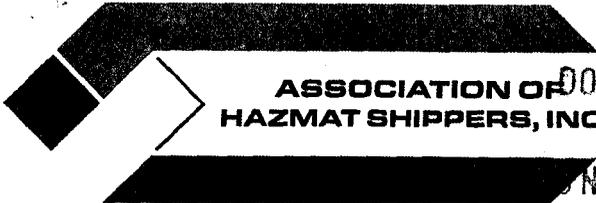


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ASSOCIATION OF DOT/RSPA/OHMS
HAZMAT SHIPPERS, INC UNIT

1620 I Street, N.W. Suite 925
Washington, DC 20006

email: ceharrison@therobertsgroup.net

Phone: (202) 293-5800
Fax: (202) 463-8998

www.hazmatshippers.org

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November 12, 2003

Dr. Robert A. McGuire
Associate Administrator for
Hazardous Materials Safety
Research & Special Programs Administration
U.S. Department of Transportation
Washington, DC 20590

**Re: Petition for rulemaking;
Air Eligibility Mark**

Dear Dr. McGuire:

As General Counsel to the Association of Hazmat Shippers (AHS), I hereby petition for expedited rulemaking, within the residual context of Docket No. HM-215E or in a separate docket, to rescind the air eligibility mark recently adopted in Section 172.321.

AHS is an association of shippers of goods regulated under the DOT hazardous materials regulations, and members have a particular interest in smaller package shipments that often are transported by air.

The air eligibility mark was proposed originally by the United States to the International Civil Aviation Organization (ICAO), for mandatory implementation by ICAO and its publishing agent IATA as of January 1, 2004. It was adopted by ICAO/IATA. In order to accommodate this international action, DOT proposed and adopted the mark in HM-215E, required in domestic air commerce on October 1, 2004.

It is our understanding that, because of substantial confusion about the meaning and impact of this mark throughout the global community of air carriers, indirect air carriers, shippers, and governments, the ICAO Dangerous Goods Panel at its recent meeting in Canada decided to delete the marking requirement.

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November 12, 2003

While we understand that some procedural steps may be necessary for ICAO to ratify the Panel's decision, we further understand that ratification is expected. Our concern relates to the impending January 1 international mandatory compliance date, as it links to U.S. shippers and carriers through both Sections 171.11 and 172.321.

Therefore, we strongly urge publication of accelerated DOT rulemaking to rescind the requirement. We explicitly ask that DOT not describe the mark as "optional," because that would imply a degree of acceptance of the concept that we think would be inappropriate under the circumstances. Perhaps in the future, with additional consideration in the international and domestic forum, some additional marking might be advisable.

Instead, at this time we urge deletion of this mark from title 49 CFR with a statement of DOT enforcement policy to the effect that packages that happen to bear such a mark will not be the subject of penalty actions under 49 U.S. Code 5101 *et seq.* Expression of this policy should protect companies that already applied the new mark to their packages, and explicit deletion of the mark from 49 CFR should impede further and unnecessary commercial actions to implement it.

Please contact me directly if you have any questions on this petition for rulemaking.

Sincerely,



Lawrence W. Bierlein

cc: Bob Richard, International Standards Coordinator
Edward Mazzullo, Office of Hazardous Materials Standards