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## Aviation Group Client Update

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### PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION'S (PHMSA) NOTIFICATION OF PILOT-IN-COMMAND (NOTOC) AND HARMONIZATION WITH THE INTERNATIONAL CIVIL AVIATION ORGANIZATION'S TECHNICAL INSTRUCTIONS FOR THE SAFE TRANSPORT OF DANGEROUS GOODS (ICAO TI).

PHMSA has issued a NPRM on [Hazardous Materials: Notification of the Pilot-in-Command and Response to Air Related Petitions for Rulemaking \(RRR\)](#). Under this NPRM, PHMSA discussed, in detail, NOTOC's harmonization with the ICAO TI. Comments regarding this NPRM must be received by **February 3, 2017**.

**Overview.** To ensure proper consideration of the presence, amount, and location of hazardous materials onboard the aircraft in the case of an emergency, the pilot-in-command must receive the NOTOC. Information contained in the NOTOC, including information about hazard classification, proper shipping name, and packing group of the hazmat onboard the aircraft can help to inform the flight crew's decision-making. This information is important, as the flight crew or the air carrier's ground personnel would need to convey information to air traffic control and/or emergency responders in order to support a safe and effective response in the case of an in-flight emergency.

**Background.** The United Parcel Service (UPS) petitioned the PHMSA to revise the NOTOC requirements so that they match the ICAO TI. Specifically, UPS petitioned PHMSA to amend the domestic NOTOC requirements to reduce what it considers extraneous information and align the Hazardous Materials Regulations (HMR) with existing international practices. UPS contends that doing so will reduce the regulatory burden for operators, as well as the costs associated with training employees and contract personnel under two standards.

**Proposed Changes.** As a result of the petition, PHMSA proposes adding each of the following requirements to the HMR: (a) The operator must provide to the flight dispatcher the same information as provided on the NOTOC; (b) the information must be provided to pilots and dispatchers prior to an aircraft moving under its own power; (c) the air operator must retain the pilot-in-command's confirmation via signature or other appropriate indication that the required information was received; and (d) the person responsible for loading must provide a signed confirmation or other form of indication that no damaged or leaking packages or packages showing evidence of damage or leakage were loaded on the aircraft. PHMSA asserts that by making these changes, PHMSA will be in harmonization with the ICAO TI with regards to information required to be provided in the NOTOC.

PHMSA contends that general harmonization between the HMR NOTOC requirements and those found in the ICAO TI will ensure consistency for operators subject to both regulatory systems, resulting in reduced inconsistencies and the cost of complying with two different sets of standards.

There is one key difference between the two systems of requirements that is worth noting, and that is that the HMR requires that the date of the flight be included on the NOTOC. PHMSA believes that maintaining the flight date serves as an additional safety control to ensure pilots have the correct form and will result in a negligible compliance burden by those required to prepare and maintain a NOTOC under the HMR. Minor differences between the two regulations will remain even if PHMSA adopts the provisions of this NPRM into a final rule.

If you have any questions or would like further information, please contact Shelley Ewalt.

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McBreen & Kopko's Aviation Group represents air carriers, fixed base operators (FBOs), airport managers, aviation service providers, and business aircraft owners and operators on a wide range of aviation issues including regulatory matters, commercial transactions, aircraft finance matters, and bankruptcy and creditors' rights.

