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14 CFR Parts 119, 121, 135, and 145
Hazardous Materials Training Requirements; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 119, 121, 135, and 145

[Docket No.: FAA–2003–15085; Amendment Nos. 119–10, 121–316, 135–101, 145–24]

RIN 2120–AG75

Hazardous Materials Training Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The Federal Aviation Administration (FAA) is amending its hazardous materials (hazmat) training requirements for certain air carriers and commercial operators. In addition, the FAA is requiring that certain repair stations provide documentation showing that persons handling hazmat for transportation have been trained, as required by the Department of Transportation's Hazardous Materials Regulations (HMRs). The FAA is updating its regulations because hazmat transportation and the aviation industry have changed significantly since the FAA promulgated its hazmat regulations over 25 years ago. The rule will set clear hazmat training standards and ensure uniform compliance with hazmat training requirements.

DATES: *Effective Date:* November 7, 2005. *SFAR Expiration Date:* February 7, 2007. *Compliance Date:* February 7, 2007.

FOR FURTHER INFORMATION CONTACT: Janet McLaughlin, Office of Hazardous Materials, ADG–1, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267–8434.

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*);

(2) Visiting the Office of Rulemaking's Web page at *http://www.faa.gov/avr/arm/index.cfm*; or

(3) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html*.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Identify the amendment number or docket number of this rulemaking.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** of April 11, 2000 (65 FR 19477–19478), or you may visit *http://dms.dot.gov*.

Small Business Regulatory Enforcement Fairness Act

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Terms and Abbreviations Frequently Used in This Document

Note: For the purposes of this rulemaking the terms ''air carrier,'' ''operator,'' ''air operator,'' ''carrier,'' and ''airline'' are used synonymously to refer to part 121 or part 135 operators. The term ''hazardous material'' is used synonymously with ''dangerous goods.''

AC—Advisory Circular
ALPA—Air Line Pilots Association
ATA—Air Transport Association of America, Inc.
COMAT—Material owned or used by a certificate holder, commonly referred to as ''company material.'' Material is only considered COMAT in transportation if it is being transported on the operator's own aircraft.
Hazmat—Hazardous material
HMRs—Department of Transportation's Hazardous Materials Regulations found in 49 CFR parts 171 through 180
ICAO—International Civil Aviation Organization
ICAO TI—International Civil Aviation Organization Technical Instructions for the Safe Transport of Dangerous Goods By Air
IATA—International Air Transport Association
IATA DGR—International Air Transport Association Dangerous Goods Regulations
NATA—National Air Transportation Association
NPRM—Notice of Proposed Rulemaking
NTSB—National Transportation Safety Board
PHMSA—Pipeline and Hazardous Materials Safety Administration (formerly the Research and Special Programs Administration)
RSPA—Research and Special Programs Administration (now the Pipeline and Hazardous Materials Safety Administration)
SFAR—Special Federal Aviation Regulation
TRF—Transport-related function, *i.e.*, any function performed for the certificate holder relating to the acceptance, rejection, storage incidental to transport, handling, packaging of COMAT, loading, of items for transport on board an aircraft
TSA—Transportation Security Administration
UPS—United Parcel Service
USPS—United States Postal Service
Will-carry operator—An operator authorized in its operations specifications to carry hazmat
Will-not-carry operator—An operator prohibited in its operations specifications from carrying hazmat that meets the definition of a hazardous material under the HMRs

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I. The Proposed Rule

On May 8, 2003, the FAA published a notice of proposed rulemaking (NPRM) on hazardous material training requirements for certain air carriers, commercial operators, and repair stations (68 FR 24810). In that NPRM,

the FAA proposed to amend the manual and hazmat training regulations in parts 121 and 135 to incorporate most of the guidance that is currently contained in Advisory Circulars (ACs). In addition, the FAA proposed to add requirements for part 145 repair stations so that the FAA could increase its oversight of the hazmat training that repair stations are required to conduct under 49 CFR part 172.

The comment period for the NPRM originally was scheduled to close July 7, 2003, but was extended to September 5, 2003 in response to public requests. See notice of extension of comment period published in the **Federal Register** on July 7, 2003 (68 FR 40206; July 7, 2003). The FAA received approximately 70 comments on the NPRM, many of which raised concerns with some aspects of the proposal.

II. Background

As discussed in the preamble of the NPRM, hazmat transportation regulations have changed since regulations for hazmat training were first adopted over 25 years ago. The Department of Transportation (DOT) implemented the Hazardous Materials Regulations (HMRs), 49 CFR parts 171 through 180 (41 FR 15972; April 15, 1976), in part to address changes following deregulation of the airline industry in the 1970s. DOT regulations govern the domestic transportation of hazmat by all modes of transport. The international aviation community relies on the International Civil Aviation Organization (ICAO) to set the standards for the safe transport of dangerous goods by air. These standards are contained in the ''Technical Instructions for the Safe Transport of Dangerous Goods by Air'' (ICAO TI). The ICAO TI also establishes hazmat training standards for air operators.

In the past, the FAA has used ACs as a way of helping air carriers and operators comply with the hazmat training requirements in the DOT HMRs. Information contained in ACs is not mandatory; it is advisory. This rule will incorporate existing guidance documents into regulations that can be uniformly enforced.

The proposed rule identified persons working for, or on behalf of the part 121 or part 135 operator who would need to receive hazmat training by the nature of the job description they hold or supervise. As used in the NPRM, the term ''supervise'' was intended to mean more than just being a designated supervisor. It was meant to include individuals with any degree of direct oversight over a function addressed by the proposed rule. This final rule clarifies that the term ''supervise'' only applies to those persons who have direct supervision over the job functions performed.

Consistent with the NPRM, the final rule establishes a two-pronged training program—one for part 121 and part 135 operators electing to transport hazmat (will-carry certificate holders), and the other for part 121 and part 135 operators electing not to transport hazmat (will-not-carry certificate holders). Will-carry certificate holders will have to conduct in-depth training for persons directly supervising or performing any of the following job functions involving items for transport on aircraft—acceptance, rejection, handling, storage incidental to transport, packaging of company materials owned or used by the certificate holder (known as COMAT), and loading. (Henceforth this list will be referred to as a transport-related function (TRF).) Will-not-carry certificate holders will be required to conduct training sufficient to enable the persons directly supervising or performing a TRF to identify material marked or labeled as hazmat, or material that is not marked or labeled as hazmat but possesses indicators that it might contain hazmat. Some possible indicators of hazmat include a hazard label or caution statement on the package with no accompanying shipping documentation, a notation such as ''flammable paint,'' without proper shipping paper declarations or labels or markings.

The FAA also proposed to add requirements for part 145 repair stations that would increase oversight of compliance with DOT hazmat training regulations. The FAA proposed that, at the time of application for a part 145 certificate or rating, a repair station would have to certify to the FAA that all hazmat employees, as defined in 49 CFR 171.8, are trained under the HMRs, and that it is otherwise in compliance with the hazmat training requirements of the HMRs. This final rule modifies that proposal to require repair stations to submit a certification to the FAA that all hazmat employees are trained under the HMR prior to the FAA issuing a certificate, not at the time of application.

In addition, the FAA proposed to amend part 145 by adding a requirement that repair stations notify each of its workers of the will-carry or will-not-carry status of the part 121 or part 135 operators for which the repair station works. In the final rule the FAA adopts this requirement with some amendments. This notification would have to be done as soon as the repair station is informed of the part 121 or part 135 operator's status. This requirement is intended to be the companion requirement to the proposed notification requirement for part 121 and part 135 operators. In the final rule the FAA amends the proposed provision to require the repair station verify receipt of the notification and communicate this status to its employees, contractors, or subcontractors that handle or replace aircraft components or other items regulated by 49 CFR parts 171 through 180 prior to performing work for, or on behalf of the part 121 or part 135 operator.

III. Statutory Authority

The FAA has broad statutory authority to regulate for aviation safety. Specifically, the FAA has authority under 49 U.S.C. 44701(a)(5) to prescribe ''regulations and minimum standards for other practices, methods, and procedures the Administrator finds necessary for safety in air commerce and national security.'' Also, 49 U.S.C. 44701(b)(1) states ''Prescribing Minimum Safety Standards.—The Administrator may prescribe minimum safety standards for—(1) an air carrier to whom a certificate is issued under section 44705 of this title; * * *.'' In addition, the FAA is required to carry out its duties in a way that ''best tends to reduce or eliminate the possibility or recurrence of accidents in air transportation'' (49 U.S.C. 44701(c)).

IV. Overview of Changes in the Final Rule

In response to public comments, the FAA is making the following changes in the final rule (discussed in detail under ''VI. Section-by-Section Discussion of the Final Rule'')—

- Clarifying that the term ''transport-related function (TRF)'' is merely a shorthand reference used in the NPRM preamble and the final rule preamble to refer to the list of covered job functions contained in §§ 121.1001 (proposed as §§ 121.801) and 135.501. This term, as amended in the final rule preamble, is used to avoid repeating the list ''acceptance, rejection, storage incidental to transport, handling, packaging of COMAT (company material) and loading of items for transport on board an aircraft.'' The FAA did not intend for the term to extend beyond the list of covered job functions. The term transport-related function is not a separate regulatory term so it is not defined in the regulations.
- Removing the terms ''unloading'' and ''carriage'' from the list of covered job functions proposed in §§ 121.801

(adopted as § 121.1001) and 135.501. The term ''unloading'' is removed because it is not a job function that needs to be addressed through the FAA's hazmat training program, since the item is being removed from the aircraft and thus would not pose a danger to the aircraft. If an item is subsequently loaded onto an aircraft, a trained person would have to perform the loading function. Based on comments from industry, the FAA believes it could be confusing to include the term ''carriage'' in the list of covered job functions in § 121.1001 and § 135.501. The term ''carriage'' is removed. The FAA does not believe the removal of this term to be significant because all of the terms covered by carriage are already listed as covered functions.

• Closely aligning the training modules in Appendix O (proposed as Appendix N) of part 121 with the standards in the 2005 edition of the ICAO TI and the IATA DGR. This will allow for workers to be trained in accordance with the job function they perform for part 121 or part 135 operators. The final rule does not prescribe exactly how each worker is to be trained. To this end, the FAA is removing the training ''modules'' and specifying minimum aspects of training for different job functions. The part 121 and part 135 operators will still be responsible for assessing the breadth and depth of each worker's training needs based on his or her job functions.

• Modifying proposed §§ 121.801 (adopted as § 121.1001) and 135.501 that would have required hazmat training to apply to all persons involved in supervising a hazmat job function. In the final rule, the FAA is limiting hazmat training to ''direct'' supervisors. This amendment eliminates the need to train persons up the supervisory chain who are not actively engaged in job functions that require hazmat training.

• Amending the recurrent hazmat training requirement currently contained in 121.401 and 135.323 by relocating it to §§ 121.1001 and 135.501 and amending the annual retraining cycle to a 24-month cycle. This change is consistent with the International Civil Aviation Organization's Technical Instructions on the Safe Transport of Dangerous Goods (ICAO TI) and the International Aviation Transport Association's Dangerous Goods Recommendations (IATA DGR) and (JAROPS) requirements.

• Clarifying that computer-based training (CBT) and distance-learning techniques, such as interactive video training, are acceptable means for satisfying the training specified in Appendix O of part 121, provided there is an opportunity for trainees to interact with an instructor to answer all questions prior to certifying completion of the training. Interaction may be in person or via telecommunications connection (e-mail, telephone, etc).

• Amending the recordkeeping provisions of §§ 121.1007 (proposed as § 121.804) and 135.507 to permit hazmat training records to be maintained electronically and off-site as long as they can be transmitted to a worker's place of work upon request.

• Harmonizing the requirements for the content of hazmat training records with the Pipeline and Hazardous Materials Safety Administrations's (PHMSA's) HMR, the ICAO TI, and the IATA DGR requirements. The FAA is deleting the requirement that the training records contain a statement signed by a person designated by the Director of Training.

• Removing the specific references to ''aircraft dispatcher,'' ''flight instructor,'' and ''check airman'' in Tables 1 and 2 in Appendix O of part 121 (proposed as Appendix N). The type of hazmat training an employee receives is based on the job functions he or she performs for, or on behalf of the part 121 or part 135 operator, not his or her job description.

• Clarifying that part 145 repair station personnel are required to be trained to a part 121 or part 135 operator's hazmat program only when they are performing or directly supervising a job function listed in § 121.1001 or § 135.501, for or on behalf of that part 121 or part 135 operator, including the aircraft loading function. The repair stations that meet the definition of a ''hazmat employer'' (49 CFR 171.8) must meet existing training requirements under 49 CFR part 172 subpart H.

• Requiring that a part 145 certificate holder inform employees, contractors, or subcontractors that handle or replace aircraft components or other items regulated by 49 CFR parts 171 through 180 of the will-carry or will-not-carry status of the part 119 certificate holders for which it performs work.

• Amending the final rule to require that the repair stations certify to the FAA that they comply with 49 CFR hazmat training requirements (if applicable) prior to the FAA's issuance of a part 145 certificate or rating. This requirement will replace the proposed requirement that a repair station provide this certification upon application for a certificate.

V. Discussion of Public Comments

V.1. General

Comments

Both Ameristar Air Cargo and Express.Net Airlines commented that the proposed dispatcher training should also apply to anyone who performs a similar function (*i.e.*, flight following or flight locating). Ameristar stated that, ''flight followers perform the function of operational control on behalf of the Director of Operations and should be required to have some training in regard to their duties associated with the transport of hazardous materials.''

FAA Response

The requirement for hazmat training is determined by the employee's job function as specified in §§ 121.1001 and 135.501, not the job description. If the person performing the job description of aircraft dispatcher, flight instructor or check airman also performs a job function identified in § 121.1001 or § 135.501, he or she must complete the applicable portion of the part 121 or part 135 operator's approved hazmat training program. Crewmembers have specific training requirements in Appendix O, regardless of the other functions they perform relating to cargo onboard the aircraft. A person performing any job function listed in § 121.1001 or § 135.501 must meet the same requirement whether specifically listed in the current § 121.401 or § 135.323. The reference to pilots, flight engineers, flight attendants and dispatchers in proposed Appendix N has been amended in the final rule. This appendix, adopted as Appendix O, identifies training associated with applicable job functions and is closely aligned with the 2005 edition of the ICAO TI and the International Air Transport Association Dangerous Goods Regulations (IATA DGR). Dispatcher training is currently referenced in §§ 121.401(a)(1) and 135.323(a)(1). In the final rule the FAA is amending these sections only to remove the reference to hazardous materials training. The hazmat training requirements are relocated in 14 CFR subpart Z of part 121 and subpart K of 135. However, the other training requirements referenced by §§ 121.401 and 135.323 remain unchanged. The requirement for each crewmember, aircraft dispatcher, flight instructor and check airman to be adequately trained to perform his or her duties other than hazmat job functions must be retained in § 121.401(a)(1) and § 135.323(a)(1) to maintain the requirements for flight and proficiency training identified in Appendixes E and

F. This requirement is not changed in this rulemaking.

Comments

The Air Transport Association of America, Inc. (ATA) stated that the FAA should address non-compliance such as that brought to light in the ValuJet accident, through appropriate enforcement. Other commenters noted that the NPRM imposes additional training requirements on carriers, when the FAA could far more effectively reduce undeclared and improperly declared hazmat by improving public education efforts towards shippers who offer hazmat for air transportation.

FAA Response

The FAA uses the enforcement process to address issues of noncompliance with FAA and DOT regulations and will continue to do so. Since 2000, FAA Hazardous Material Specialists have inspected over 8,000 shipping companies and conducted over 2,000 visits to shipper facilities, trade associations and various conferences to educate and inform shippers of their responsibilities under the HMRs. However, even with this public education campaign, the FAA has initiated 222 investigations for accepting hazardous materials improperly from January 2000 to December 2003. These investigations include both instances where hazmats were improperly labeled/marked or packaged, and instances where material was shipped undeclared and later found to be hazmat. Taking into account that noncompliance with the regulations continues despite the FAA's current training requirements and public education efforts, the FAA has adopted the revised training rules to improve the hazmat training program given to those individuals performing the job functions listed in §§ 121.1001 and 135.501. The FAA believes that a hazmat training requirement that includes clearly enforceable hazmat recognition training for both will-carry and will-not-carry certificate holders is a critical step towards reducing the number of improperly prepared or undeclared shipments. Recognition training for will-not-carry certificate holders is currently administered in accordance with advisory material; thus there are no regulatory standards. Enforceable hazmat training standards serve the dual purpose of establishing a mandatory hazmat training program with uniform requirements, and reducing the potential that ''discoverable'' hazmat shipments will move undetected. A ''discoverable'' hazmat shipment is a shipment that is likely to be flagged by a trained individual as a potential hazmat shipment, even though it is not properly prepared for shipment or is shipped undeclared. The FAA recognizes that not all improperly shipped hazmats or undeclared hazmats may be discoverable, even by a trained individual.

Additionally, the FAA notes that outreach to the aviation industry and public education has not been effective in eliminating the problem of improper shipments of oxygen generators. Since the Valujet tragedy in 1996, the FAA has investigated both operators and repair stations and has documented over 60 instances of improperly transported oxygen generators for which the FAA is collecting over $3 million in civil penalties. Oxygen generators are a key piece of equipment used in the aviation industry and are often shipped as COMAT without complying with DOT's hazmat regulations.

The FAA also has been actively engaged in enforcing the hazmat regulations. It has collected over $6 million in hazmat civil penalties for violations from U.S.-certificated air carriers from 2000 to 2003. One part 121 operator pled guilty in September 2003, to willfully not providing required hazmat information to its pilots. Another part 121 operator entered into a plea agreement with the U.S. Attorney for the Southern District of Florida in December 1999, which included agreed-to ''statement of facts'' describing hazmat infractions. One repair station was convicted of willfully not providing hazmat training in 1999.

Comment

ATA commented that the NPRM would not improve safety and is broader than necessary to address the primary safety objective cited—prevention of another ValuJet-type accident caused by inadequately trained contractors.

FAA Response

Valujet was a will-not-carry part 121 operator, thus the oxygen generators should never have been placed on board a Valujet aircraft for shipment as cargo. The FAA did not have any enforceable hazmat training requirements for part 121 will-not-carry certificate holders. This final rule corrects that deficiency. The commenter is correct that this rule addresses issues and concerns discovered through our oversight that are broader than the issues raised by the ValuJet accident.

Comment

United Parcel Service (UPS) challenged the FAA's statutory authority to promulgate requirements for training non-hazmat employees. UPS commented that the FAA has not articulated ''a reasonable basis for requiring a certificate holder to provide hazardous materials training to employees who do not perform or supervise any functions regulated under the HMR or who do not otherwise directly affect hazardous materials transportation safety.''

FAA Response

The FAA has broad statutory authority to regulate for aviation safety. Specifically, the FAA has authority under 49 U.S.C. 44701(a)(5) to prescribe ''regulations and minimum standards for other practices, methods, and procedures the Administrator finds necessary for safety in air commerce and national security.'' Also, 49 U.S.C. 44701(b)(1) states ''Prescribing Minimum Safety Standards.—The Administrator may prescribe minimum safety standards for—(1) an air carrier to whom a certificate is issued under section 44705 of this title; * * *.'' In addition, the FAA is required to carry out its duties in a way that ''best tends to reduce or eliminate the possibility or recurrence of accidents in air transportation'' (49 U.S.C. 44701(c)).

Consistent with its statutory authority, the FAA has previously required hazmat training for non-hazmat employees working for part 119 certificate holders operating under part 135. (See 38 FR 14914; June 7, 1973.) The FAA believes that prior and current hazmat enforcement actions and accidents by will-not-carry operators transporting hazmat demonstrate the need for will-not-carry training. Additionally, the FAA notes that the industry's own International Air Transport Association's (IATA's) Dangerous Goods Regulations paragraph 1.5.0.1 states that the ICAO TI and IATA DGR include training for persons with various responsibilities in processing cargo (not necessarily involving dangerous goods). Thus, given our expertise and that the aviation industry's own representatives have determined such training is important, the FAA is including it in this change.

Comment

Several commenters addressed the need to regulate or certify the hazmat training companies providing training under this rule. Express.Net Airlines stated that ''regulation should mandate a skill level for instructors in the same manner the regulation mandates skill level for management personnel required for operations conducted under parts 121 and 135 from Part 119.65.'' Express.Net believed that the FAA

should have a program that sets forth the basic knowledge a person should possess before providing hazmat instruction. Express.Net noted that the European community requires operators that load, unload or transport dangerous goods to have a person in the position of Dangerous Goods Safety Advisor.

COSTHA commented that the NPRM should be amended to assess, monitor and certify professional schools that would be authorized to provide hazmat training. It urged the FAA to amend the NPRM to state that in lieu of developing an in-house training program, carriers (both will-carry and will-not-carry), repair stations and any other person affected by the regulations would be in compliance by completing a training program offered by a FAA-certified hazmat training company.

