

The UPDATE Report



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Safety Management Systems: In the Line of Fire

The FAA-Industry Aviation Rulemaking Committee (ARC) for Safety Management Systems (SMS) meets in Dallas in March in order to finalize a single industry recommendation concerning SMS.

Safety Management Systems (or SMS) is an ICAO "mandate" and is something that the civil aviation authorities of the world have been directed to incorporate into their regulations. In the United States, it is appearing that we must adopt some sort of SMS regulation in order to avoid being hit with multiple inconsistent SMS standards from each of our foreign trading partners (which could impede our ability to sell aircraft parts outside the United States).

As ICAO envisions it, SMS would be imposed on repair stations, air carriers and manufacturers. It would not be directly imposed on distributors, although distributors may find that their business partners with SMS programs impose on them certain commercial obligations related to their own SMS regulatory obligations. This could include business partners (both vendors and customers) who insist on the distributor providing certain data (including sales data) to support the SMS data collection element. It could also include business partner requirements for a distributor to "voluntarily" adopt its own SMS Program.

The Good

For those not familiar with SMS, it may be thought of as being much like a Quality Management System (QMS) that collects data and analyzes it in order

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MESSAGE FROM ASA'S PRESIDENT

THE UPDATE REPORT

is the newsletter of the Aviation Suppliers Association.

OUR COMMITMENT

ASA is committed to providing timely information to help members and other aviation professionals stay abreast of the changes within the aviation supplier industry.

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THE UPDATE REPORT STAFF

Publisher Michele Dickstein
Editor Jason Dickstein
Production Squaw Design

QUESTIONS ?

EMAIL questions to:
jason@washingtongaviation.com

MAIL questions to:
Jason Dickstein
Aviation Suppliers Association
2233 Wisconsin Ave., NW
Suite 503
Washington, DC 20007
Voice: (202) 347-6899
Fax: (202) 347-6894

OFFICERS:

Mitch Weinberg
(954) 441-2234
Corporate Treasurer

Jason Dickstein
(202) 347-6899
Corporate Secretary

Michele Dickstein
(202) 347-6899
President

Dear Colleagues,

We find ourselves living in a world of exciting change, posing a myriad of opportunities. The Navy has put out a Request for Information (RFI) for a carrier-based stealthy, unmanned strike and surveillance system. This is one of the many initiatives that will provide the industry with new unmanned civil and defense aircraft to support. The 787 program has completed about 20% of its 2,000 hours of precertification flight testing - this will pose a long-term opportunity for ASA members who may be ultimately involved in supporting the aircraft, while at the same time infringing on short-term business opportunities based on the aircraft that will be retired and replaced by the 787. These retirements, in turn, potentially provide inexpensive aircraft for cargo conversions and for other forms of operations, as well as sources of surplus parts when the aircraft are disassembled.

The phrase "May you live in interesting times" has been popularized in modern American and English culture as a Chinese curse, although it is unlikely to have actually originated in that form in China. The phrase is likely to have originated in England, and merely been attributed to the Chinese. The closest Chinese corollary is reputed to be "It's better to be a dog in a peaceful time than a man in a chaotic period."

Knowing the origin of a witty phrase may not be important to most ASA members, but knowing where your next business opportunity is coming from is vitally important. In these interesting times, understanding industry events - and related non-industry events - as they play out is critical. A retirement of an air carrier's fleet could spell new opportunities if the fleet will be sold to other operators who still need surplus parts to maintain the aircraft; or it could represent a major write-down for those holding surplus inventory if the retired fleet will never fly again.

ASA will continue to be your source of business intelligence, with an eye on what is going on in the industry and in the government that may affect ASA members. I hope to see you all at the ASA Conference in June, where we will be discussing the business intelligence that keeps life interesting. If you can't be a dog in peaceful times, then you need to be an informed person to keep ahead of the chaos!

Take care, Michele

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Greg McGowan (206) 898-8243
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Brent Webb (972) 488-0580
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Mitch Weinberg (954) 441-2234
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to predict future potential hazards, assigns risk levels to those potential hazards, and implements solutions designed to prevent those future risks from ever materializing. Specifically, certificate holders are supposed to collect data and analyze it for patterns that suggest that there is the risk of a safety hazard. Risk assessment tools within the SMS toolbox are supposed to permit companies to distinguish those risks that are most urgent, and to devote resources to addressing them.

