



U.S. Department
of Transportation

Pipeline and Hazardous
Materials Safety
Administration

JUN 27 2012

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

Mr. Tom Ferguson, PG, CHMM, DGSA
Technical Consultant
Council on the Safe Transportation of Hazardous Articles, Inc.
7803 Hill House Court
Fairfax Station, VA 22039

Ref. No. 11-0228

Dear Mr. Ferguson:

This responds to your request for clarification of certain responsibilities under Part 175 of the Hazardous Materials Regulations (HMR; Parts 171-180). In your letter, you ask a series of questions related to operational, implementation, and logistical matters of the recently adopted provisions in § 175.25 of the HMR. I apologize for the delay in responding to your request and any inconvenience it may have caused. Your questions are paraphrased and answered as follows:

- Q1. Section 175.25(b)—Ticket Purchase: Is the intent of amendments to this section adopted in the January 19, 2011 final rule (76 FR 3308; PHMSA-2009-0126 (HM-215K)) to require a carrier to provide the permitted and forbidden text or pictorials by Jan 1, 2012 and the passenger acknowledgement provisions by Jan 1, 2013?
- A1. While §175.25(b) took effect January 1, 2012, the passenger acknowledgement portion of the rule is scheduled to take effect January 1, 2013.
- Q2. Is Ticket Purchase defined anywhere in the regulations within or beyond the HMR? Not all passengers are issued tickets. For example, does this section apply to non-revenue or employee travel?
- A2. As defined in 14 CFR 241.03 and for the purpose of this response, a non-revenue passenger means a person traveling free or under token charges, except those expressly named in the definition of revenue passenger; a person traveling at a fare or discount available only to employees or authorized persons of air carriers or their agents or only for travel on the business of the carriers; and an infant who does not occupy a seat.

Section 175.25(b) notification requirements apply to ticketed passengers only. However, non-revenue passengers, airline employees traveling as passengers onboard, and other non-ticketed passengers remain subject to requirements of the HMR, and actions by non-ticketed passengers can affect the safety of an air carrier's operation. While § 175.25 does not define specific notification requirements for non-ticketed passengers, the Pipeline and Hazardous Materials Safety Administration (PHMSA) and

the Federal Aviation Administration (FAA) solicit input on best practices for notification of all passengers (ticketed and non-ticketed) for inclusion in a future FAA advisory circular.

- Q3. Do the requirements of § 175.25 apply to third party travel sites operated by travel agents and online travel retailers (Orbitz, Expedia, Travelocity, etc.)? If so, is it the responsibility of the carrier or the travel agent/retailer to provide the required passenger notification? The International Civil Aviation Organization Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions), at Part 8:1.1.3, states “Any organization or enterprise other than an operator (such as a travel agent)... should provide passengers with information about the types of dangerous goods...” Thus, it appears the ICAO Technical Instructions places the responsibility to notify passengers in these situations on the third party provider, and not the carrier.
- A3. The requirements of § 175.25 apply to the aircraft operator. The aircraft operator is responsible for ensuring that passengers receive the notifications required by § 175.25, regardless of whether the ticket is purchased directly from the aircraft operator or via a third party source. The aircraft operator can meet its obligations by relying on the notifications provided to the passenger by a third party, but the aircraft operator is ultimately responsible for compliance with the rule. PHMSA and FAA solicit input on best practice arrangements between aircraft operators and third party travel organizations for inclusion in a future FAA advisory circular on passenger notification.
- Q4. In a situation where a customer purchases a ticket over the phone (e.g., by calling a reservation center), what constitutes compliance with the rule? Do PHMSA and FAA expect a verbal reading of § 175.25(a)(1) and (2), or would a simplified statement that guides them to additional information (i.e., carrier website) suffice?
- A4. A simplified statement may be acceptable, and may actually be the preferred means of compliance. PHMSA and FAA solicit input on best practices for passenger notification via telephone for inclusion in a future FAA advisory circular.
- Q5. Is dual acknowledgement (at the time of ticket purchase – paragraph (b), and time of check-in – paragraph (c)) intentional? If a passenger acknowledges at the time of ticket purchase, could a record of that acknowledgement also be used to meet the acknowledgement in section § 175.25(c)?
- A5. The dual acknowledgement during ticket purchase and check-in is intentional and required for compliance.
- Q6. In a Rule 240 scenario where a passenger is re-accommodated on another carrier due to canceled flights or other reasons, would a third check-in acknowledgement be required?
- A6. Although an aircraft operator may meet its obligations by relying on notifications provided to the passenger by a third party, the aircraft operator is ultimately responsible for compliance with the rule. PHMSA and FAA solicit input on best practice

arrangements during re-accommodation situations for inclusion in a future FAA advisory circular on passenger notification.

