



U.S. Department
of Transportation
**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

November 22, 2022

Mr. Pat Hulsey
Director of Operations
Ameristar Air Cargo, Inc.
4400 Glenn Curtiss Drive
Addison, TX 75001

Reference No. 22-0066

Dear Mr. Hulsey:

This letter is in response to your June 22, 2022, letter requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to hazardous materials training for a forklift operator contracted by an air carrier. You state that a forklift operator's duties are limited to removing hazardous material cargo from a truck and placing that cargo onto an aircraft's cargo hold floor, under the direct supervision of a hazardous materials trained employee of the air carrier. Once the cargo has been placed onto the aircraft, the forklift operator pulls away from the aircraft—which completes their contracted task—and a hazardous materials trained air carrier employee then handles positioning and securing the cargo on the aircraft. Further, it is your understanding that since the forklift operator is not loading the hazardous material cargo onto the aircraft by “simply moving cargo from the truck to the aircraft without positioning and securing the cargo,” you believe the forklift operator is not a hazmat employee as defined in § 171.8 and therefore, not subject to hazardous material training. You reference a previous letter of interpretation (Ref. No. 98-0221) to support your understanding of “incidental contact” with the hazardous material cargo by the forklift operator and you seek confirmation that your understanding is correct.

Your understanding is incorrect. A hazmat employee includes an individual employed on a full-time, part-time, or temporary basis by a hazmat employer, who directly affects hazardous materials transportation safety and who—during the course of employment—loads, unloads, or handles hazardous materials (see § 171.8). Further, loading incidental to movement of a hazardous material means loading of packaged or containerized hazardous material onto a transport vehicle, aircraft, or vessel for the purpose of transporting it when performed by carrier personnel or in the presence of carrier personnel. Since the forklift operator is handling hazardous material cargo by moving it from the truck and then placing it onto the aircraft, this would be considered loading incidental to movement, which is a covered hazardous materials

function that would make a person subject to hazmat training requirements as prescribed in § 172.704 of the HMR.

Regarding letter Ref. No. 98-0221, the response PHMSA provided was in the context of a person conducting a security-related function—e.g., searching through passenger baggage—that may result in incidental contact with hazardous materials. As stated in Ref No. 98-0221, the training requirements of Part 172, Subpart H, apply to an employee performing a function subject to the HMR. A forklift operator handling hazardous material cargo and loading it onto an aircraft is performing a function covered by the HMR.

Finally, PHMSA notes that in your letter, you reference 14 CFR Part 121 requirements for air carriers; however, the Federal Aviation Administration (FAA) has oversight of 14 CFR Part 121 and PHMSA defers to the FAA for any interpretation of applicable requirements.

I hope this information is helpful. Please contact us if we can be of further assistance.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Dirk Der Kinderen', is positioned above the printed name.

Dirk Der Kinderen
Chief, Standards Development Branch
Standards and Rulemaking Division



June 22, 2022

U.S. Department of transportation
Legal Interpretation Division
Pipeline and Hazardous Materials Safety Administration
1200 New Jersey Avenue, SE
Washington, DC 20590
And
Federal Aviation Administration
Legal Interpretation Division
800 Independence Ave SW, Washington, DC 20591

To Whom it May Concern:

Ameristar Air Cargo, Inc. (AAC) is a 14 CFR Part 121 subject to 14 CFR part 121, subpart Z (HM Training) as a will-carry Hazmat on-demand air carrier operating DC-9 aircraft primarily in the United States (US) and subject to the training requirements of the Hazmat Materials Regulations (HMR). AAC is respectfully requesting a clarification concerning whether or not a forklift operator would require Hazmat (HM) training in its operation (US only) when he/she does not have any responsibility under the HMR. AAC believes that a forklift operator does not fall within the meaning of any of the job functions enumerated in 14 CFR section 121.1001 or as a hazmat employee as defined in 49 CFR section 171.8 and would not require HM training for the reasons stated below.

A forklift operator's job function in AAC's operation is limited to, at the most, removing cargo from a truck and lifting that cargo onto an aircraft's floor under the direct supervision of AAC HM trained personnel. After the forklift operator has completed this task, he/she then backs the forklift away from the aircraft completing his/her contracted assignment. Once the cargo is placed in the cargo door position of the aircraft, the cargo is pushed into position and secured for flight by AAC HM trained personnel.

