

F. Part 121, Appendix N—Hazmat Training Curriculum
 G. Part 135, Subpart K—Single-Pilot Operations
 H. Part 145—Repair Stations
 III. Paperwork Reduction Act
 IV. International Compatibility
 V. Economic Evaluation Summary
 VI. Initial Regulatory Flexibility Determination
 VII. International Trade Impact Assessment
 VIII. Unfunded Mandates Reform Act Assessment
 IX. Executive Order 13132, Federalism
 X. Environmental Analysis
 XI. Energy Impact

I. Background

A. Purpose of the Proposed Rule

The FAA regulations that prescribe hazmat training for air carriers and commercial operators conducting operations under part 121 or part 135 were first adopted over 25 years ago. Since that time, hazmat transport regulation in general has changed significantly, in part because the Department of Transportation (DOT) implemented the Hazardous Materials Regulations (HMRs) in 49 CFR parts 171 through 180 (41 FR 15972; April 15, 1976), and in part because of changes following deregulation of the airline industry in the 1970s. The hazmat regulations, which include training requirements, apply to all modes of transport. Training requirements also exist in the “Technical Instructions for the Safe Transport of Dangerous Goods by Air” of the International Civil Aviation Organization (ICAO). In addition, the FAA has provided guidance to the industry through Advisory Circulars (ACs) to help the aviation industry to comply with the FAA’s and DOT’s hazmat training requirements. Information from air carriers indicates that adherence to the recommendations in ACs has been high. The ACs are not mandatory, however, and these critical safety practices need to be clearly established within the FAA’s safety regulations. The FAA is proposing adding training requirements to its regulations that would set clear standards and ensure uniform compliance with training requirements for the handling of hazardous cargo. This proposed rulemaking would amend the manual and training regulations in parts 121 and 135 to incorporate most of the guidance now contained in the ACs.

For example, these proposed regulations would require certificate holders operating under part 121 or part 135 to have one of two distinct hazmat training programs. One training program would be for certificate holders electing to transport hazmat (“will-carry”

certificate holders), and the other would be for certificate holders who elect not to transport hazmat (“will-not-carry” certificate holders). A certificate holder that elects will-carry status would have an authorization to carry hazmat in its operations specifications. For will-not-carry certificate holders, the FAA would place a prohibition against carrying hazmat subject to regulation under the HMRs in their operations specifications.

These proposed rules also would identify the persons who must receive hazmat training by the nature of the functions they perform or supervise for the certificate holders. The term “supervise” would be defined to mean more than just being a designated supervisor. It would cover a person who has any degree of oversight over a function addressed by the proposed rule. Will-carry certificate holders would have to conduct extensive training for persons supervising or performing any of the following functions involving items for transport on aircraft: Acceptance, rejection, handling, storage incidental to transport, packaging of company materials owned or used by the certificate holder (known as COMAT), loading, unloading, and carriage. (This preamble refers to these functions as “transport-related functions” or “TRF.”) Will-not-carry certificate holders would have to conduct training sufficient to enable the persons supervising or performing a TRF to identify material marked or labeled as hazmat, and material not marked or labeled but showing some indication that it is hazmat.

In addition to these proposed amendments, the FAA proposes to add requirements for repair stations that would allow the FAA to increase its oversight of the training they are required to conduct under the DOT’s hazmat training requirements in 49 CFR part 172. This separate FAA requirement is needed because the FAA has noticed that, despite the training requirements of the HMRs, a number of aviation incidents, and at least one accident, involved hazmat handled by repair stations with inadequate training programs. The proposed rules also would amend part 145 to require that repair stations meeting the definition of “hazmat employers” under 49 CFR 171.8 implement a hazmat training program that satisfies 49 CFR 172.700 through 172.704.

At the time of application for a certificate, a repair station would have to certify to the FAA that all hazmat employees, as defined in 49 CFR 171.8, are trained under the HMRs, and that it is otherwise in compliance with the

training requirements of the HMRs. The applicant also would have to provide evidence of compliance with the HMRs. Without this evidence, the applicant would not receive a certificate.

Additionally, all repair station workers performing or supervising a TRF for a certificate holder, would have to be trained under the certificate holder’s approved training program. Furthermore, a provision would be added to part 145 to require repair stations to notify all workers of the will-carry or will-not-carry status of the certificate holders for which the repair station works. This would have to be done as soon as the repair station is informed of the certificate holder’s status. This proposal would be the companion requirement to the proposed notification requirement for part 121 and part 135 certificate holders. It would ensure that repair station management gives this information to its workers immediately.

B. Historical Overview

1. Agency Rulemakings for Part 121 and Part 135

The FAA’s current part 121 and part 135 hazmat training and manual requirements were adopted on June 7, 1973 (38 FR 14914). That rulemaking added § 121.433a to require hazmat training for persons performing any duty involving handling or carriage of hazmat. Section 121.401 was amended to include this training in the certificate holder’s training program. Section 121.135 (b)(12) was amended to require certificate holders to include in their manuals procedures and instructions for recognizing hazmat, and instructions for the proper carriage, storage, and handling of these materials.

The same rulemaking added § 135.140 to require hazmat training provisions for part 135 certificate holders. These part 135 requirements were similar to those in part 121, but with one important difference. Part 135 distinguished between will-carry and will-not-carry certificate holders. The preamble stated that the intent of the rule was to require a “part 135 certificate holder to provide a program of training only if it undertakes to engage in the transportation of hazardous materials.” Thus, only part 135 will-carry certificate holders were required to have a hazmat training program. In contrast, all part 121 certificate holders were required to have training programs.

A year and a half later, on January 3, 1975, the Hazardous Materials Transportation Act (HMTA), Title I of Public Law 93–633, was enacted. The HMTA gave the Secretary of