Federal Aviation Administration

Memorandum

Date: AUG 10 2016

To: John Duncan, Director, Flight Standards Office, AFS-1

From: Lorelei Peter, Assistant Chief Counsel for Regulations, AGC-200

Prepared by: Courtney Freeman, Attorney, AGC-220

Subject: Legal Interpretation Regarding 14 CFR § 121.1005(c)

This is in response to your memorandum dated May 17, 2016, transmitting a request for a legal interpretation from Lawrence Fields, Manager, Flight Standards Division, AEA-200, regarding the validity of hazardous materials training provided by Airborne Express to employees of their contractor DHL to load/off-load Atlas Air aircraft. In the letter, we are asked if DHL (a non-Part 121 operator) can load hazmat on Atlas Air aircraft when they have not been trained by Atlas Air, but have received training from Airborne Express with Atlas differences. The answer to your question is yes.

14 CFR § 121.1005(c) describes a situation where a person who performs the same job function for more than one certificate holder may be trained only in those policies and procedures specific to the second certificate holder, as long as that person has satisfactorily completed job training for another certificate holder's program for that specific job function, and that the operations specifications for both certificate holders are the same regarding the acceptance, handling, and transport of hazardous materials.[1]

Although DHL is not a certificate holder itself, the regulation specifically refers to "a certificate holder that uses or assigns a person to perform or directly supervise a job function specified in

[1] (c) Persons who work for more than one certificate holder. A certificate holder that uses or assigns a person to perform or directly supervise a job function specified in § 121.1001(a), when that person also performs or directly supervises the same job function for another certificate holder, need only train that person in its own policies and procedures regarding those job functions, if all of the following are met:
(1) The certificate holder using this exception receives written verification from the person designated to hold the training records representing the other certificate holder that the person has satisfactorily completed hazardous materials training for the specific job function under the other certificate holder's FAA approved hazardous material training program under Appendix O of this part; and
(2) The certificate holder who trained the person has the same operations specifications regarding the acceptance, handling, and transport of hazardous materials as the certificate holder using this exception.

§ 121.1001(a)," and does not say that person must be employed directly by the certificate holder. Therefore, DHL employees are allowed to receive only Atlas-specific training in this situation.

In a 2014 legal interpretation, the FAA stated that the term "certificate holder" in § 121.1005(c) refers to another part 121 or 135 certificate holder, which Airborne Express is.[2] Accordingly, as long as Airborne Express holds a part 121 or 135 certificate, has the same operations specifications (i.e. an authorization permitting the acceptance, handling, and transport of hazardous materials) to those held by Atlas Air, and has trained the DHL employees for that specific job function with respect to their own operations, they (Airborne Express) may also train DHL employees to perform § 121.1001(a) functions on behalf of the Atlas Air certificate with only Atlas differences.

We appreciate your patience and trust that the above responds to your inquiry. If you need further assistance, please contact my staff at (202) 267-3073. This response was prepared by Courtney Freeman, an attorney in the Regulations Division of the Office of the Chief Counsel, and coordinated with the Flight Standards Service and the Office of Security and Hazardous Materials Safety.

[2]Legal Interpretation from Mark Bury to Robert Cohn, February 24, 2014.

Federal Aviation
Administration

Memorandum

Date: DEC - 3 2015

From: Brendan A. Kelly, Manager, Northeast Team, AGC-300

To: Lawrence M. Fields, Manager, Flight Standards Division, AEA-200

cc: Manager, Operations Law Branch, AGC-220

Prepared by: Jeanine Gotimer, Senior Attorney

Subject: Information: Request for Interpretation: Hazmat Training by Airborne Express for DHL Contract Employees to Load/Offload Atlas Aircraft

This is in response to your memo dated September 22, 2015 requesting an interpretation of whether an air carrier (Atlas Air, Inc.) can use the contract employees (DHL employees) of another air carrier (Airborne Express (ABX)) to perform hazmat functions pursuant to 14 CFR 121.1005, when those contract employees are trained on the second air carrier's (ABX's) approved hazmat program with "differences" training where the approved hazmat training programs of the two air carriers differ.

This office has been advised by our Operations Law Branch, AGC-220, that internal requests for interpretation, such as this, must be routed through AFS-1 to the Manager, Operations Branch, AGC-220.

Therefore, we are referring this matter to you for coordination and routing through AFS-1 to the Manager, Operations Branch, AGC-220 for an interpretation of 14 CFR 121.1005.

Please contact Jeanine Gotimer at (718) 553-3272 if you would like to discuss or have any questions.

Attachments:

Memorandum DHL HAZMAT Training
International Determination
Atlas Air Letter of Investigation

Federal Aviation Administration

Memorandum

Date: SEP 22 2015

To: Brendan A. Kelly, Managing Attorney, Northeast Team, AGC-300
Stephen Joseph, Office of Security and Hazardous Materials Safety, AHE-500

From: for Lawrence Fields, Manager, Flight Standards Division, AEA-200

Prepared by: Stephen Carbone: 703-230-7664 X269

Subject: Interpretation of Atlas Air Training with Regards to Contractor DHL

The New York Flight Standards District Office (FSDO) Certificate Management Team (CMT) for Atlas Air Inc. (UIEA) has requested interpretation and determination of the validity of hazardous materials training provided by Airborne Express to employees of their contractor DHL to load/off-load Atlas Air aircraft.

The question relates back to Title 14 Code of Federal Regulations 121.1005. DHL is not an active Part 121 operator. It does not have its own program, nor does it have its own fleet of aircraft that it applies the acquired training to, and thus should be required to receive full training from Atlas Air Inc.

Please note that the New York FSDO has a concern: Can DHL (a non-Part 121 operator) load hazmat on Atlas Air aircraft when in fact they have not been trained by Atlas Air, but have received training from Airborne Express with Atlas differences?

If more information is required, please contact Robert Jaffe, Manager, Air Carrier Technical Branch, AEA-240 at 718-995-5436 or the New York FSDO. If advice is made directly to the FSDO, kindly copy this office.

Attachments

Memorandum DHL HAZMAT Training
International Determination
Atlas Air Letter of Investigation

AFS-200-160412-001