NOTE: Any person that helps with the positioning or securing of cargo on the main deck of an AAC aircraft is required to have HM training.

AAC personnel are responsible for the applicable functions described 14 CFR section 121.1001¹ including acceptance/rejection function for any cargo (declared or undeclared HM) that is loaded on the aircraft including inspecting the cargo for damage, leakage, markings, placards and labeling. For HM shipments, AAC personnel are also responsible for verifying that the HM shipper's declaration is correct and that the labels match the commodity being shipped. After the acceptance procedures are completed, the cargo is forklifted onto the aircraft supervised by AAC personnel.

While "Loading" is a job function shown in 14 CFR section 121.1001(a)(6) involving any item for transport on board an aircraft, the word itself is not delineated further to include the key word of "responsibility" under the HMR. However, in the final rule for Hazardous Materials Training Requirements (HMTR)², there is guidance for air carriers to determine whether or not HM function specific training is required for an individual, including forklift operators. The following language from the HMTR addresses the need for training and who is responsible for making this decision:

"... in the final rule the FAA is clarifying that the part 121 or part 135 operator has the responsibility to determine which employees meet the job function requirement to train..." (70 FR 58808)

¹ §121.1001 job functions; Acceptance, Rejection, Handling and Loading

² Hazardous Materials Training Requirements; Final Rule 70 FR 58801, October 7, 2005

“...The certificate holder has the responsibility to determine which employees meet the “function specific” or “assigned” requirements to mandate training. The training requirements attach to the actual job function performed or directly supervised...” (70 FR 58813)

“...If a part 121 or part 135 operator’s truck drivers are accepting property for air transportation, they must be trained in accordance with this rule. However, if another employee performs that job function for the part 121 or part 135 operator, then the truck driver would not have to be trained in accordance with this rule. For instance, a truck driver who is required to perform the function of acceptance of a package for air transport would have to be trained for performing that function. This is the same requirement as for a person at the sort facility performing the same function. In this case, if the truck driver is not responsible for performing the acceptance of a package for air shipment, and the certificate holder was relying on the truck driver to accept the package for only motor vehicle transport, then the truck driver does not need to be trained in the certificate holder’s program. It is the function being performed or directly supervised that mandates the training requirement, not the job designation.” (70 FR 58801) (Emphasis added)

AAC believes that fork lift operators:

1. Have only incidental contact with the HM in that they are simply moving cargo from a truck to the aircraft without securing or placing cargo into a secured position for flight. Thus, their involvement in this activity does not directly affect hazardous materials transportation safety as stated in a 1998 interpretation from the Office of Hazardous Materials Standards defining a “Hazmat Employee”.³
2. Do not have the functional relationship to HM in air transportation safety to require HM training. Rather, they only have an incidental contact with HM in the work place, which is the primary factor in determining whether an individual is a “hazmat employee” subject to the HM training requirements as show in the text of a 1998 interpretation:

“An employee’s functional relationship to HM to transportation safety, rather than incidental contact with HM in the work place, is the primary factor in determining whether an individual is a hazmat employee”.⁴
3. Have not been given the responsibility for the job function of loading stated in 14 CFR Section 121.1001(a)(6) (“Loading”) – this responsibility is placed upon AAC personnel and is based upon a January 30,2007 FAA interpretation, where it states in part:

“...the key to determining who to train is to delineate which party is “responsible” for accepting a package for air transportation...”⁵

For the above stated reasons, AAC believes that a forklift operator utilized in its ground operations is not required to receive the training required by 14 CFR § 121.1001.

Thank you for your consideration.



Pat Hulsey
Director of Operations
972-725-9006
phulsey@ameristarjet.com

³ Clarification of Training Requirements from Edward T. Mazzullo, Director, Office of Hazardous Materials Standards (OHMS, August 19, 1998 Ref. No. 98-0221

⁴ Clarification of Training Requirements OHMS Ref. No. 98-0221

⁵ FAA interpretation from Rebecca B. MacPherson, Assistant Chief Counsel for Regulation, to AGC-200, dated January 30, 2007 to Sher & Blackwell representing USAJet and Hazardous Materials Training Requirements; Final Rule 70 FR 58801, October 7, 2005

Baker

From: [DerKinderen, Dirk \(PHMSA\)](#)
To: [Hazmat Interps](#)
Subject: FW: Hazmat Interpretation
Date: Thursday, June 23, 2022 11:37:59 AM
Attachments: [image002.png](#)
[image001.png](#)
[image003.png](#)
[image004.png](#)
[Request For HM Interpretation.pdf](#)

22-0066 (formally
22-0060)

Alice,

Please log this letter into the system and assign to someone in PHH11.