FAA Response

The comment suggesting that FAA establish standards for instructors or instructional schools is outside the scope of this rulemaking. Additionally, the comment suggesting a new required position for operators is also outside the scope of this rulemaking.

Comment

The overwhelming majority of the part 121 and part 135 operators requested flexibility in designing and determining curriculum, determining the depth of training required for the function the individual employee performs, the method of delivery, length of training and method of testing.

FAA Response

The FAA recognizes that part 121 and part 135 operators require flexibility to accomplish the required hazmat training. The FAA notes that it is the part 121 and part 135 operators' responsibility to ensure that the type, duration and delivery method of training is adequate and appropriate for each worker. The approved hazmat training program may be provided by company training programs, computer based programs, self-guided compact disk (CD) training programs, outside training firms or consultants, or any other type of organization offering training that meets the objective training requirements. Hazmat training may be provided by the operator or other public or private sources, including training classes that are offered by the IATA to the extent that the IATA training addresses the training specified in the FAA-approved hazmat training program. This FAA final rule will require that, regardless of the teaching method used, the operator must provide a method to respond to students' questions prior to certifying completion of the training. E-mail is an acceptable means of communicating and responding to questions.

Comment

UPS asked that the FAA confirm in any subsequent notice that operators only need to submit an outline of their proposed training programs rather than the actual training curriculum.

FAA Response

Section 121.401(a)(1) applies to all training as currently written, including hazmat. Once the final rule is fully effective, § 121.401(a)(1) will only apply to training other than hazmat training. New §§ 121.1003 (proposed as § 121.802) and 135.503 will contain the hazmat training requirement. As part of the hazmat training requirement, part 121 and part 135 operators are required to obtain FAA approval of the hazmat training program. The current practice of submitting an outline sufficient to provide an overview of the training program will suffice for purposes of approval, unless it is necessary to see the full hazmat training program to understand the curriculum.

Comment

The Air Line Pilots Association (ALPA) urged the FAA to clarify a concept called ''will-not-accept'' that is different than ''will-not-carry.'' ALPA believed that the two concepts are different because ''will-not-carry'' means no hazmat is allowed on the aircraft, while ''will-not-accept'' would allow carriers to carry their own hazmat as COMAT from point to point on their aircraft, but they would not be able to accept hazmat shipments from outside entities. ALPA believed that clarifying the three levels of classification (will-not-carry, will-not-accept, and will-carry) would be useful in allowing a carrier to develop a training program that would meet the needs of its operation.

FAA Response

The FAA only proposed will-carry and will-not-carry hazmat training. The part 119 certificate holder's operations specifications will either include an authorization permitting the certificate holder to handle and transport hazmat (will-carry certificate holder) or a prohibition against handling and transporting hazmat (will-not-carry certificate holder). There are no other options. Officially, the FAA has never endorsed a concept called ''will-not-accept'' that would allow carriers classified as will-not-carry certificate holders to carry hazmat as COMAT. If the COMAT is a hazardous material, it may be carried only by a will-carry certificate holder. A will-carry certificate holder may choose to limit its acceptance and transport of hazardous materials to COMAT only; however, the company makes this decision. The certificate holder is considered a ''will-carry'' operator, and the will-carry training program applies.

Comment

ATA noted that the procedures for handling dangerous goods, once the Transportation Security Administration (TSA) finds them, are currently under active discussion between the TSA and the carriers. The commenter went on to say that it is unclear what role carrier employees will have in handling such goods, or whether that responsibility will be handled completely or partially by a third-party contractor. ATA urged the FAA to reconsider the need for any additional training for carrier personnel who check-in passengers and luggage, and ensure that the rule takes into account ongoing developments in the TSA's role.

FAA Response

In drafting the final rule the FAA was cognizant of Pipeline and Hazardous Materials Safety Administration (PHMSA) (formerly Research and Special Programs Administration (RSPA)) and TSA activities in the area of hazmat transport by aircraft. On February 28, 2003, RSPA (now PHMSA) issued a ''Formal interpretation of regulations'' (68 FR 9735) clarifying that hazmat regulations apply to carry-on and checked baggage. Additionally, the RSPA interpretation specifically identified the point at which the carry-on baggage has been offered by the passenger for transportation and the point at which checked baggage has been accepted by the airlines for transportation. Carry-on baggage (including items on his/her person) is considered offered for transportation when the passenger tenders the baggage to screening personnel at an airport security screening checkpoint or otherwise attempts to proceed through the checkpoint with the hazardous material on his or her person. A passenger offers carry-on baggage for transportation, and represents it as fit for moving by aircraft, when the baggage is placed on the X-ray machine conveyer belt, handed to the baggage screening personnel, or placed in a bin or tray for examination by screening personnel, or when the passenger physically passes through the security checkpoint with the baggage (including items on his or her person). Carry-on

baggage is accepted by an air carrier when the airline accepts the boarding pass of the passenger while boarding the flight. The passenger is responsible for ensuring compliance for carry-on baggage with the HMR from the point of offer and at all times until transportation is complete.

Checked baggage is offered to the carrier at the point the passenger presents the baggage for acceptance by the carrier. This can occur at curbside check-in, at the ticket counter at the airport, or when the passenger presents the bag to screening personnel for explosive detection screening as a prerequisite to presentation to the carrier. When the baggage is tendered at curbside check-in or the ticket counter to the air carrier, the baggage is considered to have been accepted when the air carrier issues a baggage claim ticket for the checked baggage.

Given the various points at which baggage is considered offered for transport, and the varied types of workers that might accept baggage, it is critical that certificate holder's workers receive the proper hazmat training so that baggage can be properly screened. At the time of this writing, TSA checked baggage screeners are instructed to point out possible unauthorized hazmat items discovered in baggage to airline representatives so the airline representatives can determine if the items can be transported under the hazmat regulations. The certificate holder must report any unauthorized hazmat discovered in checked baggage to the FAA under PHMSA's rules at 49 CFR 175.31. In order for a worker to be capable of performing this job function, he or she must have completed hazmat training.

Comments

The National Transportation Safety Board (NTSB) commented that in May 1996, it issued Safety Recommendation A–96–26, which called for the FAA to require air carriers to revise as necessary their practices and training for accepting passenger baggage and freight shipments, and for identifying undeclared or unauthorized hazardous materials that are offered for transport. The NTSB voiced concern that the proposed training requirements would apply only to passenger air carriers. The NTSB urged the FAA to apply the training requirements to cargo carriers and cargo-only operations too.

FAA Response

The FAA has contacted the NTSB and informed them that the proposed training requirements would apply to both passenger and cargo air carriers. The final rule does not change this fact.

Comments

Integrated cargo carriers like UPS and FedEx Express were concerned that the proposals were drafted so broadly that, literally interpreted, they could require training of drivers in the carriers' ground operations. These carriers were concerned because their ground operations have not been covered under the FAA's training requirements in the past, although they are subject to PHMSA's hazmat training requirements. UPS and FedEx note that ground operations may well be outside the jurisdiction of the FAA. The commenter added that if the FAA intended the proposals to extend to those drivers, the costs of the additional training time would be enormous, with no commensurate safety benefit. Moreover, such coverage could conflict with the jurisdiction of other Federal agencies, and it would be problematic if FAA approval were required for a small portion of an otherwise extensive training process used to qualify drivers for their duties on-road.

FAA Response

Fed Ex and UPS are part 121 operators and both accept many types of hazmat for air transportation as well as transportation by rail and motor vehicle. The key to determining whom to train is to delineate which party is responsible for accepting a package for air transportation. This fact is consistent with current regulations. If a part 121 or part 135 operator's truck drivers are accepting property for air transportation, they must be trained in accordance with this rule. However, if another employee performs that job function for the part 121 or part 135 operator, then the truck driver would not have to be trained in accordance with this rule. For instance, a truck driver who is required to perform the function of acceptance of a package for air transport would have to be trained for performing that function. This is the same requirement as for a person at the sort facility performing the same function. In this case, if the truck driver is not responsible for performing the acceptance of a package for air shipment, and the certificate holder was relying on the truck driver to accept the package for only motor vehicle transport, then the truck driver does not need to be trained in the certificate holder's program. It is the function being performed or directly supervised that mandates the training requirement, not the job designation.

Comment

The Regional Airline Association (RAA) noted that after the Valujet accident the FAA invested heavily in the Air Transportation Oversight System (ATOS), which is an FAA oversight process that assesses an airline's safety attributes beyond strict regulatory compliance. RAA stated that ATOS was intended to raise the level of safety in the industry without additional regulations. RAA then questioned whether this proposal and the Part 60 proposal to codify extensive advisory material are a step back from the FAA's earlier commitment to the ATOS concept. RAA asked whether all of the FAA's advisory and field policy materials will be codified.

FAA Response

The FAA codifies voluntary standards when it believes it is in the best interest of safety to do so. In this case, hazardous materials are of significant concern in air transportation because of the potentially devastating consequences in the event of an accident due to an improperly transported hazmat.

V.2. Transition Period

Comments

AmAv, Inc., ATA, and UPS voiced concern that 15 months may not be enough time to develop the training program and have it approved by the FAA. In particular these commenters were concerned about what to do if the Principal Operations Inspector (POI) is not able to complete a review and approval of the program within the specified time frame. AmAv, Inc. also noted that having the POI approve the program would be a substantial increase in workload and some Flight Standards District Offices (FSDOs) are already overburdened and understaffed. UPS said that a certificate holder's current training program should remain in effect pending the FAA's approval of the revised training program.

FAA Response

The commenters raised several concerns that demonstrated some misunderstanding about the proposed rule. First, the POI will not be approving Hazardous Material Programs that include hazmat training. POIs will continue to approve the general operator's training program covered by § 121.401 or § 121.135. With regard to hazmat training, the POI will ''receive'' the training program information from part 121 and part 135 operators and submit it for review to the appropriate Regional Hazardous Material Branch

Manager in the FAA's Regional Security and Hazardous Materials Offices. This is consistent with current practice. The Hazardous Materials Branch Manager currently reviews the carrier's hazmat training program and will continue to be responsible for approving it and relaying that information back to the POI.

Second, part 121 and part 135 operators do not have to be concerned about having to implement the hazmat training program before it is approved by the FAA. Certificate holders are permitted to continue using their existing FAA approved training programs during the 15-month transition period. As provided in SFAR 99, ''during the transition period, these certificate holders can continue to comply with the current requirements or comply with the new requirements.'' The FAA believes that the 15-month transition period is a sufficient time period.

Third, incorporating the changes into the existing hazmat training program should not be difficult. The FAA chose 15 months as a transition period because it believes that the time period is sufficient to allow certificate holders to include any changes necessary due to this final rule into their existing mandatory 12-month annual recurrent training. Once this rule goes into effect, the recurrent training requirement is amended from annually to every 24 months. Since the hazmat training provision had been incorporated into the certificate holder's overall training provisions in §§ 121.401 and 135.323, the recurrent training requirement for hazmat had been aligned with the certificate holder's other recurrent training requirements for flight and proficiency training. The final rule amendment aligns the FAA's hazmat recurrent training provision with long-standing international recommendations and current industry practice for hazmat recurrent training. Thus, hazmat training and flight and proficiency training are now on different cycles. The movement from annual recurrent hazmat training to recurrent hazmat training every 24 months also aligns FAA requirements with the cycle for regulatory updates and changes followed by ICAO, IATA and the United Nations Subcommittee on the Transport of Dangerous Goods. The requirement to provide recurrent training every 24 months should provide the certificate holder with a streamlined process for revising and updating hazmat training programs.

Finally, the FAA does not believe that the changes necessitated by this rule will be as dramatic as the part 121 and part 135 operators foretell. Prior to publication of the NPRM, the FAA surveyed will-carry and will-not-carry operators with FAA-approved hazmat training programs to determine if the content of their training programs would be in compliance with the proposals in the NPRM. The FAA also randomly reviewed FAA-approved hazmat training programs currently in operations manuals of both will-carry and will-not-carry operators. These programs also were all found either to be completely adequate in content as compared to the proposed rule or would require only minor amendments.

Thus, the FAA anticipates that given the changes in the final rule certificate holders will not require significant changes to the current hazmat training program curriculum. In fact, most part 121 and part 135 operators adhere to the ICAO TI and the IATA DGR training requirements as an industry standard, and this final rule is closely aligned with the ICAO TI and IATA DGR training requirements that will be effective January 1, 2005. Therefore, certificate holders adhering to the ICAO TI and IATA DGR requirements will have programs that currently meet both the industry standards and the FAA's regulatory standards. IATA (International Air Transport Association) represents over 270 airlines operating under the flags of almost as many nations comprising 95% of the international scheduled air traffic. IATA's resolution 618 requires all member airlines to adhere to the following requirements.

In scheduled and/or unscheduled operations, no dangerous goods are permitted to be accepted and carried unless they comply fully with the international standards and recommended practices of Annex 18 to the Convention on International Civil Aviation—''The Safe Transport of Dangerous Goods by Air'' and its associated Technical Instructions as reflected in the ''IATA Dangerous Goods Regulations.''

Through IATA, airlines individual networks function as a worldwide system. Due to this business practice, even smaller non-member airlines that interline with IATA carriers must meet all of the member requirements or their cargo cannot be interlined in the cargo system.

V.3. Clarification of Supervisory Training Requirements

Comments

UPS, Continental, and ATA were concerned that the proposed requirement to train the supervisors of employees who perform a hazmat function was too broad. UPS stated that the NPRM would require training for ''every employee of a certificate holder with any supervisory responsibilities whatsoever,'' even a ''certificate holder's chief executive officer, even though that person may not perform a single function directly affecting hazardous materials safety.'' UPS also commented that the FAA has not articulated a ''reasonable basis for requiring a certificate holder to provide hazardous materials training to employees who do not perform or supervise any functions regulated under the HMR or who do not otherwise directly affect hazardous materials transportation safety.''

ATA stated that the ''definition of supervisor would sweep in hundreds of supervisory personnel whose responsibilities rarely if ever bring them in contact with hazmat.'' ATA added that covered supervisors would include ''all levels of carrier management at an airport, as well as the corporate management and officers to whom they report * * *. Such broad applicability to supervisors without regard to their responsibilities regarding hazmat is unnecessary to ensure safety and an unreasonable burden on the carriers.''

FAA Response

The FAA agrees that the definition of the term ''supervisor'' as used in the NPRM was too broad. In the final rule, the FAA is adding the term ''direct'' to qualify the term ''supervisor'' in every place where it is used in the new hazmat training regulations. This change is necessary to clarify that only the ''direct'' supervisor of a worker performing any of the job functions in § 121.1001 (proposed as § 121.801) or § 135.501 for, or on behalf of the certificate holder is required to complete the part 121 or part 135 operator's FAA-approved training program. This amendment should address the issues raised in the comments.

V.4. Constructive Knowledge

Comments

A number of commenters (Northwest Airlines, UPS, Southwest, United Airlines, Delta Airlines, and ATA) voiced concerns with the proposed requirement to train people to identify material as hazmat that is not properly labeled and marked as a hazmat. These commenters asked the FAA to provide a trigger list that would help them train their employees in this regard. UPS commented that the ''development of clear and well-conceived indicia of constructive knowledge is essential to

enabling air carriers to implement effective training with respect to undeclared hazardous materials.'' UPS was concerned that the proposed rule would leave certificate holders guessing at what indicators the FAA will deem sufficient to place a carrier on notice that a package may contain hazardous materials. United Airlines noted that the FAA needed to coordinate with the DOT's Office of Intermodalism, which is in the process of developing a definition of the term ''constructive knowledge.'' ATA commented that training revisions should not be completed until DOT guidance on determining the presence of undeclared hazmat is publicly available and preferably commented upon.

FAA Response

Many commenters raised the issue of what constitutes ''constructive knowledge'' of the presence of hazardous materials in a shipment, in the context of enabling the trained person to recognize items that contain, or may contain, hazardous materials regulated under the HMRs. In a 1998 interpretation published in the **Federal Register** (63 FR 30411–30412; June 4, 1998), RSPA (now PHMSA) used the term ''constructive knowledge'' to express the ''knowingly'' standard in 49 U.S.C. 5123(a)(1)(B) that a person ''acts knowingly'' when ''a reasonable person acting in the circumstances and exercising reasonable care'''' would have ''actual knowledge of the facts giving rise to the violation.'' RSPA also stated, ''all relevant facts must be considered to determine whether or not a reasonable person acting in the circumstances and exercising reasonable care would realize the presence of hazardous materials.'' In addition, RSPA stated, ''Information concerning the contents of suspicious packages must be pursued to determine whether hazardous materials have been improperly offered. A carrier's employee who accepts packages for transport must be trained to recognize a 'suspicious package' * * *.'' *Id.*

In 2001, Fed Ex asked DOT to develop further guidance on what constitutes ''constructive knowledge'' that a carrier is deemed to have of the presence of hazardous materials when the carrier accepts a shipment for transportation. DOT held a public meeting on June 19, 2002, and is considering the numerous oral and written comments in this proceeding (Docket No. OST–01–10380).

In the context of this final rule, the FAA is not specifying detailed hazmat training content. Should DOT or PHMSA issue a further interpretation on ''constructive knowledge,'' certificate holders would be authorized to adjust their training content accordingly. Hazmat training program content will always have to be adjusted as hazmat regulatory changes become effective. These adjustments are the responsibility of the certificate holder.

The practice that an operator's staff be adequately trained to assist them to identify and detect undeclared dangerous goods has been an industry standard in the IATA DGR for over 10 years. The IATA DGR information is intended to prevent undeclared dangerous goods in cargo from being loaded on an aircraft and prevent passengers from taking on board those dangerous goods that they are not permitted to have in their baggage.

V.5. Applicability/Transport-Related Function (TRF)

Comments

ATA, Northwest, UPS, United, and the National Air Transportation Association (NATA) were concerned that the application of the term ''transport-related function'' would end up requiring them to train all or a substantial number of the employees in their operations. UPS recommended that the FAA issue guidelines so that a carrier can determine when an employee could ''reasonably be foreseen'' as performing or supervising a transport related function.

FAA Response

The FAA recognizes the concerns voiced by the commenters. The term ''transport-related function'' is a shorthand reference used in the preamble of the NPRM and final rule to refer to the specific listed job functions in §§ 121.1001 (proposed as §§ 121.801) and 135.501. It is not intended to extend beyond those listed job functions.

In the final rule the FAA is also removing the terms ''unloading'' and ''carriage'' from the list of specific covered job functions. This decision is consistent with movement to closely align the regulations with the 2005 edition of the ICAO TI and the IATA DGR. Training conducted by an operator to satisfy industry training practices and standards (*e.g.* IATA) that meet or exceed the requirements of new part 121 Appendix O would be sufficient for compliance with the final rule requirements. The FAA does not believe that removing these terms from the list of covered functions adversely impacts safety. First, the term ''unloading'' covers a job function that actually removes the item from the aircraft where it does not pose a danger. Second, the FAA's research indicates that the personnel loading the aircraft typically are the same as the personnel unloading the aircraft. Since loading is a covered job function, these persons would be trained in accordance with the rule. Finally, if the unloaded cargo is subsequently loaded onto another aircraft, then the person doing the subsequent loading would need to be trained.

With regard to the removal of the term ''carriage,'' the FAA does not believe there is a safety issue since the term essentially incorporates all of the listed job functions and is not a stand-alone term. Consequently, the FAA finds that a specific listing of the term is unnecessary.

V.6. New Hire/New Job Function

Comment

Atlas Air stated that under the current regulations, when a carrier hires an employee/contractor who used to work for another all-cargo carrier and he or she provides a valid Dangerous Goods certification from that carrier, the carrier simply enters the employee's name in the training records under his or her valid certificate and schedules the employee for recurrent training when the base month comes up. Atlas Air urged the FAA to clarify that this practice can continue since limiting the practice would constitute an unnecessary financial burden.

FAA Response

The FAA recognizes that part 121 and part 135 operators will have many similarities in their hazmat training programs. However, each carrier has its own policies and procedures regarding the handling and transport of hazmat. Thus, a new employee that will perform a job function listed in § 121.1001 or § 135.501 does not have to be fully trained in all aspects of the hazmat regulations if he or she has been trained by another certificate holder with the same will-carry or will-not-carry status within the 24-month period. However, he or she must receive training on the certificate holder's policies and procedures prior to performing his or her job. It is the responsibility of every part 121 and part 135 operator to train each employee in the procedures and policies the certificate holder has implemented to comply with the HMR and these regulations.

Comments

Ameristar noted that the NPRM did not address how to handle a person who is not trained at a departure or destination point that helps load an

aircraft under the supervision of a flight crewmember. An entire initial training program is not practical for a person that may be loading only one piece of freight (*i.e.*, a seat belt pretensioner, Class 9 (UN3268)) using a forklift on a one-time basis for an operator. Ameristar also noted that there were no provisions for contract employees in the NPRM.

