

**Comments in response to 68 Federal Register 24810 (May 8, 2003)
Submitted Electronically to: <http://dms.dot.gov>
and in duplicate by United States First Class Mail**

**Hazardous Materials Training Requirements
Comments on the Notice of Proposed Rulemaking**

**Submitted by the
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Docket Management System
U.S. Department of Transportation
400 Seventh Street, SW
Room Plaza Level 401
Washington, DC 20590-0001

Docket No. FAA-2003-15085

Dear Sir or Madam:

Please accept these comments in response to the Federal Register Notice of Proposed Rulemaking published at 68 Federal Register 24810 (May 8, 2003) (Hazardous Materials Training Requirements) [hereinafter "Hazmat Training NPRM"]. The deadline for responding to this NPRM was extended at 68 Federal Register 40206 (July 7, 2003).

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What is AEA?

The Aircraft Electronics Association (AEA) is an international organization representing over 1,100 company members dedicated to the general aviation electronics industry. AEA's membership includes avionics repair stations, manufacturers and distributors. AEA supports efforts to improve safety and regulatory awareness among its members and in the industry as a whole.

Summary of AEA's Position

AEA believes that training is the key to safe and competent service by repair stations, and accordingly fully supports the idea that repair stations should be required to ensure that their personnel are adequately trained to carry out their technical duties and comply with all applicable regulations. Where a repair station is involved in the transportation of hazardous materials, the repair station's personnel should comply with the hazmat training requirements set forth by the Department of Transportation. AEA believes, however, that hazmat training, where needed, can be incorporated into the training programs already required under 14 CFR § 145.163. The creation of a separate training requirement as proposed in this NPRM is unnecessary for repair stations, and would only add to the administrative burdens they face without any corresponding increase in safety. FAA should withdraw the proposed new sections of part 145 and instead the FAA should amend § 145.163 to address hazmat training.

Despite efforts to harmonize hazardous materials training, it is not uniform. Two different air carriers could have very different training programs. Requiring a repair station with multiple air carrier customers to comply with the training programs of each customer could cause more problems than it solves. For this reason, AEA recommends that the provisions requiring repair station personnel to "receive[] training in accordance with the part 121 or part 135 certificate holder's approved hazardous materials training program" be removed. Instead, repair stations should be required to train their hazmat employees according to the existing (uniform) training regulations, and that they be required to make all shipping and hazmat employees aware of their air carrier customer hazmat-related operations specifications.

Some repair stations are highly unlikely to encounter hazmats, based on the sort of work that they perform. AEA proposes that the FAA institute a narrowly tailored exemption from this rule for repair stations that hold only radio and/or instrument ratings (plus an associated airframe rating for purposes of avionics installations). Most repair stations holding these ratings do not handle hazmat, and those that do already are required to have appropriate training programs by the hazmat training requirements of Title 49. The proposed new training requirements affecting avionics repair stations that perform work for a part 121 or

part 135 carrier adds a new and significant administrative burden that is not balanced by any meaningful increase in overall safety.

AEA also proposes to narrow and clarify the notification requirement in proposed § 145.27 by placing the notification provisions within the training requirements.

AEA Proposal

AEA proposes that the proposed §§ 145.5, 145.11(a)(5), and 145.27 be withdrawn. In their place, AEA proposes the following modification to section 145.163(b) and an amendment to add a subsection 145.163 (e):

§ 145.163 Training requirements.

* * *

(b) The training program must ensure:

(1) Each employee assigned to perform maintenance, preventive maintenance, alterations, or inspection functions is capable of performing the assigned task.

(2) Each employee subject to the training requirements of part 121 or part 135 of this chapter, or who meets the definition of a hazmat employee under 49 CFR 171.8, receives hazardous materials training that meets the requirements of 49 CFR 172.700 through 172.704.

(3) For each customer of the repair station, that holds an operating certificate issued under Part 121 or Part 135 of this chapter, when the repair station has been notified of the customer's operations specification that permits, prohibits or limits the carriage of hazardous materials, no employee shall perform maintenance, preventive maintenance, alterations, or inspection functions for that customer, nor shall any employee ship anything to the customer, until the employee has been notified of the customer's operations specification that permits, prohibits or limits the carriage of hazardous materials.

