

**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 ASA?

The Aviation Suppliers Association (ASA) is an international organization representing the aviation parts distribution community. Although ASA's core membership is made up of distributors of aircraft parts, ASA's membership also includes repair stations, manufacturers and air carriers.

ASA members perform handling, storage incidental to transport, and packaging of air carrier company material (COMAT). Often, they hold air carrier COMAT in their warehouse inventory (for example, as a consignment). ASA members may also be involved in the acceptance or rejection of COMAT on behalf of an air carrier.

ASA has taken an active role to improve hazardous materials safety and awareness among its members and in the industry as a whole by offering hazardous materials training, conducting hazardous materials recognition and awareness presentations, publishing articles on hazardous materials, and publishing a hazardous materials recognition and awareness poster that can be seen in many aviation industry facilities today.

ASA also audits distributors' quality systems through its ASA-100 program. One of the elements that ASA audits is compliance with the existing hazmat training requirements of Title 49.

Summary of ASA's Position

ASA believes that training is the key to hazardous materials safety. Training regulations that create redundant requirements, establish confusing training standards, or blur the responsibilities for the provision of training are an impediment to effective training, because they discourage companies from undertaking the training that they need.

The proposed regulations provide a dangerous possibility of overwhelmingly redundant training. They also create the possibility of training that is not optimized to the employees being trained. One of the ways that they do this is by making air carriers responsible for having their contractors meet the air carriers' training program requirements, instead of permitting contractors to develop programs tailored to the needs of the contractor and all of the various entities serviced by the contractor. It would be better to make air carriers responsible for assuring that their contractors are properly trained, and permit the contractors the option of engaging in their own training or participating in the air carrier training. Where a contractor engages in its own training, the purpose of these rules should be met by requiring the contractor to train its personnel in the special operations specification and procedures of the air carrier.

In order to enhance safety, ASA recommends that contractors to Part 121 and 135 air carriers remain responsible for conducting their own training and certifying their training compliance to air carriers. Contractors to Part 121 and 135 air carriers may still be required to train their employees to the specific standards and operations specifications of the customers, but this will permit that training to be optimized based on the needs of the various customers without creating needless redundancies in the training system.

ASA Proposal

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.

Brief Explanation:

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

The proposal is changed from contractors that service multiple certificate holder, to those who service multiple entities, because contractors with multiple clients will frequently will perform the same or similar functions for customers that are not 121/135 certificate holders (e.g. general aviation, helicopter operators, maritime customers, non-transportation industry customers etc.). There is no need to repeat the basic hazmat training element for the air carrier customers – there is only a need to assure that the air carrier customers' relevant particular procedures are taught to the contractors' employees.

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.

This ASA proposal is compatible with the proposal offered by the Aircraft Electronics Association.

Elimination of Redundant Training and Complicated Exemption Schemes

The revisions to parts 121, 135 and 145 contemplate that contractor employees will be trained according to the FAA-approved hazmat training systems of the air carriers. This could lead to massively redundant training where the contractor

has more than one certificate holding customer (which is the normal course of business).

Exceptions, as Written, Are Inadequate

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 contractor 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 contractor, 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 company's quality manual in order to ensure that employees have ready access to this information during their day-to-day activities.

Contractors Must Account for Other Industries

Hazardous materials are not an aviation-only problem. Many companies that support Part 121 and Part 135 air carriers also work with other industry sectors, like maritime customers, rail customers, and non-transportation industry customers. These contractors must provide training to reflect their entire line of business.

The proposed rule anticipates that the contractor will have to train according to the air carriers program, or the air carrier will have to train the contractor's employees. This could make it impossible to address the special requirements of additional industry sectors. For example, as supplier that provides fire extinguishers to air carriers but also provides explosive squibs to other industry sectors may have training requirements that do not fit into the air carrier's program. If the supplier were able to conduct its own training program, then it would be able to develop training that meets the air carrier's needs while still addressing the other specialized training concerns particular to that supplier's employees.

Contractors Already Have Legal Responsibility for Performing Their Own Training

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. 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 contractor, and not the air carrier customer). Thus, the mere fact that the air carrier provides training in its own procedures does not absolve the contractor of its own training responsibilities, particularly where the contractor may have hazmat issues that arise that are different from the issue that arise in an air carrier's environment.

An air carrier is likely to NOT have addressed, in its training program, training issues that are specific to its contractors. Air carriers simply have too many contractors with too many different business needs to expect an air carrier to accommodate the contractors' needs in the air carrier's own training program.

Contractors that are hazmat employers are already required to perform training under Title 49. Shifting the training burden to the air carrier for whom a contractor works is inefficient and it conflicts with other existing regulatory authority.

There are Safety And Efficiency Advantages to Permitting Contractors to Perform their Own Training

In addition to the fact that hazmat employers (including those that are air carrier contractors) 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 contractor's responsibility when the contractor has already undertaken this burden:

- A contractor may need to provide training specific to that contractor's operations that are outside of the air carrier's training programs. For example, the contractor might ship hazmats that are not part of the air carrier customer's training programs (e.g. if the air carrier was a do-not-carry carrier). In such a case, the contractor may have a more extensive training program than the air carrier has. If the contractor had to submit its employees to the air carrier's training, too, that would require redundant training if the air carrier could not accept the contractor'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 contractor 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 contractor's employees of the burden of attending multiple training programs that only have minor differences among them.

In summary, ASA recommends that contractors be permitted to develop their own training programs to accomplish hazardous materials safety training. The new rules should merely require that such training be supplemented by the specific procedures and operations specifications related to the customers, and that the contractor then be permitted to certify to the air carrier customers that such training has been completed. This will eliminate redundancy, avoid confusion, enhance safety by assuring that contractors remain responsible for their own employee training, reduce the complexity associated with contractors' personnel receiving training from one or more customers, and assure congruence with existing hazmat training regulations found in Title 49.

CONCLUSION

For the reasons described in these comments, ASA asks the FAA modify its proposed language in 121.803(c) and 135.503(c) so that contractors can develop their own efficient and effective training programs that reduce redundancies while still accomplishing the goals of this rulemaking.

Respectfully Submitted,

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