June 2,2000

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Dear Mr. Johnson:

This is in response to your letter of March 11, 1999, requesting a legal interpretation concerning the crediting of flight time for crewmember flight time limitations within the meaning of 14 C.F.R. §§ 1.1 and 121.471. We apologize for the delay in responding to you.

The facts that you provide are as follows. Sun Country Airlines (SCA) does not credit the taxi time a flight crew incurs when taxiing the aircraft under its own power from the gate to a de-icing pad. At the de-icing pad, the aircraft's engines are shut down and the aircraft is de-iced. The engines are restarted and the aircraft then proceeds to the active runway for departure. SCA credits the taxi time from the de-icing pad forward as flight time.

Your contention is that the entire time should be credited as flight time because when the aircraft leaves the gate, it is "with the intention of flight," and flight does follow the de-icing procedure. Our response, including a discussion of relevant authority, is set forth below.

Section 1.1 defines "flight time," in pertinent part, as pilot time that commences when an aircraft moves under its own power for the purpose of flight and ends when the aircraft comes to rest after landing. That section also provides that "operate" with respect to aircraft, means "use, cause to use or authorize to use aircraft, for the purpose...of air *navigation* including the piloting of aircraft...." In addition, section 121.629 (c) requires

[r] Section 121.629 provides, in part, as follows:

> (c)Except as provided in paragraph (d) of this section, no person may dispatch, release, or take off an aircraft any time conditions are such that frost, ice, or snow may reasonably be expected to adhere to the aircraft, unless the certificate holder has an approved ground deicing/anti-icing program in its operations specifications and unless the dispatch, release, and takeoff comply with that program. The approved ground deicing/anti-icing program must include at least the following items:
> (4) Aircraft deicing/anti-icing procedures and responsibilities, pre-takeoff check procedures and responsibilities, and pre-takeoff contamination check procedures and responsibilities.... [A

a certificate holder to have in place, in its operations specifications, an approved ground de-icing/anti-icing program that must be complied with before the dispatch, release and takeoff of an aircraft any time conditions are such that frost, ice, or snow may reasonably be expected to adhere to the aircraft.

Decisions in safety enforcement cases are instructive on the meaning of "with the intention of flight" or "for the purpose of flight." In Daily v. Bond, 623 F.2d 624 (9th Cir. 1980), the court of appeals affirmed an NTSB (Board) order that reinstated the FAA's suspension of Daily's pilot's certificate. The FAA charged Daily with violating 14 C.F.R. § 91.9 [now §91.13(a)] by operating (attempting to start) an aircraft in a careless or reckless manner, and 14 C.F.R. § 91.29(a) [now §91.7(a)] by operating (attempting to start) an aircraft that was not in an airworthy condition, after an airplane that Daily was attempting to start caught fire. In affirming the Board's decision, the court reasoned that operate means "incident to flight and an integral part of it."[2] The court also cited approvingly the Board's reasoning in Administrator v. Pauley, 2 NTSB 1369 (1975), involving a pilot found in violation of section 91.9 by the careless manner in which he attempted to start his aircraft,[3] namely, that "since the attempted start was preparatory to flight, it was for the purpose of air navigation and thus constituted operation of the aircraft within the intendment of section 91.9.[4]

We note, further, that a finding[5] of the Administrative Law Judge (ALJ) that the Board approved, in Pauley, was one that Mr. Pauley "was attempting to start the aircraft for the purpose of flight, that it is included in the term "operating an aircraft" within the meaning of Section 1.1 of the Regulations, therefore, it fits under 91.9 of the same Federal Aviation Regulations."[6]

Pre-takeoff contamination check] must be conducted within five minutes prior to beginning take-off....
(d) A certificate holder may continue to operate under this section without a program as required in paragraph (c) of this section, if it includes in its operations specifications a requirement that, any time conditions are such that frost, ice, or snow may reasonably be expected to adhere to the aircraft, no aircraft will take off unless it has been checked to ensure that the wings, control surfaces, and other critical surfaces are free of frost, ice, and snow. The check must occur within five minutes prior to beginning takeoff.

[2] 623 F.2d at 626.

2 The pilot, Mr. Pauley, attempted to start the plane by obtaining a "jump start" from the battery of a patrol car. Mr. Pauley, who was outside the aircraft leaving a non-pilot at the controls, did not tie down the plane or chock the wheels. When the aircraft started, it momentarily broke away, striking the car and injuring the driver. 2 NTSB at 1369.

623 F.2d at 626.

3 Mr. Pauley argued at the hearing before the ALJ and in his brief before the Board that section 91.9 was inapplicable to the incident since the engine start did not occur during the regulatory definition of flight time nor did it take place when air navigation was in progress. 2 NTSB at 1370. *Id* at 1372.

The conclusion of a prior FAA interpretation involving the issue of when flight time begins in the context where pushback procedures are utilized is also noteworthy. Specifically, we responded to the question whether the time spent in moving an airplane from the loading point to another point, not under the airplane's own power, but by means of a tractor or other conveyance that pulls the airplane into position to begin a flight, must be counted in calculating the duty aloft of flight crewmembers under section 121.471. See October 18, 1972 Memorandum to AGL-7, from Dewey R. Roark, Jr., Acting Associate General Counsel, Regulations and Codification Division (copy enclosed). We stated, as follows:

> Since "duty aloft" was defined in old CAR § 40.5 in terms of flight time, and since "flight time," as defined in FAR § 1.1 is defined as the time from the moment the aircraft first moves under its own power for the purpose of flight until the moment it comes to rest at the next point of landing (block-to-block time), we conclude that the time spent towing the airplane prior to the moment it first moves under its own power for the purpose of flight is not flight time and, therefore, is not duty aloft for the purpose of § 121.471.

In our opinion, the logic and principles of the enforcement cases and our prior interpretation support the conclusion that FAA-required de-icing procedures are "preparatory to flight," and when the aircraft taxies under its own power from the gate to the de-icing pad, it is "for the purpose of flight." Thus, we further conclude that flight time <u>starts</u> at the moment when the aircraft taxies under its own power from the gate to the de-icing pad, and flight time <u>continues</u> until the moment the aircraft comes to rest at the next point of landing. And, all of that time is flight time, and must be credited for purposes of the flight time limitations of section 121.471.

This opinion was prepared by Constance M. Subadan, Attorney, Operations Law Branch, and Joseph A. Conte, Manager. It has been coordinated with the Director of the Flight Standards Service and the Air Transportation Division of the Flight Standards Service at FAA Headquarters. We hope it has satisfactorily answered your inquiry.

Sincerely,

Donald P. Byrne
Assistant Chief
Counsel

Regulations
Division