

**International Brotherhood of Teamsters Local 1224
Airline Professionals Association**

National Transportation Safety Board Air Cargo Forum

The International Brotherhood of Teamsters Local 1224 Airline Professionals Association is the labor organization that represents the 750 pilots flying for ABX Air, Inc. ABX operates 24 Boeing 767 aircraft, 75 Douglas DC-9 and 14 DC-8 aircraft, and conducts flight operations in North America and Central America. The following is submitted in response to the National Transportation Safety Board's request for an analysis of current safety issues related to Air Cargo Load Masters and Third-Party Contract Loading.

In the Air Cargo industry, there are a variety of titles associated with the individual responsible for the supervision of the loading and unloading of a cargo aircraft. Load Master, Load Supervisor, Ramp Supervisor or Load Planner have been interchangeably used to describe the person who supervises and oversees the cargo loading operation, signs the load plan (load manifest required under 14 CFR Part 121.665), completes and signs the pilot notification forms for carriage of hazardous materials, and generally plays a vital role in the safe operation of cargo flights.

Currently, individuals designated as Load Masters are not required to be trained or certified by the Federal Aviation Administration hereinafter, "FAA". Conversely, the FAA requires that pilots, mechanics, and dispatchers receive formal training, pass initial and recurrent examinations and actually possess an FAA-issued certificate at the time of flight.

As with the Load Master, individuals performing the function of physically moving, manipulating and securing cargo on a cargo aircraft are not required by any Federal Regulation to receive formal training in the performance of their job, nor are they required to hold any FAA certification. The lack of such requirements has largely been ignored despite the fact that the Safety Board has investigated accidents and incidents involving 14 CFR Part 135 and Part 121 air carriers, (both "all cargo" and passenger-carrying aircraft) in which improper weight and balance, improper cargo loading and security, or hazardous materials have been cited as either a direct cause or contributing factor in the accident.

Air cargo operations have a high risk exposure to the catastrophic effects of an improperly loaded aircraft. In documented instances, shifting of cargo because of improper or inadequate restraint has resulted in the inability or substantially diminished capacity to control the aircraft. Mishandled and undisclosed hazardous materials have caused in-flight fires or overwhelming toxic fumes. Examples of these events are well documented in the NTSB's aircraft accident investigations involving the Fine Air DC-8 in Miami, Florida; the ValuJet DC-9 in the Florida Everglades; the Federal Express DC-10 that executed an emergency landing in Newburgh, New York; and the recent US Airway Express Beech 1900D at Charlotte, North Carolina.¹

¹ NTSB Report # AAR-98-02; NTSB Report # AAR-97-06; NTSB Report # 98-03; NTSB Report # AAR-04/01

In the Air Cargo Industry, the tasks of “building up” unit load devices (ULD’s) and loading/unloading aircraft are often subcontracted to companies independent of the airline. Despite the obvious diminution in oversight of these functions by the airline, Federal Aviation Regulations do not exist for companies that provide contract services to the cargo or passenger air carriers to build up cargo Unit Load Devices (ULD's) or pallets, and load/unload the aircraft. This is remarkably inconsistent with Federal requirements applicable to contract "third-party" maintenance providers pursuant to 14 CFR Part 145 (Repair Stations). There exist no minimum standards to which a contract loading company must comply nor is there a minimum level of training for these employees who not only have direct access to an aircraft, but play a vital role in the safe operation of an aircraft. Also, because there are no Federal regulations for entities performing these services or for the individuals conducting such operations, the Federal mandate for participation in formal or required "Drug Testing and Alcohol Misuse Prevention" programs is routinely ignored. During the course of researching this subject, this commentator determined that several air carriers do not include employees who perform cargo loading operations in either the drug or alcohol programs as required in 14 CFR Part 121 Appendix 1, "Drug Testing Program; and Appendix J, "Alcohol Misuse Prevention Program.

The Safety Board’s investigation of an Emery Worldwide Airline DC8 in Rancho Cordova, California (February 2000) is most instructive. See NTSB Report # AAR-03-02. That investigation revealed that two people (a load planner and cargo loader) who significantly participated in the loading of cargo aboard the Flight 17 aircraft tested positive for illegal substances after the accident. The Board's accident report states, in part, the following regarding this finding;

...The [Federal Aviation Regulations] FARs do not require post-accident drug or alcohol testing of cargo handlers. The provisions of 14 CFR Part 121, Appendix I], titled Drug Testing Program, states the following:
"Each employer shall test each employee who performs a safety-sensitive function for the presence of marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines, or a metabolite of those drugs in the employee's system if that employee's performance either contributed to an accident or can not be completely discounted as a contributing factor to the accident. The employee shall be tested as soon as possible but not later than 32 hours after the accident. The decision not to administer a test under this section must be based on a determination, using the best information available at the time of the determination, that the employee's performance could not have contributed to the accident."

