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

APR 28 2010

Mr. Mark G. Monse
[redacted]

Dear Mr. Monse,

This is in response to your request for a legal interpretation regarding the application of §91.3(d) to operations conducted under 14 C.F.R. part 121 in light of the requirements under 14 C.F.R. § 121.533 and § 121.557. In addition, you also question whether, under § 121.557(b), an aircraft dispatcher's authority to declare an emergency and take any necessary action he or she deems necessary is limited to those situations where the dispatcher cannot communicate with the pilot in command (PIC).

In regard to your first question, 14 C.F.R. §§ 121.533 and § 121.535 establish the responsibilities for operational control for domestic and flag operations. These provisions set forth that both the PIC and the aircraft dispatcher are responsible for the preflight planning, delay, and dispatch release of a flight. For aircraft dispatchers, they are also responsible for monitoring the progress of each flight; issuing necessary information for the safety of the flight, and cancelling or redispatching a flight, if in his or her opinion, or in the opinion of the PIC, the flight cannot operate or continue to operate as planned or released. To the extent that §121.533 and §121.535 establish specific requirements for operational control for operations conducted under part 121, these provisions apply to part 121 domestic and flag operations rather than the more general provisions set forth in 14 C.F.R. § 91.3. Similarly, the operational control responsibilities set forth in § 121.537 would control for part 121 supplemental operations.

In response to your second question, §121.557 addresses the responsibilities of the pilot in command and the aircraft dispatcher in emergency situations. Under this provision, a PIC is permitted to take "any action he considers necessary under the circumstances … [and] deviate from prescribed operations procedures and methods …to the extent required in the interests of safety." 14 C.F.R. §121.557(a); *cf.* 121.627 (recognizing an emergency situation as one in which a PIC has determined that continuing a flight when either an aircraft dispatcher or PIC has identified an unsafe condition, is safer than not allowing the flight to continue). For emergency situations that the aircraft dispatcher learns of during flight, the aircraft dispatcher is responsible for notifying the PIC of the emergency, "ascertain[ing] the decision of the [PIC]" and documenting the PIC's decision. 14 C.F.R. § 121.557(b).

In emergency situations that occur during flight, the aircraft dispatcher is not permitted to declare, unilaterally, an emergency situation contrary to the PIC's determination. Rather, §121.557(b) limits the authority of the aircraft dispatcher to declaring an emergency

situation and taking any action the aircraft dispatcher considers necessary in those instances when the aircraft dispatcher cannot communicate with the pilot (i.e., notify the pilot of the situation), or loses communication with the pilot. 14 C.F.R. § 121.557(b). This is consistent with the FAA's interpretation that during flight, the PIC 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. *See* 14 C.F.R. §§121.533, 121. 537, 121.557, 121.627(a); *see also* Legal Interpretation to David A. Berg, from Rebecca B. MacPherson (Sept. 8, 2005); Legal Interpretation 2001-7 (July 23, 2001) (recognizing the authority of the PIC to be the final authority on the aircraft).

We appreciate your patience and trust that the above responds to your concerns. If you need further assistance, please contact my staff at (202) 267-3073. This response was prepared by Anne Bechdolt, Acting Manager of the Operations Law Branch of the Regulations Division of the Office of the Chief Counsel, and coordinated with the Air Transportation Division of Flight Standards Service.

Sincerely,

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