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Dockets Management System
U.S. Department of Transportation
Room PL-401
400 Seventh Street, SW
Washington, DC 20591

**Re: Docket No. FAA-2003-15085;
Notice No. 03-08**

Dear Sir or Madam:

On behalf of United Air Lines, Inc. (United), I hereby offer comments on the referenced FAA notice of proposed rulemaking on the subject of hazardous materials training requirements.

United is the second largest scheduled passenger airline in the world, with significant operations both within the United States and worldwide. United holds FAA certification under UALA011A for the transportation of dangerous goods, and also operates as a Part 145 repair station that provides services to other air carriers. United is a "will-carry" airline as that term is used in this notice.

United favors improvements in the DOT hazardous materials regulations that are destined to enhance transportation safety. We do not believe, however, that the scope and direction of the changes proposed in this notice would result in greater safety. Instead, we anticipate some reduction in the current level of safety at an extremely high and unnecessary cost. We respectfully urge the FAA not to move forward to a final rule with these proposals but, instead, to adapt them based upon the comments received, issue them as a second notice, and offer an opportunity for a public hearing to discuss the second proposal.

We offer the following general comments on the proposals --

1. The focus is misplaced. Much of the expressed rationale for these proposals is a concern for undeclared hazardous materials in air transportation. We think the concern is valid, but that the proposals miss the mark.

A review of all UN-based hazmat regulatory codes confirms that the vast majority of the requirements are directed to the shippers of such goods. Thus, the basic tasks of identifying, classifying, describing, packing, marking, labeling, documenting, and certifying compliance of the shipment with the regulations are imposed exclusively on persons offering them into transportation.

History has shown, in virtually all instances of undeclared hazmat shipments in any mode of transportation, that the shipper has failed to meet one or more of these most basic regulatory requirements. The record also confirms that such shippers provided either inadequate or no hazmat training to the employees who offered such baggage or cargo to the carrier. Several references are made in these proposals to the ValuJet incident, but in that instance as in most others, the contractor's repair shop offering the materials had given none of its employees any hazmat training despite the fact that under applicable 49 CFR requirements they were obligated to do so.

The proposed rulemaking to a great extent ignores offerors of hazardous materials and, instead, places the focus upon air carrier personnel who are expected by the FAA to police the transportation system and to catch the shippers who are primarily at fault.

We cannot stress strongly enough that this focus is misplaced. While this approach appears to inject a new layer of oversight into the transportation chain, it burdens a business function that is in no way designed to adapt to such proposals. All violations of the hazmat regulations by a shipper occur long before the package arrives at an airport, and corrective actions to solve this problem also must occur before then. Excessively training carrier personnel on the mistaken hope that they will find the occasional visually identifiable improperly declared hazmat would be grossly ineffective.

In fact, training to make every employee performing a transportation-related function equivalent to a hazmat inspector would tend to undermine his or her current roles and responsibilities. Over training would be counterproductive to the stated goal in the notice of improving transportation safety. Our primary general comment, therefore, is that the FAA should work more closely with the other elements of DOT to address the real issue of shippers' improper preparation of hazmat for transportation in every mode of commerce.

2. The scope of the proposal is too broad. The proposal uses the new term "transport-related function" or TRF to describe the duties of personnel who would require initial and annual recurrent hazmat training. A TRF is defined in the preamble as "any function performed for the certificate holder relating to the acceptance, rejection, storage incidental to transport, handling, packaging of COMAT, loading, unloading or carriage of items for transport on board an aircraft."

The definition of TRF has been presented so broadly that it could be interpreted to apply to United employees of all operational job types. The proposal as we read it would result in a dramatic expansion of the existing hazmat training, from those people engaged handling such materials to every employee, whether or not they have hazmat responsibilities. Not only would nearly all employees have to be trained, but they would have to be retrained annually (with substantial related record keeping) on factors of air commerce that they never would encounter.

We think the breadth of the proposal, at least as we understand it, would diminish the effectiveness of carrier's existing programs by teaching too many people the arcane elements of a regulatory system they would not encounter, thereby necessarily distracting them from training that is much more specific to their particular job responsibilities and diluting the effect of training pertinent to their functions.

United asks, therefore, that the scope of the proposed population of employees to be trained be reconsidered, to tie training more directly to specific hazmat tasks prescribed by the regulations.

3. Disruptive redundancy. Many ground services provided to an air carrier are provided to several carriers. Such companies may serve as many as 20 to 30 individual carriers. The notice appears to propose that *each* certificated air carrier would have the training and record-keeping responsibility for every such multi-party supplier of aviation ground services. While some provision is made for a certificate holder to review the training given to a contractor by another certificate holder, the process as proposed is far too cumbersome and leaves each certificate holder with little option but to provide such service personnel with the full scope of hazmat training.

United is concerned with this proposal both as an air carrier and as a Part 145 repair station providing services to other carriers, who would pick up the obligation to train our people under their training programs.

In addition to being grossly inefficient and unnecessarily costly, we fear the proposed training redundancy for contractors would lessen the significance of each employer's own existing hazmat training responsibilities, and would blur the lines of who is responsible for initial and recurrent training. Telling ten companies to train the same person would not make that person ten times more aware, and would be far less effective than clearly telling the existing employer to train that employee. Putting the primary burden on the air carrier rather than the actual employer also would be less effective because the carrier is not in the position of the employer with respect to the power to hire, fire, discipline, or reward those employees.

