

September 5, 2003

Dockets Management System
US Department of Transportation
400 Seventh St., SW
Room PL 401
Washington, DC 20590

FILED ELECTRONICALLY

Dear Sir/Madam:

SUBJECT: COMMENTS TO DOCKET NUMBER FAA-2003-15085

Delta Air Lines, Inc. (Delta) would like to thank you for the opportunity to comment on the above-referenced proposed rule and clarify the Hazardous Materials Training Requirements. With the complexity of Hazardous Materials Regulations, Delta recognizes the need to prepare employees by training to job-specific training curriculums. After reviewing the Notice of Proposed Rulemaking, we would like to formally comment on several items.

NPRM Applicability

The FAA has proposed modifications to 14 CFR 119, 121, 135 and 145. Air carriers operating under 121, 135 and 145 certificates, therefore, are subject to the proposed regulations. However, carriers operating under 129 certificates (Foreign air carriers and foreign operators of U.S.-registered aircraft engaged in common carriage) have not specifically been mentioned.

In the NPRM, the FAA indicates a move toward the training standards embraced in the ICAO Technical Instructions for the Safe Transport of Dangerous Goods (ICAO TI), but goes further by identifying additional job-function categories. Thus, the proposed training programs will be more comprehensive than those following the ICAO TI.

If the FAA believes the ICAO TI does not require enough training, and thus for safety reasons, U.S. carriers must adhere to more stringent regulations, why have the proposed regulations not been extended to include 129 certificate holders? If, on the reverse, the ICAO TI provides adequate regulations on training programs for foreign carriers, why then is the FAA proposing additional regulations on domestic carriers? Given that safety is the overriding goal of this proposed rule, does the FAA suggest that current domestic carrier HAZMAT training programs, many of which are based on ICAO, are inferior to foreign carrier programs?

14 CFR 121.804

The proposed rule requires the certificate holder to:

[121.804(b)] ...retain the training records...at the location where the trained person performs or supervises the function specified in [14 CFR] 121.801(a).

Additionally, the proposed language in 121.804(c) requires that each record include:

- 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...;*
- 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.*

The requirement to maintain signatures and statements of individuals involved fails to utilize technology the FAA has previously approved and represents a step backward. Currently many carriers maintain a central database of training records which has been approved by the FAA. Training records currently include student's name and identification number (i.e. SSN, Employee Number), the course name, the date of completion, confirmation the employee passed the course, and an instructor identifier (i.e. SSN, Employee Number).

Additional items to be tracked will greatly increase the size and complexity of the existing databases, assuming the existing databases could even be used. Additionally, previous records, which must be maintained for certain time periods, would not contain the new information, and thus would be out of compliance upon passage of a final rule.

The requirement to have signatures on file will require many carriers, to devise complex records storage systems to maintain paper copies of training records and possibly expend significant financial to develop systems to meet the new requirements. The proposed rule would, in effect, reverse the benefits of technology and push carriers to maintain separate training files at each station verses a centralized database accessible from any location.

Job-Function Categories

In the proposed rule, the FAA defines six (6) categories of employees based on an FAA interpretation of job function:

- (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) *Person 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.*

Delta is unclear as to the applicability of each of the FAA proposed job-function categories. For example, pilots are responsible for all cargo and baggage loaded on his/her aircraft during flight. Flight attendants take an active role in assisting passengers with their carry-on baggage during the boarding process. Is the FAA proposing both of these employee groups fall into Category 5 and thus must receive all thirteen training modules? Ticket agents accept baggage for transport at the ticket counters. Are they subject to Category 1 or Category 4 training requirements?

Is it the intent of the FAA to require training programs given to different categories of employees to be the same? Thus, will pilots receive the same training as flight attendants? Will cargo agents who accept hazardous materials for carriage receive the same training as ticket agents who accept passenger baggage? Without clarification and guidance of what is specifically intended by the proposed regulations, operators must, for compliance purposes, make an interpretation of the NPRM and train employee groups to the most comprehensive program specified in Appendix N.

While the need to specify job-specific training requirements exists, the proposed rule is, in essence, overly stringent, requiring all but ramp agents and ticket agents to become hazardous materials acceptance trained. Delta would like to support the FAA initiative, however the proposed rule would require significant changes to existing training programs and provide information not pertinent to certain employee groups. At the very least, clarification is needed to understand Tables 1 and 2 in Appendix N, and to fully define which categories apply to certain employee groups and which personnel are to be included in each employee group. Further, operators need the flexibility to categorize employee groups in a manner consistent with their individual operator needs.