- Q7. In a bulk purchase or charter situation, would a single individual responding on behalf of their party be acceptable for compliance with § 175.25(b) and (c)? Would such an acknowledgement be acceptable for military charters as well?
- A7. Both § 175.25(b) and (c) allow for acknowledgement by a person acting on the passenger's behalf. While this allows for acknowledgement by a single individual, PHMSA and FAA solicit input on best practices for notification of passengers in bulk purchase, charter flight, or similar situations for inclusion in a future FAA advisory circular.
- Q8. Is the actual language in § 175.25(a)(1) and (2) required in all cases? If so, how does a carrier provide notice of additional materials forbidden beyond those covered in the general language? The ICAO Technical Instructions do not require specific language but instead require the carrier to develop their own language and format.
- A8. The information provided in § 175.25(a)(1) and (2) is required, but the specific wording used in the HMR is not required. Further, no part of § 175.25 is intended to prevent aircraft operators or other individuals from providing additional information to passengers regarding the safe transport of hazardous materials. PHMSA and FAA solicit input on best practices for conveying hazardous materials safety information, including the information provided in § 175.25(a)(1) and (2), for inclusion in a future FAA advisory circular on passenger notification.
- Q9. This rule applies to 14 CFR 129 foreign carriers that operate from the U.S. Currently, there are 14 types of hazmat listed in the ICAO Technical Instructions, at 8;1.1, as "permitted with the approval of the operator." Thus, there may be considerable differences between each U.S. and foreign airline as to what is "permitted or forbidden" by each operator. Note that the ICAO Technical Instructions, at 8;1.1.3 and 8;1.1.4, do not require the types "permitted" either - only the types of hazmat "forbidden" needs to be communicated. If a passenger checks-in with a foreign carrier and then transfers to a domestic carrier, does the original check in notification satisfy the passenger notification for the domestic leg as well?
- A9. The aircraft operator may meet their obligations by relying on notifications provided to the passenger by a third party, but the aircraft operator is ultimately responsible for compliance with the rule. PHMSA and FAA solicit input on best practice arrangements between foreign and domestic air carriers for inclusion in a future FAA advisory circular on passenger notification.
- Q10. In the case of remote check-in and boarding, where the passenger checks in at a remote location and checks baggage as well, such as a resort, cruise line, or military charter situations, does the carrier have the responsibility to notify the passenger, or is the resort, cruise line, or military branch responsible for notification? Under these

scenarios, a non-carrier operation performs the check-in function. Therefore, the carrier has limited or no contact with the passenger during the check-in process. An example would include a military charter originating from a U.S. military installation.

- A10. The requirements of § 175.25 apply to the aircraft operator. The aircraft operator is responsible for ensuring that passengers receive the notifications required by § 175.25, regardless of whether the passenger checks-in directly with the aircraft operator or via a third party source. Although the aircraft operator may meet its obligations by relying on notifications provided to the passenger by a third party, but the aircraft operator is ultimately responsible for compliance with the rule. PHMSA and FAA solicit input on best practice arrangements between aircraft operators and third party organizations for inclusion in a future FAA advisory circular on passenger notification.
- Q11. Lithium batteries have received a significant amount of attention by regulatory and enforcement entities over the last 5 years. Much of this attention is due to incidents involving such batteries, including incidents occurring in passenger baggage. Yet, the current language in § 175.25 does not mention lithium batteries. Is it acceptable for a carrier to develop independent language that conveys the intent of the language in § 175.25(a)(1) and (2) but varies in content to address recent incidents or trends? May this language be used as an alternative to the language contained in § 175.25(a)? We strongly believe the restrictive language indicated in § 175.25 is ineffective in communicating hazardous material dangers and restrictions in passenger baggage to the traveling public.
- A11. The information provided in § 175.25(a)(1) and (2) is required, but the specific wording used in the HMR is not. Further, no part of § 175.25 is intended to prevent aircraft operators or other individuals from providing additional information to passengers regarding the safe transport of hazardous materials. The FAA fully supports inclusion of information regarding lithium battery hazards in passenger notifications. PHMSA and FAA solicit input on best practices for conveying hazardous materials safety information, including the information provided in § 175.25(a)(1) and (2), for inclusion in a future FAA advisory circular on passenger notification.

