



**International Air Transport Association**

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DEPARTMENT OF TRANSPORTATION  
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Mr. David L. Catey, Flight Standards Service Division,  
Federal Aviation Administration  
U.S. Department of Transportation - Dockets  
Docket No. FAA-1998-4458; Notice No. 98-13  
400 Seventh Street, S.W.,  
Room Plaza 401,  
Washington, DC 20590

Subject: **Docket No. FAA-1998-4458, Notice No. 98-13, Prohibition on the  
Transportation of Devices Designed as Chemical Oxygen Generators as Cargo  
in Aircraft**

The International Air Transport Association (IATA) represents over 250 of the major air carriers around the world including many domestic US carriers. IATA's Dangerous Goods Board has been in existence for over 40 years and its members are experts in the field of Dangerous Goods/Hazardous Materials shipments by air both domestically and internationally. Many U.S. carriers are represented on the board either as members or as accredited observers.

The proposed Rulemaking, would apply to IATA's domestic members and possibly would also apply to our foreign members entering, leaving or operating within the United States and territories subject to United States jurisdiction. It is from this perspective that we wish to make the following comments as well as seek clarification on the applicability of the rulemaking to foreign operators.

**Summary Comments of the International Air Transport Association (IATA)**

IATA would like to emphasise that we fully support changes to the Regulations, which have the overall effect of enhancing the safety of dangerous goods in air cargo. Safety is in everyone's best interest. We do however find that overall safety is not enhanced in this rulemaking and indeed, the rulemaking may actually compromise overall safety.

The Regulations have reached a level of maturity, which permits hundreds of thousands of shipments of dangerous goods to be transported safely by various modes every day. The overwhelming majority of these shipments arrive at their destinations without incident. For the few that do not, the reason in the vast majority of cases is non-compliance with existing Regulations.

IATA considers the correct way to prevent these incidents/accidents from occurring is not by implementing unnecessary and potentially counter-productive changes to proven Regulations, but to increase awareness among the travelling public and those involved in the shipment of dangerous goods. In addition a proactive enforcement regime with severe penalties for those who intentionally violate existing Regulations is essential in promoting a safe air cargo system. IATA believes that RSPA/FAA have taken many positive steps in the areas of education and enforcement, and heartily applauds these efforts. IATA is and has been actively supporting these initiatives and has itself been involved with implementing training standards and proactive educational campaigns for many decades.

There is little doubt that unnecessarily increasing the complexity and cost of shipping dangerous goods increases this probability of undeclared shipments. An increase in undeclared shipments is probably the most dreaded scenario and greatest threat to safety. IATA feels that this might be an outcome should this Rulemaking be adopted.

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### **Detailed Comments of the International Air Transport Association (IATA)**

IATA fully supports the efforts of the U.S. Federal Aviation Administration (FAA) to respond to any deficiencies in the Dangerous Goods/Hazardous Materials Regulations. As such, IATA has in the past supported many efforts by US DOT RSPA and the FAA to respond to the ValuJet accident with appropriate Regulations, which will prevent a reoccurrence of this type of tragic accident.

There have however, been no recorded incidents/accidents, which have been attributed to properly handled, packaged and shipped oxygen generators or indeed oxidisers of any kind. It is an undeclared and improperly packaged shipment of Chemical Oxygen Generators, which are classified as oxidisers, that is believed to have caused or contributed to the crash on May 11, 1996. As a result, Chemical Oxygen Generators are now forbidden to be shipped on passenger carrying aircraft. However, it is the hidden, misdeclared, undeclared or improperly handled oxygen generators, which are at the heart of each case identified by the FAA in this rulemaking.

Dealing with improperly prepared or handled shipments must be the priority of any rulemaking whose goal is to improve safety in light of the National Transportation Safety Board's (NTSB) findings in its investigation of the crash. This can only be accomplished by greater shipper awareness, education and a proactive enforcement program. The issues of undeclared dangerous goods as well as shipper education and awareness are not dealt with in this rulemaking; to the contrary we believe this rulemaking would cause greater confusion in the shipping community as to which articles and substances are considered regulated.

