Federal Aviation Administration

Memorandum

Date: FEB - 2 2010

To: John S. Duncan, Manager, Air Transportation Division, AFS-200

From: Rebecca B. MacPherson, Assistant Chief Counsel for Regulations, AGC-200

Prepared by: David Pardo, AGC-220

Subject: Legal Interpretation of 14 C.F.R. § 121.711

This is in response to your October 21, 2009 request for a legal interpretation regarding the obligations under 14 C.F.R. § 121.711 of certificate holders to record each en route radio contact between the certificate holder and its pilots. Specifically, you note that many certificate holders use various electronic recording device mechanisms to comply with § 121.711, but that some operators record only the time of day and the flight number. You ask for an interpretation from this office to ascertain what the Administrator believes to be the minimum required content of a record under § 121.711. At a minimum, records of en route ratio contact under § 121.711 should include the time and date of the radio contact, the approximate position of the aircraft, the aircraft registration number, the flight call sign, and a narrative of the conversation.

As provided in § 121.711, "[e]ach certificate holder conducting domestic or flag operations shall record each en route radio contact between the certificate holder and its pilots and shall keep that record for at least 30 days." Section 121.711 is a recodified version of 14 C.F.R. § 40.512, which provided that "[e]ach air carrier shall maintain, and retain for a period of 30 days, records of radio contacts by or with pilots en route." The rationale behind this rule, as stated in the preamble to § 40.512's notice of proposed rulemaking, is to "enable the [Civil Aeronautics] Board and the Administrator to discharge fully their respective accident investigation and safety regulatory responsibilities." *See* 23 Fed. Reg. 7723 (Oct. 7, 1958). A notation of only the time of day and flight number would not be sufficient to allow the Administrator and the National Transportation Safety Board to fully discharge their respective accident investigation and safety regulatory responsibilities.

First, if communication regarding safety of flight that is being communicated with the certificate holder is not recorded and a cockpit voice recording is unrecoverable, information that might be needed to reconstruct an accident or incident will not be available. *Cf.* 49 C.F.R. § 830.10(d) ("The operator of an aircraft involved in an accident or incident shall

retain all records, reports, internal documents, and memoranda dealing with the accident or incident, until authorized by the [National Transportation Safety] Board to the contrary.").

Second, existing regulatory guidance materials provide that, "[i]n general, a record must show what event occurred, to whom, by whom, when, and proof of the event's occurrence, such as a certification by signature or by electronic means." FAA Order 8900.1, Vol. 3, Ch. 31, § 1, par 3-2982(A) ("A record is defined as an account which preserves evidence of the occurrence of an event."). Hence, a notation of only the time of day and flight number fails to describe what event occurred meriting the radio contact, who made and received the radio contact, on which date the radio contact took place, and on which particular aircraft such radio contact took place. Therefore, at a minimum, § 121.711 requires the time and date of the radio contact, the approximate position of the aircraft, the aircraft registration number, the flight call sign, and a narrative of the conversation.

This response was prepared by David Pardo, an attorney in the Regulations Division of the Office of the Chief Counsel. If you have additional questions regarding this matter, please contact us at your convenience at (202) 267-3073.

Rebecca B. MacPherson