Federal Aviation Administration

Memorandum

Date: JUN 10 2013

To: Hugh Thomas, Supervisory POI, United Air Lines Certificate Management Office, CMO-33

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

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Subject: Legal interpretation regarding logging flight time towards the pilot operating experience requirements set forth in 14 C.F.R. § 121.434(c) and (g)

We received your March 2013 letter requesting an interpretation of the operating experience requirements set forth in 14 C.F.R. § 121.434(c) and (g) with regard to logging flight time. You specifically asked whether the time a pilot spends resting during a given flight segment may be counted towards the hours of operating experience required in § 121.434(c)(3) and (g). Indeed, you indicated that some part 121 operators may be counting all of the time a pilot spends "airborne," including rest time, to satisfy the operating experience requirements set forth in the rule. As explained below, a pilot may only log flight time when he/she is seated at the controls of the airplane and actually performing the piloting duties required for purposes of meeting the operating experience requirements in § 121.434.

Subsection 121.434(c) details the parameters for pilots to earn the operating experience that is required generally in paragraph (a) of this section. In order for a pilot in command ("PIC") to acquire the required operating experience, paragraph (c)(1)(i) specifically provides that a PIC "must *perform the duties* of a pilot in command under the supervision of a check pilot." *See* § 121.434(c)(1)(i) (emphasis added). Additionally, as provided in paragraph (c)(2), second in command ("SIC") pilots "must *perform the duties* of a second in command under the supervision of an appropriately qualified check pilot" to acquire operating experience. *See* § 121.434(c)(2) (emphasis added). Paragraph (c)(3) sets forth the minimum number of hours of operating experience and operating cycles that must be completed by pilots, which is based on the type of airplane and training curriculum.[1]

[1] For example, 25 hours of operating experience are required for initial training in Group II airplanes. *See* § 121.434(c)(3)(i).

Subsection 121.434(g) requires PIC's and SIC's to complete "at least 100 hours of line operating flight time for consolidation of knowledge and skills (including operating experience required under paragraph (c) of this section)" within a specified time period to ensure that newly-acquired skills are used in actual operations as soon as possible after they are acquired. *See* § 121.434(g).

The operating experience requirements in § 121.434 were initially added to part 121 in 1970. *See* 35 Fed. Reg. 84, 95. Historically, this section has consistently provided that PIC's must "perform the duties of a pilot in command" to earn operating experience. *Id.* at 96. However, as initially codified, an SIC could "perform the duties of a second in command under the supervision of a check pilot" or "observe the performance of those duties on the flight deck" to earn operating experience under § 121.434. *Id.* By explicitly applying the observation option to SIC's only and not applying it to PIC's in the text of § 121.434, the regulation drew a distinction between PIC's and SIC's. The agency made its intent clear. PIC's could earn operating experience only when performing the duties required of a PIC, *i.e.* while seated at the controls.

In 1995, the FAA issued a final rule amending the operating experience requirements in § 121.434 by revising the existing requirements and adding new requirements for consolidation of knowledge and skills. *See* 60 Fed. Reg. 20,858. The rulemaking responded to accidents that had occurred at least, in part, due to the inexperience of flightcrew members and resulting NTSB recommendations. *Id.* at 20,858-59; *see also* NTSB Recommendation A-88-138 (Nov. 3, 1988).[2] In particular, the NTSB noted that the provision in § 121.434 permitting SIC's to obtain operating experience through observation in the jumpseat "reduces the opportunity for the 'hands on' aspects of the [initial operating experience]" and results in "a loss of the check pilot's ability to evaluate the performance of the first officer. *See* NTSB Recommendation A-88-138 at 5-6. As part of the final rule, the option allowing SIC's to earn operating experience through observation was removed from the regulation. *See* 60 Fed. Reg. at 20,869-70.

The plain language of the regulation as well as the rulemaking history demonstrate that PIC's and SIC's must actually "perform the duties" required of a PIC or SIC to acquire operating experience to satisfy the requirements in § 121.434. Since the 1995 amendment to § 121.434, PIC's and SIC's have been held to a similar standard for purposes of logging flight time for operating experience. Indeed, SIC's may no longer earn operating experience through observation. Accordingly, time spent by a pilot while not seated at the controls, including time spent resting as required by subparts Q, R, and S of part 121, cannot be counted to satisfy the pilot operating experience requirements of § 121.434 for a PIC or SIC.

In your letter, you provided a sample itinerary for a regularly scheduled round trip flight from San Francisco to Melbourne, during which operating experience might be obtained by the PIC or SIC for purposes of meeting the training requirements in part 121.[3] You requested a determination of the appropriate amount of time that may be counted towards the minimum hour

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[2] NTSB recommendation A-88-138 set forth that the FAA should "amend 14 C.F.R. § 121.434 to require that a second-in-command pilot complete initial operating experience for that position while actually performing the duties of a second-in-command under the supervision of a check pilot."

[3] For purposes of this interpretation, our analysis assumes the operator uses a training program in accordance with subparts N and O of part 121.

requirements in § 121.434(c)(3)(i)[4] and (g). A breakdown of time spent by the pilot at the controls versus time spent resting or "on break" was provided as follows to guide our analysis:

Total flight time = 31 hours, 10 minutes
Total break/rest time = 12 hours, 27 minutes
Total time seated at controls under supervision of check pilot = 18 hours, 43 minutes

We conclude that the amount of time that may be counted towards the operating experience requirements in § 121.434 is the 18 hours and 43 minutes of flight time that the pilot spent seated at the controls under supervision of the check pilot, since this is the time actually spent performing piloting duties. The outcome is the same whether the pilot is earning operating experience as a PIC or SIC and whether the pilot is gaining operating experience to meet the requirements for initial, upgrade or transition training in paragraph (c) or for consolidation in paragraph (g). As explained above, the time a pilot spends resting, or otherwise away from the controls, is not time when the pilot is "performing the duties" required of a PIC or SIC and therefore cannot be counted to satisfy the pilot's operating experience requirements.

This response was coordinated with the Air Transportation Division of Flight Standards Service. If you need further assistance, please contact our office at (202) 267-3073.

[4] Subsection 121.434(c)(3)(i) requires 15 hours of operating experience in Group I reciprocating powered airplanes, 20 hours in Group I turbopropeller powered airplanes, and 25 hours in Group II airplanes for initial training.