August 24, 1999

Mr. James W. Johnson
Supervisory Attorney, Legal Department
Air Line Pilots Association, International
535 Herndon Parkway
Herndon, Virginia 20172-1169

Dear Mr. Johnson:

This responds to your letter, dated June 2, 1999, concerning the pilot in command's duty regarding the passenger load manifest. While your letter specifically requests an interpretation of Sections 121.693 and 121.695 of the Federal Aviation Regulations, you recognize that other provisions of the Federal Aviation Regulations are relevant to addressing the issue you raise. Specifically, you ask a number of questions based on the scenario where the actual number of passengers aboard the aircraft differs from the manifest information given to the pilot in command (PIC) before the flight begins.

The specific regulations applicable to your inquiry are as follows: Section 121.693, which provides in pertinent part;

> The load manifest must contain the following information concerning the loading of the airplane at takeoff time:
>
> (a) The weight of the aircraft, fuel and oil, cargo and baggage, passengers and crewmembers.
>
> * * *
>
> (e) Names of passengers, unless such information is maintained by other means by the certificate holder.

Section 121.665 provides:

Each *certificate holder*[1] 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 [1]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. 14 C.F.R. §121.665 (footnote and emphasis added).

Section 121.695 specifies in pertinent part:

[1] The "certificate holder" is the air carrier or commercial operator that is issued a certificate under Part 119 authorizing Part 121 operations. See, e.g., 14 C.F.R. Section 121.1(a).

(a) The pilot in command of an airplane shall carry in the airplane to its destination –
(1) A copy of the completed load manifest (or information from it, except information concerning cargo and passenger distribution);
* * *

Question number 1: Is the PIC obligated *under the Federal Aviation Regulations* as opposed to the certificate holder's requirements to do an actual passenger count to verify the manifest information?

Response: There is no specific regulatory requirement that requires the PIC to conduct an actual passenger count to verify manifest information. As you correctly noted in your letter, Section 121.665 places the responsibility on the certificate holder carrier to prepare an accurate load manifest. Furthermore, that section specifies that the certificate holder is "responsible for ... the accuracy of [the] load manifest form before each takeoff". Under this section, the certificate holder must assign employees to prepare and sign the load manifest. A PIC might be given that assignment by the air carrier. Any inaccuracies in the load manifest, however, whether made by a PIC or by other employees of the air carrier, are the responsibility of the air carrier in regard to Sections 121.665 and 121.693(e).

Nonetheless, an inaccuracy in the passenger count may affect the PIC's ability to comply with other safety regulations contained in the Federal Aviation Regulations. For example, if additional passengers result in the takeoff weight exceeding the takeoff weight in the Airplane Flight Manual, then a pilot could be found to have operated in violation of Section 91.605 and Section 121.189. Inaccurate weight calculations could affect engine performance criteria, including engine-out factors, weight and balance issues and fuel requirements, which are specified in Sections 121.189, 121.191, 121.193, and 121.195. Thus, an inaccurate passenger count could result in a pilot facing violations of these regulations as well, which impose duties on pilots (and others who "operate" aircraft) in consideration of aircraft limitations (i.e., airframe structure, balance configurations, safe takeoff distances, fuel sufficiency and takeoff power sufficiency).

Question 2: If the PIC becomes aware of an actual passenger count that differs from the manifest, must he resolve that difference before departing?

Response: Yes, to the extent that the miscount affects such safety issues as aircraft weight and balance calculations. See the discussion to Question No. 1.

For purposes of Section 121.665, however, if the load manifest has the names of 100 passengers but the PIC notices that actually there are 110 passengers on board, then the air carrier, not the PIC, is in violation of the regulation. Likewise, if the PIC takes off and the load manifest only shows the names of 100 passengers although 110 are on board, the air carrier would be in violation of Section 121.693(e).

Question 3: If the PIC reports the discrepancy to the certificate holder prior to departure and is advised to nevertheless operate the flight by the certificate holder, may he (the PIC) do so?

Response: Since the requirements to maintain an accurate load manifest are the responsibility of the certificate holder, the PIC could not be found to be in violation of Sections 121.665 or 121.693(e) for proceeding with the flight despite inaccurate or incomplete information in the load manifest. However, the PIC might be held in violation of other regulations that apply to the pilots and that depend on

accurate passenger information, including accurate weight information. See discussion in Response to Question No. 1.

Question 4: Does the PIC have any responsibility for a passenger count discrepancy other than reporting it to the certificate holder? If so, what is the responsibility?

Response: Yes. See response to Question No. 1.

Thank you for your inquiry. We hope this has been responsive to your request. This response was prepared by Carol Moors Toth, attorney, Operations Law Branch, and coordinated with the Air Transportation Division of the Flight Standards Service.

Sincerely,

Donald P. Byrne
Assistant Chief Counsel
Regulations Division