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The UPDATE Report

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FOR THEIR REACCREDITATION TO THE ASA-100 STANDARD

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AVIATION SUPPLIERS ASSOCIATION

Safety Management Systems

The FAA released their proposed Safety Management System (SMS) regulation on Friday, November 5, 2010. The proposed regulation, if adopted in its current form, could reflect an important new paradigm in aviation quality assurance protocols. The new proposal is open for comment through February 3, 2011. ASA will be working on comments through the month of December, and any feedback that you can provide on the elements that should be included in the comments would be appreciated.

How Does SMS Affect Distributors?

The proposed regulation would establish a new "Part 5" to the FAA's regulations. In this section, the public will find the parameters for what the FAA envisions to be required to have a SMS program that meets the FAA's minimum standards.

Past history shows that when the FAA issues a regulation, it has a strong persuasive effect on many other jurisdictions, so there is a strong likelihood that this draft regulation and the final regulation that follows it could affect SMS regulations published by nations other than the USA.

The initial release affects only air carriers, but the preamble to the proposed rule admits that the proposed Part 5 will eventually apply to repair stations and manufacturers as well. As with other quality paradigms, distributors can expect that commercial pressures will probably cause their business partners to commercially

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INSIDE:

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.

The UPDATE Report is just one of the many benefits that ASA offers members. To learn more about our valuable educational programs, please contact ASA.

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Dear Colleagues,

The Board of Directors has approved changes to the ASA-100 Standard. The changes are incorporated in a Letter of Interpretation (LI 100-016) which is effective January 1, 2011. The changes were proposed by the ASA Quality Assurance Committee in an effort to reflect the global marketplace. Several individuals worked on the changes and special recognition goes to the following persons for their hard work: Dave Damron, Ryan Charlton, Chris Anderson, Tim Heckart, George Ringger, Jason Dickstein and Stephanie Brown. The Quality Assurance Committee discussed additional changes that the group will be working on in 2011.

I would also like to thank Luis Giacoman for his service as a Director on the ASA Board. Luis has relinquished his position as a Director due to the rules of the ASA Bylaws dealing with company change. Luis's passion for development and support of Latin American operators led him to involve ASA in the CCMA. Luis took the further step by proactively advocating the needs of Latin American companies and joined the ASA Board of Directors. During his tenure on the ASA Board of Directors, he made a direct impact on ASA.

The lead article in this newsletter deals with the proposed new rule for SMS. The comment period ends in February. While the rule is not directed at distributors, it is likely that there will be a trickle-down of some of the regulation requirements or company mandates to distributors. It is often hard to see what a company may be required to do to comply with SMS. If you have any questions feel free to contact the Association. In addition, a section of the one-day workshop is on SMS.

As the year comes to a close, it has once again been a pleasure to represent the members and the industry. From everyone at ASA – Stephanie, Diane, Jason, Erika, Michelle, George, Richard and Kelly, we wish you a happy and healthy new year.

Take care, Michele

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impose SMS principles and protocols on distributors. The first place to look for what those protocols mean is the existing FAA regulation.

For example, SMS requires data collection. Data needs to be collected from a source. Just as distributors have become de facto sources for DAR-signed 8130-3 tags for new parts (where the tags are not issued at the place of manufacturing), it is also likely that air carriers, repair stations and even manufacturers may find themselves looking to distributors to be collectors and distributors of safety data for the parts that they sell. Unless the FAA requirement for data collection imposes strong limits on what is meant by data collection, it is likely that air carriers will interpret safety data collection regulations to mean "ask your distributor to provide this information as a condition of sale".

The final version of SMS for air carriers, then, is likely to have a strong influence on SMS as it is applied to all other forms of aerospace companies expected to have quality assurance systems (which includes distributors).

What is SMS?

The concept of SMS has been changing in the US as time goes on; but essentially SMS can be thought of as a quality management system that has some additional features, which supplement the traditional QMS features. Some of these additional features include:

- Establishment of an expected level of safety (e.g. FAA airworthiness standards; higher-threshold company standards; etc.)
- Collection of safety data from various sources
- Identification of safety hazards (based on both past events and predictive analysis)
- Assessment of safety risks that could lead to the identified safety hazards
- Mitigation of safety risks to the appropriate level of safety
- Continuing analysis to assure that the safety risks remain mitigated to the appropriate level of safety
- Continuing efforts to improve the SMS system and its ability to correctly disposition hazards and risks

One of the most important features of SMS that distinguishes it from traditional quality systems is the focus on predictive analysis: identifying potential future hazards, identifying the risks that could lead to those hazards, and mitigating those risks before they can lead to the possible hazards.

