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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 119, 121, 135, and 145

[Docket No. FAA-2003-15085; Notice No. 03-08]

RIN 2120-AG75

Hazardous Materials Training Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) is proposing to amend its hazardous materials (hazmat) training requirements for certain air carriers and commercial operators, ~~certificated to operate under part 121 or part 135.~~ In addition, the FAA is proposing that certain repair stations ~~certificated under part 145~~ document for the FAA 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 transport and the aviation industry have changed significantly since the FAA promulgated its hazmat training regulations over 25 years ago. The proposed rule would set clear training standards and ensure uniform compliance with training requirements.

DATE: Send your comments on or before [~~insert date 60 days after date of publication in the Federal Register~~] July 1, 2003.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh St., SW, Washington, DC

20591. You must identify the docket number (FAA-2003-15085) at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to http://dms.dot.gov. You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Dockets office is on the plaza level of the Department of Transportation at the address above. Also, you may review public dockets on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: William Wilkening, Hazardous Materials Division, ASI-300, Federal Aviation Administration, 800 Independence Avenue SW, Washington, D.C., 20591; telephone (202) 267-9864; facsmilie (202) 267-9788.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the environment, energy, federalism, or economic impact that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking.

The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the addresses in the ADDRESSES section of this preamble between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the web address in the ADDRESSES section.

Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Availability of Rulemaking Documents

You can get an electronic copy of this document from the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) web page (http://dms.dot.gov/search).

(2) On the search page, type the last digits of the docket number shown at the beginning of this document. Click on "search."

(3) On the next page, which contains the docket summary information for the docket you selected, click on the document number for the item you wish to view.

You also can get an electronic copy of this document from the Internet through FAA's web page at http://www.faa.gov/avr/armhome.htm or the Government Printing Office's web page at http://www.access.gpo/su_docs/aces/aces140.html.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Ave., SW, Washington, DC 20591, or by calling 202-267-9680. Be sure to identify the docket number, notice number, or amendment number of this rulemaking.

List of Abbreviations and Acronyms Used in This Document

AC—Advisory Circular
COMAT—Material owned or used by a certificate holder, commonly referred to as "company material"
Hazmat—Hazardous material
HMRs—Department of Transportation's Hazardous Materials Regulations found in 49 CFR parts 171 through 180
ICAO—International Civil Aviation Organization
NTSB—National Transportation Safety Board
RSPA—Research and Special Programs 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, unloading or carriage of items for transport on board an aircraft
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 requires declaration under the HMRs

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I. Background

A. Purpose of the Proposed Rule

The FAA regulations that prescribe hazmat training for air carriers and commercial operators conducting operations under part 121 or part 135 were first adopted over 25 years ago. Since that time, hazmat transport regulation in general has changed significantly, in part because the Department of Transportation (DOT) implemented the Hazardous Materials Regulations (HMRs) in 49 CFR parts 171 through 180 (41 FR 15972; April 15, 1976), and in part because of changes following deregulation of the airline industry in the 1970s. The hazmat regulations, which include training requirements, apply to all modes of transport. Training requirements also exist in the "Technical Instructions for the Safe Transport of Dangerous Goods by Air" of the International Civil Aviation Organization (ICAO). In addition, the FAA has provided guidance to the industry through Advisory Circulars (ACs) to help the aviation industry to comply with the FAA's and DOT's hazmat training

requirements. Information from air carriers indicates that adherence to the recommendations in ACs has been high. The ACs are not mandatory, however, and these critical safety practices need to be clearly established within the FAA's safety regulations. The FAA is proposing adding training requirements to its regulations that would set clear standards and ensure uniform compliance with training requirements for the handling of hazardous cargo. This proposed rulemaking would amend the manual and training regulations in parts 121 and 135 to incorporate most of the guidance now contained in the ACs.

For example, these proposed regulations would require certificate holders operating under part 121 or part 135 to have one of two distinct hazmat training programs. One training program would be for certificate holders electing to transport hazmat ("will-carry" certificate holders), and the other would be for certificate holders who elect not to transport hazmat ("will-not-carry" certificate holders). A certificate holder that elects will-carry status would have an authorization to carry hazmat in its operations specifications. For will-not-carry certificate holders, the FAA would place a prohibition against carrying hazmat subject to regulation under the HMRs in their operations specifications.

These proposed rules also would identify the persons who must receive hazmat training by the nature of the functions they perform or supervise for the certificate holders. The term "supervise" would be defined to mean more than just being a designated supervisor. It would cover a person who has any degree of oversight over a function addressed by the proposed rule. Will-carry certificate holders would have to conduct extensive training for persons supervising or performing any of the following 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), loading, unloading, and carriage. (This preamble refers to these functions as "transport-related functions" or "TRF.") Will-not-carry certificate holders would have to conduct training sufficient to enable the persons supervising or performing a TRF to identify material marked or labeled as hazmat, and material not marked or labeled but showing some indication that it is hazmat.

In addition to these proposed amendments, the FAA proposes to add requirements for repair stations that would allow the FAA to increase its oversight of the training they are required to conduct under the DOT's hazmat training requirements in 49 CFR part 172. This separate FAA requirement is needed because the FAA has noticed that, despite the training requirements of the HMRs, a number of aviation incidents, and at least one accident, involved hazmat handled by repair stations with inadequate training programs. The proposed rules also would amend part 145 to require that repair stations meeting the definition of "hazmat employers" under 49 CFR 171.8 implement a hazmat training program that satisfies 49 CFR 172.700 through 172.704.

At the time of application for a certificate, 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 training requirements of the HMRs. The applicant also would have to provide evidence of compliance with the HMRs. Without this evidence, the applicant would not receive a certificate.

Additionally, all repair station workers performing or supervising a TRF for a certificate holder, would have to be trained under the certificate holder's approved training program. Furthermore, a provision would be added to part 145 to require repair stations to notify all workers of the will-carry or will-not-carry status of the certificate holders for which

the repair station works. This would have to be done as soon as the repair station is informed of the certificate holder's status. This proposal would be the companion requirement to the proposed notification requirement for part 121 and part 135 certificate holders. It would ensure that repair station management gives this information to its workers immediately.

B. Historical Overview

1. Agency Rulemakings for Part 121 and Part 135

The FAA's current part 121 and part 135 hazmat training and manual requirements were adopted on June 7, 1973 (38 FR 14914). That rulemaking added §121.433a to require hazmat training for persons performing any duty involving handling or carriage of hazmat. Section 121.401 was amended to include this training in the certificate holder's training program. Section 121.135 (b)(12) was amended to require certificate holders to include in their manuals procedures and instructions for recognizing hazmat, and instructions for the proper carriage, storage, and handling of these materials.

The same rulemaking added §135.140 to require hazmat training provisions for part 135 certificate holders. These part 135 requirements were similar to those in part 121, but with one important difference. Part 135 distinguished between will-carry and will-not-carry certificate holders. The preamble stated that the intent of the rule was to require a "part 135 certificate holder to provide a program of training only if it undertakes to engage in the transportation of hazardous materials." Thus, only part 135 will-carry certificate holders were required to have a hazmat training program. In contrast, all part 121 certificate holders were required to have training programs.

A year and a half later, on January 3, 1975, the Hazardous Materials Transportation Act (HMTA), Title I of Public Law 93-633, was enacted. The HMTA gave the Secretary of Transportation the authority to consolidate hazmat regulations of the various transportation modes. On April 15, 1976, using this authority, the Materials Transportation Bureau (the predecessor of the Research and Special Programs Administration (RSPA)) consolidated all hazmat regulations of the various DOT modal administrations into one set of regulations for air, water, and surface transportation of hazmat (41 FR 15972). These consolidated regulations were published in 49 CFR parts 100 through 180. In response, the FAA removed its hazmat regulations from 14 CFR part 103, but it did not remove the hazmat training and manual requirements from part 121 and part 135. These regulations remained because they were an integral part of the certification requirements and operating rules for part 121 and part 135 certificate holders.

On May 25, 1978 (43 FR 22643), the FAA amended §121.433a to add paragraph (c) allowing certificate holders operating in foreign locations to use personnel not trained under the certificate holder's hazmat training program to load and unload aircraft. These persons, however, must be under the supervision of someone who has successfully completed the certificate holder's approved training program. The amendment also allowed flight crewmembers to complete recurrent training a month before or a month after the actual due date.

On October 10, 1978, the FAA substantially rewrote part 135 (43 FR 46742). As part of that final rule, the FAA added §135.23 (p) to require each certificate holder, whether or not it carries hazmat, to include hazmat recognition procedures and instructions in its manual.

Will-carry certificate holders had to include in their manuals detailed procedures and instructions for handling and carrying hazmat.