FAA Response

Currently, the regulations require that the workers (contractor or direct airline employee) performing a hazmat job function (including unloading) be trained. There are no exceptions under current FAA training regulations. In this final rule, the FAA is adopting a new exception that would allow a person (either a new hire or someone who is performing a new job function) to perform a job function involving storage incidental to transport or loading of items on an aircraft for transport, provided the person is under the direct visual supervision of another properly trained employee authorized to directly supervise him or her. The exception is only valid for 30 days, and is contingent on the certificate holder complying with the recordkeeping requirements in §§ 121.1007(b) and 135.907(b) (proposed as § 121.804(b)) or § 135.504(b), as applicable. After that time period, the individual must receive the required training.

V.7. Persons Working for More Than One Certificate Holder

Comments

Several carriers were concerned about the application of the training requirement for employees or contractors who work for more than one certificate holder. Atlas Air stated that proposed § 121.803(a) would prevent Atlas, Polar, and similarly situated carriers from relying on another certificate holder's training program to satisfy the training obligation.

Additionally, Atlas Air commented that the second exception in proposed § 121.803(c), limiting the retraining required of persons working for other certificate holders in certain circumstances, would permit certification only from another certificate holder with the same will-carry status. Atlas believed this would put it at a distinct disadvantage around the world by prohibiting the acceptance of foreign carriers' certifications, which represent a large segment of Atlas' business.

UPS stated that proposed § 121.803(c)(1) would require a certificate holder to receive written verification that a repair station employee was properly trained from an ''authorized, knowledgeable person representing the other certificate holder.'' The commenter said that the FAA provided no standards or guidelines for how a certificate holder can determine whether a person is ''knowledgeable.''

United commented that the process for verifying that a contractor has provided its employees with the proper hazmat training is ''far too cumbersome and leaves each certificate holder with little option but to provide such service personnel with the full scope of hazmat training.'' Aircraft Electronics Association and Aviation Suppliers Association believed that contractors may be unwilling to provide the training certifications required by proposed §§ 121.803(c) and 135.503(c) for fear of legal liability or because they do not want to assume training costs that their competitors are not assuming. Moreover, the commenter stated, several of the exceptions are based on the worker having received prior training by a certificate holder having the same operations specifications authorization for the carriage of hazmat.

FAA Response

The FAA believes that the exception provided for in §§ 121.1005(c) and 135.505(c) (proposed as §§ 121.803(c) and 135.503(c)) will actually minimize the training burden on part 121 and part 135 operators. After reviewing the concerns voiced by the commenters, it appears that many of the commenters may have misunderstood what type of training is required. The core of each part 121 and part 135 operator's training program is substantially the same. However, a worker who has been trained by one certificate holder but used by a second should be aware of that certificate holder's policies and procedures for handling hazmat. For instance, a worker initially performing work for a certificate holder with an operations specification prohibiting the acceptance of radioactive material may not have received in-depth training in the transport of radioactive materials. However, if that worker performs a job function listed in § 121.1001 or § 135.501 for or on behalf of an additional certificate holder that does accept radioactive material, the worker must be trained on the regulations pertaining to such materials. Therefore, a part 121 or part 135 operator using a person trained under another part 121 or part 135 operator's approved training program (both with the same will-carry or will-not-carry status) only has to train that person in the way it complies with the regulations.

Only operations conducted in accordance with parts 121, and 135, and part 145 certificate holders are covered by this rulemaking. Thus, the part 121 or part 135 certificate holders must ensure that a worker is trained when using a worker in a foreign location. Since this final rule is closely aligned with the 2005 edition of the ICAO TI and the IATA DGR requirements, there should be minimal differences in training. If the actual operations are in a foreign location, then the foreign location requirements in §§ 121.1005 and 135.505 (proposed as §§ 121.803 and 135.503) may be applicable.

The FAA agrees that the term ''authorized, knowledgeable person'' cannot be confirmed. Therefore, in the final rule the FAA is removing the proposed terminology and replacing it with the phrase ''person designated by the certificate holder to hold the records.''

Comment

MidWest Airlines agreed that if a contractor is a will-not-carry airline for hazardous materials and provides services for a will-carry airline, the contractor needs to receive hazardous materials training from that airline. However, MidWest stated that it did not ''understand the need for training to be provided when the status of the airline and contractor is reversed.''

FAA Response

A worker of a part 121 or part 135 operator with a status of will-carry operator receives hazmat training appropriate for the job function being performed. If the worker also performs or directly supervises job functions for a will-not-carry certificate holder, the employee will only have to be trained in the policies and procedures for the will-not-carry certificate holder. For instance, the worker needs to know what the policies are for a will-not-carry certificate holder if the worker identifies cargo as potential hazmat. These policies and procedures would include information such as who does the worker notify and where does the material get placed until the appropriate person investigates, etc. Only the policies and procedures specific to the will-not-carry certificate holder will need to be provided.

V.8. Recurrent Training

Comments

Several commenters raised concerns with the FAA's proposal to require annual recurrent training. Atlas Air

requested that the FAA make the recurrent training requirement every two years, consistent with ICAO and United Nations (UN) recommendations. Ameristar Air Cargo commented that the base-month concept in the proposed rule is inconsistent with 14 CFR 121.401(b). This requires an industry to have two standards. Ameristar believed that the requirements of 14 CFR 121.433a currently allow the grace-month provision.

NATA urged the FAA to keep its recurrent training requirements consistent with PHMSA's recurrent training requirements under the HMRs.

FAA Response

In response to comments on this issue, the FAA is closely aligning the final rule with the 2005 edition of the ICAO TI and the IATA DGR including modifying the proposal by requiring recurrent training every 24 months instead of annually. The change in recurrent training from every twelve months to every 24 months should not adversely impact safety since recurrent training is designed to update workers on amendments in the regulations. These amendments tend to occur on a 24-month schedule, keeping aligned with ICAO and IATA amendments. Under 49 CFR 175.20 ''Compliance and Training'' for air carriers, the FAA's 14 CFR 121.135, 121.401, 121.433a, 135.323, 135.327 and 135.333 are incorporated by reference. Under PHMSA's ''hazmat employee'' concept, recurrent training is required every three years. Currently, the FAA requires that recurrent hazmat training be completed by part 121 and part 135 operators annually along with the flight and proficiency training. The FAA's recurrent training requirements were in place before PHMSA's and were not superceded by PHMSA's retraining requirements. There are other differences between PHMSA's and the FAA's training requirements. For instance, the FAA requires the hazmat training program to be reviewed and approved by the agency.

The FAA also is clarifying that recurrent hazmat training can be taken in the calendar month before or the calendar month after it is actually due without changing the anniversary date for retraining purposes. A person can be retrained earlier than one calendar month prior to the training anniversary date; however, the anniversary date will change to the completion date of the retraining. The FAA believes that these exceptions provide the part 121 and part 135 operators with maximum flexibility in scheduling retraining while ensuring that there is not an extensive time period between the retraining dates.

V.9. Notice to Repair Stations

Comments

Several commenters opposed the FAA's proposal to require a certificate holder to communicate and verify awareness of its hazardous materials policies and procedures to a repair station. UPS noted that ''all repair stations likely 'use' or 'handle' materials classified as hazardous materials in the course of their operations.'' Thus, proposed § 121.803(e) quite possibly could require ''notice and awareness'' for every repair station utilized by a certificate holder.

NATA was concerned that the requirement to verify that the repair station is ''aware of'' its status and policies and procedures is ''another regulatory trap.'' In this instance, the commenter stated, the FAA is establishing a mandate without giving a clear means of compliance. Southwest believed that while the requirement to provide written notification to each repair station performing work on the certificate holder's behalf is obtainable and objective, ''the requirement to ensure that the repair station is ''aware of' the certificate holder's policies and procedures is a subjective requirement that cannot be verified by the carrier.''

ATA stated that ''carriers can and do take the objective steps of informing repair stations whether they carry hazmat and advising them of carrier procedures for HMR compliance.''

FAA Response

The FAA agrees that the term ''aware of'' is somewhat subjective. The FAA's intent in proposing this standard was to ensure that critical information was effectively communicated between two parties.

The will or will-not-carry status of a certificate holder is critical information that must not get drowned out by other information. That is why the FAA proposed that part 121 and part 135 operators ensure that each repair station be aware of the part 121 and part 135 operator's will or will-not-carry status. In the final rule, the FAA is replacing the requirement for the repair station to be ''aware of'' the operator's will-or will-not-carry status with a requirement for the repair station to acknowledge receipt of the notification. This change is reflected in §§ 121.1005(e), 135.505(e), and 145.206(a).

There are many ways to get a written verification. One way of complying with this requirement would be to have the responsible person from the part 121 or part 135 operators write a letter to the repair station stating its status and policies and procedures and then have the authorized repair station supervisor or manager sign and return a copy of the letter. However, to allow for flexibility, the FAA is not mandating this method; it is simply one method of compliance. The FAA's purpose in adopting this requirement is to ensure that the repair station receive the required notification from the part 121 or part 135 operator. This notification then triggers the requirement for the part 145 repair station to notify its covered employees of the part 121 or part 135 operator's' status. Based on ATA's comments, it appears that part 121 or part 135 operators already are taking some level of care to ensure that repair stations know which certificate holders carry hazmat. The only additional step may be the written verification.

V.10. Foreign Locations

Comment

NATA and ATA opposed the exception for certificate holders operating at foreign locations in proposed § 121.803(f) (adopted as § 121.1005(f)). NATA believed that this exception should be standard operating procedures regardless of whether local labor laws require the certificate holder to use persons working in that country to load and unload aircraft, given the logistical problems of training and recordkeeping for part 135 operators.

ATA commented that workers in foreign locations already receive function-specific hazmat training and follow the ICAO Technical Instructions. Current FAA rules require ''supervision'' by a trained person of loading, offloading, and handling of dangerous goods by persons who have not had the FAA-approved training. The commenter stated, ''ATA believed that the proposal would unreasonably narrow the exception for untrained employees working under supervision by restricting the exception to loading and unloading.'' Thus, ATA argued that any other handling of hazmat would have to be done by someone who has had the extensive training, regardless of supervision. For loading and unloading, the trained person would have to provide ''direct visual supervision.'' The commenter added that, in situations where there is more than one flight being worked, particularly at hubs, this is unworkable. There is no compromise of safety in continuing to allow the trained person to supervise by giving appropriate direction and follow-up, enabling him or her to handle more than one issue at once.

FAA Response

The FAA believes that the loading with untrained workers should not be standard operating procedures at foreign locations regardless of local labor laws. This is consistent with current FAA hazmat training regulations. Since the FAA is now closely aligning the final rule with the 2005 edition of the ICAO TI and IATA DGR requirements, general training should be more standardized. In the final rule, the FAA is also removing the term ''unloading'' from the list of specific covered job functions listed in §§ 121.1001 and 135.501. Thus, part 121 and part 135 operators should find it easier to obtain trained workers to use in completing these hazmat job functions. Under the exception adopted in the final rule, loading with untrained workers can be performed only if the labor laws of the foreign country require that the certificate holder uses persons who work in that country, and the worker performs the loading function under the direct visual supervision of a trained worker. The existing rule does not require visual supervision of the untrained worker. However, in the NPRM the FAA proposed such a requirement, and this requirement is adopted in the final rule. The certificate holder can use a non-supervisory person trained to load the aircraft, provided they are authorized to directly supervise the untrained worker in the performance of this function. The FAA has determined that requiring a trained supervisor to visually observe the performance of the untrained person's duties is an important step towards eliminating the possibility of undeclared discoverable hazmat or improperly shipped hazmat from being loaded onto the aircraft.

The current exception also includes the term ''handling;'' however, the proposal removed that term because it was confusing to regulated entities. The FAA has understood the term ''handling,'' as used in the current CFR, to refer to the handling that would be required during the loading of the aircraft. The industry's application, however, has been inconsistent. Although the FAA is eliminating this term, the FAA still recognizes that those people who load must handle the cargo. The removal of the term ''handling,'' however, eliminates any confusion over the breadth of the exception.

V.11. Recordkeeping Requirements

V.11.A. Location

Comments

A number of commenters raised concerns with the proposed amendments to the recordkeeping requirements. The proposed rule would have required the certificate holder to maintain signed records of each training course for the last three years. ATA Airlines noted that this is not in keeping with current practices that allow paper records to be discarded after 90 days if they are entered into an automated record keeping system. ATA encouraged the FAA to accept a centralized, computerized corporate record that is accessible by field locations. Many of the carriers stated that they have electronic files and databases and oppose a manual file system as a step backwards.

The proposed rule also would have required that the records be maintained at the location where the person performs or supervises the hazmat function. Many commenters opposed this proposed requirement. ALPA stated that records should be maintained ''at the company headquarters or at a facility that is charged with keeping such records.'' Columbia Helicopters noted that because many certificate holders affected by the NPRM operate from multiple sites, frequently rotating aircrew and maintenance personnel ''moving records is an unnecessary burden and greatly increases the likelihood of loss or administrative error.'' All commenters agreed that allowing computer records that can be accessed from various locations is the best option.

The proposed rule also would require the certificate holder to maintain records on its independent contractors and subcontractors. UPS believed that the certificate holder should not have to maintain records for its contractors and subcontractors. It stated that such a requirement may blur the relationship and ''give rise to a presumption that personnel employed by the contractor are employees of the certificate holder.''

FAA Response

The FAA agrees with the commenters that the worker training records should not be required to be kept as a written record. In the final rule, the FAA is clarifying that the part 121 and part 135 operators have the responsibility to determine the method of recordkeeping (electronic, manual, etc). This allows the certificate holder to manage its recordkeeping program in a manner appropriate to its business. The worker training records may be maintained by any method (including electronic). The records may be maintained in a central location provided that they can be made available upon request at the location of the employee. Contractors performing or directly supervising a job function listed in §§ 121.1001 or 135.501 for, or on behalf of a part 121 or part 135 operator will be required to comply with the training requirements of 14 CFR. A certificate holder is responsible for ensuring that its workers are properly trained. A contractor performing or directly supervising a job function listed in §§ 121.1001 or 135.501 for, or on behalf of the part 121 or part 135 operator represents the same responsibility to the certificate holder as a direct employee. Therefore, since the part 121 or part 135 operator is responsible for maintaining the records for all direct employees performing or directly supervising a function listed in §§ 121.1001 or 135.501 for, or on behalf of the part 121 or part 135 operator, it should also be responsible for maintaining the records of contractors performing or directly supervising the same job functions.

V.11.B. Content

Comment

A number of carriers commented on the signature requirement in the proposed recordkeeping rule. Proposed §§ 121.804(c)(3) and 135.504(c)(3) (adopted as §§ 121.1007 and 135.507) would have required training records to be signed by a person designated by the Director of Training. ASTAR Air Cargo pointed out that § 121.401(c) states: ''When the certification required by this paragraph is made by an entry in a computerized recordkeeping system, the certifying instructor, supervisor, or check airman must be identified with that entry. However, the signature of the certifying instructor, supervisor, or check airman is not required for computerized entries.'' ASTAR along with ATA Airlines, Southwest, Chautauqua Airlines, Ameristar, FedEx, AMR Corporation, and the Air Transport Association all supported eliminating the signature requirement. Ameristar, Fed Ex, ATA and AMR Corporation also pointed out that there is no Director of Training, so requiring that individual's signature implies a requirement that is not possible.

ASTAR also believed that the description of the training course required by proposed §§ 121.804(c)(4) and 135.504(c)(4) (adopted as §§ 121.1007 and 135.507) is redundant and not required since a full description of the training program is contained in the FAA-approved Training Manual.

FAA Response

The FAA agrees with the commenters' suggestions, and in the final rule, the FAA is eliminating the requirement for the signature. The FAA also did not

intend to require that certificate holders employ a Director of Training. The FAA is instead requiring that the individual who is providing the hazmat training be identified on the training record. The contents of the training records will be the same as 49 CFR 172.704(d), ICAO TI 1;4.2.4, and IATA DGR 1;1.5.4.1. The FAA is harmonizing the contents to eliminate duplication of recordkeeping. The same records required under this rulemaking can be used for compliance with all hazmat regulations having the same requirements (49 CFR 172.704(d), ICAO TI 1;4.2.4, and IATA DGR 1;1.5.4.1).

V.12. Curriculum—Proposed Appendix N (Adopted as Appendix O)

Comments

Many commenters stated that the training curriculum set forth in proposed Appendix N (adopted as Appendix O) goes beyond the knowledge needed to fulfill the given job function. ATA and Southwest Airlines called the training ''excessive.'' ATA went on to argue that ''excessive training inundates employees with needless information and requirements that are extraneous to their specific responsibilities and—at best—distracts from the central purpose of job specific training, diluting the effect of training on material relevant to their function. At worst, it confuses employees about their assigned roles and responsibilities.''

United and Midwest Airlines urged the FAA to abandon the idea of a one-size-fits-all training program and allow the certificate holder to tailor the training subject matter to the employee's job functions. Chautauqua Airlines stated that its current program has been approved by the FAA, but would not be acceptable under the proposed rule since the programs are not divided into specific modules. Chautauqua argued that to prepare a hazmat program that follows the prescribed curriculum ''would require significant efforts by various business unit training organizations internal to CHQ, costing both time and money.''

AMR Corporation explains that a flight attendant will greet a customer and/or help a customer with luggage after the customer has interfaced with at least one of its agents trained in dangerous goods acceptance, and after passing through TSA-controlled checkpoint where security screeners are tasked with looking for threatening objects. Flight attendants are trained in the safety of the passenger. They are trained to handle a situation in flight where a substance may be leaking or found to be inappropriate in the cabin. Training in documentation checks and acceptance guidelines would not increase the awareness or effectiveness of these employees in identifying hidden dangerous goods.

Furthermore, AMR Corporation noted that its dispatchers do not supervise the loading, nor do they perform other load planning functions. The commenter added that a dispatcher may be tasked with contacting Air Traffic Control, Airport Rescue and Fire Fighting, or the Federal Aviation Administration; however, dangerous goods acceptance training would not improve his or her ability to assist the flight crew.

NATA stated that persons required to be trained on Module 6 but not 5, should not be required to be trained on Module 8. In order to do their jobs properly, NATA said that these persons do not need to know the ''use of hazardous materials tables, proper shipping names, hazard class definitions, UN/ID numbers, or packing groups'' as described in Module 8. ATA believed that the FAA could greatly alleviate the unnecessary burden by aligning them with the ICAO Technical Instructions. The ICAO TI allows the carrier to tailor the training content for each employee group, making it commensurate with job duties of the specific employees in question.

ASTAR Air Cargo made a similar request and urged the FAA to include the statement ''Each Hazmat employee must be provided only that function specific training concerning each of the areas of training which are specifically applicable to the operation the employee performs.'' ASTAR pointed out that this suggested language is nearly identical to that of CFR title 49 and would allow operators to tailor the training as necessary.

ATA Airlines, Delta, and UPS believed that proposed Table 1, which defined training requirements based on Job Function defined by Categories of Personnel, is confusing and will require interpretation. ATA also stated that there is no differentiation between levels of knowledge required based on actual involvement in the dangerous materials transport process. UPS wanted the rule to clarify that the level of training should be commensurate with the employee's responsibilities. UPS urged the FAA to place proposed Appendix N into an advisory circular so that certificate holders would have greater flexibility in structuring their own training programs.

As stated in the comments submitted by ATA, ''ATA's will-not-carry members also have FAA-approved training programs that provide for HMR instruction. Indeed, even though they do not transport hazmat, they provide recognition training to acceptance employees to enable them to recognize and refuse hazmat if it is offered to their carrier.'' Furthermore ATA stated that carriers provide ''persons engaged in passenger and baggage check-in services (e.g., skycaps, ticket counter agents, flight attendants, etc.) with recognition training and function-specific training on relevant hazmat topics.'' ATA also stated ''the FAA could greatly alleviate the unnecessary burden on carriers by specifically authorizing them, as the ICAO Technical Instructions provide, to tailor training content for each employee group, making it commensurate with job duties of the specific employees in question. The ICAO Technical Instructions are a reasonable starting point for that assessment. This allows carriers to plan in accordance with their own business structures.''

Express.Net Airlines was concerned that no standard exists for the length of time necessary to conduct training and points to the FAA's publication ''FAA National Operations and Training Manual for the Acceptance and Transport of Dangerous Goods in Air Transportation.'' In that document, the FAA recommends an 8-hour initial training program and a 2-hour recurrent training program for operators that elect to carry hazmat.

ALPA believed that the proposed modules listed for pilot crewmembers are adequate provided that the training is ''specifically tailored for the duties and responsibilities of the flight crew member.'' ALPA requested that the FAA add a note to Tables 1 and 2 stating that ''Awareness-level training of components within a module may be appropriate if the person (employee) does not actually perform those functions.''

Atlas Air asked the FAA to clarify whether all-cargo carriers and passenger carriers would be required to follow the same curriculum.