Another important feature is the use of risk-based analysis to prioritize resource allocation. Using risk-based analysis, a business can identify the most pressing risks and commit resources to mitigating those risks, first.

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As a systems approach to safety, SMS is a great tool. It permits a company to manage its limited safety resources more effectively. As a regulation, it remains to be seen whether it will achieve the success that it might achieve when used, alone, as a management tool.

There will be many hurdles to successful implementation of SMS as a regulation. One such problem is the subjectivity of the risk-based analysis. Risk-based analysis applies numerical values to both likelihood and severity of risks in order to judge where to commit mitigation resources first. Although this seems to be a highly quantitative analysis, the actual assignment of values is somewhat subjective. This is a benefit as a management tool, because it allows companies to assign risk values based on the particular needs of the company. For example, losing a facility to fire might be a lower-level hazard to a parts brokerage that can operate anywhere as long as their sales people each have a cell phone and a Rolodex. It is a much higher-severity hazard to a company that maintains a significant warehouse of inventory at its headquarters. As a regulation, however, there will be a natural temptation among the regulators to try to standardize the valuation of likelihood and severity for risks in order to provide uniform oversight. This actually will undermine the effectiveness of SMS for companies that find they are assigning values that meet FAA standardization requirements but that bear little resemblance to the company's own likelihoods and severities.

The problems with implementing SMS are not limited to the text and interpretation of the regulation itself. Another problem with SMS as a regulation is that the FAA has already recognized that much of their workforce is trained and qualified to serve as inspectors, rather than as systems auditors. FAA employees have suggested that the shift in attitude toward true systems-based auditing could take 10-15 years and could require a "generational shift." Someone from Transport Canada is reputed to have suggested to the FAA that they "fire all the inspectors and start over" in order to make SMS work. FAA ACO and FSDO employees are used to providing a very different form of oversight - the industry has already recognized difficulties among some FSDO employees in adjusting to the system-based oversight processes associated with repair station quality manuals and repair station manuals - and thus there are certainly going to be problems associated with FAA oversight that undermines the risk-based and system-based approach of SMS. Thus, one of the greatest impediments to successful implementation of SMS paradigms in aviation businesses could be the FAA employees who are expected to oversee implementation.

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If you look at the difference in hiring criteria for MIDO inspectors (who are often used to serving as systems auditors, and assess whether the quality system works, with inspections that include spot checks designed to test the system), as opposed to ACO engineers (who look at designs and identify their point-by-point compliance to the regulations, rather than assessing whether the design system leads to compliance of the design), then you will plainly see the difference in system-oriented oversight and detail-oriented oversight.

What Are the Elements of SMS?

From ICAO's perspective, the basic framework of SMS looks like this:

1. Safety policy and objectives
    - 1.1 Management commitment and responsibility
    - 1.2 Safety accountabilities
    - 1.3 Appointment of key safety personnel
    - 1.4 Coordination of emergency response planning
    - 1.5 SMS documentation
2. Safety risk management
    - 2.1 Hazard identification
    - 2.2 Risk assessment and mitigation
3. Safety assurance
    - 3.1 Safety performance monitoring and measurement
    - 3.2 The management of change
    - 3.3 Continuous improvement of the SMS
4. Safety promotion
    - 4.1 Training and education
    - 4.2 Safety communication.

We will return to these elements in the next issue, and continue analyzing what the new SMS paradigm will mean for companies in the aviation industry. In the mean time, if you would like to learn more about ICAO's vision of

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SMS, then you can find more information in the ICAO SMS Manual at http://www.icao.int/anb/safetymanagement/DOC_9859_FULL_EN.pdf. Read the SMS regulation as released in the Federal Register at http://edocket.access.gpo.gov/2010/pdf/2010-28050.pdf

Hazmat Regulation of Tires

One of our members disclosed that he customarily ships tires deflated below their rated pressure. He asked whether this was necessary.

The short answer is that it is wise to confirm that serviceable tires are at, or below, their rated pressure before shipping them by air. But, of course, the complete answer is a bit longer than that.

Regulatory Background

Tires are listed as potential hazardous materials, unless they fit within certain narrow boundaries. The reason for this is because of the air pressure in the tire, which reflects a pressurization hazard. This article examines the boundaries of regulated treatment for shipment of tires under both the IATA Dangerous Goods Regulations and the U.S. Hazardous Materials Regulations.

