



Aeronautical Repair Station Association

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BY ELECTRONIC MEANS TO: <http://dms.dot.gov> to Docket Number 15085

Docket Management System
Department of Transportation
Room Plaza 401
400 Seventh Street, SW
Washington, D.C. 20590-0001

Re: Docket Number FAA-2003-15085; Hazardous Materials Training Proposals

Dear Ladies and Gentlemen:

The Aeronautical Repair Station Association (ARSA) submits these comments on the above Notice of Proposed Rulemaking (the "NPRM") issued by the Federal Aviation Administration ("FAA") on May 8, 2003 (68 FR 24810). We apologize for the late submission; however, we believe our comments will assist the FAA in fully understanding the significant adverse impact the proposals would have on the aviation maintenance industry.

ARSA represents several hundred repair stations certificated under Part 145 of the Federal Aviation Regulations (FARs) and similar rules issued by National Aviation Authorities (NAAs) around the world. A substantial majority of its members perform work on behalf of U.S. and foreign air carriers. The association membership also includes companies that distribute parts to international civil aviation businesses, as well as air carriers and manufacturers. These entities would be directly impacted if the proposed rules were implemented.

The proposals would substantially expand the scope of hazardous materials (hazmat) training regulations without a showing that it would enhance safety. They would impose significant new costs (at a time when the industry can least afford it) on both certificated and non-certificated maintenance contractors and subcontractors that are in full compliance with current hazmat regulations. Although ARSA supports the FAA's objective of enhancing hazmat compliance, these proposals would apply indiscriminately to several thousand companies that do not even handle hazardous materials. Therefore, they cannot be justified on the basis of the FAA's safety authority.

A review of recent FAA hazmat enforcement cases reveals that most involve companies whose only connection to aviation is that they offered hazardous materials for shipment by air. While airlines, repair stations and other aviation entities have also been subject to enforcement under the Hazardous Materials Regulations (HMR); they are responsible for only a fraction of the cases brought by the FAA.

FAA press releases issued by FAA Washington headquarters from January 1 through April 28, 2003 (the most recent data available on the FAA's web site) include 32 proposed hazmat civil penalty cases in excess of \$50,000. Twenty-eight (28), or about 90% of the cases, involved companies outside the aviation industry. These entities manufacture and sell cosmetics and related products, paints, chemicals, solvents and other hazardous materials not even used in the aviation industry. Only four cases involved companies in the aviation industry: an air carrier, a fixed base operator and two manufacturers that also hold repair station certificates. FAA hazmat enforcement cases from previous years show a similar pattern.

This data does not justify the imposition of sweeping new regulatory requirements on air carriers and their maintenance providers. These companies are not a significant source of non-compliance. Indeed, most "rotable" parts (those on which maintenance is performed) used on aircraft are not themselves hazardous materials nor do they contain hazmat. Accordingly, only a small fraction of the approximately 4,500 repair stations in the United States are hazmat employers as defined in 49 CFR section 171.8. As we will describe more fully below, the FAA's objectives can be achieved by imposing less onerous requirements while still increasing hazmat awareness in the maintenance industry.

ARSA supports the excellent comments submitted by the Air Transport Association (ATA). They describe current hazmat training practices in a well-organized and comprehensive manner and explain the devastating impact these proposals would have on the aviation industry. ARSA agrees with ATA that the FAA should concentrate its surveillance and enforcement resources on industries that have a poor hazmat compliance record. However, ARSA disagrees with ATA's recommendation that an Advisory Rulemaking Committee (ARC) should be convened to address hazmat issues. We believe a final rule within the scope of the notice can be adopted without the necessity of convening an ARC.

Multiple Tiers of the Maintenance Process

The FAA proposed that maintenance contractors to Part 121 and 135 air carriers be subject to new hazmat training requirements. The proposals would require hazmat training of repair station employees whether or not the companies are hazmat employers as defined in 49 CFR section 171.8. On page 14 of its comments, ATA noted that a large carrier may use as many as 500 highly specialized contractors to perform maintenance on its behalf, citing the example of an engine overhaul shop that is a subcontractor to a heavy maintenance provider. However, maintenance subcontractors may extend several tiers below the engine overhaul shop as illustrated by the following example.

An air carrier's heavy maintenance provider removes an engine from an aircraft and sends it out for a shop visit requiring disassembly of the case (i.e., an overhaul). Typically, both entities would have a contractual relationship with the carrier since both are considered "substantial maintenance providers" under the air carrier's operations specifications. The engine overhaul facility, XYZ, Inc., only services the rotating components and the case. Therefore, it subcontracts out the pumps, gearboxes, generators and fuel controls to other facilities. In this situation, the airline would have no direct relationship with subcontractors below the engine overhaul facility. In some cases, the airline may not have a direct contract with the engine overhaul facility.

The main fuel control is sent to ABC Fuel Services, another certificated repair station. However, ABC does not work on the servo valves or solenoids that are installed in that component. Therefore, ABC removes these parts from the main fuel control and sends them to DEF Servo Valve Services for overhaul. DEF is also certificated under Part 145. During a preliminary inspection DEF determines that a valve has a worn gear assembly.

