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

800 Independence Ave., S.W.
Washington, D.C. 20591

September 8, 2005

David A. Berg
Vice President and General Counsel
Air Transport Association
1301 Pennsylvania Ave., NW Suite 1100
Washington, DC 20004-1707

Dear Mr. Berg:

I am responding to your request for an interpretation of 14 CFR 121.557, *Emergencies: Domestic and flag operations*, and 14 CFR 121.559, *Emergencies: Supplemental operations*, as they relate to the evacuation of people and the distribution of supplies associated with Hurricane Katrina. Under each of these sections, a pilot in command may take any action he deems necessary under the circumstances in an emergency situation. Accordingly, he may deviate from prescribed operations, procedures and methods, weather minimums, and other provisions of Chapter 1 of Title 14 of the Code of Federal Regulations to the extent required in the interests of safety.

As you are aware, Hurricane Katrina was among the most devastating natural disasters in the history of the United States and has been declared an *incident of national significance* by the Secretary of Homeland Security. An *incident of national significance* is an actual or potential high-impact event that requires a coordinated and effective response by and appropriate combination of Federal, State, local, tribal, non-governmental, and/or private sector entities in order to save lives and minimize damage, and provide the basis for long-term community recovery and mitigation activities. See National Response Plan, December 2004.[1]

Under the applicable provisions of 14 CFR 121.557 and 14 CFR 121.559, the emergency situation need not occur in flight for the pilot in command to determine that a deviation is appropriate. The regulations do not speak to employees of an air carrier other than the pilot in command for circumstances other than an in-flight emergency. Accordingly, only the pilot in command would generally be able to decide whether an emergency unrelated to the actual flight existed.

[1] An *incident of national significance* may only be declared under one of the four conditions set forth in the Homeland Security Presidential Directive-5 (February 28, 2003). Those conditions are (1) a Federal department or agency acting under its own authority has requested the assistance of the Secretary of Homeland Security; (2) the resources of State and local authorities are overwhelmed and Federal assistance has been requested by the appropriate State or local authorities; (3) more than one Federal department or agency has become substantially involved in responding to the incident; and (4) the Secretary of Homeland Security has been directed to assume responsibility for managing the domestic incident by the President of the United States.

The Federal Aviation Administration (FAA) recognizes that the restraints ordinarily placed on airline employees who are not the pilot in command under 14 CFR 121.557 and 121.559 may not be appropriate when the emergency in question is classified as an *incident of national significance*. Not only has the emergency already been declared by the Secretary of Homeland Security, but both the Homeland Security Presidential Directive-5 and the National Response Plan contemplate the assistance of the private sector in the event of an *incident of national significance*. The type of activities needed to address the emergency situation may expand beyond a single flight under the control of a single pilot in command. In such instances, the operations must, of necessity, be coordinated by the air carrier in coordination with the FAA or the Department of Homeland Security. According, existing regulations may not adequately address the circumstances surrounding an *incident of national significance*.

Because Hurricane Katrina has been declared an *incident of national significance*, the FAA has decided to permit an air carrier to determine generally that a deviation from Chapter 1 of Title 14 is appropriate for each affected flight. The pilot in command retains the ultimate authority to determine that a given operation is necessary even if it cannot be conducted in a manner fully consistent with all applicable regulations. Likewise, the pilot in command must ensure that any deviation is limited to the extent required for safety.

Both 14 CFR 121.557 and 14 CFR 121.559 require the person exercising emergency authority to send a written report of any deviation to the Administrator within 10 days of the flight's completion. Given the nature of operations associated with Hurricane Katrina, a single, consolidated report may be submitted by each air carrier conducting emergency operations within 10 days of the last flight conducted pursuant to the emergency. Separate reports from each pilot in command are not required. The report should be submitted to the Administrator through the air carrier's director of operations or operations' manager.

This letter of interpretation is limited to those part 121 operations conducted to evacuate individuals from, or deliver supplies and necessary personnel to, the areas directly affected by Hurricane Katrina. Should the Secretary of Homeland Security declare further incidents of national significance, the FAA will consider expanding the scope of this interpretation to those events. Please let me know if I may be of further assistance.

Sincerely,

Rebecca B. MacPherson
Assistant Chief Counsel for Regulations