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

Office of the Chief Counsel

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

MAY 24 2013

Mr. Dane Jaques
Partner
McKenna Long & Aldridge LLP
1676 International Drive, Penthouse
McLean, VA 22102

Dear Mr. Jaques:

This letter is provided in response to your request for a legal interpretation sent to the Acting Assistant Chief Counsel for International Law, Legislation and Regulations, January 14, 2013. In your request for a legal interpretation, you ask a series of questions regarding the Fair Treatment for Experienced Pilots Act (the Act) and the application of 14 C.F.R. §§ 61.3(j) and 121.383(d)(2) and (e)(2).

The Act added § 44729 to title 49 of the United States Code. Section 44729(c)(1) allows a pilot who has attained 60 years of age to serve as pilot in command (PIC) in part 121 operations between the United States and another country only if there is another pilot in the flight deck crew who has not yet attained 60 years of age.

Following the Act, the agency issued a final rule amending 14 C.F.R. parts 61 and 121. Part 61 of title 14 of the Code of Federal Regulations provides pilot certification requirements as well as limitations regarding a pilot's use of such certificate. Specifically, § 61.3(j) prohibits a person who has reached the age of 60 but who has not reached the age of 65 from serving as PIC unless another pilot on the flight crew is under 60 years of age. This crew pairing limitation applies to pilots conducting operations using an aircraft of U.S. registry that reflect the characteristics in one of the following paragraphs:

> (i) Scheduled international air services carrying passengers in turbojet powered airplanes;
> (ii) Scheduled international air services carrying passengers in airplanes having a passenger-seat configuration of more than nine passenger seats, excluding each crewmember seat;
> (iii)Nonscheduled international air transportation for compensation or hire in airplanes having a passenger-seat configuration of more than 30 passengers seats, excluding each crewmember seat; or
> (iv) Scheduled international air services, or nonscheduled international air transportation for compensation or hire in airplanes having a payload capacity of more than 7,500 pounds.

§ 61.3(j)(1). The terms, "scheduled international air service" and "non-scheduled international air transportation for compensation or hire" as used in § 61.3(j) include operations that pass through the airspace over the territory of more than one country.

Part 121 also contains a crew pairing requirement. Section 121.383(e)(2) prohibits a person from serving as PIC in part 121 operations between two countries if that person has reached his or her 60th birthday but is less than 65 years of age, unless another pilot on the flight crew is under 60 years of age. Section 121.383(d)(2) prohibits an air carrier from using a person as PIC in part 121 operations between two countries if that person has reached his or her 60th birthday but is less than 65 years of age, unless another pilot on the flight crew is under 60 years of age.

Your questions regarding §§ 61.3(j) and 121.383 and responses to those questions are provided below.

Question No. 1: We seek an interpretation of the applicability of these provisions to a situation in which a part 121 flight departs from a location in the United States, transits international airspace, and then lands at a point in the United States without making an intermediary stop.

Question No. 2: If the same part 121 flight described in Question No. 1 were to depart from a location in the continental United States, pass through the airspace over the territory of more than one country, and then land at a point in the United States without making an intermediary stop, would the answer be the same?

Responses to Questions No. 1 and 2: This office recently addressed Questions No. 1 and 2 in a February 6, 2013 legal interpretation provided by Mark W. Bury, Acting Assistant Chief Counsel for International Law, Legislation and Regulations, to Jim Stieve, Sr. Mgr. Certification and Compliance, Southwest Airlines – Operations. For your convenience, we have enclosed a copy of this legal interpretation. If you feel that your questions are not fully addressed in the enclosure, you may submit a request for a legal interpretation that clearly identifies any questions that have not been addressed.

Question No. 3: We also seek an interpretation of the applicability of the Act and the above-referenced regulations to a situation in which a part 121 flight that is not subject to the Act's pilot age-pairing requirements is diverted, as a result of an emergency, to an alternate airport[1] not located within the United States. Are the age-pairing requirements contained in the above-referenced provisions applicable to the diverted flight in this scenario?

[1] We assume that when the request for a legal interpretation refers to an "alternate airport" this term means the alternate airport identified on the dispatch or flight release.

Responses to Question No. 3: Part 121 addresses PIC authority in emergency situations. Sections 121.557(a) (applicable to domestic and flag operations) and 121.559(a) (applicable to supplemental operations) provide that, in an emergency situation that requires immediate decision and action, the pilot in command may take any action that he considers necessary under the circumstances. In such a case, the pilot in command may deviate from prescribed operations, procedures and methods, weather minimums, and this chapter, to the extent required in the interests of safety. *See* 14 CFR §§ 121.557(a) and 121.559(a). As used in §§ 121.557 and 121.559, "this chapter" refers to chapter 1, Federal Aviation Administration, Department of Transportation which includes parts 1 through 199 of title 14 of the Code of Federal Regulations.

Assuming a situation exists that would constitute an emergency under §§ 121.557 and 121.559, the pilot in command may deviate from the crew pairing requirements of parts 61 and 121. We caution that the emergency provisions of §§ 121.557 and 121.559 have been interpreted to apply to an unexpected occurrence or condition requiring immediate action to meet its danger. *See* Legal Interpretation 1979-38. Although a diversion to an alternate airport listed on the flight or dispatch release may involve an emergency, a diversion to an alternate airport does not, in and of itself, constitute an emergency.

Question No. 4: If the same part 121 flight described in Question No. 3 were diverted as a result of a non-emergency situation to a listed alternate airport not located within the United States, would the answer be the same?

