U.S. Department
of Transportation
**Federal Aviation
Administration**

800 Independence Ave., SW.
Washington, DC 20591

Mark W. Atwood, Esq.
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Suite 900
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Washington DC 20036

Dear Mr. Atwood:

This responds to your request for an interpretation about how the 30-day maximum period would apply to the so called, "new hire or job function" exception, in 14 CFR 121.1005(b) as it relates to a carrier's use of a contract employee on an ad hoc basis. You explained that your client, a part 121 cargo and passenger charter operator, provides on-demand services for customers who need to have their cargo transported on large aircraft. Accordingly, your client contracts with local companies at the airport it will be using on a particular trip to provide loading assistance. Your client does not train the contractor's employees in basic hazmat training (or require that the contractor do so), because your client may only occasionally use a particular airport.

You correctly note that the FAA's hazardous material training final rule, published October 7, 2005, did not specifically address your client's situation (70 Fed. Reg. 58796). The rule did, however, discuss the training requirements for newly hired employees or those employees transferred into a new job function. You have asked whether an employee of a contractor with whom your client has only an occasional relationship would be treated in a manner similar to a newly hired or transferred employee.

The FAA would apply the provision applicable to new hire or new job function to such an individual. Under the "new hire or new job function" section, section 121.1005(b) provides that "(a) person who is a new hire and has not yet satisfactorily completed the required initial hazardous materials training, or a person who is changing job functions and has not received initial or recurrent training for a job function involving storage incidental to transport, or loading of items for transport on an aircraft, may perform those job functions for not more than 30 days from the date of hire or a change in job function, if the person is under the direct visual supervision of a person who is authorized by the certificate holder to supervise that person and who has successfully completed the certificate holder's FAA-approved initial or recurrent training program within the past 24 months."

Under this provision the 30-day maximum period applies to the individual, who is the new hire, or is performing the new job function, and starts to run on the day the individual performs work covered by the regulation. Using your example, if XYZ's employee John Smith, a new hire or a person who is changing job functions, assisted with the loading of hazmat on an aircraft, the 30 day maximum period runs from that date. The answer would be the same if XYZ only employed John Smith on an ad hoc basis. Moreover, if XYZ hired and fired John Smith 29 days later, XYZ only gets the benefit of the 30-day provision once. The same analysis applies to the change in job function. Thus, John Smith would only be able to load the hazmat aboard the aircraft within that initial 30-day period without being trained by your client. If your client contracted with XYZ six months later, that contractor would need to provide another employee to assist in loading or unloading hazmat for your client.

If you have questions regarding the policies underlying these regulations you may call Janet McLaughlin at (202)267-8434.

This response was written by Cecile O'Connor of my staff; if you have any questions you may contact Cecile at (202) 267-3073.

Sincerely,

Rebecca B. MacPherson
Assistant Chief Counsel
Regulations Division