



U.S. Department of Transportation
**Pipeline and Hazardous Materials
Safety Administration**

1200 New Jersey Ave, SE
Washington, D.C. 20590

MAR 28 2011

Mr. Mike Tobin
Alaska Air Group, Inc.
P.O. Box 68900
Seattle, Washington 98168

Reference No. 10-0194

Dear Mr. Tobin:

This responds to your letter requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to the requirements for notification of pilot-in-command. Specifically, you ask if the EX number for UN3268, proper shipping name "Air bag inflators, *or* Air bag modules, *or* Seat-belt pretensioners" is required to be indicated on the notification of the pilot-in-command.

In accordance with § 175.33(a), when a hazardous material subject to the provisions of the HMR are carried in an aircraft, the operator of that aircraft must provide the pilot-in-command with accurate and legible information about the shipment before departure of the aircraft. The information required on the notification of the pilot-in-command (NOPIC) must include the proper shipping name, hazard class, and identification number of the material, including any material remaining aboard the aircraft from prior stops.

Section 175.33(a)(1)(i) also states that, except for the requirement for number and type of package, any additional requirements provided in § 172.202 and § 172.203 must also be shown on the NOPIC. There is no requirement in § 172.202 or § 172.203 specifying that an EX number be marked on a shipping paper, therefore there is no clear requirement to include the information on the NOPIC. While § 172.202 or § 172.203 do not specify that an EX number be marked on a shipping paper, it should be noted that there are additional description requirements referenced in the HMR for shipments that are prepared in accordance with the International Civil Aviation Organization (ICAO) Technical Instructions (TI). The following provisions apply specifically to UN3268:

Section 175.33(a)(1)(ii) specifies that if a hazardous material is described by the proper shipping name, hazard class, and identification number appearing in the ICAO TI (IBR, see § 171.7 of this subchapter), any additional information required to be shown on shipping papers by Subpart C of Part 171 of the HMR must also be shown in the notification.

Section 171.23(b)(2) specifies that for each approved air bag inflator, air bag module and seat-belt pretensioner, the shipping paper description must conform to the requirements in §173.166(c) of the HMR.

Section 171.23(b)(2)(i) specifies that the EX number or product code must be included in association with the basic shipping description. When a product code is used, it must be traceable to the specific EX number assigned to the inflator, module or seat-belt pretensioner by the Associate Administrator. The EX number or product code is not required to be marked on the outside package.

Section 173.166(c) specifies that when offered for transportation, the shipping paper must contain the EX number or product code for each approved inflator, module or pretensioner in association with the basic description required by §172.202(a) of the HMR. Product codes must be traceable to the specific EX number assigned to the inflator, module or pretensioner by the Associate Administrator. The EX number or product code is not required to be marked on the outside package.

PHMSA recognizes that it is unclear as to the requirements between the HMR and ICAO TI for the EX number for UN3268 to be listed on the NOPIC. While §175.33(a)(1)(ii) stipulates that any additional information required on the shipping paper by Subpart C of Part 171 be included on the NOPIC, PHMSA did not intend to require that the EX number for UN3268 be included on the NOPIC when using either the HMR or the ICAO Technical Instructions as authorized by Subpart C of Part 171. We plan to clarify this in a future rulemaking.

I hope this satisfies your inquiry. Please contact us if we can be of further assistance.

Sincerely,

A handwritten signature in cursive script that reads "T. Glenn Foster".

T. Glenn Foster
Chief, Regulatory Review and Reinvention Branch
Standards and Rulemaking Division



Benedict
§175.33
§173.166(c)
Air/Notification to Pilot
in Command
10-0194

August 24, 2010

Edward T. Mazzullo
Director, Office of Hazardous Materials Standards
Pipeline and Hazardous Materials Safety Administration
U.S. Department of Transportation
East Building, PHH-10
1200 New Jersey Avenue, SE
Washington, D.C. 20590-0001

Dear Mr. Mazzullo,

Alaska Airlines kindly requests a formal interpretation:

Is the EX number of an UN3268 Air bag inflators, or Air bag modules, or Seat-belt pretensioners required to be on the Notification to Pilot in Command (NOPIC)?