More significantly, the October 1978 rule, added training requirements for will-not-carry certificate holders. They were required to train their crewmembers to recognize hazmat. The new training requirement was put in part 135 because of a number of incidents where a will-not-carry certificate holder inadvertently accepted hazmat because its employees did not recognize it. Part 135 hazmat recognition training, however, was limited to crewmembers.

After deregulation of the airline industry, the FAA allowed a number of part 121 certificate holders to elect will-not-carry status and to provide only general awareness/recognition of hazmat training. In accordance with this practice, on July 10, 1980 (45 FR 46736), the FAA amended part 121 manual requirements to require will-not-carry certificate holders to have procedures and instructions in sufficient detail to assist personnel in identifying packages marked or labeled as containing hazmat. The training requirements in §121.433a, however, were not modified to incorporate a "recognition training" requirement for part 121 will-not-carry certificate holders. The FAA believes that most, if not all, part 121 certificate holders provide hazmat recognition training, but, to ensure that this training does occur, the FAA believes that these training requirements should be clearly stated in the regulations.

2. Advisory Circulars

In 1984, the FAA issued an AC providing certificate holders with information on 49 CFR parts 171 through 180, and the ICAO's "Technical Instructions for the Safe Transport

of Dangerous Goods by Air" (AC 121-21B, entitled "Information Guide for Training Programs and Manual Requirements in the Air Transportation of Hazardous Materials"). The AC also provided a recommended training curriculum. This curriculum pre-dated DOT's passage of more specific hazmat training requirements in 49 CFR 172.700 through 172.704. The AC also encouraged will-not-carry certificate holders to ensure "that their personnel (including crewmembers) are adequately trained to recognize those items which can be classified as hazardous materials."

3. Training Requirements for Repair Stations

The recent hazmat incident and accident history indicates that additional requirements are needed to ensure that repair stations are doing the training required by the HMRs. In August 1997, the National Transportation Safety Board (NTSB) issued its final report on its investigation into the crash of ValuJet Airlines Flight No. 592 ("In-Flight Fire and Impact With Terrain, ValuJet Airlines Flight 592"). The report concluded that if ValuJet had implemented a hazmat recognition training program for its repair station employees, and in it had notified those employees of Valujet's will-not-carry status and its implications, SabreTech (Valujet's repair station) might not have mishandled the packaging and shipment of the chemical oxygen generators that were loaded onto the aircraft. Thus, NTSB recommended that the FAA:

> Require air carriers to ensure that maintenance facility personnel, including mechanics, shipping, receiving, and stores personnel at air carrier operated or subcontractor facilities are provided initial and recurrent training in hazardous materials recognition and in proper labeling, packaging and shipment procedures with respect to the specific items of hazardous materials that are handled by the air carrier's maintenance functions.

The FAA currently has no separate hazmat training requirement for part 145 repair stations that use, offer for transport, or otherwise handle hazmat. However, DOT's hazmat training requirements in 49 CFR part 172, apply to these repair stations. Yet, even with the heightened awareness of the dangers of oxygen generators since the crash of Valujet Airlines Flight 592, the FAA continues to find hazmat, including oxygen generators, that have been improperly prepared and offered for shipment by air carriers and repair stations. The FAA believes that the DOT training requirements need to be referenced in the FAA's rules concerning repair stations. This will ensure that repair stations are aware of them, and make retention of their repair station certificate subject to compliance with them.

C. Relationship Between FAA and DOT Training Requirements

The DOT's HMRs (49 CFR parts 171 through 180) clearly apply to air carriers and repair stations that transport hazmat. They require all "hazmat employers" to train "hazmat employees" pursuant to 49 CFR 172.700 through 172.704. The terms "hazmat employer" and "hazmat employee" are defined in 49 CFR 171.8. "Hazmat employee" includes anyone who directly affects transportation safety by performing a function regulated by the HMRs. "Hazmat employer" is defined as "a person who uses one or more of its employees in connection with: transporting hazardous materials in commerce; causing hazardous materials to be shipped in commerce; or representing, marking, certifying, selling, offering, manufacturing, reconditioning, testing, repairing, or modifying containers, drums or packagings as qualified for use in the transportation of hazardous materials." Under DOT's regulations, however, there is no training requirement placed upon employers or employees who are not "hazmat employers" or "hazmat employees." Thus, there are no hazmat

recognition training requirements in DOT's HMRs for the employees of will-not-carry certificate holders who are not supposed to handle or transport hazmat. The FAA in this proposal recognizes that employees who are not supposed to accept, handle, or carry hazmat need adequate training to recognize and appropriately reject it to prevent the improper carriage of hazmat by will-not-carry certificate holders. It should be noted that even a will-not-carry certificate holder that does not handle hazmat from the public for transport may be a hazmat employer with respect to aircraft components, consumable materials, or other items of its own or another carrier.

D. United States Mail as Cargo

Significant amounts of mail are transported as cargo by part 121 and part 135 certificate holders. Thus, certificate holders and persons acting for certificate holders perform a TRF when accepting mail for transport on an aircraft. In 1990, the U.S. mail and the U.S. Postal Service (USPS) were expressly excluded from the reach of the Federal hazardous materials transportation law (Hazardous Materials Transportation Uniform Safety Act of 1990, Pub.L. 101-615, 1990 (49 U.S.C. App. 1801 note). The USPS has its own regulations that control the transportation of hazmat in the mail (Domestic Mail Manual (DMM), C023, revised in Postal Bulletin 21997, May 6, 1999). Generally, the USPS accepts only limited quantities and classes of hazardous materials. It requires hazmat offered for transportation by air to be segregated and properly identified. The USPS standards cross-reference the HMRs and recognize the hazmat classifications, labeling and marking requirements of the HMRs. The FAA has received reports from certificate holders concerning mail cargo that did not comply with USPS requirements or the conditions of the

contract of carriage between the certificate holder and the USPS. These proposed rules therefore include a training topic under proposed Module 12, Dangerous Goods Exceptions, that addresses the mail and USPS standards concerning the restrictions on hazmat in the mail and air transportation of mail.

II. Discussion of Proposals

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

The FAA recognizes that part 121 or part 135 certificate holders would need a reasonable period of time to implement these proposed regulations. Thus, the FAA is proposing to provide a 15-month transition period to allow certificate holders certificated on or before the effective date of the final rule to bring their hazmat training programs into compliance. During this transition period, these certificate holders could continue to comply with the current requirements or comply with these proposed new rules. Certificate holders certificated after the effective date of the final rule would have to comply with the new hazmat training requirements immediately upon certification. At the end of the transition period, all certificate holders would be required to comply with the new training requirements.

The FAA proposes to move all existing hazmat training requirements in §§121.401 (a)(1), 121.433a, 135.323 (a)(1), and 135.333 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, which would be in parts 121 and 135. The SFAR would expire at the end of the 15-month transition period.

B. Section 119.49--Contents of Operations Specifications

Section 119.49 (a)(13) would be amended to provide that a certificate holder's operations specifications would include either 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). Current language of (a)(13) providing that operations specifications may include any other item the Administrator deems necessary would be redesignated as new (a)(14).

C. Sections 121.135 and 135.23—Manual Contents

This proposed rule would amend the manual requirements at 14 CFR 121.135 (b)(23) and 135.23 (p) to require both will-carry and will-not-carry certificate holders to include procedures and information in their manuals to assist each person performing or supervising a TRF in recognizing hazmat. A certificate holder authorized as a will-carry operator would be required to provide additional procedures and information in its manual. The proposed rule would apply to full time and part time employees of a certificate holder or a contractor or subcontractor, and any other person who performs or supervises a TRF for a certificate holder under any other arrangement. This more extensive language is necessary because the current manual requirements do not clearly identify the person covered by the requirements. The current rule language merely states that the procedures and information must be included in the manual to "assist personnel to identify packages marked or labeled as containing hazardous materials...." Furthermore, in order to emphasize that the manual applies to all persons working for the certificate holder, whether or not directly employed by the certificate holder, the FAA proposes to replace the term "personnel" with the term "person."

The proposed language of §§121.135 (b)(23) and 135.23 (p) would require a two-tiered approach to the hazmat portion of the certificate holder's manual: Those requirements applying to both will-carry and will-not-carry certificate holders, and those requirements applying only to will-carry certificate holders.

