AMERISTAR
AIR CARGO, INC.

Docket Management System
U.S. Department of Transportation
Room Plaza 401
400 7th Street, South West
Washington, D.C. 20590
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Attn: Docket Number FAA-2003-15085; Notice No. 03-08

Ameristar Air Cargo, Inc. submits the following comments to the docket for deletion of 14 CFR Part 121.433a, the addition of 14 CFR Part 121 Subpart Y and Appendix N, changes to 14 CFR 119, and 14 CFR 145.

General
Ameristar Air Cargo, Inc. (Ameristar) is an on demand 14 CFR Part 121 Certificate holder conducting operations throughout North and South America primarily for the automotive industry and does carry hazardous materials on a regular basis. The automotive industry requires the use of airports that are as close to their plants as possible so as to reduce the amount of surface movement from the aircraft to the assembly line. Many of the airports are small town airports providing only basic service; fuel, local part-time ground handlers and office support.

The NPRM does not take into consideration the on-demand carriers both large and small who use contract loaders to load and unload its aircraft.

Ameristar requires, as part of its Hazardous Materials Program, to train those individuals that have not had any hazardous materials training within the last 12 months on a one-time basis that is good for the loading event that is taking place. This training is currently required by 14 CFR Part 121.433a(b), is documented and made part of the hazardous materials paperwork that is kept on file for 375 days as required by and consistent with 49 CFR Part 172.201(e).

Comments
There is no mention of applicability to 14 CFR Part 125 Certificate holders. Part 125 Certificate holders are a large segment of the ad hoc (on demand) large aircraft all-cargo industry. Without including Part 125 Certificate holders in this rule it further erodes the playing field between Part 135 and 121 Certificate holders and does not complete the intent of the rule. There are currently DC-8, B-727, DC-9, Convair and other large aircraft being operated under the rules of 14 CFR Part 125 in air commerce that are authorized and carrying hazardous materials. These part 125 aircraft are a major competitor to Ameristar and fly for the same customers carrying the same types of hazardous materials on a daily basis.

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Large aircraft can carry a significant amount of hazardous materials and do on a nightly basis in conjunction with freight transportation companies such as Emery, DHL, BAX and others. It has been my experience that these companies provide their employees with excellent training and provide subcontracting air carriers that fly within these systems an accurate accounting of hazardous materials that are required to be described to flight crewmembers. A sample audit of these types of companies would suffice to provide for the level of safety that is sought in the above-described NPRM without the exchange of training records required by the proposed 14 CFR 121.803(b). For example, as is the practice for many 14 CFR Part 121 air carriers today, conduct a sample audit of a station's hazmat training records that are represented by a single entity employing individuals that are qualified under 49 CFR §172.704. A certification by a representative of the air carrier attesting to the inspection and finding of an individual's hazmat training record should suffice to ensure a high level of confidence that the training has been accomplished in accordance with 49 CFR §172.704.

Table 1 At Page 24824 of the Federal Register Vol. 68, No. 89
Table 1 should have another category with the Key of "Persons that load, unload or handle hazardous material under the supervision of someone trained by a Category 5 person". This category of person is clearly thought of in 49 CFR 172.704(a) and should be accounted for in this table.

121.401 At Page 24822 of the Federal Register Vol. 68, No. 89

(1) Does not address FAR 121 Supplemental carriers, i.e. flight followers. Flight followers perform the function of operational control on behalf of the Director of Operations and should be required to have some training in regards to their duties associated with the transport of hazardous materials. Many, if not most, of the FAR 121 Domestic and Flag carriers prohibit hazardous materials aboard their aircraft.

121.801 At Page 24822 of the Federal Register Vol. 68, No. 89
(b) Does not address a person that 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 1 piece of freight, i.e. a seat belt pretensioner, Class 9 (UN3268) using a forklift on a one-time basis for an operator. The training should be very specific to the item being loaded since the person would be supervised during the entire loading process. It is very possible in Ameristar's operation to use this person once in a lifetime for less than 10 minutes. I suggest the following:

Add Paragraph (b)(4) to read:
"Function Specific Training for Hazard Materials" – Training approved by the administrator to qualify a person to perform a function or functions listed in paragraph (a) of this section applicable to the certificate holder's operation.

This language is consistent with 49 CFR §172.704(a) and provides guidance for operators and inspectors.

121.802 At Page 24823 of the Federal Register Vol. 68, No. 89
(b) add "function specific training" or in the alternative 14 CFR Part 121.803(f) provides an equivalent level of safety. In other words if it is safe outside the country, why wouldn't that regulation provide the same safety layer within the United States.

121.803 At Page 24823 of the Federal Register Vol. 68, No. 89

(a) add to the last paragraph the following:

"...or completed function specific training as required by the certificate holder's hazardous materials training program." In the alternative 14 CFR Part 121.803(f) provides an equivalent level of safety. In other words if it is safe outside the country why wouldn't that regulation provide the same safety layer within the United States.

