U.S. Department
of Transportation
Federal Aviation Administration

Office of the Chief Counsel

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Washington, D.C. 20591

JUL 24 2013

Mr. Thomas R. Taylor
FedEx Express
FAA Liaison Office
3131 Democrat Rd.
Memphis, TN 38194-5433

Dear Mr. Taylor,

This letter responds to your April 5, 2012 inquiry regarding the issuance of special flight permits under the authority of Operations Specification (OpSpec) D084 -Special Flight Permit (SFP) with Continuous Authorization to Conduct Ferry Flights. OpSpec D084 is authorized under the provisions of 14 C.F.R. § 21.197(c)(1) and 14 C.F.R. § 119.51. You ask whether OpSpec D084 may be used under several scenarios:

1. Under D084(b), may a certificate holder fly an aircraft to a place where the aircraft will be stored and then later fly that aircraft to a place where maintenance or alterations will be performed or to a place where the aircraft will be scrapped, donated or sold? Your letter makes the assumption that the aircraft has been inspected and found safe for the intended flight.

2. Under D084(d), may a certificate holder fly an aircraft with an expired Airworthiness Directive (AD) to a place where the aircraft will be stored, then at a later date to a repair facility to perform work required by the AD or to a place where the aircraft will be scrapped, donated or sold? Your letter assumes that the AD allows the aircraft to be flown and the aircraft has been inspected and found safe for the intended flight.

3. Under D084 (b) and (d), may a certificate holder fly an aircraft with or without an expired AD directly to a place where the aircraft will be scrapped, donated or sold? Your letter assumes that the AD allows the aircraft to be flown and the aircraft has been inspected and found safe for the intended flight.

For the reasons explained below, a certificate holder may conduct ferry flights under the continuing authorization of OpSpec D084, as authorized by § 21.197(c), for the purpose of flying an aircraft to a place where the aircraft will be stored. However, ferry flights conducted for the purpose of flying an aircraft to a place where the aircraft will be scrapped, donated or sold require the issuance of an SFP by the FAA under § 21.197(a).

Regulatory History

14 C.F.R. § 21.197 was first promulgated in 1965 as part of a project to recodify the Civil Air Regulations. Section 21.197(a) originally provided in pertinent part that an SFP could be issued for (1) flying an aircraft to a base where maintenance or alterations are to be performed and (2) delivering or exporting the aircraft. The language of § 21.197(a)(1) was changed by Amendment 21-21, effective June 6, 1968, to add "repairs" and "or to a point of storage" to the purposes for an SFP.

The concept of a continuous authorization for ferry flights, under specifically controlled circumstances, first appeared in an NPRM in 1967 as § 21.197(c) "for the purpose of flying aircraft to a base where maintenance or alterations are to be performed." In the preamble to the NPRM, the FAA recognized that there were various types of ferry flights contemplated for continuous authorization:

> Experience indicates that certain problems that necessitate the ferrying of aircraft reoccur sufficiently often to justify granting to the Part 121 operator a special flight permit with continuing authority to enable the ferrying of aircraft in those reoccurring situations... Therefore, requiring a separate application for each ferry flight, as is now necessary, places what appears to be a burden upon both the certificate holder and the FAA, where each request must be handled individually with the FAA assigned maintenance inspector. *See*, 32 FR 14775; October 25, 1967.

The final rule was issued on August 22, 1968.

The Use of OpSpec D084 for Continuous Authorization of Ferry Flights

As noted above, OpSpec D084 gives a certificate holder continuous authorization to conduct ferry flights for the purpose of *"maintenance or alterations."* The word "maintenance" is defined in § 1.1, General Definitions, as:

> *Maintenance* means inspection, overhaul, ***repair, preservation,*** and the replacement of parts, but excludes preventive maintenance. ***(emphasis added)***

Thus, ferry flights to a place of storage for preservation would fall under the definition of "maintenance" as used in § 21.197(c) and be allowed under a certificate holder's D084, consistent with the certificate holder's storage program developed under § 43.13(c) and included in the maintenance program required by § 121.367. Ferry flights for the purpose of making repairs required by an AD are authorized under § 39.23 and would be allowed under a certificate holder's D084 so long as the AD allows for the movement of the aircraft prior to repair.

However, ferry flights conducted for the purpose of flying an aircraft to a place where the aircraft will be scrapped, donated or sold do not fit within the scope of the terms

maintenance or alteration. Therefore, these flights would require the issuance of an SFP by the FAA under § 21.197(a).

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 letter has been prepared by Robert H. Frenzel, Manager, Operations Law Branch, Regulations Division of the Office of the Chief Counsel and coordinated with the Air Transportation and Aircraft Maintenance Divisions of Flight Standards Service.

Sincerely,

Mark W. Bury
Acting Assistant Chief Counsel for International Law,
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