Federal Aviation Administration

Memorandum

Date: JUL -8 2014

To: John S. Duncan, Director, Flight Standards Service (AFS-1)

From: Mark W. Bury, Assistant Chief Counsel for International Law, Legislation and Regulations (AGC-200)

Prepared by: Sara Mikolop, Attorney (AGC-220)

Subject: Request for Legal Interpretation of 14 CFR § 14 C.F.R. § 121.601, Aircraft Dispatcher Information to Pilot In Command: Domestic and Flag Operations

This memorandum is provided in response to a request for a legal interpretation dated February 12, 2014. In the request for a legal interpretation, you asked a series of questions pertaining to 14 C.F.R. § 121.601 which requires aircraft dispatchers to provide pilots in command (PIC) with information pertaining to weather, services and navigation facilities before and during the flight if such information would affect the safety of the flight.[1]

Question 1: When does a flight begin? (For purposes of examining the requirements of § 121.601, one operator contends that a flight begins when the PIC signs the dispatch release.)

Completion of the dispatch release does not represent the beginning of a flight.

A PIC does not begin a flight simply by signing a dispatch release. Rather, the purpose of a dispatch release is to provide authorization for a flight as well as information and conditions regarding the flight. *See* § 121.687 (identifying the specific information that the dispatch release must contain). Further, as described in § 121.663 the PIC's signature on the dispatch release

[1] Section 121.601 states,

(a) The aircraft dispatcher shall provide the pilot in command with all available current reports or information on airport conditions and irregularities of navigation facilities that may affect the safety of the flight.

(b) Before beginning a flight, the aircraft dispatcher shall provide the pilot in command with all available weather reports and forecasts of weather phenomena that may affect the safety of flight, including adverse weather phenomena, such as clear air turbulence, thunderstorms, and low altitude wind shear, for each route to be flown and each airport to be used.

(c) During a flight, the aircraft dispatcher shall provide the pilot in command any additional available information of meteorological conditions (including adverse weather phenomena, such as clear air turbulence, thunderstorms, and low altitude wind shear), and irregularities of facilities and services that may affect the safety of flight.

indicates that the PIC believes that the flight can be safely made. *See* § 121.663 (stating "The pilot in command and an authorized dispatcher shall sign the release only if they both believe that the flight can be made with safety..."). Although a PIC may sign a dispatch release close in time to beginning the flight, this action alone does not indicate that the flight has begun.

A flight begins when the aircraft departs (pushes back or taxis) from the departing gate or ramp area.

When considered in its entirety, § 121.601 creates an ongoing requirement for the aircraft dispatcher to provide a PIC with weather information that would affect the safety of a flight. However, because § 121.601 distinguishes the time "before beginning a flight" and "during a flight" we have been asked to determine when a flight begins.

We note that the regulatory framework addressing the requirements for aircraft dispatchers contemplates the period of time between the signing of the dispatch release and the beginning of the flight. Although the aircraft dispatcher and PIC may sign the dispatch release close in time to the beginning of the flight, the signing of the dispatch release and the beginning of a flight may also occur hours apart. During this time, it is possible for meteorological conditions to change such that they may affect the safety of the flight. Given the potential for a significant amount of time to pass between the signing of the dispatch release and the beginning a flight, § 121.601(b) requires the aircraft dispatcher to provide the PIC with certain weather information "before beginning a flight..." Under § 121.601(b), the aircraft dispatcher must provide the PIC with all available weather reports and forecasts that may affect the safety of the flight for each route to be flown and each airport to be used. Since the relevant weather reports and forecasts that affect the safety of the flight may be made available at different times prior to the beginning of the flight and may change over time, § 121.601(b) creates an ongoing requirement for the aircraft dispatcher to update the PIC until the beginning or start of the flight at which point the requirements in § 121.601(c) will apply.[2]

Section 121.601(c) requires that "during a flight...," the aircraft dispatcher must provide the pilot in command with additional information pertaining to meteorological conditions and irregularities of facilities and services that may affect the safety of the flight. Although the regulatory history for § 121.601 is not instructive as to the period of time contemplated as "before the flight" versus the period of time "during the flight" for consistency with the requirements applicable to aircraft dispatcher and pilot communications in § 121.711, it is appropriate to find that for purposes of § 121.601, a flight begins when the aircraft departs from the departing gate.

[2] In a legal interpretation from Mark. W. Bury to James W. Powell (Oct. 29, 2013), we noted the requirements for the dispatcher to report information regarding airport conditions and weather phenomena prior to dispatch and during the flight. The Powell legal interpretation was issued in the more limited context of dispatching ETOPS flights and was not intended to limit the applicability of § 121.601 in any way. Accordingly, the interpretation of § 121.601 as provided in this memorandum is controlling.

Question 2: During which phases of flight does the aircraft dispatcher have to provide the PIC with all available current reports or information on airport conditions and irregularities of navigation facilities that may affect the safety of the flight?

