory Enforcement Fairness Hearing; Region VII Regulatory Fairness Board

The Small Business Administration Region VII Regulatory Fairness Board and the SBA Office of the National Ombudsman will hold a Public Hearing on Monday, April 29, 2002 at 12:30 p.m. at the Wichita Area Chamber of Commerce, 350 W. Douglas, Wichita, Kansas 67202-2970, to receive comments and testimony from small business owners, small government entities, and small non-profit organizations concerning the regulatory enforcement and compliance actions taken by federal agencies.

Anyone wishing to attend or to make a presentation must contact Edgar Poindexter in writing or by fax, in order to be put on the agenda. Edgar Poindexter, U.S. Small Business Administration, Wichita District Office, 271 West Third Street North, Suite 2500, Wichita, KS 67202-1212, phone (316) 269-6631, fax (316) 269-6618, e-mail: [edgar.poindexter@sba.gov](mailto:edgar.poindexter@sba.gov)

For more information, see our Web site at [www.sba.gov/ombudsman](http://www.sba.gov/ombudsman).

Dated: March 29, 2002.

**Michael L. Barrera,**  
National Ombudsman.

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## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

[Docket No. OST-01-10380]

### Hazardous Materials: Knowledge Required for Civil Penalty Enforcement Proceedings

**AGENCY:** Office of the Secretary, DOT.

**ACTION:** Notice of public meeting and invitation to comment.

**SUMMARY:** Interested parties are invited to submit comments for consideration by DOT in developing additional guidance as to when a reasonable person offering, accepting or transporting a hazardous material in commerce would be deemed to have knowledge of facts giving rise to a violation of Federal hazardous material transportation law or the Hazardous Materials Regulations.

**DATES:** *Public meeting.* The public meeting will be held on June 19, 2002, from 9 a.m. to 4 p.m. The meeting will end before 4:00 p.m. if all topics have been addressed and all participants heard.

*Comments.* Written comments must be received by July 19, 2002.

**ADDRESSES:** *Public meeting.* The public meeting will be held in Room 2201 of the U.S. Department of Transportation headquarters building (Nassif Building), 400 Seventh Street, SW, Washington, DC 20590-0001. Any person desiring to attend the public meeting must notify LCDR Thomas Sherman by telephone or e-mail (see **FOR FURTHER INFORMATION CONTACT** below) no later than June 5, 2002, in order to facilitate entry to the Nassif Building. It is recommended attendees arrive early to facilitate new enhanced building security procedures. Each person should indicate which of the four topics described at the end of this notice that he or she wishes to discuss.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact LCDR Sherman as soon as possible.

*Comments.* You must address comments to the Dockets Management System, U.S. Department of Transportation, Room PL-401, 400 Seventh Street, SW, Washington, DC 20590-0001. You must identify the docket number (OST-01-10380) and submit two copies of your comments. If you want to confirm that we received your comments, include a self-addressed, stamped postcard.

You may also submit comments by e-mail by accessing the DOT Dockets

Management System website at: <http://dms.dot.gov>. Click on "Help," "DMS Web Help," or "DMS Frequently Asked Questions" to obtain instructions for filing a document electronically.

The Dockets Management System is located on the Plaza Level of the Nassif Building at the above address. You may review public dockets there between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, except public holidays. You may also review comments on-line at the DOT Dockets Management System website at: <http://dms.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** LCDR Thomas Sherman, Intermodal Hazardous Materials Programs, Office of the Associate Deputy Secretary, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20009. Telephone: 202-366-5846; Fax: 202-366-0263; or E-mail (preferred): [Tom.Sherman@ost.dot.gov](mailto:Tom.Sherman@ost.dot.gov).

### SUPPLEMENTARY INFORMATION:

Federal hazardous material transportation law provides that DOT may assess a civil penalty against a person that "knowingly violates" that law or the HMR. 49 U.S.C. 5123(a)(1). The same section of the law also states 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.

