May 9, 2003

Mr. James W. Johnson
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Dear Mr. Johnson:

This letter responds to your February 1, 2001, letter requesting a legal interpretation of 14 C.F.R. § 121.471(b). We set forth below the facts you provided, your question, and our response.

YOUR FACTS

After 24 hours free of duty, the pilot reports at 1500 hours. He performs Part 121 flying for 5 hours and 30 minutes of flight time during his 8 hours and 45 minutes duty period, which is completed at 2345 hours. He is then assigned Part 91 flying, which is completed at 0300 hours, at which time the pilot is released to rest 8 hours and 15 minutes. The pilot reports for duty at 1115, and deadheads to Pittsburgh arriving at 1230. He is subject to receiving a flight assignment, but is not assigned. At 1800 hours he is again deadheaded to Kalamazoo and is released to rest at 2040 hours. He is scheduled to report at 0515 the following morning for a flight assignment. The rest he received prior to the 0515 report was 8 hours and 35 minutes.

YOUR QUESTION

Was the pilot required to receive a 10-hour compensatory rest on the second day when he was released for rest at 2040, since he received a reduced rest of 8 hours and 15 minutes on Day 1 and he performed duty (i.e., standby and deadhead) on Day 2? It is your Association's belief that compensatory rest was required, and had to begin at or before 0300 on Day 2.

DISCUSSION

Section I. Introduction:

At the outset, we make some assumptions about the facts you provided. We also restate some of the relevant regulations and interpretations.

We make the following assumptions about your stated facts concerning rest and flight time. You state that "[a]fter 24 hours free of duty, the pilot reports at 1500 hours." We

assume that your intent is to indicate that the pilot received (more than) the minimum lookback rest period for Day 1's flight time. Although your facts do not contain a statement concerning the hours of flight time for which the pilot was scheduled on Day 1, we assume that he not only "performs Part 121 flying for 5 hours and 30 minutes of flight time," but he was also scheduled for 5 hours and 30 minutes of flight time on Day 1. Thus, the pilot and the certificate holder were acting in accordance with §121.471(b)(1).

In addition, your question provides that the pilot received a reduced rest of 8 hours and 15 minutes "on Day 1." We assume that you meant "on Day 2," since your facts indicate that that 8 hours and 15 minutes period falls into Day 2. We assume that the "flight assignment" in your facts that the pilot is subject to receiving is a §121.471 flight time assignment. Finally, we assume that you meant to ask whether the compensatory rest had to begin by 0300 "on Day 3," instead of your stated "Day 2," because 24 hours from the start of your stated "reduced rest of 8 hours and 15 minutes" would be 0300 on Day 3.

Under §121.471, for a period to qualify as a rest period, it must satisfy the requirement concerning the nature of a rest period, i.e., comply with the three conditions the FAA has said are necessary for a period to qualify as rest. We have consistently interpreted the rest required by §121.471 as: 1) a continuous period of time, 2) determined prospectively, and 3) during which the crewmember is free from all restraint by the certificate holder, including freedom from work or freedom from present responsibility for work should the occasion arise. See our October 29, 2002, letter to James W. Johnson, from Donald P. Byrne, Assistant Chief Counsel, Regulations Division (copy enclosed) for a fuller discussion about the nature of the rest period under §121.471.

The language and structure of §121.471 (b)[1] and (c) establish an integral relationship between rest requirements and flight time, that is, a specified minimum amount of lookback rest or reduced lookback rest is keyed to: 1) a specified amount of scheduled flight time assigned by the certificate holder; and 2) the 24-consecutive-hour period before scheduled completion of each flight segment. In addition, the specified minimum

[1]Paragraphs (b) and (c) of §121.471 state as follows:

(b) Except as provided in paragraph (c) of this section, no certificate holder conducting domestic operations may schedule a flight crewmember and no flight crewmember may accept an assignment for flight time during the 24 consecutive hours preceding the scheduled completion of any flight segment, without a scheduled rest period during that 24 hours of at least the following:

(1) 9 consecutive hours of rest for less than 8 hours of scheduled flight time.

(2) 10 consecutive hours of rest for 8 or more but less than 9 hours of scheduled flight time.

(3) 11 consecutive hours of rest for 9 or more hours of scheduled flight time.

(c) A certificate holder may schedule a flight crewmember for less than the rest required in paragraph (b) of this section or may reduce a scheduled rest under the following conditions:

(1) A rest required under paragraph (b)(1) of this section may be scheduled for or reduced to a minimum of 8 hours if the flight crewmember is given a rest period of at least 10 hours that must begin no later than 24 hours after the commencement of the reduced rest period.

(2) A rest required under paragraph (b)(2) of this section may be scheduled for or reduced to a minimum of 8 hours if the flight crewmember is given a rest period of at least 11 hours that must begin no later than 24 hours after the commencement of the reduced rest period.

(3) A rest required under paragraph (b)(3) of this section may be scheduled for or reduced to a minimum of 9 hours if the flight crewmember is given a rest period of at least 12 hours that must begin no later than 24 hours after the commencement of the reduced rest period. (Emphasis added.) *See also* Oct. 29, 2002, Letter to James W. Johnson, from Donald P. Byrne, Assistant Chief Counsel, Regulations Division (copy enclosed).

[2] Under 14 C.F.R. §1.1, flight time means:

(1) 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[.]

amount of lookback rest, if reduced,[3] triggers a specified minimum amount of compensatory rest, to occur no later[4] than 24 hours after the commencement of that reduced rest. Thus, for example, under paragraphs (b)(1) and (c)(1): "9 consecutive hours of rest" are required for "an assignment for flight time" for "less than 8 hours of scheduled flight time," and the 9 hours of rest for less than 8 hours of scheduled flight time may be reduced to "8 hours" of rest for "less than 8 hours of scheduled flight time." But such lookback rest or reduced lookback rest must occur "during the 24 consecutive hours preceding the scheduled completion of any flight segment," and if lookback rest is reduced,[5] "10 hours" of compensatory rest must occur "no later than 24 hours after the commencement of the reduced rest period." In order to determine whether a flight may commence in accordance with minimum reduced lookback rest requirements, it must be noted that on the day of departure of a given flight segment, "scheduled completion of any flight segment" means revised time of completion or arrival of the flight segment based on actual flight conditions.[6] Finally, the language of § 121.471(e), [7] proscribing "any duty with the air carrier during any required rest period" underscores the importance of compliance with timely receipt of the minimum amount of lookback rest, reduced lookback rest, and compensatory rest.[8]

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[3] *See* 50 Fed. Reg. 29306, at 29312-13 (July 18, 1985) ("[R]educed and compensatory rest periods are absolute and may not be further reduced under any circumstances....[T]his rule...does not allow for any reduction of the minimum reduced rest or of the minimum compensatory rest under any circumstances.").

See 50 Fed. Reg. 29306, at 29312 (July 18, 1985) ("In order to assure that a flight crewmember receives both the reduced and compensatory rests within a reasonable period, the final rule requires, in all appropriate sections, that the compensatory rest begin no later than 24 hours after the commencement of the reduced rest period. The longer compensatory rest is necessary within a reasonable time period to overcome any acute fatigue incurred during the flight times scheduled before and after the reduced rest.").

[5] Note that rest may be reduced in 2 ways under paragraph (c): 1) a certificate holder may set up a schedule involving planned minimum reduced lookback rest along with planned minimum compensatory rest; or 2) a certificate holder may reduce a previously-scheduled full minimum lookback rest period to minimum reduced lookback rest and also provide unplanned minimum compensatory rest, when as late as prior to take-off for any flight segment, in looking back 24 hours from the actual expected completion of the flight segment, one can find less than full minimum lookback rest but not less than the amount of minimum reduced lookback rest, and the flight segment is expected to land at a time that it will not infringe on the required start of compensatory rest *(see* Nov. 20, 2000, Letter to Captain Richard Rubin, from James W. Whitlow, Deputy Chief Counsel [2000-7] (copy enclosed), and Oct. 29, 2002, Letter to James W. Johnson, *supra* note 1, at 6-7).