Thanks,
Dirk Der Kinderen
Chief, Standards Development Branch
PHMSA
202-366-4460 (desk)
202-365-4684 (cell)

From: Kelley, Shane (PHMSA) <shane.kelley@dot.gov>
Sent: Thursday, June 23, 2022 11:32 AM
To: DerKinderen, Dirk (PHMSA) <Dirk.DerKinderen@dot.gov>
Cc: Nickels, Matthew (PHMSA) <Matthew.Nickels@dot.gov>; Foster, Glenn (PHMSA) <Glenn.Foster@dot.gov>
Subject: FW: Hazmat Interpretation

Dirk –

Can your team manage this one as it has port of Portland overtones?

Let me know who is assigned so that I can be aware and I am sure we will coordinate response with FAA.

Shane

From: Cameron, Michael (FAA) <Michael.Cameron@faa.gov>
Sent: Thursday, June 23, 2022 11:27 AM
To: Kelley, Shane (PHMSA) <shane.kelley@dot.gov>
Cc: Burger, Donald (PHMSA) <donald.burger@dot.gov>; Bello, Pearl <FAA> <pearl.bello@faa.gov>; Strupczewski, William <FAA> <william.strupczewski@faa.gov>
Subject: FW: Hazmat Interpretation

Hi Shane,

I'm not sure where this will land within PHMSA, but one of our air carriers has requested an interp from PHMSA (attached). If any meetings or coordination are required, please let me know!

Michael J. Cameron
Division Manager- Policy, Standards & Stakeholder Engagement
FAA Hazardous Materials Safety Program (AXH)
Office of Security and Hazardous Materials Safety, (ASH)
(786) 494-1710

Visit PackSafe for Passengers:



Visit SafeCargo for Shippers and Startups:



Visit OperateSafe for Air Carriers:



From: Serafin, Paul (FAA) <Paul.Serafin@faa.gov>
Sent: Thursday, June 23, 2022 11:19 AM
To: Cameron, Michael (FAA) <Michael.Cameron@faa.gov>
Cc: Nielson, Jessica (FAA) <Jessica.Nielson@faa.gov>
Subject: FW: Hazmat Interpretation

Just for awareness if PHMSA reaches out. For some reason the carrier opted to send PHMSA an interpretation request for something that is more 14 CFR related.

From: Pohlke, Ryan (FAA) <Ryan.Pohlke@faa.gov>
Sent: Wednesday, June 22, 2022 4:29 PM
To: Nielson, Jessica (FAA) <Jessica.Nielson@faa.gov>; Serafin, Paul (FAA) <Paul.Serafin@faa.gov>
Subject: Fwd: Hazmat Interpretation

FYI

A continuation of discussions where MJYA doesn't agree that a forklift driver placing cargo / pallets qualifies for the "loading" and "handling" functions of Title 14CFR 121.1001.

I look forward to reviewing this with the FAA...

I'm confused of the submission to "PHMSA", but ok.....

Thoughts?

Thanks

RP

Ryan Pohlke | *Principal HAZMAT Inspector*
Oversight Operations | Air Carrier Safety Assurance Division, AXH-300
FAA Office of Security & Hazardous Materials Safety, ASH
San Antonio, Texas | [210-238-6090](tel:210-238-6090)

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From: Pat Hulsey <PHulsey@AmeristarJet.com>

Sent: Wednesday, June 22, 2022 4:52 PM

To: McMillen, Willard F (FAA)

Cc: Pohlke, Ryan (FAA); Rhodes, James R (FAA); Sweet, Michael (FAA); John Polizzi

Subject: Hazmat Interpretation

Mac,

Based upon our conversation last month concerning the training of a forklift driver, I've sent a request for a legal interpretation to the PHMSA and FAA regarding the requirements to train a forklift operator in Ameristar Air Cargo, Inc.'s operation.

We are currently training the forklift operator as we agreed to do using the training in Appendix B to our Hazmat Manual and will continue to do so.

Let me know if you have any questions.

Pat Hulsey

Director of Operations

Ameristar Air Cargo, Inc.

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