One of the good things about the theory of SMS is that it provides an organized and documented mechanism for assessing and prioritizing risks.

Another good thing is that the mechanism permits a company to consider potential hazards and attempt to mitigate or prevent them.

The Bad

One of the problems with SMS as a regulation is that SMS encourages “out-of-the-box” thinking to identify hazards and fix them before they manifest themselves, but the US legal system is not structured to reward that sort of approach. It is possible for US regulators to use SMS regulations as a tool for punishing those who encounter unforeseeable accidents; because one could argue that the unforeseeable should have been foreseen through the SMS program. This is not the intent of SMS, but it is a reasonably possible result if SMS is not very carefully implemented at the regulatory level.

SMS also imposes requirements for continuous improvement. In the ICAO documents it is clear that this was meant to reflect continuous improvement of the SMS processes, but FAA guidance documents have caused some industry experts to predict that the FAA may interpret this to include requirements for more general safety improvement. While continuous improvement is beneficial to everyone, a regulation that requires continuous improvement could be used to penalize a company with a perfect safety record for not improving upon perfection. Once again, this is not the intent of the SMS paradigm, but it is a possibility under SMS regulations in the United States

The Ugly

The worst fears of SMS are that SMS regulations could open a company to new legal jeopardies.

For example, the paradigm effectively requires a company to predict all future hazards, because failure to predict a hazard that occurs would reflect a failure of the system. But when a company predicts a hazard and then fails to prevent that hazard, the company can be (and generally is) accused of recklessness in the courts. So successfully predicting all potential hazards, successfully ranking them based on potential risks, and then using the risk weighting to determine how to

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best allocate safety mitigation resources could be a ticket to legal jeopardy if the company guesses wrong on which risks should have been remedied first.

More insidious, the paradigm requires all of this analysis to be recorded. So there is a written record when a company considers a potential hazard and then decides to commit resources to mitigating a different hazard. Written internal records in which a company identified the potential for a safety risk (no matter how small) are like cotton candy to trial lawyers.

Finally the fact that everything identified by a SMS program is, by definition, a safety risk imposes new semantic concerns. Juries will not want to hear that the company only had a limited budget for addressing safety risks, and that the company made a choice to address one issue identified as a safety risk over another issue identified as a safety risk. A jury will want to hear that the company committed maximum resources to everything identified as a safety risk.

A Fist Full of Dollars

Another concern being raised about SMS - especially in small companies - is that it may divert limited resources from safety hazard mitigation and remediation (which is most valuable) to data collection and risk analysis (which is valuable, but not more valuable than fixing the problems that have already been identified). The diversion of resources is not the only resource problem. It is fundamentally uneconomical for companies to be required to duplicate the same data collection and risk analysis, but this is exactly what SMS appears to require. If data suggests that there is a potential safety problem and that it is a high-level risk, then each air carrier, each repair station, and each manufacturer that identifies it will have expended their own resources to collect the data associated with it. They will have each expended their own resources to identify the problem, and to perform risk analysis on it. Then they will each expend duplicative resources to develop solutions to the issue. This duplication of effort and waste of resources appears to be mandated by the regulatory paradigm.

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A Perfect World

As a theoretical paradigm, SMS makes sense for many companies. As a practical addition to a quality management system, SMS could be useful, especially for companies that have the resources to devote to data analysis and risk categorization. But as a regulation, SMS raises many fears that are not adequately addressed by the Report of the Aviation Rulemaking Committee. Regulating SMS will prove to be a challenge as regulators strive to impose an objective standard over a predictive analysis system.

With or without certificates, all ASA members should pay attention to the debates concerning SMS, because they will shape the future of the industry. 

FAA Repair Stations Law Could Affect Distributors

Congress is reaching the final stages of a FAA Reauthorization Bill that would establish new standards for repair stations. These new standards could have an important effect on distributors by limiting the number of repair stations able to provide dual-certification maintenance release documents (like 8130-3 tags with both EASA and FAA approvals).