This response was coordinated with FAA. Additionally, PHMSA and FAA will co-sponsor a public meeting on this issue in the very near future. We will announce the location, date and time of the meeting in the *Federal Register* once details are finalized.

I trust this satisfies your concerns. Please contact us if we can be of further assistance.

Sincerely,



Charles E. Betts
Director, Standards and Rulemaking Division



**COUNCIL ON SAFE TRANSPORTATION
OF HAZARDOUS ARTICLES, INC.**

Stevens
§ 175.25
Air/ICAO
11-0228

September 14, 2011

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Dear Ms. McLaughlin and Mr. Stevens,

The Council on Safe Transportation of Hazardous Articles (COSTHA) requests clarification regarding implementation of the new passenger signage requirements adopted in Docket PHMSA-2009-0126 (HM-215K). Specifically, we have a number of practical implementation questions our members have identified related to the new language of §175.25.

COSTHA is a not-for-profit organization representing manufacturers, shippers, distributors, carriers, freight forwarders, trainers, packaging manufacturers and others associated with the hazardous materials transportation industry. In addition to promoting regulatory compliance and safety in hazardous materials transportation, COSTHA assists its members and the public in evaluating the practicality and efficacy of laws, rules and regulations for the safe transportation and distribution of hazardous materials. Included within our membership is the Air Carrier Roundtable, a group of seventeen (17) passenger and cargo air carriers.

In HM-215K, PHMSA adopted significant changes to the requirements of passenger signage in §175.25. These modifications were made as harmonization to the 2011-2012 International Civil Aviation Organization Technical Instructions on the Safe Transportation of Dangerous Goods By Air (ICAO TI). The result is an increase in the number of times a passenger has the opportunity to receive notices about hazardous materials in baggage, and the penalties associated with failing to comply with the hazardous material requirements. §175.25 remains different from the ICAO TI in several areas including

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the specified language contained in §175.25(a)(1) and (2). The ICAO TI does not mandate the actual language, only the requirement to notify. Therefore carriers subject to the US Hazardous Material Regulations (HMR) encounter greater challenges implementing the new requirements than carriers who follow the ICAO TI only. Further, when US carriers operate in foreign locations, airport authorities often control the ticketing and gate areas, limiting the ability for carriers to place signage at all.

COSTHA supports the concept of putting this information in areas most likely utilized by passengers during the ticket purchase/check-in process. However, technology has changed dramatically in the last 10 years. The ticket purchase, ticket issuing, and check-in processes do not resemble the practices of the past. Thus changes to the signage and passenger notification requirements are not as easily implemented as simply "changing the airport signage". Carriers have faced numerous obstacles in maintaining signage as airport authorities continually remove or modify permanent signage, leaving the carrier in a potentially non-compliant situation. Third party or online ticket sales have increased, further reducing the carriers' ability to reach the passenger directly before they arrive at the airport. And remote or mobile check-in limits the amount of time the passenger actually spends at a ticket counter or carrier help desk. The modified language in §175.25 may provide opportunities to reach passengers more efficiently given these changes to procedures. But it also creates additional obstacles.

The COSTHA Air Carrier Roundtable has identified a number of questions which have been asked by carrier marketing, sales, technology, and compliance personnel. These questions are not meant to be an indication of unwillingness to comply with the intent of §175.25. But given the history of enforcement regarding airport signage, COSTHA would like these questions formally answered so that our members may fully understand their obligations and responsibilities with regards to hazardous material signage and notification.

