AIR TRANSPORT ASSOCIATION

February 3, 2003

Dr. Robert A. McGuire
Associate Administrator for Hazardous Materials Safety
Dockets Management System
U.S. Department of Transportation
PL - 401
400 Seventh St., SW
Washington, DC 20590-0001

Re: DOT 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 (Notice of proposed rulemaking published December 3, 2002)

Dear Dr. McGuire:

The Air Transport Association of America (ATA)[1] takes this opportunity to respond to the DOT RSPA Notice of Proposed Rulemaking Docket HM-215E. Harmonization with the United Nations Recommendations, International Maritime Dangerous Goods Code and the International Civil Aviation Organization's Technical Instructions as published in the *Federal Register*, Vol. 67, No. 232, dated December 3, 2002.

The ATA is the trade and service organization of the U.S. scheduled airlines and, as such, we assist our members in the formation of air carrier policy with respect to hazardous materials/dangerous goods.

ATA's members share and support the goal of the DOT-R&SPA in proposing to amend the Hazardous Materials Regulations (HMR) in order to maintain alignment with international standards, particularly with the ICAO Technical Instructions for the Safe Transport of Dangerous Goods By Air.

The availability of such a Technical Instruction, consistent in its application for domestic and international dangerous goods shipments by air provides for increased safety by its uniformity and consistency. It also helps to eliminate complexities and errors, which are often, occur when too many sources of reference are needed or required to be followed.

[1] The Member airlines are: Airborne Express, Alaska Airlines, Aloha Airlines, America West Airlines, American Airlines, American Trans Air, Atlas Air, Continental Airlines, Delta Air Lines, DHL Airways, Emery Worldwide, Evergreen International Airlines, Federal Express, Hawaiian Airlines, JetBlue Airways, Midwest Express Airlines, Northwest Airlines, Polar Air Cargo, Southwest Airlines Co., United Airlines, United Parcel Service, and US Airways. The Associate members are: Aeromexico, Air Canada, Air Jamaica, KLM – Royal Dutch Airlines, and Mexicana.

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The ATA consolidated comment on behalf of its members follows:

Air Eligibility (AE) mark

Although the members of the ATA are completely supportive of any measure taken to increase shipper awareness of the packaging requirements for transporting dangerous goods by air, we do find concern with the proposed §172.323.

Our concern focuses around the NPRM preamble statement; "person offering the package" versus the *person responsible for preparing the packaging for shipment*. An offeror could be an air freight forwarder, who other than inspecting a package and verifying the accompanying documentation, marking and labeling, etc. has no way of verifying that the entire package is indeed "air eligible" and all transportation requirements for air transport have been met. The proposed §172.323(a) would direct "that each person that offers for transportation or transports by aircraft..." Apparently, this would allow any person, other than the actual (initial) shipper, to arbitrarily place the Air Eligibility (AE) mark on a package. It could also be interpreted to include air carriers as being responsible for placing the AE marking on a package. We do not believe that this was the intent, unless the carrier is the original/initial shipper. The proposed §175.30(a)(5) specifies that carriers may not accept shipments that have not been marked with the AE marking. Thus, making the proposed §172.323 confusing and ambiguous.

We believe that the ICAO Dangerous Goods Panel (DGP) intent in adopting the AE marking was to provide yet another verification that the *packaging* meets the requirements applicable for transport by aircraft. We also firmly believe that the ICAO DGP never intended that the marking certified all other requirements including labeling, classification, etc., etc.

We ask that RSPA review the composition of §172.323 and modify it to clarify that the AE marking must be applied by "each person who offers a packaging for air transportation." Also, by permitting the preprinting of the AE marking, the wording in the proposal allows the application of the AE marking prior to the application of the required dangerous goods labels.

Again, pointing out that such an AE marking must verify preparation of *only* the packaging.

Sequence of Information on Shipping Papers

We would like to take this opportunity to voice the plea of the ATA and its member air carriers regarding the subject of the sequence of information on shipping papers.

For a number of reasons, political, regional and otherwise the ICAO DGP has made changes in these sequences and in fact in a compromise offered an either/or sequence permitting the use of either of two sequences.

The airline industry was completely supportive of the sequence that had been in existence for many years which order started with PSN followed by ID, etc. When a compromise was offered the air carriers were explicitly against a change that provided options and thus, continued with the desire for the sequence, which survived with the greatest longevity.

In view of the fact that this situation has become so contentious and arguable we implore the United States appointed expert to the ICAO Dangerous Goods Panel to once again call upon the ICAO Dangerous Goods Panel to adopt one sequence. The selected sequence should be whichever sequence the majority of the Panel desires to adopt. This action should be followed by a lengthy phase in period in order to permit the adjustment of a myriad of computer programming requirements, changes to printed manuals, regulations, shipping papers, check lists, training and audio-visual aids, etc.

An assurance must be built into the selection of the one sequence that would prevent sequence changes being adopted due to an impulse of the panel members. No less than a twenty-year moratorium should be considered.

The 2003-2004 Edition of the ICAO Technical Instructions recognizes three distinct sequences of information on shipping papers:

(1) Proper shipping name (PSN), Primary hazard class (PH), Identification number (ID), Packing group (PG) and Subsidiary risk (SR).

(2) PSN, PH, (SR), ID and PG.

(3) ID, PSN, PH, (SR), and PG.

A good example of the confusion that exists, for everyone, in the sequence of information issue is, according to §172.202 paragraph (a)(2) the first sequence (above) which is recognized by ICAO, would not be permitted by 49CFR. Also a forth sequence was introduced in HM-215E of (ID, PH, (SR), PSN, PG.

Even though we understand that subsequent to the issuance of the NPRM these situations have been recognized by RSPA and will be rectified in a final rule. We again, suggest that this is a perfect example of what can happen to anyone, including the drafters of regulation, when multiples of sequences are offered.

Limited Quantities of Hazardous Materials/Dangerous Goods

The proposal in 49 CFR § 172.315 is a total change in the current requirements for Limited Quantity packaging and is not consistent with the ICAO Technical Instructions. THE ICAO TI in 4.3.4.5.1 requires packages containing Limited Quantities of Dangerous Goods to be marked in accordance with Part 5 of the TI. Part 5.2.4.1.1 requires that the package be marked with the PSN and when assigned, the ID number.

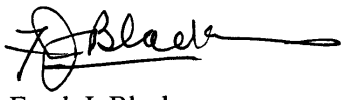
A square-on-point or diamond marking is both a burden to the shipper and carrier and may not only confuse the carrier but also confuse enforcement personnel, as well.

As the Hazard class labels are square-on-point labels we feel that the addition of another square-on-point with a marking, on a limited quantity package, may be confused with a hazard class label.

The RSPA introduction of these proposals and modifications is not in harmony with the ICAO Technical Instructions. We ask RSPA to review their proposal removing the requirement for square on point shaped marking/label, however, including both the proper shipping name and identification number as required by international standards.

We appreciate the opportunity to provide comment and gladly offer any assistance to RSPA that we can provide.

Sincerely,



Frank J. Black
Director, Cargo Services
& Dangerous Goods Board
Facilitator

cc: Frits Wybenga, Deputy Associate Administrator for Hazardous Materials Safety
Bob Richard, International Standards Coordinator
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