

appropriately reject it to prevent the improper carriage of hazmat by will-not-carry certificate holders. It should be noted that even a will-not-carry certificate holder that does not handle hazmat from the public for transport may be a hazmat employer with respect to aircraft components, consumable materials, or other items of its own or another carrier.

#### *D. United States Mail as Cargo*

Significant amounts of mail are transported as cargo by part 121 and part 135 certificate holders. Thus, certificate holders and persons acting for certificate holders perform a TRF when accepting mail for transport on an aircraft. In 1990, the U.S. mail and the U.S. Postal Service (USPS) were expressly excluded from the reach of the Federal hazardous materials transportation law (Hazardous Materials Transportation Uniform Safety Act of 1990, Pub. L. 101-615, 1990 (49 U.S.C. App. 1801 note)). The USPS has its own regulations that control the transportation of hazmat in the mail (Domestic Mail Manual (DMM), C023, revised in Postal Bulletin 21997, May 6, 1999). Generally, the USPS accepts only limited quantities and classes of hazardous materials. It requires hazmat offered for transportation by air to be segregated and properly identified. The USPS standards cross-reference the HMRs and recognize the hazmat classifications, labeling and marking requirements of the HMRs. The FAA has received reports from certificate holders concerning mail cargo that did not comply with USPS requirements or the conditions of the contract of carriage between the certificate holder and the USPS. These proposed rules therefore include a training topic under proposed Module 12, Dangerous Goods Exceptions, that addresses the mail and USPS standards concerning the restrictions on hazmat in the mail and air transportation of mail.

## **II. Discussion of Proposals**

### *A. Part 119—Special Federal Aviation Regulation (SFAR) No. 99*

The FAA recognizes that part 121 or part 135 certificate holders would need a reasonable period of time to implement these proposed regulations. Thus, the FAA is proposing to provide a 15-month transition period to allow certificate holders certificated on or before the effective date of the final rule to bring their hazmat training programs into compliance. During this transition period, these certificate holders could continue to comply with the current requirements or comply with these

proposed new rules. Certificate holders certificated after the effective date of the final rule would have to comply with the new hazmat training requirements immediately upon certification. At the end of the transition period, all certificate holders would be required to comply with the new training requirements.

The FAA proposes to move all existing hazmat training requirements in §§ 121.401(a)(1), 121.433a, 135.323(a)(1), and 135.333 into Special Federal Aviation Regulation (SFAR) No. 99 to make it easier for certificate holders to identify existing requirements and distinguish them from new requirements, which would be in parts 121 and 135. The SFAR would expire at the end of the 15-month transition period.

### *B. Section 119.49—Contents of Operations Specifications*

Section 119.49(a)(13) would be amended to provide that a certificate holder's operations specifications would include either an authorization permitting the certificate holder to handle and transport hazmat (will-carry certificate holder) or a prohibition against handling and transporting hazmat (will-not-carry certificate holder). Current language of (a)(13) providing that operations specifications may include any other item the Administrator deems necessary would be redesignated as new (a)(14).

### *C. Sections 121.135 and 135.23—Manual Contents*

This proposed rule would amend the manual requirements at 14 CFR 121.135(b)(23) and 135.23(p) to require both will-carry and will-not-carry certificate holders to include procedures and information in their manuals to assist each person performing or supervising a TRF in recognizing hazmat. A certificate holder authorized as a will-carry operator would be required to provide additional procedures and information in its manual. The proposed rule would apply to full time and part time employees of a certificate holder or a contractor or subcontractor, and any other person who performs or supervises a TRF for a certificate holder under any other arrangement. This more extensive language is necessary because the current manual requirements do not clearly identify the person covered by the requirements. The current rule language merely states that the procedures and information must be included in the manual to "assist personnel to identify packages marked or labeled as containing hazardous

materials \* \* \*." Furthermore, in order to emphasize that the manual applies to all persons working for the certificate holder, whether or not directly employed by the certificate holder, the FAA proposes to replace the term "personnel" with the term "person."

The proposed language of §§ 121.135(b)(23) and 135.23(p) would require a two-tiered approach to the hazmat portion of the certificate holder's manual: Those requirements applying to both will-carry and will-not-carry certificate holders, and those requirements applying only to will-carry certificate holders.

Unlike the current rule language, the proposed amendments to §§ 121.135(b)(23) and 135.23(p) would require both will-carry and will-not-carry certificate holders to provide procedures for rejecting packages that are not prepared and offered for shipment under the HMRs in 49 CFR parts 171 through 180, or that appear to contain undeclared hazmat. This change is needed because the current rule language only refers to identifying or recognizing packages marked and labeled as hazmat. The FAA believes that a certificate holder's manual should include procedures for rejecting known hazmat that is not properly offered for transport in compliance with DOT's HMRs. Thus, the rule would apply to materials appearing to be undeclared hazmat. The FAA has found that in many cases packages not marked and labeled as hazmat still display indicators that would lead a trained person to suspect the presence of hazmat. For example, terms such as "chemicals," "lighters," "paint," or "solvents" on packages or in documents accompanying the package may indicate the possible presence of an undeclared hazmat. Additionally, trigger lists can be used to help alert persons to the possible presence of hazmat in items not properly identified as hazmat. These items include gasoline-powered equipment (chainsaws, generators, or aviation fuel control units) not purged of their hazardous contents, and perishable goods shipped with dry ice, which is a regulated hazmat.

If this rule is adopted, persons would be trained to recognize items not properly identified as hazmat. Furthermore, the proposed rule would require both will-carry and will-not-carry certificate holders to include in their manuals procedures and information regarding notifying DOT of hazmat incidents. (See proposed §§ 121.135(b)(23)(ii)(B) and 135.23(p)(2)(ii)). This information would have to be provided to each person performing or supervising a TRF. In