Federal Aviation Administration

Memorandum

Date: JAN 31 2013

To: Leslie H. Smith, Manager, Air Transportation Division, AFS-200

From: Mark Bury, Acting Assistant Chief Counsel for International Law, Legislation and Regulations, Office of the Chief Counsel, AGC-200

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Subject: Request for Legal Interpretation of 14 CFR § 121.631, Original Dispatch or Flight Release, Redispatch or Amendment of Dispatch or Flight Release

This memorandum responds to your request for a legal interpretation regarding the application of 14 C.F.R.§ 121.631(a), which provides in pertinent part that: "a certificate holder may specify any regular, provisional, or refueling airport, authorized for the type of aircraft, as a destination for purpose of original dispatch or release." Your request describes an apparent conflict between this regulation and non-standard authorizations in current operations specifications (OpSpecs) issued to individual certificate holders and questions whether § 121.631(a) applies only to scheduled operations by virtue of the reference to regular, provisional, or refueling airports, which are required by § 119.49(a)(4) to be listed in OpSpecs issued to certificate holders conducting domestic or flag operations.

Specifically, you asked if a certificate holder conducting nonscheduled supplemental operations, conducts those operations in accordance with the regulations applicable to domestic or flag scheduled operations, but does not list a regular, provisional or refueling airport as a destination in the dispatcher or flight release for the purpose of original dispatch or release, would that be contrary to the language contained in §121.631(a)? We find that, while not expressly contrary to § 121.631(a), conducting such an operation would be contrary to the language and intent of § 119.49(a)(4), which requires the listing of airports in domestic and flag OpSpecs and specifically limits operations to only those airports.

In 1964, Civil Aviation Regulations (CAR) 40, 41 and 42 were combined into new 14 C.F.R. part 121. Sections 40.393 and 41.393, applicable to domestic and flag operations, provided in pertinent part: "(a). Any regular, provisional, or refueling airport the use of which is authorized for the type of airplane to be operated may be specified as a destination for the purpose of original dispatch." Section 42.393, applicable to supplemental operations, provided in pertinent part: (a) Any airport which meets the requirements of the applicable regulations for the type of

airplane to be operated may be specified as the airport of destination for the purpose of original flight release."

It appears that the intent in drafting § 121.631(a) was to include both scheduled and supplemental operations. While the regulatory text could be clearer, the addition of the words "or release" following most of the then existing text of §§ 40.393 and 41.393 shows a clear intent to capture domestic, flag and supplemental operations within § 121.631(a) when all three sections were merged.

A fair reading of this would be that § 121.631(a), by itself, is permissive regarding the airport to be listed in an original dispatch or release. However, the retention of the language "(a)ny regular, provisional, or refueling airport" (which only applied to domestic and flag operations prior to the recodification of the CARs), without a change in the rule to list those airports in the OpSpecs for domestic and flag carriers, indicates that the requirement was intended to survive the recodification. This treatment is supported by the preamble to a revision of CAR 42 in 1963, limiting the listing of airports in the OpSpecs of supplemental carriers:

> As a result of comments received, it was determined that paragraph (d) should be modified to require an airport to be listed in the operations specifications only if special authorizations and limitations have been imposed on operations at the airport. *See*, 28 FR 7126, July 1963.

The new §§ 121.25 and 121.45 retained this distinction between domestic and flag and supplemental operations for the requirements for listing airports. *See*, 29 FR 19226, December 31, 1964. In 1995, when the certification and OpSpec regulations were moved to a new part 119, §§ 119.49(a)(4) (*domestic and flag*) and 119.49(b)(7) (*supplemental*) maintained the previous part 121 OpSpec requirements for listing airports. However, new § 119.49(a)(4)(ii) contains additional language that is more restrictive than its predecessor § 121.25 since it now states that "the certificate holder may *not* conduct any operation using any aircraft or airport *not* listed." Thus, all certificate holders conducting domestic and flag operations are subject to the prohibition in § 119.49(a)(4)(ii) against conducting operations between airports not listed in the appropriate OpSpecs applicable to airports authorized for scheduled operations (C070 in this case). Any relief from § 119.49(a)(4)(ii) should be granted through an exemption.