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Scott A. Mugno
Managing Director
Corporate Safety
Health and Fire Prevention

Delivery Code 7622
3670 Hacks Cross Road
Building G, 2nd Floor
Memphis, TN 38125-8800

US Mail PO Box 727
Memphis, TN 38194-7622

Telephone 901.434.9587
Fax 901.434.9771
Email samugno@fedex.com



DEPT OF TRANSPORTATION
2003-15085

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September 4, 2003

Documents Management System
U.S. Department of Transportation
Room PL 401
400 Seventh Street, SW
Washington D.C. 20590-0001

RE: FAA-2003-15085 Hazardous Materials Training Requirements

Dear Sir or Madam: ⁴⁰

FedEx Express is the world's largest express transportation company and transports more hazardous materials, also known as dangerous goods, shipments than any other air carrier.

FedEx Express submits the following comments in response to the Notice of Proposed Rulemaking: Hazardous Materials Training Requirements Docket No. FAA-2003-15085. The NPRM seeks to amend its hazardous materials (hazmat) training requirements for certain air carriers and commercial operators.

FedEx Express again restates its contention, made in comments to RSPA and FMCSA rulemakings, that before any DOT agency pursues further rulemaking on hazardous materials, DOT must first review and significantly revise current hazardous materials requirements. We contend that current requirements are redundant, confusing, encumber the very process intended to be supported and improved, and additional requirements from new rulemakings only add to or compound these problems. It is our contention that such requirements have not been significantly or thoroughly reviewed or revised since their inception and do not consider the changes and improvements in the various industries, professions, and modes of transportation involved. We further contend that if such a review was conducted and appropriate and applicable revisions implemented, safety and security would improve significantly and be implemented and practiced more effectively.

FedEx Express applauds FAA for its following acknowledgement in its summary paragraph of the NPRM. "The FAA is updating its regulations because hazmat transportation and the aviation industry have changed significantly since the FAA promulgated its hazmat training regulations over 25 years ago." However, clarifying outdated training requirements without reviewing and revising the outdated underlining requirements is the equivalent of treating the symptoms instead of the cause of the problem. For that and other reasons stated below, FedEx Express offers the following comments.

The proposals in this NPRM will far exceed the cost noted in the cost-benefit analysis for additional training and will impose unnecessary expense on air carriers. The burdensome training proposals set forth in this NPRM are so far reaching, than what is currently and safely in place, that FAA should consider withdrawing the notice and conduct an Aviation Rulemaking Committee (ARC). The ARC can work with all agencies and industries involved in the shipping and transportation of Hazardous Materials in evaluating what additional training, if any, is needed to the current hazardous materials training requirements.

FAA should, at a minimum, hold a public meeting to clarify the proposals in the NPRM and then reissue a notice if needed.

FedEx Express hazardous material shipments represent less than one third of one percent of the total daily volume at FedEx Express. We provide this critical service for the benefit of industry, technology, medical facilities and both domestic and international commerce. Fedex Express currently provides extensive function specific and general awareness training in hazardous materials to employees that are currently required to be trained as set forth in 49 CFR Subpart H 172.700. If this NPRM is adopted, as written, it may force will-carry airlines like FedEx Express to seriously review this service and reconsider whether offering the dangerous goods service is sound business.

FAA's proposal to require each air carrier that utilizes a repair station and contracted employees to provide DG training is unworkable and can not be achieved. Repair stations already are required to be trained under the Hazardous Materials Regulations and are subject to FAA enforcement. Carriers should not be required to "police" repair stations that are themselves shippers, provide training, and maintain training records for their own companies. Carriers have no authority to enforce requirements on persons at repair stations that they do not directly employ. Contracted employees can work for several different airlines both domestically and internationally. Requiring carriers to provide their specific training courses will result in redundant training courses given to these companies. FAA fails to take into account that there are many qualified DG trainers that can and do provide any necessary training to contract employees. It is simply unfeasible to provide training in locations where an airline does not provide direct aircraft lift or maintain facilities.

FAA's proposal to have across the board instructor-led training is unnecessary and does not align with current protocols used in the industry for initial and recurrent DG training. Computer based training along with CD-ROM and video training has long been used in the industry to provide more than adequate training to employees and contracted personnel.