If PHMSA determines the EX number is required on the NOPIC, would PHMSA please add that requirement to State Variation 16 in the ICAO Technical Instructions. US 16 applies only to UN 3268, and while it requires the EX number on the shipping paper, it is silent on provision of information to flight crew.

If PHMSA determines the EX number is not required on the NOPIC, would PHMSA please clarify that in US 16 and change 49 CFR 175.33(a)(1)(ii) to read (suggested change in bold italics): The ICAO Technical Instructions (IBR, see §171.7 of this subchapter), any additional information required to be shown on shipping papers by subpart C of part 171 of this subchapter, **except for the EX number of UN3268**, must also be shown in the notification.

Background:

The PHMSA Hazardous Materials Information Center told us on the telephone the EX number is not required on the NOPIC.

A FAA Letter of Investigation (2010NM710065) to us asserts that the EX number is required.

Therefore there is disagreement within the DOT as well.

Previous discussion

In the Final Rule of Docket No. RSPA-02-11654 (HM-228) on March 22, 2006, on page 71 FR 14594, it appears PHMSA did not want the EX number on NOTOCs:

ATA further states, “Inclusion of details such as the EX number for airbags (but not for other explosives when the detail is marked on a package or shipping papers), State exemptions, or similar information cross-referenced to the shipping papers is irrelevant, and possibly confusing to the flight crew and/or emergency responders.”

...
We did not propose any revision to the requirements related to shipping papers or the preparation and delivery of a NOPIC. Therefore, the comments summarized above are beyond the scope of this rulemaking.

Does the EX number serve a purpose on a NOPIC

PHMSA assigns an EX number to approved explosives, but does not make them available online as Special Permits are. The EX number is no more useful than packaging information, and PHMSA has exempted type of packaging from the NOPIC - (49CFR175.33(a)(1)(i).

The FAA inspector who issued the LOI told us that the EX number on the NOPIC would alert the flight crew and responders to the presence of the explosive hazard, but flight crews and incident responders rely on the Emergency Response guide based on UN number.

The DOT assigns UN3268 to Guide 171 (Low to moderate hazard) in the North American Emergency Response Guidebook, whereas UN0012 Cartridges, small arms, are assigned to Guide 114 Explosives – Division 1.4C.

Flight crews and airport emergency responders also use the ICAO ERG. UN3268 are assigned 9L (no general inherent risk – low risk), whereas UN0014 are assigned 3L (flammable solid – low risk)

So if the EX number has value for response mitigation, we ask PHMSA to assign a different response code for UN3268.

Regulatory argument for EX number on a NOPIC.

a) 49CFR175.33(a)(1)

(i) Except for the requirement to indicate the type of package, any additional description requirements provided in §§172.202, and 172.203 of this subchapter must also be shown on the notification.

(ii) The ICAO Technical Instructions (IBR, see §171.7 of this subchapter), any additional information required to be shown on shipping papers by subpart C of part 171 of this subchapter must also be shown in the notification.

b) 49CFR171.23 Requirements for specific materials and packagings transported under the ICAO Technical Instructions, IMDG Code, Transport Canada TDG Regulations, or the IAEA Regulations.

(b) Conditions and requirements specific to certain materials —

(2) Air bag inflator, air bag module and seat-belt pretensioner . For each approved air bag inflator, air bag module and seat-belt pretensioner, the shipping paper description must conform to the requirements in §173.166(c) of this subchapter.

(i) The EX number or product code must be included in association with the basic shipping description. When a product code is used, it must be traceable to the specific EX number assigned to the inflator, module or seat-belt pretensioner by the Associate Administrator. The EX number or product code is not required to be marked on the outside package.

The FAA inspector conceded a case could be made that the EX number is not required for a shipment prepared according to the HMR, only a shipment prepared according to the ICAO TI. This further strengthens our belief PHMSA did not intend for an EX number to be on a NOPIC as there is either a benefit to having the EX number on the NOPIC or there is not, and the benefit is not dependent on the regulatory system used for shipment preparation. PHMSA does not require the EX number of any other article or device to be on the NOPIC. And the EX number is not on the package itself which the hands-on emergency responder would see, so clearly its value is very limited.

Thank you very much for your consideration. If I can be of further assistance in understanding the request, please let me know.



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