[6] *See* Nov. 20, 2000, Letter to Captain Richard Rubin, *supra* note 5 (lookback rest is computed using actual expected flight time and taxi-in time based on the specific conditions that exist on the day to determine the scheduled arrival time for purposes of determining whether a flight should be commenced) (copy enclosed); and Air Transp. Ass'n of America v. FAA, 291 F.3d 49, 53-55 (D.C. Cir. 2002) (concluding that "the FAA's interpretation *via* the Whitlow Letter represents a permissible construction of FAR 121.471"); *see also* Oct. 29, 2002, Letter to James W. Johnson, *supra* note 1, at 6-7.

Paragraph (e) of §121.471 states: No certificate holder conducting domestic operations may assign any flight crewmember and no flight crewmember may accept assignment to any duty with the air carrier during any required rest period.

[8] *See* Air Transp. Ass'n of America v. FAA, 291 F.3d 49, 52 (D.C. Cir. 2002) ("Compensatory rest...may not be reduced or delayed under any circumstances. *See* 14 C.F.R. § 121.471(e); *see also* 50 Fed. Reg. at 29314 (`If a flight crewmember does not receive the required number of hours of rest, the operator and the flight crewmember are in violation of the regulation')"); *see also* Oct. 29, 2002 Letter to James W. Johnson, *supra* note 1, at 5-6.

On the issue of "other commercial flying,"[9] we make the following assumptions regarding your stated facts. You state that the pilot "performs Part 121 flying for 5 hours and 30 minutes of flight time...which is completed at 2345 hours. He is then assigned Part 91 flying, which is completed at 0300 hours...." Under your facts, the Part 91 flying follows the part 121 flying. We assume that the Part 91 flying was ferry flying (perhaps, a flight for the purpose of returning or repositioning an aircraft), that it was also assigned by the certificate holder, and that in the stated period (from 2345 to 0300, i.e., 3 hours and 15 minutes), the pilot performed less than 3 hours and 15 minutes of ferry flying, perhaps, 2 hours and 45 minutes of ferry flying.

The regulatory provision involving "other commercial flying" is stated in paragraph (a) of §121.471, and provides as follows:

> (a) No certificate holder conducting domestic operations may schedule any flight crewmember and no flight crewmember may accept an assignment for flight time in scheduled air transportation or in other commercial flying if that crewmember's total flight time in all commercial flying will exceed--
> (1) 1000 hours in any calendar year;
> (2) 100 hours in any calendar month;
> (3) 30 hours in any 7 consecutive days;
> (4) 8 hours between required rest periods.
> (Emphasis added.)

Prior interpretations involving the flight time limitations and rest requirements rules published on July 18, 1985, and applicable to operations conducted under Part 135 state that Part 91 ferry flying constitutes "other commercial flying."[10] We have also concluded in those interpretations that a "other commercial flying" (i.e., assigned by the certificate holder or another entity) performed before Part 135 flights, "counts" when the Agency assesses whether the certificate holder and the pilot are in compliance with the daily Part 135 *flight time limits;*

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[9] *See* Oct. 31, 1990, Letter to Manager, NE-FSDO-03, from Donald P. Byrne, Acting Assistant Chief Counsel, Regulations and Enforcement Division [1990-32] ("Other commercial flying" means any nonmilitary flying as a required crewmember, other than in air transportation, for which the crewmember is paid for his or her services) (copy enclosed). So, for example, when an individual is paid (e.g., with money) for flying corporate officers on a corporate jet in Part 91 service or when an airman provides flight training for compensation to another, such Part 91 flying is "other commercial flying" for the corporate jet pilot and for the flight instructor. Also, to the extent that the pilot operates an aircraft, for example, under Parts 125, 133 or 137 and receives remuneration for his pilot services, such flight time is "other commercial flying." Additionally, to the extent that a pilot receives remuneration from the certificate holder for Part 91 ferry flights or test flights, such flight time is "other commercial flying."

[10] *See e.g.,* Mar. 27, 1992, Letter to Thomas T. Gasta, from Donald P. Byrne, Assistant Chief Counsel, Regulations and Enforcement Division [1992-15] (copy enclosed). And note that ferry flying ("other commercial flying") is an

assignment for flight time. *See* §121.471(a); and §1.1. cited *supra* note 2. [11] *See e.g.*, Oct. 28, 1991, Letter to David Bodlak, from Donald P. Byrne, Assistant Chief Counsel, Regulations and Enforcement Division [1991-57] ("The other commercial flying done by the flight crewmember does count against the daily 8 hour limitation if it is done before the Part 135 flying, and also counts against the pilot's quarterly and yearly flight time limitations. For example, 2 hours of `free lance' flight instruction by the pilot during his rest period limits him to only 6 hours of Part 135 flying time during that 24 consecutive hour period. Any other commercial flying done after the Part 135 flying does not count against the daily limitation, but still counts against quarterly and yearly totals.") (copy enclosed). Note that in the aviation industry a Part 91 ferry flight following the completion of daily Part 121 or Part 135 air transportation flights is known as "tail end ferry flying."

but, when such flying is performed after the Part 135 flights, it "does not count" in the assessment of compliance with the daily *flight time limits.*[12] Further, "other commercial flying," whether performed before or after a given duty day's Part 135 flying, "counts" against yearly and quarterly limits.[13] Also, the prohibition against performing "other commercial flying" during a required rest period[14] only applies when the same entitv[15] that assigns the Part 135 flying is also assigning the "other commercial flying."

Finally, concerning the meaning of "duty," and the legal status of "standby" and "deadhead transportation," we note the following. Prior interpretations state that "duty" means actual work for an air carrier or present responsibility for work should the occasion arise. *See e.g.,* Feb. 28, 2002 Letter to James W. Johnson, from Donald P. Byrne, Assistant Chief Counsel, Regulations Division [2002-1] (copy enclosed). On the issue of standby duty for flight crewmembers, we have said that if the standby or reserve pilot has a present responsibility to work if called, then he is on duty because he is not free from restraint. *See* Mar. 26, 1992, Letter to John Darbo, from Donald P. Byrne, Assistant Chief Counsel, Regulations and Enforcement Division [1992-14] (copy enclosed). As to deadhead transportation, it refers to a situation in which the pilot is required to ride as a passenger to a destination where he is to serve on a flight as a crewmember, or required to ride home as a passenger after serving on a flight as a crewmember. *See* March 27, 1992 Letter to Thomas T. Gasta [1992-15] (copy enclosed); July 14, 1992, Letter to James W. Johnson, from Donald P. Byrne, Assistant Chief Counsel, Regulations Division [1992-48] (copy enclosed); and §121.471(f).[16] We also said in the July 14, 1992, Letter to James Johnson: "FAR 121.471(f) refers to what is commonly called 'deadhead transportation,' frequently where crewmembers fly as passengers on the air carrier's airplane to a destination where they are to begin service as flight crewmembers, or the reverse. While such crewmembers are being deadheaded they could not at the same time be considered relieved from all duty with the air carrier for the purpose of satisfying FAR[] 121.471(f)...."