1. §175.25(b)- Ticket Purchase: Is the intent of this section of the rule to have Carriers provide the permitted and forbidden text or pictorials by Jan 1, 2012 with the Passenger acknowledgement portion of the rule by Jan 1, 2013?
2. Is Ticket Purchase defined anywhere in the regulations within or beyond the HMR? Not all passengers are issued tickets. For example, does this section apply to Non-Revenue or employee travel?
3. Do the requirements of §175.25 apply to third party travel sites such as Travel Agents and online travel retailers (Orbitz, Expedia, Travelocity, etc.)? If so, is it the responsibility of the carrier or the travel agent/retailer to provide the required notification? The ICAO TI Part 8:1.1.3 states "Any organization or enterprise other than an operator (such as a travel agent)... should provide passengers with information about the types of dangerous goods...". Thus it appears ICAO puts the responsibility to notify in these cases on the third party provider, not the carrier.
4. In a situation where a Customer purchases a ticket over the phone (by calling a Reservation Center), what would constitute compliance with the rule? Does PHMSA/FAA expect a reading of §175.25(a)(1) and (2), or would a simplified statement and guiding them to additional information (i.e. Carrier website) suffice?
5. Is the dual acknowledgement (at the time of ticket purchase – paragraph (b), and time of check-in – paragraph (c)) intentional? If a Passenger makes the acknowledgement at

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the time of ticket purchase, could record of that acknowledgement be used to meet the acknowledgement in section §175.25(c)?

6. In a Rule 240 scenario where a Passenger is re-accommodated on another Carrier due to canceled flights or other reasons, would a third check-in acknowledgement be required?
7. In bulk purchase and/or charter situation, would a single individual responding on behalf of their party be acceptable for compliance with §175.25(b) and (c)? Would such an acknowledgement be acceptable for military charters as well?
8. Is the actual language in §175.25(a)(1) and (2) required in all cases? If so, how does a carrier provide notice of additional materials forbidden beyond those covered in the general language? The ICAO TI does not require specific language but instead requires the carrier to develop their own language and format.
9. This rule applies to Part 129 foreign carriers that operate from the US. Currently there are 14 types of hazmat listed in ICAO TI 8;1.1 as permitted "with the approval of the operator." Thus there may be considerable differences between each US and foreign airline as to what is "permitted or forbidden" on each operator. Note that ICAO TI 8;1.1.3 and 8;1.1.4 do not require the types "permitted" either - only the types of hazmat "forbidden" need be communicated. If a passenger checks in with a foreign carrier and then transfers to a domestic carrier, does the original check in notification cover the passenger for the domestic leg as well?
10. In the case of remote check-in and boarding where the passenger checks in at a remote location and checks baggage as well, such as resort, cruise line, or military charter situations, does the carrier have the responsibility to notify the passenger, or does the resort, cruise line, or military branch have the notification responsibility? In these cases, a non-carrier operation performs the check-in function. Therefore, the carrier has limited or no contact with the passenger during the check-in process. An example would include a military charter originating from a US Military base.
11. Lithium batteries have received significant attention by both regulatory and enforcement officials over the last 5 years. Much of this attention is due to incidents involving such batteries, including incidents in passenger baggage. Yet the current language does not make mention of lithium batteries at all. Is it acceptable for a carrier to develop independent language that conveys the intent of the language in §175.25(a)(1) and (2) but varies in content to address recent incidents or trends? May this language be used as an alternate to the language contained in §175.25(a)? We strongly believe the restrictive language indicated in §175.25 is ineffective in communicating hazardous material dangers and restrictions in passenger baggage to the traveling public.

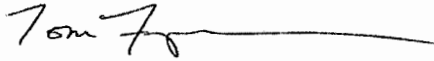
Many of the questions are very detailed and point to related regulations within the air carrier industry. If you need clarification on any of these questions, please do not hesitate to ask.

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These questions address technology concerns, and technology modifications take time to implement. Given the January 2012 implementation deadline for part of the new rule, carriers have a limited amount of time to implement these new requirements. COSTHA appreciates your timely review and response on these questions.

Best Regards,

A handwritten signature in black ink, appearing to read "Tom Ferguson", followed by a long horizontal line extending to the right.

Tom Ferguson
Technical Consultant