Unlike the current rule language, the proposed amendments to §§121.135 (b)(23) and 135.23 (p) would require both will-carry and will-not-carry certificate holders to provide procedures for rejecting packages that are not prepared and offered for shipment under the HMRs in 49 CFR parts 171 through 180, or that appear to contain undeclared hazmat. This change is needed because the current rule language only refers to identifying or recognizing packages marked and labeled as hazmat. The FAA believes that a certificate holder's manual should include procedures for rejecting known hazmat that is not properly offered for transport in compliance with DOT's HMRs. Thus, the rule would apply to materials appearing to be 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 in documents accompanying the package may indicate the possible presence of an undeclared hazmat. Additionally, trigger lists can be used to help alert persons to the possible presence of hazmat in items not properly identified as hazmat. These items include gasoline-powered equipment (chainsaws, generators, or aviation fuel control units) not purged of their hazardous contents, and perishable goods shipped with dry ice, which is a regulated hazmat.

If this rule is adopted, persons would be trained to recognize items not properly identified as hazmat. Furthermore, the proposed rule would require both will-carry and will-

not-carry certificate holders to include in their manuals procedures and information regarding notifying DOT of hazmat incidents. (See proposed §§121.135 (b)(23)(ii)(B) and 135.23 (p)(2)(ii)). This information would have to be provided to each person performing or supervising a TRF. In contrast, the current rule language requires a certificate holder to include this information in its manual only if the certificate holder has will-carry status.

A certificate holder may carry hazmat in accordance with 49 CFR 175.10. Training for recognition of the hazardous materials excepted from 49 CFR would be included in the will-carry and will-not-carry training programs.

The proposed rule also would require the manual to indicate whether a certificate holder is a will-carry or will-not-carry operator, as specified in its operations specifications. (See proposed §§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.

Certificate holders electing will-carry status would be required to provide procedures and information to ensure that: (1) The packages containing hazmats are properly offered, accepted, handled, stored, packaged, loaded, unloaded and carried on the aircraft in compliance with DOT's HMRs; (2) DOT requirements regarding discrepancy reporting (§175.31) and notice to the pilot in command (§175.33) are met; and (3) aircraft replacement parts shipped as COMAT, consumable materials, and any other item regulated under the HMRs, are properly handled, packaged, and carried on board an aircraft.

As noted above, if the proposed changes are adopted, certificate holders certificated on or before the effective date of the final rule would have 15 months from the effective date to revise their manuals and implement the changes. Current §§121.135 (b) and 135.23 (p) would be placed in SFAR No. 99 (discussed under II.A.), which would expire at the end of

the 15-month transition period. Applicants certificated after the effective date of the final rule to operate under part 121 or 135 would be subject to the new requirements upon certification.

D. Sections 121.401 (a)(1), 121.433a, 135.323 (a)(1), and 135.333—Transfer of Hazmat Provisions to SFAR

The hazmat requirements currently in §§121.401 (a)(1), 121.433a, 135.323 (a)(1), and 135.333 would be moved to SFAR No. 99, which would remain in effect for the 15-month transition period, as discussed under II.A. Sections 121.401 (a)(1) and 135.323 (a)(1) would be revised to continue to require crewmember training other than hazmat. New subparts in parts 121 and 135 (discussed under II.E.) would contain revised hazmat training requirements. A new §§121.802 and 135.502 would require the hazmat training for part 119 certificate holders conducting operations in accordance with part 121 or part 135. This reorganization would provide needed separate emphasis for hazmat training.

E. Part 121, Subpart Y, and Part 135, Subpart K—Hazardous Materials Training Program

The proposed hazmat training rules in part 121, subpart Y, and part 135, subpart K, would require all air carriers and commercial operators to train each person who may perform or supervise a TRF. The FAA believes that adequate training of each person involved in a TRF would greatly enhance safety in air transportation and help avoid life-threatening incidents. Moreover, given the frequency of undeclared hazmat incidents, the FAA believes that a broader training curriculum, which includes hazmat recognition training, should be mandated for all part 121 and part 135 certificate holders.

Because the changes that are proposed to the manual and training requirements in parts 121 and 135 are virtually identical, this discussion of the individual sections will address the changes to the parallel provisions of these parts together.

1. Applicability and Definitions (§§121.801 and 135.501)

These proposed provisions would clarify that the new subparts prescribe requirements for certificate holders for training persons performing or supervising a TRF, whether the certificate holder is a will-carry or will-not-carry operator. The will-carry or will-not-carry status would be relevant only to the nature of the training curriculum, not to the requirement to train. The proposed rules would be broader than the current requirements in §§121.433a and 135.333, which apply only to persons handling or carrying hazardous materials.

Paragraph (a): The proposal would cover persons who perform or supervise any function for a certificate holder in the transport of an item on board an aircraft, whether or not an item is, or contains, a hazmat. The proposed rules would include ground-handling personnel, passenger check-in personnel, skycaps, cargo acceptance personnel, maintenance shop personnel, shipping and receiving personnel, and their supervisors.

Currently, §§121.433a and 135.333 forbid certificate holders 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 proposed applicability provisions in §§121.801 and 135.501 are intended to be broad enough to cover not only those persons directly performing a TRF, but also those persons supervising the performance of a TRF. Whether a person were officially assigned to perform a function would be irrelevant. 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.

Paragraph (b): Sections 121.801 (b) and 135.501 (b) would define "initial hazardous materials training" and "recurrent hazardous materials training."

Paragraph (b)(1) would define "Company material (COMAT)" as material owned or used by the certificate holder. COMAT is a term of art used in the aviation industry. It is used in the proposed rule to ensure that persons are trained to understand that hazardous COMAT must be marked, labeled, and identified as hazmat, and that there is no exception for the carriage of hazardous COMAT even by will-not-carry certificate holders.

Paragraph (b)(2) would define "initial hazardous materials training" consistent with the initial training required by 49 CFR 172.704, although 49 CFR does not specifically define initial hazmat training.

Paragraph (b)(3) would define "recurrent hazardous materials training" consistent with the way the term is used in 49 CFR 172.704, although it too is not a defined term in DOT's regulations. The FAA's recurrent hazardous materials training requirement, however, would be for annual training, instead of every 3 years, as required by DOT. The yearly recurrent hazardous materials training requirement is consistent with other current training requirements for part 121 and part 135 certificate holders.

2. General Requirement to Train (§§121.802 and 135.502)

The FAA believes that a mandated curriculum for both will-carry and will-not-carry certificate holders would improve the knowledge base of persons performing or supervising a

TRF. This training would improve transportation safety by ensuring that persons perform their job functions or supervisory responsibilities under the certificate holder's hazmat policy and the DOT's HMRs.

The current regulations in parts 121 and 135 do not provide specific details on the hazmat training curriculum. Nor do the hazmat training requirements in 49 CFR part 172 provide a specific curriculum; they simply provide a general training outline that requires general awareness training, function-specific training, and safety training. As noted above, the FAA historically has provided guidance to certificate holders in the form of ACs on the suggested content of the training curriculum. This guidance has been designed to enable the certificate holders to develop a program that will be suitable for FAA approval. Under this proposal, however, the curriculum would be mandated by regulation.

Paragraph (a): Proposed §§121.802 (a) and 135.502 (a) would require all hazmat training programs to include, at a minimum, the hazmat training curriculum contained at Appendix N of part 121. (See discussion of Appendix N under II.F.) The training programs would ensure that each person performing or supervising a TRF is trained to comply with 49 CFR parts 171 through 180, and would enable trained persons to recognize items that contain, or may contain, hazmat.

Paragraph (b): The proposal envisions that a certificate holder would develop an organized training program that would build upon a person's knowledge of hazmat regulations, keep up with current requirements, and focus on any problem areas. This is consistent with current requirements. "Initial hazardous materials training" would be similar to initial flight and proficiency training in part 121, subpart N, except that it would apply to a broader category of persons, and the training curriculum would be hazmat-focused. With

certain exceptions, each person performing or supervising a TRF would be required to receive initial hazardous materials training prior to performing or supervising that function.

Paragraph (c): Sections 121.802 (c) and 135.502 (c) would require the certificate holder to obtain FAA approval of the hazmat training program prior to implementing the program. This requirement would be consistent with the current training requirements in §§121.401 and 135.323.

3. Training Requirement (§§121.803 and 135.503—Paragraphs (a))

Proposed paragraphs (a) of §§121.803 and 135.503 would provide that no certificate holder could use any person to perform or supervise a TRF, unless that person had satisfactorily completed the certificate holder's FAA-approved initial or recurrent hazardous materials training program within the past year. (See discussion of recurrent training under II.E.6.) A person would be satisfactorily trained when that person understood the relevant training material and was capable of performing his or her job in compliance with both 49 CFR parts 171 through 180 and part 121, subpart Y, or part 135, subpart K, as applicable.

Under the proposed requirement, the certificate holder would have to ensure that each person performing or supervising a TRF completed the certificate holder's initial or recurrent hazardous materials training program within the past year. A person who has not received this training could not be used to perform or supervise a TRF, unless the conditions of an exception (discussed below) were satisfied. Example A explains how this general training requirement would work.