Section 121.601(a) requires the aircraft dispatcher to "provide the pilot in command with *all available current* reports or information on airport conditions and irregularities of navigation facilities that may affect the safety of the flight." Section 121.601(c) requires that, "During a flight, the aircraft dispatcher shall provide the pilot in command with *any additional available* information of meteorological conditions (including adverse weather phenomena, such as clear air turbulence, thunderstorms, low altitude wind shear), and irregularities of facilities and services that may affect the safety of the flight."

Although § 121.601(a) does not expressly state that it applies before the flight, it is implied by the requirement in § 121.601(c) that requires an aircraft dispatcher to provide *available* information of meteorological conditions and irregularities of facilities and services *during a flight*.

The requirement in § 121.601(c) for the aircraft dispatcher to provide the PIC with any additional available information of meteorological conditions and irregularities of facilities and services does not distinguish among the various phases of flight. This means that any time during a flight the aircraft dispatcher finds that the available information reflects a change in to meteorological conditions, or irregularities of facilities and services that would affect the safety of flight, the dispatcher must provide that information to the PIC. *See* 42 Fed. Reg. 27572, 27572 (May 31, 1977) (clarifying that information that would not affect the safety of flight need not be provided).

Further, the term "current" does not appear in the regulatory text for §121.601(b) and (c). However, given that § 121.101(d) requires "Each certificate holder conducting domestic or flag operations to adopt and put into use an approved system for obtaining forecasts and reports of adverse weather phenomena...that may affect the safety of flight on each route to be flown and at each airport to be used", the agency expects aircraft dispatchers to be able to obtain and supply the PIC with current weather reports or information if it is available.

Question 3: If while the airplane is taxiing from the gate or departure area to the takeoff runway, the status of airport conditions and/or navigational facilities change to the degree that the safety of flight could be affected, is the aircraft dispatcher required to provide that information to the PIC?

Yes. As discussed in response to Question 1, once the airplane begins to taxi to the takeoff runway, the flight has begun and the requirements of § 121.601(c) would apply.

Section 121.601(c) provides the requirements for aircraft dispatchers to provide certain information during the flight. Specifically, § 121.601(c) requires aircraft dispatchers to provide the PIC with additional information during the flight regarding meteorological conditions and irregularities of facilities and services that may affect the safety of flight.

Question 4: If the signing of the dispatch release occurs an hour or more prior to departure is the aircraft dispatcher required to provide the PIC with additional weather information before the flight departs?

Yes. As discussed in the responses to Questions 1 and 3, the additional weather information must be provided if it could affect the safety of the flight.

Section 121.687(b) requires the dispatch release to contain, or have attached to it weather reports, available weather forecasts, or a combination thereof, for the destination airport, intermediate stops, and alternate airports that are the latest available at the time the release is signed by the PIC and dispatcher.

Section 121.601, paragraphs (a) and (b) provide ongoing requirements for information that must be provided by the aircraft dispatcher for the duration of the time between the signing of the dispatch release and the departure or beginning of the flight. Paragraphs (a) and (b) of § 121.601 require the aircraft dispatcher to provide the PIC with all available current reports or information on airport conditions and facilities and all available weather reports and forecasts of weather phenomena for each route. This information need only be provided if it may affect the safety of the flight. Thus, if additional weather information becomes available after the dispatch release is signed and before the flight begins, and if the information may affect the safety of the flight, then the aircraft dispatcher must provide it to the PIC.

Question 5: Is a certificate holder responsible to ensure that its aircraft dispatchers comply with § 121.601?

It is a well-established principle that air carriers are responsible for regulatory violations committed by their employees while acting within the scope of their employment. *See* In the Matter of Warbelow's Air Ventures, Inc., FAA Order No. 2000-3 at *3 (Feb. 3, 2000); In the Matter of Trans World Airlines, Inc., FAA Order No. 98-11 at 27 (June 17, 1998) (rejecting Respondent's argument that it should not be liable for providing alcohol to intoxicated person, because it was a breach of fiduciary duty for flight attendants to violate air carrier policy and Federal Aviation Regulations); In the Matter of USAIR, Inc. FAA Order No. 92-48 at *3 (July 22, 1992) (air carrier is liable for acts and omissions of where the ground crew improperly chocked the nose gear wheels, contrary to the air carrier's general maintenance manual), petition for reconsideration den'd, FAA Order No. 92-70 (Dec. 21, 1992).

Although a finding of violation on the part of the certificate holder would turn on the specific facts of the case, it is worth providing some additional context for the Agency's expectations for certificate holders that must comply with § 121.601. We note that the agency amended the § 121.601 requirements for aircraft dispatchers to provide weather information to PICs at the same time as it amended the § 121.101 requirements for weather reporting. Section 121.101 requires "Each certificate holder conducting domestic or flag operations... [to] adopt and put into use an approved system for obtaining forecasts and reports of adverse weather phenomena...that may affect the safety of flight on each route to be flown and at each airport to

be used. Thus, a certificate holder conducting flag and supplemental operations must ensure that the information obtained in accordance with a system approved under § 121.101 must be disseminated in accordance with the requirements of § 121.601 for the benefits of § 121.101 to be realized.