Federal Aviation Administration

Memorandum

Date: AUG 28 2012

To: Bob Laurion, ASW-240, Technical Support Branch, Air Carrier

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

Prepared by: Robert H. Frenzel, Manager, Operations Law Branch, Regulations Division, AGC-220

Subject: March 27, 2012 Legal Interpretation definition of "interruption to a flight"

This memorandum responds to your concerns about the definition of words "interruption to a flight" as they were defined in a March 27, 2012 Legal Interpretation issued by my office to Michael Pallatto in the Atlanta Certificate Management Office ("Pallatto"). The term is used in 14 C.F.R. § 121.705(a) to describe the type of mechanical difficulty that must be reported in the monthly Mechanical Interruption Summary Report required by § 121.705. The legal interpretation ended with a determination that "each interruption to a flight" means from takeoff to landing, or "during flight." Your concern is whether this was the original intent of the regulations as they were first written as part of CAR 40, 41 and 42, and recodified as § 121.705 in 1964.

As your memorandum points out, when § 121.705(a) was first published in 1964, it contained the phrase "each interruption to a scheduled flight." The word "scheduled" was subsequently removed from the regulation by Amendment 121-10 in 1965. In the preamble, the FAA stated:

> Section 121.705(a) which is based on former CAR §§ 40.509, 41.509, and 42.509, requires the reporting of each interruption to a "scheduled" flight. Since this section is based on § 42.509 as well as the comparable Parts 40 and 41 requirements, the word "scheduled" is inappropriate and therefore is being deleted. (30 FR 10025, August 12, 1965)

The removal of the word "scheduled" forms the basis for your concern that § 121.705(a) should apply to interruptions to a flight due to mechanical difficulties while at the gate or while taxiing prior to takeoff, not just to interruptions that occur during flight. However, the removal of the word "scheduled" was appropriate as that word was not a part of CAR 42.509(a), since Supplemental operations did not have "scheduled" flights. So it appears on its face that the removal of the word was required since three different parts of the CAR were combined into the new part 121.

This reading of the removal of the word "scheduled" is also supported by the fact that, if we were to read the word "scheduled" under CAR 40 and 41 as originally requiring the reporting of interruptions at the gate or during taxi out to the runway, we would have to read CAR 42 as *not* requiring the same reporting, even though an on-demand Supplemental operation also has a scheduled departure time from a gate (or ramp) and taxies out to the departure runway in the same way as a scheduled flight.

You also reference an internal memorandum sent to Mike Zenkovich, Manager, Flight Standards Division, ASW-200 from Carol E. Giles, Manager, Aircraft Maintenance Division, AFS-300 on August 25, 2010. We cannot verify that AGC reviewed that memorandum prior to it being issued. The memorandum has several inconsistencies with prior legal interpretations, two of which are relevant to this discussion. In her reply to a question asking for a definition of "a flight," Ms. Giles used the definition of "flight time" found in § 1.1, which is used to determine pilot time in relation to flight and duty regulations or in relation to the logging of pilot time. In a legal interpretation to Charles Lewis from Don Byrne, Assistant Chief Counsel for Regulations (Apr. 1997), addressing whether the use of a minimum equipment list under § 121.268 is applicable to discrepancies occurring after push-back, but prior to take-off, the FAA stated:

> Note that the term "flight" as used in § 121.628(a)(2) is *not* synonymous with "flight time" (i.e., "block to block" time), but rather refers to when the aircraft has left the earth's surface. *See, e.g.,* September 21, 1988 Letter re: Definition of Enroute, *supra*,. ("No matter how one defines "flight" the connotation is that the object must literally be flying through the air.")(emphasis in original)

Thus, the term "flight" as used in § 121.705 could not be defined as "flight time."

However, the term "flight time" is specifically used in § 121.563, which details the requirement for a pilot in command to enter into the maintenance log of the airplane all mechanical irregularities that occur during *flight time*. This stands in direct contrast to the use of only the word *flight* in § 121.705 for items that must be included in the monthly MISR. Both terms cannot have the same meaning as noted in the above Lewis Interpretation. As a result, a reading of those two sections together would conclude that:

- all mechanical irregularities that occur during flight time ("block to block" time) must appear in the airplane log (§ 121.563), and
- those mechanical irregularities in the log that caused an interruption during a flight (from take-off to landing) must be included in the monthly MISR (§ 121.705(a)).

The Giles memorandum answered a second question asking whether the interruption of a flight begins at or prior to the scheduled gate departure, relying on portions of FAA Order 8900.1, Volume 3, Chapter 32, Section 14, Paragraph 3-3432 (A)(1) and (2), which states in full:

> 1) Sections 121.563 and 135.63 require each certificate holder to provide an aircraft maintenance log for recording or deferring mechanical irregularities, as applicable, and the subsequent corrective actions performed. This log must be carried on board each aircraft.

2) The operator's manual should provide a method where the pilot in command (PIC) will inform the operator of mechanical irregularities or defects that appear before, during, and after a flight. The operator uses this information to let the maintenance personnel know of any suspected problems so that corrective action can be taken. This method of reporting is the basis for the required MISR.

The memorandum used portions of this guidance to establish a connection between the requirement to log mechanical irregularities under § 121.563 and the MISR required by § 121.705(a). The log book may well be the basis for the information necessary to complete the monthly MISR, but as the discussion above points out, there are two different meanings to the words "flight" and "flight time." Otherwise, the MISR would simply become a copy of the logbook.

As a result, we believe that the Pallatto interpretation correctly defines the word "flight" and makes the appropriate distinctions between the content of the reports required by § 121.705 and § 121.703. AFS-300 should issue a new memorandum and review the appropriate guidance material based upon this interpretation and the Pallatto interpretation.

If there is a policy reason to consider expanding what is required to be reported, then AFS-300 should evaluate whether a rulemaking effort is appropriate. We would note that any expansion of the reporting requirements may significantly increase the paperwork burden for certificate holders and require substantial benefits to outweigh the costs of such rulemaking.

We trust this explains the reasoning behind the Pallatto interpretation. If you should have any additional questions, you may contact my office at 202-267-3073,