> *Example A*: A flight attendant is employed by Certificate Holder A (a will-carry operator under part 121) and receives initial hazmat training appropriate for the job on March 1. On August 1 of the same year, the flight attendant leaves Certificate Holder A to work for Certificate Holder B (also a will-carry operator under part 121)

as a flight attendant. Certificate Holder B cannot use the initial hazmat training provided by Certificate Holder A to satisfy its training obligation. Certificate Holder B must ensure that the flight attendant completes its approved hazmat training program before permitting the flight attendant to work in that capacity, unless the certificate holder uses the flight attendant as permitted by the exception in §121.803 (b).

4. New Hire/New Job Functions--(§§121.803 and 135.503—Paragraphs (b))

There would be two exceptions to §§121.803 (a) and 135.503 (a). The exceptions would 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 function. The new hire/new job function exception would apply only to persons performing a function involving storage incidental to transport, or loading or unloading of items on an aircraft for transport. This exception could not be used for persons performing or supervising any other TRF. The exception would not apply to persons supervising a function, nor would the exception apply to someone performing a function involving a task other than storage incidental to transport, loading, or unloading. The new hire/new job function exception would apply for a period of not more than 30 days from either the date of hire or, for a change in functions, 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 person authorized to supervise him or her by the certificate holder. The supervisor would have to have successfully completed the certificate holder's approved initial or recurrent hazardous materials training program. In addition, the certificate holder would have to comply with the recordkeeping requirements in §121.804 (b) or §135.504 (b), as appropriate. The supervisor would have to observe the untrained person's performance to ensure that the function is performed in compliance with both the FAA's regulations and the

DOT's HMRs. The supervisor-to-worker ratio would be approved by the principal operations inspector or the principal security inspector. Use of a video camera would not satisfy the direct visual supervision requirement.

The proposed new hire/new job function exception would be similar to the exception in 49 CFR 172.704 (c)(1) for multi-modal training in that it would apply to new hires or persons changing job functions. However, unlike the exception in 49 CFR, the proposed exception would apply only to persons performing storage, loading, or unloading functions and would be valid only for 30 days from the date of employment or a change in job function. This is more limited than the new hire/new function exception now in 49 CFR is not limited by job function and applies for 90 days after employment or a change in job function.

5. Persons Working for More than One Certificate Holder (§§121.803 and 135.503—paragraphs (c))

The second exception to the proposed rule (proposed §§121.803 (c) and 135.503 (c)) would apply to workers who perform or supervise a TRF for more than one certificate holder. Under this exception, a certificate holder using a person to perform or supervise a TRF would need only to train that person in its own policies and procedures, in accordance with its own hazardous materials training program. The certificate holder could use this exception only if:

(1) It received written verification from an authorized, knowledgeable person representing the other certificate holder for whom the person works that the person has satisfactorily completed the other certificate holder's required initial or annual approved hazardous materials training for that specific function.

(2) The certificate holder who trained the person had the same will-carry or will-not-carry status as the certificate holder using the exception.

Example B explains how this exception would apply:

> *Example B*: Employees at a repair station perform work for 10 will-carry certificate holders. As part of the workers' duties, they package COMAT for these certificate holders and load the packages onto aircraft for transport. All these employees performing any function involving packaging, loading, or unloading COMAT would have to be trained according to Appendix N of part 121 under at least one certificate holder's approved training program and then receive the policy and procedure training (module 13 of Appendix N of part 121) for each of the remaining nine certificate holders. The employees would have to receive this training on an annual basis. However, if a worker performing loading and unloading functions for a will-not-carry certificate holder, and then were to be used for a will-carry operator, the will-carry certificate holder could not use the exception. This employee would have to be fully trained under the will-carry certificate holder's approved hazmat training program.

The exception would minimize the training burden on certificate holders. Given the curriculum mandated, the core of each certificate holder's training program would be substantially the same. The only differences would be a certificate holder's policies and procedures for implementing the regulations. Thus, a certificate holder using a person trained by another certificate holder would only have to train that person in the way it complies with the regulations.

6. Recurrent Training (§§121.803 and 135.503—Paragraphs (d))

As noted above, the definition of the term "recurrent hazardous materials training" would be similar to the definition of "recurrent training" used in part 121, subpart O, for flight training. Under the proposed rule, recurrent hazardous materials training would have to be completed within a year. Thus, all persons affected by these rules would have to receive

hazardous materials training once a year. However, a person would be allowed to receive recurrent hazardous materials training earlier than it is due or before the end of the month after it is due. This exception would be similar to that currently in §121.433a (a). Thus, if recurrent hazmat training were due in January, but were completed in February, it would be considered as having been accomplished in January, and recurrent training would be due again before the end of the following January. If the training occurred before January, the anniversary month would be the month in which it occurred.

7. Notice to Repair Stations-- (§§121.803 and 135.503—paragraphs (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 certificate holders regarding the will-carry or will-not-carry status of the certificate holder. This proposed requirement would ensure that communication. Under proposed §§121.803 (e) and 135.503 (e), certificate holders would be responsible for providing written notification to each repair station that performed work on its behalf and that used or replaced consumable materials, aircraft parts, or other items regulated by 49 CFR parts 171 through 180, of its will-carry or will-not-carry status, and its policies and procedures. Additionally, the certificate holder would have to verify that the repair station was "aware of" its status and policies and procedures. The words "aware of" would mean that the certificate holder could not take care of its responsibilities under this rule simply by mailing a letter to the repair station stating whether it was a will-carry or will-not-carry operator. The certificate holder would have to communicate this policy to the repair station

and ensure that management were actually aware of the certificate holder's policies and procedures regarding hazmat.

8. Foreign Locations (§§ 121.803 and 135.503--paragraphs (f))

Proposed §§121.803 (f) and 135.503 (f) would maintain the current exception in §121.433a for certificate holders operating at foreign locations. Under this exception, part 121 or part 135 certificate holders operating in foreign locations where they are required to use persons working in that country to load and unload aircraft could 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. This exception would apply to those persons loading or unloading an item onto or off of an aircraft.

"Direct visual supervision" in paragraph (f) would mean the same as it would for the new hire/new job function exception.

9. Recordkeeping Requirements (§§121.804 and 135.504)

Current §§121.433a (b) and 135.333 (b) require records to be maintained for initial and recurrent hazmat training given to crewmembers and ground personnel "who perform assigned duties and responsibilities for the handling and carriage of dangerous articles and magnetized materials."

Paragraph (a): Proposed §§121.804 (a) and 135.504 (a) would require each certificate holder to maintain training records of all initial and recurrent training received within the preceding 3 years for all categories of persons listed in Appendix N of part 121 performing or

supervising a TRF for 90 days after they stop performing or supervising TRFs. This length of time would be identical to that required by 49 CFR 172.704 (d). The certificate holder would be responsible for maintaining records of anyone who performed work for the certificate holder including direct employees, contractors, subcontractors, and any other person performing or supervising a TRF.

Paragraph (b): Proposed paragraph (b) would require that these records be maintained at the current location the trained person performs or supervises the TRF. When that person ceases to perform such a function, the records must be maintained at the last location for 90 days.

Paragraph (c): Under proposed §§121.804 (c) and 135.504 (c), the information maintained would be more specific than that required by 49 CFR 172.704 (d). In addition to the person's name, the proposed rule would require the following:

(1) The function performed or supervised;

(2) The dates of each training course successfully completed for the preceding 3 years;

(3) A statement signed and dated by a person designated by the Director of Training certifying that the person has completed training in accordance with the certificate holder's approved hazardous materials training program; and

(4) A description of each training course successfully completed by that person that would include for each course:

- The date of the course,
- Its subject matter of the course or training area covered;
- The number of course hours;

- The instructor's name and signature indicating the person's successful completion of the course, and the person's name and signature indicating the person's attendance; and
- The name and business address of the organization or professional instructor who provided the training.

The current FAA rules do not specify information that must be contained in the training record; however, since 1990, DOT's HMRs have specified it. Section 172.704 (d) of 49 CFR specifies that the record must contain the hazmat employee's name; the most recent training completion date; a description, copy, or location of the training materials used in the training; the name and address of the person providing the training; and certification that the hazmat employee has been trained and tested as required. DOT's HMRs already require hazmat employers (will-carry certificate holders) to maintain records that include the preceding 3 years for all persons defined under 49 CFR 171.8 as hazmat employees. Thus, to the extent that the training curriculum prescribed in the proposed regulations would be used to comply with the training requirement in DOT's HMRs, the requirement is duplicative. However, because the proposed training program covers more categories of persons than the recordkeeping requirements in 49 CFR, the duplication would be necessary. The proposed recordkeeping provision also would require more extensive information on the classes attended by the affected persons. The proposed recordkeeping rules would enable the FAA to monitor compliance with the hazmat training requirements and assess the quality of training provided to persons who would be covered by this rule.

