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

Office of the Chief Counsel

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

MAR -7 2014

Mr. Zachary Kelley
[redacted]

Dear Mr. Kelley:

This letter is provided in response to your request for a legal interpretation sent to me on November 7, 2013. In your request, you present two scenarios and question the application of 14 C.F.R. § 121.436(a)(3), the requirement for 1,000 hours of pilot experience prior to service as a pilot in command (PIC) in part 121 operations, to those scenarios.

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]

Section 91.1053(a)(2)(i) operations use multi-engine turbine-powered fixed wing and powered-lift aircraft for which a PIC must hold an airline transport pilot (ATP) certificate and applicable type ratings. Section 135.243(a)(1) operations are passenger carrying operations using a turbojet with a passenger-seat configuration of 10 seats or more, or using a multiengine airplane in a commuter operation for which the PIC must hold an ATP with appropriate category and class ratings and, if required, an appropriate type rating.

Scenario 1: In the first scenario, you describe a pilot who served for over 1,000 hours as PIC in part 121 operations. However, the pilot has not served for 1,000 hours as SIC in part 121 operations, or as PIC in operations conducted under § 91.1053(a)(2)(i) or § 135.243(a)(1). The pilot was not employed by a part 121 operator on July 31, 2013. After July 31, 2013, this pilot was hired by a part 121 operator to serve as PIC in part 121 operations.

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[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."

You ask whether the pilot's time as PIC in part 121 operations prior to July 31, 2013, would satisfy the experience requirement provided by § 121.436(a)(3).

Response 1: The pilot's time as PIC in part 121 operations prior to July 31, 2013, would not satisfy the experience requirement provided by § 121.436(a)(3).

The 1,000 hours in air carrier operations may be 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 121 operations *on* July 31, 2013, from § 121.436(a)(3). Thus, the 1,000 hours as PIC in 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.

Scenario 2: In the second scenario, you describe a pilot who holds an ATP certificate and a type rating for a Beechcraft 1900. The pilot flies the Beechcraft 1900 for a part 135 operator as PIC with only cargo (no seats) and has over 1,000 hours of flight time in the airplane with the part 135 operator (scheduled and unscheduled operations).

You ask whether the flight time described in the second scenario would satisfy the requirement for 1,000 hours of flight time, allowing the pilot to act as PIC of a Beechcraft 1900 under part 121. You also ask whether flight time accrued in other aircraft type certificated with ten or more passenger seats but that do not have seats installed may be used to satisfy the experience requirement in § 121.436(a)(3).

Response 2: Time spent as PIC of a part 135 all-cargo operation may not be credited towards the 1,000-hour experience requirement in § 121.436(a)(3).

Experience as PIC on flights conducted under § 135.243(a)(1) is the only part 135 experience that may be credited towards the 1,000-hour experience requirement in § 121.436(a)(3). One of the defining characteristics of § 135.243(a)(1) operations, is that these operations are passenger-carrying operations and require an ATP certificate.[2] The operations you have described are all-cargo operations and only require a commercial pilot certificate thus § 135.243(a)(1) would not apply.

As the agency recently stated in the final rule on Pilot Certification and Qualification Requirements for Air Carrier Operations, operations under § 135.243(a)(1) require an ATP certificate, are multicrew operations and generally use turbine aircraft and therefore are the

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[2] § 135.243(a)(1) states, "(a) No certificate holder may use a person, nor may any person serve, as pilot in command in passenger-carrying operations—(1) Of a turbojet airplane, of an airplane having a passenger-seat configuration, excluding each crewmember seat, of 10 seats or more, or of a multiengine airplane in a commuter operation as defined in part 119 of this chapter, unless that person holds an airline transport pilot certificate with appropriate category and class ratings and, if required, an appropriate type rating for that airplane.

most applicable to part 121 operations. *See* 78 Fed. Reg. 42324, 42357 (July 15, 2013). The agency determined that while other part 91 and part 135 operations may involve certain elements that are related to part 121 operations, the varied nature of operations does not make credit toward the air carrier operations experience requirement appropriate. *See* id.

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,

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