Imposing a requirement that employees comprehend all subjects is subjective and will be difficult, if not impossible, to determine by objective results.

Additionally, requiring air carriers to keep records at the current location of the employee is not a standard utilized by industry today and does not appear to add value for the intended purpose. A centralized, computer based program that is accessible by internal corporate standards provides proof of training and is standard business practice.

Requiring that each person performing any supervisory hazardous materials functions also be trained is also burdensome and will not necessarily add any safety value. Many members in management have no direct responsibilities for hazmat shipments. Others provide direction to groups of workers, moving from one group to another. Suggesting that training the management chain and requiring visual supervision would be beneficial ignores the huge burden being required with no real value added.

Currently, there is no requirement for carriers to have a "Director of Training" and there appears to be no practical reason for one.

Requiring an instructor or employee's signature is also not necessary to provide proof of training when records are already kept electronically.

FedEx Express requested RSPA to review the issue of "constructive knowledge" and provide guidance and any "trigger lists" that carriers can use to train their employees with respect to the recognition of undeclared hazmat. A public meeting was held regarding this issue. It is our understanding that RSPA and the Office of the Secretary may soon issue guidelines as a result of our request and the public meeting. FAA proposals on this subject should not be given until RSPA guidance is provided on this important subject.

While FedEx Express applauds FAA's shipper inspections and outreach, much more can be done to prevent undeclared hazmat where it begins in the first place -- the shipper. Any effort for the prevention of undeclared hazmat must include the shipper whether addressed in this proposal or a separate proceeding. The proposal incorrectly and unrealistically assumes that any employee can be as knowledgeable as a FAA Agent or Operator Hazmat Specialist who may recognize one chemical name over another. The shipper has the full and complete responsibility for the proper preparation of hazmat shipments. Requiring carriers to

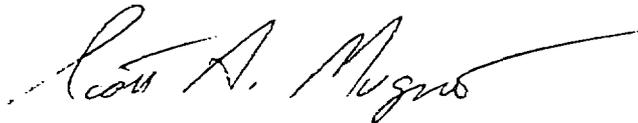
"police" the compliance of the shippers or the general public is not the answer and does not address the real problem of shipper compliance and public awareness. The FAA should focus their enforcement and education programs upon non-compliant shippers and conduct public educational and outreach programs targeted at industries and those indirect entities that otherwise may manufacture, utilizes or ship hazmat products. Any appropriate requirements from the appropriate agency for product marking and labeling from point of manufacturer to consumer will certainly assist in the prevention of undeclared hazmat and should also be strongly pursued.

The training proposals in this NRPM are so burdensome and complex that it would be impossible for carriers to comply with any mandatory changes in employee communication and updating of manuals within the suggested fifteen (15) month time frame. The POIs could not possibly approve training programs in time for all carriers given the enormity of the proposed additions and changes to each carrier's training program and manuals. A carrier could spend many months in developing a new training program for implementation only to have it rejected before the due date. Also, for the most part, POIs are operational experts and would have to be given additional training on how to evaluate a new hazmat training program under these new proposals.

Finally, the FAA needs to allow the same discretion allowed carriers now in permitting training commensurate with an employee's job function. Carriers must have the leeway and ability to determine, based on their own categories of employees with different job responsibilities, what training is necessary, if any, for the content of their hazmat training programs. Their proposals here would impose an unnecessary and expensive burden on carriers to train employees that do not handle freight or prepare any kind of hazmat shipments. Many of the modules proposed in the NPRM have no relation to the employees job function. Professional training analysis has determined that to ensure retention of information, an individual must use what is learned on some repetitive frequency. Training individuals in areas that is not part of their normal job function will not only be inefficient but will compromise their ability to maintain proficiency

FedEx Express appreciates the opportunity to comment on this proposed rulemaking. If you have any questions concerning these comments, please contact me or David Littlejohn, Dangerous Goods Technical Advisor, at (901) 434-9567.

Think Safety, Act Safely, Be Safe



Scott A. Mugno
Managing Director
Corporate Safety, Health & Fire Prevention
Phone: (901) 434-9587
Facsimile: (901) 434-9771
Email: samugno@fedex.com