U.S. Department
of Transportation
**Federal Aviation
Administration**

Office of the Chief Counsel

800 Independence Ave., S.W.
Washington, D.C. 20591

3/11/2024

Scott Van Valin
Director of Operations
Island Air Express
P.O. Box 1174
Craig, Alaska 99921

Dear Scott Van Valin:

We received your letter dated January 23, 2024, requesting an interpretation of sections 135.85 and 135.113 of Title 14 of the Code of Federal Regulations (CFR). Specifically, you asked whether section 135.113 is a passenger-carrying requirement within the meaning of the prefatory language in section 135.85 and, accordingly, whether an employee of a certificate holder may occupy a pilot seat without meeting the criteria set forth in section 135.113. We have determined that your request is appropriate for legal interpretation because it is novel.

As a threshold matter, we note that section 135.113 only applies when an aircraft has a passenger seating configuration, excluding any pilot seat, of more than eight seats. There are no prohibitions on an employee of a certificate holder occupying a pilot seat when an aircraft has eight or fewer passenger seats. We also note that an aircraft that has a passenger seating configuration, excluding any pilot seat, of ten seats or more requires a second in command. *See* 14 CFR § 135.99(b). While your request did not identify the passenger-seating configuration of the aircraft(s) you operate, as a practical matter, it would be operationally impossible for a person other than the pilot in command or second in command to occupy a pilot seat when an aircraft has ten or more passenger seats. Accordingly, the following response applies to aircraft with a passenger-seating configuration of nine seats.

For background, 14 CFR § 110.2 defines a "passenger-carrying operation" as any aircraft operation carrying any person, unless the only persons on the aircraft are those identified in sections 121.583(a) or 135.85. For 135 operations, this means that an operation is considered "passenger-carrying" unless the only persons on the aircraft are those listed in 14 CFR § 135.85(a)-(h). Your request did not state whether you seek to have an employee occupy a pilot seat when the only persons on the aircraft are crewmembers or employees (or are otherwise listed in 14 CFR § 135.85(a)-(h)); or, alternatively, whether you seek to have an employee occupy a pilot seat when there are other persons onboard that are not listed in 14 CFR § 135.85(a)-(h). The answer to your question will vary, as described below, depending on which scenario you intended.

An operation where the *only* persons onboard the aircraft are crewmembers or employees of the certificate holder, or any other person identified in 135.85(b)-(h), would not be considered a

passenger-carrying operation. Thus, section 135.113, which is a passenger-carrying requirement,[1] would not apply to that operation and an employee of the certificate holder would be able to occupy a pilot seat without meeting the criteria listed in section 135.113.

In contrast, if there are any persons onboard the aircraft that are not listed in 14 CFR § 135.85(a)-(h), then the operation is considered a passenger-carrying operation, and the prohibition on a person occupying a pilot seat in section 135.113 would apply. In such an operation, if the aircraft has more than eight passenger seats, the only persons who may occupy a pilot seat are those listed in section 135.113, specifically the pilot in command, a second in command, a company check airman, or an authorized representative of the Administrator, the National Transportation Safety Board, or the United States Postal Service. Thus, an employee who does not meet one of these criteria would not be able to occupy a pilot seat.

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 response was prepared by Casey Gardner, Senior Attorney in the Regulations Division of the Office of the Chief Counsel, and coordinated with the Air Transportation Division of the Office of Safety Standards in the Flight Standards Service.

Sincerely,

LAURA JANE MEGAN-POSCH

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Date: 2024.03.11 07:13:18 -04'00'

Laura Megan-Posch
Assistant Chief Counsel for Regulations

[1] We have previously explained that a similar regulation applicable to part 121 operations, 14 CFR § 121.547(c), which governs admissions to the flight deck when a passenger seat is unavailable, is a passenger-carrying requirement that does not apply when the only persons aboard the aircraft are those listed in section 121.583(a). *See* Legal Interpretation to Captain David Webb**,** July 23, 2001 ("The requirements pertaining to *passengers* in Section 121.547 are contained in the introductory text of paragraph (c). Thus, for all-cargo operations (i.e., those operations in which the only people aboard the aircraft are those listed in Section 121.583(a)), the air carrier is excused from complying with the passenger requirements in Section 121.547 (i.e., those contained in the introductory text of paragraph (c) of that section).").