* * *

(e) Notwithstanding any other provision of this chapter, a repair station shall not be required to provide hazardous materials training to its employees, and a certificate holder shall be relieved of any hazardous materials training duties imposed under Part 121 or Part 135 of this chapter as they relate to the repair station and its employees, if the repair station meets all of these requirements:

(1) The repair station is not a hazardous materials employer as that term is defined in Title 49 of the Code of Federal Regulations;

(2) The repair station holds a radio rating, an instrument rating, or both;

(2) The repair station may also hold an airframe rating that is used only for the purpose of installing equipment that falls within the scope of the repair station's radio rating or instrument rating;

(4) Except for a rating described in subsections (e)(2) or (e)(3) of this section, the repair station does not hold any other rating; and

(5) The repair station certifies to the FAA, based on a diligent investigation of the repair station's business practices, that it would be unreasonable to believe that the repair station would ever ship a hazardous material.

AEA also proposes that the proposed §§ 135.503(c) 121.803(c) be replaced by the following text:

121.803(c):

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

(1) The certificate holder using this exception receives written verification that the person has satisfactorily completed hazardous materials training for the specific function;

(2) The certificate holder using this exception receives written verification that the person has been trained in the operations specifications, regarding the acceptance, handling, and carriage of hazardous materials, that are used by the certificate holder using this exception, which training may have occurred without reference to the certificate holder; and

(3) The certificate holder using this exception receives written verification that the person has been notified of all of the operations specifications, regarding the acceptance, handling, and carriage of hazardous materials, that are used by the certificate holder using this exception.

135.503(c):

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

(1) The certificate holder using this exception receives written verification that the person has satisfactorily completed hazardous materials training for the specific function;

(2) The certificate holder using this exception receives written verification that the person has been trained in the operations specifications, regarding the acceptance, handling, and carriage of hazardous materials, that are used by the certificate holder using this exception, which training may have occurred without reference to the certificate holder; and

(3) The certificate holder using this exception receives written verification that the person has been notified of all of the operations specifications, regarding the acceptance, handling, and carriage of hazardous materials, that are used by the certificate holder using this exception.

Repair Station Hazmat Training Should be Regulated with Other Repair Station Training

The proposed rule would impose a hazmat training requirement on all persons who perform a transport-related function (TRF) for a part 121 or part 135 certificate holder. "Person" refers not only to employees of the certificate holder, but to contractors or subcontractors as well, such as repair stations. This requirement would apply regardless of whether the repair station qualifies as a hazmat employer under the Hazardous Materials Regulations (HMR), 49 CFR parts 171 through 180. Repair station personnel would be required to participate in the certificate holder's FAA-approved training program.

Repair stations, however, are already required to develop and implement employee training programs addressing key aspects of their operations. As part of the recent amendments to part 145, repair stations are required under 14 CFR § 145.163 to submit to the FAA for approval training programs that provide initial and recurrent training for their employees. The training program is to ensure that each employee assigned to perform maintenance, preventive maintenance, alterations, or inspection functions is capable of performing the assigned task. The Flight Standards Service is currently developing guidance material that will define the scope of this training requirement.

Rather than add new sections to part 145 concerning hazmat training, AEA proposes that the FAA include hazmat training as one of the requirements under § 145.163. This will keep all training-related requirements consolidated in one section of the rules and will help repair stations keep hazmat training in perspective relative to the other types of training required to ensure the technical competence of its employees.

Elimination of Redundant Training and Complicated Exemption Schemes

The revisions to parts 121, 135 and 145 contemplate that repair station employees and other contractors will be trained according to the FAA-approved hazmat training systems of the air carriers. This could lead to massively redundant training where the repair station has more than one certificate holding customer (which is the normal course of business).

The exceptions found in 121.803(c) and 135.503(c) do not adequately address this redundancy. First, they are conditioned on a certification from a Part 121 or part135 customer. Such customers may be unwilling to provide such certifications for fear of legal liability or because they do not want to assume training costs that their competitors are not assuming – in such a case unnecessary redundant training would be necessary. Second, they are conditioned on the proposition that the prior training addressed the exact same operations specifications. This could lead to redundant training based on insignificant differences.

The mere fact that one carrier customer's operations specifications differ from another does not mean that the employees must receive complete training for each customer – all that is necessary is that the repair station employees receive basic hazmat training supplemented with a special training unit describing each customer's special conditions and operations specifications related to hazmat. For a repair station, such training could center around a table listing the customers and their hazmat-related operations specifications and procedures – a copy of the table might also be found in the repair stations quality manual in order to ensure that employees have ready access to this information during their day-to-day activities.