Response No. 4: Part 121 contemplates that a flight will proceed to the alternate airport if it cannot continue to the airport to which it has been dispatched or released. *See generally* 14 CFR part 121, subpart U. In those instances in which part 121 requires an alternate airport to be identified in a flight or dispatch release, the requirements to operate to that airport are known in advance of the departure of the flight. Further, part 121 does not provide any exceptions to the crew pairing requirements in §§ 61.3(j) and 121.383. Therefore, unless an emergency contemplated by §§ 121.557(a) or 121.559(a) exists, the flight would be subject to the crew pairing requirements found in §§ 61.3(j) and 121.383.

Question No. 5: When the aircraft described in Questions No. 3 and 4, having diverted to the non-U.S. location, returns to the United States, does the Act and its implementing regulations require that if the pilot in command has attained the age of 60, there must be another pilot in the flight deck crew who has not attained 60 years of age? Or could the aircraft return to the United States using a flight crew that met the requirements applicable to the original intended flight? Would the answer be the same with respect to the return flight of the aircraft described in Question No. 4?

Response No. 5: The request for a legal interpretation does not provide any information regarding the nature of the emergency that would allow us to provide a specific response to a number of issues raised in Question No. 5. However, assuming that the emergency no longer exists when the aircraft described in Question No. 3 returns to the United States, the operator and the PIC are expected to comply with the crew pairing requirements of §§ 121.383 and 61.3(j)(1). The answer would be the same with respect to the return flight of the aircraft described in Question No. 4.

This response was prepared by Sara Mikolop, an attorney in the Regulations Division of the Office of the Chief Counsel, and coordinated with the International Programs and Policy and Air Transportation Divisions of the Flight Standards Service. If you have any additional questions regarding this matter, please contact us at your convenience at (202) 267-3073.

Sincerely,

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

Enclosure

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

Office of the Chief Counsel

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

FEB -6 2013

Mr. Jim Stieve
Sr. Mgr. Certification and Compliance
Southwest Airlines – Operations
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Dallas, TX 75235

Dear Mr. Stieve:

This letter is provided in response to your request for a legal interpretation e-mailed to the Assistant Chief Counsel for International Law, Legislation and Regulations, on October 8, 2012. Specifically, you ask whether a flight that departs Puerto Rico and then lands at a point within the 48 contiguous states of the United States, must comply with the crew pairing requirements of 14 C.F.R. § 61.3(j). In addition, you asked the Assistant Chief Counsel to identify the applicable crew pairing requirements for flights that take-off and land within the 48 contiguous states of the United States and pass through Canadian airspace during the flight. For purposes of this legal interpretation, we assume that the flights will be conducted under the operating requirements of part 121 of title 14.

Part 61 of title 14 of the Code of Federal Regulations provides pilot certification requirements as well as limitations regarding a pilot's use of such certificate. Specifically, 14 C.F.R. § 61.3(j) prohibits a person who has reached the age of 60 but who has not reached the age of 65 from serving as pilot in command (PIC) unless another pilot on the flight crew is under 60 years of age. This crew pairing limitation applies to pilots conducting operations using an aircraft of U.S. registry that reflect the characteristics in one of the following paragraphs:

> (i) Scheduled international air services carrying passengers in turbojet powered airplanes;
> (ii) Scheduled international air services carrying passengers in airplanes having a passenger-seat configuration of more than nine passenger seats, excluding each crewmember seat;
> (iii)Nonscheduled international air transportation for compensation or hire in airplanes having a passenger-seat configuration of more than 30 passengers seats, excluding each crewmember seat; or
> (iv) Scheduled international air services, or nonscheduled international air transportation for compensation or hire in airplanes having a payload capacity of more than 7,500 pounds.

§ 61.3(j)(1). The terms, "scheduled international air service" and "non-scheduled international air transportation for compensation or hire" as used in § 61.3(j) include operations that pass through the airspace over the territory of more than one country.

Part 121 also contains a crew pairing requirement. Section 121.383(e) prohibits a person from serving as PIC in part 121 operations between two countries if that person has reached his or her 60th birthday but is less than 65 years of age, unless another pilot on the flight crew is under 60 years of age.

A pilot relying on a certificate issued under part 61 of title 14 of the Code of Federal Regulations when serving in operations under part 121 of title 14 of the Code of Federal Regulations, must satisfy the requirements of both parts because part 61 applies to the exercise of the pilot's certificate and part 121 applies to the operation in which the pilot serves. Accordingly, both § 121.383(e) and § 61.3(j) apply to pilots conducting part 121 operations if the operational characteristics of the flight meet the characteristics described in § 61.3(j)(1). This means that pilots who conduct part 121 operations that depart Puerto Rico, pass through the airspace over the territory of a country other than the United States, and then land at a point within the 48 contiguous states of the United States, must comply with the crew pairing requirements of § 61.3(j) if the operational characteristics of the flight are covered by that section.[1] This same analysis applies to a flight that takes-off and lands within the contiguous states of the United States but passes through the airspace over the territory of a country other than the United States (e.g. a cross country flight that passes through Canadian airspace).

This response was prepared by Sara Mikolop, an attorney in the Regulations Division of the Office of the Chief Counsel, and coordinated with the International Programs and Policy and Air Transportation Divisions of the Flight Standards Service. If you have any additional questions regarding this matter, please contact us at your convenience at (202) 267-3073.

Sincerely,

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

[1] The information contained in the FTEPA FAQ document available at http://www.faa.gov/other_visit/aviation_industry/airline_operators/airline_safety/info/all_infos/media/age65_qa.pdf reflects the requirements of the Fair Treatment of Experienced Pilot Act requirements only.