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[12] Compare also our prior interpretations involving the Part 121 rules applicable to supplemental operations stating that Part 91 ferry flying constitutes "other commercial flying," and is considered when determining whether a subsequent Part 121 flight may be conducted. *See e.g.,* Jan.13, 1992, Letter to Peter E. Beckner, from Donald P. Byrne, Assistant Chief Counsel, Regulations and Enforcement Division [1992-1](stating that a ferry flight flown between two Part 121 legs, i.e., a Part 91 flight that occurs between 2 supplemental Part 121 flight legs**,** would be counted toward the flight time limitations of §§121.521(a) and 121.523(a); but if Part 121 flying does not follow the ferry flight, the Part 121 limitations applicable to a period of 24 consecutive hours do not apply) (copy enclosed).

" *See* Oct. 28, 1991, Letter to David Bodlak, *supra* note 11.

[14] *See e.g.,* Oct. 31, 1990, Letter to Manager, NE-FSDO-03, *supra* note 9 ("The general rule regarding rest requirements is that if the other commercial flying is assigned by the certificate holder, it may not be conducted during a required rest period.").

[15] *See* Oct. 28, 1991, Letter to David Bodlak, *supra* note 11 ("The prohibition against `other commercial flying' during a rest period applies to flying assigned by the certificate holder.").

[16] Paragraph (f) of § 121.471 states: Time spent in transportation, not local in character, that a certificate holder requires of a flight crewmember and provides to transport the crewmember to an airport at which he is to serve on a flight as a crewmember, or from an airport at which he was relieved from duty to return to his home station, is not considered part of a rest period.

We now explore various hypothetical situations that address §121.471 flying, ferry flying, deadhead, and standby, in order to determine what flight crewmember assignment required by the certificate holder may serve, under § 121.471(b) and (c), as the legal predicate or trigger for compensatory rest, including your question about whether standby and deadhead assignments may trigger such rest.

Section II. Ferry Flight Hypothetical Examples:

Example No. 1(a): *The pilot is scheduled to perform §121.471 flying, followed by ferry flying; and to perform §121.471 flying the following morning; all flights are performed as planned: A pilot is given a 9-hour rest period under §121.471(b)(1) (from 1500 on Day l to 2400 on Day 1), to be followed by a 15-hour duty day (from 0000 on Day 2 to 1500 on Day 2). During Day 2's duty period he is scheduled to perform three §121.471 flights totaling 6 hours, followed at the end of duty Day 2 by a Part 91 ferry flight of 1 hour and 59 minutes. Another 9-hour rest period under §121.471(b)(1) (from 1500 on Day 2 to 2400 on Day 2) is scheduled to precede Day 3's 15-hour duty period (from 0000 on Day 3 to 1500 on Day 3). During Day 3's duty period the pilot is scheduled to perform a §121.471 flight of 1 hour and 5 minutes, then a 1-hour Part 91 ferry flight, then two §121.471 flights totaling 5 hours. At the end of duty Day 3, a 25-minutes Part 91 ferry flight is scheduled to follow the two §121.471 flights. Most of Day 3's flying is scheduled to be performed early on duty Day 3. Another 9-hour rest period under § 121.471(b)(1) (from 1500 on Day 3 to 2400 on Day 3) is scheduled to precede Day 4's 15-hour duty day (from 0000 on Day 4 to 1500 on Day 4). The scheduled flights for Day 4 will be identical to Day 2's. At 1500 hours on Day 4 the pilot will be given 3 days off.*

Day 2's flights are performed as planned: 1st §121.471 flight (0500 to 0600); 2nd §121.471 flight (0630 to 0830); 3rd §121.471 flight (0900 to 1200); ferry flight (1230 to 1429). Day 3's and Day 4's flights are also performed as scheduled: Day 3: 1St §121.471 flight (0330 to 0435), ferry flight (0500 to 0600), 2nd §121.471 flight (0630 to 0830), 3rd §121.471 flight (0900 to 1200), ferry flight (1400 to 1425); Day 4: 1st §121.471 flight (0500 to 0600); 2nd §121.471 flight (0630 to 0830); 3rd §121.471 flight (0900 to 1200); ferry flight (1230 to 1429).

In the 24-hour-consecutive-hour period between 1230 on Day 2 to 1230 on Day 3 that includes Day 2's 1 hour and 59 minutes ferry flight there is a total of 9 hours and 4 minutes of §121.471 and ferry flying: Day 2's ferry flight (1230 to 1429), and Day 3's §121.471 flights as well as one of Day 3's ferry flights (1st § 121.471 flight, 0330 to 0435; ferry flight, 0500 to 0600; 2nd

§121.47I flight, 0630 to 0830; 3rd §121.471 flight, 0900 to 1200).

Question: Ex. No. 1(a)

Was the 9-hour lookback rest period under § 121.471(b)(1) that preceded duty Day 3, required to be a minimum 11-hour lookback rest period under § 121.471(b)(3) because the certificate holder scheduled the pilot for a total of 9 hours and 4 minutes flight time in the 24-consecutive-hour period from 1230 hours on Day 2 to 1230 hours on Day 3; or, alternately, was that rest period required to be a planned 9-hour reduced lookback rest period under §121.471(c)(3) to be followed by 12 hours of compensatory rest starting no later than at 1500 hours on Day 3, because the certificate holder scheduled the pilot for a total of 9 hours and 4 minutes flight time in the 24-hour-consecutive period from 1230 hours on Day 2 to 1230 hours on Day 3?

Answer: Ex. No. 1(a) *(Also see Analysis starting at page 10.)*

Yes. Because there were "9 or more hours of scheduled flight time" in the 24-hour period between 1230 on Day 2 to 1230 on Day 3, the rest period between Day 2 and Day 3 had to be planned under §121.471(b)(3) or §121.471(0(3). The certificate holder was required to provide the pilot before Day 3's flying either a minimum 11-hour lookback rest period under §121.471(b)(3), or a planned minimum 9-hour reduced lookback rest period under §121.471(0(3) to be followed by 12 hours of compensatory rest starting no later than at 1500 hours on Day 3. The 1 hour and 59 minutes ferry flight at the end of duty Day 2 precedes §121.471 flying on duty Day 3, and is within the 24-consecutive-hour period in which §121.471 and ferry flying total 9 hours and 4 minutes scheduled flight time (i.e., the ferry flight is within the 24 hours between 1230 on Day 2 and 1230 on Day 3). The end-of-duty-Day 2 scheduled ferry flight time must be counted in the total scheduled flight time that determines the amount of lookback rest or planned reduced lookback rest with planned compensatory rest. Thus, although the ferry flight at the end of Day 2 may be viewed as "tail end" as to Day 2 and as "tail end" in regard to the daily flight time limits, that ferry flight is not "tail end" in regard to the length or amount of the rest period that the certificate holder must plan to give under §121.471(b)(3), or that the certificate holder must at a minimum give under §121.471(c)(3).

Example No. 1(b): *The pilot is scheduled to perform §121.471 flying, followed by ferry flying; a delay occurs that affects the ferry flight; the pilot is scheduled to perform §121.471 flying the following morning: The facts are identical to the facts in Example No. 1(a), except that a delay affects the 1 hour and 59 minutes Part 91 ferry flight at the end of duty Day 2. That ferry flight (scheduled departure, 1230; scheduled arrival, 1429) is delayed for 1 hour by circumstances beyond the certificate holder's control, e.g., weather (departure and completion are now expected to be 1330 and 1529, respectively). At the ferry flight's actual expected completion there would only be 8 hours and 31 minutes of lookback rest (in the period from 1529 on Day 2 to 1529 on Day 1).*

Questions: Ex. No. 1(b)

a. Does the 1 hour and 59 minutes ferry flight time at the end of duty Day 2 count to designate the amount of lookback rest for Day 2's flying; if so, does the reduction of lookback rest to 8 hours and 31 minutes at the ferry flight's actual expected completion trigger receipt of 10 hours compensatory rest?

b. If the pilot is entitled to receive 10 hours compensatory rest at the completion of the late arriving ferry flight, and assuming the pilot had been scheduled for an 11-hour lookback rest period (from 1500 on Day 2 to 0200 on Day 3) because he was scheduled for a total of 9 hours and 4 minutes flight time in the 24-hour-consecutive-hour period from 1230 hours on Day 2 to 1230 hours on Day 3, may the 10-hour compensatory rest period occur concurrently with the 11-hour scheduled lookback rest period?