One significant problem is that the training exceptions found in 121.803(c) and 135.503(c) anticipate that the carrier will provide training to the non-carrier contractors like repair stations. This conflicts with the existing training requirements in Part 49, which already impose the responsibility for training on the hazmat employer (which would be the repair station, and not the air carrier customer). Thus, the mere fact that the air carrier provides training in its own procedures does not absolve the repair station of its own training responsibilities, particularly where the repair station may have hazmat issues that arise that are different from the issue that arise in an air carrier's environment.

In addition to the fact that hazmat employer-repair stations already bear legal responsibility for training their employees (conflicting with the plan to impose the training burden on the air carriers), there are safety and efficiency advantages in maintaining the training within the repair station's responsibility when the repair station has already undertaken this burden:

- A repair station may need to provide training specific to that repair station's operations that are outside of the air carrier's training programs. For example, the repair station could also ship hazmats that are not part of the air carrier customer's training programs. That would require redundant training if the air carrier could not accept the repair station's training program.
- Subtle differences between the programs of one air carrier and the next could make it impossible for one carrier to make the certifications called for in proposed sections 121.803(c)(1) and (2) and 135.503(c)(1) and (2) of the NPRM. Rather than requiring employees to go through both air carriers' complete training programs, a repair station could easily develop a single training program that captures the differences between the operations specification and operating procedures of its customers, and explains them in a manner that is easy to understand (such as a chart of customers' requirements). In addition to being a more effective and efficient training model, this also relieves the repair station employees of the burden of attending multiple training programs that only have minor differences among them.

In summary, AEA recommends that repair stations that are required to train their employees in hazardous materials safety be permitted to engage in such training, supplemented by the specific procedures and operations specifications related to the customers, and that the repair station then be permitted to certify to the customers that such training has been completed. This will eliminate redundancy, avoid confusion, enhance safety by assuring that repair stations remain responsible for their own employee training, reduce the complexity associated with repair station personnel receiving training from one or more customers, and assure congruence with existing hazmat training regulations found in Title 49.

The Notification Provision In Proposed § 145.27 Is Vague

AEA recognizes the importance of ensuring that repair station personnel who perform work for part 121 or part 135 carriers be aware of whether the carrier in question has elected "will-carry" or "will-not-carry" status. Nevertheless, the wording of proposed § 145.27 should be modified to clarify and appropriately narrow the notification requirement. As proposed, § 145.27 would require repair stations to notify "all workers" of "each certificate holder's" operating specifications relating to the carriage of hazmat. This requirement is overly broad in two respects.

First, the requirement to notify *all* workers – presumably meaning all employees of the repair station – would encompass personnel such as administrative employees who may have no involvement with the work being performed for the

part 121 or part 135 carrier. This requirement should be limited to 1) repair station employees who actually perform maintenance services on parts, components, or appliances belonging to part 121 or part 135 carriers, 2) personnel responsible for receiving and shipping those items, and 3) the supervisory personnel overseeing these two categories of workers.

Second, the reference to “each certificate holder” is vague, and should be limited to each certificate holder for which the repair station provides maintenance services. The wording of the section as proposed would potentially encompass carriers with which the repair station has no relationship whatsoever, or common carriers such as FedEx or UPS that a repair station uses to ship components to its customers. It would also require notification to new employees concerning operations specifications of carriers that are no longer customers of the repair station (but that provided an op spec notification in the past). The wording leaves open the potential for absurd enforcement interpretations.

As an additional note, the rule should avoid suggesting that the repair station is required to obtain copies of the air carrier’s operations specifications in order to ascertain the carrier’s status relative to carriage of hazmats. Many carriers are reluctant to share their operations specifications with outside vendors, making it difficult for repair stations to obtain them. In this context, all the repair station really needs to know is whether the part 121 or part 135 carrier for which it is providing services has elected “will-carry” or “will-not-carry” status, something that could be communicated by the carrier in question by any means consistent with proposed sections 121.803 and 135.503.

As an alternative, should the FAA decide not to withdraw proposed § 145.27, AEA proposes the following language:

§ 145.27 Notification of hazardous materials limitations.

Each repair station that performs work for a part 121 or part 135 certificate holder must notify all repair station employees who perform or supervise maintenance services for such certificate holder, or who perform or supervise the receiving and shipment of items belonging to such certificate holder, as to whether that certificate holder is authorized in its operations specifications to carry hazardous materials.

