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

Office of the Chief Counsel

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

FEB 19 2013

Mr. Glen Kenny
President, New Zealand Air Line Pilots' Association
3 Airpark Drive, Mangere
P.O. Box 53183
Auckland Airport, Manukau 2150
New Zealand

Dear Mr. Kenny:

This letter is provided in response to your letter dated August 24, 2011, to Mr. John Allen, Director of the Federal Aviation Administration (FAA) Flight Standards Service. In your letter, you asked for an interpretation of the FAA's application of International Civil Aviation Organization (ICAO) Standard 2.1.10.1 and the application of agency guidance material related to the Standard to operations conducted by Air New Zealand into the United States.

Specifically, you ask the following three questions regarding ICAO standard 2.1.10.1 and the FAA's application of the standard:

> 1. In the opinion of the FAA, and with reference to the CFRs, Operations Specifications and FAA Order 8900.1[1] does the Air New Zealand Second Officer fulfill the ICAO paragraph 2.1.10.1 Standard requirement to be the "other pilot" if they are under the age of 60 and therefore meet the "pairing restriction" requirement applicable to that Standard?
>
> 2. Does the Second Officer also fulfill the FAA Order 8900.1 requirement to be "one of the two remaining pilots" if they are under age 60?
>
> 3. If the FAA's answers to questions 1 and 2 are "No," would the answers be different if New Zealand Civil Aviation exemption to Rule Part 121.569 and the associated restrictions applicable to it were not in place for Air New Zealand Second Officers, when operating flights to the United States?

The FAA requires compliance 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. *See* 14 C.F.R. § 129.5. In implementing §129.5, the FAA stated in the preamble to the rule –

> 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

[1] In February 2011, the FAA amended part 129 to clarify the operating requirements for part 129 air carriers; therefore, we do not address previously issued inspector guidance in FAA Order 8900.1.

> 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 the Contracting State. The requirements under which these certificates or licenses were issued or rendered valid by the Contracting State must be equal to or above the minimum standards established by the Chicago Convention.

As noted in your request for an interpretation, Annex I (Personnel Licensing) limits the age of pilots in command of aircraft engaged in international commercial air transport operations. 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.

The FAA has consistently applied the age pairing requirement of the ICAO standard to foreign air carriers operating within the United States. *See* Letter to Mr. J.M. Airey from Rebecca B. MacPherson, August 11, 2011. The rule has also been applied to overflights of United States airspace. *See* Letter to Mr. Jim Roberts from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations, June 29, 2012.

In your request for an interpretation, you ask whether the Second Officer may fulfill the requirement to be the "other pilot" if that pilot is under age 60. We assume this question refers to operations involving augmented flight crews. ICAO has clarified the age 65 limitation provision of Annex 1 for operations involving augmented flight crews in guidance material. ICAO advised that:

> [i]n 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.

Personnel Licensing Frequently Asked Questions, Licenses and ratings for pilots, Age limit for flight crew, ICAO, http://www.icao.int/safety/AirNavigation/Pages/peltrgFAQ.aspx#anchor23, visited January 26, 2013.

Based on the ICAO standard, as clarified in the ICAO guidance, the New Zealand Second Officer may serve as the other pilot of an augmented flight crew, only if that pilot *is licensed, appropriately rated for all phases of flight, current, and younger than 60 years of age*. *See* Letter to Mr. J.M. Airey from Rebecca B. MacPherson, August 11, 2011.

In framing your third question, you indicate that under an exemption in the New Zealand Civil Aviation Rules, the New Zealand Second Officer is not required to complete the normally required take-off and landings in the actual aircraft after type rating. You also state that New Zealand has filed a difference to the relevant ICAO standard. As noted earlier, for overflights and operations within the United States, when a pilot-in-command is 60 or over, a pilot under age 60 must be assigned to the flightcrew and *must be qualified for all phases of flight in accordance with Annexes 1 and 6.* If the Air New Zealand Second Officer does not complete the takeoffs and landings required of a pilot serving as PIC or co-pilot, the New Zealand Second Officer would not be fully qualified for all phases of flight as required by ICAO and would therefore not meet the age 65 crew pairing requirement.

With regard to the filing of a difference, we previously addressed this issue as follows:

> Under Article 33 of the Chicago Convention Contracting States are not bound to recognize certificates of competency and licenses of other Contracting States where the requirements 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 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.

See Letter to Jim Roberts from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations, June 29, 2012. Thus, even if New Zealand has filed a difference to the applicable ICAO standard, the New Zealand Second Officer's qualifications would not meet or exceed the ICAO standard for a pilot-in-command or co-pilot, and the air carrier would not comply with §129.5.

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 coordinated with the International Programs and Policy and Air Transportation Divisions of the Flight Standards Service.

Sincerely,

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