Answers: Ex. No. 1(b) *(Also see Analysis starting at page 10.)*

a. Yes. While the pilot is entitled to the same amount of lookback rest (i.e., minimum of 9 hours) whether the 1 hour and 59 minutes ferry flight time is added to the 6 hours of §121.471 flight time or not, because the ferry flight is scheduled to precede §121.471 flying within a 24-consecutive hour period (see e.g., the period from 1230 on Day 2 to 1230 on Day 3), the ferry flight time must be counted to designate the amount of lookback rest for Day 2's flying, and the reduction of lookback rest to 8 hours and 31 minutes at its actual expected completion " triggers receipt of at least 10 hours compensatory rest."

b. Yes. The 10-hour compensatory rest period and the 11-hour lookback rest period may be served concurrently, ***provided*** *that: (1) the compensatory rest period starts on time, and (2) the total duration of the pilot's rest period is 11 hours. Thus, if after 15*

minutes post flight duties, the pilot is released for timely compensatory rest at 15:44[18] *on Day 2, he may not be required to report until 11 hours later at 0244 hours on Day 3.*[19]

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[17] Of course, if the actual expected completion of the flight would be at a time when there would be less than the minimum amount of reduced lookback rest, the flight may not commence. *See* Nov. 20, 2000, Letter to Captain Richard Rubin, *supra*, note 5. Also, for this hypothetical example and for the other hypothetical examples, we assume that the flight actually ends at the time the certificate holder had actually expected it to end. This assumption about actual expected arrival time to determine whether to commence a flight and what actually occurs (i.e., the flight does end at the actual expected arrival time: a time when there is less than full minimum lookback rest) underlies all the hypothetical examples we provide in this letter. If, unexpectedly, the flight is completed at a time when looking back 24 hours, one finds full minimum lookback rest, the pilot is not entitled to compensatory rest.

[18] Note that the pilot may be released for timely compensatory rest as late as at 1600 hours on Day 2 (and have a report time of 0300 on Day 3 after concurrently receiving the 11-hour rest period) because at 1600

Example No. 1(c): *The pilot is scheduled to perform §121.471 flying, followed by ferry flying; and to perform §121.471 flying the following morning; all flights are performed as planned: A pilot is given a 9-hour rest period under §121.471(b)(1) (from 1500 on Day 1 to 2400 on Day 1), to be followed by a 15-hour duty day (from 0000 on Day 2 to 1500 on Day 2). During Day 2's duty period he is scheduled to perform four §121.471 flights totaling 7 hours and 59 minutes, followed at the end of duty Day 2 by a 3-hour Part 91 ferry flight. Another 9-hour rest period under § 121.471(b)(1) (from 1500 on Day 2 to 2400 on Day 2) is scheduled to precede Day 3's 15-hour duty period (from 0000 on Day 3 to 1500 on Day 3). During Day 3's duty period the pilot is scheduled to perform three §121.471 flights. totaling 5 hours and 15 minutes. After Day 3's §121.471 flights, the pilot is scheduled to perform a 3-hour ferry flight (from 0700 to 1000). After performing Day 3's ferry flight, the pilot will be required to perform various non-flight duties prior to his release at 1500 hours. All of Day 3's flying is scheduled to be performed early on duty Day 3. Another 9-hour rest period under §121.471(b)(1) (from 1500 on Day 3 to 2400 on Day 3) is scheduled to precede Day 4's 15-hour duty day (from 0000 on Day 4 to 1500 on Day 4). The scheduled flights for Day 4 will be identical to Day 3's. The pilot will also be required to perform various non-flight duties after performing Day 4's ferry flight. At 1500 hours on Day 4 the pilot will be given 3 days off.*

Day 2's flights are performed as planned: 1st §121.471 flight (0015 to 0215); 2nd §121.47I flight (0230 to 0430); 3rd §121.471 flight (0445 to 0600); 4th §121.471 flight (0730 to 1014); ferry flight (1130 to 1430). Day 3's and Day 4's flights are also performed as scheduled: 1st §121.471 flight (0015 to 0215); 2nd §121.471 flight (0230 to 0430); 3rd §121.471 flight (0445 to 0600); ferry flight (0700 to 1000).

In the 24-consecutive-hour period between 0600 on Day 2 to 0600 on Day 3 that includes Day 2's 3-hour ferry flight there is a total of 10 hours and 59 minutes of §121.47I and ferry flying: Day 2's 4t §121.471 flight (0730 to 1014), Day 2's ferry flight (1130 to 1430), and Day 3's §121.471 flights (1 u §121.471 flight, 0015 to 0215; 2nd §121.471 flight, 0230 to 0430; 3rd §121.471 flight, 0445 to 0600).

hours on Day 2 one can still find a minimum of 8 hours of reduced lookback rest (from 1600 to 2400 on Day 1).

[19] This example also illustrates a somewhat paradoxical aspect of the rules, namely, that a § 121.471 rest period may be both a compensatory rest period and a reduced rest period at the same time. Here, because the 1-hour delay in the commencement of the ferry flight caused that flight to go beyond Day 2's implied 15-hour work window and reduced the pilot's lookback rest for Day 2's flying below 9 hours (here, to 8 hours and 31 minutes), the pilot was owed a timely compensatory rest (i.e., one that began "no later than 24 hours after the commencement of the reduced rest period") and the correct length or amount of compensatory rest (here, at least 10 hours). At the same time, because the certificate holder planned for “9 or more hours of scheduled flight time" within a 24-consecutive-hour period, §121.471(b)(3) required that the rest period between Day 2 and Day 3 be at least 11 hours, reducible (under §121.471(0(3)) to a

minimum of 9 hours, followed by a minimum of 12 hours compensatory rest. But because the compensatory rest period applicable to the reduced lookback rest for Day 2's flying had to be at least 10 hours, the certificate holder does not have the flexibility to reduce the full lookback rest period (i.e., 11 hours) to minimum reduced **lookback** rest (i.e., 9 hours). Instead, the certificate holder may only reduce the rest to 10 hours. And the pilot must also be given 12 hours of compensatory rest "no later than 24 hours" after the start of this 10-hour reduced rest period. (Note that there are other hypothetical examples in this letter *(see Ex.* No. 1(c) `Question b,' and Ex. No. 1 (d)) that illustrate the fact that rest periods may be served concurrently and the paradoxical aspect of the rules that the pilot's entitlement to a minimum amount of compensatory rest limits the amount of flexibility a certificate holder might otherwise have to reduce a concurrently received full rest period.)

Questions: Ex. No. 1(c)

a. Does the certificate holder violate paragraph (a)(4) by scheduling the pilot to perform the 3-hour ferry flight at the end of duty Day 2 because the pilot's total flight time in all commercial flying (10 hours and 59 minutes) will exceed more than 8 hours between required rest periods?

b. Was the 9-hour lookback rest period under § 121.471(b)(1) that preceded Day 3's duty day required to be a minimum I I -hour lookback rest period under § 121.471(b)(3), because the certificate holder scheduled the pilot for a total of 10 hours and 59 minutes flight time in the 24-consecutive-hour period from 0600 hours on Day 2 to 0600 hours on Day 3; or, alternately, was that rest period required to be a planned 9-hour reduced lookback rest period under § 121.471(c)(3) to be followed by 12 hours of compensatory rest starting no later than at 1500 hours on Day 3, because the certificate holder scheduled the pilot for a total of 10 hours and 59 minutes flight time in the 24-consecutive-hour period from 0600 hours on Day 2 to 0600 hours on Day 3?