IATA believes that parts of this proposed rulemaking do not stand up to scrutiny when evaluated for their effect on overall safety. The basis for shipping dangerous goods has always been classification of articles and substances based on criteria as set out in the various domestic and international dangerous goods/hazardous materials Regulations. Therefore it is

difficult to understand how “newly manufactured devices that have not yet been charged for the generation of oxygen” could possibly be regulated as dangerous goods if they clearly do not meet any of the criteria for classification as such. The NTSB, after a lengthy investigation developed a detailed set of recommendations which made no reference to adding a new requirement to regulate newly manufactured devices which have not yet been filled.

Regulating articles and substances, which do not meet the criteria of at least one of the nine classes of dangerous goods, is a dangerous precedent, as it throws doubt on the entire classification system used world-wide to regulate dangerous goods. Based on the reasoning used by the FAA in this NPRM, virtually all non-regulated articles or chemical substances, which may possibly be confused with dangerous goods, should be regulated to prevent possible mis-classification. This does not stand up to the test of logic. Without first expanding the definition and classification criteria for the appropriate class of dangerous goods involved, the FAA is actually implementing an entirely new classification system by proposing to regulate articles or substances, which clearly fall outside of the regulated realm.

If the FAA wishes to ban these items, it must be based on hazards presented by that item and not on problems with classification by shippers which is a training issue, the true heart of this problem. This provision would actually cause confusion, as employees are trained that articles and substances are classified based on the inherent hazards of that article or substance based on classification criteria set out in various, which are designed to take account of those hazards. How do “newly manufactured devices that have not yet been charged for the generation of oxygen” fit in this framework?

A major question that remains to be answered is: How does banning “newly manufactured devices that have not yet been charged for the generation of oxygen” help to prevent any of the incidents/accident listed in the Rulemaking? These incidents/accidents were all the result of not following well established Regulations. If the existing Regulations were not followed in these situations, it is hard to believe that this new requirement would have prevented or even helped prevent the occurrence of any of these incidents/accidents.

IATA agreed with the RSPA/FAA Rulemaking requiring installation of approved fire/smoke detection/suppression systems in all “D” class cargo holds within a reasonable time period. IATA believes that the combination of these measures as well as the fire detection/suppression systems built into the other types of cargo compartments found on cargo only aircraft where oxygen generators may be stowed, will provide the necessary margin of safety to ensure the safe transport of these items. As such, IATA views the proposed requirement for segregation of oxygen generators from all other cargo before flight as excessive.

The FAA’s own tests on oxygen generators showed that they were extremely difficult to actuate, even by a fire produced under extreme laboratory conditions. A wooden crib was built around the oxygen generators and ignited. A fully engulfed wooden crib produces much more heat than a fire fuelled by typical packaging materials used to ship cargo such a

cardboard or light wooden materials. Taking account of the difficulty in actuating the generators even under extreme laboratory conditions, the relatively lower heat produced by normal packing materials and the fact that built-in fire detection/extinguishing will soon to be required for class D cargo compartment on cargo only aircraft, IATA feels that this additional segregation requirement is unnecessary and overly burdensome.

It must also be remembered that there is no concrete evidence that it was the fire **onboard** the **ValuJet** flight, which caused the oxygen generators to initiate and provide additional oxygen to the fire. Evidence shows that the generators were not properly packed and that some did not even have a primary means of preventing accidental actuation installed. The oxygen generators may well have initiated on their own due to normal aircraft vibration or movement. With respect to the packing material providing fuel for a fire which is then supplemented by oxygen from actuated oxygen generators, IATA feels that the fire detection/suppression systems currently required or soon to be required, provide the necessary capacity to deal with these types of fires.