Frequently, shippers who ship their goods by air will rely on the ICAO Technical Instructions, as those Technical Instructions have been reproduced in the IATA Dangerous Goods Regulations (for purposes of this article, we shall rely on the language of the IATA Dangerous Goods Regulations, because that is the resource most often used in air shipment in the aviation industry).

U.S. law permits someone shipping by air to ship an article in accordance with the ICAO Technical Instructions.[1] As a practical matter, this generally means that the shipper relies on the IATA Dangerous Goods Regulations, in most cases. This permission is subject to certain limitations. In this analysis, a very important limitation is that an article designated as a hazardous material under the U.S. regulations, but not regulated under the IATA/ICAO standards must be transported in accordance with the U.S. requirements.[2]

IATA Tire Restrictions

The IATA Dangerous Goods Regulations (and also the ICAO Technical Instructions) specify that inflated tires are forbidden from air transport if they are unserviceable or damaged.[3] They are also forbidden from air transport if they are inflated to a pressure above the maximum rated pressure.[4] Thus, the IATA Dangerous Goods Regulations may only be used for inflated tires when shipping serviceable tires, at or below their rated pressure.

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[1] *49 C.F.R. § 171.22.*
[2] *49 C.F.R. § 171.22(c).*
[3] *IATA Dangerous Goods Regulations § 4.4 (Special Provision A59).*
[4] *Id.*

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IATA Treatment of Serviceable Inflated Tires

Under the IATA Dangerous Goods Regulations, tires are treated as unregulated for air transport when they are shipped at or below their rated inflation pressure.[5] While this provision applies in countries that have adopted IATA standards for their own, additional review is necessary to assure compliance with U.S. law. This is because articles that are unregulated under the IATA standards must comply with U.S. standards.[6]

U.S. Hazmat Standards for Tires

Because properly-pressurized, serviceable tires are not regulated under the ICAO/IATA rules, we must examine the United States hazardous materials shipping rules in order to identify the right way to handle such articles when they are shipped within, into, out of, or through U.S. airspace.

Shipping Tires under U.S. Law

Tires shipped under the United States hazardous materials regulations will fit into two categories - those filled with compressed nitrogen (proper shipping name "nitrogen, compressed") and those filled with other (unspecified) compressed air (proper shipping name "air, compressed"). Both types of tires are treated similarly under the regulations.

Please note that the percentage of oxygen in a tire should generally not exceed 23.5 percent of the gas. This is because the term "Air, Compressed," may not be used to describe compressed air which contains more than 23.5 percent oxygen.[7] An oxidizer label is not required for any oxygen concentration of 23.5 percent or less. But higher concentrations will likely be forced to be labeled as oxidizers, and to choose an appropriate proper shipping name. The proper shipping names for oxidizers will often result in a requirement for a different packaging than a tire - usually a specially rated cylinder.[8]

Generally speaking, compressed nitrogen or compressed air is required to be shipped in a special tank (a cylinder).[9]

There is an exception to the cylinder requirements that is made for compressed air or nitrogen shipped in certain tires: serviceable tires that are inflated to pressures equal to or less than their rated inflation pressures remain unregulated under the U.S. hazmat rules.[10] When such tires are offered for transportation by air, they must also be protected from damage during transportation.[11]

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Tire Shipping Checklist:

As a practical matter, those shipping tires by air should consider using this checklist:

- ☐ Confirm that the tire is serviceable and undamaged;
- ☐ Confirm that the gas filling the tire is air or nitrogen, and does not contain more than 23.5% oxygen;
- ☐ Confirm that each tire is at or below the rated pressure of the tire (a record of this check in the shipping records would be useful in case the decision is ever questioned, although such a record is not required by the regulations);
- ☐ Confirm that each tire is protected from damage during transportation.

[5] *IATA Dangerous Goods Regulations § 4.2; see also IATA Dangerous Goods Regulations § 4.4 (Special Provision A59).*
[6] *49 C.F.R. § 171.22(c).*
[7] *49 C.F.R. § 172.102(c)(1)(code 78).*
[8] *49 C.F.R. § 173.302(f).*
[9] *49 C.F.R. § 173.302.*
[10] *49 C.F.R. § 173.307(a)(2).*
[11] *49 C.F.R. § 175.8(b)(4); see also 49 C.F.R. § 173.307(a)(2) (requiring compliance with section 175.8).*

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Unserviceable Tires

So what can you do with an unserviceable or damaged tire that you want to ship by air? Deflate it! The U.S. regulations specify that a tire or tire assembly that is unserviceable or damaged is forbidden from air transport.[12]

A damaged tire is not subject to the requirements of the hazmat regulations, though, if it is deflated to the point where it no longer meets the definition of a hazardous material. This means that the air / nitrogen should be no longer pressurized in excess of the regulatory threshold for a compressed gas, and the tire must bear no other hazard (e.g. a tire containing oxygen in excess of 23.5% would be an oxidizer even if the pressure was reduced below the threshold for a division 2.2 gas).

