Federal Aviation Administration

Memorandum

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

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Subject: Legal Interpretation Regarding 14 C.F.R. § 121.583

This memorandum is provided in response to your memorandum dated March 26, 2010, requesting a legal interpretation regarding 14 C.F.R. § 121.583, Carriage of persons without compliance with the passenger-carrying requirements of this part. Generally, you are concerned that certificate holders conducting all-cargo operations and certain elements within the FAA believe that § 121.583 provides relief from *all* regulations related to the carriage of passengers within part 121. The request for interpretation suggests that inconsistent application of the rule has resulted in inconsistent agency oversight.

To help resolve this concern, you asked us to respond to the following questions:

> 1. "Whether all 'persons' other than those listed in 14 CFR 121.583(a)(1) are identified 'passengers.'"

The purpose of section § 121.583(a) is to except all-cargo operations from certain part 121 passenger-carrying requirements identified in 121.583(a), should certain persons be carried aboard an aircraft engaged in an all-cargo operation. Section 121.583(a)(1) identifies crewmembers as the first of eight categories of persons who may be carried aboard an airplane without complying with certain passenger-carrying requirements. *See* 14 C.F.R. § 121.583(a)(1) – (8).

As was highlighted in the request for interpretation, the definition for "all-cargo operations" in 14 C.F.R. § 110.2 suggests that the definition refers to persons identified in § 121.583(a)(1) as passengers. *See* 14 C.F.R. § 110.2 (defining an all-cargo operation as, "[A]ny operation for compensation or hire that is other than a passenger-carrying operation or, if passengers are carried, they are only those specified in §§ 121.583(a) or 135.85 of this chapter."). *But see* 14 C.F.R.

§ 110.2 (defining passenger carrying operations as "[A]ny aircraft operation carrying any person, unless the only persons on the aircraft are those identified in §§ 121.583(a) or 135.85 of this chapter, as applicable…"). Ultimately, however, it makes no difference whether the remaining individuals identified in § 121.583(a)(2) – (a)(8) are labeled as passengers or persons for purposes of interpreting the scope of § 121.583. Section 121.583 makes no such distinction in excepting all-cargo operations from compliance with the part 121 requirements identified in § 121.583(a).

2. "Whether 14 CFR 121.583 applies only to all cargo operations, or if it can be applied to passenger carrying operations as well[.]"

14 C.F.R. § 121.583 applies only to all-cargo operations. Although the regulation does not explicitly state as much, the definitions of passenger-carrying operations and all-cargo operations, and the purpose of the regulation lead to this conclusion.

The regulatory definitions of passenger-carrying operation and all-cargo operation limit the application of § 121.583 to all-cargo operations. According to the definition of passenger-carrying operation, if the only persons on the flight are those identified in § 121.583(a), then the flight is not considered to be a passenger-carrying operation. *See* 14 C.F.R. § 110.2. An all-cargo operation retains its all-cargo status even if it carries the individuals identified in § 121.583. *See* 14 C.F.R. § 110.2. Consequently, if the only persons on an aircraft are those individuals identified in § 121.583(a), then a part 121 operation conducted with that aircraft can only be an all-cargo operation because it would not qualify as a passenger-carrying operation. Further, although the categories of persons that may be carried under § 121.583 have expanded over the years, the initial purpose of this rule was to provide relief to cargo operations from certain passenger-carrying rules when carrying persons on the aircraft deemed necessary to attend to certain cargo on the aircraft. *See* 35 Fed. Reg. 1053, 1053 (Jan. 27, 1970).

3. "Clarification of the intent of the sentence in 14 CFR 121.583(a) that states, 'the requirements pertaining to passengers in 14 CFR 121.285, 121.313(f), 121.317, 121.547 and 121.573'. Specifically, what are those 'requirements pertaining to passengers?'"

This question involves the final group of regulations which an all-cargo operation is excepted. The prefatory language to this final group of regulations states that they are "requirements pertaining to passengers." *See* 14 C.F.R. § 121.583(a). When this group of regulations was added to the list from which all-cargo operations were excepted, we stated that these "[S]ections of Part 121…contain requirements concerning the carriage of passengers but do not use the term 'passenger-carrying aircraft' or 'passenger-carrying operation.'" *See* 35 Fed. Reg. 1053, 1053-1054 (Jan. 27, 1970).