Answers: Ex. No. 1(c) *(Also see Analysis starting at page 10.)*

a. No. We do not consider that the flight time limits of paragraph (a(4) have been violated.

b. Yes. The certificate holder was required to provide the pilot before Day 3's flying either a minimum 11-hour lookback rest period under §121.471(b)(3), or a planned minimum 9-hour reduced lookback rest period under § 121.471(0(3) to be followed by 12 hours of compensatory rest starting no later than at 1500 hours on Day 3. The 3-hour ferry flight at the end of duty Day 2 precedes §121.471 flying on duty Day 3, and is within the 24-consecutive-hour period from 0600 hours on Day 2 to 0600 hours on Day 3 in which §121.471 flying and ferry flying total 10 hours and 59 minutes of scheduled flight time. The end-of-duty-Day 2 scheduled ferry flight time must be counted in the total scheduled flight time that determines the amount of lookback rest or planned reduced lookback rest with planned compensatory rest. Also see our Answer to the Question in Ex. No. 1(a); as well as our discussion in footnote 19 and our Answer to Question a' of Ex. No. 1 (d) about rest periods being served concurrently and the paradoxical aspect of the rest rules.

Example No. 1 (d): *The pilot is scheduled to perform §121.471 flying, followed by ferry flying; a delay occurs that affects the*

ferry flight; the pilot is scheduled to perform §121.471 flying the following morning: The facts are identical to the facts in Example No. 1(c), except that a delay affects the 3-hour Part 91 ferry flight at the end of duty Day 2. That ferry flight (scheduled departure, 1130; scheduled arrival, 1430) is delayed for 21/2 hours by circumstances beyond the certificate holder's control, e.g., weather (departure and completion are now expected to be 1400 and 1700, respectively). At the ferry flight's actual expected completion there would only be 7 hours of lookback rest (in the period from 1700 on Day 2 to 1700 on Day 1).

Questions: *Ex. No. 1(d)*

a. Was the pilot entitled to receive paragraph (b)(3) lookback rest of at least 11 hours before reporting for duty at 0000 hours on Day 2 because he had a total of 10 hours and 59 minutes of scheduled flight time (i.e., 7.59 hours of § 121.471 flying plus 3 hours of ferry flying) on Day 2?

b. If the pilot was entitled to at least 11 hours of rest before reporting for duty at 0000 hours on Day 2 (see Question a'), and assuming a hypothetical example modified as to this fact that he received that amount of rest before reporting, would the pilot or certificate holder violate § 121.471 or §91.13 if the pilot commences the delayed ferry flight at 1400 hours on Day 2?

Answers: *Ex. No. 1(d) (Also see Analysis starting at page 10.)*

a. Yes. Because the end-of-duty-Day 2 ferry flight is scheduled to precede §121.471 flying within a 24-consecutive-hour period (see e.g., the period from 0600 hours on Day 2 to 0600 hours on Day 3), the 3-hour ferry flight time must be added to the 7 hours and 59 minutes of scheduled §121.471 flight time to determine the amount of lookback rest the pilot must receive for Day 2's flying. Thus, the pilot was entitled to receive at least 11 hours of lookback rest before reporting for duty at 0000 hours on Day 2; alternatively, that rest period was required to be a planned 9-hour reduced lookback rest period, to be followed by at least 12 hours of compensatory rest starting no later than at 1500 hours on Day 2. Note that in the situation where the rest period for Day 2's flying is reduced lookback rest followed by compensatory rest, the rest period preceding Day 3's flying (see Ex. No. I(c) Question b') must be 12 hours in order to satisfy the amount of compensatory rest applicable to the reduced lookback rest for Day 2's flying.

b. Yes. The pilot and the certificate holder would

violate § 121.471 if the pilot commences the delayed ferry flight at 1400 hours because they do so knowing that its actual expected completion time would be later than 1500 hours on Day 2 (i.e., the latest point in time at which there is a minimum 9-hour reduced lookback rest and on-time start of compensatory rest of 12 hours).

Also, the circumstances (e.g., only 7 hours of lookback rest) raise serious concerns about potential pilot fatigue and the possibility, as to both the pilot and the certificate holder, of a careless or reckless operation contrary to 14 C.F.R. § 91.13(a).

Analysis

While there may be a "general understanding" in the aviation industry that "tail end ferry flying[20] "does not count" toward the daily flight time limits of § 121.471(a)(4), we found no interpretation addressing whether ferry flying is considered or not toward the flight time limits of § 121.471(a)(4). Because the safety rationale[21] for including or not including ferry flying in the daily flight time limits of the Part 135 regulations is relevant to operations conducted under §121.471, we recognize for §121.471 operations, the rule stated in the previously-discussed interpretations of the Part 135 flight time regulations that "other commercial flying" assigned by any entity and performed before an air transportation flight under Part 135 "counts" against the daily Part 135 flight time limits, but "does not count" against the daily flight time limits when it follows the part 135 flying. Thus, under §121.471(a)(4), when any "other commercial flying" is performed before §121.471 flights in a given duty day it "counts" against paragraph(a)(4)'s daily *flight time limits;* however, it "does not count" against these daily *flight time limits* when it follows all of a given duty day's §121.471 flights.[22]

When we use the term "counts," regarding daily flight time limits, we mean that we do consider "other commercial flying," for example, a ferry flight scheduled to be performed

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[20] *See supra* note 11.

[21] The Agency's rationale for including a ferry flight that precedes an air transportation or revenue flight in the daily flight time limits of the Part 135 regulations, but not including in such daily flight time limits a non-passenger/non-cargo carrying ferry flight that follows all air transportation flights of the duty day, may have been based on the safety analysis that a ferry flight, that is performed before an air transportation flight, is itself a fatigue-causing event for the pilot of that ferry flight. Thus, the ferry flight time must be "counted" to ensure the safety of the intended beneficiaries of the daily flight time limits, e.g., paying passengers on the subsequent air transportation flight that will be performed by the ferry pilot. However, when a pilot performs a ferry flight that follows all the air transportation flights of the duty day, the daily flight time limits are not considered violated because the ferry pilot does not operate any revenue flights after the ferry flight in that duty day. Thus, no paying passengers, the intended beneficiaries of the daily flight time limits on pilots, are subsequently at risk of a fatigue-caused aviation accident.

[22] Our August 9, 1990 Letter to James W. Johnson, from Donald P. Byrne, Assistant Chief Counsel, Regulations and Enforcement Division, addressed "other commercial flying" in an operation conducted under §121.471, but is not relevant to the "tail end" ferry flight issue. That interpretation dealt with the question whether flight time accrued during

a test-flight by an FAA designated pilot examiner is "other commercial flying" and should count for purposes of the flight time limitations of § 121.471(a). We concluded that the flight examiner is neither a passenger nor a crewmember, but instead a representative of the Administrator with the duty to observe an applicant's competence in performing the functions necessary for a particular certificate or rating. Having concluded that the examiner is not **a** crewmember, we further concluded that the time the examiner spends in conducting flight tests should not be included as "other commercial flying" for purposes of the flight time limitations of Part 121[1990-21] (copy enclosed).

before a §121.471 air transportation flight(s), in our assessment about certificate holder or flight crewmember compliance with § 121.471(a)(4)'s prescriptions against scheduling or accepting an assignment of more than a total of 8 hours flight time (e.g., total of §121.471 air transportation flights and ferry flights) between required rest periods. And when we use the phrase "does not count," we mean the converse, that is, we do not consider the scheduled ferry flight following a §121.471 air transportation flight(s) in our determination about compliance with the §121.471(a)(4) daily flight time limits.