Non-Certificated Subcontractors

DEF does not perform chrome plating on the gear so it subcontracts this work to the production facility that originally manufactured the part, or perhaps to an outside plating shop. Neither the manufacturer nor the plating facility is a certificated repair station. Does the FAA intend to require all "contractors" including non-certificated, sub-tier maintenance providers to be covered by an air carrier's hazmat training program?

Many non-certificated maintenance subcontractors support the aviation industry without actually being part of it. For example, a welding or machine shop may serve customers from many industries. In some cases, the percentage of aviation work they perform is significant; in others, it is relatively small. These entities provide various specialized services including, but not limited to, machining, welding, plating, heat-treating, coating and non-destructive testing (NDT).

Non-certificated maintenance subcontractors include electronics manufacturers that repair components installed in aircraft entertainment systems or dry cleaners that clean aircraft seats in accordance with a component maintenance manual. Repair stations that perform major alterations of aircraft interiors, for example, subcontract to a variety of non-certificated sources, such as those engaging in the cosmetic plating of galley and lavatory fixtures and the repair and refurbishment of rugs, Formica, wood products and plumbing materials.

Repair stations also subcontract various maintenance functions to manufacturing facilities. Some production facilities may be part of the same company as the repair station doing the contracting. For example, Boeing, Pratt & Whitney and Honeywell hold FAA production approvals and repair station certificates. Their repair stations frequently

subcontract a maintenance function to the production side of the company. Similarly, repair stations that do not hold production approvals also subcontract maintenance functions to original equipment manufacturers. In these cases, the repair station takes airworthiness responsibility for the work performed although the production facility is clearly performing a maintenance function for the air carrier.

Certain employees of these non-certificated subcontractors would now be subject to the hazmat training requirements even if they never handled hazardous materials or had a direct contract with an air carrier. **In our view, most of these companies are unaware that the FAA has even issued a proposal that would subject them to mandatory federal hazmat training.** Nevertheless, they routinely perform maintenance functions on air carrier equipment and a certificated entity must take airworthiness responsibility for their work.

Knowledge that the Work Was Being Performed for a Particular Air Carrier

What if DEF Servo Valve Services instructed the plating subcontractor to chrome plate the gear in accordance with the manufacturer's requirements? The subcontractor may not know that it is performing work for a particular air carrier. Indeed, it would not matter provided an upstream provider is aware of the air carrier's maintenance requirements and flows them down to the entity performing the work.

- Is the FAA suggesting that all lower tier repair stations and other maintenance providers should be included in the hazmat training program of numerous airlines because they may be asked to work on the carriers' equipment?
- While an air carrier will typically be provided with maintenance records for the work performed, it will not necessarily know the identity of each downstream subcontractor. Therefore, how would it know which entities to train in its hazmat procedures?
- Repair stations specializing in large transport category aircraft, aircraft engines and components have direct contracts with numerous air carriers. The FAA proposal would require the repair station to obtain training from each of its air carrier customers. The cost, merely in time away from work, would be extremely burdensome, particularly since there is no correlation between the training and the repair station's status as a hazmat employer.

The above scenario illustrates the complexity and degree of specialization in the aviation maintenance industry. It is impractical and unduly burdensome to expect air carriers to train maintenance providers with which they have no direct contractual relationship. Although the FAA could impose hazmat training requirements directly on all repair stations, the pertinent portions of 49 CFR currently apply to Part 145 certificate holders **if they are hazmat employers**. In ARSA's view, the agency has no rational

basis for imposing hazmat training requirements on any entity that does not maintain or otherwise handle hazardous materials. Indeed, this is analogous to requiring pilots who fly the B-737 to be trained on the A-320.

ARSA's Recommendations

ARSA supports increasing hazmat awareness in the aviation maintenance industry and offers the following recommendations for the FAA's consideration. We believe these proposals would address the FAA's primary concerns without unduly burdening the industry with impractical and unnecessary requirements.

First, ARSA suggests that the pertinent requirements of Title 49 of the Code of Federal Regulations (CFR) be cross-referenced in several sections of the new Part 145. Although the FAA proposed a form of this in the hazmat training NPRM¹, the proposal was limited to repair stations that do not perform maintenance for Part 121 and 135 air carriers. For those that work for air carriers, the agency proposed to require airline-specific hazmat training under Parts 121 and 135. ARSA agrees with ATA that this approach is simply unworkable because it fails to take into account the complexities of the aviation maintenance industry.

As described further below, Part 145 should contain several cross-references to 49 CFR. This would emphasize the fact that the HMR applies to **any** repair station that **is a hazmat employer under 49 CFR section 171.8**. This will ensure that the responsibility for compliance is reinforced in Part 145 rather than imposed indirectly on air carriers that cannot possibly supervise and control hazmat training for all of their maintenance contractors and subcontractors. **However, ARSA is strongly opposed to any proposal that imposes sweeping new hazmat requirements on repair stations that are not hazmat employers under 49 CFR.** Although most hazmat non-compliance involves non-aviation entities, the Association supports increasing the visibility of these important safety regulations in the repair station community.