Avionics Repair Stations Should Be Exempted From the New Requirement

Avionics repair stations perform highly specialized work involving parts, components, and appliances that very rarely constitute hazmat. Consequently, very few avionics repair stations qualify as hazmat employers under the HMR. The proposed rule would impose training requirements on a substantial number

of avionics repair stations that have never had to implement hazmat training in the past. The costs associated with this additional burden significantly outweigh the likely safety benefits to be expected. Accordingly, avionics repair stations should be exempted from the proposed rule.

Avionics Repair Stations Generally Do Not Transport Hazmat

The majority of AEA's members are radio- and/or instrument-rated repair stations that specialize in the repair, alteration, and installation of avionics systems. As a consequence of recent efforts by Flight Standards Service to harmonize ratings requirements, many AEA members have obtained airframe or limited airframe ratings in order to install the avionics systems into the aircraft. Avionics systems are typically solid-state electronic devices that do not contain hazardous materials or substances regulated by 49 CFR parts 171 through 180. When the repaired avionics are not installed by the repairing repair station, the repair stations and their customers typically ship these items via common carriers.

The work performed by avionics repair stations for Part 121 and Part 135 certificate holders (air carriers) typically consists of component- or appliance-level repair. Avionics repair stations generally have no direct contact with air carriers' aircraft and are not involved in the transportation of COMAT. Avionics typically receive their power from the aircraft power bus, so there would not be a hazmat battery in on-board avionics (some avionics have dry cell Ni-Cad backup batteries but these would be exempt from the regulations under 49 C.F.R. § 172.102, special provision 130). As a general rule, avionics repair stations would not have any occasion to ship a hazardous material to an air carrier.

The New Training Requirements Would Add an Administrative Burden Without Any Corresponding Material Increase In Safety

Because the work avionics repair stations perform for their customers generally does not involve hazmat or COMAT, avionics repair stations typically do not qualify as hazmat employers under the hazardous materials regulations [HMR] found in Title 49 of the CFR. Consequently, these repair stations generally have not been subject to the HMR training requirements. The proposed rule would change that. Any repair station performing work under contract or subcontract for a part 121 or part 135 certificate holder would now be required to participate in the certificate holder's hazmat training program. This represents a significant new administrative burden for many repair stations. Affected repair stations would need to make arrangements for their employees to attend training sessions, with the attendant costs in terms of possible direct training costs, travel expenses, and lost productivity. This burden would fall the hardest on small repair stations – especially those with five or fewer employees – that constitute a significant portion of all avionics repair stations.

Balanced against the cost of this administrative burden is a safety benefit that is marginal at best. Because avionics repair stations are so rarely involved in transporting hazmat or COMAT, the overall safety benefit to be gained from requiring all such repair stations that perform work for part 121 or part 135 certificate holders to undergo hazmat training is extremely small. While the FAA's desire to "increase the knowledge base" in the industry is laudable, the costs in this particular instance outweigh the benefits.

An Exemption Can Be Narrowly Tailored

This proposed burden on avionics repair stations can be avoided by means of a narrowly drawn exemption. AEA proposes that this exemption apply to repair stations that only hold ratings under 14 CFR § 145.59(d) (radio ratings) and/or 145.59(e) (instrument ratings), provided those repair stations do not qualify as hazmat employers under 49 CFR § 171.8. The exemption should also apply to repair stations rated under 14 CFR § 145.59(a) (airframe ratings), when such rating is held in conjunction with a radio and/or instrument rating and is held solely for the purpose of performing installations of electronic systems.

Explanation of AEA's Proposed Language

AEA Proposal § 145.163(b):

(b) The training program must ensure:

(1) Each employee assigned to perform maintenance, preventive maintenance, alterations, or inspection functions is capable of performing the assigned task.

(2) Each employee subject to the training requirements of part 121 or part 135 of this chapter, or who meets the definition of a hazmat employee under 49 CFR 171.8, receives hazardous materials training that meets the requirements of 49 CFR 172.700 through 172.704.

(3) For each customer of the repair station, that holds an operating certificate issued under Part 121 or Part 135 of this chapter, when the repair station has been notified of the customer's operations specification that permits, prohibits or limits the carriage of hazardous materials, no employee shall perform maintenance, preventive maintenance, alterations, or inspection functions for that customer, nor shall any employee ship anything to the customer, until the employee has been notified of the customer's operations specification that permits, prohibits or limits the carriage of hazardous materials.