There are several elements to the FAA Reauthorization legislation that could affect repair stations. The element that has been receiving the most press is a requirement that all of the nearly 700 repair stations outside the US that hold FAA Part 145 certificates must receive two audits per year from FAA inspectors in order to retain their FAA certificates. These FAA certificates are necessary in order to work on US-registered aircraft.

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While the inspections reflect a burden on the repair stations, the greatest problem for non-US repair stations would be the issue of FAA resources to conduct the audits. Because the FAA does not currently perform this level of audits, the FAA does not currently have the resources in place to support these audits. In an age where FAA resources are already stretched thinly, the FAA would have to add inspectors to its international field offices in order to be able to support the twice-yearly audits for the roughly 700 "foreign" repair stations holding US FAA repair station certificates. With no additional funding being provided to support this burden, the FAA would either have to tax the repair stations to pay for the additional costs (using the structure established under Part 187 of the regulations) or it would have to cut back on the total number of extraterritorial repair station certificates that it issues, to a limit that can be fully supported by the existing staff.

It appears that the Congressional "compromise" on this proposal will permit the United States to enter into bilateral agreements with other governments (like the current Maintenance Implementation Procedures (MIPs), and to rely on audits conducted under those bilaterals in lieu of live audits by US inspectors. This is an imperfect solution. The US-EU bilateral agreement still remains unimplemented, and while the United States currently has bilateral agreements with 13 of the 27 EU nations (Austria, Belgium, Czech Republic, Denmark, Finland, France, Germany, Italy, the Netherlands, Poland, Romania, Spain, Sweden, and the UK), there are only three maintenance implementation procedures in Europe (France, Ireland and Germany). Repair Stations in other EU nations would likely need to be subject to the US FAA audits unless the US-EU Agreement is implemented. Repair stations in nations that do not have MIPs with the United States would have no recourse but to submit to the audits or lose their FAA certificates.

The European Union has already said that they will engage in reciprocal auditing of EASA 145 repair stations to the same extent that such auditing is required to be imposed on their repair stations by the United States. It is possible that a twice-yearly auditing requirement could result in reciprocal twice-yearly audits from other governmental authorities that issue certificates in the United States, like the Chinese airworthiness authority.

All of this suggests that there may be fewer repair stations with multiple certifications in the future, and those that have multiple certifications will pay more for the privilege. This affects distributors who rely on those repair stations for overhaul work. An overhauled article that enjoys approval for return to service under multiple regulatory systems can be sold into multiple markets. Thus, a part that was overhauled under both EASA and FAA certificates can be dual-certified and then can be sold to an air carrier operating under either a US or a European certificate. A part that has been approved for return to service under only one of those certificates has a narrower potential market into which it can be sold.

This bill, and its fall-out, deserves careful monitoring by the distribution community. 



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Shipping Management

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Repair Orders*

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Document Imaging

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Contains both customer and vendor information including pre-defined settings such as payment terms, preferred method of shipping, discounts, tax and more. It can also group vendors and suppliers for marketing purposes and provide detailed history information for each vendor and supplier.



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US Government to Eliminate Some Import Liquidation Notices

The Bureau of Customs and Border Protection (CBP) has issued a notice of proposed rule making that would change the way in which some importers would receive notice of duties on imported goods. CBP is the federal agency with jurisdiction over import regulations.

CBP currently provides notice of liquidation (the final calculation of custom duties) by posting a final bulletin notice of liquidation at each customs house. The date of the bulletin notice is considered the final date of liquidation.

CBP also has the discretion to provide advanced notice of the liquidation date through the use of a courtesy notice of liquidation (“courtesy notice”). Courtesy notices are customarily mailed and/or issued electronically to importers of record and customs brokers who are agents of the importers, if those parties used the Automated Broker Interface (ABI) to file their entry summaries. Currently, CBP transmits electronic courtesy notices to all ABI filers, and mails paper courtesy notices to all importers of record. Thus, importers of record who filed via ABI receive two courtesy notices: an electronic notice and a mailed paper notice.

