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

Office of the Chief Counsel

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

APR 10 2009

Mr. Michael A Moulis, Esq.
Moulis & Associates, PA
1100 Lee Wagener Blvd. Suite 114
Ft. Lauderdale, Florida 33315

Dear Mr. Moulis:

This responds to your letter dated November 26, 2008. In that letter you present the following factual scenario:

> A FAR Part 121 Air Carrier is awarded a contract from the Department of Defense (hereinafter referred to as "contract"). The Department of Defense contract requires a FAR Part 121 Air Carrier to use its 121 training program to train active duty military pilots and eventually allow for the issuance of an Airline Transport Pilot Certificate with a type rating.

You specifically request an interpretation of the following question:

> May a crewmember on active duty with a branch of the armed services utilize an FAR Part 121 Air Carrier's training program which leads to a check-ride, upon completion of which the crewmember will be issued a US ATP certificate with a Type Rating (either by the carrier's APD (aircrew program designee) or FAA inspector).

You state that you believe any training conducted by the air carrier under the contract you describe is contrary to the regulations. You state that the regulations permit an air carrier certificated to conduct operations under Title 14, Code of Federal Regulations (14 CFR) part 121 "to train its own pilots or the pilots of another air carrier utilizing the same type of aircraft." You further state that the carrier "must have a 142 certificate to train pilots who are not from another Part 121 air carrier." You conclude that "accordingly, since the military pilots are not from another FAR, Part 121 air carrier, they may not be trained under the Department of Defense Contract."

Subpart N of part 121 sets forth the requirements for establishing and maintaining training programs for crewmembers, aircraft dispatchers, and operations personnel of certificate holders conducting operations under that part. Section 121.402 specifically permits a certificate holder conducting operations under part 121, or a flight training center certificated under part 142, to provide training, testing, and checking to another certificate holder conducting operations under part 121. However, neither that section, nor other

sections within subpart N, applies to training provided to persons who are not subject to the requirements of that part.

A certificate holder conducting operations under part 121 or 135 may also use an alternative method (know as an "Advanced Qualification Program (AQP)) to qualify train, certify, and otherwise ensure competency of its crewmembers, aircraft dispatchers, other operations personnel, instructors, and evaluators who are required to be trained under those parts. A certificate holder must obtain approval of each curriculum in its AQP. An AQP, however, only serves as an alternative means for certificate holders conducting operations under parts 121 or 135 to meet applicable training requirements. It does not address the provision of training to other certificate holders or entities.

The regulations applicable to the issuance of pilot certificates, to include the training necessary to obtain those certificates, are found in 14 CFR part 61. An additional means to accomplish the training required by that part (and parts 63, 91, 121, 125, 135 and 137) is also found in part 142. That part became effective on August 1, 1996 (61 FR 34507; July 2, 1996). Notice 92-10, which proposed that part (57 FR 35888; August 11, 1992), would have required certificate holders conducting operations under part 121 to obtain a certificate issued under part 142 when providing training, testing, or checking to persons other than employees of the certificate holder. Several commenters correctly asserted that the proposal "would preclude part 121 certificate holders from providing training to other persons without being certified under part 142." Although the agency revised its original proposal to permit air carriers to train aircrews of other air carriers, the FAA stated in its response that it "agrees that the commenters' analysis is true to the extent that a part 142 certificate will be required for training, testing, and checking offered to persons other than aircrew employees of another part 121 certificate holder" (61 FR 34531).

The agency further noted in the final rule that "part 121 and part 135 certificate holders will continue to train personnel under those parts; however those certificate holders will be required to acquire a part 142 training certificate in order to conduct training, testing, and checking for persons not subject to those parts" (61 FR 34510). Accordingly, a certificate holder conducting operations under part 121 that intends to conduct training, testing, and checking for a person other than its own employees or the employees of another certificate holder who seek to meet the certification or training requirements of part 61 or 121 must conduct that training in accordance with the provisions of part 142 or an exemption issued under part 11. Airman certificates and type ratings could not be issued unless the applicable training and testing were conducted in accordance with these provisions.

It should be noted however, that part 142 is an alternative means to accomplish training that is required by other parts of the regulations. If an air carrier conducting operations under part 121 is awarded a contract to conduct training for the Department of Defense and the training is not being used to accomplish training required by parts 61, 63, 91, 121, 125, 135 and 137 (as specified in § 142.1) the provision of such training would not be considered training, testing, or checking subject to the regulatory provisions of part 142. The FAA would therefore permit such activity to be conducted. It would not, however, be conducted under the privileges of the air carrier's certificate but rather under the specific provisions of

the contract to meet specific DOD requirements. It could not be used to meet the requirements of those parts specified in § 142.1 nor result in the issuance of a pilot certificate or type rating unless the training and testing is conducted in accordance with the applicable provisions of part 61.

In your letter you also question whether an air carrier would be in violation of the regulations if it issued an airline transport pilot certificate or type rating upon completion of the training. Upon completion of the required training the appropriate certificate or rating is issued by the FAA, not the air carrier.

This interpretation was prepared by Paul Greer, an attorney in the Regulations Division of the Office of the Chief Counsel, and was coordinated with the Air Transportation Division (AFS-200) of the Flight Standards Service. If you have additional questions regarding this matter, please contact us at your convenience at (202) 267-3073.

Sincerely,

Rebecca B. MacPherson
Assistant Chief Counsel for Regulations, AGC-200