



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

1200 New Jersey Ave, SE
Washington, D.C. 20590

JUN 23 2010

Mr. Andrew Brought
Britt & Brown LLP
1000 Walnut Street, Suite 1400
Kansas City, Missouri 64106-2140

Ref. No. 10-0041

Dear Mr. Brought:

This responds to your February 12, 2010 letter requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you ask for clarification of the applicability of the HMR to Repair Stations certified by the FAA pursuant to 14 CFR Part 145 and the employees, who in the course of their repair operations may handle and temporarily store hazardous material cargo.

As specified in § 171.1, the HMR govern the safe transportation of hazardous materials in intrastate, interstate and foreign commerce. Generally, a "hazmat employee" is any person who is employed on a full-time, part-time, or temporary basis and who in the course of such employment directly affects hazardous materials safety. (See § 171.8 for the complete definitions of "hazmat employee" and "hazmat employer."). In other words, a person who performs duties that are regulated under the HMR is considered to be a hazmat employee. Part 175 contains requirements specifically applicable to the transportation of hazardous materials by aircraft. Any person who is responsible for performing a duty that is regulated by Part 175 is considered to be a hazmat employee. All hazmat employees must be trained in accordance with the requirements in Subpart H of Part 172 of the HMR.

Specific questions pertaining to the functions performed by FAA certified Repair Stations, including repairs of commercial and non-commercial aircraft containing hazardous cargo should be directed to FAA's Office of Chief Counsel, Rebecca MacPherson, AGC-200.

I hope this information is helpful. If you have further questions, please contact this office.

Sincerely,

Charles E. Betts
Chief, Standards Development
Office of Hazardous Materials Standards



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Air
10-0041

File No. 5015392/0002

ANDREW C. BROUGHT
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February 12, 2010

VIA U.S. FIRST CLASS MAIL

U.S. Department of Transportation
PHMSA Office of Hazardous Materials Standards
Attn: PHH-10
East Building
1200 New Jersey Ave., SE
Washington, D.C. 20590-0001

Re: HazMat Interpretation / Guidance – Aircraft Repair Stations

Dear Office of Hazardous Materials Standards:

One of our clients operates several aircraft repair stations certified by the Federal Aviation Administration (“FAA”), pursuant to 14 CFR Part 145 (the “Repair Station”). A large majority of aircraft repairs are conducted on noncommercial private aircraft operating under 14 CFR Part 91. The Repair Station may occasionally conduct repairs on commercial aircraft operated under 14 CFR Part 121, but very rarely repair 14 CFR Part 135 charter/air taxi aircraft. The Repair Station employees have received hazardous materials (“HazMat”) training under 49 CFR Part 172, Subpart H, as required by the FAA.

With respect to repair of Part 91 Aircraft, guidance is requested concerning the interplay of the Department of Transportation Pipeline and Hazardous Materials Safety Administration’s (“DOT-PHMSA”) HazMat regulations at 49 CFR Part 175 and the FAA’s repair station regulations under 14 CFR Part 145. In particular, the regulations do not address repair of Part 91 Aircraft at Part 145 repair stations and there do not appear to be any applicable FAA or DOT-PHMSA guidance materials or interpretive letters.

The following are examples of various hypothetical scenarios that could arise at the Repair Station, for which guidance is requested from DOT-PHMSA:

- (1) An aircraft being operated under Part 91 flies into the Repair Station for repairs. The pilot owns the plane. There are no passengers on the plane. The pilot unloads unidentified cargo and stores it temporarily in a locker at the Repair Station. At the finish of the repair the pilot reloads the cargo.

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U.S. Department of Transportation

February 12, 2010

Page 2

(a) Please confirm there is not any basis under which DOT-PHMSA would assert Part 175 applicability/jurisdiction for the Repair Station? If there is a basis for jurisdiction, please identify the specifically applicable regulations under Part 175 to the Repair Station.

(b) If, instead of being unidentified cargo, a Repair Station employee identifies HazMat items off-loaded and then re-loaded by the pilot/owner, would the analysis change?

(c) Would the analysis change if the owner of the plane was not the pilot, but instead a pilot was hired to fly the plane to and from the Repair Station?

(2) Assume the same fact scenario as Hypothetical No. 1, but in this instance a Repair Station employee, as opposed to the pilot, unloads the unidentified cargo, stores it in a locker temporarily and reloads the cargo before the aircraft's departure.

(a) As it relates to the unidentified cargo, is there any basis under which DOT-PHMSA would assert compliance with Part 175 is required (*e.g.*, (i) offering or accepting hazardous materials for transportation, (ii) performing the duties of a hazmat shipper; or (iii) unloading or loading hazardous materials for transportation)? If so, please identify the specifically applicable regulations under Part 175 to the Repair Station.

(b) If, instead of being unidentified cargo, a Repair Station employee identifies HazMat items, and that employee is involved in the off-loading and then re-loading, would the analysis change?

(c) Would the analysis change if the owner of the plane was not the pilot, but instead a pilot was hired to fly the plane to and from the Repair Station?

Please contact me at (816) 292-8886 at your convenience to discuss the DOT's interpretation of these scenarios and the interplay of DOT's regulations with FAA Part 145 repair stations.

Sincerely,



Andrew C. Brought

ACB/acb



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U.S. Department of Transportation

February 12, 2010

Page 3

bcc: Ms. Dawn Wavle Reed, Esq. Hawker-Beechcraft Corp. (via Electronic mail)
Ms. Bonnie Nold, Hawker-Beechcraft Corp. (via Electronic mail)