CBP’s proposed rule would eliminate mailing a paper notice to importers of record that filed entry summaries through the ABI. Thus, if the proposal is adopted, importers who filed via ABI would receive only electronic courtesy notices, and would not receive mailed paper notices. Importers that do NOT file via ABI would continue to receive paper courtesy notices through the mail.

This proposed rule can be found at 75 Fed. Reg. 12483 or online at <http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480abe55e>. Comments are being accepted through May 17, 2010. 

Hazardous Materials: Transportation of Lithium Batteries

The Pipeline and Hazardous Materials Safety Administration (PHMSA) has proposed new standards for shipping lithium batteries by air. Lithium batteries are extremely common and are frequently found in consumer electronics such as cellular phones and laptop computers. Lithium batteries can also be found in a variety of aviation components, such as electronic flight bags, onboard medical monitoring devices, portable oxygen concentrators, and emergency locator beacons.

The PHMSA’s proposed changes, while far from sweeping, have the possibility of changing the way that the industry ships lithium batteries and articles containing lithium batteries. Overall, the proposed NPRM seeks to standardize the PHMSA’s regulations with ICAO’s Dangerous Goods Regulations, but stops short of full standardization.

The first significant change is that the NPRM adopts the shipping descriptions used by ICAO—“lithium metal batteries including lithium alloy batteries” and “lithium ion batteries including lithium ion polymer batteries.”

Second, the NPRM proposes to discontinue the use of “lithium content” of batteries and instead use Watt-hours to measure the size of batteries. This proposed change would bring the US size determinations (using Watt-hours) in line with ICAO standards. Additionally, many ASA members may find that Watt-hours is typically an easier metric to identify for non-manufacturer exporters.

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Third, the NPRM removes the existing shipping exceptions for small lithium batteries. The NPRM, instead, changes the small battery exception to include only those lithium batteries less than 3.7 Watt-hours that are packed with or contained in equipment. All other lithium batteries will be regulated for shipping. The proposed small battery exception is significantly different than ICAO's standards.

Finally, the regulation forbids the shipping of certain lithium batteries by air - requiring that they be shipped by ground. Proposed section 173.185(h) completely prohibits shipping lithium batteries over 12 kg on passenger aircraft, and it only permits shipments of lithium batteries exceeding 12 kg on cargo aircraft if approved prior to transportation (so the shipper would need to obtain a permit).

While the NPRM reflects an effort to align US regulations with recently-changed international standards, it will represent a change in the way that lithium batteries are shipped in the United States. Companies that ship lithium batteries; whether separately, with equipment, or contained in equipment; must continue to recognize that important differences exist between PHMSA's standards and those of ICAO.

This proposed rule can be found at 75 Fed. Reg. 1302 or online at <http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480a7b3a7>. 

HIRE Act Tax Benefits

In an effort to stimulate employment, the U.S. Congress passed the Hiring Incentives to Restore Employment (HIRE) Act on March 18, 2010. The HIRE Act contains two possible tax benefits for businesses that hire employees that were previously unemployed or working only part-time.

The first potential tax benefit applies to an employer that hires an unemployed worker this year (after Feb. 3, 2010 but before Jan. 1, 2011). Such an employer may qualify for a 6.2% payroll tax incentive. Employers would, in effect, be exempted from paying their share of Social Security taxes on wages paid to these employees after the date of enactment. Employers would still need to withhold the 6.2% share of Social Security taxes, but would not be required to pay these taxes to the IRS.

Under the second potential tax benefit, businesses could claim a general business tax credit for each previously unemployed (or part-time) worker they hire that they retain for at least a year (52 consecutive weeks). The tax credit could be up to \$1,000 and would be noted on the business's 2011 income tax return.

Employers hoping to benefit under these new tax benefits must note, however, that an employer of a new employee who the employer retains for at least a year and who also qualifies for the 6.2% payroll tax incentive, may only take one tax credit which is the smaller of the \$1,000 or the 6.2% of wages. Thus, there is a maximum tax credit of \$1,000 for each eligible new hire.

