AIR LINE PILOTS ASSOCIATION, INTERNATIONAL

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Dockets Management System
U.S. Department of Transportation
Room PL-401
400 Seventh Street, S.W.
Washington, D.C. 20590-0001

Subject: Docket No. RSPA–2002–13658 (HM–215E); Harmonization with the United Nations' Recommendations, International Maritime Dangerous Goods Code, and International Civil Aviation Organization's Technical Instructions

Ladies and Gentlemen:

The Air Line Pilots Association, International (ALPA), representing the safety interests of 66,000 professional airline pilots flying for 43 airlines in the United States and Canada, has reviewed the subject Research and Special Programs Administration (RSPA), Department of Transportation Notice of Proposed Rulemaking (NPRM) that is proposing to amend the Hazardous Materials Regulations (HMR) to maintain alignment with international standards by incorporating various amendments, including changes to proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, air transport quantity limitations and vessel stowage requirements. We understand that this document is the result of recent changes to the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions) and the United Nations Recommendations on the Transport of Dangerous Goods (UN Recommendations), these revisions are necessary to facilitate the transport of hazardous materials in international commerce via the air mode.

We recognize there are two separate comment period closure dates. Our comments in this submittal refer to those proposals that are for the incorporation by reference of publications listed in §171.7, specifically the ICAO Technical Instructions for the Safe Transport of Dangerous Goods by Air. Additional comment may be forwarded under separate cover before the closure of the second comment period on February 3, 2003.

In general, ALPA is pleased and supports the proposed rulemaking to harmonize the HMR with the new international standards. A single, consistent set of regulations for both domestic and international dangerous goods shipments facilitates safety by reducing complexity and eliminating confusion. We also applaud the incorporation of several new requirements into the HMR, including increased battery safety standards, the revision of requirements for use of absorbent material for packagings intended for transportation by aircraft, and the inclusion of the subsidiary risk in the description of a hazardous material on shipping papers in §172.202(a)(2).

We have several concerns and disagree with the proposed requirement for a new section, §172.323 to incorporate the use of an Air Eligibility (AE) mark. We believe the interpretations made by the RSPA are a significant change from the ICAO regulations. While we agree that

heightening shipper awareness of the additional packaging requirements for transporting shipments by the air mode is appropriate, we do not feel that the current proposal as published is effective.

In the NPRM's preamble, the RSPA indicates that the shipper is responsible for preparing the packaging for shipment (via the air mode) but is not required to physically place the mark on the packaging. The proposed text requires the "person offering the package" to determine that it complies with all appropriate requirements. This is shifting the burden for this determination from the shipper who constructed the packaging to someone else, such as a freight-forwarder. When directly tendered or offered to an air carrier this may not be the case. But unless specifically specified by the shipper to the forwarder regarding the mode the shipment is or is not prepared for there is no way for the shipper to know how the package is going to be shipped. The AE mark is only expanding a weakness in the system, not reducing it.

This is inconsistent with the ICAO regulations and with RSPA's own Preliminary Regulatory Evaluation, dated November 2002. On page 6, of that evaluation it states that, "the marking would represent a shipper's certification that all applicable transportation requirements for air transportation have been met, ..., selection of appropriate types of packagings, ..." This is significantly different than the actual regulatory text published in the proposed NPRM §172.323(a) on page 72071 that lists "each person who offers for transportation or transports by aircraft..." and further states, "...in a non bulk package, including packages used..." ALPA believes that asserting the regulations in this manner (person who offers) would potentially allow any person (forwarders) other than the original shipper to arbitrarily place the AE mark on the packaging (shipment) in order to meet delivery deadlines. We maintain that to be successful any marking would need to be applied during the time the <u>packaging</u> was being prepared. This would be part of a certification process by the <u>shipper</u> indicating that the shipment complied with all air transport requirements, including inner packaging limits, selection of appropriate types of packagings, and proper classification.

If adopted as published, we have concluded that the AE mark would be more than likely preprinted prior to the preparation of a packaging. Because the acceptance procedure already seeks to determine if a shipment has been prepared according to the standards for air transportation, we feel the adoption of an AE mark in this manner would be ineffective. Therefore, ALPA disagrees that allowing the AE mark to be preprinted on packagings is acceptable. We believe that this option in the proposal does little to reduce the likelihood that an improperly prepared shipment could not be loaded on an aircraft using an otherwise appropriate packaging. The potential exists that an "AE preprinted" cardboard box or other packaging could be used for shipment that is <u>not</u> intended to go by air but because the AE mark may not have been obliterated would be unknowingly placed into the air mode. The additional act of placing the appropriate marks and labels on a packaging allows for the continued checking and cross checking by the shipper to assure that the packaging is correctly prepared for shipment and that it meets all of the requirements for all modes of transportation the shipper can reasonably expect that packaging will travel. This is by far the safest procedure to follow.

ALPA also disagrees with the proposed text that would allow a hand drawn AE mark to be used. The general rule concerning marks and labels in both the international and domestic regulations

is that this mark be clearly recognizable by all those in the system. We strongly maintain that a hand drawn AE mark will not accomplish that function. There is no way to monitor uniformity or conformity. What is considered a picture or marking of an airplane can be greatly distorted and misrepresented.

Although the AE mark is being promoted as a method to further identify and highlight the additional packaging requirements imposed by the air mode have been met, because the regulations are stated in this manner, we believe that there is the potential that would allow for other persons to arbitrarily place, without checking with the original shipper, the AE mark on the packaging in order to meet shipment and arrival deadlines.

We also note in this section the use of the terms "package" and "packages" when the ICAO requirements use the term "packaging." We question if the terms are being used interchangeably. If so, this is not correct and should be corrected. This use is not consistent with the ICAO definition and use of the terms. The "package" is "the complete product of the packing operation, consisting of the packaging and its contents prepared for transport." While the term "packaging" refers to "the receptacle and any other components or materials necessary for the receptacle to perform its containment function." This is a significant difference since the packaging is the primary containment receptacle not the package.

An editorial note: There is currently a section §175.323 *Infectious substances* that was added on August 14, 2002 and became effective on October 1, 2002. That section introduced the BIOHAZARD marking. Accordingly, reference to the AE mark requires a different section number be assigned. Therefore, we request that the RSPA go through and replace any reference to the AE marking that uses §175.323 reference be changed. Caution should be taken so as to not remove any previous reference to the infectious substances BIOHAZARD mark.

Since the AE mark is not effective in the ICAO Technical Instructions until January 2004, ALPA recommends that the RSPA not adopt the referenced proposed §172.323 as published in this NPRM. Additional review is required to make this an addition to the margin of safety and not an unintended decrease.

Thank you for the opportunity to comment. If you would like to discuss this matter further, please contact me directly at mark.rogers@ALPA.org or via Rick Kessel, ALPA Engineering and Air Safety Department staff at 703/689-4202 or kesselr@ALPA.org.

Sincerely,

Mark Rogers

Mark Rogers, Director
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