The regulatory threshold for a compressed gas (the defining characteristic) is that it must have a gauge pressure of 200 kPa (29.0 psig/43.8 psia) or greater at 20 °C (68 °F).[13]

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[12] *49 C.F.R. § 175.8(b)(4).*
[13] *49 C.F.R. § 173.115(b)(1).*

Evergreen Hit with Five Million Dollar Fine for Training

Ever wonder about the importance of training? The FAA certainly believes it is important. The FAA recently proposed a civil penalty of nearly five million dollars against Evergreen International Airlines for an alleged failure to provide adequate training.

The FAA claims that Evergreen flew 232 revenue flights, using pilots who had not been properly trained in accordance with the carrier's FAA-approved training program. The flights were made between February 19 and July 9, 2009, on aircraft equipped with a new flight management system (FMS) that was different enough from the prior system that the FAA claims it required a specific pilot-training program.

The FAA admits that Evergreen's pilots received ground training and a check ride on the new FMS, but the proposed civil penalty is based on the allegation that Evergreen did not provide familiarization flights supervised by the company's check pilots. The FAA also accuses Evergreen of failure to distribute the FMS system manual to crews who would be using the FMS.

The FAA also announced that Evergreen subsequently provided the familiarization training that the FAA claims is necessary.

The total proposed civil penalty is for $4,855,000. "Even though Evergreen now complies with its training program, this penalty is appropriate because requiring operators to complete required, approved training is the only way to make sure crews are fully qualified to operate the equipment and systems to manage flights safely," said FAA Administrator Randy Babbitt.

Evergreen has until late October to decide how it wants to respond to the FAA's notice of proposed civil penalty.

There are two important lessons to glean from this situation. The first is the importance of training - it is clearly a FAA priority. But the second important lesson from this transaction is that you must follow your own written programs. The basis of the FAA's complaint seems to be that Evergreen failed to provide a form of testing (familiarization flight) that was required in the manual. It is possible that the combination of ground testing and a check ride was sufficient from a pedagogical point of view, but if the manuals required a familiarization flight before the check ride, then obviously the carrier must comply with its manuals.

Training is important because of the information you learn, in addition to being able to "check a box." ASA will present its annual workshop this winter, and will be bringing you the latest changes in the laws, regulations and policies that affect aviation parts transactions.

Economic Forecast: Don't Look to the Feds for New Aerospace Loans

The President recently signed Small Business Jobs Act of 2010. A much-vaunted element of the bill is a new 30 billion dollar pool of money for small business loans. But will this money be available for companies within the aviation industry?

The answer is, probably not. There are two major pools of money in the bill. The first is for "section 7(a)" loans. This provision only seems to apply to businesses whose credit renders them unable to get credit

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elsewhere. 15 U.S.C. 636(a)(1)(A) ("No financial assistance shall be extended pursuant to this subsection if the applicant can obtain credit elsewhere"). These "section 7(a)" loans are generally intended for new businesses.

When examining the section 7(a) program, the SBA is considered to be a lender of last resort, in that a bank must certify that the business is not able to obtain credit elsewhere before the business becomes eligible for "section 7(a)" loans from the SBA. This usually means that the company has been denied credit from two different sources. Before the SBA authorizes a loan under the "section 7(a)" program, SBA is required to consider whether the business could obtain funds from sale of securities or sale of assets, or whether the business owners, management or principle shareholders could obtain credit or funding from their own personal assets.

Thus, most of the aerospace small businesses that are in a position to create new jobs are unlikely to be eligible for loans under the section 7(a) program that is funded by the Small Business Jobs Act. In particular, companies that have sufficient business to be seeking a loan for expansion (to increase jobs) are among those that could probably obtain credit elsewhere and therefore would be ineligible for this program.

Other Lending Provisions

There is also a clause in the Small Business Jobs Act that permits the formation of new non-profit lending organizations whose purpose would be to obtain funds from the SBA and make small business loans with these funds. At face value, it appears to leverage the lending power of the SBA by adding these non-profits to the ranks of those empowered to review and issue loans. There is a distinct intention that such funds be disbursed through community development organizations; but because these loans are still limited only to those who have already been denied credit elsewhere, it appears that the loans are unlikely to lead to a substantial number of new jobs in the aviation industry, and in fact they are most likely to go to companies that are least likely to be able to pay-back those loans.