This statutory definition of "knowingly" was added in the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA), Public Law 101-615, section 12, 104 Stat. 3259 (Nov. 16, 1990), to "cover violations that are committed negligently" and to "negate any inference that the term only encompasses actions based on actual knowledge or reckless actions." H. Report No. 101-444, Part 1, Committee on Energy and Commerce, p. 47 (Apr. 3, 1990) (emphasis in original).<sup>1</sup>

<sup>1</sup> In its regulations, the Research and Special Programs Administration (RSPA) had implemented the "knowingly" standard for assessment of a civil penalty in the original Hazardous Material Transportation Act, Pub. L. 93-633, section 110, 88 Stat. 2160 (Jan. 3, 1975), and defined "knowingly" to mean that a person (1) has actual knowledge of the facts that give rise to the violation, or (2) should have known of the facts that give rise to the violation. A person knowingly commits an act if the act is done voluntarily and intentionally.

Former 49 CFR 107.299, added 48 FR 2653 (Jan. 20, 1983), revised 56 FR 8624 (Feb. 28, 1991), moved to 49 CFR 107.3 (Definitions), 61 FR 21094 (May 9, 1996). When RSPA revised § 107.299 in 1991 to define "knowingly" consistent with the language adopted in HMTUSA, it noted that

In a letter to the Secretary of Transportation, Federal Express Corporation asked DOT to develop further guidance on what constitutes "constructive knowledge" that a carrier is deemed to have of the presence of hazardous materials when the carrier accepts a shipment for transportation. Federal Express stated that carriers lack "essential criteria defining constructive knowledge of undeclared hazardous materials, that would allow the carriers to design and implement a viable system for training their employees, and for identifying and reporting discrepancies, without being subjected to second-guessing after a shipment has been transported."

In its letter, Federal Express referred to a formal interpretation published in the **Federal Register** on June 4, 1998, 63 FR 30411. In that interpretation, which was coordinated among all the DOT agencies to which enforcement authority has been delegated,<sup>2</sup> RSPA's Chief Counsel stated that:

a carrier knowingly violates the HMR when the carrier accepts or transports a hazardous material with actual or constructive knowledge that a package contains a hazardous material which has not been packaged, marked, labeled, and described on a shipping paper as required by the HMR. This means that a carrier may not ignore readily apparent facts that indicate that either (1) a shipment declared to contain a hazardous material is not properly packaged, marked, labeled, placarded, or described on a shipping paper, or (2) a shipment actually contains a hazardous material governed by the HMR despite the fact that it is not marked, labeled, placarded, or described on a shipping paper as containing a hazardous material.

\* \* \* \* \*

In the case of an undeclared or hidden shipment, all relevant facts must be considered to determine whether or not a reasonable person acting in the circumstances and exercising reasonable care would realize the presence of hazardous materials. In an enforcement proceeding, this is always a question of fact, to be determined by the fact-finder. Because innumerable fact patterns may exist, it is not practicable to set forth a list of specific criteria to govern whether or not the carrier has sufficient constructive knowledge of the presence of hazardous materials within an undeclared or

hidden shipment to find a knowing violation of the HMR.

Information concerning the contents of suspicious packages must be pursued to determine whether hazardous materials have been improperly offered. A carrier's employees who accept packages for transportation must be trained to recognize a "suspicious package," as part of their function-specific training as specified in 49 CFR 172.704(a)(2), because the legal standard remains the knowledge that a reasonable person acting in the circumstances and exercising reasonable care would have.<sup>3</sup>

63 FR at 30412.

In an interim response to Federal Express's attorney, the Secretary of Transportation advised that DOT's Director, Intermodal Hazardous Materials Programs (IHMP), located within the Office of the Associate Deputy Secretary and Director, Office of Intermodalism,<sup>4</sup> would be the focal point in developing possible guidance on "constructive knowledge." In conjunction with FAA (TSA), FMCSA, FRA, RSPA, and USCG, the Director of IHMP invites interested parties to attend a public meeting and to comment at that meeting or separately in writing on the indicia or readily apparent facts that would indicate the potential presence of hazardous materials to a reasonable person and the actions that a reasonable person should take in response to those indicia or readily apparent facts.