In addition, whether performed before or after a given duty day's §121.471 flight(s), any "other commercial flying" "counts[23] against the regulation's cumulative flight time limits. Thus, any "other commercial flying" "counts" against the calendar year, calendar month, and 7-consecutive-days flight time limitations stated, respectively, in paragraph (a)(1),(2), and (3) of §121.471.

We also apply to operations conducted under §121.471, as more fully explained below, the general rule that "other commercial flying" assigned by the certificate holder may not be performed in a required rest period. We note that the previously-discussed Part 135 interpretations dealing with "other commercial flying" under the July 1985 regulation considered that general rule only with respect to unscheduled operations conducted under §135.267.[24] We found no interpretation addressing that general rule with respect to the rest requirements of scheduled operations conducted under §135.265 or §121.471. We also note that the language of §135.265(b) and (c) is essentially the same as §121.471(b) and (c), and that these rules are likewise interpreted.

We explained above at pages 2-3, that the language and the structure of paragraphs (b) and (c) of §121.471 establish an integral relationship between rest requirements and flight time, and key a specified minimum amount of lookback or reduced lookback rest to: 1) a specified amount of scheduled flight time assigned by the certificate holder; and 2) the 24-hour period before the scheduled completion of each flight segment. In addition, that specified minimum amount of lookback rest, if reduced, triggers a specified minimum amount of compensatory rest that must occur no later than 24 hours after the commencement of the reduced lookback rest. We also noted that in order to determine whether a flight may commence in accordance with minimum reduced lookback

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[23] A 1987 interpretation stating that "other commercial flying," such as a ferry flight, that occurs subsequent to flight time in

air transportation, does not count against the flight time limits of §121.471(a)(3) is consistent with our approach that a given duty day's "other commercial flying" counts toward §121.471(a)'s cumulative flight time limits. In the 1987 interpretation we were asked whether a pilot for a domestic air carrier operating an aircraft on a wet lease, who has flown 29.5 hours in the last 7 days, has had 24 hours off during this 7-day period, and goes off duty after a ferry flight, would violate §121.471(a)(3) if he returned the aircraft to main base after completing the wet lease when that ferry flight takes 2 hours and gives the pilot a 7-day total of 31.5 hours. We said that "such a ferry flight which occurs subsequent to flight time in air transportation is not counted against the `30 in 7' limitation." In that letter, two important facts were: 1) the 29.5 hours were air transportation flying (i.e., §121.471 flying); and 2) the pilot would be off duty upon completing the ferry flight. Thus, in this particular situation no ferry flying preceded the § 121.471 flying and the pilot would not be performing any §121.471 flying after the ferry flight, in fact, he would be off duty. *See* May 4, 1987, Letter to AWP-7, from John H. Cassady, Assistant Chief Counsel, AGC-200 [1987-12] (copy enclosed).

[24] *See e.g.*, Oct. 31, 1990, Letter to Manager, NE-FSDO-03, *supra* note 14.

rest requirements, on the day of departure of a given flight segment, "scheduled completion of any flight segment" means revised time of completion or arrival of the flight segment based on actual flight conditions. Also, pursuant to the language of §121.471(e) and the regulatory history, reduced lookback rest and compensatory rest may not be delayed or further reduced under any circumstances.

The Agency's rationale for including (i.e., "counting") a ferry flight that precedes an air transportation or revenue flight in the daily *flight time limits,* but not including in such daily *flight time limits* a non-passenger/non-cargo carrying ferry flight that follows all air transportation flights of the duty day, may have been based on the safety analysis that a ferry flight, that is performed before an air transportation flight, is itself a fatigue-causing event for the pilot of that ferry flight. Thus, the ferry flight time must be "counted" to ensure the safety of the intended beneficiaries of the daily flight time limits, e.g., paying passengers on the subsequent air transportation flight that will be performed by the ferry pilot. However, when a pilot performs a ferry flight that follows all the air transportation flights of the duty day, the daily *flight time limits* are not considered violated because the ferry pilot does not operate any revenue flights after the ferry flight in that duty day. Thus, no paying passengers, the intended beneficiaries of the daily flight time limits on pilots, are subsequently at risk of a fatigue-caused aviation accident. We view the safety logic to protect subsequent air transportation flights as being equally important in the application of the §121.471 ***rest rules*** when a ferry flight that is the last flight of a duty day is scheduled: 1) to precede §121.471 air transportation flights that are scheduled to be performed the following day; 2) the end-of-duty-day ferry flight and the subsequent day's §121.471 flights are scheduled to be performed in a 24-consecutive-hour period;[25] and 3) all such flying will be performed by the same pilot for the same certificate holder.

We conclude that the language and structure of §121.471(b) and (c), §121.471(e)'s proscription against scheduling or accepting duty in a required rest period, the regulatory intent that lookback and compensatory rest be inviolate, and the safety rationale to protect subsequent air transportation flights support the following construction of the regulation: When a certificate holder schedules an assignment for ferry flight time that is to precede §121.471 flight time in a 24-consecutive-hour period and all such flying will be performed by the same pilot and for the same certificate holder, the scheduled ferry flight time must be "counted" in the total

scheduled flight time (for a line or reserve pilot) that designates lookback rest or planned reduced lookback rest along with planned compensatory rest. And if on the day of departure of a given ferry flight, its actual expected time of completion would reduce lookback rest in the preceding 24-hour period, that ferry flight's actual expected time of completion determines whether the flight may commence and also triggers the pilot's timely receipt of the applicable amount of unplanned compensatory rest. Since such rest periods may not be violated, the ferry flight may not be performed during a time when it would infringe on the required reduced lookback rest designated by total scheduled flight time. The ferry flight may also not be performed during a time when it infringes on timely receipt of the applicable amount of compensatory rest.

Therefore, as to Example No. 1(a), the answer is that the certificate holder was required to provide the pilot before Day 3's flying either an 11-hour minimum lookback rest period pursuant to § 121.471(b)(3), or a planned minimum reduced lookback rest of no less than 9 hours pursuant to §121.471(c)(3) to be followed by 12 hours of compensatory rest starting no later than at 1500 hours on Day 3. The 1 hour and 59 minutes ferry flight at the end of duty Day 2 precedes §121.471 flying on duty Day 3, and is within the 24-consecutive-hour period from 1230 hours on Day 2 to 1230 hours on Day 3 in which § 121.471 and ferry flying total 9 hours and 4 minutes scheduled flight time. The end-of-duty-Day 2 scheduled ferry flight time must be counted in the total scheduled flight time that determines the amount of lookback rest or planned reduced lookback rest with planned compensatory rest.

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25 *See generally 50* Fed. Reg. 29306, at 29311 for an explanation (text and Figure 1) of the mechanics of scheduling a pilot to fly in excess of 8 hours within a 24-consecutive-hour period.

