

docket number FAA-2003-15085 - Hazardous Materials Training

July 6, 2003

Docket Management System  
U.S. Department of Transportation  
Room Plaza 401  
400 Seventh St. SW  
Washington DC 20591

Dear Sir or Madam:

My comments are based on 23 years of experience in the on-demand single and multi-engine piston FAR 135 charter business.

I have continuously operated my single pilot, "will-*not*-carry", on-demand, FAR 135 company since 1984. In more than 10,000 hours of flight time I have flown thousands of passengers and loaded an awful lot of baggage. During that span of time I refused fewer than a half dozen requests to transport hazardous materials, and all without so much as a single hazmat incident.

I fully support the concept of educating air transportation personnel about hazardous materials. However, this proposal requires actions out of proportion to the actual need, fails to consider the limited resources of small FAR 135 operators in general and single pilot operators in particular, and most importantly, fails to address the key issue--education--in a cost-efficient and logistically effective manner.

Within the Preamble of the NPRM:

Section I. Background A. Purpose of the Proposed Rule, states that in the last 25 years "hazmat transport regulation in general has changed significantly". While this may be true for certain specific areas of air transportation, my own actual experience in the "will-*not*-carry" on-demand charter business refutes this. I typically fly families on vacation and find myself quite adequately trained in accordance with FAR 135.333(c) to understand the necessary aspects of *not* transporting hazardous materials.

The NPRM uses a lack of regulatory modernization as a basis for a substantive increase in the burden placed on FAR 121, 135, and now 145 operators by mandating extensive hazmat training requirements.

Section I. Background A. Purpose of the Proposed Rule, notes "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." This is a lame claim indeed since Advisory Circular 121-21B, INFORMATION GUIDE FOR TRAINING PROGRAMS AND MANUAL REQUIREMENTS IN THE AIR TRANSPORTATION OF HAZARDOUS MATERIALS *has not been updated since January of 1984*. If the Advisory Circular is out of date, whose failure is that?

This same section continues, "Information from air carriers indicates that adherence to the recommendations in ACs has been high." It appears therefore, that this NPRM is at best a solution in search of a problem, and at worst is just another example of bureaucratic empire

building with comparatively little regard for true public need or the negative impact on small “will-not-carry” operators.

I have educated myself through both DOT hazmat videos<sup>1</sup> and a training CD-ROM<sup>2</sup>. While the training materials were educational, they are basically geared to “will-carry” operations and are therefore largely irrelevant to any potential issue I might encounter in day-to-day operations. In addition to educating myself, I display a 22 x 28 inch DOT hazmat awareness poster in my passenger waiting area, and similar brochures on my one aircraft in accordance with 49 CFR § 175.25 in an attempt to educate my passengers.

As a single pilot operator I am not required to have a manual, however I do have a “mini” manual. With respect to hazmat it is simple yet effective. It says in part, “A brief explanation to a customer of what may be considered a hazardous material is any item that you would not: pour on your skin, put into your mouth, strike a match to, or inhale its fumes.” On the other hand, U.S. DOT hazmat regulations are perhaps the most voluminous and arcane that exist within the transportation industry. They rival the U.S. Tax Code in complexity. FAA personnel charged with the responsibility of overseeing hazmat regulation compliance are typically possessed with an unbridled enthusiasm for the minutiae of these regulations. Regulations that a hazmat inspector might consider basic, such as what division a particular class of hazmat falls into, are for me irrelevant since, with certain exceptions, hazardous materials are forbidden aboard my aircraft. Indeed it is an understanding of the exceptions that is of greatest interest to me.

The proposal is to require extensive hazmat training for industry yet the average FAA safety inspector for airworthiness or operations has little if any hazmat training and is therefore unable to provide accurate guidance to operators when requested.

Section I.A. states “Will-not-carry certificate holders would have to conduct training sufficient to enable the persons supervising or performing a TRF [transport-related function] to identify material marked or labeled as hazmat, and material not marked or labeled but showing some indication that it is hazmat.” It appears therefore, that compliance with the new rule would be no more onerous than FAR 135.333(c), yet replacing it with the new Subpart K of FAR 135 expands the sheer volume of regulation by more than *five fold*. Clearly this change of regulation would be more burdensome than current rules since the NPRM further *estimates* that compliance costs would average *an additional \$1800 annually* for “small” operators. At my current labor rate for aircraft maintenance this equals 30 hours of billable work !

Section I.B. states “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.” If compliance has been achieved without additional regulation then why add the burden and the cost? If compliance has not been achieved why haven’t effective educational measures been taken by FAA experts in the field of hazmat transportation *prior* to reaching the rulemaking stage?

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<sup>1</sup> “Ensuring Safety: Transporting Hazardous Materials by Air” and “Hazardous Materials: General Awareness and Familiarization”

<sup>2</sup> “Hazardous Materials - Transportation Training Modules 97/98”

Allow me to bring the rules to reality relationship into perspective. Please consider the following parallel:

Rules exist within the FARs that require an aircraft to have a specified minimum quantity of fuel on board (expressed in time) prior to departure. Obviously this is prudent and sensible, however every year a number of aircraft crash due to fuel exhaustion. Given that even the most obtuse layman understands the result of running out of fuel, to suppose that expanded regulations in this area would reduce the accident rate due to fuel exhaustion is fanciful. On the other hand educational efforts do have a positive impact on reducing this problem.