Logical topics for discussion at the public meeting and in written comments include:

1. The responsibilities of an offeror of a hazardous material to properly classify the material, package the material, mark and label packagings, outside containers, and overpacks, describe the material on a shipping paper, and provide placards to a carrier.

2. The responsibilities of a carrier when it accepts any shipment to review documentation that accompanies the shipment and inspect the packagings, outside containers, or overpacks to determine (a) whether a hazardous

material is present, and (b) when a hazardous material is present, whether it is properly packaged, marked, labeled, placarded, and described on a shipping paper.

3. When a reasonable person should have constructive knowledge of the potential presence of a hazardous material based on information that is readily apparent from: (a) Documentation that accompanies a shipment, (b) markings, labels, or placards on packagings, outside containers, or overpacks, and (c) the condition of the packagings, outside containers, or overpacks themselves.

4. Methods used to train personnel who prepare materials for shipment or accept shipments for transportation to recognize the potential presence of a hazardous material based on information that is readily apparent, including the use of checklists such as those required by Section 7;1.3 of the Technical Instructions for the Transport of Dangerous Goods of the International Civil Aviation Organization (ICAO).

Oral comments at the public meeting and separate written comments are not limited to the above topics and may include any suggestions for developing additional guidance as to when a reasonable person would be deemed to have constructive knowledge of the potential presence of hazardous material and the manner in which that material is classified, packaged, marked, labeled, placarded, and described on a shipping paper. A facilitator will chair the meeting to ensure that all topics are covered and persons heard. No formal transcript of this meeting is planned, but the meeting will be tape recorded for later use by DOT in its decision-making process.

Issued in Washington, DC on April 3, 2002.

**Jackie A. Goff,**

*Director, Intermodal Hazardous Materials Programs, Office of the Associate Deputy Secretary.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket Nos. FMCSA-99-5748 (OMCS-99-5748), FMCSA-99-5473 (OMCS-99-5473), FMCSA-99-6156 (OMCS-99-6156), and FMCSA-99-6480]

### Qualification of Drivers; Exemption Applications; Vision

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

<sup>1</sup> "Congress effectively adopted the Department's historic interpretation of the term 'knowingly.'" 56 FR 8620.

<sup>2</sup> The Secretary of Transportation has delegated to five agencies within DOT the authority to bring civil penalty enforcement cases and assess civil penalties for violations of Federal hazardous material transportation law or the HMR: United States Coast Guard (USCG), Transportation Security Administration (TSA), Federal Railroad Administration (FRA), RSPA, Federal Motor Carrier Safety Administration (FMCSA). 1.46(u), 1.47(j)(1), 1.49(s)(1), 1.53(b)(1), 1.73(d)(1).

<sup>3</sup> In its June 14, 1996 Advisory Guidance; Offering, Accepting, and Transporting Hazardous Materials, 61 FR 30444, 30446, RSPA urged persons "who engage in day-to-day transportation activities [to] make a concerted effort to ensure their own compliance, as well as that of others from whom they receive shipments" and reminded them to: (1) "Know Your Customer," (2) "Know the Packaging," (3) "Know/Verify the Proper Hazardous Material Description," (4) "Visually Inspect Shipments," (5) "Advise Your Customer of Possible Discrepancies," and (6) "Report Violations."

<sup>4</sup> The Secretary of Transportation has delegated to the Associate Deputy Secretary and Director, Office of Intermodalism, the authority under Federal hazardous material transportation law to act as the focal point for review of hazardous materials policies, monitor departmental hazardous materials activities, and address regulatory and programmatic cross-modal issues related to hazardous materials as warranted. 49 CFR 1.74.