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

Office of the Chief Counsel

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

JUL 16 2014

Richard Durden
General Counsel
Gulf & Caribbean Cargo, Inc.
6860 South Service Drive
Waterford, MI 48327

This letter is provided in response to your request for a legal interpretation sent to me on March 14, 2014. In your request, you ask a number of questions related to 14 CFR § 121.436(a)(3) which identifies the experience-related prerequisite for serving as pilot in command (PIC) in part 121 operations.

Section 121.436(a)(3) provides the requirement for a pilot to have 1,000 hours of air carrier operations experience prior to serving as PIC in part 121 operations. The 1,000 hours of air carrier operations experience may be a combination of time serving as second in command (SIC) in part 121 operations or serving as PIC in operations conducted under §§ 91.1053(a)(2)(i) or 135.243(a)(1). Pilots serving as PIC in part 121 operations on July 31, 2013, are excepted from the 1,000-hour air carrier operations experience requirement.[1]

Operations Under Part 121

In your request for a legal interpretation, you ask for clarification of the phrase, "operations under this part" as it is used in § 121.436(a)(3), a regulation within part 121 of title 14 of the Code of Federal Regulations. In satisfying the § 121.436(a)(3) requirement for 1,000 hours of air carrier experience prior to serving as PIC in part 121 operations, a pilot may receive credit for "hours as second in command in operations under this part..."

For pilots seeking to satisfy the § 121.436(a)(3) experience prerequisite through "hours as second in command in operations under this part..." only those flight hours accrued during operations conducted under the operating rules of part 121 may be credited. This means that flight time accrued during operations conducted under the operating rules of part 91, including repositioning flights and flight training conducted in a flight simulation training device are not considered operations under part 121 for purposes of satisfying the § 121.436(a)(3) experience prerequisite.

---

[1] § 121.436(a)(3) prohibits a certificate holder from using a pilot as PIC and prohibits a pilot from acting as PIC unless the pilot: "[H]as 1,000 hours as second in command in operations under this part, pilot in command in operations under § 91.1053(a)(2)(i) of this chapter, pilot in command in operations under § 135.243(a)(1) of this chapter, or any combination thereof. For those pilots who are employed as pilot in command in part 121 operations on July 31, 2013, compliance with the requirements of this paragraph (a)(3) is not required."

Documenting Flight Time to Satisfy PIC Experience Requirement

In your request for a legal interpretation, you questioned the extent of a certificate holder's obligation for determining compliance with the requirements of § 121.436(a)(3). The request for a legal interpretation also included a description of potential challenges that could arise as one attempts to distinguish in a pilot log book, the flight time in part 121 operations versus operations subject to other parts of title 14.

The introductory paragraph in § 121.436(a) prohibits a pilot from serving as PIC in an aircraft in part 121 operations and also prohibits a certificate holder from using a pilot as PIC in part 121 operations unless the pilot meets all of the requirements in paragraphs (a)(1) – (a)(3). Accordingly, both pilots and certificate holders are responsible for compliance with § 121.436(a).

The agency recognizes that pilots may have started to accrue the experience required by § 121.436(a)(3) prior to the effective date of the provision and prior to employment with the certificate holder.[2] While some pilots may not have identified in their log book the part under which a particular flight was operated, there are other means by which a certificate holder may ascertain whether a pilot's flight time could be used to satisfy the experience prerequisite in § 121.436(a)(3) (e.g., evaluation of relevant employment history and N numbers identified in the pilot's log book).

We note that pilots are free to record as much detail as they wish in their log books. For ease of demonstrating compliance with this provision, pilots anticipating future employment with a certificate holder conducting part 121 operations may wish to include in their log books, more detail about each flight that could satisfy the § 121.436(a)(3) experience requirements.

PIC Experience Prior to July 31, 2013

In your request for a legal interpretation you question how a pilot who was not employed on July 31, 2013, but has more than 10,000 hours as PIC in part 121 operations could comply with the experience-related requirements in § 121.436(a)(3).[3] In a prior legal interpretation, we addressed the issue of pilots with prior service as PIC in part 121 operations but who were not employed on July 31, 2013. *See* Legal Interpretation from Mark W. Bury to Zachary Kelley (March 7, 2014).

The requirement for 1,000 hours of experience prior to serving as PIC in operations under part 121 may be met with a combination of time serving as PIC in operations conducted under § 91.1053(a)(2)(i) or § 135.243(a)(1) or as SIC in part 121 operations. Experience as a PIC in part 121 operations is addressed by excepting those pilots employed as PIC in part

---

[2] The experience prerequisite applies to PICs newly hired by the certificate holder as well as to an SIC currently employed by the certificate holder and completing the certificate holder's upgrade curriculum.

[3] We note that in this factual scenario, you stated that this pilot had more than 1,000 hours as SIC in part 121 operations but could not provide evidence of such experience. Please see the discussion under the heading, "Documenting Flight Time to Satisfy PIC Experience Requirement" for discussion on this issue.

121 operations *on* July 31, 2013, from § 121.436(a)(3). Thus, the 1,000 hours as PIC in part 121 operations prior to July 31, 2013 could not be used to satisfy the § 121.436(a)(3) air carrier experience requirement. We note, however, that the agency may consider a petition for exemption based on experience as a PIC in part 121 operations for those pilots who were not serving as PIC in part 121 operations on July 31, 2013. *See* Legal Interpretation from Mark W. Bury to Zachary Kelley (March 7, 2014).

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 Sara Mikolop, an attorney in the in the International Law, Legislation, and Regulations Division of the Office of the Chief Counsel, and coordinated with the Air Transportation Division of the Flight Standards Service.

Sincerely,

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