Jet Arizona, Aviation Services Unlimited, and Southwest Airlines commented on recognition training for will-not-carry operators. Jet Arizona believed that will-not-carry certificate holders should only be required to train to the level required for their crews to recognize hazmat for the purposes of preventing it from being loaded on that company's aircraft. It believed that additional training creates an unnecessary burden that the FAA has not justified adequately with data. Aviation Services Unlimited also commented that to require operators to change their already-successful

programs only unnecessarily increases the burden.

Ameristar Air Cargo suggested that in Module 13 the FAA delete the words ''Policies and procedures regarding handling, packaging, and transport of hazardous materials moving by means other than air.'' The commenter said that this element leaves too much interpretation to the FAA inspector approving a hazardous materials program. The commenter suggested the following language: ''Applicable policies and procedures regarding handling, packaging, and transport of hazardous materials moving by means other than air.''

Express.Net Airlines noted that Table 1 of proposed Appendix N was incomplete because Module 10 'Notice to Pilot-in-Command' training would not have been required for category 3 workers; ''persons who handle, store, and load or unload packages, passenger baggage or cargo'' on the aircraft.

Menlo Worldwide Forwarding recommended that an additional exception be included in the rule to allow the establishment of a stand-alone training and supervision program administered by an integrated freight forwarder that contracts multiple certificate holders to transport dangerous goods and is subject to review and approval of the FAA. The commenter added that air carriers would incorporate the training regimen into their approved programs by referring to the integrated freight forwarder's training program and services in their Operations Manuals.

Direct Flight stated that simply because requirements may be suitable for a part 135 scheduled commuter airline does not mean those requirements are appropriate for a small on-demand carrier simply because the way each operates is very different. Continental believed that the NPRM inappropriately combined part 121 and part 135 duties together. Continental stated that ''there are many specific duties for Part 135 carriers that do not apply to a Part 121 carrier. For example, there are many Part 135 carriers that will have their flight crews assigned to tasks that are not performed by the flight crew of Part 121 carriers (i.e., loading baggage and cargo into the airplane).''

FAA Response

Many commenters disagreed with the proposal to mandate curriculum for a part 121 or part 135 operator's hazmat training program. The FAA agrees, and in the final rule the FAA is closely aligning the training requirements in 14 CFR parts 121 and 135 with those in the 2005 edition of the ICAO TI and the IATA DGR. The certificate holders believed that the ICAO TI standards are the best common reference point to facilitate the uniform, seamless handling of hazmat in international air transportation. By accepting the operator's comments indicating that only part 121 and part 135 operators themselves can develop specific detailed hazmat training curricula, the FAA believes that the need to provide model hazardous material training programs has been reduced. The direction taken by the ICAO Dangerous Goods Panel in 2002 (published in the 2005–2006 edition of the ICAO TI and IATA DGR) was a departure from the traditional ''categories of staff'' to a task-oriented (function-specific) approach, which is the same approach the FAA is adopting. Additionally, in the final rule, the FAA closely aligns the required training for persons performing or directly supervising job functions listed in § 121.1001 or § 135.501 for, or on behalf of a will-not-carry certificate holder with the requirements for handling only non-dangerous goods in the 2005 edition of the ICAO TI. The training standards will apply to both all-cargo and passenger carriers.

The part 121 or part 135 operators will also be required to provide training on any operator specific policies and procedures not specifically mentioned in new Appendix O. The FAA believes that each certificate holder currently trains all employees in their individual policies and procedures, so this should not be an additional burden. This allows part 121 or part 135 operators to train in accordance with their own business structures. If a certificate holder's training program differs from the ICAO TI format, it should discuss this with the FAA during the approval process.

Therefore, in the final rule the FAA is clarifying that the part 121 or part 135 operator has the responsibility to determine which employees meet the job function requirement to train, the level of training required, the delivery method of administering the training, including a test to verify comprehension, and the method of recordkeeping (electronic, certificate, etc). The FAA is not specifying requirements for these processes. The FAA believes these amendments will allow the certificate holder to manage their FAA approved hazmat training programs as appropriate. The final rule will not contain the training modules. Instead, Table 1—Operators That Transport Hazardous Materials—Will-Carry Certificate Holders, and Table 2—Operators That Do Not Transport Hazardous Materials—Will-Not-Carry Certificate Holders, will provide the minimum aspects to be covered in the part 121 and part 135 operator's hazmat training program for each job function performed. These minimum requirements will apply to persons performing or directly supervising the job function.

Given the changes that the FAA is making to the final rule, the FAA anticipates that most part 121 or part 135 operators should not have to substantially change their training programs if their current FAA-approved hazmat training program contains the minimum requirements required by 2005 edition of the ICAO TI and IATA DGR. Standards for will-not-carry training will require that both part 121 and part 135 will-not-carry certificate holders conduct recognition training to assist persons directly supervising or performing a job function covered in Appendix O, Table 2, identifying possible undeclared, as well as declared, hazmat.

The specific job function specified in Appendix O will determine the training required. In-depth training is intended to give detailed knowledge of the requirements pertaining to the specific job function that the person performs. General-awareness training is intended to provide a general overview of the regulatory scheme.

V.13. Training Method

Comments

Atlas Air, Northwest Airlines, AMR Corporation, Express.Net Airlines and ALPA were concerned that the proposed requirement would eliminate computer-based training. In addition, the proposed rule would require an interactive instructor to be available to address any questions or concerns. ALPA believed that recent changes in computer-based training have made that possible. The Dangerous Goods Council urged the FAA to allow an electronic instructor to be used who could be immediately available by instant message, e-mail or phone.

FAA Response

Part 121 or part 135 operators have the responsibility for ensuring that the specific level and duration of hazmat training is adequate and appropriate for each worker. While the responsibility for providing the hazmat training remains with the certificate holder, the FAA has the responsibility for approving the hazmat training program. Hazmat training may be provided by company training programs, computer-based programs, self-guided CD training programs, outside training firms or consultants, educational institutions, or

any other type of organization offering training. Electronic instruction is permitted and an on-site instructor is not required. Hazmat training may be provided by the part 121 or part 135 operator or other public or private sources, including training classes that are offered by the IATA to the extent that the IATA training satisfies the FAA-approved hazmat training program. The part 121 or part 135 operator must ensure that the hazmat training program provides a method to respond to students' questions prior to certifying completion of the training and that all persons are tested to verify understanding of the regulations and requirements.

V.14. Single-Pilot Operations

Comments

Several commenters were concerned that the FAA did not adequately address the issue of the single-pilot operation in the proposed rule. NATA provided an example of a part 135 on-demand carrier using Cessna Caravans (which require only one pilot) in a cargo configuration to regularly transport newspapers for delivery. On occasion, the newspaper employee delivering or picking up the newspapers may assist the pilot in the loading or unloading of these papers. NATA believed that proposed § 135.503(a) would require the certificate holder to provide hazmat training of this helpful person. NATA saw no justification for this restrictive requirement. The pilot instead could be trained as a supervisor and then permit the newspaper employee to assist in performance of the transport-related function under direct supervision similar to the requirements of the foreign locations exception (see proposed § 135.503(f)). NATA believed that, given the nature of part 135 on-demand operations, which use any and all airports on short notice, the principle of direct supervision is reasonable as a general rule rather than the exception.

Direct Flight Inc. also urged the FAA to— (1) clarify the notation ''would remain subject to the hazmat training requirements in § 135.333,'' since the proposal removes § 135.333; and (2) drop that portion of the NPRM which applies to small, will-not-carry, on-demand part 135 operators and instead retain the language contained in § 135.333(c).

FAA Response

In the final rule, the FAA is deleting the language ''would remain subject to the hazmat training requirements in § 135.333,'' since that language is only applicable to the current hazmat training requirements. Hazmat training requirements are being relocated in subpart K.

The part 135 operator has the responsibility for ensuring that the level of training is adequate and appropriate for each employee. In the situation described by NATA, the FAA agrees that the pilot could be trained in accordance with the FAA's hazmat regulations and supervise the loading function pursuant to § 135.505. The on-demand operator or an operator using one person for loading has the responsibility for determining the adequacy of training. This is consistent with current requirements under § 135.333(d). In fact, the requirements under § 135.333(d) have been expanded because under the final rule, single-pilot operators can use the new-hire exception. Single-pilot operators also will only be required to conduct recurrent training every 24 months once the FAA harmonizes the recurrent training with international and industry standards.

V.15. Repair Stations (Part 145)—General

Comment

One commenter noted that it does not appear that the repair stations have any transitional period. ATA noted that carriers already notify repair stations of their will-carry or will-not-carry status and their procedures for HMR compliance.

FAA Response

The final rule does not contain a transitional period to allow part 145 repair stations to train their workers because part 145 repair station workers are already required to be trained if they are hazmat employees, as defined in 49 CFR 171.8. Repair stations that perform or directly supervise a job function listed in §§ 121.1001 or 135.501 for, or on behalf of a part 121 or part 135 operator would need to be trained in accordance with the FAA's requirements as well. This is the same requirement for any contractor or subcontractor performing or directly supervising a job function listed in §§ 121.1001 or 135.501 for, or on behalf of a part 121 or part 135 operator. For instance, part 145 repair stations performing work for, or on behalf of will-not-carry certificate holders who perform loading functions for the part 121 or part 135 operators will need to be hazmat trained during the 15-month transition period. Additionally, most part 121 and part 135 operators have indicated that they currently notify the repair stations of their status (will-carry or will-not-carry). Consequently, the notification requirement adopted by the FAA in the final rule should not pose an additional burden. In the final rule, the FAA is simply making notification mandatory and enforceable.

The requirement to certify to the FAA that all hazmat employees have been trained as required by 49 CFR 172.704(d) is satisfied by providing copies of the records required by 49 CFR 172.704(d), or by submitting a letter from an authorized representative of the repair station indicating that all hazmat employees are trained in accordance with 49 CFR. The only additional hazmat training requirement would be for the repair station employees who directly supervise or perform a job function listed in § 121.1001 or § 135.501 for, or on behalf of the part 121 or part 135 operators, such as loading the certificate holder's aircraft for transport. The FAA believes that only a very small percentage, if any, of part 145 repair station employees actually load the part 121 or part 135 operator's aircraft for transport unless the repair station also is certified under part 121 or part 135 which would impose the requirements of part 121 or part 135 of 14 CFR currently.

Comment

ALPA agreed with the FAA's decision to include part 145 Aircraft Repair Stations in the NPRM. The commenter said that a significant potential exists that materials or components being shipped to, shipped from, or returned to service could contain hazardous materials. Northwest Airlines, AMR Corporation, Midwest Airlines, and NATA were concerned that the training program for repair stations would be burdensome because repair stations would have to be trained and current in every carrier's hazmat program. AMR Corporation noted that repair stations will simply pass the cost of training down to the certificate holder. AMR Corporation stated that ''if the FAA established repair stations as ''shippers'' and regulated the shipping community, the FAA could go further in promoting safety in this area.

NATA did not object, in concept, to the FAA's desire to reference 49 CFR 172 within the part 145 regulations. NATA was concerned with the increased training burdens on the certificate holder. NATA contended that it is redundant for a repair station employee, already trained under their employer's program, to then be trained by the certificate holder if performing a TRF. NATA also believed that the real problem in the industry is lack of education.

The NTSB supported the repair station proposal and believed that it will enhance the likelihood that repair stations will provide appropriate hazardous materials training for their employees. Safety recommendation A–97–73 called for the FAA to require air carriers to ensure that maintenance facility personnel, including mechanics and shipping, receiving, and stores personnel, at air carrier-operated or subcontracted facilities are provided initial and recurrent training in hazardous materials handling. The NTSB also supported the notification requirement.

Chromally Gas Turbine Corporation stated that the proposed requirement would require training and documentation for everyone in a ''repair station who even handles hazardous waste and/or labels hazardous waste containers which will never be involved in air transport.''

The Aircraft Electronics Association (AEA) believed that hazmat training, where needed, can be incorporated into training programs already required under 14 CFR 145.163. AEA also requested that the FAA adopt a narrowly tailored exemption for repair stations that hold only radio and/or instrument ratings (plus an associated airframe rating) for purposes of avionics installations. AEA stated that most repair stations holding these ratings do not handle hazmat, and those that do already are required to have appropriate training programs by the hazmat training requirements of title 49.

Boeing urged the FAA to adopt a new § 145.5(c) that would allow the repair station to receive acknowledgement from the air carrier that its training program is adequate. Boeing believed that such a provision would be adequate if a certificate holder verifies the adequacy of the repair station's controls over the processes, procedures, and training of persons performing transport-related functions for a repair station. The option to require specific training, if deemed necessary, provides flexibility to both the certificate holders and repair stations while maintaining adequate controls to ensure the proper handling and shipping of hazardous materials, and the continued safety of aircraft and personnel.

FAA Response

In the final rule, the FAA is removing the words ''and use in repair operations aircraft components, consumable materials on behalf of the operator regulated under 49 CFR parts 171 through 180'' from § 145.165. By making this amendment, the FAA seeks to clarify that the repair stations intended to be covered under this proposal are the part 145 repair stations that perform work for, or on the part 121 or part 135 operator's behalf and are regulated by 49 CFR parts 171 through 180. This, by definition in 49 CFR, would include only the repair stations that offer or accept hazardous material for transportation. The remainder of the requirement is retained. All part 145 repair stations that are regulated under 49 CFR currently are required to have hazmat training in place.

The FAA is not adopting the recommendation suggested by Boeing that carriers approve a repair station's training program. Repair stations may perform duties as hazmat shippers, and when they do, they are regulated under 49 CFR. However, if they perform or directly supervise a job function listed in §§ 121.1001 or 135.501 for, or on behalf of a part 121 or part 135 operators, such as loading of the certificate holder's aircraft, they are required to be trained under the FAA's hazmat training requirements.

V.16. Application for Part 145 Certificate

Comments

Ameristar Air Cargo believed that employees should not have to be trained by the time the application is filed, but instead should be required to be trained prior to the repair station being issued a certificate. Ameristar also believed that proposed § 145.5 is very clear in regards to required training, making the proposed language of § 145.11(a)(5) redundant.

FAA Response

The FAA agrees with Ameristar that the repair station employees should have to be trained prior to FAA issuing a part 145 certificate or change in rating, not at the time of application. The final rule requires that the repair station certify that all hazmat employees have been trained as required by 49 CFR part 172 subpart H prior to issuing the repair station certificate or rating. For a change in rating, a repair station is not required to submit another certification if previously provided.

V.17. Notification of Hazardous Materials Authorizations

Comments

Ameristar and AEA believed that the requirement to notify all workers is very broad in scope. AEA believed that the proposed requirement would needlessly encompass personnel such as administrative employees who may have no involvement with the work being performed for the part 121 or part 135 carriers. This notification requirement should be limited to—(1) repair station employees who actually perform maintenance services on parts, components, or appliances belonging to part 121 or part 135 carriers; (2) personnel responsible for receiving and shipping those items; and (3) the supervisory personnel overseeing these two categories of workers.

AEA also believed that the reference to ''each certificate holder'' is vague and should be limited to ''each certificate holder for which the repair station provides maintenance services.''

FAA Response

The FAA believes that the notification requirement is essential and a very minimal requirement for hazardous material communication information. The FAA has determined that it is essential for a repair station to know whether its customers are will-carry or will-not-carry operators. In the final rule, the FAA is clarifying that the notification requirement applies only to the repair station employees, its contractors, or subcontractors that handle or replace aircraft components or other items regulated by 49 CFR parts 171 through 180. This will eliminate the possibility of the notification process applying to personnel such as administrative or others who do not come into contact with any aircraft components.

Comment

Both Northwest Airlines (NWA) and Aircraft Electronics Association questioned the need for the certificate holder to train repair station employees as referenced in proposed § 121.803(a). NWA stated that this requirement could easily double or triple the amount of training that it would be required to administer. Aircraft Electronics believed that this requirement conflicts with the existing training requirements in 49 CFR, which imposes the requirement on the hazmat employer.

FAA Response

In the final rule, § 145.165(b) states that repair station workers must not perform or directly supervise any job function listed in § 121.1001 or § 135.501 for or on behalf of the part 121 or part 135 operator unless that person has completed training under the part 121 or part 135 operator's hazmat training program. When performing or directly supervising any job function listed in § 121.1005 or § 135.501 for or on behalf of a part 121 or part 135 operator, a repair station worker is not any different than any other contractor or subcontractor performing or directly

supervising a covered job function including loading the certificate holder's aircraft. Any contractor loading the aircraft for transportation must be trained under the FAA's Approved Hazardous Materials Training Program for that part 121 or part 135 operator. There is not a requirement for the part 121 or part 135 operators to train all repair station employees, only those who perform a covered function for or on behalf of the certificate holder. For instance, a repair station worker that loads COMAT onto an aircraft, or otherwise prepares the cargo for air shipment, for or on behalf of the certificate holder, must be trained in the certificate holder's hazmat training program.

Training conducted to comply with 14 CFR may meet the requirements in 49 CFR depending on the content of the training program.

VI. Section-by-Section Discussion of Final Rule

Part 119—Special Federal Aviation Regulation (SFAR) No. 99

The NPRM proposed to establish an SFAR that would contain all current part 121 and part 135 hazmat training regulations that would be replaced by the proposed changes. The SFAR is adopted without changes. The SFAR will expire 15 months after the effective date of the rule.

As proposed, all existing hazmat training requirements in §§ 121.401(a)(1), 121.433a, 135.323(a)(1), and 135.333 are moved into Special Federal Aviation Regulation (SFAR) No. 99. This is designed to make it easier for certificate holders to identify existing requirements and distinguish them from new requirements. The remaining parts of these regulations that are not hazmat-related will remain in their respective sections. New §§ 121.1003 and 135.503 (proposed as §§ 121.802 and 135.502) will require hazmat training for part 119 certificate holders conducting operations in accordance with part 121 and/or part 135 of 14 CFR.

The SFAR will exist for 15 months after the effective date of the final rule, during which time certificate holders certificated on or before November 7, 2005 will be responsible for bringing their hazmat training programs into full compliance with the new regulations. During the 15-month transition period, current part 121 and part 135 operators may continue to comply with the current requirements or elect to comply with the new requirements. As of February 7, 2007, all part 121 and part 135 operators are required to comply with the new training requirements.

Section 119.49 Contents of Operations Specifications

The FAA proposed to redesignate the current language of § 119.49(a)(13) as (a)(14) and add a new (a)(13) to provide that a certificate holder's operations specifications must include either an authorization permitting the part 121 or part 135 operator to handle and transport hazmat (will-carry certificate holder) or a prohibition against handling and transporting hazmat (will-not-carry certificate holder). The FAA did not receive any comments on this section. The references to paragraph (b) and (c) were inadvertently left out of the NPRM. The NPRM preamble discussed amending § 119.49 to show that all part 121 and 135 operators' operations specifications will be required to show the appropriate authorization.

Sections 121.135 and 135.23 Manual Contents

The FAA proposed that the current manual requirements in 14 CFR 121.135(b)(23) and 135.23 (p) be amended to require that both will-carry and will-not-carry certificate holders include procedures and information to assist each person directly supervising or performing a job function listed in § 121.1001 or § 135.501 for, or on behalf of a part 121 or part 135 operator in recognizing hazmat. The FAA is adopting the proposed provisions with some modifications, which are discussed below. The FAA believes that the proposed changes are necessary to clarify who is covered by the requirements and to more clearly specify the types of procedures and policies that must be provided. Some procedures are common to both will-carry and will-not-carry certificate holders. Other procedures vary, depending upon whether the carrier is a will-carry or will-not-carry certificate holder.

A. *Both will-carry and will-not-carry certificate holders:* In the final rule, the FAA is maintaining current manual requirements for both will-carry and will-not-carry certificate holders, with some amendments. The final rule requires that manuals for both will-carry and will-not-carry certificate holders contain procedures for rejecting packages not properly prepared and offered for shipment under 49 CFR parts 171 through 180, or that appear to contain hazmat. This is a change from the current requirements and was proposed because the current language only refers to identifying or recognizing packages marked and labeled as hazmat. The FAA wants certificate holder personnel to be better trained so that they are more likely to stop either packages improperly offered for shipment as hazmat, or packages that contain undeclared hazmat shipments which provide indicia of hazmat to a trained individual (discoverable hazmat shipment).

Thus in the final rule, the FAA is requiring part 121 and part 135 operators to have procedures for rejecting materials that appear to be improperly prepared or possible undeclared hazmat. The FAA has found that in many cases packages not marked and labeled as hazmat still display indicators that would lead a trained person to suspect the presence of hazmat. For example, terms such as ''chemicals,'' ''lighters,'' ''paint,'' or ''solvents'' on packages or accompanying documents not prepared as a hazmat indicate the possible presence of an undeclared hazmat. Additionally, trigger lists (such as the ones found in the ICAO TI Part 7, Chapter 6, or in IATA DGR Part 2 Chapter 2) may be used to alert personnel to the possible presence of hazmat in items not properly identified as hazmat.