ARSA proposes that each applicant for a repair station certificate advise the Administrator whether it would be a hazmat employer as defined in 49 CFR section 171.8.² In addition, all Part 145 certificate holders would have their hazmat status listed

¹ The FAA proposed to add sections to the current Part 145 rather than the new Part 145 published on August 6, 2001 (66 FR 41088). Although the effective date of the new Part 145 is expected to be extended until January 31, 2004, ARSA is proposing that any new hazmat training rules for repair stations be inserted in new section 145.163 as that section requires the repair station to have an approved training program.

² The FAA proposed to add new section 145.11(a)(5) requiring the applicant for a repair station certificate to certify that all hazmat employees are trained as required by 49 CFR section 172.704. In ARSA's view, the FAA should not require hazmat training to have occurred at the time of application but rather prior to the commencement of operations under the certificate. Under ARSA's proposal, the FAA would have sufficient notice of an applicant's hazmat employer status. In addition, proposed section 145.163 would

on their operations specifications similar to what the FAA has proposed for the “will carry” and “will not carry” airlines. Finally, a repair station would be required to notify the FAA within 15 days after its status as a hazmat employer changed.

These recommendations would accomplish several objectives. First, each applicant or certificated repair station would have to determine whether it was covered by the HMR and continuously monitor that status. Second, it would identify hazmat employers in the repair station community, allowing the FAA to target surveillance resources to those entities subject to 49 CFR. Additionally, the FAA would know whether hazmat training requirements in 49 CFR apply to that repair station.

In that regard, ARSA proposes that hazmat training be included as an element of the approved repair station training program under new section 145.163 for those entities (i.e., hazmat employers) that are required to comply with 49 CFR. The requirement for an approved training program will take effect beginning April 6, 2005 in accordance with section 145.163(a). Adding a hazmat component will ensure that this critical subject is specifically addressed in Part 145.

Finally, if the FAA adopts new regulations requiring air carriers to notify their maintenance contractors of their “will carry” or “will not carry” status, ARSA recommends that hazmat employer repair station manuals include procedures to notify the Part 145 certificate holder’s hazmat employees of the “will carry” or “will not carry” status of the air carrier customer. This will ensure that repair stations returning maintained articles to their customers via COMAT (company material) will not inadvertently ship hazmat on a carrier that is prohibited from carrying such materials. In addition, the repair station manuals should include procedures for notifying the Administrator within 15 days after a change in the repair station’s status as a hazmat employer so the FAA could change the repair station’s operations specifications.

Proposed Regulatory Language

ARSA recommends the adoption of the following repair station regulations in lieu of those proposed in the NRPM. These requirements would be added to the new Part 145 and take effect contemporaneously with that rule. The requirement to include hazmat subjects in the repair station’s approved training program would become effective beginning on April 5, 2005, consistent with new section 145.163(a).

Section 145.5 Certificate and Operations Specifications

- (a) No person may operate as a certificated repair station without, or in violation of, a repair station certificate, ratings, or operations specifications issued under this part.

require that hazmat training be accomplished and documented before any hazmat employee could perform these duties.

In addition to any other information required by the Administrator, the operations specifications shall state whether the repair station is a hazmat employer in accordance with 49 CFR section 171.8.

Section 145.51 Application for certificate

(a) * * *

(8) A statement whether the applicant is a hazmat employer in accordance with 49 CFR section 171.8.

Section 145.163 Training requirements

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(e) Each repair station that is a hazmat employer as defined in 49 CFR section 171.8 shall establish and conduct hazardous materials training that meets the requirements of 49 CFR sections 172.700 through 172.704. The program shall be part of the repair station's approved training program under this section.

(f) No certificate holder may use any person as a hazmat employee as defined in 49 CFR section 171.8 unless the requirements of 49 CFR sections 172.700 through 172.704 have been met,

(g) A person who satisfactorily completes recurrent training required by this section in the calendar month before or after the month in which it becomes due is considered to have taken that training during the month it became due.

Section 145.209 Repair station manual contents

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(g) Procedures for maintenance, preventive maintenance or alterations performed under section 145.205. For those repair stations that are hazmat employers, the procedures shall include the means for notifying the repair station's hazmat employees whether a Part 121 or Part 135 air carrier on whose behalf maintenance and alterations are performed is authorized to carry hazardous materials.

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(l) Procedures for notifying the certificate holding district office within 15 days after a change in the repair station's status as a hazmat employer as defined in 49 CFR section 171.8.

Please contact the undersigned if you have any questions or desire additional information about these comments.

Sincerely,

A handwritten signature in cursive script that reads "Marshall S. Filler". The signature is written in black ink and is positioned below the word "Sincerely,".

Marshall S. Filler
General Counsel