Paragraph (d): Proposed §§121.804 (d) and 135.504 (d) would also contain a recordkeeping requirement for a certificate holder using the new hire/new job function exception. This requirement would be necessary to monitor compliance with the new exception. Under the proposed requirements, a certificate holder using a person under the exception in §121.803 (b) or 135.503 (b) would have to maintain a record that included:

(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 functions;

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

(5) The date the person is to receive and complete hazmat training in accordance with proposed Appendix N of part 121.

F. Part 121, Appendix N--Hazmat Training Curriculum

The training curriculum in Appendix N would replace the recommended curriculum in AC 121-21B. The training curriculum would be modeled on the curriculum adopted in ICAO Document 9284/AN-905, "Technical Instructions for the Safe Transport of Dangerous Goods By Air" (ICAO Technical Instructions). However, the two curricula would not be identical. For instance, the types of training provided to certain categories of workers would be expanded from that required by the ICAO Technical Instructions, especially for will-not-carry certificate holders. Additionally, categories of workers would be function-based; thus, a flight crewmember may need to have training in acceptance of cargo if he or she performed any task relevant to that function. Finally, the ICAO Technical Instructions require recurrent

training only every 2 years, instead of every year, as the FAA proposes. The ICAO 2-year requirement is reflected in most foreign regulations, such as those promulgated in the Joint Aviation Requirements and proposed by the European Union.

Appendix N of part 121 would use a matrix that identifies 13 separate training modules, six categories of workers, and the training modules required for each category of worker. Appendix N of part 121 would provide clear standards for hazmat training programs applicable to both will-carry and will-not-carry certificate holders.

The training curriculum would vary depending upon the function to be performed or supervised. Standards for will-not-carry training would require that both part 121 and part 135 will-not-carry certificate holders conduct recognition training to enable persons performing or supervising a TRF to identify undeclared, as well as declared, hazmat. The training curriculum for will-carry operators would cover the three phases of training specified by the HMRs: General awareness, function-specific, and safety training.

To receive FAA approval, a training program would have to provide ample time to ensure that all areas were thoroughly covered. Additionally, the FAA proposes that any approved training program would have to provide an interactive session with an instructor who could address any questions or problem areas.

The FAA is proposing that each person would have to be tested by a written or performance-based test. The certificate holder would have to document to the FAA that the test covered, and the person comprehended, each subject area required by Appendix N. To ensure comprehension, the FAA would expect an instructor to review parts of the test that the test taker could not answer, or answered incorrectly and re-instruct the trainee. The FAA encourages the use of performance-based or other types of tests that are characterized by

practical application of the subject matter to the TRFs performed by the certificate holder. Comprehension includes both understanding the subject matter and how it relates to the functions performed by the individual.

Based on a "Special Emphasis Review" conducted by the Principal Operations Inspectors, the FAA believes that most part 121 and 135 certificate holders have already implemented a hazmat training program similar to the ICAO training curriculum. Because the ICAO Technical Instructions are the basis for proposed curriculum, the FAA believes that this proposal would largely incorporate existing practice.

It should be noted that foreign carriers entering the United States under 14 CFR part 129 would not be affected by the proposed amendment.

G. Part 135, Subpart K--Single-Pilot Operation

Current 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, would remain subject to the hazmat training requirements in §135.333.

Under the proposed rules, all part 135 certificate holders, including single-pilot certificate holders, would have to meet the hazmat training requirements of proposed part 135, subpart K, although they would not have to have a "training program" as such. Additionally, those persons loading aircraft for these certificate holders also would have to receive hazmat training that would meet the requirements of proposed Appendix N of part 121 and be informed of the certificate holder's restrictions and limitations regarding the carriage of hazardous materials.

Although certificate holders with only one pilot do not have an approved training program, these certificate holders would have to be able to demonstrate compliance with this proposed hazmat training rule and would have to continue to maintain records of training. In addition, certificate holders conducting operations that transport hazmat with one pilot would remain subject to DOT's hazardous materials training and recordkeeping requirements in 49 CFR 172.700 through 172.704.

H. Part 145--Repair Stations

The FAA continues to be concerned about hazmat training provided to persons performing work at repair stations used by a certificate holder. The FAA, therefore, proposes to require that repair stations that are hazmat employers under 49 CFR 171.8, and use aircraft components, consumable materials, or other items regulated under 49 CFR parts 171 through 180, establish a hazmat training program and provide evidence of compliance with that program when applying for certification or rating. The proposed rule would allow the FAA to ensure compliance with DOT's HMRs. Historically, this compliance has been sought through civil penalty enforcement actions following the discovery of violations of the HMRs, but the FAA believes that additional requirements should be in place to ensure that repair stations are complying with DOT's HMRs. If they are not complied with, the FAA would have the option of taking certificate action against the repair station.

Many required items on aircraft contain, or are themselves, regulated hazmat. 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

have been improperly offered and accepted for air transportation. The FAA believes that these proposed FAA rules would increase compliance with the hazmat training requirements of 49 CFR 172.700 through 172.704, and the rules regulating hazmat in commerce.

Additionally, the FAA is proposing to require that repair station management notify all workers of the will-not-carry or will-carry status of the certificate holders for which it works. This would have to be done upon being notified by the certificate holder in accordance with §121.803 (d) or §135.503 (d). This would mirror certificate holder requirements contained in parts 121 and 135 and would provide the necessary follow-through from repair station management to worker.

Foreign repair stations must seek certification under part 145 to perform maintenance on United States-registered aircraft operated under part 121. Those part 145 foreign repair stations would be bound by the proposed rule. It would not apply to foreign repair stations that do not seek part 145 certification.

1. Section 145.5--Hazardous Materials Training

Paragraph (a): The FAA is proposing to add §145.5 (a) to cross-reference the hazardous materials training requirement in 49 CFR. The FAA is not proposing that the repair stations do anything that they are not already doing under DOT's HMRs. Based on the FAA's experience, however, many repair stations that use consumable hazardous materials or other hazmat, or replace aircraft components, do not realize that many of these items are regulated by 49 CFR parts 171 through 180. By including this cross-reference in part 145, the FAA would be notifying all repair stations that they should carefully review the items with which they work to determine whether any are regulated by 49 CFR parts 171 through

180. If so, the repair station would have to establish and implement a hazardous materials training program, if one were not already in place.

Paragraph (b): Proposed §145.5 (b) would prohibit repair station workers from performing or supervising a TRF for part 121 or part 135 certificate holders, unless those persons had received annual training in accordance with the part 121 or part 135 certificate holder's approved hazardous materials training program.

2. Section 145.11—Application and Issue

Proposed §145.11 (a)(5) would require part 145 certificate holders that are hazmat employers under 49 CFR 171.8 to certify to the FAA that, at the time of application, they train all hazmat employees, as defined in 49 CFR 171.8, as required by the HMRs. This certification would have to be submitted along with the repair station's application for a part 145 certificate or rating. Requiring the repair station to provide this certificate would impose minimal additional documentation as part of the application for certification or rating process, but would ensure that the applicant is aware of its responsibility under the HMRs.

3. Section 145.27—Notification of Hazardous Materials Authorizations

Proposed §145.27 would require each repair station to notify each of its workers of the will-carry or will-not-carry status of the certificate holders for which the repair station does work.

III. Paperwork Reduction Act

This proposal contains the following new information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Transportation has submitted the information requirements associated with this proposal to the Office of Management and Budget for its review.

Description of respondents: Part 121, part 135, and part 145 certificate holders.

Need: This NPRM would require a part 121 or a part 135 certificate holder to update its training manuals, restructure its recordkeeping data bases, update its employee training records, and notify its repair stations of its status as a will-carry or a will-not-carry operator.

The NPRM would also require a part 145 certificate holder to notify its employees of the will-carry or will-not-carry status of each of the part 121 or part 135 certificate holders it works for, and to certify to the FAA that it is in compliance with the regulations.

Estimated burden: The NPRM would require a total of 3,673,948 hours at a cost of $75,756,500.

The agency is soliciting comments to: (1) Evaluate whether the proposed collection of information would be necessary for the proper performance of the functions of the agency, including whether the information would have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden; (3) enhance the quality, utility, and clarity of the information proposed to be collected; and (4) minimize the burden of the collection of information, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (for example, permitting electronic submission of responses).

Individuals and organizations may see the "Supporting Statement for the Paperwork Reduction Act Submission" on the Internet at http://dms.dot.gov, or by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Ave., SW, Washington, DC 20591 (202-267-9680). Be sure to identify the docket number of this rulemaking. Individuals and organizations may submit comments on the information collection requirement by the comment closing date shown under "Dates." Comments should be directed to the address under "Addresses" above.