In the final rule, the FAA adopts the requirement for both will-carry and will-not-carry certificate holders to communicate to crewmembers and persons, including contractors and subcontractors performing or directly supervising job functions listed in §§ 121.1001 and 135.501 for, on behalf of, the part 121 or part 135 operator of the operator's procedures for notifying DOT of hazmat incidents and discrepancies. (See §§ 121.135(b)(23)(ii)(B) and 135.23(p)(2)(ii)). Again, this is a change from the current requirements, which require a certificate holder to include this information in its manual only if the certificate holder has will-carry status.

The manual also must communicate the terms under which a certificate holder, including a will-not-carry certificate holder, may carry hazmat in accordance with the passenger and crew exceptions listed in 49 CFR 175.10. Currently, training for these hazmat exceptions are included in the will-carry and will-not-carry training programs based on long-standing advisory circular guidance. This amendment will make the training enforceable.

In the final rule, the FAA also requires part 121 and part 135 operators to indicate in their manuals whether they are will-carry or will-not-carry operators, as specified in the operations

specifications. (See §§ 121.135(b)(23)(ii)(C) and 135.23(p)(2)(iii)). This information currently does not have to be in the certificate holder's manual.

B. *Will-carry certificate holders only:* A part 121 or part 135 operator authorized as a will-carry operator will be required to provide to crewmembers and persons, including contractors and subcontractors performing or directly supervising job functions listed in §§ 121.1001 and 135.501 for, or on behalf of, the part 121 or part 135 operator with additional procedures and information regarding the transport of hazmat in its manual. The covered persons include any other person who directly supervises or performs a job function listed in § 121.1001 or § 135.501 for, or on behalf of a part 121 or part 135 operator under any other arrangement.

Additionally, part 121 or part 135 operators electing will-carry status are required to provide procedures and information to ensure that—

- The packages containing hazmat are properly offered, accepted, handled, stored, packaged and loaded on the aircraft in compliance with 49 CFR;
- Requirements for notice to the pilot in command (49 CFR 175.33) are met; and
- Aircraft replacement parts shipped as COMAT, consumable materials, and any other item regulated under the HMRs, are properly handled, packaged, and carried on board the aircraft.

C. *Will not carry operators:* There are no manual requirements specific only to will-not-carry certificate holders. The manual requirements are shared with the will-carry certificate holders.

Transfer of Hazmat Provisions to SFAR No. 99

All existing hazmat training requirements in §§ 121.401(a)(1), 121.433a, 135.323(a)(1), and 135.333 are moved into Special Federal Aviation Regulation (SFAR) No. 99 to make it easier for certificate holders to identify existing requirements and distinguish them from new requirements. New §§ 121.1003 and 135.503 (proposed as §§ 121.802 and 135.502) will require hazmat training for part 119 certificate holders conducting operations in accordance with part 121 and/or part 135. Section 121.401 is shown in the regulatory text only to show how the section reads once the hazmat training requirements are removed. The SFAR will expire on February 7, 2007.

Part 121—Subpart Z and Part 135 Subpart K—Hazardous Materials Training Program

The FAA notes that the numbering of new sections in part 121 has changed due to the adoption of new rules since the NPRM was published. In the final rule, therefore, the new subpart and sections are renumbered accordingly. In addition, the FAA is skipping numbers in between sections to allow room for the addition of new sections in the future. Therefore, regulations proposed as subpart Y §§ 121.801 through 121.804 are renumbered as subpart Z §§ 121.1001 through 121.1007 in the final rule. The FAA is renumbering sections in part 135 subpart K for the same reason. Sections in subpart K that were proposed as §§ 135.501 through 135.504 are renumbered as §§ 135.501 through 135.507 in the final rule.

Hazmat training rules in part 121, subpart Z, and part 135, subpart K, require all air carriers and commercial operators to train each crewmember and person who directly supervises or performs a job function listed in § 121.1001 or § 135.501. The FAA believes that adequate training of each person involved in a job function listed in § 121.1001 or § 135.501 will greatly enhance safety in air transportation and help avoid life-threatening incidents. Also, due to the frequency of undeclared shipments, the FAA believes that a broader training program, which includes hazmat recognition training, must be mandated for all part 121 and part 135 operators. However, as discussed below, the FAA is removing the term ''curriculum'' and the modules previously included in proposed Appendix N (adopted as Appendix O) of part 121 in this final rule.

1. *Applicability and definitions (§§ 121.1001 and 135.501)*—The final rule includes new subparts that prescribe requirements for certificate holders to train crewmembers and persons directly supervising or performing a job function listed in § 121.1001 or § 135.501, whether the part 121 or part 135 operator is a will-carry or will-not-carry operator. The will-carry or will-not-carry status is relevant only to the content of the training, not to the requirement to train. The FAA is removing the term ''curriculum'' because the FAA has decided against mandating a curriculum. Instead, it will be the certificate holder's responsibility to determine which workers require certain training based on the job functions they perform. The certificate holder will need to determine the level, content and duration of training.

The current requirements in §§ 121.433a and 135.333 apply only to persons handling or carrying hazardous material, even though the approved hazmat training programs contained in the certificate holder's manuals indicate the training is currently applied on a broader basis. The hazmat training requirements contained in the final rule apply to a broader group of individuals than covered in the current regulations.

1.A. *Paragraph (a):* Paragraph (a) identifies who is required to receive hazmat training. The training requirements cover crewmembers and persons who directly supervise or perform a job function listed in § 121.1001 or § 135.501 for, or on behalf of a certificate holder in the transport of an item on board an aircraft. Part of the training includes teaching individuals how to recognize materials that may be hazmat but are improperly prepared for shipment. The NPRM included a list of specific job positions and the type of training they needed. The final rule establishes training based on the job function performed by the employee. Currently, §§ 121.433a and 135.333 forbid operators from using a person to perform, and forbids a person from performing, ''any assigned duties and responsibilities for the handling or carriage of dangerous articles and magnetized materials governed by Title 49 CFR'' unless the person has been trained. The NPRM proposed applicability provisions in §§ 121.801 (adopted as § 121.1001) and 135.501 that were broad enough to cover not only those persons performing a job function listed in § 121.1001 or § 135.501, but also those persons supervising the performance of that job function. This ensured that the certificate holder identified and trained each person who could reasonably be foreseen as supervising or performing a TRF, whether or not it was part of his or her day-to-day job duties (function-specific training). In the final rule, the FAA is clarifying that the training requirement does not apply to every supervisor, but rather to the ''direct'' supervisor who oversees the performance of a job function listed in § 121.1001 or § 135.501.

In this final rule, the FAA also clarifies the portion of the NPRM preamble that discussed when an individual's job function would necessitate training. The NPRM language that generated confusion is as follows: ''Whether a person were officially assigned to perform a job function would be irrelevant [to the need to train]. This would ensure that the certificate holder identifies and trains each person who could

reasonably be foreseen as performing or supervising a TRF, whether or not it is part of his or her job description.''

It was not the FAA's intent to require a part 121 or part 135 operator's entire work force to receive hazmat training. As an example, a person can be reasonably foreseen as performing or directly supervising a job function listed in § 121.1001 or § 135.501 when he or she may be asked to fill in for a sick or absent worker or supervisor. The certificate holder has the responsibility to determine which employees meet the ''function specific'' or ''assigned'' requirements to mandate training. The training requirements attach to the actual job function performed or directly supervised.

The FAA has also removed the job functions of ''unloading'' and ''carriage'' from the list of covered job functions in the final rule. This amendment brings the job functions covered in the training rule closely aligned with the 2005 edition of the ICAO TI and the IATA DGR hazmat training requirements. The FAA does not believe that removing these terms from the list of covered functions adversely impacts safety. First, the term ''unloading'' covers a job function that actually removes the item from the aircraft where it does not pose a danger. Second, FAA's research indicates that the personnel loading the aircraft are the same as the personnel unloading the aircraft. Since loading is a covered job function, these persons would be trained in accordance with the rule. Finally, if the unloaded cargo is subsequently loaded onto another aircraft, then the person would need to be trained. With regard to removing ''carriage,'' the FAA does not believe there is a safety issue since the term essentially incorporates all of the listed job functions and is not a stand-alone term.

1.B. *Paragraph (b):* Sections 121.1001 (b) (proposed as § 121.801(b)) and 135.501(b) set forth relevant definitions. Paragraph (b)(1) defines ''Company material (COMAT)'' as material owned or used by the certificate holder.'' COMAT is a term of art used in the aviation industry. The FAA is using the term to ensure that persons are trained to understand that COMAT classified as hazardous material must be marked, labeled, and identified as hazmat, and that there is no exception for the transport of hazardous material as COMAT for will-not-carry certificate holders. In the final rule the FAA is not changing this definition.

Paragraph (b)(2) defines ''initial hazardous material training.'' The definition of ''initial hazardous material training'' is consistent with the initial training requirement in 49 CFR part 172 subpart H, although 49 CFR does not specifically define initial hazmat training. In the final rule the FAA is not changing this definition.

Paragraph (b)(3) defines ''recurrent hazardous material training.'' The definition of ''recurrent hazardous materials training'' is also consistent with the way the term is used in 49 CFR part 172 subpart H, although under PHMSA's rules, this term is not defined. The NPRM proposed retaining an annual training requirement. However, the FAA is amending this proposal in the final rule to mandate recurrent hazardous material training every 24 months, consistent with the ICAO TI and the IATA DGR.

2. *General Requirement to Train (§§ 121.1003 and 135.503) (proposed as §§ 121.802 and 135.502))*—In the NPRM, the FAA proposed mandating a ''curriculum'' for both will-carry and will-not-carry certificate holders to improve the knowledge base of persons supervising or performing a TRF. The term ''curriculum,'' as used in the NPRM was widely misunderstood. Upon further consideration, the FAA realizes that the term ''content'' would have been a better description of the requirement. Actual curriculum (content) would vary depending upon the certificate holder's hazmat acceptance policy and the worker's job function. Standards for will-not-carry operators require that both part 121 and part 135 operators conduct training to assist those persons directly supervising or performing a job function listed in § 121.1001 or § 135.501 to identify possible undeclared, as well as declared, hazmat.

The training for will-carry operators covers two phases of training specified by the HMRs—general awareness training and function-specific training. The type of hazmat training necessary depends upon the job function performed or directly supervised. It is the responsibility of the certificate holder to ensure that the level of training is adequate and appropriate for each worker's job function. The specific level and duration of training is determined by the certificate holder, not the FAA.

2.A. *Paragraph (a)*—Sections 121.1003(a) and 135.503(a) (proposed as §§ 121.802(a) and 135.502(a)) require all hazmat training programs to include, at a minimum, the requirements of Appendix O of part 121. The training programs will ensure that each crewmember and person directly supervising or performing a job function listed in § 121.1001 or § 135.501 is trained to comply with the applicable requirements of 49 CFR parts 171 through 180, and that persons are trained to look for certain indicia that may indicate an undeclared (discoverable hazmat) or improperly prepared hazmat item. The FAA is closely aligning the job functions and the associated minimum aspects of training with the 2005 edition of the ICAO TI and the IATA DGR standards.

2.B. *Paragraph (b)*—Under paragraph (b), a certificate holder must develop an organized training program that will build upon a person's knowledge of hazmat regulations, keep up with current requirements, and focus on any problem areas. This requirement is consistent with current regulatory provisions. With certain exceptions, each crewmember and person performing or directly supervising a job function listed in § 121.1001 or § 135.501 will be required to receive initial hazardous materials training prior to performing or directly supervising that job function.

2.C. *Paragraph (c)*—Under paragraph (c) the certificate holder must obtain FAA approval of the hazmat training program prior to implementing the program. This requirement is consistent with the current training requirements in §§ 121.401 and 135.323.

3. *Training Requirement (§§ 121.1005(a) and 135.505(a)) (proposed as §§ 121.803 (a) and 135.503 (a))*—Sections 121.1005(a) and 135.505(a) provide that no certificate holder can use any crewmember and person to directly supervise or perform a job function listed in § 121.1001 or § 135.501, unless that person has satisfactorily completed the certificated holder's FAA-approved initial or recurrent hazardous materials training program within the past 24 months. A person is satisfactorily trained when that person understands the relevant training material and is capable of performing his or her job in compliance with both 49 CFR parts 171 through 180 and part 121, subpart Z, or part 135, subpart K, as applicable.

A person who has not received this training cannot be used to directly supervise or perform a job function listed in § 121.1001 or § 135.501, unless the conditions of an exception were satisfied.

4. *New Hire/New Job Functions—(§§ 121.1005(b) and 135.505(b)) (proposed as §§ 121.803(b) and 135.50(b))*—The FAA proposed two exceptions to the training requirements contained in §§ 121.1005(a) and 135.505(a). These exceptions apply to persons who are new hires or who are changing job functions and have not received the required initial or recurrent

hazmat training for the new job function. The new hire/new job function exception applies only to persons performing a job function involving storage incidental to transport, or loading of items on the part 121 or part 135 operator's aircraft for transport. This exception could not be used for persons performing or directly supervising any other job function listed in § 121.1001 or § 135.501 for, or on behalf of the part 121 or part 135 operator. The new hire/new job function exception can be applied for a period of not more than 30 days from either the date of hire or, for a change of job function, the date the person began performing the new job function.

To use this exception, the person would have to be under the direct visual supervision of another properly trained employee authorized to directly supervise him or her by the part 121 or part 135 operator. The direct supervisor must have successfully completed the certificate holder's approved initial or recurrent hazardous materials training program. In addition, the certificate holder must comply with the recordkeeping requirements in § 121.1007(b) or § 135.507(b) (proposed as §§ 121.804(b) and 135.804(b)), as applicable. The direct supervisor must observe the untrained person's performance to ensure that the job function is performed in compliance with both the FAA's regulations and the DOT's HMRs. Use of a video camera will not satisfy the direct visual supervision requirement. The requirement for the supervisor-to-worker ratio to be approved by the principal operations inspector or the principal security inspector is being removed. The FAA has determined that the requirement for the supervisor to visually observe the untrained person's performance provides sufficient oversight.

The new hire/new job function exception is similar to the exception in 49 CFR 172.704(c)(1) for multi-modal training in that it applies to new hires or persons changing job functions. However, unlike the exception in 49 CFR, this exception is only valid for 30 days from the date of employment or a change in job function. This is more limited than the new hire/new job function exception now in 49 CFR, which applies for 90 days after employment or a change in job function.

5. *Persons Working for More Than One Certificate Holder (§§ 121.1005(c) and 135.505(c)) (proposed as §§ 121.803(c) and 135.503(c))*—The second exception is in §§ 121.1005(c) and 135.505(c) and applies to workers who directly supervise or perform a job function listed in § 121.1001 or § 135.501 for, or on behalf of more than one part 121 or part 135 operator. Under this exception, a part 121 or part 135 operator using a person to directly supervise or perform a job function listed in § 121.1001 or § 135.501 need only train that person in its own policies and procedures and any additional information not covered by the other part 121 or part 135 operator's training program, in accordance with its own hazardous materials training program. In the final rule, the FAA is changing the term ''authorized, knowledgeable person'' to ''person designated to hold the records representing the other certificate holder.'' This change is necessary because there are no standards a certificate holder can apply to determine who is an ''authorized, knowledgeable person.'' However, a certificate holder should have an individual responsible for maintaining records.

The certificate holder can use this exception only if both of the following conditions are met:

(1) The certificate holder using this exception receives written verification from the person designated to hold the records representing the other certificate holder for whom the person works that the person has satisfactorily completed that certificate holder's required initial or recurrent approved hazardous material training for that specific job function in the last 24 months.

(2) The certificate holder who trained the person has the same will-carry or will-not-carry status listed in its operations specifications as the certificate holder using the exception. This also applies to an employee who previously worked for a will-not-carry certificate holder providing any policy differences are communicated to the employee.

The NPRM contained an example for a repair station that was misunderstood. The only repair station workers required to be trained in the part 121 or part 135 operator's FAA-approved training program are the repair station workers performing or directly supervising a job function listed in § 121.1001 or § 135.501 for, or on behalf of the part 121 or 135 operator including loading the certificate holder's aircraft for transport. The requirement to train the repair station workers who perform or directly supervise a job function listed in § 121.1001 or § 135.501 for, or on behalf of the part 121 or 135 operator is not any different than training any other contractor performing or directly supervising a job function listed in § 121.1001 or § 135.501 for, or on behalf of the part 121 or 135 operator. The FAA is providing the following example to help clarify the application of this exception.

Example B: Employees loading (a job function listed in § 121.1001 or § 135.501) a part 121 or part 135 operator's aircraft for transport perform work, including the job function of loading the aircraft, for 10 will-carry certificate holders. Persons performing any job function involving loading of a part 121 or a part 135 operator's aircraft will have to be trained according to Appendix O (proposed as Appendix N) of part 121 under the part 121 or part 135 operator's FAA-approved hazmat training program. Then the repair station employees will receive training in the policies, procedures, and any differences for each of the remaining nine part 121 or part 135 operator's training programs. The substantive requirements such as marking, labeling, documentation, etc. in the hazmat training programs are standardized by PHMSA's HMRs, and vary little among will-carry certificate holders. The person required to be trained under the FAA-approved training program would have to receive this training every 24 months.

However, if a worker performed loading for part 121 or part 135 will-not-carry certificate holders, the repair station could not use the exception to also perform loading or any other job function listed in § 121.1001 or § 135.501 for, or on behalf of, a will-carry certificate holder, without the worker being trained. The worker will have to complete the hazmat training required under the will-carry certificate holder's approved hazmat training program.

The FAA believes that this exception will help to minimize the training burden. Given that the core of each certificate holder's hazmat training program will be substantially the same; the only differences will be a certificate holder's policies and procedures for implementing the regulations.

6. *Recurrent Training (§§ 121.1005(d) and 135.505(d)) (proposed as §§ 121.803(d) and 135.503(d))*—The definition of the term ''recurrent hazardous materials training'' is similar to the definition of ''recurrent training'' used in part 121, subpart O, for flight and proficiency training. The FAA is mandating that the recurrent hazmat training be completed within 24 months while recurrent flight and proficiency training remains on an annual schedule. Thus, all persons affected by this rule are required to receive hazardous materials training every 24 months. However, a person may receive recurrent hazardous material training earlier than it is due or before the end of the month after it is due. These timing provisions are similar to those requirements currently contained in § 121.433a(a). Therefore, if recurrent hazmat training is due in January, but completed in February, it will be

considered as having been accomplished in January, and recurrent training would be due again before the end of 24 months following January. The training is not considered out-of-date until 31 days after the 24-month anniversary of the last training. Section 121.1005(d) states: ''A person who satisfactorily completes recurrent hazmat training in the calendar month before or the calendar month after the month in which the training is due is considered to have taken that training during the month in which it is due. If the person completes this training earlier than the month before it is due, the month of the completion date becomes the new anniversary date.''

7. *Notice to Repair Stations (§§ 121.1005(e) and 135.505(e)) (proposed as §§ 121.803(e) and 135.503(e))*—Based on the NTSB's report on Valujet Flight 592 and the FAA's experience with repair stations, the FAA has concluded that there should be better communication between repair stations and the part 121 and part 135 operators regarding the will-carry or will-not-carry status of the certificate holder. The NPRM proposed to ensure this communication in, §§ 121.1005(e) and 135.505(e) which required certificate holders to provide written notification of their will-carry or will-not-carry status and policies and procedures to each repair station that performed work on their behalf and that uses or replaces consumable materials, aircraft parts, or other items regulated by 49 CFR parts 171 through 180. The repair stations covered by this requirement were viewed broadly by many commenters because the language used in the NPRM was unclear. The FAA is therefore clarifying that the repair stations intended to be covered under this rule are the repair stations that perform work for, or on behalf of a part 121 or part 135 operators and are regulated by 49 CFR parts 171 through 180.

The proposed rule also contained language that would have required the certificate holder to make sure the repair station was aware of the will-carry or will-not-carry status of the certificate holder. The FAA is removing this language in the final rule and replacing it with a requirement for the part 145 certificate holder to acknowledge receipt of the notification.

8. *Foreign Locations (§§ 121.1005(f) and 135.505(f)) (proposed as §§ 121.803(f) and 135.503(f))*—The current exception in § 121.433a for operators operating at a foreign location in §§ 121.1005(f) and 135.505(f) is maintained in the final rule. Under the final rule, part 121 or part 135 operators operating in foreign locations where they are required to use persons working in that country to load aircraft can use persons even if they have not received the required hazmat training, but only if they are under the direct visual supervision of someone who has received the required initial or recurrent training. The current exception in § 121.433a applies to those persons loading and unloading an item onto an aircraft. The job function of unloading has been removed from this exception as it has been removed from the list of covered job functions that require hazmat training under this final rule. The current exception also includes the term ''handling;'' however, the FAA is not including handling in the final rule because it may be confusing. The use of the term ''handling'' in the current CFR refers to the handling that would be required during the loading of the aircraft. Although the FAA is not including this term in the final rule, the FAA still recognizes that those people who load must handle the cargo. The removal of the term ''handling'' is necessary, however, to eliminate any confusion over the breadth of the exception.