This same logic holds true for hazmat regulation. For rules to be reasonable they must be applied to an extent no greater than is required to meet a given safety objective. In that regard the current rule, FAR 135.333(c), for small, “will-not-carry”, on-demand FAR 135 air carriers superbly meets that requirement by simply stating “Each certificate holder that elects not to accept hazardous materials shall ensure that each crewmember is adequately trained to recognize those items classified as hazardous materials.” My 23 years of flying and thousands of flight hours in FAR 135 operations without a hazmat incident attests to the success of this regulation.

Section II. C. Sections 121.135 and 135.23—Manual Contents, details a change to make certificate holders responsible for the actions or inactions of “all persons working for the certificate holder, whether or not directly employed by the certificate holder”. This appears to be an improper attempt on the part of regulators to reach beyond their authority. It places undue responsibility onto the shoulders of regulated certificate holders by requiring them to act as regulators themselves where they have no authority to do so. It is akin to suggesting that the police (FAA) should have the authority to arrest (certificate action) and fine me (certificate holder) if my neighbor (contractor) beats his wife and I failed to prevent it. I ask you, should you be held responsible if a package delivery van backing out of your driveway hits your neighbor’s car parked across the street? I think not.

Section II.E. states “... 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.” Clearly recognition training is useful and meaningful however it is equally clear that the training requirement will not be limited to recognition alone but would include a myriad of aspects of no use to “will-not-carry” operators. Operators are rather limited in their ability to discover undeclared goods without conducting searches of an individual’s baggage. Are the proponents of these rules advocating that operators conduct physical searches of persons and property?

It appears from the NPRM that FAA has a greater interest in increasing regulatory burden and in a de facto manner reducing the number of remaining small on-demand FAR 135 operators than it has in actually addressing the issue which is used to justify the NPRM. Since 1996 the number of these operators has, according to the Air Charter Guide, declined approximately 25%.

The FAA has done little (such as producing a training video or CD-ROM for example) to directly deal with the issue of increasing hazmat recognition and awareness for “will-not-carry” operators who, by FAA’s own count, constitute more than 97% of all FAR 135 operators. Certainly the excuse of insufficient funding and resources can be heard even in advance of my comment, however I am prepared to argue the same point and assure you that my company’s resources are microscopic compared to those of the FAA. If the FAA can afford to conduct

annual FSDO level safety meetings for Inspection Authorization holders (mechanics) surely it can afford to do something similar for those affected by hazmat regulations. And such efforts can be made without any change in regulation.

Substantial and effective educational efforts have been made to reduce the number of unauthorized runway incursions without any change in regulation. If FAA's analysis actually shows that hazmat is truly an increasing hazard then a similar effort to educate could be made.

Section II.E.2. states "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." I am amazed that FAA would so boldly embrace the "one size fits all" concept which clearly fails practice. That which is suitable for a FAR 135 scheduled commuter airline is in numerous ways wholly unsuitable for a small on-demand carrier and vice versa simply because the way each operates is very different. Additionally this allows for no flexibility on the part of a prudent and sensible inspector who oftentimes understands what the rulemongers do not.

Section II.G. states:

"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."

While this recognition of single pilot operators is in the preamble, *nowhere* in the actual text of the proposed regulation are these points specifically addressed. Furthermore the notation "would remain subject to the hazmat training requirements in § 135.333" is deceptive and misleading since the proposal removes § 135.333. This entire section appears to be a trap for the unsuspecting single-pilot operator who may be lulled into thinking he/she will be unaffected by this proposed rule change.

I recommend that the FAA do the following:

1 - Drop that portion of the NPRM which applies to small, "will-*not*-carry", on-demand FAR 135 operators and instead retain the language contained in FAR 135.333(c).

2 - Provide clear and concise training materials in modern and effective formats for the "will-*not*-carry" operators who makeup 97% of all FAR 135 air carriers with emphasis on the real issues of the hazards of hazmat rather than simply what is needed to achieve regulatory compliance.

3 - Conduct annual hazmat awareness meetings (one or more per FAA region based on geographic size) which provide presentations, discussion, and question and answer opportunities for these same operators.

4 - Educate then regulate. This is particularly appropriate here since hazmat represents a small specialized area of knowledge not related to aviation per se.

5 - Extend the comment period to allow certificate holders more time to consider the impact of this NPRM. Some weeks ago I asked Katherine H. Perfetti, National Resource Specialist-Part 135 and Fractional Ownership, FAA-AFS-200 about this NPRM and how it would be addressed within the 125/125 Aviation Rulemaking Committee. She was unaware of the Hazmat Training NPRM. If she missed it I suspect many, many, other affected entities missed it as well.

Implementation of the above items would be helpful and effective in reducing the number of hazmat incidents and accidents as well as build better relationships between FAA/DOT and industry.

Promulgators of regulation should consider the fact that the resources of any entity, large or small, are limited, and that poorly crafted rules absorb those finite resources and ultimately degrade overall safety in spite of anyone's good intentions. Adding safety features to an automobile in an attempt to make it crash proof is valueless if it subsequently becomes un-driveable.

Sincerely,

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