According to the regulations implementing the Paperwork Reduction Act of 1995 (5 CFR 1320.8 (b)(2)(vi)), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this information collection will be published in the Federal Register after it has been approved by the Office of Management and Budget.

IV. International Compatibility

The FAA has reviewed the International Civil Aviation Organization (ICAO) Annex 18, International Standards and Recommended Practices for the Safe Transport of Dangerous Goods by Air; the ICAO Technical Instructions for the Safe Transport of Dangerous Goods by Air; the (proposed) European Union regulations OPS 1.1135, Approval to Transport Dangerous Goods; and the Joint Aviation Requirements—Operations, and other regulations, where they exist. The agency has evaluated similarities and differences in these proposed amendments and foreign regulations. Differences would affect U.S. aircraft operators only, and, therefore, it would not be necessary for the FAA to file any differences with ICAO. Foreign carriers operating in the United States would not be affected by the proposed rule.

V. Economic Evaluation Summary

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency to propose or adopt a regulation only if the agency makes 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 through 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 requires agencies to consider international standards. Where appropriate, agencies are directed to use those international standards as the basis of U.S. standards. And fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules. This requirement applies only to rules that include a Federal mandate on State, local or tribal governments or the private sector, likely to result in a total expenditure of $100 million or more in any one year (adjusted for inflation).

In conducting these analyses, FAA has determined this proposed rule: (1) Would have benefits which would justify its costs, would be a "significant regulatory action" as defined in the Executive Order and would be "significant" as defined in DOT's Regulatory Policies and Procedures; (2) would not have a significant economic impact on a substantial number of small entities; (3) would impose no barriers to international trade; and (4) would not impose an unfunded mandate on state, local, or tribal governments, or on the private sector. The FAA has placed these analyses in the docket and summarized them below.

Benefits

The proposed rule is intended to reduce the improper carriage of hazardous materials aboard part 121 and 135 aircraft by updating and clarifying the current hazardous material requirements for these operators and by amending the certification procedures and requirements for part 145 repair stations that use or handle hazardous materials.

A review of the National Transportation Safety Board database indicates that there have been six hazardous materials related accidents in the 10-year period 1989 through 1998. The FAA sanctioned 64 violations of the hazardous materials regulations and imposed fines amounting to $1.3 million for these violations during 2000. The potential for further accidents is significant given the number of serious incidents being investigated by the FAA. A review of active cases in 1999 indicated that at least 59 were for serious hazardous materials violations against certificate holders. Given that there have been six accidents in the past in which hazardous materials were involved, the FAA estimates that there almost certainly will be a hazardous materials related accident in the next decade based on the past accident history. Furthermore, given that one of the six accidents involved fatalities, the FAA believes there is a chance that there will be one or more fatal accidents attributable to hazardous materials violations if the current regulations are not improved. The FAA estimates that a single fatal accident would result in 79 lives lost and a monetary loss of $232 million.

Costs

The FAA has analyzed the expected costs of this proposal for a 10-year period, 2002 through 2011. All costs in this analysis are expressed in 1999 dollars. The estimated industry costs over 10 years total $107.5 million, or $75.8 million discounted. These costs consist of the initial cost of revising manuals and upgrade databases, annual recordkeeping, and annual notifications. In addition, some carriers would incur the cost for initially training personnel in the more comprehensive hazardous materials recognition programs and for recurrent training. The cost of revising manuals is estimated at $321,000, ($300,000 discounted); database upgrades at $617,000 ($577,000 discounted); recordkeeping at $13,526,000 ($9,294,000 discounted); and notifications at $549,500 ($449,800 discounted). The training of aircraft operator and repair station persons is estimated at $91.6 million ($64.5 million discounted). Repair station record submission and staff notification costs are estimated at $878,000 ($612,000 discounted).

Public comment is invited. The FAA requests that all comments be accompanied by clear economic documentation.

Cost-Benefit Analysis

The National Transportation Safety Board's accident database shows one fatal accident in the past 10 years. Applying the Poisson probability distribution to that one fatal accident suggests that, under the proposed rule, there would be a more than a 60 percent chance that one or more fatal accidents would be avoided. (See the discussion of "Benefits" in the complete Regulatory Impact Analysis, which is contained in the public docket.) The monetary benefit of avoiding a single accident resulting in fatalities is estimated at $232

million. The cost of implementing this proposed rule is estimated at $107.5 million over the next 10 years.

The cost of a final rule ("Hazardous Materials: Chemical Oxidizers and Compressed Oxygen Aboard Aircraft" (64 FR 45388; Aug. 19, 1999)) published by the Research and Special Programs Administration, using the same accident database, was estimated at $865,000, thus raising total costs to industry to $108.3 million. Since the potential benefits exceed the additional costs of this proposed rule and the RSPA final rule, the proposed rule would be cost beneficial.

The FAA invites public comments and requests that all comments be accompanied with clear and detailed supporting economic documentation.

VI. Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) 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 RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA 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 RFA. 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 RFA 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 proposed 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 aircraft operators consist of small part 121 operators and small part 135 operators. To determine the impact of the proposed rule on the 110 small part 121 operators and the 1,780 small part 135 operators, the FAA has estimated the annualized cost impact on these two categories of small entities separately, since the proposed rule's impacts differ.

The proposed rule could impose an estimated cost of $4.5 million on the 110 small part 121 operators over the next 10 years. The average annualized cost per small operator is estimated at $4,100. However, the FAA estimates that two will-carry operators would incur all six cost elements (manual revisions, database upgrades, recordkeeping, notifications, deficiency training, repair station training) and the annualized cost to each of these entities is estimated at $82,400. The costs to will-not-carry operators would be lower since less training would be required. According to a SBA analysis of Bureau of Census data for scheduled air transportation firms, firms with fewer than 500 employees have average revenues of $10.75 million. The estimated cost to each of these small entities is approximately eight-tenths of one percent of the average revenue of $107,531 of these firms.

Thus none of the 110 small part 121 entities would incur a substantial economic impact in the form of higher annual costs as the result of the proposed rule.

The proposed rule could impose an estimated cost of $32.6 million on the 1,780 small part 135 operators over the next 10 years. While the average annualized cost per small operator is estimated at $1,800, some 49 will-carry entities would each incur annualized costs of $7,600. These operators would incur higher training costs than will-not-carry operators. According to a Small Business Administration analysis of Bureau of Census data for non-scheduled air transportation firms, firms with fewer than 500 employees have average revenues of $1.87 million. The estimated cost to each of these small entities is approximately four-tenths of one percent of the average revenue ($18,700) of non-scheduled air transportation firms with fewer than 500 employees, based on the SBA analysis of Bureau of Census data, and thus none of the small part 135 entities would incur a substantial economic impact in the form of higher annual costs as the result of the proposed rule. Therefore, the FAA has determined that this proposed rule would 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 domestic repair stations meet this criterion. The proposed rule is expected to impose an estimated cost of $878,000 on the 1,935 small independent domestic part 145 repair stations. The average annualized cost to the 56 small repair stations that incur both cost elements (record submission and staff notification) is estimated at $125. The FAA considers this amount economically insignificant. Therefore, the FAA has determined that this proposed rule would 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 proposed rule would not have a significant economic impact on a substantial number of small entities.

VII. 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 proposed rule and has determined that it would impose costs on domestic entities that international entities operating into and out of the United States would not incur. However, the anticipated safety benefits warrant these costs and, therefore, these costs are not considered unnecessary obstacles to the foreign commerce of the United States.

VIII. Unfunded Mandates Reform Act Assessment

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104-4 on March 22, 1995 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 rule that may result in a $100 million or more expenditure (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." This proposed rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

IX. Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. The FAA has determined that this action would not have a substantial direct effect on the States, or the relationship between the national government of the United States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the FAA determined that this notice of proposed rulemaking would not have Federalism implications.

X. Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this proposed rulemaking action qualifies for a categorical exclusion.

XI. Energy Impact

The energy impact of this notice of proposed rulemaking has been assessed in accordance with the Energy Policy and Conservation Act (EPCA), Pub. L. 94-163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. The FAA has determined that the proposed rule is not a major regulatory action under the provisions of the EPCA.

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 Proposed Amendments

In consideration of the foregoing, the Federal Aviation Administration proposes to amend parts 119, 121, 135, and 145 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, 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 [insert effective date of the final rule] to operate under part 121 or part 135 of this chapter. Notwithstanding parts 121 and 135 of this chapter, these air carriers and commercial operators may comply with either the provisions of this SFAR until its expiration, or part 121, subpart Y, or part 135, subpart K.

