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

Office of the Chief Counsel

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

NOV 10 2010

Mr. Gerald G. Hester
[redacted]

Dear Mr. Hester:

This letter is provided in response to your letter dated May 20, 2010, to Rebecca MacPherson, Assistant Chief Counsel for Regulations requesting a legal interpretation. Specifically, you sought an interpretation regarding the applicability of 14 C.F.R. § 121.383(d)(1)[1] to an entity seeking authority to operate under part 121. Specifically, you requested information as to whether, during the part 121 application for certification process, the agency may require an applicant for a part 121 certificate to stop using the services of a person as a pilot who has reached his or her 65th birthday.

The restriction in 14 C.F.R. § 121.383(d)(1) limits the actual use of the services of a person who reaches his or her 65th birthday as a pilot in an operation conducted under the operating rules of part 121. Therefore, it would not be contrary to 14 C.F.R. § 121.383(d)(1) for an air carrier to use the services of a person as a pilot whose age exceeds the limitations in § 121.383(d)(1) as long as those operations do not take place under the part 121 operating rules.

Further, we note that while an applicant for a part 121 certificate may be required to submit certain documents to the agency for review (e.g., manuals) and demonstrate certain operating procedures (e.g., training, testing and inspection) during the part 121 certification process, the requirement to comply with 14 C.F.R. § 121.383(d) is not triggered until a part 121 operating certificate is issued. *See* FAA Order 8900.1, Volume 2, Chapter 2, Section 4; Advisory Circular 120-49. In other words, at no point during the certification process is an applicant required to comply with 14 C.F.R. § 121.383(d)(1) because during this time, there is no applicable part 121 operating certificate.

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[1] 14 C.F.R. § 121.383(d) states,

> (d) No certificate holder may:
>
> (1) Use the services of any person as a pilot on an airplane engaged in operations under this part if that person has reached his or her 65th birthday.
>
> (2) Use the services of any person as a pilot in command in operations under this part between the United States and another country, or in operations between other countries, if that person has reached his or her 60th birthday unless there is another pilot in the flight deck crew who has not yet attained 60 years of age.

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 Sara Mikolop, Attorney, Operations Law Branch of the Regulations Division of the Office of the Chief Counsel, and coordinated with the Air Transportation Division of the Flight Standards Service.

Sincerely,

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