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

Office of the Chief Counsel

800 Independence Ave., SW.

SEP 24 2018

John B. Vyhnalek
[redacted]

Re: Request for legal interpretation of consolidation of knowledge and skills under 14 C.F.R. §§ 121.434(g) and 121.434(h)(4).

Dear Mr. Vyhnalek:

This letter responds to your May 4, 2018 request for a legal interpretation of 14 CFR § 121.434(g) and 14 CFR § 121.434(h)(4), which require 100 hours of line operating flight time for consolidation of knowledge and skills within a specified timeframe. Your request for legal interpretation included several questions related to extension of the 120-day timeframe.

Section 121.434(g) provides in pertinent part that:

> Except as provided in paragraph (h) of this section, pilot in command and second in command crewmembers must each acquire at least 100 hours of line operating flight time for consolidation of knowledge and skills…within 120 days after the satisfactory completion of:
>
> (1) Any part of the flight maneuvers and procedures portion of either an airline transport pilot certificate with type rating practical test or an additional type rating practical test, or
>
> (2) A § 121.441 proficiency check.

Section 121.434(h)(4) provides that:

> The following exceptions apply to the consolidation requirement of paragraph (g) of this section:
>
> (4) If the required 100 hours of line operating flight time are not completed within 120 days, the certificate holder may extend the 120-day period to no more than 150 days if—

(i) The pilot continues to meet all other applicable requirements of subpart O of this paragraph; and

(ii) On or before the 120th day the pilot satisfactorily completes refresher training conducted by an appropriately qualified instructor or check pilot…or a check pilot determines that the pilot has retained an adequate level of proficiency after observing that pilot in a supervised line operating flight.

Your first question posited a scenario in which a pilot has completed his or her initial training and checking in accordance with subparts N and O of Part 121 "up to the point where he is completing operating experience." Following completion of operating experience, the company conducted a line check in accordance with § 121.440. Under your scenario, you conducted the operating experience and line check for the pilot. The company thereafter released the pilot to normal operations. A few days later, you supervised the pilot's first trip. Two months after the pilot's first trip, your company asked you to sign off on the 30-day extension allowed by § 121.434(h)(4) based on your observations made during operating experience flight two months earlier. You asked at what point should a check airman sign off on the extension (at the completion of operating experience or nearer to the expiration of the 120-day period) and whether the check airman must make a separate observation to determine the pilot's retention of proficiency.

Section 121.434(h)(4) establishes two conditions for extending the 120-day period: (1) that the pilot continues to meet the applicable crewmember qualifications; and (2) that the pilot has completed refresher training, or, as is relevant to your question, that "a check pilot determines that the pilot has retained an adequate level of proficiency after observing that pilot in a supervised line operating flight." The preamble to the final rule implied that the observation occur near the end of the 120-day period to determine whether the pilot had retained an adequate level of proficiency to continue consolidation without refresher training. *See* Pilot Operating and Experience Requirements Final Rule, 60 Fed. Reg. 20858, 20867 (Apr. 27, 1995).

Only by observing the pilot's level of proficiency near the end of the 120-day consolidation period could a check pilot accurately determine whether the pilot had retained an adequate level of proficiency to continue consolidation or needed refresher training. Prematurely assessing the pilot's proficiency and approving the extension would ignore the rule's purpose and the check pilot's responsibility. If the check pilot cannot determine that the pilot has retained the adequate level of proficiency, without refresher training, the certificate holder may not grant the extension.

Finally, you asked if once the extension period expires, whether the 100-hour consolidation period starts over or if a pilot may apply previously accumulated hours to the new 120-day consolidation period.

With an extension, if consolidation is not completed by the 120th or 150th day, all flight time accumulated during consolidation reverts to zero. Section 121.434(h)(4) states that "the certificate holder may extend the 120-day period to no more than 150 days." Moreover, in the preamble to the proposed rule, the FAA noted that "[i]f the pilot has not completed one of the options described above [i.e., refresher training or a supervised line observation flight], to ensure

that the newly acquired knowledge and skills are consolidated, the pilot would have to be *requalified* under the certificate holder's approved training program." Pilot Operating and Experience Requirements Notice of Proposed Rulemaking, 58 Fed. Reg. 15730, 15732 (Mar. 23, 1993) (emphasis added).

This response has been prepared by Autumn Killingham, Operations Law Branch, Office of the Chief Counsel, and coordinated with the Air Transportation Division of Flight Standards Service. If you need further assistance, please contact our office at (202) 267-3073.

Sincerely,

Lorelei D. Peter
Assistant Chief Counsel for Regulations, AGC-200

John B. Vyhnalek
[redacted]

Office of the Chief Counsel
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4 May 2018

To Whom It May Concern,

I am writing to request a legal interpretation of 14 CFR 121.434(g) and 14 CFR 121.434(h)(4). I wish to know when the observation for the extension of the 120 days of Consolidation of Knowledge and Skills to 150 days must take place and if the 150 day period expires does the 100 hours of consolidation start over again or can the airman apply the hours already accumulated to new 120 day period?

As a company Check Airman (Check Pilot) authorized to conduct Line Checks IAW 14 CFR (FAR) 121.440 and supervise Operating Experience IAW FAR 121.434 for a U.S. certificated air carrier under FAR Part 121 I am also authorized to conduct the observation required by FAR 121.434(h)(4)(ii) to extend an airman's 120 day consolidation period to 150 days, often called the 30 day extension.