The funds that can be disbursed by such community development organizations are only available to organizations that are new in the loan disbursement game – they must have one year or less in disbursing loans – so existing banks, community development organizations, or anyone with experience in disbursing funds is actually ineligible to serve as an intermediary for these funds.

There is a second major pool of money in this Act that looks useful at face value, but upon closer inspection may not be useful to ASA's members. The Act provides substantial funds for acquisition, construction, conversion or expansion, including the acquisition of land as well as for refinancing at favorable rates. But a closer look at the underlying limits shows that these loans are limited to renewable energy source plant efforts. These provisions are unlikely to support any sort of investment in the aviation industry, except perhaps to support renewable-source fueling locations for an electric aircraft.

In fairness, the law sets aside much money to support renewable energy sources, and supporting renewable energy sources has long been a stated goal of the current administration. But the Act was sold to the American public as a small business jobs bill - not an energy bill. The part of the law that sets aside money for renewable energy sources is actually entitled "Small Business Access to Capital."

Finally, some of the SBA money (about $15 million) is being targeted to support U.S. exports. ASA plans to attend a meeting with the Commerce Department on December First in order to better judge how some of this money might become available to ASA members.

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New Small Business Definition

This does not mean that the bill holds no benefit for small businesses in our industry. There is a new standard for defining small businesses that could be a boon to repair stations. Under the existing standard, most repair stations are considered small businesses only if their average annual receipts fall below $7 million (repair stations fall under NAICS 488190). This can be a difficult metric for repair stations that sell and install high-dollar-value items, with only slim margins. A ten-man repair station could install ten million dollars worth of avionics but only see $300,000 net profit on the installations (that's $30k per employee with nothing left over for rent and other expenses). Under the current law, such a repair station is not a small business because of the high total revenues. Under the new standards, such repair stations may qualify as small businesses based on their average net income (which must be less than $5 million per year for the past two years). To qualify under the new (interim) standards, the business must also have net worth of less than $15 million.

Note that most aircraft parts distributors who do not have repair stations fall under the classification "NAICS 423860," and as a consequence their small business threshold is 100 employees.

This new definition for small businesses may help some repair stations qualify as small businesses where they have been unfairly characterized as something else; but this provision is unlikely to have any real effect on jobs in the aviation industry in the near term.

3 Steps to Ensure Better Collections of Receivables

By Sven Nelson, C2C Resources, LLC

1. Have a dedicated system for collections:

Recommended collections timeline:
10 days after sending invoice, call to make sure the client received it and that there weren't any problems.
35 days after sale, send past due notice and make follow up call.
60 days after sale, send termination of credit letter, place account on COD and make follow up call.
80 days after sale, send certified letter with 10 day final demand.
90 days after sale, place for collections.

This timeline may not work for some because everyone has different terms and differing opinions on what is acceptable for their business. However, if you are writing off more bad debt than you are comfortable with, you may need to look at your collections policy closer and decide if it is really working for you.

2. Avoid nonsense excuses:

Two of the excuses that we hear most often when trying to collect a debt is that they "never got the invoice" or all of a sudden at 90 days, when you are trying to collect a debt from someone that you have extended credit to, there is "something wrong with the product or service" that they received. If there was really something wrong, why didn't they mention it earlier? The truth that usually comes out later is that this is a stall tactic. One of the things that I recommend to my clients is that ten days after the invoice has gone out, you have the credit department make a call to the customer to make sure they got the invoice and that the product or service they received was exactly what they ordered and were expecting. This eliminates those two issues later on down the road if a bill becomes late; and who knows you may even get another order.

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3. Final means FINAL!

When it comes to collecting debts, many companies find themselves in a vicious cycle of doing the same things over and over again while expecting different results. Remember that you aren't the only one that is trying to collect from your customer and they may have only a six inch pile of money and a twelve inch stack of bills. So how do you get yours to the top of the pay now pile? The answer is by doing something different than everyone else. This may include placing the account with a third party for collections. Before you do this, make sure you have sent a final demand for payment via certified mail or email with a read receipt so that you know it was received. When you do send a final demand, make sure that you only send one because after all final is FINAL. You don't know how many companies I have seen send four or five different final demands, then months later, place the account for collection only to find out that the company they are trying to collect on went out of business months ago. Keep in mind that final demands are your final request for payment, once the final demand is ignored you must take action to maintain credibility. If you do not follow through with action any further demands for payment will not be taken seriously.

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