JUN 20 1991

Mr. E.E. Sowell
Legal Counsel
Allied Pilots Association P.O.
Box 5524
Arlington, TX 76005-5524

Dear Mr. Sowell:

Thank you for your letter of December 5, 1990 in which you ask for an interpretation of section 121.471(4) of the Federal Aviation Regulations (FAR). We apologize for the delay in answering your letter.

In your letter you set out an example of the issue you are addressing:

A pilot has completed a required rest period and is originally scheduled for the following segments:

Segments 1. A to B-scheduled flight time-4 hours
2. B to C-scheduled flight time-2 hours
3. C to D-scheduled flight time-1:59

The pilot has completed the A to B segment with 4 hours of actual flying time. After departure from B and while enroute for 1 hour, aircraft is put into a holding pattern by ATC with expected delay in arriving at C. While in holding, pilot is advised by Company of a reschedule upon arrival at C. Instead of flying the original C to D segment of 1 hour and 59 minutes he is rescheduled from C to E for 2 hours and 5 minutes.

You then ask whether FAR 121.471(a)(4) would preclude the rescheduling of the C to E segment, and whether a schedule can be changed after

departure and before arrival when the actual flying time (elapsed time) is unknown at the time of reschedule.

FAR 121.471(a)(4) in pertinent part says:

(a) No domestic air carrier may schedule any flight crewmember and no flight crewmember may accept an assignment in scheduled air transportation or in other commercial flying if that crewmember's total flight time in all commercial flying will exceed-8 hours between required rest periods.

The absence of all the facts supplied makes necessary certain assumptions. We assume that the reschedule from C to E is due to weather or some other circumstance which is beyond the control of the air carrier.

FAR 121.471(g) allows crewmembers to exceed flight time limitations when the flights normally terminate within the limitations, but due to circumstances beyond the control of the air carrier (such as adverse weather) are not at the time of departure expected to reach their destination within the scheduled time.

In this example the crew would have exceeded 8 hours of flying, even if they had continued on to D, by entering holding with expected delays. The additional circumstance of the en route diversion to E, presumably because of the weather, is the type of situation envisioned in FAR 121.471(g) and, therefore, is not in violation of FAR 121.471(a)(4).

FAR 121.541 lists factors domestic airlines must consider in establishing schedules. Schedules must be realistic. Amendment 121-186 of June 3, 1985, contained a discussion of actual vs. scheduled flight time. The FAA stated:

> ...compliance with the flight scheduling rules requires each carrier to schedule realistically ... If actual flight time is consistently higher than the scheduled flight time allowed, the schedule should be adjusted.

This interpretation has been prepared by Arthur E. Jacobson, Staff Attorney, Operations Law Branch, Regulations and Enforcement Division; Richard C. Beitel, Manager.

We hope this satisfactorily answers your questions.

Sincerely,

Donald P. Byrne Assistant
Chief Counsel
Regulations and Enforcement Division