For Example No 1(b), the answer to `Question a' is that even though the pilot was entitled to the same amount of lookback rest preceding duty Day 2's flying (i.e., a minimum of 9 hours), whether the 1 hour and 59 minutes of ferry flight time is added to duty Day 2's 6 hours of §121.471 flight time or not, because the 1 hour and 59 minutes ferry flight at the end of duty Day 2 is scheduled to precede §121.471 flying in a 24-consecutive-hour period, that ferry flight time must be counted to designate the amount of lookback rest for Day 2's flying; and the reduction of lookback rest to 8 hours and 31 minutes at the ferry flight's actual expected completion triggers receipt of at least 10 hours of compensatory rest. The answer to `Question b' is that the 10-hour compensatory rest triggered by the actual expected completion of the ferry flight at the end of duty Day 2 and the already scheduled 11-hour lookback rest to precede Day 3's flying may be served concurrently, provided that the compensatory rest starts on time and the pilot receives a total rest period of 11[26] hours. The answer to `Question a' of Example 1(c) is that we not consider the 3-hour scheduled ferry flight time following duty Day 2's scheduled §121.471 flights in determining compliance with paragraph (a)(4)'s flight time limits. Thus, we do not consider that the *flight time limits* of paragraph (a)(4) have been violated. The answer to `Question b' is that the certificate holder was required to provide the pilot before Day 3's flying either a minimum 11-hour lookback rest period under §121.471(b)(3), or a planned minimum 9-hour reduced lookback rest under §121.471(c)(3) to be followed by 12 hours of compensatory rest starting no later than at 1500 hours on Day 3. The 3-hour ferry flight at the end of duty Day 2 precedes §121.471 flying on duty Day 3, and is within the 24-consecutive-hour period from 0600 hours on Day 2 to 0600 hours on Day 3 in which §121.471 flying and ferry flying total 10 hours and 59 minutes of scheduled flight time. The end-of-duty-Day 2 scheduled ferry flight time must be counted in the total scheduled flight time that designates the amount of lookback rest or planned reduced lookback rest with planned compensatory rest.

The answer to `Question a' of Example No.1 (d) is that the pilot was entitled to at least 11 hours of lookback rest before reporting for duty at 0000 hours on Day 2 because the

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[26] *See supra* notes 18 and 19. Note again that footnote 19 discusses a situation in which the already scheduled 11-hour lookback rest period is reduced to 10 hours.

3-hour ferry flight at the end of duty Day 2 was scheduled to precede § 121.471 flying within a 24-consecutive-hour period, and must be added to the 7 hours and 59 minutes of scheduled § 121.471 flight time to determine the amount of lookback rest for Day 2's flying. Alternatively, that rest period was required to be a planned 9-hour reduced lookback rest period, to be followed by at least 12 hours of compensatory rest starting no later than at 1500 hours on Day 2. Note that in the situation where the rest period for Day 2's flying is reduced lookback rest followed by compensatory rest, the rest period preceding Day 3's flying *(see* Ex. No. 1(c) `Question b') must be 12 hours in order to satisfy the amount of compensatory rest applicable to the reduced lookback rest for Day 2's flying. As to `Question b,' the pilot and the certificate holder would violate §121.471 if the pilot commences the delayed ferry flight at 1400 hours because they do so knowing that its actual expected completion time would be later than 1500 hours on Day 2 (i.e., the latest point in time at which there is a minimum 9-hour reduced lookback rest and on-time start of compensatory rest of 12 hours). Further, the circumstances of the example raise serious concerns about potential pilot fatigue and the possibility, as to both the pilot and the certificate holder, of a careless or reckless operation contrary to 14 C.F.R. §91.13(a).

We note that the facts you provided in your hypothetical example do not implicate the question whether the ferry flying conducted in the period from 2345 hours on Day 1 to 0300 hours on Day 2 violated the lookback or compensatory rest requirements. The Agency established an end-of-duty-day "tail end ferry flying" exception to daily *flight time limits* because after the "tail end" ferry flight, the ferry pilot will not operate, in that duty day, any subsequent air transportation flights on which there are intended beneficiaries of daily *flight time limits (e.g.,* paying passengers on the subsequent air transportation flight(s) to be performed by the ferry pilot). Thus, no intended beneficiaries of the daily *flight time limits* on pilots are subsequently at risk of a fatigue-caused aviation accident. Similarly, an end-of-duty-day "tail end" ferry flight does not implicate the *rest rules* when the certificate holder does not schedule the pilot for, nor call him or her out to perform, any §121.471 flights the following day and within a 24-consecutive-hour period of the previous duty day's "tail end" ferry flight. In this situation, no intended beneficiaries of the ***rest rules*** for pilots are subsequently at risk of a fatigue-caused aviation accident.

Section III. Deadhead Hypothetical Examples:

Example No. 2(a): *The pilot is scheduled to perform §121.471 flying, followed by deadhead; a delay occurs that affects the flight on which the pilot is deadheading; the pilot is scheduled to perform §121.471 flying the following morning: A pilot is given a 9-hour rest period under §121.471(b)(1) (from 1500 on Day 1 to 2400 on Day 1), to be followed by a 15-hour duty day (from 0000 on Day 2 to 1500 on Day 2), during which time he is scheduled to perform four §121.471 flights totaling 7 hours and 59 minutes. After performing the § 121.471 flights he will deadhead (i.e., be required to ride as a passenger on an aircraft the certificate holder provides) on a 3-hour flight (from 1130 to 1430), in order to be available for Day 3's duty. Another 9-hour rest period under §121.471(b)(1) (from 1500 on Day 2 to 2400 on Day 2) is scheduled to precede Day 3's 15-hour duty period (from 0000 on Day 3 to 1500 on Day 3). During Day 3's duty period the pilot is scheduled to perform three §121.471 flights totaling 5 hours and 15 minutes. That §121.471 flying is scheduled to be performed early on duty Day 3 (0015 to 0215; 0230 to 0430; 0445 to 0600). After performing Day 3's §121.471 flights the pilot will be required to perform various non-flight duties prior to release from his 15-hour duty day). At 1500 hours on Day 3 he will be given 3 days off.*

Day 2's §121.471 flights are performed as planned: 1st §121.471 flight (0015 to 0215); 2nd §121.471 flight (0230 to 0430); 3rd §121.471 flight (0445 to 0600); 4th §121.471 flight (0730 to 1014); however, the flight on which the pilot is deadheading (scheduled departure, 1130; scheduled arrival, 1430) is delayed by circumstances beyond the certificate holder's control, e.g., weather, for 21/2 hours (departure and completion are now expected to be 1400 and 1700, respectively). At the deadhead flight's actual expected completion there would only be 7 hours of rest (from 1700 on Day 2 to 1700 on Day 1).

Question: *Ex. No. 2(a)*
Is the pilot entitled to paragraph (c)(1) compensatory rest if he rides on the delayed deadhead flight because at it's actual expected completion his lookback rest will be less than 9 hours?

Answer: *Ex. No. 2(a)* *(Also see Analysis starting at page 16.)*
No. The pilot is not entitled to receive compensatory rest because a deadhead assignment may not trigger compensatory rest. He was legally scheduled under paragraph (b)(1) for 9 hours of lookback rest on Day 1, based on a total of 7 hours and 59 minutes of §121.471

flight time; and he legally received that rest period. Note that the certificate holder may not use the pilot for Day 3's §121.471 flying without first giving him a 9-hour rest period under §121.471(b(l), because deadhead may not be performed during the lookback rest period for Day 3's flying.

Example No. 2(b): The certificate holder deadheads the pilot to a place at which the pilot is on standby for some §121.471 flight assignments; the pilot does perform some §121.471 flights; a delay occurs that affects the 3rd §121.471 flight; the pilot is scheduled to perform §121.471 flying the following morning: A pilot is given a 9-hour rest period under §121.471(b(1) (from 0000 on Day 2 to 0900 on Day 2). The pilot reports for duty at 0900 hours on Day 2, and will deadhead (i.e., be required to ride as a passenger from point A to point B on an aircraft the certificate holder provides), from 0930 hours to 1330 hours on Day 2. At point B, the pilot must be available by the phone from 1330 hours to 1730 hours on Day 2 in expectation of performing some § 121.471 flight assignments. On Day 3 the pilot is scheduled to perform two §121.471 flights totaling 5 hours and 30 minutes (0930 to 1300; 1330 to 1530). Another 9-hour rest period under § 121.471(b(l) (from 0000 on Day 3 to 0900 on Day 3) is scheduled to precede Day 3's flying. At 1600 hours on Day 3 the pilot will be given 3 days off.