9. *Recordkeeping Requirements (§§ 121.1007 and 135.507) (proposed §§ 121.804 and 121.504).*

9.A. *Paragraph (a)*—Sections 121.1007(a) and 135.507(a) require each certificate holder to maintain training records of all initial and recurrent hazmat training received within the preceding 3 years for all job functions of persons listed in Appendix O (proposed as Appendix N) of part 121 who directly supervise or perform a job function listed in § 121.1001 or § 135.501 for 90 days after they stop directly supervising or performing the covered job function. This length of time is identical to that required by 49 CFR 172.704(d). The certificate holder is responsible for maintaining records for direct employees, contractors, subcontractors, and any other person directly supervising or performing a job function listed in § 121.1001 or § 135.501 for, or on behalf of the part 121 or 135 operator. Records may be maintained electronically.

9.B. *Paragraph (b)*—Paragraph (b) requires the certificate holder make the records available to the FAA upon request at the location where the trained person performs or directly supervises the covered job function. Records must be available at the location at which a person works and may be provided by electronic means. This modification aligns the provision with 49 CFR, the ICAO TI, and the IATA DGR. The records are required to be maintained for 90 days after the person stops directly supervising or performing a job function listed in § 121.1001 or § 135.501.

9.C. *Paragraph (c)*—Under proposed §§ 121.804(c) and 135.504(c) the required information to be maintained was more specific than that required by 49 CFR 172.704(d). The FAA proposed that the records would have to contain references to the individual's job function performed or supervised; dates of each training course successfully completed within the preceding three years; a statement signed and dated by a person designated by the director of training; and a description of each training course successfully completed. In §§ 121.1007(c) and 135.507(c) of the final rule, the FAA is aligning the required contents for each record with the ICAO TI, the IATA DGR, and 49 CFR. Under the final rule, the records must contain the individual's name; most recent training completion date; a description, copy, or reference to training materials used to meet the training requirement; name and address of organization providing the training; and a copy of the certification issued when an individual was trained (showing that a test was satisfactorily completed).

Both the ''format'' of the record verifying completion of training and ''who'' records the verification would be left to the operator. The recordkeeping enables the FAA to monitor compliance with the hazmat training requirements. However, to alleviate duplication of recordkeeping, the FAA is changing the final rule so that the required contents are aligned with 49 CFR 172.704(d), ICAO TI 1;4.2.4 and IATA DGR 1;1.5.4.1.

9.D. *Paragraph (d)*—Sections 121.1007(d) and 135.507(d) contain a recordkeeping requirement for a certificate holder using the new hire/new job function exception. This requirement is necessary to monitor compliance with the new exception. Under the requirements of §§ 121.1007(b) and 135.507(b), a certificate holder must maintain a record that includes:

(1) A signed statement from an authorized representative of the certificate holder authorizing the use of the person in accordance with the exception;

(2) The date of hire or change in job function;

(3) The person's name and assigned job functions;

(4) The name of the supervisor of the job function; and

(5) The date the person is to receive and complete hazmat training in

accordance with Appendix O of part 121.

Part 121—Appendix O (Proposed as Appendix N)—Hazardous Materials Training Requirements for Certificate Holders

The FAA notes that the lettering of the appendices in part 121 has changed due to other rulemaking activity since the NPRM was published. In the final rule, therefore, proposed Appendix N is being adopted as Appendix O.

Many commenters disagreed with the proposal to mandate curriculum for the certificate holder's hazmat training program. The FAA agrees and is closely aligning the final rule with the training requirements in the 2005 edition of the ICAO TI and the IATA DGR. The certificate holders indicated that the ICAO TI standards are the best common reference point to facilitate the uniform, seamless handling of hazmat in international air transport. By modifying the final rule to allow certificate holders to develop their own training curriculum, the FAA believes that the need to provide model hazardous material training programs has been diminished.

Consequently, the FAA is removing the training modules from Appendix O. Table 1 ''Operators That Transport Hazardous Materials (Will-Carry Certificate Holders)'' and Table 2 ''Operators That Do Not Transport Hazardous Materials (Will-Not-Carry Certificate Holders)'' in Appendix O will provide the minimum aspects to be covered in the certificate holder's hazmat training program. These minimum requirements will apply to persons performing or directly supervising a job function listed in § 121.1001 or § 135.501 for, or on behalf of the part 121 or part 135 operator. If a certificate holder's FAA-approved hazmat training program currently contains the minimum requirements, no changes will be required.

Will-not-carry certificate holders (both part 121 and part 135) will be required to conduct recognition training to assist persons directly supervising or performing a job function covered in Appendix O Table 2 in identifying discoverable undeclared hazmat offered for shipment.

Will-carry certificate holders (both part 121 and part 135) are required to cover the three phases of training specified by the HMRs—General awareness, function-specific, and safety training. The specific job function performed or directly supervised and the certificate holder's policies and procedures will determine the level of training required under Appendix O. General awareness training is intended to give general information and guidance about the overall hazmat regulations. Function-specific training is intended to give an in-depth and detailed understanding of the regulations regarding a specific job function that the employee will perform.

The change adopted in the final rule reflects changes to the 2005 edition of the ICAO TI and the IATA DGR. The FAA proposed a category of staff approach consistent with the ICAO TI and the IATA DGR at the time the NPRM was drafted. However, the 2005 edition of the ICAO TI adopts a task-oriented approach, and this is the approach the FAA is now adopting. The 2005 edition of the ICAO TI recommended that dangerous goods training programs, approved by the competent authorities, be established and maintained by or on behalf of persons with various responsibilities in processing cargo (not necessarily involving dangerous goods). The ICAO Dangerous Goods Panel determined that persons handling only non-dangerous goods should undertake dangerous goods training. Subsequent to the 2005 ICAO TI amendments being announced, IATA adopted the same training requirement to be included in the 2005–2006 IATA DGR. The IATA DGR reflects the industry standard practices or operational considerations, including training for those employees and operators handling only non-dangerous goods.

In Appendix O of part 121, the FAA is using a matrix similar to the matrix in the ICAO TI Table 1–4 and the IATA DGR Table 1.5A. The matrix has seven categories of personnel and 14 aspects of hazmat training. Since the categories and matrices are function-based, the required components in the training programs will be the same or similar to requirements for compliance with ICAO, IATA, and 49 CFR. The aspects of training in Appendix O are designated subject matter relating to dangerous goods transport with which the various persons performing specific functions must be familiar. These are comparable to the ''area of training'' listed in the tables of proposed Appendix N of the NPRM. The detailed curriculum, previously proposed in Modules 1 through 13 in the NPRM, are removed in the final rule to allow the certificate holder to use the functions being performed to determine the training commensurate with the personnel's responsibilities taking into account the requirements in Appendix O. Therefore, in the final rule, the FAA is clarifying that the certificate holder has the responsibility to determine the level of training required, the method of training, duration, type of testing necessary, and the method of recordkeeping. Thus, in the final rule, the FAA is amending the proposed requirement to test all persons through a method that verifies comprehension of each subject area. The certificate holder must certify that a test has been completed satisfactorily.

Under the final rule, part 121 and part 135 operators will still need to provide any operator-specific policies and procedures not specifically mentioned in Appendix O. The FAA believes each certificate holder currently trains all workers in its individual policies and procedures, so this will not be an additional requirement. If a certificate holder's training program differs from the required format, that fact can be discussed with the FAA during the approval process.

The following examples are designed to clarify the application of hazmat training.

Example C: A will-carry certificate holder that accepts all hazmat allowed by regulation will develop a training program to include all applicable topics or aspects identified in the table in Appendix O. The training must provide both an in-depth appreciation of the whole subject and, policies and procedures specific to the job function being performed. Depending on the responsibilities of the person, the aspects of training to be covered may vary from those shown in Appendix O.

Example D: A will-carry certificate holder that accepts hazmat, but has a prohibition on carrying radioactive material will develop a training program to include all applicable topics or aspects identified in Table 1 in Appendix O. This training must provide an in-depth appreciation of hazmat as a whole and will contain an awareness of radioactive material and knowledge of the policy of the certificate holder's prohibition against the transport of radioactive material for transportation. Depending on the responsibilities of the person, the aspects of training to be covered may vary from those shown in Appendix O.

Example E: A certificate holder's worker (applies to both will-carry and will-not-carry certificate holders) accepts small parcel cargo at the ticket counter. In addition to general awareness training on the general philosophy and limitations of hazmat, the person is required to have training applicable to passenger handling and cargo acceptance. Depending on the responsibilities of the person and whether or not hazardous materials are accepted at that counter, the aspects of training to be covered may vary from those shown in Appendix O.

Example F: A will-not-carry certificate holder that does not accept hazmat develops a training program that includes all required aspects or topics in Table 2 of Appendix O. This training must provide general information and guidance to workers to give a general appreciation of the requirements.

Depending on the responsibilities of the person, the aspects of training to be covered may vary from those shown in Appendix O.

Example G: When a part 121 or part 135 operator, its subsidiary or agent offers a consignment of hazmat for air transport, the certificate holder, subsidiary, or agent is a shipper and must comply with shipper's responsibilities and training. This is applicable even if the consignment is to be transported on its own or another certificate holder's aircraft.

Part 135—Hazardous Materials Training Program (§§ 135.501 Through 135.507) (Proposed as §§ 135.501 Through 135.504)

The FAA notes that the numbering of sections in part 135 has changed due to the adoption of new rules since the NPRM was published. In the final rule, therefore, sections in subpart K are renumbered accordingly. In addition, the FAA is skipping numbers in between sections to allow room for the addition of new sections in the future. Therefore, sections in subpart K that were proposed as §§ 135.501 through 135.504 are renumbered as §§ 135.501 through 135.507 in the final rule.

Currently, part 135 contains exceptions for certificate holders who use only one pilot in their operations. Specifically, these certificate holders are excepted from the manual requirements in § 135.21. These certificate holders, however, will remain subject to the hazmat training requirements in subpart K.

All part 135 operators, including single-pilot certificate holders, must meet the hazmat training requirements in Appendix O of part 121. Additionally, those persons loading aircraft for these certificate holders must have hazmat training that meets the requirements of Appendix O of part 121, including being informed of the certificate holder's restrictions and limitations regarding the transport of hazmat or meet the exception in § 135.505(b).

The certificate holders with only one pilot do not have an approved hazmat training program. These certificate holders must be able to demonstrate compliance with this hazmat training rule and will have to continue to maintain records of training. In addition, certificate holders conducting operations that transport hazmat with one pilot remain subject to DOT's hazardous material training and recordkeeping requirements in 49 CFR part 172 subpart H.

Part 145—Repair Stations

Section 145.53 Issue of Certificate (Proposed as § 145.11 (a)(5))

Section 145.57 Amendment to or Transfer of a Certificate

The FAA notes that the numbering of sections in part 145 has changed due to the adoption of new rules since the NPRM was published. Therefore, proposed § 145.11 (a)(5) is incorporated into § 145.53 in the final rule.

The FAA continues to be concerned about hazmat training provided to persons performing work at repair stations used by part 121 or part 135 operators. Repair stations workers that perform work on behalf of part 121 or part 135 operators that are ''hazmat employers'' as defined by 49 CFR 171.8, currently must establish a hazmat training program under 49 CFR part 172 subpart H. Historically, the FAA has verified compliance with hazmat training requirements only after an enforcement proceeding was initiated. The FAA believes this regulation adopts a pro-active approach. If the hazmat training requirements are not complied with, the FAA will not issue the repair station's certificate or rating.

As revised in this final rule, § 145.53 (proposed as § 145.11(a)(5)) requires part 145 certificate holders located within the United States to certify in writing that all hazmat employees (see 49 CFR 171.8) for the repair station, its contractors, or subcontractors are trained as required in 49 CFR part 172 subpart H. Part 145 certificate holders located outside the United States must certify in writing that all employees for the repair station, its contractors, or subcontractors performing a job function involving the transport of dangerous goods (hazardous material) are trained as outlined in the most current edition of the International Civil Aviation Organization Technical Instructions for the Safe Transport of Dangerous Goods by Air.

This certification must be submitted prior to the FAA's issuing a part 145 certificate or rating. The certification also must be provided by the holder of a repair station certificate when applying for a change to its certificate. This includes a change to the location of the repair station, or a request to add or amend a rating. Requiring a repair station to provide this certification imposes minimal additional documentation as part of the application for certification or rating process, but ensures that the applicant is aware of its training responsibility under the HMRs.

Section 145.165 Hazardous Materials Training (Proposed as § 145.5)

The FAA notes that the numbering of sections in part 145 has changed due to the adoption of new rules since the NPRM was published. Therefore, proposed § 145.5 is adopted as § 145.165 in the final rule.

Section § 145.165 paragraph (a) (proposed as § 145.5(a)) provides a cross reference to the hazardous materials training requirement in 49 CFR. By including this cross reference in part 145, the FAA is notifying all repair stations that they must carefully review the hazardous properties of the items with which they work to determine whether they are regulated by 49 CFR parts 171 through 180. If so, the repair station must establish and implement a hazardous materials training program as currently required by 49 CFR part 172 subpart H.

In the final rule, the FAA is removing the language ''uses or replaces aircraft components, uses or handles consumable hazardous materials or other items regulated by 49 CFR parts 171 through 180'' to clarify that the repair stations intended to be covered under this final rule are the repair stations that perform work for, or on behalf of a part 121 or part 135 operator and are regulated by 49 CFR parts 171 through 180. A repair station may use or handle hazardous materials without placing those items in transportation. Thus only the repair stations that perform functions regulated under 49 CFR parts 171–180 would be covered by this requirement.

Many required items on aircraft are regulated hazmat when shipped as cargo. Examples include oxygen generators used to provide oxygen to passengers in the event of an emergency, and fuel control units for jet engines. Since the crash of Valujet Flight 592, the FAA repeatedly has investigated incidents where oxygen generators and fuel control units were transported as cargo that were offered and accepted for air transportation improperly.

While this regulation is designed to help improve compliance and prevent these types of mistakes, the FAA is also clarifying the interplay of requirements between FAA and DOT hazmat training regulations. If a repair station is performing the functions of a shipper and preparing an item classified as a hazardous material (including materials shipped as COMAT) for shipment by air, DOT's hazmat training regulations in 49 CFR part 172 H currently apply. If a person does not perform a job function listed in § 121.1001 or

§ 135.501 on behalf of the part 121 or part 135 operator, then that person does not have to be trained under the FAA's training regulations. However, if a repair station worker performs a job function listed in § 121.1001 or § 135.501 for, or on behalf of the part 121 or 135 operator then that person must be trained in accordance with both DOT's hazmat training regulations and FAA's hazmat training regulations.

The FAA believes the only job function currently or previously performed by repair stations that are not also affiliated with part 121 and part 135 operators is the loading of the certificate holder's aircraft for transport. Since any person currently loading the part 121 or part 135 operator's aircraft would have to be trained under the FAA's hazmat training requirements, the repair station employee also would have to complete the required FAA hazmat training. Section 145.165(b) prohibits repair station workers from directly supervising or performing a job function listed in § 121.1001 or § 135.501 for, or on behalf of the part 121 or 135 operator unless those persons have been trained in accordance with the part 121 or part 135 operator's FAA-approved hazardous material training program applicable to that job function.

Section 145.206 Notification of Hazardous Materials Authorizations (Proposed as § 145.27)

The FAA notes that the numbering of sections in part 145 has changed due to the adoption of new rules since the NPRM was published. In the final rule, therefore, proposed § 145.27 is renumbered § 145.206 in the final rule. In addition, the section is divided into paragraphs (a) and (b), as discussed below.

Section 145.206 (proposed as § 145.27) requires each repair station to notify repair station employees, its contractors, or subcontractors that handle or replace aircraft components or other items regulated by 49 CFR parts 171 through 180 of the will-carry or will-not-carry status of the part 121 or part 135 operators for which the repair station does work.

In the final rule, the FAA is adding a requirement (as paragraph (a)) that the repair stations must inform the part 121 or part 135 operator that it has received the required notification. This receipt notification replaces the proposed requirement for the part 121 and part 135 operators to make sure that the repair station is aware of its status.

The language proposed in § 145.27 is adopted as paragraph (b) in the final rule, with modification. In the final rule, the FAA is changing the words ''notify all workers'' to ''notify its employees, contractors, or subcontractors that handle or replace aircraft components or other items regulated by 49 CFR parts 171 through 180.'' This language clarifies that all workers do not require notification.

VII. Regulatory Analysis and Notices

VII.1. Paperwork Reduction Act

An agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA submitted a copy of the new information collection requirements in this rule to the OMB for its review. OMB approved the collection of this information and assigned OMB control number 2120–0705.

This rule was proposed in the **Federal Register** of May 8, 2003. At that time, the FAA requested public comments on the proposed information collection requirements. These comments, and the FAA's responses, are discussed under ''V.11. Recordkeeping Requirements.'' The following is a summary of the full ''Supporting Statement'' of information collection requirements submitted to OMB for review. The numbers in the ''Supporting Statement'' are derived from the full Economic Evaluation, which is in the docket for this rulemaking.

• The estimated first-year hour and cost burdens to part 121 operators and part 135 operators to revise their hazardous materials manuals are as follows:

Large part 121 operators: 408 hours/$27,299
Small part 121 operators: 856 hours/$36,988
Large part 135 operators: 24 hours/$1,037
Small part 135 operators: 12,624 hours/$365,970
Total: 13,912 hours/$431,294

• The estimated annual manual revision hour and cost burdens for years 1–10 are as follows:

Large part 121 operators: 40.8 hours/$2,730
Small part 121 operators: 85.6 hours/$3,699
Large part 135 operators: 2.4 hours/$104
Small part 135 operators: 1,262.4 hours/$36,597
Total: 1,391.2 hours/$43,130

• The estimated first-year hour and cost burden for part 121 operators and part 135 operators to restructure their databases are as follows:

Large part 121 operators: 72 hours × 36 firms/$114,860
Small part 121 operators: 32 hours × 87 firms/$81,153
Large part 135 operators: 72 hours × 3 firms/$6,819
Small part 135 operators: 8 hours × 2,536 firms/$588,149
Total: 25,880 hours/$790,981

• The estimated annual hour and cost burden for years 1–10 for part 121 and part 135 operators to restructure their databases are as follows:

Large part 121 operators: 259.2 hours/$11,486
Small part 121 operators: 278.4 hours/$8,115
Large part 135 operators: 21.6 hours/$682
Small part 135 operators: 2,028.8 hours/$58,815
Total: 2,588 hours/$79,098

• The estimated annual hour and cost burden to part 121 operators and part 135 operators to update their training records is as follows:

Part 121 operators: 1,052 hours/$20,071
Part 135 operators: 2,617 hours/$1,939
Total: 3,669 hours/$22,010

• The estimated first-year hour and cost burden to part 121 operators and part 135 operators to notify 145 repair stations of their will-carry or will-not-carry statuses are as follows:

Part 121 operators: 4,386.8 hours/$75,853
Part 135 operators: 2,792.9 hours/$38,314
Total: 7,179.7 hours/$114,167

• The estimated hour and cost burden for years 1–10 to part 121 operators and part 135 operators to notify 145 repair stations of their will-carry or will-not-carry statuses are as follows:

Part 121 operators: 797.6 hours/$15,170
Part 135 operators: 507.8 hours/$7,663
Total: 1,305.4 hours/$22,833

• The total estimated annual hour and cost burdens to part 145 operators to comply with §§ 145.53 and 145.206 are as follows:

440 hours/$87,560

• All estimated annual burdens to part 121 operators, part 135 operators, and part 145 repair stations are as follows:

Part 121 operators: 1,461.6 hours/$41,200
Part 135 operators: 3,823 hours/$103,861
Part 145 repair stations: 440 hours/$87,560
Total: 5,724.6 hours/$232,621

• Additional annual costs to part 121 and part 135 operators that are not

already following the procedures required by the final rule for the collection of information are as follows:

Large will-not-carry part 121 operators: $120,528
Small will-not-carry part 121 operators: $6,912
Large will-not-carry part 135 operators: $6,048
Small will-carry part 135 operators: $8,100
Small will-not-carry part 135 operators: $78,192
Total: $219,780

VII.2. International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has determined that differences would affect U.S. aircraft operators only, and therefore it is not necessary for the FAA to file any differences with ICAO. Foreign carriers operating in the United States will not be affected by the rule.

VII.3. Economic Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency to propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act also requires agencies to consider international standards and, where appropriate, use them as the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation).

In conducting these analyses, FAA has determined this rule:

(1) Has benefits that justify its costs; is a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866; and is ''significant'' as defined in DOT's Regulatory Policies and Procedures;

(2) Will not have a significant economic impact on a substantial number of small entities;

(3) Will not impact international trade; and

(4) Does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector.

These analyses, available in the public docket for this rulemaking, are summarized below.

