

Transportation the authority to consolidate hazmat regulations of the various transportation modes. On April 15, 1976, using this authority, the Materials Transportation Bureau (the predecessor of the Research and Special Programs Administration (RSPA)) consolidated all hazmat regulations of the various DOT modal administrations into one set of regulations for air, water, and surface transportation of hazmat (41 FR 15972). These consolidated regulations were published in 49 CFR parts 100 through 180. In response, the FAA removed its hazmat regulations from 14 CFR part 103, but it did not remove the hazmat training and manual requirements from part 121 and part 135. These regulations remained because they were an integral part of the certification requirements and operating rules for part 121 and part 135 certificate holders.

On May 25, 1978 (43 FR 22643), the FAA amended § 121.433a to add paragraph (c) allowing certificate holders operating in foreign locations to use personnel not trained under the certificate holder's hazmat training program to load and unload aircraft. These persons, however, must be under the supervision of someone who has successfully completed the certificate holder's approved training program. The amendment also allowed flight crewmembers to complete recurrent training a month before or a month after the actual due date.

On October 10, 1978, the FAA substantially rewrote part 135 (43 FR 46742). As part of that final rule, the FAA added § 135.23(p) to require each certificate holder, whether or not it carries hazmat, to include hazmat recognition procedures and instructions in its manual. Will-carry certificate holders had to include in their manuals detailed procedures and instructions for handling and carrying hazmat.

More significantly, the October 1978 rule, added training requirements for will-not-carry certificate holders. They were required to train their crewmembers to recognize hazmat. The new training requirement was put in part 135 because of a number of incidents where a will-not-carry certificate holder inadvertently accepted hazmat because its employees did not recognize it. Part 135 hazmat recognition training, however, was limited to crewmembers.

After deregulation of the airline industry, the FAA allowed a number of part 121 certificate holders to elect will-not-carry status and to provide only general awareness/recognition of hazmat training. In accordance with this practice, on July 10, 1980 (45 FR 46736),

the FAA amended part 121 manual requirements to require will-not-carry certificate holders to have procedures and instructions in sufficient detail to assist personnel in identifying packages marked or labeled as containing hazmat. The training requirements in § 121.433a, however, were not modified to incorporate a "recognition training" requirement for part 121 will-not-carry certificate holders. The FAA believes that most, if not all, part 121 certificate holders provide hazmat recognition training, but, to ensure that this training does occur, the FAA believes that these training requirements should be clearly stated in the regulations.

2. Advisory Circulars

In 1984, the FAA issued an AC providing certificate holders with information on 49 CFR parts 171 through 180, and the ICAO's "Technical Instructions for the Safe Transport of Dangerous Goods by Air" (AC 121-21B, entitled "Information Guide for Training Programs and Manual Requirements in the Air Transportation of Hazardous Materials"). The AC also provided a recommended training curriculum. This curriculum pre-dated DOT's passage of more specific hazmat training requirements in 49 CFR 172.700 through 172.704. The AC also encouraged will-not-carry certificate holders to ensure "that their personnel (including crewmembers) are adequately trained to recognize those items which can be classified as hazardous materials."

3. Training Requirements for Repair Stations

The recent hazmat incident and accident history indicates that additional requirements are needed to ensure that repair stations are doing the training required by the HMRs. In August 1997, the National Transportation Safety Board (NTSB) issued its final report on its investigation into the crash of ValuJet Airlines Flight No. 592 ("In-Flight Fire and Impact With Terrain, ValuJet Airlines Flight 592"). The report concluded that if ValuJet had implemented a hazmat recognition training program for its repair station employees, and in it had notified those employees of ValuJet's will-not-carry status and its implications, SabreTech (ValuJet's repair station) might not have mishandled the packaging and shipment of the chemical oxygen generators that were loaded onto the aircraft. Thus, NTSB recommended that the FAA:

Require air carriers to ensure that maintenance facility personnel, including mechanics, shipping, receiving, and stores personnel at air carrier operated or

subcontractor facilities are provided initial and recurrent training in hazardous materials recognition and in proper labeling, packaging and shipment procedures with respect to the specific items of hazardous materials that are handled by the air carrier's maintenance functions.

The FAA currently has no separate hazmat training requirement for part 145 repair stations that use, offer for transport, or otherwise handle hazmat. However, DOT's hazmat training requirements in 49 CFR part 172, apply to these repair stations. Yet, even with the heightened awareness of the dangers of oxygen generators since the crash of ValuJet Airlines Flight 592, the FAA continues to find hazmat, including oxygen generators, that have been improperly prepared and offered for shipment by air carriers and repair stations. The FAA believes that the DOT training requirements need to be referenced in the FAA's rules concerning repair stations. This will ensure that repair stations are aware of them, and make retention of their repair station certificate subject to compliance with them.

C. Relationship Between FAA and DOT Training Requirements

The DOT's HMRs (49 CFR parts 171 through 180) clearly apply to air carriers and repair stations that transport hazmat. They require all "hazmat employers" to train "hazmat employees" pursuant to 49 CFR 172.700 through 172.704. The terms "hazmat employer" and "hazmat employee" are defined in 49 CFR 171.8. "Hazmat employee" includes anyone who directly affects transportation safety by performing a function regulated by the HMRs. "Hazmat employer" is defined as "a person who uses one or more of its employees in connection with: Transporting hazardous materials in commerce; causing hazardous materials to be shipped in commerce; or representing, marking, certifying, selling, offering, manufacturing, reconditioning, testing, repairing, or modifying containers, drums or packagings as qualified for use in the transportation of hazardous materials." Under DOT's regulations, however, there is no training requirement placed upon employers or employees who are not "hazmat employers" or "hazmat employees." Thus, there are no hazmat recognition training requirements in DOT's HMRs for the employees of will-not-carry certificate holders who are not supposed to handle or transport hazmat. The FAA in this proposal recognizes that employees who are not supposed to accept, handle, or carry hazmat need adequate training to recognize and