



**Hazardous Materials: Harmonization With the United Nations
Recommendations, International Maritime Dangerous Goods Code, and the
International Civil Aviation Organization Technical Instructions for the Safe
Transport of Dangerous Goods by Air**

Comments on the Notice of Proposed Rulemaking
published at 75 Fed. Reg. 52070 (August 24, 2010).

Submitted to the PHMSA docket number PHMSA–2009–0126
online at <http://www.regulations.gov>

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October 25, 2010

Docket Management System;
U.S. Department of Transportation,
Dockets Operations, M-30, Ground
Floor, Room W12-140, 1200 New Jersey
Avenue, SE., Washington, DC 20590-0001

Dear Sir or Madam:

Please accept these comments in response to the Hazardous Materials: Harmonization Notice of Proposed Rulemaking, which was published for public comment at 75 Fed. Reg. 52070 (August 24, 2010).

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Who is ASA?

Founded in 1993, ASA represents the aviation parts distribution industry, and has become known as an organization that fights for safety in the aviation marketplace.

ASA and ASA's members are committed to safety, and seek to give input to the United States Government regarding government policies so that the aviation industry and the government can work collaboratively to create the best possible guidance for the industry and the flying public.

ASA members have a special interest in shipments of hazardous materials. Many ASA members sell and ship aircraft parts that are regulated as hazardous materials. They also ship substances regulated as hazardous materials. Various aircraft parts exhibit hazardous properties associated with nearly all hazard classes (with the exception of class 4). These aircraft parts are sold in both the commercial aviation market and the general aviation market. Operators rely on the availability of these parts to keep their aircraft flying, and distributors rely on reasonable regulatory schemes to permit them to ship their parts in a safe, timely and compliant manner.

Introduction to the Comments

ASA applauds the PHMSA's efforts to establish better regulations governing shipment of hazardous materials, as well as efforts at international harmonization; nonetheless, ASA advises caution with respect to any effort that would create a serious potential for non-compliance without offering any additional safety benefit. ASA also advises caution with respect to efforts that would create greater confusion among those trying to deduce the meaning of symbols used in shipping hazardous materials.

Comments

One of the things that is beginning to make compliance with the hazmat regulations particularly difficult is the frequency with which the regulations change, and the apparent capriciousness of the changes. In this rulemaking, at least one of the proposed changes appears to be made capriciously, without regard to any safety need. We fear that this may lead to enforcement actions for non-compliance that are fundamentally unfair, to the extent that it is unfair to engage in frequent changes to the labeling and marking regulations to which the public must conform, without any sound policy basis.

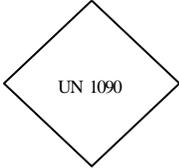
In the past, conformity to international standards published in the ICAO Technical Instructions has reflected a sound basis for policy change, but the recent capriciousness of change in the ICAO Technical Instructions seems

Limited Quantity Marking

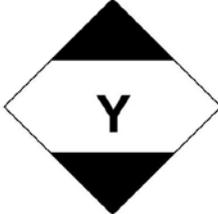
About two years ago, ICAO announced impending changes to the way that limited quantities of hazardous materials would be identified - these become an 'authorized methods of identification' under the IATA Dangerous Goods Regulations that are commonly used in the aviation industry. Technical Instructions for the Safe Transport of Dangerous Goods By Air, § 2.4.1 (ICAO 2009-2010 Edition).

Ltd Qty Acetone UN 1090 <i>Shipper</i> <i>Consignee</i>
2007-2008 IATA/ICAO Limited Quantity Marking

The 2009-2010 authorized identification method involved putting the item's UN identification number in a diamond shape. Id. The 2009 revisions stated that this would become the mandatory way to mark limited quantity packages starting in 2011. Id.