We have further stated that, certain sections of part 121 "[C]oncerning the carriage of passengers, such as § 121.317 pertaining to passenger information, are not practical when applied to the persons specified in § 121.583." *See* 35 Fed. Reg. 1053, 1053 (Jan. 27, 1970). However, we have clarified that within the list of requirements "pertaining to passengers" that not every paragraph of every regulation cited pertains to passengers and thus an all-cargo operation is not excused from compliance with those paragraphs.

For example, not all paragraphs of § 121.547 pertain to passengers. *See* Legal Interpretation 2001-7. The purpose of § 121.547(a) is to provide rules on who may be admitted to the flight deck of an aircraft used in any part 121 operation – all-cargo or passenger-carrying - and the entities that have the authority and responsibility to grant or deny such admission. Section 121.547(c), on the other hand, contains passenger requirements. *See* Legal Interpretation 2003-1; Legal Interpretation 2001-7. Section 121.547(c) limits flight deck admission to the persons identified in §§ 121.547(c)(1) - (c)(6). Other persons who have not been identified in §§ 121.547(c)(1) – (c)(6) may be admitted to the flight deck, consistent with the requirements of § 121.547, if there is a seat available for that person in the passenger compartment.

4. "14 CFR 121.547(a)(3) requires any person who is admitted to the flight deck to have permission of the pilot in command, an appropriate management official of the certificate holder and the Administrator. 14 CFR 121.583 exempts persons listed in paragraph (a) from the passenger carrying requirements of 14 CFR 121.547. 14 CFR 121.583(e) allows the pilot in command to authorize a person covered by paragraph (a) of 14 CFR 121.583 to be admitted to the 'crew compartment[.]' Is it the FAA's intent that persons listed in 121.583(a) are exempt from requiring the permission of the certificate holder and the FAA to enter the 'crew compartment' which is also known as the 'flight deck'?"

No. Section 121.583(e) allows the pilot in command to authorize a person covered by § 121.583(a) to enter the flight deck on an all-cargo operation. However, since § 121.547(a) pertains to flight deck admission, and does not pertain to passengers, § 121.583(e) does not excuse an air carrier from the flight deck admission requirements in § 121.547(a). *See* Legal Interpretation 2003-1; Legal Interpretation 2001-7. Thus, notwithstanding the authority in § 121.583(e), any requirements found in § 121.547(a) for flight deck admission must be met whether the operation is a passenger-carrying or all-cargo operation. *See* id.

5. "14 CFR 121.583(a) provides relief from the passenger carrying requirements of 14 CFR 121.285 however, no relief is provided from compliance with 14 CFR 121.589. 14 CFR 121.589(b) requires compliance with 14 CFR 121.285(c). If a certificate holder is required to comply with 14 CFR 121.589, then would they

also be required to comply with 14 CFR 121.285(c) despite the fact that 14 CFR 121.583(a) seems to indicate otherwise?"

No. Section 121.589(b) requires compliance with §§ 121.285(c) and (d) which establish cargo stowage requirements for passenger compartments. Section 121.583(a) excuses all-cargo operations from complying with § 121.285 in its entirety. Further, an aircraft used in an all-cargo operation does not have a passenger compartment, therefore §§ 121.285(c) and (d) are not pertinent.

6. "Whether or not all sections of 121.291 pertain to passenger carrying operations and therefore, all cargo operations are exempted from compliance with 14 CFR 121.291 in its entirety."

Section § 121.583 allows all-cargo operations to carry the individuals identified in (a)(1) – (a)(8) without complying with, among other regulations, "the passenger carrying operation requirements in § ... 121.291. Based on the current regulatory text of § 121.291 in which "passenger carrying operations" are specifically referenced, as well as the regulatory history, we conclude that the entirety of § 121.291 is intended to apply to passenger-carrying operations. *See* 30 Fed. Reg. 3200, 3200 (March 9, 1965) (stating that the purpose of the amendments made by this final rule, including the addition of the demonstration of emergency evacuation and ditching procedures in § 121.291, was "to provide for improved emergency evacuation procedures and equipment for passenger-carrying aircraft").

We apologize for the delay in our response. We appreciate your patience and trust that the above responds to your concerns.