United would support a revision under the appropriate sections of 14 CFR Part 145 to align the training interval required for repair stations to be annual, instead of every three years. This training requirement, imposed on the actual employer, would have the effect of increasing overall hazmat awareness at repair stations, and well as aligning with their customer carriers' training regimen under Part 121.

4. Supervision is too broadly described. The proposal would allow an as-yet untrained person to perform very limited tasks under the direct "visual" supervision of a

trained person. This is a more narrow authorization than has applied in the past. We are unaware of any situation in which a broader range of tasks was performed incorrectly by an appropriately but not necessarily visually-supervised employee. The proposed mandate to complete full hazmat training within 30 days also is too tight, and more time is needed to carry out this task on an orderly basis.

Vesting the authority in regional FAA personnel to decide the appropriate ratio of supervisors to employees would insert the FAA too far into daily operational responsibilities of certificated carriers. We accept the current 49 CFR requirement that a new untrained person be supervised, but we reject the discretion for the FAA to be able to say that each such employee may need his own one-on-one visual supervisor.

5. The proposal impacts U.S. carriers only, contrary to reason. To quote the notice, "Differences [in the training regulations] would affect U.S. aircraft operators only, and, therefore, it would not be necessary for the FAA to file any differences with ICAO. Foreign air carriers operating in the United States would not be affected by the proposed rule."

Trade discrimination issues aside, if history has taught anything, it is that hazmat transport is a global industry. That is why the core requirements are developed at the United Nations and pass thereafter to ICAO, the International Maritime Organization, and national government agencies such as DOT. The products are the same and they are shipped on transportation equipment in all modes of commerce, across all geographical boundaries.

Risks to transportation and public safety are the same whether an air carrier is certificated by the FAA or the aviation agency of another nation. Shippers, who are primarily responsible for preparation of materials, are missed by any requirements that are imposed only on carriers. In addition, all flights into and out of the U.S. on foreign-flag aircraft would be unaffected by these proposals. The proposals directly undermine the basic premise of improving awareness of hazmat transportation, as well as being inherently unfair to U.S. companies. Under the proposals, a foreign carrier one gate away from a U.S. flag carrier, could allow baggage and cargo to be transported without the purported benefits of these proposals, whereas the U.S. carrier would be burdened with compliance with such a rule. Operational effectiveness and requisite staffing aside, based on the arguments of the rule's own assumptions, the foreign carrier would permit unacceptable risk to travel in U.S. airspace.

We suggest as an alternative that training issues for both shippers and carriers of hazardous materials be addressed comprehensively, and more reasonably, through international requirements developed through the UN, ICAO, IMO, and other international regulatory bodies. We do not believe these FAA proposals, addressed only to air carriers, and addressed only to those registered in this country, should be adopted.

6. The proposed curriculum is too extensive. A look at the proposed training modules and the persons who would have to receive such training confirms that many of the subjects are appropriate only for the shippers of these materials and, within the shipper's operations, only those people directly engaged in the tasks of classification, determination of Packing Group, identification, etc.

While we understand that employees actually involved in the handling of air cargo or baggage need to be familiar with the hazmat regulatory system and signals such as marks and labels, the proposals to make all employees expert in preparing goods for shipment are misdirected.

ICAO says, and we believe correctly, that hazmat training given to employees must be "commensurate with their responsibilities," and that to more broadly train people in subjects they are not expected or authorized by their employer to perform would be a mistake.

United strongly urges the FAA, therefore, to abandon the idea of a one-size-fits-all training program and curriculum, allowing the certificate holder to tailor the training subject matter to the functions affected employees are authorized to perform. Each carrier will have different means of addressing these issues in their own operations, and the FAA should not compel uniformity in operations in order to fit the unrealistic concept of identical training for all will-carry and will-not-carry air carriers. The FAA also should not compel carriers to weaken the effectiveness of training by requiring coverage of irrelevant course content.

7. Constructive knowledge. We note that these proposals make certain assumptions with regard to the responsibilities of carrier personnel to recognize and be responsible for improperly declared hazmat. As you know, this subject has been the topic of a public proceeding initiated at the request of an air carrier and the FAA, with each noting that the concept would benefit from substantial Department-wide clarification. We believe such clarification is being written now. We ask that the FAA coordinate with RSPA and the Office of Intermodalism working on this matter.

Conclusion. Please give positive consideration to the comments offered by United, the Air Transport Association, and other carriers so seriously affected by these proposals. Recognize that it is better for safety to clarify (and to enforce) rules applicable to specific employers, rules that are commensurate with the responsibilities of the employees being trained in the performance of their tasks under the hazmat regulations. Most of all, recognize that dramatically increasing the training burden on air carriers and their employees, with the hope of stopping unlawful actions by shippers for whom such training emphasis is not being provided, will be both costly and ineffective.

Please reissue these proposals as a second notice of proposed rulemaking, taking into account the comments that have been offered. Also, in accordance with 49 U.S. Code 5103(b)(2), please provide affected parties with an opportunity to make an oral presentation on these proposals. Thank you.

Sincerely,

Lawrence W. Bierlein
For United Air Lines, Inc.