Feb 8 1990

Mr. Bernard Geier

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5021 Powell Road,
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Dear Mr. Geier:

This is in response to your letter of November 10, 1988, wherein you requested an interpretation of the applicability of Federal Aviation Regulation (FAR) §121.471. We regret very much the delay in responding to your request. We appreciate your patience. In effect, you ask whether a flight crew may complete the final segment(s) of a trip beyond the eight hour limitation of §121.471(a)(4) if they were properly scheduled and then delayed due to circumstances beyond the control of the air carrier.

Hypotheticals:

1) "A cockpit crew is scheduled for a two segment trip during which the first leg's schedule time is 5 hours and 45 minutes and the second leg has a scheduled time of 2 hours, so that the schedule fulfilled the provisions of Section 121.471(a)(4), i.e. it did not exceed 8 hours between required rest periods. The crew begins the flight and due to reasons beyond their control, e.g. weather or air traffic delays, the first segment takes 6 hours and 15 minutes. Upon arrival at airport A, the crew only has 1 hour and 45 minutes remaining in the 8 hours. If they had not been previously scheduled, they could not now be scheduled for a second leg that would require 2 hours since they would have been scheduled for more than 8 hours. However, since they were originally scheduled for the two legs with a scheduled time of 7 hours and 45 minutes, they can continue on to Airport B even though they will have flown 8 hours and 15 minutes upon arrival at Airport B. Section 121.471 must then be addressed for the rest period required. In this situation I believe the requirements of the regulation have been met in that the flight crew was not scheduled for more than 8 flight hours between required rest periods. Please advise me if my interpretation is correct in this situation."

2) "The second question involved a flight of 1 hour to airport A, followed by two subsequent legs of 3 hours and 3 hours and 30 minutes to airports B and C respectively, for a total Scheduled flight time of 7 hours and 30 minutes. The flight is

begun as scheduled, however in route to airport A, due to a condition that arose on board, e.g. a bomb threat, the flight was diverted to an alternate airport and following landing and resolution of the cause for the diversion, the flight crew continued to airport A. Because of the diversion, the flight to airport A required a total of 1 hour and 45 minutes. Since the flight was scheduled to continue to airports B and C and the scheduled flight time was 7 hours and 30 minutes, the crew is permitted by the rule to continue to airports B and C even though they will have flown 8 hours and 15 minutes upon arrival at airport C. Again, in this situation, I believe the requirements of the regulation have been met in that the flight crew was not scheduled for more than eight flight hours between required rest periods. Please advise me if my interpretation is correct in this situation."

Answer:

Your interpretations are correct. Section 121.471(g) applies to the situations you describe. It reads:

> A flight crewmember is not considered to be scheduled for flight time in excess of flight time limitations if the flights to which he is assigned are scheduled and normally terminate within the limitations, but due to circumstances beyond the control of the air carrier (such as adverse weather conditions), are not at the time of the departure expected to reach their final destination within the scheduled time.

If the schedule was set up by the air carrier so as to meet the requirements of §121.471(a)(4), deviations within the particular time frames due to weather or other unforeseen delays would be permitted. The key to the applicability of such an exception is the unforeseen weather conditions or other unforeseen delays disrupting an otherwise properly scheduled flight. If the original scheduling is upset because the weather or a "bomb threat" causes a diversion, the final segments notwithstanding that the final eight hour period originally planned.

This interpretation is supported by the preamble to the most recent revision of the flight time rules. "Subsection 121.471(g)... states] that a flight crewmember is not considered to be scheduled for duty in excess of flight time limitation "if-the scheduled flights normally, terminate within the limitation" (emphasis original) 50 FR 29306 at 29314, July 18, 1985. No penalty exists in §121.471 for circumstances under which actual flight time exceeds scheduled flight time when the delay is due to circumstances beyond the control of the operator.

The flight time regulations have a premise that each certificate holder is scheduling realistically. The aforementioned preamble specifically states: "compliance with the flight scheduling rules requires each air carrier to schedule realistically.” “If actual flight time is consistently higher than the scheduled flight time allowed, the schedule should be adjusted." Thus, constant deviations from the flight and duty time limitations of Part 121 based *upon* such delays are *not* acceptable if the certificate holder is not scheduling realistically. Clearly, certain delays, weather related or otherwise, can be anticipated and schedules adjusted accordingly.

We hope that this satisfactorily answers your inquiries.

Sincerely,

Donald P. Byrne
Acting Assistant Chief Counsel
Regulations and Enforcement Division