Content and Delivery of Training Modules

The proposed rule identifies thirteen (13) modules that must be components of each operator's HAZMAT training program. Delta's current program, which is approved by the FAA, is not formatted using the proposed outline. While all components required by 49 CFR 172.704 are presented to appropriate employee groups, the programs are not divided into the specific modules proposed in the NPRM. To prepare a HAZMAT program that follows the prescribed curriculum, in the prescribed format, would require significant efforts by various business unit training organizations internal to Delta, costing both time and money, yielding a training program that is equivalent to the currently approved format.

How the training modules are presented is also of concern. During the past several years, many carriers, Delta included, have embraced learning technology and offer part or all of their programs via computer-based training (CBT). The program may be delivered via CD or accessed directly from the Intranet. Tests delivered through this method are performance based and self-remediating, directing students to review material not understood.

The NPRM implies the use of CBT is ineffective and will not be permitted. While the discussion of the proposed rule indicates an interactive session must be part of each program, the recordkeeping requirements are more conducive to instructor-led training. Is it the intent of the FAA to require instructor-led training for HAZMAT courses to the exclusion of computer-based training?

Constructive Knowledge

Through the NPRM, the FAA notes that many incidents occur due to hidden, undeclared hazardous materials. Much of the proposed regulation focuses on training individuals who may be able to identify hazardous materials not properly marked, labeled, or offered for transportation. While it is certainly important for all individuals engaged in transportation-related functions (TRF) to participate in the process, Delta feels the proposed rule is laying the foundation for enforcing "constructive knowledge" without providing guidance for what constitutes constructive knowledge.

The primary focus or goal of regulations should be ensuring the safety of passengers, employees, the general public, animals, etc. The FAA is charged with enforcing the existing regulations and proposing changes that will enhance safety. By enforcing constructive knowledge against the carriers, however, the FAA does not target or educate those creating the violation.

Delta respectfully suggests the safety of air passengers and employees would be enhanced if the FAA took increased action against shippers identified as offering hidden, undeclared or misdeclared goods using outreach and educational programs and enforcement actions, instead of the operators who currently have programs in place and actively attempt to keep such materials off aircraft.

Cost of Training

In the NPRM, the FAA estimates the cost of implementing the proposed training program at \$107.5 Million over 10 years for the entire industry. In light of the proposed changes to the HMR, increasing the number of individuals who require training, and the volume of information to be given during training, Delta strongly disagrees with the FAA's cost estimate.

Delta strongly disagrees with the FAA's proposed costs and believes the dollar value is grossly underestimated. We recommend the FAA refer to the Air Transport Association's (ATA) comments concerning the financial implications of the proposals outlined in the NPRM.

Conclusion

While Delta supports the FAA's intention of increasing safety for our passengers and employees, we believe the FAA is focusing its attention in the wrong direction. A partnership with the operators to inform the traveling public and shipping community about the dangers of hidden, undeclared or misdeclared hazardous materials, and the possible consequences of non-compliance with the regulations, would do more to serve the aviation industry than the provisions included in the NPRM. Operators are currently regulated and embrace safety as a core corporate value. Additional regulations, as proposed, will not be as effective or productive as a partnered approach.

Delta understands the fluidity of the regulations and thus the need to update training programs with the latest requirements. We also recognize the need for the FAA to provide clear guidance to Principal Operating Inspectors (POIs), who approve operator programs, as to what is required of a competent and effective hazardous materials training program. However the NPRM attempts to fit all operator programs into a set regimen with little, if any, room for creativity and company-specific tailoring. Although the NPRM attempts to identify clear guidelines for such programs, there exist "gray" areas within the NPRM that could lead to FAA Regional interpretations that differ from those intended by this NPRM. Misunderstandings and misinterpretations of this nature are likely given the proposed provisions included in the NPRM as currently issued and do not benefit the FAA or operators.

Delta respectfully requests the FAA retract the NPRM for the reasons discussed in the responses provided by Delta's Flight Operations Division and the Air Transport Association. Delta would welcome the opportunity to discuss with the FAA future modifications to 14 CFR regarding training, or to help develop a partnered outreach program. However it is Delta's opinion the NPRM, as proposed, does not support nor enhance the safety of the aviation industry.

Sincerely,

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