Federal Aviation Administration

Memorandum

Date: JUL 2 7 2010

To: Greg Kirkland, Assistant Division Manager, AFS-201

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

Prepared by: Anne Bechdolt, Acting Manager, Operations Law, AGC-220

Subject: Legal Interpretation of 14 C.F.R. § 121.99

This is in response to your March 23, 2010 request for a legal interpretation of the meaning of "reliable and rapid communications" under 14 C.F.R. § 121.99. You note that a FAA "Speed Memo" dated May 26, 1977, and prepared by Southern Regional Counsel R.R. Hagadone (1977 Speed Memo) stated the FAA continues to construe the term "rapid" in § 121.99 as meaning less than four minutes. You seek clarification regarding the minimum time required for an aircraft dispatcher to communicate with an aircraft that is en route and be in compliance with §121.99.

Section 121.99 states, in pertinent part, that

> (a) Each certificate holder conducting domestic or flag operations must show that a two-way communication system, or other means of communication approved by the FAA certificate holding district office, is available over the entire route. The communications may be direct links or via an approved communication link that will provide reliable and rapid communications under normal operating conditions between each airplane and the appropriate dispatch office, and between each airplane and the appropriate air traffic control unit.

As stated above, the 1977 Speed Memo construed the term "rapid communications" to mean that the calling party must be able to establish communication with the called party in less than four minutes. The FAA sought to codify this meaning into the regulatory text via a 2002 notice of proposed rulemaking. *See* 67 Fed. Reg. 77326, 77334 (Dec. 17, 2002). In response, a majority of commenters objected to the proposed requirement, citing the "diminishing availability of communication service providers who use high frequency (HF) radio communications systems for long-range communications, e.g., oceanic and polar, the limitations of HF voice communications due to propagation characteristics, and the high costs of equipping their aircraft with satellite communication systems which would be one means of meeting these two proposed requirements." 72 Fed. Reg. 31662, 31668 (June 7, 2007).

In light of the comments received, the FAA declined to codify a strict less than four-minute rule into the requirements of §121.99. The FAA recognizes the concerns regarding current technological limitations associated with long-range operations. However, although long-range and short-range operations take place in different operating environments, each pose safety concerns that nevertheless require reliable and rapid communications under normal operating conditions. Therefore, the FAA generally considers that communications that occur within four to five minutes meet the requirement of "reliable and rapid communications" for normal operating conditions under §121.99.