Additionally, the provisions of 14 CFR Part 121, Appendix J, titled Alcohol Misuse Prevention Program, states the following:

"As soon as practicable following an accident, each employer shall test each surviving covered employee for alcohol if that employee's performance of a safety-sensitive function either contributed to the accident or cannot be completely discounted as a contributing factor to the accident. The decision not to administer a test under this section shall be based on the employer's

determination, using the best available information at the time of the determination, that the covered employee's performance could not have contributed to the accident. If a test required by this section is not administered within 2 hours following the accident, the employer shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test required by this section is not administered within 8 hours following the accident, the employer shall cease attempts to administer an alcohol test and shall prepare and maintain the same record. Records shall be submitted to the FAA upon request of the Administrator or his or her designee."

The five drugs of abuse for which specimens are tested in post-accident analysis are marijuana, cocaine, opiates, phencyclidine, and amphetamines.

Appendixes I and J specify "safety-sensitive" functions to which the post-accident drug and alcohol testing requirements apply. These functions include the duties of flight crewmembers, flight attendants, flight instructors, aircraft dispatchers, aircraft maintenance or preventive maintenance personnel, ground security coordinators, aviation screeners, and air traffic controllers. Cargo handler duties are not included under "safety-sensitive" functions, nor are load planners or ramp supervisors. Although testing was not required, voluntary drug tests were conducted on eight cargo handlers, the load planner, and the ramp supervisor who were involved with the cargo loaded on the accident airplane; all tests were conducted between February 17 and February 22, 2000. The load planner tested positive for amphetamines and was relieved of duties on February 25. A cargo handler who was tested on February 22 tested positive for amphetamines and cocaine metabolites and was relieved of duties on March 2, 2000.

The Safety Board's analysis of these findings was discussed in section 2.8, Drug and Alcohol Testing of Ground Personnel, and stated in part, the following:

The FARs require that all employees who perform a "safety-sensitive" function be tested for drugs or alcohol if their performance could have contributed to or could "not be completely discounted as a contributing factor to the accident." Drug testing and alcohol testing are required to be accomplished as soon as possible but no later than 32 and 2 hours after the accident, respectively. However, the ground personnel at MHR who were involved with the accident airplane (including cargo handlers, load planners, and ramp supervisors) were not required to submit to drug or alcohol testing promptly after the accident, in part because the applicable regulations (specifically 14 CFR Part 121, Appendixes I and J) do not define their duties as "safety-sensitive." Although not required, voluntary drug tests were eventually conducted on eight cargo handlers, a load planner, and the ramp supervisor involved with the accident flight. Samples were taken from the 10 tested employees between 1 and 6 days after the accident; 2 of the 10

employees tested positive for drugs and were subsequently relieved of their duties.

Although it was determined that the performance of cargo-handling personnel was not a factor in this accident, improper loading of the airplane's cargo and/or a cargo shift during takeoff have been involved in previous accidents and were considered possibilities during the early stages of this investigation. As evidenced by the history of cargo-related accidents, the way cargo-handling personnel conduct their duties (whether those duties involve the loading of cargo in cargo compartments; the loading/packing of the containers, pallets, and other items for placement within the cargo compartments; or planning the placement of the load) can have a significant effect on the safety of a flight. This potential effect is no less serious than several of the functions that are currently defined as safety-sensitive by the FARs, including aircraft dispatcher duties, ground security coordinator duties, aviation screening duties, and aircraft maintenance or preventive maintenance duties. Therefore, the Safety Board concludes that the current regulatory definition of safety-sensitive functions is too narrow for the issue of post-accident testing because it does not include cargo handlers, load planners, and ramp supervisors, all of whom have a demonstrated potential to affect the safety of a flight. Therefore, the Safety Board believes that the FAA should modify the list of safety-sensitive functions described in 14 CFR Part 121, Appendixes I and J, to include all personnel with direct access to the airplane and a direct role in the handling of the flight, including cargo handlers, load planners, and ramp supervisors.