Business owners must also be aware of a couple important caveats. Generally, the tax credit only applies to newly added positions. Thus, the tax credits only apply to new hires that fill existing positions if the worker that they are replacing left voluntarily or for cause. Also, family members and other relatives do not qualify for the tax credit.

Further, the new law requires employers to get a signed affidavit from each eligible new hire that they were unemployed during the 60 days prior to beginning employment or, alternatively, that they worked less than 40 hours over the previous 60 days. Eligible employers will not be able to claim any such tax credits during the first quarter of 2010, but will be able to credit any such first quarter tax incentives on their revised government tax form for the second quarter of 2010. Revised forms for obtaining the employee affidavit, and for claiming the tax incentives, will be posted by the IRS on their website shortly. 

SBA's ARC Loan Program

Many healthy, competitive small businesses have been negatively affected by the economic recession of the last two years. Many small businesses have struggled to find credit and have suffered from decreased sales and increased costs of doing business. There is a new loan program available to help companies that are experiencing financial hardship as a consequence of the country's current economic issues: the America's Recovery Capital (ARC) loan program.

What is the ARC loan program?

The ARC loan program is a temporary program designed to give viable small businesses that are suffering immediate financial hardship some temporary financial relief. The program is offering small businesses loans of up to \$35,000 to be used on principal and interest payments on existing, qualifying debts or loans. ARC loans are 100% guaranteed by the SBA, have no lender fees associated with them, and have no interest

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Why should I attend ?

The U.S. Department of Transportation (U.S. DOT) requires that all individuals engaged in handling hazardous materials must be trained at least once every 3 years. Air Carriers are required to be trained annually, and IATA requires training every 2 years.

This course will focus on shipments of Dangerous Goods under the IATA Dangerous Goods Regulations (a field manual that includes the ICAO technical instructions). This course will also address matters arising out of United States' regulations that are not covered by IATA.

All attendees receive a Certificate of Training stating 49 CFR 172 Subpart H training requirements have been met (upon successful completion of all attendance and testing requirements).

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charges for the borrower. The loans have a disbursement period of up to six months, followed by twelve months with no repayment. The borrower pays the loan principal off over five years. Basically, ARC loans can provide up to \$35,000 of interest-free financing that small businesses can use to pay off existing debt.

Who's eligible for an ARC loan?

There are two requirements for a small business to qualify for an ARC loan. First, the business must be "viable." Second, the business must be experiencing "immediate financial hardship."

A "viable" small business is an established business that can demonstrate profitability or a positive cash flow in at least one of the past two years. Future cash flow predictions should also demonstrate that the business will be able to meet its current and future debt obligations. Finally, the business must certify that they are currently no more than 60 days past due on any loan being paid with an ARC loan and that they have an acceptable business credit score.

An "immediate financial hardship" means that there is evidence of a negative change in financial condition. Some examples include declining sales, frozen credit lines, difficulty paying rent, difficulty making loan payments, or other similar conditions. Both your lender and the SBA must determine that a financial hardship exists.

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Company	_____
Address	_____
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Post Code	Country
Phone	Fax
Email	_____

PLEASE INDICATE COMPANY ACTIVITY

Airlines	O'haul Base	Aviation Services	<input type="checkbox"/> Insurance
<input type="checkbox"/> Administration	<input type="checkbox"/> Airframes	<input type="checkbox"/> Academic Institution	<input type="checkbox"/> Leasing Company
<input type="checkbox"/> Technical	<input type="checkbox"/> Engine/Components	<input type="checkbox"/> Airforce	<input type="checkbox"/> Legal
<input type="checkbox"/> Operations	<input type="checkbox"/> FBO	<input type="checkbox"/> Airport	<input type="checkbox"/> Bank
Manufacturer		<input type="checkbox"/> Airshows/Conferences	<input type="checkbox"/> Parts Dealers
<input type="checkbox"/> Airframe	<input type="checkbox"/> Engines	<input type="checkbox"/> Aviation Association	<input type="checkbox"/> Public Relations
<input type="checkbox"/> Avionics	<input type="checkbox"/> Helicopters	<input type="checkbox"/> Non Aviation Publishing	<input type="checkbox"/> Publishing
<input type="checkbox"/> BFE	<input type="checkbox"/> Raw Materials	<input type="checkbox"/> Consultants/Brokers	<input type="checkbox"/> Regulatory Body
<input type="checkbox"/> Components	<input type="checkbox"/> Simulators	<input type="checkbox"/> Enthusiast	<input type="checkbox"/> Software
		<input type="checkbox"/> Government Body	<input type="checkbox"/> Tooling
		<input type="checkbox"/> Ground Support	