 Ltd Qty Acetone <i>Shipper</i> <i>Consignee</i>
2009-2010 IATA/ICAO Limited Quantity Marking

Beginning in 2011, ICAO has abandoned the marking protocols announced in 2009, and established a new, different, identification protocol for identifying limited quantities of hazardous materials. Instead of placing the UN identification number in the diamond shape, shippers will be required to place a "Y" in the diamond shape and to include broad black stripes above and below that "Y."

 Acetone UN 1090 <i>Shipper</i> <i>Consignee</i>
2011-2012 IATA/ICAO Limited Quantity Marking

There appears to be no reason other than mere harmonization for the sake of harmonization for adopting the ICAO limited quantity marking. Such adoption would lead to the use of a marking that provides no additional value, and in fact that reduces the information value connoted by the markings. This is because many people in the United States system will have no idea what the "Y" marking means, although they would have understood the meaning of the phrase "limited quantity."

Although "Y" is the letter that precedes limited quantity packing instructions in the ICAO system, the letter "Y" has no special meaning in the existing United States regulations. There is nothing about it that connotes "limited quantity" in the United States hazardous materials system. Moreover, there is nothing intuitive about

the letter "Y" that would lead persons who are not trained in the international Dangerous Goods regulations to recognize it as a symbol for limited quantities.

The United States rulemaking effort states that the purpose is to bring its own regulations into compliance with the latest ICAO specifications for limited quantity packages. But this raises an important question about US rulemaking rationale. Has the United States committed to harmonize its regulations to ICAO standards regardless of whether these regulatory changes make sense? Such an action appears to reflect an abandonment of the United States' sovereign authority. In a case such as this, where the proposal would diminish domestic comprehension of the symbols, slavish harmonization seems to undermine U.S. regulatory goals.

Marking of Packagings

The United States Department of Transportation has recently imposed a requirement for export shippers of aircraft parts to:

"Preserve and package products and articles as necessary to protect them against corrosion and damage during transit or storage and state the duration of effectiveness of such preservation and packaging." 14 C.F.R. § 21.335(b).

At this time, there is no requirement in the existing regulations for any packaging manufacturer to disclose the effectiveness of the packaging. Without such disclosure from packaging manufacturers, there is no way for shippers to identify the effectiveness of the packaging.

There are many different aircraft parts that are shipped as hazardous materials. In order to provide a mechanism for permitting compliance with 14 C.F.R. § 21.335(b), we recommend that the packaging marking requirements of Part 178 be amended by adding a § 178.503(g) that states:

"(g) A manufacturer must mark every UN specification packaging with the duration of effectiveness of the packaging."

Conclusion

ASA generally supports PHMSA efforts to standardize international practices; however, when those standardization efforts appear to inhibit commerce without adding any new safety benefit, then this is troubling.

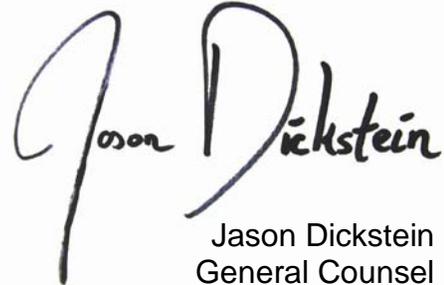
Bi-annual changes to the marking requirements, without any justification or showing of need for the changes, is not useful nor reasonable for anyone that needs to comply with the regulations.

Moreover, a change in marking requirements that reduces the ability of average persons without special training to deduce the meaning of the markings is a change that increases, rather than decreases, confusion - and such a change is not appropriate.

Finally, in order to support the FAA's latest Title 14 changes that require shippers to disclose duration of effectiveness of packaging, we recommend that manufacturers of non-bulk specification packaging be required to mark their packages with such information.

We appreciate your consideration of these comments.

Respectfully Submitted,

A handwritten signature in black ink that reads "Jason Dickstein". The signature is written in a cursive style with a large, prominent "J" and "D".

Jason Dickstein
General Counsel
Aviation Suppliers Association