June 19, 1991

Mr. B. Stephen Fortenberry
B-727 Chief Pilot
Evergreen International Airlines, Inc. 3850
Three Mile Lane
McMinnville, OR 97128-9496

Dear Mr. Fortenberry:

This is in response to your letter of October 12, 1989, to Mr. Thomas Jensen at Flight Standards District Office 64, requesting an interpretation of section 121.471(d) of the Federal Aviation Regulations (FAR), which provides as follows:

> Each domestic air carrier shall relieve each flight crewmember engaged in scheduled air transportation from all further duty for at least 24 consecutive hours during any 7 consecutive days.

We apologize for the lengthy delay in our response, and thank you for your patience.

Background

In your letter, you provide us with the following background information:

> Due to Evergreen International Airlines' type of business we have need to position crews and aircraft in different locations that are available to fly ad hoc charter trips as the opportunities arise. These crews are normally provided private, individual hotel rooms and allowed to rest as much as they like with no duties required. They are expected, however, to make a telephone contact number or pager available at all times and if not at a telephone contact location (i.e. on a golf course) they must contact crew scheduling hourly for possible assignment.

You then state that while Evergreen does not consider this telephone standby to be duty, some crewmembers are concerned that the FAA might take action against them if they accept 7 days of telephone standby (reserve) since they believe the FAA might consider that as 7 days of duty.

Discussion

The Agency has consistently interpreted section 121.471(d) (and its predecessors) as a flight time limitation and not a duty time limitation. Under the interpretations, this regulation can be violated only if a flight crewmember performs duty aloft in air transportation on seven consecutive days without receiving at least 24 consecutive hours relief from duty during that 7 consecutive day period. To state it another way, an air carrier may require a flight crewmember to attend ground school, load

and unload baggage, stand reserve, or perform any type of non-duty aloft duty for 7 consecutive days without violating section 121.471(d). However, if a flight crewmember has performed duty aloft as a flight crewmember in scheduled air transportation for 6 consecutive days without having been relieved from duty for at least 24 consecutive hours, then that flight crewmember must be accorded the 24 hours relief before being assigned to further duty aloft in air transportation.

Subject to the above principles, if it is assumed that a rest period of 24 consecutive hours is required, then certain requirements must be met in order to qualify as a rest period. A rest period must be prospective in nature. Stated another way, a flight crewmember must be told in advance that he or she will be on a rest period for the duration required in the particular instance, in this case 24 consecutive hours. In addition, a rest period must be free of all restraint. However, the Agency's interpretations hold that receipt of one telephone call or beeper call does not constitute a violation of a rest period provision. Moreover, a flight crewmember in a rest period must be free of present responsibility for work should the occasion arise.

In order to give you a definitive interpretation, we need the precise facts of specific situations and the meaning which you attribute to terms such as telephone standby, reserve, etc. These terms are not self-defining nor, as far as we are aware, do they have any commonly accepted meaning in the air transportation industry. To the contrary, it has been our experience that the meaning and consequences of these terms vary among the various air carriers.

Subject to the above and such precise facts as we may encounter upon examination of further information from you, we give you general answers below in an attempt to be of as much help as possible.

Question 1

Is telephone standby in a hotel or at home "duty"?

Answer

No, not in the sense that it produces the need for the rest period required by section 121.471(d). If duty aloft in air transportation has produced the need for 24 hours rest, a complete explanation of "standby" and the entire schedule of duty aloft assignments is necessary for a definitive answer.

Question 2

Is the use of a pager any different than telephone standby?

Answer

See answer to Question 1.

Question 3

> If a crewmember is on reserve (telephone standby) for three days (Mon - Wed) and is not called out to fly until the fourth day (Thurs) for a four-day trip (Thurs - Sun), may he accept the assignment?

Answer

As explained under the heading "Discussion," the 24 hours of rest is not required unless the flight crewmember has been engaged as a flight crewmember in air transportation for 6 consecutive days. In order to answer this question, we would have to examine what occurred on Monday through Wednesday following the 4-day trip.

Question 4

> May a carrier assign and may a crewmember accept 7 consecutive days of reserve or telephone/pager standby?

Answer

Yes, if there is not duty aloft in air transportation as a flight crewmember. For the rationale underlying this answer, please see the discussion in the paragraph entitled "Discussion."

As we also indicated in the "Discussion" paragraph, definitive interpretations of flight time and rest provisions must be accompanied by a detailed description of all flight crewmember duty aloft assignments and rest periods communicated to the flight crewmembers in the period of time under scrutiny. Your letter states that section 121.471 is applicable to your operations, but there is no reference to how you comply with the rest period provisions of section 121.471(b). In addition, section 121.471 applies to domestic scheduled operations. However, your letter references "ad hoc charter trips as the opportunities arise." This implies non-scheduled operations such as are regulated under Subpart S. We do not understand this implied discrepancy.

As stated, we regret the delay which occurred in writing to you and hope that this general information has proved helpful to you. We also hope that this letter will prove helpful to you if you should decide to develop more information for submission to us.

Thank you again for your patience.

Sincerely,

Donald P. Byrne
Assistant Chief Counsel
Regulations and Enforcement Division