(b) Normally a flight crewmember cannot complete a curriculum (Hazmat training is normally a part of all curriculums) and be assigned to line flying until all of the elements of that curriculum are complete. This paragraph leads me to believe that an assignment can be made without completing a curriculum segment.

(b) There are no provisos for contract employees. It is not possible to comply with this paragraph in the on-demand world in a timely manner. This presents a burden to the carrier and ultimately the customer, i.e. General Motors, Ford, Chrysler, etc. whose assembly line may be shutdown waiting time-sensitive parts costing those companies $25,000 or more a minute. Again, the function specific training suggested above would and does work for this type of situation. In the alternative 14 CFR Part 121.803(f) provides an equivalent level of safety. In other words if it is safe outside the country why wouldn't that regulation provide the same safety layer within the United States.

(d) The "Base Month" concept in this paragraph is inconsistent with 14 CFR Part 121.401(b). This requires an industry to have two standards. This could easily require a certificate holder to bring a person in for training at least one more time to complete other annual recurrent training requirements. This is an economic burden that does not enhance safety. The requirements of 14 CFR Part 121.433a currently allow the grace month proviso.

In addition, this is not consistent with 49 CFR §172.704(c)(2) that allows up to 3 years.

(e) The requirements of (e) are superfluous in that:

Each Part 121 repair station handles thousands of hazardous materials. Why should a Part 121 certificate holder have to do anything more than to get a copy of its Part 145 repair station's certificate? Is it possible that there is a Part 121 repair station that does not have the authority to ship and handle hazardous materials? My experience with repair stations is excellent – they are very diligent when it comes to shipping hazardous materials. I think that when a repair station offers a hazardous material and the air carrier accepts that shipment the carrier's hazardous materials program takes over. In addition, 14 CFR 145.5 and 145.11 requires a hazardous materials program and training for each 14 CFR 145 repair station.

121.804 At Page 24823 of the Federal Register Vol. 68, No. 89

(a) add three years after the effective date of this rule.

(b) 14 CFR Part 121 consistently allows/requires that records be kept at a certificate holder's "Principal Base of Operations". § 172.201(e), Preparation and retention of shipping papers, also allows the operator to retain shipping paper information at its "principal place of business". This should be the same language.

(b) Ameristar Air Cargo, Inc. is a small carrier that serves over 200 cities in North and South America, the requirements of this paragraph would be very difficult to comply with. An exemption would have to be obtained to address this proposed language.

(c)(1) Correct to Person's Name Only. The official job function may be listed in the training file or human resources. Unless there is listed in the regulation all of the acceptable categories of functions that should be listed. This may be operator dependent. The curriculum that is accomplished would be important.

(c)(2) add three years after the effective date of this rule.

(c)(3) There is no official in 14 CFR Part 119 or 121 that directly or indirectly refers to such a position as Director of Training. Suggest that the language similar to that in 14 CFR Part 121.401 be used to describe the certification process. Again, an exemption or deviation would be required to accommodate this language.

(c)(4)(i) The date of the course is a repeat of (C)(2)

Appendix N At Page 24825 of the Federal Register Vol. 68, No. 89
Suggest a preface statement in Appendix N that states that training modules are developed applicable to an air carrier's operation. For example, Ameristar's operation as an all-cargo on-demand operator is significantly different than that of American Airlines. Allow the Principal Operations Inspector to ensure appropriate compliance with this language.

Module 2 – "passenger check-in list" would not be applicable to Ameristar's operation and would be removed from the curriculum.

Module 3 – The reference to disposal procedures would not be pertinent to Ameristar's operations – again applicability. Ameristar would not be disposing of any hazardous materials. As a shipper, Ameristar would contact the appropriate authorities in the event of spill or leakage of a hazardous substance. In turn, the appropriate authorities would handle the disposal of the hazardous material.

Module 13 – Suggest deleting "Policies and procedures regarding handling, packaging, and transport of hazardous materials moving by means other than air." This module element leaves too much interpretation to the FAA inspector approving a hazardous materials program. In the alternative, the following language could be used:

"Applicable policies and procedures regarding handling, packaging, and transport of hazardous materials moving by means other than air."

145.11(a)(5) At Page 24827 of the Federal Register Vol. 68, No. 89

1. Should be prior to a certificate being issued. During the application process certain employees necessary to start business may not be in place and could not be trained. In the alternative, a statement indicating that all hazmat employees "will" be trained prior to a certificate being issued would be appropriate.
2. Proposed Section 145.5 is very clear in regards to required training making the proposed language of 145.11(a)(5) somewhat redundant.

145.27 At Page 24827 of the Federal Register Vol. 68, No. 89

1. "All workers" as used in this regulation is very broad in scope.

Thank you for the opportunity to comment on this NPRM

Sincerely,

Pat Hulsey
Director of Operations