Cost Assumptions

- Discount rate: 7%.
- Because there will be a 15-month transition from the effective date of the rule, the time horizon for this cost section is from 2006 through 2015.
- Monetary Values expressed in 2003 dollars.
- To calculate recurrent training costs, the FAA assumes a 24-month cycle instead of the annual cycle used in the proposed rule. The 24-month cycle is consistent with ICAO/IATA recommendations.
- Because hazmat training records are already kept electronically, updating these records with recurrent training information every two years is estimated to take approximately five additional minutes per employee in the final rule instead of the 10 minutes per employee estimated in the proposed rule.
- The FAA assumes the cost of the IATA/FIATA International Cargo Agents training course to be $216, which includes training materials, an examination fee, and a shipping fee.
- The FAA assumes that training will be conducted based on a self-taught, independent study method (as all IATA/FIATA International Cargo Agents training courses are conducted) or based on computer-based training (CBT).
- The FAA assumes that many of these operators will maintain computer-based records.
- 5% of employees of deficient part 121 carriers [1] will receive hazardous materials training.
- 10% of non-crewmember employees of deficient part 135 carriers [1] will receive hazardous materials training.
- 5% of employees, of non-deficient part 121 carriers,[1] who have already received the necessary hazardous materials training, will receive that training every other year resulting in cost saving for their employer.
- All crewmembers and 10% of employees, of non-deficient part 135 carriers,[1] who have already received the necessary hazardous materials training, will receive that training every other year resulting in cost savings for their employer.

Changes in Cost Analysis From the NPRM to the Final Rule

The NPRM costs were estimated to be $107.5 million ($75.8 million, discounted) over a 10-year period. The final rule costs are estimated at $7.2 million ($5.0 million, discounted) over a 10-year period. This decrease in costs is attributed to several changes made from the issuance of the NPRM to the publication of this final rule.

As shown in the table below, the majority of the cost reduction is due to aligning the training requirements to the ICAO/IATA standards, reducing the number of employees at part 121 and part 135 operators who will need to be trained, and reducing the recurrent training requirements to every 24 months instead of the every 12-month requirement in the NPRM. Additionally, administrative costs were reduced significantly from the NPRM for part 121 and part 135 operators, largely due to the final rule allowing for electronic recordkeeping.

[1] A deficient operator is an operator who is not already in compliance with the standards, while a non-deficient operator is an operator who is already in compliance with the standards. This determination was based on the operators' responses to the ''Special Emphasis Review: Hazardous Materials or Dangerous Goods Programs and Requirements,'' as summarized in Appendix A of the full regulatory evaluation in the public docket for this rulemaking.

	Administrative	Training		Total
	Recordkeeping	Alignment with ICAO/IATA	Change in population estimates	
Undiscounted				
NPRM	$13,525,600	$91,565,900		$105,091,500
Final Rule	220,107	4,608,915		4,829,022
Difference	13,305,493	7,763,157	16,193,828	100,262,478
Discounted				
NPRM	9,294,000	64,523,400		73,817,400
Final Rule	220,107	3,056,216		3,276,323
Difference	9,073,893	44,064,820	17,402,364	70,541,077

Further, the NPRM estimated significant training costs for repair stations. The FAA has since learned that repair stations have stopped performing job functions related to hazardous materials transport, including loading. However, this rule requires repair stations to train their employees, contractors, and subcontractors if they are performing job functions related to hazardous materials transport for part 121 or part 135 carriers. Repair stations that are hazmat employers will be required to train their employees so they are in compliance with 49 CFR part 172, but that is not a cost of this rule. Repair stations that do not perform the listed job functions will not be required to train their employees, so generally, the only increased costs borne by repair stations will be administrative.

Costs of This Rulemaking

The estimated cost to part 121, part 135 operators, and domestic part 145 repair stations to comply with the administrative and training provisions over a 10-year period are approximately $3.1 million ($2.1 million, discounted), $3.2 million ($2.3 million, discounted), and $876,000 ($575,000, discounted), respectively. The total costs of this rulemaking are approximately, $7.2 million ($5.0 million, discounted), over a 10-year period.

Cost Savings and Safety Benefits of This Rulemaking

The cost savings over a 10-year period are estimated at $70.8 million, or $44.1 million, discounted, of which ''will carry'' operators will realize cost savings of $37.4 million ($23.3 million, discounted) and ''will not carry'' operators will realize cost savings of $33.4 million ($20.8 million, discounted).

The expected part 121 benefits of the rule over 10 years from avoided accidents involving the carriage of hazardous materials will be approximately $60.9 million. However, there is a 15 percent probability (based on the Poisson distribution) that the estimated benefits from avoiding these types of accidents could be $319.7 million or higher over 10 years. The Poisson distribution model was used to estimate the probability of experiencing potential rare incidents on board U.S. air carriers over the next 10 years. The Poisson distribution provides a realistic model for predicting rare and random phenomena.

The expected part 135 benefits of the rule over 10 years from avoided accidents involving the carriage of hazardous materials will be approximately $3.4 million. However, there is a 26 percent probability (based on the Poisson distribution) of one or more fatal accidents and the estimated benefits from avoiding these types of accidents will range between $6 million and $25 million.

VII.4. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Act) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organization, and government jurisdictions subject to regulation.'' To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The Small Business Administration (SBA) suggests that ''small'' entities can be identified either on the basis of employees or revenues. For this rule, small entities are composed of two distinct groups: aircraft operators and repair stations. The SBA suggests that aircraft operators with 1,500 or fewer employees are ''small'' entities. The SBA does not provide revenue information for firms with fewer than 1,500 employees, but does provide data for firms with fewer than 500 and fewer than 20 employees. To determine the impact of the proposed rule on the 87 small part 121 operators and the 2,536 small part 135 operators, the FAA has estimated the annualized cost impact on these two categories of small entities separately, since the rule's impacts differ.

The final rule is expected to impose an estimated cost of $2.1 million on the 87 small part 121 operators over the next 10 years. The average annualized cost per small operator is estimated at $2,600. However, the FAA estimates that part 121 ''will not carry'' operators will incur all six cost elements and the annualized cost to each of these entities is estimated at $3,500. The costs to ''will carry'' operators will be lower since less training will be required. According to a Small Business Administration analysis of Bureau of Census data for scheduled air transportation firms, firms with fewer than 500 employees have

average revenues of $10.8 million. (Source: *http://www.SBA/gov/advo/stats.* Data are not available for firms with fewer than 1,500 employees. Presumably, the average revenue for firms with 1,500 employees would be higher than those firms with fewer than 500 employees.) Data are not available for firms with fewer than 1,500 employees. Presumably, the average revenue for firms with 1,500 employees would be higher than those firms with fewer than 500 employees. The estimated cost to each of the ''will not carry'' entities is only .032 of one percent of the average revenue of $10.8 million of these firms. The FAA does not consider a cost of 0.032 of one percent of revenues to be a significant cost. Thus none of the 87 small part 121 entities will incur a significant economic impact in the form of higher annual costs as the result of the final rule.

The final rule is expected to impose an estimated cost of $3.1 million on the 2,536 small part 135 operators over the next 10 years. The average annualized cost per small 135 operator is estimated at $150. The FAA does not consider $150 costs to be significant. Thus none of the small part 135 entities will incur a significant economic impact in the form of higher annual costs as the result of the rule. Therefore, the FAA has determined that this final rule will not have a significant impact on a substantial number of small part 121 or part 135 operators.

The SBA suggests that ''small'' repair stations can be identified as those firms with annual revenues of $5 million or less. Research conducted for the FAA indicates that approximately 56 percent of all repair stations meet this criterion. (''An Analysis of International Trade Flows in Aircraft Repair Services'' GRA Inc. Contract No. DTFA01–93–C–00066 Work Order 46 Figure 6, page 18.) The final rule is expected to impose an estimated cost of $876,000 on the 2,006 small independent domestic part 145 repair stations. The average annualized cost to the 62 small repair stations that incur both cost elements is estimated at $76. The FAA considers this amount economically insignificant.

Therefore, the FAA has determined that this final rule will not have a significant impact on a substantial number of small entities. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

VII.5. International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards.

In accordance with the above statute, the FAA has assessed the potential effect of this final rule and has determined that it will have the same impact on foreign sponsors as on domestic sponsors and, therefore, creates no obstacles to the foreign commerce of the United States.

VII.6. Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $120.7 million in lieu of $100 million.

This final rule does not contain such a mandate. The requirements of Title II of the Act, therefore, do not apply.

VII.7. Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. The FAA determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore does not have federalism implications.

VII.8. Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from the preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined that this rulemaking action qualifies for the categorical exclusion identified in paragraph 312f of FAA Order 1050.1E and involves no extraordinary circumstances.

VII.9. Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The FAA has determined that it is not a ''significant energy action'' under the executive order because it is not a ''significant regulatory action'' under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects

14 CFR Part 119

Administrative practice and procedure, Air carriers, Aircraft, Aviation safety, Charter flights, Reporting and recordkeeping requirements.

14 CFR Part 121

Air carriers, Aircraft, Airmen, Aviation safety, Charter flights, Reporting and recordkeeping requirements, Safety, Transportation.

14 CFR Part 135

Aircraft, Airmen, Aviation Safety, Reporting and recordkeeping requirements.

14 CFR Part 145

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The Amendments

■ In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations as follows:

PART 119—CERTIFICATION: AIR CARRIERS AND COMMERCIAL OPERATORS

■ 1. The authority citation for part 119 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1153, 40101, 40102, 40103, 40113, 41721, 44105, 44106, 44111, 44701–44717, 44722, 44901, 44903, 44904, 44906, 44912, 44914, 44936, 44938, 46103, 46105.

■ 2. Amend part 119 by adding Special Federal Aviation Regulation No. 99 as follows:

Special Federal Aviation Regulation No. 99—Hazardous Materials Regulations Governing Manual and Training Requirements

1. *Applicability.* This Special Federal Aviation Regulation (SFAR) applies to all U.S. air carriers and commercial operators that are issued a certificate under part 119 of this chapter on or before November 7, 2005 to operate under part 121 or part 135 of this chapter. For purposes of hazardous materials training, these air carriers and commercial operators may comply with the provisions of this SFAR until its expiration. Alternatively, they may comply with the provisions of part 121, subpart Z, or part 135, subpart K, as applicable. All other provisions of parts 121 and 135 not affected by this rule remain applicable.

2. *Expiration.* This Special Federal Aviation Regulation expires on February 7, 2007.

3. *Definition.* The term certificate holder, as used in this SFAR, means a person certificated in accordance with part 119 subpart C, of this chapter and operating under part 121 or part 135 of this chapter.

4. *Manual Contents.* (a) Each manual required by § 121.133 shall contain procedures and information to assist personnel to identify packages marked or labeled as containing hazardous materials and, if these materials are to be carried, stored, or handled, procedures and instructions relating to the carriage, storage, or handling of hazardous materials, including the following:

(1) Procedures for determining whether the material is accompanied by the proper shipper certification required by 49 CFR chapter I, subchapter C; whether it is properly packed, marked, and labeled; whether it is accompanied by the proper shipping documents; and whether requirements for compatibility of materials have been met.

(2) Instructions on the loading, storage, and handling.

(3) Notification procedures for reporting hazardous material incidents as required by 49 CFR chapter I, subchapter C.

(4) Instructions and procedures for the notification of the pilot in command when there are hazardous materials aboard, as required by 49 CFR chapter I, subchapter C.

(b) Each manual required by § 135.21 of this chapter shall contain procedures and instructions to enable personnel to recognize hazardous materials, as defined in 49 CFR, and if these materials are to be carried, stored, or handled, procedures and instructions for:

(1) Accepting shipment of hazardous material regulated by 49 CFR to assure proper packaging, marking, labeling, shipping documents, compatibility of articles, and instructions for loading, storage, and handling;

(2) Notification and reporting hazardous material incidents as required by 49 CFR; and

(3) Notification of the pilot in command when there are hazardous materials aboard, as required by 49 CFR.

5. *Training Program.* (a) Each certificate holder required to have a training program under § 121.401 of this chapter shall establish, obtain the appropriate initial and final approval of, and provide, a training program that meets the requirements of part 121, subpart O, and appendices E and F of part 121 of this chapter. Each certificate holder required to have a training program under § 121.401 of this chapter shall ensure that each crewmember, aircraft dispatcher, flight instructor, and check airman, and each person assigned duties for the carriage and handling of hazardous materials, is adequately trained to perform his or her assigned duties.

(b) Each certificate holder required to have a training program under § 135.341 of this chapter shall establish, obtain the appropriate initial and final approval of, and provide a training program that meets the requirements of this SFAR. Each certificate holder required to have a training program under § 135.341 of this chapter shall ensure that each crewmember, flight instructor, check airman, and each person assigned duties for the carriage and handling of hazardous materials (as defined in 49 CFR 171.8) is adequately trained to perform their assigned duties.

6. *Training requirements: Handling and carriage of hazardous materials under part 121 of this chapter.*

(a) No certificate holder conducting operations under part 121 of this chapter may use any person to perform and no person may perform, any assigned duties and responsibilities for the handling or carriage of hazardous materials governed by 49 CFR, unless within the past year that person has satisfactorily completed training in a program established and approved under this SFAR, which includes instructions regarding the proper packaging, marking, labeling, and documentation of hazardous materials, as required by 49 CFR, and instructions regarding their compatibility, loading, storage, and handling characteristics. A person, who satisfactorily completes training in the calendar month before, or the calendar month after, the month in which it becomes due, is considered to have taken that training during the month it became due.

(b) Each certificate holder conducting operations under part 121 of this chapter shall maintain a record of the satisfactory completion of the initial and recurrent training given to crewmembers and ground personnel who perform assigned duties and responsibilities for the handling and carriage of hazardous materials.

(c) When a certificate holder conducting operations under part 121 of this chapter operates in a foreign country where the loading and unloading of aircraft must be performed by personnel of the foreign country, that certificate holder may use personnel not meeting the training requirements of paragraphs 5 (a) and 5 (b) of this SFAR if they are supervised by a person qualified under paragraphs 5 (a) and 5 (b) of this SFAR to supervise the loading, offloading and handling of hazardous materials.

7. *Training requirements: Handling and carriage of hazardous materials under part 135.*

(a) Except as provided in paragraph 7 (d) of this SFAR, no certificate holder conducting operations under part 135 of this chapter may use any person to perform, and no person may perform, any assigned duties and responsibilities for the handling or carriage of hazardous materials (as defined in 49 CFR 171.8), unless within the past year that person has satisfactorily completed initial or recurrent training in an appropriate training program established by the certificate holder, which includes instruction on—

(1) The proper shipper certification, packaging, marking, labeling, and documentation for hazardous materials; and

(2) The compatibility, loading, storage, and handling characteristics of hazardous materials.

(b) Each certificate holder conducting operations under part 135 of this chapter, shall maintain a record of the satisfactory completion of the initial and recurrent training given to crewmembers and ground personnel who perform assigned duties and responsibilities for the handling and carriage of hazardous materials.

(c) Each certificate holder, conducting operations under part 135 of this chapter, that elects not to accept hazardous materials shall ensure that each crewmember is adequately trained to recognize those items classified as hazardous materials.

(d) If a certificate holder conducting operations under part 135 of this chapter operates into or out of airports at which trained employees or contract

personnel are not available, it may use persons not meeting the requirements of paragraph 7 (a) or 7 (b) of this SFAR to load, offload, or otherwise handle hazardous materials if these persons are supervised by a crewmember who is qualified under paragraphs 7 (a) and 7 (b) of this SFAR.

■ 3. Amend § 119.49 by redesignating paragraphs (a)(13), (b)(13), and (c)(12) as paragraphs (a)(14), (b)(14), and (c)(13) respectively, and adding new paragraphs (a)(13), (b)(13), and (c)(12) to read as follows:

§ 119.49 Contents of operations specifications.

(a) * * *

(13) An authorization permitting, or a prohibition against, accepting, handling, and transporting materials regulated as hazardous materials in transport under 49 CFR parts 171 through 180.

* * * * *

(b) * * *

(13) An authorization permitting, or a prohibition against, accepting, handling, and transporting materials regulated as hazardous materials in transport under 49 CFR parts 171 through 180.

* * * * *

(c) * * *

(12) An authorization permitting, or a prohibition against, accepting, handling, and transporting materials regulated as hazardous materials in transport under 49 CFR parts 171 through 180.

* * * * *

PART 121—OPERATING REQUIREMENTS: DOMESTIC FLAG, AND SUPPLEMENTAL OPERATIONS

■ 4. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 45101–45105, 46105, 46301.

■ 5. Amend § 121.135 by revising the section heading and paragraph (b)(23) to read as follows:

§ 121.135 Manual contents.

* * * * *

(b) * * *

(23)(i) Procedures and information, as described in paragraph (b)(23)(ii) of this section, to assist each crewmember and person performing or directly supervising the following job functions involving items for transport on an aircraft:

(A) Acceptance;

(B) Rejection;

(C) Handling;

(D) Storage incidental to transport;

(E) Packaging of company material; or

(F) Loading.

(ii) Ensure that the procedures and information described in this paragraph are sufficient to assist the person in identifying packages that are marked or labeled as containing hazardous materials or that show signs of containing undeclared hazardous materials. The procedures and information must include:

(A) Procedures for rejecting packages that do not conform to the Hazardous Materials Regulations in 49 CFR parts 171 through 180 or that appear to contain undeclared hazardous materials;

(B) Procedures for complying with the hazardous materials incident reporting requirements of 49 CFR 171.15 and 171.16 and discrepancy reporting requirements of 49 CFR 175.31

(C) The certificate holder's hazmat policies and whether the certificate holder is authorized to carry, or is prohibited from carrying, hazardous materials; and

(D) If the certificate holder's operations specifications permit the transport of hazardous materials, procedures and information to ensure the following:

(*1*) That packages containing hazardous materials are properly offered and accepted in compliance with 49 CFR parts 171 through 180;

(*2*) That packages containing hazardous materials are properly handled, stored, packaged, loaded, and carried on board an aircraft in compliance with 49 CFR parts 171 through 180;

(*3*) That the requirements for Notice to the Pilot in Command (49 CFR 175.33) are complied with; and

(*4*) That aircraft replacement parts, consumable materials or other items regulated by 49 CFR parts 171 through 180 are properly handled, packaged, and transported.

* * * * *

■ 6. Amend § 121.401 by revising paragraph (a)(1) to read as follows:

§ 121.401 Training program: General.

(a) * * *

(1) Establish and implement a training program that satisfies the requirements of this subpart and appendices E and F of this part and that ensures that each crewmember, aircraft dispatcher, flight instructor and check airman is adequately trained to perform his or her assigned duties. Prior to implementation, the certificate holder must obtain initial and final FAA approval of the training program.

* * * * *

§ 121.433a [Removed]

■ 7. Remove § 121.433a.

■ 8. Add subpart Z, consisting of §§ 121.1001 through 121.1007, to read as follows:

Subpart Z—Hazardous Materials Training Program

Sec.

121.1001 Applicability and definitions.

121.1003 Hazardous materials training: General.

121.1005 Hazardous materials training required.

121.1007 Hazardous materials training records.

§ 121.1001 Applicability and definitions.

(a) This subpart prescribes the requirements applicable to each certificate holder for training each crewmember and person performing or directly supervising any of the following job functions involving any item for transport on board an aircraft:

(1) Acceptance;

(2) Rejection;

(3) Handling;

(4) Storage incidental to transport;

(5) Packaging of company material; or

(6) Loading.

(b) *Definitions*. For purposes of this subpart, the following definitions apply:

(1) *Company material (COMAT)*—Material owned or used by a certificate holder.

(2) *Initial hazardous materials training*—The basic training required for each newly hired person, or each person changing job functions, who performs or directly supervises any of the job functions specified in paragraph (a) of this section.

(3) *Recurrent hazardous materials training*—The training required every 24 months for each person who has satisfactorily completed the certificate holder's approved initial hazardous materials training program and performs or directly supervises any of the job functions specified in paragraph (a) of this section.

§ 121.1003 Hazardous materials training: General.

(a) Each certificate holder must establish and implement a hazardous materials training program that:

(1) Satisfies the requirements of Appendix O of this part;

(2) Ensures that each person performing or directly supervising any of the job functions specified in § 121.1001(a) is trained to comply with all applicable parts of 49 CFR parts 171 through 180 and the requirements of this subpart; and

(3) Enables the trained person to recognize items that contain, or may

contain, hazardous materials regulated by 49 CFR parts 171 through 180.

(b) Each certificate holder must provide initial hazardous materials training and recurrent hazardous materials training to each crewmember and person performing or directly supervising any of the job functions specified in § 121.1001(a).

(c) Each certificate holder's hazardous materials training program must be approved by the FAA prior to implementation.

§ 121.1005 Hazardous materials training required.

(a) *Training requirement.* Except as provided in paragraphs (b), (c) and (f) of this section, no certificate holder may use any crewmember orperson to perform any of the job functions or direct supervisory responsibilities, and no person may perform any of the job functions or direct supervisory responsibilities, specified in § 121.1001(a) unless that person has satisfactorily completed the certificate holder's FAA-approved initial or recurrent hazardous materials training program within the past 24 months.

