

the Emergency Response Guidebook's section containing ID numbers.

One commenter requested a clarification regarding color specification for the limited quantity marking. Consistent with the UN Recommendations and the IMDG Code, we are not restricting the marking to a specific color.

Two commenters requested early voluntary compliance, as of January 1, 2003, with the new limited quantity marking. Because the NPRM did not include this requirement together with the proposed early compliance date for the incorporation-by-reference materials, the request is considered beyond the scope of this final rule. We are, however, authorizing immediate voluntary compliance upon the date of publication of this final rule.

Based on the above discussion, we are adding a new section, § 172.315, as an alternative marking requirement for packages containing limited quantities of hazardous materials. When marked in accordance with this section, limited quantity packages must be marked with the identification (ID) number placed within a square-on-point. Marking the proper shipping name on limited quantity packages is not required when using this marking, but is permissible. The line forming the square-on-point must be at least 2 mm thick and the height of the ID number no less than 6 mm. For packages containing more than one limited quantity of hazardous materials with different ID numbers, the packaging must be marked with either individual diamonds bearing a single ID number, or a single diamond large enough to include each applicable ID number. The marking must be durable, legible and of a size relative to the packaging as to be readily visible.

**Section 172.321.** A new section, § 172.321, is added to incorporate an air eligibility marking requirement into the HMR for non-bulk packages offered for transportation by aircraft. Section 172.321 replaces the proposed § 172.323 as the location for this requirement because § 172.323 is now the marking section for infectious substances. The marking certifies compliance with all the applicable air transport requirements that apply to a package containing hazardous materials that is offered for transport by air, including pressure differential requirements, package markings and labels, inner packaging limits, selection of appropriate types of packagings, use of closure instructions for inner packagings, use of absorbent materials, application of the cargo aircraft handling label (when applicable), and

proper classification of the contents of the packaging.

We received approximately 10 comments addressing the proposed air eligibility mark. Some commenters are in favor of the marking, but request certain revisions, while other commenters are opposed to the adoption of the mark altogether.

Several commenters addressed the distinction between the use of the words "package" and "packaging." The ICAO's use of the word "package" in the Technical Instructions and our use of the word "package" as proposed in the NPRM has led to misunderstandings of the meaning and applicability of the air eligibility mark. One commenter suggested that we postpone adoption of this requirement until ICAO has considered this issue. Another commenter suggested that we submit a variation to ICAO if we adopt the air eligibility mark as proposed. We interpret the current ICAO text that states shipments must "meet all the applicable requirements for air transport" to include the packaging plus its contents (the "package") and not the packaging alone. On the basis of a proposal to ICAO to revise the Technical Instructions by clarifying that the certification marking applies to the package, the ICAO Dangerous Goods Panel recently agreed to amend the ICAO Technical Instructions to indicate that the air eligibility mark is an indication that the shipper has determined that the "package" meets the applicable air transport requirements. Based on the foregoing, the text, as proposed, will be consistent with the ICAO Technical Instructions. Therefore, we believe it is appropriate to adopt this change at this time.

The Air Transport Association (ATA), the Air Line Pilots Association (ALPA) and Delta Airlines stated that the wording "each person" in paragraph (a) suggests that any person, including the carrier and the forwarder would be responsible for marking the package with the air eligibility mark. ALPA maintains that it is important for the marking to be applied when the package is being prepared. We agree that the offeror is the appropriate person to assume responsibility for the mark and that the carrier is responsible for ensuring that the mark is present. We are revising paragraph (a) by replacing the wording "each person who offers for transportation or transports" with "each person who offers for transportation." This revision also responds to a comment that we received from DGAC in which DGAC cited the Federal hazardous materials transportation law concerning "Representation" and

questioned the authority to place the air eligibility marking on a package. DGAC stated that, as proposed, requiring the mark to represent total certification of compliance would suggest that the only person who may "display the marking on a package would be the same person making the certification" in accordance with § 172.204. DGAC went on to question whether a packaging manufacturer may pre-certify compliance because there is no signature involved in the display of the marking. As discussed in the paragraph above, it is the offeror who is responsible for the certification. The packaging manufacturer is not certifying that the package is in compliance with all applicable requirements. The marking has no significance as a certification until the package is offered for transportation. With respect to the statement suggesting that only a signature can represent certification, the commenter is incorrect. Although the air eligibility mark, as a form of certification, does not waive the shipping paper certification, the air eligibility mark certifies that the package meets all applicable requirements for air transport. This is consistent with existing regulatory text in § 172.316 that states the ORM-D marking is the certification that the material is properly described, classed, packaged, marked and labeled.

Several commenters disagree with allowing the air eligibility mark to be hand drawn. Currently, the HMR does not prohibit any markings from being hand drawn provided all applicable specifications are met. We did not propose a specific graphic for the marking and do not believe it is necessary to single out the air eligibility mark from being hand drawn as long as it clearly depicts an airplane in a circle and says "Air Eligible." However, we may consider proposing a specific graphic for the air eligibility marking in future rulemaking, preferably based on a consensus standard.

Dupont, the Air Transport Association (ATA), ALPA and Delta Airlines disagree with allowing the air eligibility mark to be preprinted on packages. The commenters believe that preprinted packages can inadvertently be used for shipments that are not suitable for air transport. Currently, the HMR authorizes UN markings and other package markings to be preprinted and we view the air eligibility mark as similar. In certain instances it may be more cost effective for the shipper to preprint the mark. It is our position that it is the responsibility of the offeror to ensure that every package bearing the