As a result of its investigation, the NTSB issued Safety Recommendation A-03-036 requesting that the FAA "...modify the list of safety-sensitive functions in 14 CFR Part 121 Appendices I and J, to include all personnel with direct access to the airplane and a direct role in the handling of the flight, including cargo handlers, load planners and ramp supervisors." The FAA responded to the Safety Board in a letter dated January 12, 2004, in which it agreed with the intent of the safety recommendation and announced the initiation of a project to rewrite the applicable regulations. The FAA represented that it would give full consideration to the regulation of all personnel with direct access to the aircraft or a direct role in controlling the flight. Nonetheless, the FAA gave little cause for optimism when it stated that "we anticipate substantial opposition so it is difficult to project an accurate schedule for completion...."

Despite its public pledge to rewrite "applicable regulations", the FAA insisted that the aforementioned personnel were presently included in many carrier programs. However, this commentator's telephone discussion with several FAA drug abatement program personnel revealed a lack of standardization in the interpretation of how company employed cargo loading supervisor (loadmasters) load planners, ramp supervisors, and cargo loaders, or contractors (vendors) providing these services are identified and captured in the 14 CFR Part 121 Appendix I "Drug Testing Program; and Appendix J, "Alcohol Misuse Prevention Program. One interpretation indicated that persons responsible for cargo container/pallet build-up, weighing, cargo restraint, aircraft loading and unloading, and all other related functions are considered to

be inclusive of the "aircraft dispatch" function, and thus, identified as a "Safety Sensitive" task performers as listed Appendix I of the regulations. Despite using the same description of job function, other FAA and air carrier personnel indicated that cargo loading personnel were considered to be performing a "ground handling service," and therefore were not subject to the requirements of Appendices I and J.

In an attempt to clarify the issue, the Airline Professionals Association submitted a written request to the FAA. In an email response to the Airline Professionals Association dated March 9, 2004, the Manager of the Program Policy Branch, Drug Abatement Division, provided the following response:

Question: *Are cargo loading personnel who are either employed by the certificate holder or contracted by the certificate holder to perform these services, which include cargo loaders, loadmasters, load planners, covered under 14 CFR part 121, appendices I and J, as "safety-sensitive" personnel?*

Answer: Each operator is required to have procedures detailed in its company Operations Manual and contained in its Operations Specifications on how weight and balance for baggage and cargo will be calculated and who will be responsible for signing the load manifest form. Consequently, each operator must determine who is subject to the antidrug and alcohol misuse prevention regulations based on the requirements of its procedures.

14 CFR § 121.665, states "Each certificate holder is responsible for the preparation and accuracy of a load manifest form before each takeoff. The form must be prepared and signed for each flight by employees of the certificate holder who have the duty of supervising the loading of aircraft and preparing the load manifest forms or by other qualified persons authorized by the certificate holder."

Drug and alcohol testing is not required for employees who only weigh and load the freight, add the different weights together, and pass on the information. This is considered gathering weight and balance data but not calculating the weight and balance and, therefore, is not a covered function.

Only those responsible for the weight and balance calculation and signing the load manifest form are required to be in the company's FAA-mandated drug and alcohol program.

In the aforementioned Emery investigation, the Safety Board found that the load planner had tested positive for illegal substances only through voluntary testing conducted after the accident at the request of investigators and the contractor, and not under the regulatory requirements of 14 CFR Part 121, Appendix I and J. Further, the FAA's March 9th statement effectively exempts workers who compose a critical link in the safety chain. The loadmaster, the person responsible for supervising the operation and signing the final aircraft weight and balance manifest, is dependent upon these same workers to accurately and properly weigh, position and restrain the

cargo in the aircraft. This glaring inconsistency endangers the safety of aviators, the general public, and the Air Cargo industry.

The FAA intends to release an Advisory Circular (AC) addressing these issues. According to Section 1 of the current draft, "What is the purpose of this Advisory Circular", it states:

This Advisory Circular (AC) provides air carriers with recommended procedures for managing air carrier cargo operations. It gives extensive recommendations about what items should be included in an air carrier cargo operations system. Developing and using these comprehensive procedures is key to establishing a safe and efficient cargo management system. For Unit Load Device (ULD), restraint, and cargo handling system manufacturers, this AC contains recommendations for certification of these items.

This AC was developed in response to national Transportation Safety Board safety recommendations A-98-45, A-98-46, A-98-47, and A-98-48 as a result of the Fine Air accident in Miami, FL. It also incorporates issue resolutions to those concern categories in the Cargo Strategic Action Plan (CSAP) and the follow on Air Cargo System Implementation Plan (ACIP).

