U.S. Department
of Transportation
**Research and
Special Programs
Administration**

400 Seventh St., S.W.
Washington, D.C. 20590

APR 1 0 2003

Members of the Air Transport
Association of America
Air Transport Association of America
1301 Pennsylvania Ave., Suite 1100
Washington, DC 20004-1707

Dear Exemption Holders:

I hereby terminate DOT-E 10990 issued to Members of the Air Transport Association of America, in accordance with 49 CFR 107.121(b). On January 8, 2003, I issued a letter informing you that we proposed to terminate the exemption and provided you opportunity to show cause why the exemption should not be terminated. We received your February 6, 2003, letter and have addressed the issues you raised. We are terminating DOT-E 10990 for the following reasons:

> DOT-E 10990 only provides relief from the retest and inspection of cylinders in transportation in commerce. Cylinders that are used as components in aircraft fire suppression systems are not considered to be in transportation in commerce when mounted to aircraft. Therefore, the retest period for a cylinder used as a component of and mounted in an aircraft is not subject to the HMR.
>
> The retest requirements in the Hazardous Materials Regulations (HMR) apply to a cylinder that is removed from an aircraft and offered for transportation as an article of commerce. However, a DOT specification or exemption cylinder containing a hazardous material for which the retest date has become due need not be emptied to meet the testing schedule outlined in the HMR.
>
> In addition, the Federal Aviation Administration amended Appendix 3 to Order 8300.10 on September 4, 2002. This bulletin provides guidance to Airworthiness Aviation Safety Inspectors regarding the maintenance and inspection of pressure cylinders that serve as aircraft equipment in

APR 1 0 2003

operations under Title 14 of the Code of Federal Regulations parts 91, 121, 125, 129 and 135 and § 129.14. As amended, the order allows alternative testing and inspection procedures that are specified by the manufacturer or referenced authority when approved by the Federal Aviation Administrator.

You contend that DOT-E 10990 authorized transportation of cylinders in addition to providing relief from the retest and inspection requirements for cylinders. Your understanding is not correct. As provided by § 173.301(a)(6), no person may fill a cylinder overdue for periodic requalification with a hazardous material and then offer it for transportation. However this does not apply to a cylinder filled prior to the requalification date. In other words the cylinders that are installed in aircraft and have not been tested in accordance with the HMR may be removed and transported; however, they may not be refilled until properly tested.

In addition, you are concerned about the language in paragraph 11. of the exemption which states "No person may use or apply this exemption, including display of its number, when this exemption has expired..." You state that you have numerous internal documents and thousands of cylinders that display the exemption number and question whether you would be required to remove all reference to the exemption as soon as the exemption expires. The answer is no. You are prohibited from marking cylinders or using the exemption once it is expired but you are not required to remove the exemption number either from your internal documents or the cylinders.

Each of these reasons constitutes a sufficient basis to terminate DOT-E 10990, and the exemption is therefore terminated effective June 1, 2003.

Sincerely,

Robert A. McGuire
Associate Administrator for
Hazardous Materials Safety