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

Office of the Chief Counsel

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

AUG 11 2011

Mr. J.M. Airey
Inder Lynch
621 Great South Road
P.O. Box 76-745, Manukau City 2241
New Zealand

Dear Mr. Airey:

This responds to your letter of February 4, 2011 requesting an interpretation of the age 65 requirements for pilots operating under 14 C.F. R part 129 within the United States. In a letter to the Flight Standards Division on July 7, 2011, you offered the following clarification-

> "...the query that we wish to raise is whether ANY co pilot on the operating flight crew (regardless of rank) who is licensed under New Zealand law to operate the aircraft as pilot-in-command throughout all phases of flight and holds the appropriate type rating may fulfill the requirement of "the other" pilot when the pilot in command is aged over 60 years of age but under 65 years of age. Put another way, is it permissible for the pilot-in-command and one co-pilot to be aged over 60 years if another co pilot on the flight crew is aged under 60 years, even though the under 60 pilot may not be at the controls of the aircraft throughout all phases of flight, despite being fully licensed and qualified to do so?"

Under 14 CFR §129.5, each foreign air carrier conducting operations within the United States must conduct its operations in accordance with the standards contained in Annex 1 (Personnel Licensing) and Annex 6 (Operation of Aircraft). Annex 1 states that –

> A Contracting State, having issued pilot licences, shall not permit the holders thereof to act as pilot-in-command of an aircraft engaged in international commercial air transport operations if the licence holders have attained their 60th birthday or, in the case of operations with more than one pilot where the other pilot is younger than 60 years of age, their 65.th

See Annex 1, 2.1.10.1

The International Civil Aviation Organization (ICAO) has issued guidance[1] clarifying the age 65 limitation provision of Annex 1 for operations involving augmented flight crews as follows-

> In commercial long-range air transport, the designated flight crew may be augmented, and can number three, four or even more pilots. In the case of flight crew comprising more than two pilots, the intent of §2.1.10.1 is to ensure that, when the pilot-in-command is over 60 but less than 65 years of age, the operating flight crew includes at least one other pilot, who is licensed, appropriately rated for all phases of flight, current, and younger than 60 years of age. It is *suggested* that during high workload phases of flight (such as flight below 10,000 feet above ground level) at least one pilot seated at the controls should be under 60 years of age (emphasis added).

For certain domestic operators, the FAA requires required flight crew members on flight deck duty to remain at the assigned duty station for take off and landing and while the aircraft is en route (except for certain limited circumstances). (*See* 14 CFR §121.543). The FAA does not apply this same requirement to foreign air carriers operating within the United States because there is no mandatory ICAO standard to have one pilot under age 60 seated at the controls during high workload phases. As noted in previous FAA interpretations,[2] the FAA applies the ICAO pilot age rules to pilots employed by foreign air carriers who operate within the United States.

Therefore, applying ICAO age 65 rules to your example, the answer to your two-part question is:

> (1) One pilot (who could be the co-pilot) in an augmented flight crew must be under 60 years of age, and
>
> (2) The pilot who is under 60 years of age need not be seated at the controls of the aircraft throughout all phases of flight.

This response was prepared by Lorna John, Senior Attorney in the Regulations Division of the Office of the Chief Counsel and coordinated with the International Programs and Policy Division of the Flight Standards Service and within the Office of the Chief Counsel. If we can be of further assistance, please contact us at (202) 267-3073.

Sincerely,

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

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[1] The ICAO guidance is available at http://www.icao.int/icao/en/trivia/peltrgFAQ.htm#30.
[2] See Letter to Jennifer Black from Rebecca MacPherson, June 19, 2009