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

Office of the Chief Counsel

800 Independence Avenue, SW
Washington, DC 20591

FEB 28 2013

Francis M. DeJoseph
[redacted]

Dear Mr. DeJoseph,

We have reviewed your October 24, 2012 letter directed to the Assistant Chief Counsel for the International Law, Legislation and Regulations Division requesting an interpretation of 14 C.F.R. § 121.402. Specifically, you asked whether § 121.402 allows a part 121 certificate holder to give credit for training completed by a newly hired crewmember while in the employment of another part 121 operator, in order to satisfy the hiring certificate holder's FAA training requirements.

Each part 121 certificate holder is required to ensure that all crewmembers, aircraft dispatchers and operations personnel receive the required training set forth in subpart N (*see* § 121.400); however, the training regulations in subpart N do not differentiate between the level of training required for crewmembers based on previous experience working for another part 121 certificate holder. Section 121.401 obligates each certificate holder to establish and implement a satisfactory training program satisfying the requirements of subpart N. Section 121.402 specifies what entities, other than the certificate holder, may conduct training and checking (testing) of a part 121 certificate holder's crewmembers and specifically provides the conditions under which a part 121 certificate holder may contract with "another certificate holder certificated under this part or a flight training center certificated under part 142..." for the provision of training to its employees.

Section 121.402 was added to subpart N in a 1992 rulemaking entitled "Aircraft Flight Simulator Use in Pilot Training, Testing, and Checking and at Training Centers" (*see* 51 F.R. 35999; 61 F.R. 34508). That rulemaking was primarily focused on the creation of part 142 to establish standardized certification and operating rules for training centers, but also addressed "an expanded use of, and credit for, training, testing, and checking conducted in flight simulators and flight training devices in accordance with approved programs conducted at training facilities and training centers..." (*see* 57 F.R. 35889).

The NPRM explained the addition of §121.402 as follows:

> Under this proposed section, a part 121 certificate holder could provide training, testing, and checking services to others by contract. To provide these services, the certificate holder would have to hold appropriate ratings and specifications issued under part 142 and would have to meet certain other requirements. This proposed section should promote the use of training centers. It also clarifies that an air carrier does not have to repeat the training program elements for which it contracts (*see* 57 F.R. 35899).

In the final rule, the FAA responded to comments and clarified the circumstances under which a part 121 certificate holder may contract out FAA-required training, setting forth that:

> [A] part 121 certificate holder may continue to provide training, testing, and checking to another part 121 certificate holder provided the training meets the requirements of part 121 and the POI of that receiving certificate holder approves the training (*see* 61 F.R. 34530).

Section 121.402 was created to allow a part 121 certificate holder to contract with other certificate holders and training centers for training of its employees. There was no discussion in the final rule indicating that significant comments were received questioning the ability of part 121 certificate holders to credit training received by a crewmember through a previous employer. The rulemaking simply did not contemplate transferring training credits between part 121 certificate holders for the purposes of satisfying the training requirements of a hiring certificate holder. Rather, the issue of "crediting" training was only discussed in the rulemaking documents in the context of expanding credit for training completed in a simulator that was traditionally required to be completed in flight (*see* 61 F.R. at 34509). Moreover, many of the training requirements set forth in subpart N are employer-based and therefore, training is generally not transferable between part 121 air carriers (*see* e.g. §§ 121.415(a)(1)(iii)-(iv)).

However, a reading of § 121.402 independent of the regulatory scheme does not fully answer the question that you raised in your October 2012 letter. Indeed, this provision must be read in the broader context of subpart N.

As indicated above, part 121 currently requires each certificate holder to have a training program, requires all crewmembers to receive the required training under subpart N and essentially treats all new crewmembers the same for purposes of the particular training required. The regulations generally do not provide for part 121 certificate holders to include a system for crediting training from a previous employer in order to satisfy their own obligations. Every crewmember must be trained in all required subject areas and tasks set forth in the training regulations.

However, subpart N does not preclude a hiring certificate holder from minimizing the training time that a new crewmember (with prior training under another part 121 certificate holder) must spend on the required training curricula.[1] Therefore, a part 121 certificate holder may include in its training program, an alternative curriculum (containing all required subjects and tasks) with reduced program hour requirements based on a particular level of

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[1] The part 121 air carrier may develop and submit to the FAA for approval a training plan that includes multiple curricula for a particular category of training, crewmember duty position, and aircraft make, model and series. The curricula may include different programmed hours based on the crewmember's level of previous knowledge and skill that may have been attained while working for another part 121 certificate holder.

previously attained knowledge and skill.[2] Moreover, such a reduced program hour curricula must be submitted and approved by the FAA.

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 Bonnie C. Dragotto, Attorney, and reviewed by Robert Frenzel, Operations Law Branch Manager, International Law, Legislation and Regulations Division of the Office of the Chief Counsel.

Sincerely,

Mark W. Bury
Acting Assistant Chief Counsel for International Law, Legislation and Regulations, AGC-200

[2] The air carrier must clearly specify the prerequisites for entry into each specific reduced curriculum.