April 10, 2003

Mr. David M. Shinn
[redacted]

Dear Mr. Shinn:

This letter is in response to your letter of April 2, 2002, requesting an interpretation of the flight time limitations and rest requirements regulations applicable to supplemental operations, Subpart S, 14 C.F.R. sections 121.500 through 121.525. Your questions, facts, and our response are set forth below.

QUESTIONS AND FACTS

You pose several interrelated questions along with examples that we organize and set forth for clarity, as follows:

1. Please provide me with a discussion of section 121.513 and its applicability to scheduling under section 121.521.

2. When complying with sections 121.513 and 121.521 to allow the additional airman:

a. Should the flight be between two places, precluding multiple flight segments per 121.513(a-c)? It appears section 121.513(b-c) establishes the one leg requirement (between any two places), which would indicate why section 121.513(a) is written in the singular.

b. Are crews being scheduled with the intent of the FARs if total block hours exceed 8 hours, but none of the single segments exceeds 8 hours, with an additional airman (RFO) [we assume that you mean a relief flight officer] on board? Section 121.521(a) discusses a crew of two pilots (e.g., MD-11, B747-400) and one additional airman (RFO), and the block hour (time aloft) limitation of 12 hours. My concern regarding intent is the non-stop reference in section 121.503(f), and the eight hours in 24 references [we assume that you are referring to section 121.503(a)]. Is it appropriate to schedule under section 121.521 (flights in excess of 8 hours with an additional airman), but not comply with section 121.513 (between any two places)? The following examples will help to address my concerns:

Ex. No.l: A flight departs Taipei for Anchorage without any

intermediate stops. The total block time is 9 hours. This flight exceeds 8 hours block time, and is between two places.

Ex. No. 2: A flight departs Hong Kong for Anchorage with an intermediate stop in Osaka. The first flight segment blocks 3 hours and 11minutes, has a turn in Osaka of 1 hour and 13 minutes, and then blocks 7 hours and 31 minutes from Osaka to Anchorage. The total block time is 10 hours and 42 minutes, with a total duty time of 13 hours and 12 minutes. This flight exceeds 8 hours block time, but is between three places.

Finally, in communications with the FAA Office for the Alaska Region, you indicated that you fly more than 20 hours in two-pilot crews in 30 consecutive days. You also indicated that you are scheduled in two-pilot crews, three-pilot crews, and four-pilot crews in 30 consecutive days.

RESPONSE TO QUESTION NO. 1

Under Subpart S, when an operation is (or operations are) international in character, a certificate holder has the option, under section 121.513, of electing to comply with the provisions found in sections 121.515 and 121.521 through 121.525 (the "international rules"), instead of the provisions found in section 121.503 through 121.511 (the "U.S. mainland rules"). Section 121.513 states:

> §121.513 Flight time limitations: Overseas and international operations: airplanes.
> In place of the flight time limitations in §§ 121.503 through 121.511, a certificate holder conducting supplemental operations may elect to comply with the flight time limitations of §§ 121.515 and 121.521 through 121.525 for operations conducted
>
> (a)Between a place in the 48 contiguous States and the District of Columbia, or Alaska, and any place outside thereof;
> (b)Between any two places outside the 48 contiguous States, the District of Columbia, and Alaska; or
> (c)Between two places within the State of Alaska or the State of Hawaii.

We note that section 121.513 gives to the certificate holder, in plain and unambiguous language, the option to "elect" the flight time limitations provisions under which the operations will be governed:

> In place of the flight time limitations in §§ 121.503

> through 121.511, a certificate holder conducting supplemental operations may elect, to comply with the flight time limitations of §§ 121.515 and 121.521 through 121.525.... (Emphasis added.)

The plain dictionary definition of "elect" is:

> 1: to make a selection of: choose....3: to choose (a course of action) esp. by preference: decide upon....

Webster's Third New International Dictionary Unabridged 731 (1961).

It is evident that a certificate holder may not make the section 121.513 election by inaction because the provisions of the "U.S. mainland rules" and the "international rules" differ from each other, with each set of rules subjecting the operation to different requirements. For example, under § 121.503(d) of the "U.S. mainland rules" the 30-consecutive-day flight time limit is 100 hours: "No pilot may fly as a crewmember in air transportation more than 100 hours during any 30 consecutive days." But under §121.521(c)(1) of the "international rules," applicable to an airman in an airplane with a crew of 2 pilots and one additional airman, that limit is 120 hours: "No airman may be aloft as a flight crewmember more than--(1) 120 hours during any 30 consecutive days[.]"[1] Finally, because a flight crewmember[2] is also responsible for ensuring compliance with various provisions of the regulations, a certificate holder must communicate its election[3] to the flight crewmember.