(b) *New hire or new job function.* A person who is a new hire and has not yet satisfactorily completed the required initial hazardous materials training, or a person who is changing job functions and has not received initial or recurrent training for a job function involving storage incidental to transport, or loading of items for transport on an aircraft, may perform those job functions for not more than 30 days from the date of hire or a change in job function, if the person is under the direct visual supervision of a person who is authorized by the certificate holder to supervise that person and who has successfully completed the certificate holder's FAA-approved initial or recurrent training program within the past 24 months.

(c) *Persons who work for more than one certificate holder.* A certificate holder that uses or assigns a person to perform or directly supervise a job function specified in § 121.1001(a), when that person also performs or directly supervises the same job function for another certificate holder, need only train that person in its own policies and procedures regarding those job functions, if all of the following are met:

(1) The certificate holder using this exception receives written verification from the person designated to hold the training records representing the other certificate holder that the person has satisfactorily completed hazardous materials training for the specific job function under the other certificate holder's FAA approved hazardous material training program under Appendix O of this part; and

(2) The certificate holder who trained the person has the same operations specifications regarding the acceptance, handling, and transport of hazardous materials as the certificate holder using this exception.

(d) *Recurrent hazardous materials training—Completion date.* A person who satisfactorily completes recurrent hazardous materials training in the calendar month before, or the calendar month after, the month in which the recurrent training is due, is considered to have taken that training during the month in which it is due. If the person completes this training earlier than the month before it is due, the month of the completion date becomes his or her new anniversary month.

(e) *Repair stations.* A certificate holder must ensure that each repair station performing work for, or on the certificate holder's behalf is notified in writing of the certificate holder's policies and operations specification authorization permitting or prohibition against the acceptance, rejection, handling, storage incidental to transport, and transportation of hazardous materials, including company material. This notification requirement applies only to repair stations that are regulated by 49 CFR parts 171 through 180.

(f) *Certificate holders operating at foreign locations.* This exception applies if a certificate holder operating at a foreign location where the country requires the certificate holder to use persons working in that country to load aircraft. In such a case, the certificate holder may use those persons even if they have not been trained in accordance with the certificate holder's FAA approved hazardous materials training program. Those persons, however, must be under the direct visual supervision of someone who has successfully completed the certificate holder's approved initial or recurrent hazardous materials training program in accordance with this part. This exception applies only to those persons who load aircraft.

§ 121.1007 Hazardous materials training records.

(a) *General requirement.* Each certificate holder must maintain a record of all training required by this part received within the preceding three years for each person who performs or directly supervises a job function specified in § 121.1001(a). The record must be maintained during the time that the person performs or directly supervises any of those job functions, and for 90 days thereafter. These training records must be kept for direct employees of the certificate holder, as well as independent contractors, subcontractors, and any other person who performs or directly supervises these job functions for or on behalf of the certificate holder.

(b) *Location of records.* The certificate holder must retain the training records required by paragraph (a) of this section for all initial and recurrent training received within the preceding 3 years for all persons performing or directly supervising the job functions listed in Appendix O at a designated location. The records must be available upon request at the location where the trained person performs or directly supervises the job function specified in § 121.1001(a). Records may be maintained electronically and provided on location electronically. When the person ceases to perform or directly supervise a hazardous materials job function, the certificate holder must retain the hazardous materials training records for an additional 90 days and make them available upon request at the last location where the person worked.

(c) *Content of records.* Each record must contain the following:

(1) The individual's name;

(2) The most recent training completion date;

(3) A description, copy or reference to training materials used to meet the training requirement;

(4) The name and address of the organization providing the training; and

(5) A copy of the certification issued when the individual was trained, which shows that a test has been completed satisfactorily.

(d) *New hire or new job function.* Each certificate holder using a person under the exception in § 121.1005(b) must maintain a record for that person. The records must be available upon request at the location where the trained person performs or directly supervises the job function specified in § 121.1001(a). Records may be maintained electronically and provided on location electronically. The record must include the following:

(1) A signed statement from an authorized representative of the certificate holder authorizing the use of the person in accordance with the exception;

(2) The date of hire or change in job function;

(3) The person's name and assigned job function;

(4) The name of the supervisor of the job function; and

(5) The date the person is to complete hazardous materials training in accordance with appendix O of this part.

Appendix N—[Reserved]

■ 8.A. Add and reserve Appendix N.

■ 9. Add Appendix O to read as follows:

Appendix O—Hazardous Materials Training Requirements For Certificate Holders

This appendix prescribes the requirements for hazardous materials training under part 121, subpart Z, and part 135, subpart K of this chapter. The training requirements for various categories of persons are defined by job function or responsibility. An ''X'' in a box under a category of persons indicates that the specified category must receive the noted training. All training requirements apply to direct supervisors as well as to persons actually performing the job function. Training requirements for certificate holders authorized in their operations specifications to transport hazardous materials (will-carry) are prescribed in Table 1. Those certificate holders with a prohibition in their operations specifications against carrying or handling hazardous materials (will-not-carry) must follow the curriculum prescribed in Table 2. The method of delivering the training will be determined by the certificate holder. The certificate holder is responsible for providing a method (may include email, telecommunication, etc.) to answer all questions prior to testing regardless of the method of instruction. The certificate holder must certify that a test has been completed satisfactorily to verify understanding of the regulations and requirements.

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Table 1. Operators That Transport Hazardous Material – Will-Carry Certificate Holders

Aspects of transport of hazardous materials by air with which they must be familiar, as a minimum (See Note 1)	Shippers (See Note2) Will-carry	Operators and ground-handling agent's staff accepting hazardous materials (See note 3) Will-carry	Operators and ground-handling agents staff responsible for the handling, storage, and loading of cargo and baggage Will-carry	Passenger-handling staff Will-carry	Flight crew members and load planners Will-carry	Crew members (other than flight crew members) Will-carry
General philosophy	X	X	X	X	X	X
Limitations	X	X	X	X	X	X
General requirements for shippers	X	X				
Classification	X	X				
List of hazardous materials	X	X			X	
General packing requirements	X	X				
Labeling and marking	X	X	X	X	X	X
Hazardous materials transport document and other relevant documentation	X	X				
Acceptance procedures		X				
Recognition of undeclared hazardous materials	X	X	X	X	X	X
Storage and loading procedures		X	X		X	
Pilots' notification		X	X		X	
Provisions for passengers and crew	X	X	X	X	X	X

Emergency procedures	X	X	X	X	X	X

Note 1 – Depending on the responsibilities of the person, the aspects of training to be covered may vary from those shown in the table.

Note 2 –When a person offers a consignment of hazmat, including COMAT, for or on behalf of the certificate holder, then the person must be trained in the certificate holder's training program and comply with shipper responsibilities and training. If offering goods on another certificate holder's equipment, the person must be trained in compliance with the training requirements in 49 CFR. All shippers of hazmat must be trained under 49 CFR. The shipper functions in 49 CFR mirror the training aspects that must be covered for any shipper offering hazmat for transport.

Note 3 – When an operator, its subsidiary, or an agent of the operator is undertaking the responsibilities of acceptance staff, such as the passenger handling staff accepting small parcel cargo, the certificate holder, its subsidy, or the agent must be trained in the certificate holder's training program and comply with the acceptance staff training requirements.

Table 2. Operators That Do Not Transport Hazardous Materials-Will-Not-Carry Certificate Holders

Aspects of transport of hazardous materials by air with which they must be familiar, as a minimum (See Note 1)	Shippers (See Note2) Will-not-carry	Operators and ground-handling agent's staff accepting cargo other than hazardous materials (See Note3) Will-not-carry	Operators and ground-handling agents staff responsible for the handling, storage, and loading of cargo and baggage Will-not-carry	Passenger-handling staff Will-not-carry	Flight crew members and load planners Will-not-carry	Crew members (other than flight crew members) Will-not-carry
General philosophy	X	X	X	X	X	X
Limitations	X	X	X	X	X	X
General requirements for shippers	X					
Classification	X					
List of hazardous materials	X					
General packing requirements	X					
Labeling and marking	X	X	X	X	X	X
Hazardous materials transport document and other relevant documentation	X	X				
Acceptance procedures						
Recognition of undeclared hazardous materials	X	X	X	X	X	X
Storage and loading procedures						
Pilots' notification						
Provisions for	X	X	X	X	X	X

passengers and Crew						
Emergency procedures	X	X	X	X	X	X

Note 1 –Depending on the responsibilities of the person, the aspects of training to be covered may vary from those shown in the table.

Note 2 – When a person offers a consignment of hazmat, including COMAT, for air transport for or on behalf of the certificate holder, then that person must be properly trained. All shippers of hazmat must be trained under 49 CFR. The shipper functions in 49 CFR mirror the training aspects that must be covered for any shipper, including a will-not-carry certificate holder offering dangerous goods for transport, with the exception of recognition training. Recognition training is a separate FAA requirement in the certificate holder's training program.

Note 3 –When an operator, its subsidiary, or an agent of the operator is undertaking the responsibilities of acceptance staff, such as the passenger handling staff accepting small parcel cargo, the certificate holder, its subsidiary, or the agent must be trained in the certificate holder's training program and comply with the acceptance staff training requirements.

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PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON-DEMAND OPERATIONS

■ 10. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 41706, 44113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

■ 11. Amend § 135.23 by revising paragraph (p) to read as follows:

§ 135.23 Manual contents.

* * * * *

(p)(1) Procedures and information, as described in paragraph (p)(2) of this section, to assist each crewmember and person performing or directly supervising the following job functions involving items for transport on an aircraft:

(i) Acceptance;

(ii) Rejection;

(iii) Handling;

(iv) Storage incidental to transport;

(v) Packaging of company material; or

(vi) Loading.

(2) Ensure that the procedures and information described in this paragraph are sufficient to assist a person in identifying packages that are marked or labeled as containing hazardous materials or that show signs of containing undeclared hazardous materials. The procedures and information must include:

(i) Procedures for rejecting packages that do not conform to the Hazardous Materials Regulations in 49 CFR parts 171 through 180 or that appear to contain undeclared hazardous materials;

(ii) Procedures for complying with the hazardous materials incident reporting requirements of 49 CFR 171.15 and 171.16 and discrepancy reporting requirements of 49 CFR 175.31.

(iii) The certificate holder's hazmat policies and whether the certificate holder is authorized to carry, or is prohibited from carrying, hazardous materials; and

(iv) If the certificate holder's operations specifications permit the transport of hazardous materials, procedures and information to ensure the following:

(A) That packages containing hazardous materials are properly offered and accepted in compliance with 49 CFR parts 171 through 180;

(B) That packages containing hazardous materials are properly handled, stored, packaged, loaded and carried on board an aircraft in compliance with 49 CFR parts 171 through 180;

(C) That the requirements for Notice to the Pilot in Command (49 CFR 175.33) are complied with; and

(D) That aircraft replacement parts, consumable materials or other items regulated by 49 CFR parts 171 through 180 are properly handled, packaged, and transported.

* * * * *

■ 12. Amend § 135.323 by revising paragraph (a)(1) as follows:

§ 135.323 Training program: General.

(a) * * *

(1) Establish and implement a training program that satisfies the requirements of this subpart and that ensures that each crewmember, aircraft dispatcher, flight instructor and check airman is adequately trained to perform his or her assigned duties. Prior to implementation, the certificate holder must obtain initial and final FAA approval of the training program.

* * * * *

§ 135.333 [Removed]

■ 13. Remove § 135.333.

■ 14. Add subpart K, consisting of §§ 135.501 through 135.507, to read as follows:

Subpart K—Hazardous Materials Training Program

Sec.

135.501 Applicability and definitions.
135.503 Hazardous materials training: General.
135.505 Hazardous materials training required.
135.507 Hazardous materials training records.

§ 135.501 Applicability and definitions.

(a) This subpart prescribes the requirements applicable to each certificate holder for training each crewmember and person performing or directly supervising any of the following job functions involving any item for transport on board an aircraft:

(1) Acceptance;

(2) Rejection;

(3) Handling;

(4) Storage incidental to transport;

(5) Packaging of company material; or

(6) Loading.

(b) *Definitions.* For purposes of this subpart, the following definitions apply:

(1) *Company material (COMAT)*—Material owned or used by a certificate holder.

(2) *Initial hazardous materials training*—The basic training required for each newly hired person, or each person changing job functions, who performs or directly supervises any of the job functions specified in paragraph (a) of this section.

(3) *Recurrent hazardous materials training*—The training required every 24 months for each person who has satisfactorily completed the certificate holder's approved initial hazardous materials training program and performs or directly supervises any of the job functions specified in paragraph (a) of this section.

§ 135.503 Hazardous materials training: General.

(a) Each certificate holder must establish and implement a hazardous materials training program that:

(1) Satisfies the requirements of Appendix O of part 121 of this part;

(2) Ensures that each person performing or directly supervising any of the job functions specified in § 135.501(a) is trained to comply with all applicable parts of 49 CFR parts 171 through 180 and the requirements of this subpart; and

(3) Enables the trained person to recognize items that contain, or may contain, hazardous materials regulated by 49 CFR parts 171 through 180.

(b) Each certificate holder must provide initial hazardous materials training and recurrent hazardous materials training to each crewmember and person performing or directly supervising any of the job functions specified in § 135.501(a).

(c) Each certificate holder's hazardous materials training program must be approved by the FAA prior to implementation.

§ 135.505 Hazardous materials training required.

(a) *Training requirement*. Except as provided in paragraphs (b), (c) and (f) of this section, no certificate holder may use any crewmember or person to perform any of the job functions or direct supervisory responsibilities, and no person may perform any of the job functions or direct supervisory responsibilities, specified in § 135.501(a) unless that person has satisfactorily completed the certificate holder's FAA-approved initial or recurrent hazardous materials training program within the past 24 months.

(b) *New hire or new job function*. A person who is a new hire and has not yet satisfactorily completed the required initial hazardous materials training, or a person who is changing job functions and has not received initial or recurrent training for a job function involving storage incidental to transport, or loading of items for transport on an aircraft, may perform those job functions for not more than 30 days from the date of hire or a change in job function, if the person is under the direct visual supervision of a person who is authorized by the certificate holder to supervise that person and who has successfully completed the certificate holder's FAA-approved initial or recurrent training program within the past 24 months.

(c) *Persons who work for more than one certificate holder*. A certificate holder that uses or assigns a person to perform or directly supervise a job function specified in § 135.501(a), when that person also performs or directly supervises the same job function for another certificate holder, need only train that person in its own policies and procedures regarding those job functions, if all of the following are met:

(1) The certificate holder using this exception receives written verification from the person designated to hold the training records representing the other certificate holder that the person has satisfactorily completed hazardous materials training for the specific job function under the other certificate holder's FAA approved hazardous material training program under appendix O of part 121 of this chapter; and

(2) The certificate holder who trained the person has the same operations specifications regarding the acceptance, handling, and transport of hazardous materials as the certificate holder using this exception.

(d) *Recurrent hazardous materials training—Completion date*. A person who satisfactorily completes recurrent hazardous materials training in the calendar month before, or the calendar month after, the month in which the recurrent training is due, is considered to have taken that training during the month in which it is due. If the person completes this training earlier than the month before it is due, the month of the completion date becomes his or her new anniversary month.

(e) *Repair stations*. A certificate holder must ensure that each repair station performing work for, or on the certificate holder's behalf is notified in writing of the certificate holder's policies and operations specification authorization permitting or prohibition against the acceptance, rejection, handling, storage incidental to transport, and transportation of hazardous materials, including company material. This notification requirement applies only to repair stations that are regulated by 49 CFR parts 171 through 180.

(f) *Certificate holders operating at foreign locations*. This exception applies if a certificate holder operating at a foreign location where the country requires the certificate holder to use persons working in that country to load aircraft. In such a case, the certificate holder may use those persons even if they have not been trained in accordance with the certificate holder's FAA approved hazardous materials training program. Those persons, however, must be under the direct visual supervision of someone who has successfully completed the certificate holder's approved initial or recurrent hazardous materials training program in accordance with this part. This exception applies only to those persons who load aircraft.

§ 135.507 Hazardous materials training records.

(a) *General requirement*. Each certificate holder must maintain a record of all training required by this part received within the preceding three years for each person who performs or directly supervises a job function specified in § 135.501(a). The record must be maintained during the time that the person performs or directly supervises any of those job functions, and for 90 days thereafter. These training records must be kept for direct employees of the certificate holder, as well as independent contractors, subcontractors, and any other person who performs or directly supervises these job functions for the certificate holder.

(b) *Location of records*. The certificate holder must retain the training records required by paragraph (a) of this section for all initial and recurrent training received within the preceding 3 years for all persons performing or directly supervising the job functions listed in Appendix O of part 121 of this chapter at a designated location. The records must be available upon request at the location where the trained person performs or directly supervises the job function specified in § 135.501(a). Records may be maintained electronically and provided on location electronically. When the person ceases to perform or directly supervise a hazardous materials job function, the certificate holder must retain the hazardous materials training records for an additional 90 days and make them available upon request at the last location where the person worked.

(c) *Content of records*. Each record must contain the following:

(1) The individual's name;

(2) The most recent training completion date;

(3) A description, copy or reference to training materials used to meet the training requirement;

(4) The name and address of the organization providing the training; and

(5) A copy of the certification issued when the individual was trained, which shows that a test has been completed satisfactorily.

(d) *New hire or new job function*. Each certificate holder using a person under the exception in § 135.505(b) must maintain a record for that person. The records must be available upon request at the location where the trained person performs or directly supervises the job function specified in § 135.501(a). Records may be maintained electronically and provided on location electronically. The record must include the following:

(1) A signed statement from an authorized representative of the certificate holder authorizing the use of the person in accordance with the exception;

(2) The date of hire or change in job function;

(3) The person's name and assigned job function;

(4) The name of the supervisor of the job function; and

(5) The date the person is to complete hazardous materials training in accordance with Appendix O of part 121 of this chapter.

PART 145—REPAIR STATIONS

■ 15. The authority citation for part 145 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44707, 44717.

■ 16. Revise § 145.53 to read as follows:

§ 145.53 Issue of certificate.

(a) Except as provided in paragraph (b), (c), or (d) of this section, a person who meets the requirements of this part is entitled to a repair station certificate with appropriate ratings prescribing such operations specifications and limitations as are necessary in the interest of safety.

(b) If the person is located in a country with which the United States has a bilateral aviation safety agreement, the FAA may find that the person meets the requirements of this part based on a certification from the civil aviation authority of that country. This certification must be made in accordance with implementation procedures signed by the Administrator or the Administrator's designee.

(c) Before a repair station certificate can be issued for a repair station that is located within the United States, the applicant shall certify in writing that all ''hazmat employees'' (see 49 CFR 171.8) for the repair station, its contractors, or subcontractors are trained as required in 49 CFR part 172 subpart H.

(d) Before a repair station certificate can be issued for a repair station that is located outside the United States, the applicant shall certify in writing that all employees for the repair station, its contractors, or subcontractors performing a job function concerning the transport of dangerous goods (hazardous material) are trained as outlined in the most current edition of the International Civil Aviation Organization Technical Instructions for the Safe Transport of Dangerous Goods by Air.

■ 17. Amend 145.57 by revising paragraph (a) to read as follows:

§ 145.57 Amendment to or transfer of certificate.

(a) The holder of a repair station certificate must apply for a change to its certificate in a format acceptable to the Administrator. A change to the certificate must include certification in compliance with § 145.53(c) or (d), if not previously submitted. A certificate change is necessary if the certificate holder—

(1) Changes the location of the repair station, or

(2) Requests to add or amend a rating.

* * * * *

■ 18. Add § 145.165 to subpart D to read as follows:

§ 145.165 Hazardous materials training.

(a) Each repair station that meets the definition of a hazmat employer under 49 CFR 171.8 must have a hazardous materials training program that meets the training requirements of 49 CFR part 172 subpart H.

(b) A repair station employee may not perform or directly supervise a job function listed in § 121.1001 or § 135.501 for, or on behalf of the part 121 or 135 operator including loading of items for transport on an aircraft operated by a part 121 or part 135 certificate holder unless that person has received training in accordance with the part 121 or part 135 operator's FAA approved hazardous materials training program.

■ 19. Add § 145.206 to read as follows:

§ 145.206 Notification of hazardous materials authorizations.

(a) Each repair station must acknowledge receipt of the part 121 or part 135 operator notification required under §§ 121.905(e) and 135.505(e) of this chapter prior to performing work for, or on behalf of that certificate holder.

(b) Prior to performing work for or on behalf of a part 121 or part 135 operator, each repair station must notify its employees, contractors, or subcontractors that handle or replace aircraft components or other items regulated by 49 CFR parts 171 through 180 of each certificate holder's operations specifications authorization permitting, or prohibition against, carrying hazardous materials. This notification must be provided subsequent to the notification by the part 121 or part 135 operator of such operations specifications authorization/designation.

Issued in Washington, DC, on September 18, 2005.

Marion C. Blakey,

Administrator.

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