Federal Aviation Administration

Memorandum

Date: August 25, 2014

To: Michael J. O'Donnell, Director of Airport Safety and Standards, AAS-1

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

Prepared by: Robert Hawks, Attorney, AGC-240

Subject: Clarification of sufficient and qualified personnel requirements under 14 C.F.R. § 139.303(a)

This memorandum responds to your request for a legal interpretation clarifying 14 C.F.R. § 139.303(a). The request results in part from a 2012 National Transportation Safety Board (NTSB) investigation and recommendation (number A-12-71) for the FAA to determine whether part 139 airports have "sufficient and qualified operations personnel on duty at the airport during all scheduled air carrier operations, and direct airports without such staffing to implement actions to meet the personnel requirements" of § 139.303. In response to the NTSB's recommendation, you ask what is meant by the term "sufficient" as used in § 139.303(a).

Section 139.303(a) states, in relevant part, that each certificate holder must provide "sufficient and qualified personnel to comply with the requirements of its Airport Certification Manual and the requirements of this part." Section 139.1 states, in relevant part (and subject to limited exceptions not relevant to this discussion), that part 139 applies to "the certification and operation of airports" serving "scheduled passenger-carrying operations of an air carrier operating aircraft configured for more than 9 passenger seats" and "unscheduled passenger-carrying operations of an air carrier operating aircraft configured for at least 31 passenger seats."

Personnel requirements for airport operations have existed in some form since part 139 was promulgated in 1972. *See* 37 Fed. Reg. 12278 (Jun. 21, 1972) (adopting § 139.81 Operations rules: General, requiring "sufficient qualified personnel . . . to comply with its approved airport operations manual"). The purpose of the requirement is to ensure compliance with part 139 and the procedures detailed in the airport's airport certification manual (ACM).

Although the personnel requirement has long existed in part 139, the FAA has not been clear about when and how many personnel must be present at a certificated airport. In adopting

revisions to part 139 in 2004, the FAA "intentionally did not define the term 'sufficient,'" stating it would be "impractical to define the number of personnel each certificate holder would need to comply with part 139 due to the variations between airport size and layout, type of operations served, and the local governing body." 69 Fed. Reg. 6380, 6397 (Feb. 10, 2004). Furthermore, in 2000, the FAA proposed permitting designees (such as air carrier station employees or fixed-base operator employees) to conduct a required airport self-inspection "when airport personnel are not present during hours of scheduled operations." 65 Fed. Reg. 38636, 38656 (Jun. 21, 2000). This proposal was recommended by an aviation rulemaking advisory committee working group, which implied a practice of not requiring onsite airport personnel during all air carrier operations and potentially a practice of using designees to perform airport duties. The final rule added a new § 139.303(f) to permit the use of an independent organization or designee to comply with any requirement in part 139 or the airport's ACM. *See* 69 Fed. Reg. 6380, 6409 (Feb. 10, 2004).

Considering the increased requirements under part 139 over the last several decades, and the regulations' purpose to ensure safety of airport operations, it is not reasonable to assume that the FAA meant "no personnel" would be sufficient to meet the requirements of part 139. In order to perform some duties applicable to air carrier operations specified in part 139 and in an airport's ACM (for example, duties related to the airport emergency plan under § 139.325), some airport personnel must be onsite. Though personnel need not be onsite during all hours, the applicability of part 139 to scheduled air carrier operations and unscheduled air carrier operations with large aircraft requires that personnel be onsite during those operations. This conclusion is consistent with the 2000 proposed and 2004 final rule because permitting the use of designees, whose responsibilities and duties are specified in the airport's ACM as required by § 139.303(f)(2), mitigates the burden of having an airport employee onsite provided there is an airport designee to perform required duties during air carrier operations. Although we can conclude that § 139.303(a) requires at least one airport employee or designee be onsite during air carrier operations, the number of individuals that would be sufficient depends on the specific needs of each airport after considering its size and layout as well as the volume and complexity of operations.

This response was coordinated with the Airport Safety and Operations Division of the Office of Airports. We hope this response has been helpful.