The FAA does not define what it considers as appropriate segregation from other cargo. Does this mean that oxygen generators must be stowed in their own unit load device and/or in their own cargo compartment? If not what kind of distances is the FAA considering as appropriate? These questions must be answered before a full assessment of the safety, operational and monetary effects of this rulemaking can be fully considered. IATA therefore requests that the FAA clarify its definition of segregation in the context of this rulemaking. If the segregation requirements are overly burdensome, it would quite likely render carriage of oxygen generators by air, both operationally and economically unfeasible from the perspective of the operator and would likely result in bans on the carriage of these items.

A ban would in turn increase the number of undeclared shipments of oxygen generators by unscrupulous shippers, who may need to use the air mode to ship these items. There could also be major commercial ramifications for the airline industry as the result of aircraft on ground situations (AOG) if oxygen generators cannot be shipped by air due to bans imposed on oxygen generators. The current ban on transport of oxygen generators on passenger aircraft has greatly decreased the flexibility of operators to deal with AOG situations. A ban by some all cargo operators would further exacerbate this problem causing aircraft to be flown with large portions of blocked seats or even ferried empty to the nearest maintenance facility.

Before preparing any firm assessment on the monetary and operational implications of this new segregation requirement, IATA must first know the details of these requirements so that we can poll our members on this issue. Again, we must point out that this kind of segregation requirement was not included in the extensive recommendations of the NTSB.

The FAA has requested comments concerning the compatibility of this rulemaking with respect to international dangerous goods regulations, specifically the ICAO Technical Instructions. While these requirements do not contradict i.e. are not less restrictive than the

provisions of the ICAO Technical Instructions, they do go far beyond the requirements which experts worldwide have deemed acceptable for the transport by air of oxygen generators.

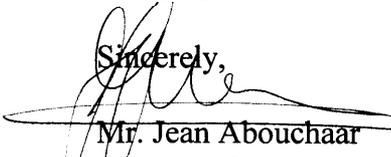
As mentioned previously, regulating items i.e. “newly manufactured devices that have not yet been charged for the generation of oxygen”, which do not fall within the definition/classification criteria generally accepted in international dangerous goods regulations does cause problems with respect to harmonisation of transportation standards world-wide. While these new requirements do not violate the letter of the ICAO Technical Instructions, IATA believes that the requirements do undermine the classification system used in all international dangerous goods regulations. The United States, which has been extremely active in the development of this internationally recognised classification system, has, along with many other countries harmonised its domestic regulations to this international standard and this seems to be a step backward in this process.

IATA would like to clarify whether it’s foreign members i.e. non-U.S.-based operators would be covered by the provisions of this rulemaking in their U.S. operations. Under Section X International Compatibility, the FAA indicates that the provisions of this rulemaking would not apply to foreign operators. We would therefore assume that foreign operators would be able to continue to transport “newly manufactured devices that have not yet been charged for the generation of oxygen” as non-regulated. Additionally, foreign carriers would also be exempt from the segregation requirements for “charged” oxygen generators.

Finally, it is IATA’s understanding that under Subchapter A, Part 106, Paragraph 106.13, of 49 CFR, rulemakings are initiated by the Administrator, Research and Special Programs Administration (RSPA), Department of Transportation (DOT). Further, the Administrator may, at their “. . .discretion to consider the recommendations of other agencies of the United States or of other interested persons, . . .”. In light of paragraph 106.13, IATA questions the authority of the FAA to be the initiating agency for this rulemaking. Paragraph 106.13 seems to indicate that rulemakings can only be initiated RSPA, with consultation from other agencies of the United States government such as the FAA as well as other interested parties.

The current regulatory regime is often considered difficult to comply with because of the number of variations in regulations. When two regulatory authorities within a single country regulate the same issues in different ways, it is doubly confusing to the regulated community. IATA would like to make its concerns know in this regard, and would like to suggest that rulemakings be drafted, promulgated and implemented in a consistent way. IATA believes that this would best be accomplished with one rulemaking body, accepting input from appropriate sources and producing one set of regulations on behalf of the United States. We believe that this is the intent behind the provisions of Paragraph 106.13.

Sincerely,



Mr. Jean Abouchaar  
Assistant Director, Special Cargoes  
IATA