2. *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.

3. *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 their 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.

4. *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 N, 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.

5. *Training requirements: Handling and carriage of hazardous materials under part 121.* (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 (a) and (b) of this provision if they are supervised by a person qualified under paragraphs (a) and (b) of this provision to supervise the loading, offloading and handling of hazardous materials.

6. *Training requirements: Handling and carriage of hazardous materials under part 135.* (a) Except as provided in paragraph (d) of this provision, no certificate holder conducting operations under part 135 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 (a) or (b) of this provision to load, offload, or otherwise handle hazardous materials if these persons are supervised by a crewmember who is qualified under paragraphs (a) and (b) of this provision.

7. *Expiration.* This Special Federal Aviation Regulation expires on [insert date 15 months after the effective date of the final rule].

3. Amend §119.49 by redesignating paragraph (a)(13) as (a)(14) and adding a new paragraph (a)(13) to read as follows:

§119.49 Contents of operations specifications.

(a) * * *

(13) An authorization permitting, or a prohibition against, accepting, handling, and transporting of 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, 46105.

5. Amend §121.135 by revising paragraph (b)(23) to read as follows:

§121.135 Contents.

* * * * *

(b) * * *

(23)

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

(A) Acceptance;

(B) Rejection;

(C) Handling;

(D) Storage incidental to transport;

(E) Packaging of company material;

(F) Loading;

(G) Unloading; or

(H) Carriage.

(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;

(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 carriage 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, unloaded and carried on board an aircraft in compliance with 49 CFR parts 171 through 180;

(3) That the requirements for discrepancy reporting (49 CFR 175.31) and 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 carried.

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 Y, consisting of §§121.801 through 121.804, to read as follows:

Subpart Y--Hazardous Materials Training Program

§ 121.801 Applicability and definitions.

(a) This subpart prescribes the requirements applicable to each certificate holder for training each person performing or supervising any of the following 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;

(6) Loading;

(7) Unloading; or

(8) Carriage.

(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 supervises any of the functions specified in paragraph (a) of this section.

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

§121.802 Hazardous materials training: General.

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

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

(2) Ensures that each person performing or supervising any of the functions specified in §121.801 (a) is trained in accordance with 49 CFR 172.700 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 person performing or supervising any of the functions specified in §121.801 (a).

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

§121.803 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 person to perform any of the functions or supervisory responsibilities, and no person may perform any of the functions or supervisory responsibilities, specified in §121.801 (a) unless that person has satisfactorily completed the certificate holder's FAA-approved initial or recurrent hazardous materials training program within the past year.

(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 function involving storage incidental to transport, loading, or unloading of items for transport on an aircraft, may perform those functions for not more than 30 days from the date of hire or a change in job function, if:

(1) The person is under the direct visual supervision of a person who is authorized by the certificate holder and who has successfully completed the certificate holder's FAA-approved initial or recurrent training program within the past year;

(2) The supervisor-to-worker ratio is approved by the principal security inspector or the principal operations inspector.

(c) Persons who work for more than one certificate holder. A certificate holder that uses or assigns a person to perform or supervise a function specified in §121.801 (a), when that person also performs or supervises the same function for another certificate holder, need only train that person in its own policies and procedures regarding those functions, if all of the following are met:

(1) The certificate holder using this exception receives written verification from an authorized, knowledgeable person representing the other certificate holder that the person has satisfactorily completed hazardous materials training for the specific function under the other certificate holder's approved training program under Appendix N of this part; and

(2) The certificate holder who trained the person has the same operations specifications regarding the acceptance, handling, and carriage 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 on the certificate holder's behalf is notified in writing, and is aware of, the certificate holder's policies and operations specifications regarding the acceptance, rejection, handling, storage incidental to transport, and carriage of hazardous materials, including company material. This notification requirement applies only to repair stations that handle, use, or replace material regulated by 49 CFR parts 171 through 180, including consumable hazardous materials and aircraft parts containing hazardous materials.

(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 and unload 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 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 or unload aircraft.

§ 121.804 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 supervises a function specified in §121.801 (a). The record must be maintained during the time that the person performs or supervises any of those 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 supervises these functions for the certificate holder.

(b) Location of records. The certificate holder must retain the training records required by paragraph (a) of this section at the location where the trained person performs or supervises the function specified in §121.801 (a). When the person ceases to perform the function, the certificate holder must retain these records at the last location where the person performed the function for an additional 90 days.

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

(1) The person's name and function performed or supervised;

(2) The dates of each training course successfully completed within the preceding three years;

(3) A statement signed and dated by a person designated by the Director of Training certifying that the person has completed training in accordance with the certificate holder's approved hazardous materials training program; and

(4) A description of each training course successfully completed by the person that includes for each course:

(i) Date of the course;

(ii) Subject matter of the course and training area covered;

(iii) Number of hours of the course;

(iv) Instructor's name and signature indicating the person's successful completion of the course, and person's name and signature indicating the person's attendance; and

(v) Name and business address of the organization or professional instructor providing the training.

(d) New person or new job function. Each certificate holder using a person under the exception in §121.803 (b)(1) must maintain a record for that person at the location where the person performs the function. 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 function;

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

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

9. Add Appendix N to read as follows:

Appendix N--Hazardous Materials Training Curriculum For Certificate Holders

This appendix prescribes the requirements for hazardous materials training under part 121, subpart Y, and part 135, subpart K of this chapter. The training requirements for various categories of persons are defined by 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 supervisors as well as to persons actually performing the 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. All persons must be tested through a written or performance-based

test that verifies comprehension of each subject area required by this appendix.

TABLE 1--HAZARDOUS MATERIALS TRAINING CURRICULUM FOR CERTIFICATE HOLDERS THAT TRANSPORT HAZARDOUS MATERIALS

MODULE	AREA OF TRAINING	CATEGORY OF PERSONNEL (see key below)					
		1	2	3	4	5	6
1	General Overview	X	X	X	X	X	X
2	Hidden Dangerous Goods	X	X	X	X	X	X
3	Company Materials (COMAT)	X	X	X	X	X	
4	Documentation	X	X	X	X	X	
5	Acceptance & Handling	X	X	X	X	X	
6	Marking & Labeling	X	X	X	X	X	X
7	Classification	X	X	X		X	
8	Identification	X	X	X		X	
9	Packaging	X	X			X	
10	Notice to Pilot-In-Command	X	X		X	X	X
11	Safety & Reporting	X	X	X	X	X	X
12	Passenger/Air Carrier Exceptions/ U.S. Mail	X	X	X	X	X	
13	Certificate holder policies and procedures	X	X	X	X	X	X

KEY:

1--Persons who accept cargo, packages or passenger baggage

2--Persons working in supply, storage, or warehouse facilities, or involved in shipping of aircraft parts, supplies or company material

3--Persons who handle, store, and load or unload packages, passenger baggage or cargo

4--Persons engaged in passenger and baggage check-in services (e.g., skycaps, ticket counter agents, flight attendants, etc.)

5--Persons responsible for cargo during flight (including pilots, flight engineer, flight attendants, dispatchers)

6--Flight crewmembers who do not perform any responsibility listed above

TABLE 2--HAZARDOUS MATERIALS TRAINING CURRICULUM FOR CERTIFICATE HOLDERS THAT DO NOT TRANSPORT HAZARDOUS MATERIALS

MODULE	AREA OF TRAINING	CATEGORY OF PERSONNEL (see key below)					
		1	2	3	4	5	6
1	General Overview	X	X	X	X	X	X
2	Hidden Dangerous Goods	X	X	X	X	X	X
3	Company Materials (COMAT)	X	X	X	X	X	
4	Documentation	X	X	X	X	X	
5	Acceptance & Handling		X				
6	Marking & Labeling	X	X	X	X		X
7	Classification		X				
8	Identification	X	X	X	X	X	
9	Packaging		X				
10	Notice to Pilot-In-Command		X				X
11	Safety & Reporting	X	X	X	X	X	X
12	Passenger/Air Carrier Exceptions/ U.S. Mail	X	X	X	X	X	
13	Certificate holder policies and procedures	X	X	X	X	X	X

KEY:

1--Persons who accept cargo, packages or passenger baggage

2--Persons working in supply, storage, or warehouse facilities, or involved in shipping of aircraft parts, supplies or company material

3--Persons who handle, store, and load or unload packages, passenger baggage or cargo

4--Persons engaged in passenger and baggage check-in services (e.g., skycaps, ticket counter agents, flight attendants, etc.)