Explanation:

This language would require repair stations to include hazmat training in their training provisions. It would specify that hazmat training is required for persons who meet the definition of a hazmat employee, and also for persons required to

be trained under Part 21 or Part 135 even if they are not hazmat employees. In addition to the training already required under Title 49, it would also require that persons be trained in the customers' operations specifications. This ensures that the repair station personnel know what the customers are permitted to carry and what they are not permitted to carry.

AEA Proposal § 145.163(e):

(e) Notwithstanding any other provision of this chapter, a repair station shall not be required to provide hazardous materials training to its employees, and a certificate holder shall be relieved of any hazardous materials training duties imposed under Part 121 or Part 135 of this chapter as they relate to the repair station and its employees, if the repair station meets all of these requirements:

- (1) The repair station is not a hazardous materials employer as that term is defined in Title 49 of the Code of Federal Regulations;
- (2) The repair station holds a radio rating, an instrument rating, or both;
- (2) The repair station may also hold an airframe rating that is used only for the purpose of installing equipment that falls within the scope of the repair station's radio rating or instrument rating;
- (4) Except for a rating described in subsections (e)(2) or (e)(3) of this section, the repair station does not hold any other rating; and
- (5) The repair station certifies to the FAA, based on a diligent investigation of the repair station's business practices, that it would be unreasonable to believe that the repair station would ever ship a hazardous material.

Explanation

This addition to the repair station training regulation would exempt from hazmat training avionics facilities (radio and instrument repair stations), because it is not reasonable to believe that they would ship hazardous materials in their business dealings. Part 121 and 135 air carriers would also be relieved of the burden of training such facilities.

This rule identifies avionics facilities by their ratings. In light of FAA policies that have required avionics repair stations to obtain airframe ratings for installation of avionics on general aviation aircraft, an airframe rating used solely for this purpose should not disqualify an avionics repair station from this exemption. Based on the (e)(1) and (e)(5) provisions, this exemption would not be available to repair stations that reasonably may ship hazardous materials.

AEA Proposal §§ 135.503(c) and 121.803(c):

ASA proposes that the proposed §§ 135.503(c) 121.803(c) be replaced by the following text:

121.803(c):

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

(1) The certificate holder using this exception receives written verification that the person has satisfactorily completed hazardous materials training for the specific function;

(2) The certificate holder using this exception receives written verification that the person has been trained in the operations specifications, regarding the acceptance, handling, and carriage of hazardous materials, that are used by the certificate holder using this exception, which training may have occurred without reference to the certificate holder; and

(3) The certificate holder using this exception receives written verification that the person has been notified of all of the operations specifications, regarding the acceptance, handling, and carriage of hazardous materials, that are used by the certificate holder using this exception.

135.503(c):

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

(1) The certificate holder using this exception receives written verification that the person has satisfactorily completed hazardous materials training for the specific function;

(2) The certificate holder using this exception receives written verification that the person has been trained in the operations specifications, regarding the acceptance, handling, and carriage of hazardous materials, that are used by the certificate holder using this exception, which training may have occurred without reference to the certificate holder; and

(3) The certificate holder using this exception receives written verification that the person has been notified of all of the operations specifications, regarding the acceptance, handling, and carriage of hazardous materials, that are used by the certificate holder using this exception.

Explanation:

This proposal changes the air carriers' burden to train contractors that service multiple air carrier customers. For the reasons described elsewhere in these comments, the contractors would be permitted to perform their own training, so long as that training addresses the operations specification of the customer base.

In addition to addressing the specific operations specifications and what they mean to the contractor, the contractor would also be responsible for notifying employees of the specific operations specifications that apply to each air carrier customer.

CONCLUSION

For the reasons described in these comments, AEA asks the FAA withdraw proposed 14 CFR sections 145.5, 145.11(a)(5), and 145.27, and amend section 145.163 to encompass hazmat training requirements. AEA further proposes that radio- and instrument-rated repair stations be exempted from the proposed hazmat training requirements altogether. Finally, AEA proposes amendments to proposed 121.803(c) and 135.503(c) designed to permit repair stations and other contractors to multiple air carriers to develop efficient and effective training programs that reduce redundancies while still accomplishing the goals of this rulemaking.

Respectfully Submitted,

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