



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

400 Seventh Street, S.W.
Washington, D.C. 20590

AUG 23 2005

Ms. Susan Fournier
President
AeroPro, Inc.
111 Hunter Road
Freeport, Maine 04032-6757

Ref No.: 05-0026

Dear Ms. Fournier:

This responds to your January 25, 2005 letter requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you ask for clarification of the general applicability and training requirements.

Your questions are in reference to a facility that performs aircraft maintenance. According to your letter, the maintenance involves removal of certain components that contain hazardous materials (e.g., pressurized cylinders, fuel system components, and other fluid containing devices). Your questions have been paraphrased and answered as follows:

Q1: Do the HMR apply to fluid-containing components if they have been removed from the aircraft, cleaned to remove any hazardous material, and offered into transportation?

A1: No. A packaging that has been sufficiently cleaned of residue and purged of vapors to remove any potential hazard in transportation is not subject to the requirements of the HMR (§ 173.29).

Q2: Do the HMR apply to the shipment of compressed gas cylinders if they are depressurized, cleaned to remove any hazardous material, and offered into transportation?

A2: No. Except for ammonia, anhydrous, the HMR do not apply to a Division 2.2 (Non-flammable gas) at a pressure of less than 280 kPa (40.6 psia); at 20°C (68°F). In addition, the HMR do not apply to a Division 2.1 (Flammable gas) or a Division 2.3 (Poison gas) if the cylinders have been cleaned of residue and purged of vapors to remove any potential hazard in transportation (§ 173.29).

Q3: An employee carries a component containing a hazardous material by foot from Company A (aircraft maintenance facility) to Company B (hazmat shipper), which is fully authorized to package and ship a hazardous material in accordance with the HMR. Company B takes responsibility for properly packaging and offering the hazardous component into transportation. Is Company A considered a hazmat employer?



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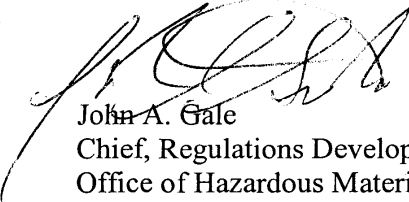
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A3: No. Company A is not considered a hazmat employer (see § 171.8) provided its employees do not perform the function of a hazmat employee (see § 171.8). In the scenario you describe, the employee does not perform a function of a hazmat employee.

Please note that the hazardous materials regulations apply to any person who offers, transports, or stores hazardous materials incident to transportation. Your facility is subject to the HMR if it performs any of these regulated functions.

I hope this information is helpful. Please contact us if you require additional assistance.

Sincerely,

A handwritten signature in black ink, appearing to read 'John A. Gale', is written over a circular stamp or watermark.

John A. Gale
Chief, Regulations Development
Office of Hazardous Materials Standards

Eichenlaub

\$ 171.1

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Training / Empty Packaging

05-0026



111 Hunter Road
Freeport, ME 04032
(207) 865-1937

January 25, 2005

Edward T. Mazzullo
Director of Hazardous Materials Standards
RSPA / U.S. DOT
400 7th Street SW
Washington, DC 20590

Dear Mr. Mazzullo:

I. Background –

I am an aviation maintenance consultant currently working with an applicant in achieving their goal of becoming certificated by the Federal Aviation Administration as an Air Agency. This certificate would authorize the company to perform maintenance on single and light twin engine aircraft employing both reciprocating and turbine engines. The specific regulations for certificating such agencies can be found in 14 CFR 145.

Part of the maintenance process for these aircraft may involve the removal of pressure cylinders, fuel system components, or other fluid carrying devices which may be shipped by ground or air to other facilities for repair or overhaul. We are aware of the critical requirements of 49 CFR Subchapter C—Hazardous Materials Regulations and before these components are shipped they are depressurized, purged and/or cleaned of all substances. Based on our preparations and handling of these components we have determined that they do not constitute HAZMAT as defined by the regulations.

During the certification process the FAA informed us that we did not have any policies or procedures for dealing with hazardous materials as required by their internal guidance (FAA Order 8300.10, Volume 4, Chapter 12 – see attached). I offered the following information:

"You indicated that we are required by FAA Order 8300.10 to include HAZMAT training in our Repair Station Manual. We do not ship HAZMAT therefore it does not affect our operation. It is also our understanding that there is no current regulatory requirement for HAZMAT in 14 CFR 145. We are aware that a Notice of Proposed Rulemaking (NPRM) was issued by the FAA on May 8, 2003, with a comment closing period of July 7, 2003 (extended to September, 2003). As of this date a final ruling on this subject has not been released by the FAA."

The FAA responded with the following:

"Your statement that here is currently no regulatory requirement for HAZMAT in 14 CFR 145 is technically correct. However, all air agencies are obligated to comply with Title 49, Hazardous Materials Regulations. FAA Order 8300.10 is the guidance I must follow in certificating your agency. In Volume 4, Chapter 12, this order states, "with rare exceptions, all air agencies are HAZMAT employers." The definitions of HAZMAT employer and HAZMAT employee can be found in 49



CFR Part 171, §171.8. Common repair station activities, such as sending oxygen bottles out for hydrostatic testing or shipping a fuel control unit to another repair station for overhaul would cause you to be regulated as a HAZMAT employer. While 14 CFR 145 does not specifically deal with HAZMAT, 14 CFR 13 obligates me to enforce the Hazardous Materials Regulations as they apply to your agency. Therefore, to mitigate the undue risk of violating HAZMAT regulations and endangering public safety, I would highly recommend that you consider addressing this issue either in your Repair Station Manual or Training Program. 49 CFR, Subpart H details training requirements for HAZMAT employees.

