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

Office of the Chief Counsel
800 Independence Ave., SW.
Washington, DC 20591

JUN 29 2012

Mr. Jim Roberts
Partner, Hesketh Henry
41 Shortland Street
Private Bag 92007, Auckland 1142
New Zealand DX CP 24017

Dear Mr. Roberts:

This letter responds to your request for an interpretation of the pilot age rules applicable to foreign air carriers operating within, or conducting overflights of United States airspace, or operating in international airspace in which the United States provides air traffic control services.[1] You state that New Zealand has not implemented the "Age 60" rule set forth in Annex 1, 2.1.10.1 to the Convention on International Civil Aviation (the Chicago Convention), which establishes an upper age limit of 60 years for pilots engaged in international commercial air transportation, except for operations involving more than one pilot. Additionally, you indicate that New Zealand has filed a difference to that standard with the International Civil Aviation Organization (ICAO). We address each specific question separately.

Question #1

You ask whether the age 60 rule has been in effect for (a) aircraft landing in the United States, aircraft passing through United States controlled airspace, and (b) aircraft passing through international airspace, for example, the Oakland Oceanic Flight Information Region (FIR).

ICAO Annex 1, 2.1.10.1 states-

> A Contracting State, having issued pilot licenses, shall not permit the holders thereof to act as pilot-in-command of an aircraft engaged in international commercial air transport operations if the license 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 65th birthday.

In 2006, the FAA issued an interpretation confirming that the FAA would apply the age 65 limit to pilots employed by foreign air carriers. *See* Letter to George Vilven from Rebecca MacPherson, Assistant Chief Counsel, Regulations Division (December 11, 2006) stating that "[t]he U.S. allows operations in our territory by foreign air carriers that utilize a PIC or second SIC age 60 or over, provided one of them is under the age of 60."

---

[1]While these questions were included in your FOIA submission of February 22, 2012, the FAA has construed that portion of the FOIA as a separate request for interpretation.

On December 13, 2007, the United States enacted the Fair Treatment for Experienced Pilots Act, (the "Act") 49 U.S.C. 44729 that increased the upper age limit for the PIC to 65 years in scheduled international operations conducted under 14 C.F.R. part 121, if there is another pilot on the flight deck crew who is under 60 years.[2] The Act did not alter the existing requirement that foreign air carriers comply with the requirements of Annex 1, 6 and 8. (*See* §129.5(b)[3], formerly §129.11(a)) when operating within U.S. territorial airspace.

Subsequently, in 2009, the FAA clarified that the ICAO standard also applied to overflights of U.S. airspace. *See* Letter to Jennifer Black from Rebecca MacPherson, Assistant Chief Counsel, Regulations Division (June 19, 2009) in which we advised that "[a]s a member state, the U.S. has applied the ICAO standard since its adoption, and the FAA has allowed foreign air carrier pilots under the age of 65 to conduct operations over U.S. airspace, including [designating] U.S. airports as planned alternates." Therefore, as a matter of long-standing policy, the FAA requires the pilot-in-command of a foreign air carrier operation within U.S. territorial airspace to comply with the pilot age standard as it appears in Annex 1, Paragraph 2.1.10.1. However, a foreign air carrier operation where the pilot-in-command does not comply with the international pilot age standard of Annex 1 would be permitted within U.S. territorial airspace where an emergency condition threatened the safety of that flight and required the flight to enter U.S. territorial airspace.

The FAA does not apply the international pilot age standard to foreign pilots operating non-U.S.-registered aircraft in international airspace controlled by the United States, such as the Oakland Oceanic FIR.[4]

Question #2.

You also ask whether the difference to the ICAO standard filed by New Zealand would apply to New Zealand aircraft (a) passing through United States territorial airspace, or (b) passing through international airspace, such as the Oakland Oceanic FIR.

Under Article 33 of the Chicago Convention,[5] Contracting States are not bound to recognize certificates of competency and licenses of other Contracting States where the requirements

---

[2] For domestic operations under part 121, the upper age limit is 65 years for all pilots. *See* §121.383(d)(1).

[3] Section 129.5(b) provides –

> "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), Annex 6 (Operation of Aircraft), Part I (International Commercial Air Transport-Aeroplanes) or Part III (International Operations - Helicopters), as appropriate, and in Annex 8 (Airworthiness of Aircraft) to the Convention on International Civil Aviation."

[4] The FAA is aware of an informal communication referring to the general obligation of ICAO Contracting States to comply with Annex 1 for operations in international airspace, which could be interpreted as an additional FAA requirement. To the extent there is any miscommunication, this letter clarifies FAA's policies.

under which such certificates or licenses were issued or rendered valid do not meet the minimum standards established under the Chicago Convention. The United States allows only those foreign air carriers whose certificates and licenses meet the minimum safety standards[6] established in ICAO Annexes I, 6 and 8 (*see* §129.5) to operate within U.S. territorial airspace. Thus, the filing of a difference serves the purpose of notification only, and the United States has no obligation to allow operations within its territorial airspace that do not meet the applicable ICAO standard. This same rule applies to overflights of U.S. airspace.

As noted above, the FAA does not apply the international pilot age standard to foreign pilots operating non-U.S.-registered aircraft in international airspace controlled by the United States, such as the Oakland Oceanic FIR. Therefore, the filing of a difference for those operations serves the purpose of notification only.

This interpretation was prepared by Lorna John, Senior Attorney, in the Regulations Division of the Office of the Chief Counsel and was coordinated with the International Programs and Policy Division of the Flight Standards Service.

Sincerely,



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

---

[5] Article 33

> Certificates of airworthiness and certificates of competency and licenses issued or rendered valid by the contracting State in which the aircraft is registered, shall be recognized as valid by the other contracting States, provided that the requirements under which such certificates or licenses were issued or rendered valid are equal to or above the minimum standards which may be established from time to time pursuant to this Convention.

[6] In the preamble of the Notice of Proposed Rulemaking for the February 2011 amendment to part 129, at 75 FR 12528, the FAA stated -

> ICAO Annexes contain the international standards for safety, regulation, and efficiency of air Navigation. These international standards define the minimum level of safety necessary for the recognition by Contracting States to the Chicago Convention of certificates of airworthiness, certificates of competency and licenses that allow for the flight of aircraft of other States *into or over* their territories. They also provide for the protection of other aircraft, third parties, and property. *'As with all Contracting States to the Chicago Convention, the United States is obligated to recognize only those certificates of airworthiness, certificates of competency, and licenses issued or rendered valid by another Contracting State. The requirements under which these certificates or licenses are issued or rendered valid by the Contracting State must be equal to or above the minimum standards established by the Chicago Convention.* (Emphasis added.)