On Day 2 the pilot does perform three § 121.471 flight assignments totaling 4 hours of flight time (1st §121.471 flight: scheduled departure 1830, scheduled arrival 1930; 2nd §121.471 flight: scheduled departure 2000, scheduled arrival 2200; 3rd §121.471 flight: scheduled departure 2230, scheduled arrival 2330). The 3rd flight is delayed for 1 hour due to circumstances beyond the certificate holder's control, e.g., weather, and the revised scheduled departure time is 2330 hours. At its actual expected completion time, the pilot would have 8 hours and 30 minutes of lookback rest in the preceding 24 hours.

Question: *Ex. No. 2(b)*
Is the pilot entitled to receive at least 10 hours compensatory rest?

Answer: Ex. No. *2(b) (Also see Analysis starting at page 16.)*
Yes. Because the actual expected completion of a flight time assignment, in this case, a § 121.471 flight, would reduce the pilot's lookback rest to less than 9 hours, but not less than 8 hours, the pilot could commence the flight. And, he is entitled to receive at least 10 hours compensatory rest, because, as we stated in footnote 17 regarding all the hypothetical examples

discussed in this letter, the flight ends at the time the certificate holder expected it would end (here, when the pilot had less than 9 hours of lookback rest in the preceding 24 hours).

Example No. 2(c): *The requester's hypothetical example: After 24 hours free of duty, the pilot reports at 1500 hours. He performs Part 121 flying for 5 hours and 30 minutes of flight time during his 8 hours and 45 minutes duty period, which is completed at 2345 hours. He is then assigned Part 91 flying, which is completed at 0300 hours, at which time the pilot is released to rest 8 hours and 15 minutes. The pilot reports for duty at 1115, and deadheads to Pittsburgh arriving at 1230. He is subject to receiving a flight assignment, but is not assigned. At 1800 hours he is again deadheaded to Kalamazoo and is released to rest at 2040 hours. He is scheduled to report at 0515 the following morning for a flight assignment. The rest he received prior to the 0515 report was 8 hours and 35 minutes.*

Question: Ex. No. 2(c)

a. Was the pilot required to receive a 10-hour compensatory rest on the second day when he wasreleased for rest at 2040, since he received a reduced rest of 8 hours and 15 minutes on Day 1[we assume you meant, Day 2] and he performed duty (i.e., standby and deadhead) on Day 2?

b. Was compensatory rest required to begin at or before 0300 on Day 2 [we assume you meant, Day 3]?

Answer: Ex. No. 2(c) *(Also see Analysis starting at pagel6.)*

a. No. The pilot was not[27] entitled to receive compensatory rest on Day 3 based on the performance of the standby and deadhead assignments and reduced rest on Day 2 because neither standby nor deadhead triggers compensatory rest.

b. No. See our answer to Question a.'

Analysis

As previously discussed at page 5, deadhead has traditionally meant a situation in which the pilot is required to ride as a passenger in transportation that is not local, provided by the certificate holder, and frequently on the certificate holder's aircraft, to a destination where he is to serve on a flight as crewmember; or required to ride home as a passenger after serving on a flight as a crewmember. We note that deadhead does not involve manipulating the

controls; thus, it is unlike a flight time assignment. Also, under § 121.471(f), deadhead is not considered part of a rest period.

We also previously explained at pages 2-3, that under §121.471(b) and (c), a specified minimum amount of lookback or reduced lookback rest is keyed to: 1) a specified amount of scheduled flight time assigned by the certificate holder; and 2) the 24-hour period before the scheduled completion of each flight segment. And, that specified minimum amount of lookback rest, if reduced, triggers a specified minimum amount of compensatory rest that must occur no later than 24 hours after the commencement of the reduced lookback rest. We noted, too, that in order to determine whether a flight may commence in accordance with minimum reduced lookback rest requirements, on the day of departure of a given flight segment, "scheduled completion of any flight segment" means revised time of completion or arrival of the flight segment based on actual flight conditions. Also, the plain language of § 121.471(e) proscribes scheduling or accepting any duty during a required rest period.

We conclude that the language and structure of the regulation support an interpretation that a deadhead assignment, which is unlike a flight time assignment that involves manipulating the controls, does not require or trigger lookback rest or planned reduced lookback rest along with planned compensatory rest. Further, the reduction of the deadheading pilot's lookback rest by the actual expected time of completion of the deadhead flight does not determine if the deadhead flight may commence, nor does such reduction trigger receipt of unplanned compensatory rest for the deadheading pilot. However, pursuant to §121.471(e)'' and (f), deadhead may not be performed during a required rest period; thus, deadhead may not infringe on the lookback rest applicable to §121.471 flying scheduled to be performed in the following duty day.

[27] Note that if the pilot had actually been called out, had performed a § 121.471 flight and **had** been scheduled for §121.471 flying the following morning *(see Ex.* No. 2(b)), he would be entitled to timely compensatory rest in accordance with § 121.471(c) in a situation where the actual expected completion of the § 121.471 flight he was called out for would reduce § 121.471(b) lookback rest.

As to a standby assignment (though it has different meanings in the aviation industry), it clearly does not mean or involve manipulating the controls. Thus, our interpretation of the regulation regarding a deadhead assignment is applicable to a standby assignment: standby does not require or trigger lookback rest or planned reduced lookback along with planned compensatory rest; and it may not trigger unplanned compensatory rest. Standby also may not be performed during a required rest period. *See* §121.471(e).

Therefore, the answer to Example No. 2(a) is that the pilot is not entitled to receive compensatory rest because a deadhead assignment may not trigger compensatory rest.[29] He was legally scheduled, under paragraph (b)(1), for 9 hours of lookback rest on Day 1, based on a total of 7 hours and 59 minutes of § 121.471 flight time; and he legally received that rest period. Note, however, that the certificate holder may not use the pilot for Day 3's §121.471 flying without first giving him a 9-hour rest period under §121.471(b)(1),[30] because deadhead may not be performed during the lookback rest period for Day 3's flying. For Example No. 2(b), the answer is that the actual expected completion of a flight time assignment would reduce the pilot's lookback rest to less than 9 hours, but not less than 8 hours; thus, the pilot could commence the flight. He is also entitled to at least 10 hours of compensatory rest because the flight ends at a time when he has less than 9 hours of lookback rest. For Example No. 2(c) (the requester's hypothetical), the answer is that the pilot was not entitled to receive compensatory rest on Day 3 based on the performance of the standby and deadhead assignments and reduced rest on Day 2 because neither standby nor deadhead[31] requires or triggers compensatory rest.

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[28] *Compare* Feb. 28, 2002, Letter to James W. Johnson, from Donald P. Byrne, Assistant Chief Counsel, Regulations Division [2002-1] (stating that regardless of whether drug/alcohol testing is classified as "duty" or nonduty, time spent submitting to mandatory drug/alcohol testing is not "rest") (copy enclosed).

[29] If, however, a § 121.471 flight that the pilot performs and that precedes the flight on which the pilot is deadheading would end at a time when looking back 24 hours one finds less than full minimum lookback rest, that fact would entitle the pilot to compensatory rest.

[30] Of course, under paragraph (c)(1), this 9-hour period is reducible to no less than 8 hours.

[31] Any previous statements by the FAA that a deadhead assignment may trigger a regulatory-required compensatory rest are mistaken. However, we also caution certificate holders conducting domestic operations to guard against a myopic view that just because deadhead or standby assignment may not trigger compensatory rest they may assign pilots to duty that includes excessive deadhead or standby. The circumstances of such assignments may raise serious concerns about potential pilot fatigue and the possibility of a careless or reckless operation contrary to 14 C.F.R. § 91.13(a).

This response was prepared by Constance M. Subadan, Attorney, Operations and Air Traffic Law Branch, and Joseph A. Conte, Manager. It was coordinated with 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 for Regulations