II. Conclusions –

We disagree with the FAA's assessment that; "*with rare exceptions, all air agencies are HAZMAT employers.*" If we were to engage in the process of shipping hazardous materials then we are obligated to comply with the requirements of 49 CFR Subpart C. Based on our interpretation we have determined that we are not a HAZMAT employer. However, because we have determined that we are not a HAZMAT employer doesn't mean that we have ignored the regulations. In fact we are well aware of the consequences and criticality of these rules. For this reason we have instituted safeguards at our facility to prevent the shipment of hazardous materials through basic awareness training.

Based on our review, there are no current requirements in 14 CFR 145 for the handling of hazardous materials therefore there are no requirements to amend our Repair Station Manual to include HAZMAT procedures. This manual was created specially to explain the internal maintenance and inspection system of the repair station as defined by 14 CFR 145.209 and 145.211.

As previously stated, we are aware that a Notice of Proposed Rulemaking (NPRM) was issued by the FAA on May 8, 2003, with a comment closing period of July 7, 2003. As of this date a final ruling on this subject has not been released by the FAA."

III. Questions -

Does the shipment of aircraft fluid carrying components (carburetors, fuel manifolds, fuel controls, fuel pumps, etc) constitute the shipment of HAZMAT if these components are purged and cleaned before shipment?


Does the shipment of compressed gas cylinders (oxygen cylinders, nitrogen cylinders, fire extinguishing agent cylinders), constitute the shipment of HAZMAT if these components are depressurized and cleaned before shipment?

If we remove an aircraft component that contains hazardous materials but we elect to hand carry that item to a facility that is fully authorized to properly package and ship it for us would we be considered a HAZMAT employer?

If our facility contains hazardous materials that will be used in our maintenance processes (such as paints, strippers, chemical cleaners, etc), that will not be shipped from our facility are we considered a HAZMAT employer?



We thank you for your attention and time in advance. Since moving ahead with the certification process depends upon your responses, we ask that this matter be treated expeditiously.



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Enclosure

FAA Order 8300.10, Volume 4, Chapter 12

11/12/03

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CHAPTER 12. AIR CARRIER AND AIR AGENCY CONTROL AND HANDLING OF AIRCRAFT COMPONENTS OR CONSUMABLE MATERIALS THAT CONTAIN HAZARDOUS MATERIALS

1. BACKGROUND. This chapter provides guidance concerning Title 49 of the Code of Federal Regulations (49 CFR), on hazardous materials (HAZMAT) transportation. Principal inspectors (PI) should ensure that air agencies/carriers are aware of the regulations governing HAZMAT transportation by air contained in 49 CFR. These regulations apply to the certificate holder's shipment of HAZMATs. Air agencies/carriers should be made aware that as a HAZMAT employer, their compliance with the HAZMAT employee training requirements contained in 49 CFR part 172, subpart H—Training, is mandatory. With rare exceptions, all air agencies are "HAZMAT employers." The definitions of "HAZMAT employer" and "HAZMAT employee" can be found in 49 CFR part 171, § 171.8. Also, the certificate holders must develop and implement a system that will allow the air agency/carrier to remain current with the regulations that are updated and/or changed.

3. RESPONSIBILITIES. PIs with certificate responsibilities for air agencies (Title 14 of the Code of Federal Regulations (14 CFR) part 145), and PIs with certificate responsibilities for air carriers (14 CFR parts 121 and 135) that use aircraft components or consumable materials that contain HAZMATs should ensure that air agencies/carriers include in their manuals, and provide appropriate personnel training on, the following information:

A. Procedures and information to assist personnel (particularly maintenance, shipping, and storage personnel) to identify or recognize aircraft components and consumable materials that contain HAZMATs.

B. Procedures and information on how these aircraft components or consumable materials are to be moved, stored, or handled within the facilities of the air agency, air carrier, or other air agency with whom they may be contractors.

C. Procedures and information for determining the proper packaging, marking, labeling, and materials compatibility, including instructions for the safe movement, storage, and handling of aircraft components and consumable materials that contain HAZMATs while they are within their facilities.

D. Information, guidance, and precautions on the specific hazards associated with aircraft components and consumable materials containing HAZMATs that are to be moved, stored, or handled within their facilities.

E. Information, instructions, and detailed procedures for the proper disposal of unserviceable aircraft components and consumable materials containing HAZMATs.

5. AMENDING AN AIR CARRIER'S MANUAL.

The FAA's authority for inspecting an air carrier or conducting routine surveillance to ensure compliance with the air carrier's manual requirements is contained in 14 CFR, part 119, § 119.59. The FAA's authority for an air carrier manual change is contained in 14 CFR part 121, §§ 121.131, 121.133(a), and 121.135(b)(24), and part 135, §§ 135.21(a) and 135.23(r), as appropriate.