5--Persons responsible for cargo during flight (including pilots, flight engineers, flight attendants, dispatchers)

6--Flight crewmembers who do not perform any responsibility listed above

Module 1--General Overview

- Applicable regulatory materials
- Overview of 49 CFR parts 171 through 180
- Use of ICAO Technical Instructions
- Use of IATA Dangerous Goods Manual
- Definitions used in air transportation of hazardous materials
- General transportation requirements--49 CFR 171.2
- Carriage by aircraft--49 CFR part 175
- Training and recordkeeping requirements
- Use of and familiarity with a "trigger list" and a "passenger check-in list" to assist authorized persons in the detection of undeclared hazardous materials carried in passenger baggage or other types of cargo

Module 2--Hidden Dangerous Goods

- Hidden shipment indicators (includes review and use of Hidden Shipment List and/or trigger lists)
- Suspicious cargo and baggage awareness (review and training in the use of a "passenger check-in list" to assist those authorized persons in detection of hazardous materials carried by passengers in baggage or cargo)

Module 3--Company Materials (COMAT)

- Identifying and recognizing hazardous company- materials (COMAT), including:
  - -Hazardous materials on aircraft
  - -Replacement components
  - -Consumable materials
- Specific hazardous materials
- COMAT exceptions
- Facility storage and safe movement and handling requirements for hazardous materials COMAT--
  - -Specific hazards of, and precautionary measures and proper disposal procedures, including:
    - Environmental precautions
    - Transportation precautions

Module 4--Documentation (49 CFR part 172, subpart C, and 49 CFR part 175, subpart A)

- Shipper's certification requirements for hazardous materials
- Shipping paper requirements
- Description of hazardous materials required on shipping papers
- Shipping papers for hazardous materials aboard aircraft, 49 CFR part 175, subpart A

Module 5--Acceptance, Handling, Loading

- Passenger and cargo information signage requirements
- Acceptance procedures and requirements for hazardous materials
- Inspection of packages and unit load devices
- Quantity limitations on aircraft
- Quantity limitations for inaccessible cargo
- Stowage compatibility

- Orientation of packages
- Securing packages
- Location of packages
- Damaged shipments of hazardous materials

Module 6--Marking and Labeling

- Markings required on packages containing hazardous materials
- Labels required on packages containing hazardous materials
- Keeping and replacing hazardous materials labels

Module 7--Classification

- Hazardous materials classification
- Unacceptable hazardous materials

Module 8--Identification

- Purpose and use of the hazardous materials tables
- Proper shipping names
- Hazard class (definitions)
- UN/ID numbers
- Packing group

Module 9--Packaging

- Shippers' responsibilities
- General packaging requirements
- Packing instructions and assignments
- Small quantity exceptions
- Limited quantity exceptions

Module 10--Notification to Pilot In Command

- Requirements for notification to pilot in command
- Emergency response information

Module 11--Safety and Reporting

- Emergency response information
- Hazardous materials discrepancy/incident reporting

Module 12--Dangerous Goods Exceptions

- Exceptions
- U.S. Mail and U.S. Postal Service standards

Module 13--Certificate Holder Policy and Procedures

- Policies and procedures regarding acceptance, rejection, handling, storage incidental to transport, packaging of company material, loading, unloading and carriage of items for transport on board aircraft
- Policies and procedures regarding handling, packaging, and transport of hazardous materials moving by means other than air

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), 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, for each person performing or supervising the following functions involving items for transport on board an aircraft:

i ~~(A)~~ Acceptance;

ii ~~(B)~~ Rejection;

iii ~~(C)~~ Handling;

iv ~~(D)~~ Storage incidental to transport;

v ~~(E)~~ Packaging of company material;

vi ~~(F)~~ Loading;

vii ~~(G)~~ Unloading; or

viii ~~(H)~~ Carriage.

iv ~~(2)~~ Procedures and information, as described in this paragraph, sufficient to assist a person in identifying packages that are marked or labeled as containing hazardous materials

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or that exhibit indications of containing undeclared hazardous materials. The procedures and information must include:

i ~~(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;

ii ~~(B)~~ Procedures for complying with the hazardous materials incident reporting requirements of 49 CFR 171.15 and 171.16;

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

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

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

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

C ~~(3)~~ That the requirements for discrepancy reporting (49 CFR 175.31) and Notice to the Pilot in Command (49 CFR 175.33) are complied with; and

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

* * * * *

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 135.504, to read as follows:

Subpart K – Hazardous Materials Training Program

§135.501 Applicability and definitions.

(a) This subpart prescribes the requirements applicable to each certificate holder for training each person performing or supervising any of the following 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;

(6) Loading;

(7) Unloading; or

(8) Carriage.

(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 supervises any of the functions specified in paragraph (a) of this section.

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

§135.502 Hazardous materials training: General.

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

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

(2) Ensures that each person performing supervising any of the functions specified in §135.501 (a) is trained in accordance with 49 CFR 172.700 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 person performing or supervising any of the functions specified in §135.501 (a).

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

§135.503 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 person to perform any of the functions or supervisory responsibilities, and no person may perform any of the functions or 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 year.

(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 function involving storage incidental to transport, loading, or unloading of items for transport on an aircraft, may perform those functions for not more than 30 days from the date of hire or a change in job function, if:

(1) The person is under the direct visual supervision of a person who is authorized by the certificate holder and who has successfully completed the certificate holder's FAA-approved initial or recurrent training program within the past year;

(2) The supervisor-to-worker ratio is approved by the principal security inspector or the principal operations inspector.

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

(1) The certificate holder using this exception receives written verification from an authorized, knowledgeable person representing the other certificate holder that the person has satisfactorily completed hazardous materials training for the specific function under the other certificate holder's approved training program under Appendix N 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 carriage 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 on the certificate holder's behalf is notified in writing, and is aware of, the certificate holder's policies and operations specifications regarding the acceptance, rejection, handling, storage incidental to transport, and carriage of hazardous materials, including

company material. This notification requirement applies only to repair stations that handle, use, or replace material regulated by 49 CFR parts 171 through 180, including consumable hazardous materials and aircraft parts containing hazardous materials.

(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 and unload 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 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 or unload aircraft.

§135.504 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 supervises a function specified in §135.501 (a). The record must be maintained during the time that the person performs or supervises any of those 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 supervises these functions for the certificate holder.

(b) Location of records. The certificate holder must retain the training records required by paragraph (a) of this section at the location where the trained person performs or

supervises the function specified in §135.501 (a). When the person ceases to perform the function, the certificate holder must retain these records at the last location where the person performed the function for an additional 90 days.

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

(1) The person's name and function performed or supervised;

(2) The dates of each training course successfully completed within the preceding three years;

(3) A statement signed and dated by a person designated by the Director of Training certifying that the person has completed training in accordance with the certificate holder's approved hazardous materials training program; and

(4) A description of each training course successfully completed by the person that includes for each course:

(i) Date of the course;

(ii) Subject matter of the course and training area covered;

(iii) Number of hours of the course;

(iv) Instructor's name and signature indicating the person's successful completion of the course, and the person's name and signature indicating the person's attendance; and

(v) Name and business address of the organization or professional instructor providing the training.

(d) New person or new job function. Each certificate holder using a person under the exception provided in §135.503 (b)(1) must maintain a record for that person at the location where the person performs the function. 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 function;

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

(5) The date the person is to complete hazardous materials training in accordance with Appendix N 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. Add §145.5 to read as follows:

§145.5 Hazardous materials training.

(a) Except for repair stations that are already subject to the training requirements of part 121 or part 135 of this chapter, each repair station that uses or replaces aircraft components, uses or handles consumable hazardous materials or other items regulated by 49 CFR parts 171 through 180 and 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 172.700 through 172.704.

(b) A person may not perform or supervise a function for a repair station or a certificate holder involving acceptance, rejection, handling, storage incidental to transport, packaging of material owned or used by a part 119 certificate holder (commonly referred to

as company material or COMAT) for transport on the certificate holder's aircraft, loading, unloading or carriage 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 certificate holder's approved hazardous materials training program.

17. Amend §145.11 by adding paragraph (a)(5) to read as follows:

§145.11 Application and issue.

(a) * * *

(5) A certification that, at the time of application, all hazmat employees are trained as required by 49 CFR 172.704 for the repair station, its contractors, or subcontractors, that handles or replaces aircraft components, or handles or uses consumable hazardous materials or other items that are regulated by 49 CFR parts 171 through 180.

* * * * *

18. Add §145.27 to subpart A to read as follows:

§145.27 Notification of hazardous materials authorizations.

Each repair station must notify all workers of each certificate holder's operations specifications authorization permitting, or prohibition against, carrying hazardous materials, upon notification by the certificate holder of such operations specifications authorization/designation.

Issued in Washington, DC on May 1, 2003.

Ross Hamory
Director, Security and Investigations

Certified to be a True Copy
John M. Allen