Allied to Field

Advertising Agency
 Other - please specify

PLEASE INDICATE YOUR MANAGERIAL ROLE

Senior Management Management Non Management

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Sign here if you wish to receive:

Aircraft Technology Engineering & Maintenance

Signature	Date
_____	_____



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(Continued from Page 12)

What loans or debts are eligible to benefit from ARC?

The only eligible purpose for ARC loans is to make periodic payments of principal and interest on existing qualifying business loans. Some examples include mortgages, lines of credit, capital leases, notes payable to lenders, and credit card obligations for business purposes, just to name a few. Please be aware, an ARC loan cannot be used to repay an existing SBA loan.

How do I obtain an ARC loan?

Talk to your local lender. ARC loans are made by commercial lenders, not the SBA itself. Check to see if your current lender is participating in the ARC loan program. A list of participating lenders can be found here: http://www.sba.gov/idc/groups/public/documents/sba_homepage/sba_recovery_arc_lenders.pdf. Lenders not on the list can still become SBA lenders and make ARC loans. Otherwise, talk to a lender that does provide ARC loans.

What else do I need to know?

Even if your small business has been making all your loan payments on time, you may still qualify for an ARC loan. ARC loans are designed to free up small business income to pay other operating expenses or make investments in your current business. However, ARC loans are not designed for new businesses, so be aware that you must demonstrate profitability or positive cash flow for at least one of the past two years. Finally, if you are interested in an ARC loan, act fast! The program was put into place in June of 2009, and it will continue through September 30, 2010 or as long as funding remains available. The SBA anticipates approving 10,000 ARC loans, and over 6,300 have already been approved. So it is imperative that if you think you are eligible, and are interested in an ARC loan, that you begin speaking with your current lender today!



Post Office to Eliminate Saturday Delivery

The United States Postal Service (USPS) has proposed to eliminate Saturday delivery for regular and priority mail service. Under the new schedule, mail originally expected to be delivered on a Saturday would now wait until Monday. There would also be no pick-up from USPS mailboxes on Saturdays.

The USPS would retain a seven-day delivery schedule for express mail.

The Postal Service will be seeking an advisory Opinion on this proposal from the Postal Regulatory Commission. A copy of the request and its supporting documentation is expected to be made available through a link on the USPS website as of March 31, 2010.

Additional details on how this proposal would affect businesses are available online from the USPS website at: http://www.usps.com/communications/five-daydelivery/biz_overview.htm



CALENDAR OF EVENTS

Industry Events

- April 20-22, 2010** **MRO Americas**
Phoenix, AZ
- May 5-6, 2010** **Airline Purchasing & Maintenance EXPO**
London, UK
- June 27-29, 2010** **ASA 2010 Annual Conference**
Las Vegas, NV

Workshops

- April 19, 2010** **REGULATORY WORKSHOP**
Phoenix, AZ
- May 13-14, 2010** **HAZMAT WORKSHOP**
Los Angeles, CA
- May 19-20, 2010** **HAZMAT WORKSHOP**
Miramar, CA
- July 14-15, 2010** **HAZMAT WORKSHOP**
Chicago, IL
- August 2-3, 2010** **HAZMAT WORKSHOP**
Washington, DC

CONTACT US!

ASA Staff is always interested in your feedback. Please contact us with any comments or suggestions.

Michele Dickstein
President
michele@aviationsuppliers.org

Stephanie Brown
Director of Programs
stephanie@aviationsuppliers.org

Erika Schnure
Programs & Membership Assistant
erika@aviationsuppliers.org

Jason Dickstein
General Counsel
jason@washingtonaviation.com

Diane Leeds
Account Services
diane@aviationsuppliers.org

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