Assume an airman at a Part 121 carrier has completed his initial pilot training and checking as required by subparts N and O on a B-737 400 F (Freighter) up to the point where he is completing Operating Experience. This scenario pertains to both Pilot in Command and Second in Command positions. At the completion of Operating Experience our company conducts a Line Check for both duty positions even though a line check is not required of First Officers under FAR 121.440. Assume I had conducted the Operating Experience and Line Check for the airman. Assume that the airman is then released to normal line operations and continues his Consolidation of Knowledge and Skills. By chance, this airman's first trip off of OE, assigned a few days later as a reserve assignment, is with me, afterwards I do not fly with the airman again. Assume over two months later I receive a call from the company asking me to sign off the 30 day extension allowed by FAR 121.434(h)(4)(ii) based on my observations made in OE more than two months earlier. Assume that the company expects airmen to be signed off for the extension at the completion of OE as a standard practice.

In my example, I refuse to sign the extension authorization citing that I have no idea if, over two months after having flown with the airman, he had retained an adequate level of proficiency.

As a former member of the ATA Training Committee in the 1990s I keenly remember the situation that led to this regulation. As stated in the final rule (Federal Register 20858 Vol. 60, No. 81, dated 27 April 1995) several accidents occurred where the lack of consolidation of pilot skills could be considered causal factors. One was a US Air B-737 in which a newly rated first officer had been paired with a captain

who himself had only 138 hours of PIC time in air transport aircraft. This was the first officer's first trip after a 39 day absence from flying after her completion of OE. The accident occurred on takeoff from runway 31 at LaGuardia Airport and crashed off the end of the runway. Ironically, in my example above, the First Officer that I was asked to sign off received a very distressing phone call after our trip a few days after the completion of OE. He was released from duty for a period of several weeks for a family emergency. I never saw him again.

I made my concerns clear to the company who consulted the FAA. The company has received guidance from our Principal Operations Inspector that if we conduct an initial line check at the completion of OE and that check is more than 30 days from the date of the airman's initial proficiency check (which marks the beginning of the 120 day clock) that we are to sign off the airman for the 30 day extension.

I seem to remember in meetings with the FAA at the time of the rule making that we did not want to put a set time limit on the Check Airman's observation for the 30 day extension. Specifically, we wanted to leave it open so as not to be excessively restrictive with more record keeping requirements and causing scheduling conflicts. However, the intent of the regulation seems to be that a check airman must fly with the airman with the prospective intent to determine whether he or she has retained the skills necessary to continue from 120 days to 150 days. Currently, as authorized by our POI, a check airman could be signing off an airman on day 31 with no possible way of determining what will happen between that sign off of the extension and the expiration of the original 120 days. In my example, the airman had a terrible family tragedy to deal with that I am certain took his mind away from his duties as a first officer and an absence from flying.

Also, I find the instruction to sign off the airman at the completion of OE IAW our POI's instructions to be in complete opposition to the comments stated in the final rule, one of which reads "However, NTSB stresses that such extensions should be approved only under extenuating circumstances and in strict compliance with the additional requirements of the proposed rule as a whole." The intent is to compel the company and other parties to derive a method of complying with the consolidation, not evading it.

In addition, as the regulation reads, it is implied that a check airman observe the airman near the end of the 120 day period and make a determination based on an assessment of the pilot's skills at that time.

Next, assume a pilot is nearing or has reached his 150 day expiration (with an acceptable extension). Assume the pilot has only accumulated 80 hours of time in accordance with the regulation. Assume the company administers a proficiency check under FAR 121.441 and the 120 day clock is restarted. Must the airmen obtain 20 hours to complete consolidation or must he restart his flight time as well and accumulate an additional 100 hours within the new 120 day period?

To summarize;

- At what point during the 120 day period should the observation of FAR 121.434(h)(4)(ii) to extend the airman's 120 day period to 150 days take place? For example, should it take place after 110 days? Within a week of the pilot's expiration? Is the intent truly to determine if the airman has retained these skills near the end of the 120 days or can the extension be signed off based on an observation made during OE?
- Is it appropriate to ask a check airman to sign off the 30 day extension at the completion of OE, as stated above?

- Does the observation have to be a separate observation, made with sole intent of determining if the airman has met the requirements of the regulation, or can it be combined with his initial Line Check at the completion of his Operating Experience?
- If the original 120 day period for the Consolidation of Knowledge and Skills expires, with or without the extension to 150 days, and a PC is administered to restart the 120 day period, can the hours accumulated during the original 120 day period be applied to the new 120 day period or is the 100 hour flight time requirement restarted?

Recommendations:

- Guidance should be placed in FAA Order 8900.1 (FSIMs) as to how the extension is to be administered, as well as whether the 100 hour clock is restarted after a failure to consolidate in 150 days.
- FAR 121.434(h)(4)(ii) should be changed to reflect that the 30 day extension would only allow the airman to extend the period for 30 days past the date of the check airman observation.

Your response is very gratefully appreciated.
Best Regards,



John B. (Jack) Vyhnalek
B-737 Captain, Line Check Airman
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