The Airline Professionals Association applauds the effort of the FAA and the participants of the industry working group that contributed to the creation of a guidance document for air cargo carrier. However, because the circular is advisory and not regulatory, implementing policies and procedures suggested in the circular depends largely upon corporate goodwill. As has been demonstrated throughout recent history in the aviation industry, voluntary participation that requires change in policies and procedures, diminishes as additional resources are required. There is little hope of substantive change without regulatory action.

Inadequate regulatory and industry oversight of air carrier operations is a recurrent theme in incidents and accidents involving air carrier operations. The 1993 crash of a cargo Douglas DC8 in Guantanamo Bay, Cuba, and the 1996 crash of a Valujet DC-9 in the Florida Everglades are two prominent examples of accidents wherein revealed deficiencies in regulatory oversight contributed to the cause of the accident. Expectations of "volunteerism" are inadequate to insure safety within the air cargo industry.

The FAA's inherently flawed reliance upon goodwill aside, the proposed circular fails to sufficiently address some key elements associated with air cargo operations. For instance, prior to the proposed circular, the FAA interpreted the cargo loading function to be flight-related (dispatch function), thereby assuming that persons performing the function of cargo loading supervisor (loadmasters) load planners, ramp supervisors, and cargo loaders or contractors (vendors) providing these services would be included in the 14 CFR Part 121 Appendix 1 "Drug Testing Program; and Appendix J, "Alcohol Misuse Prevention Program." However, the proposed circular fails to address the subject of Drug and Alcohol testing of people performing air cargo loading functions or contractors providing personnel to perform such services. It justified the omission with the odd claim that cargo loading was considered to be a "ground

handling" function and that the "FAA division responsible" for the standards of 14 CFR Part 121, 135 ground handling operations would address this subject.

The FAA indicated in its response to Safety Recommendation A-03-036 that "many airline programs already include these personnel. If as the FAA claims a substantial number of carrier airlines have included cargo loading personnel in such programs, one is left to wonder why the FAA "...anticipates substantial opposition..." The Airline Professionals Association submits that most air carriers require a pre-employment and "probable cause" testing of direct employees but do not conduct "random" or "post incident/accident" testing. Further, because air carriers do not conduct such testing on its own cargo handling employees, contract vendor employees that perform these services are also not tested either by the air carrier program or an in-house program established by the vendor. Several employees of the cargo contractor that loaded Emery Worldwide Airlines Flight 17 were tested during a period of time that ranged from hours to days after the accident. Had the employees not voluntarily participated in the test, no one would have identified these two employees as a danger to safety and the employees would have continued to compromise the safe operation of the airline because of drug impairment on the job.

The pilot in command of an aircraft is directly responsible for, and is the final authority as to, the operation of that aircraft. However, it is virtually impossible for the PIC of an air carrier all-cargo or passenger carrying aircraft to participate and oversee the cargo operation to insure that each ULD, pallet or other cargo container has been properly built-up, weighed correctly, loaded in the correct position on the aircraft and restrained properly. The PIC is heavily reliant upon the load master and those persons performing the aforementioned functions to insure the airworthiness of the aircraft and the safety of flight. Based on the complexity of the air cargo operation, the time constraints imposed on these types of operators, and the dependence on numerous individuals to prepare the crew and the aircraft for flight, it is imperative that those persons in a position of direct contact with the aircraft be examined, trained and certified to a reasonable standard of proficiency in their particular field of expertise.

Airline Professionals Association recommends that the FAA require formal certification of select persons performing cargo loading duties, including those in supervisory roles. The certification would insure the employee receive a proper level of training, understand the importance of employing proper practices, policies and procedures, and consistently demonstrate the level of accountability and shared responsibility for the safety of flight that is essential to the air cargo operation. Further, air carriers and third-party contract service organizations should also be required to provide to their employees an "approved" cargo loading training program that consists of initial training for new employees and periodic recurrent training for those persons who perform such duties. In addition, these people should be included in the list of "safety-sensitive" positions listed in Appendix I, and be required to participation in mandatory drug and alcohol testing in conjunction with 14 CFR Part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs.

The establishment of the above controls enables the carrier to minimize the risks associated with air cargo operations and maintain a continuous and diligent oversight of all workers functioning

in safety sensitive roles. To do otherwise exposes the aviation community, general public and the air cargo industry to unnecessary and avoidable risk.

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