RESPONSE TO QUESTION NO. 2

An election under section 121.513 results in the application of the flight time limitations and other provisions of the "international rules" to an operation that meets the geographic specifications of section 121.513, paragraphs (a), (b), or (c)--that is, to an operation that is international in character. An operation that is international in character may involve a flight with multiple flight segments or legs; and such an operation qualifies under paragraphs (a), (b), or (c), as explained below:

> *(a) Between a place in the 48 contiguous States and the District of Columbia, or Alaska, and any place outside thereof,*

1. One flight leg of the multiple-leg operation must originate in a place that is in the 48 contiguous States and the District of Columbia and must terminate in any place outside thereof, or the reverse, i.e., one flight leg of the multiple-leg operation must terminate in a place that is in the 48 contiguous States and the District of Columbia and must originate in any place,

outside thereof; or 2. One flight leg of the multiple-leg operation must originate in a place that is in Alaska and must terminate in any place outside thereof, or the reverse, i.e., one flight leg of the multiple-leg operation must terminate in a place that is in Alaska and must originate in any place outside thereof.

Examples are the following hypothetical multiple-leg trip sequences: *Los Angeles-Anchorage-San Diego; Paris-NYC-Baltimore's-Atlanta; Honolulu-Chicago[6]-Memphis.*

Note that the Agency has stated in prior interpretations that an operation (involving multiple flight segments) that is international in character may lose its international character, and a segment(s) may become subject to the "U.S. mainland rules." We have said that an overseas flight that terminates in the 48 contiguous States retains its international character notwithstanding an intermediate stop in the United States if the stop is only for refueling or to off-load cargo or passengers enplaned outside the 48 contiguous States, and is not a stop to enplane cargo or passengers prior to the ultimate destination in the United States. In the latter situation where cargo or passengers are enplaned, the flight loses its international character at the intermediate stop, and the flight segment with the newly enplaned cargo or passengers becomes subject to the "U.S. mainland rules." *See e.g.,* Nov. 9, 1990 Letter to Autumn Newsome, ASO-7, from Donald P. Byrne, Acting Assistant Chief Counsel, Regulations and Enforcement Division [1990-361 (copy enclosed).

Note that these limits of 100 and 120 hours, respectively, are both subject to the prescriptions stated in §121.517. [2] *See* Administrator v. Richard, NTSB Order Nos. EA-2665 and EA-2575 (1988 and 1987) (affirming, except as modified regarding sanctions, the ALJ's conclusion of a violation of §121.503(d); and stating that the flight time limitations impose independent responsibilities on pilots and air carriers, and flight crewmembers cannot make an air carrier exclusively accountable for their own failure to comply with §121.503); and In re Thoral Merklev, Acting Administrator, FAA Order No. 93-11(1993) (reversing judgment on pleadings, and remanding to ALJ for determination whether flight crewmember's flight time totals on dates charged exceeded limitations of §121.503(d) and §121.521(c)(2); but also approving the ALJ's rejection of the flight crewmember's argument that the air carrier is solely responsible for ensuring that pilots not exceed the flight time limitations, and stating that the respective language of §121.503(d) and §121.521(c)(2) that "no pilot may fly" and "no airman may be aloft" places the responsibility for the accounting of flight time on the pilot or airman). Note that our August 30, 1993, Letter to Captain Freeman, from Donald P. Byrne, Assistant Chief Counsel, Regulations Division, stating that "FAR 121.521 only prescribes requirements for an air carrier" is not at odds with these enforcement cases. Our Letter to Captain Freeman addressed only paragraphs (a) and (b), which contain prescriptions directed to a certificate holder; it did not address the prescriptions of paragraph (c) that are directed to a flight crewmember [1993-22] (copy enclosed). *See also* July 7, 1989, Letter to Rudolf Hahn**,** from Donald P. Byrne, Acting Assistant Chief Counsel, Regulations and Enforcement Division [1989-15] ("In Subpart S of Part 121 annual flight time limitations are contained in Sections 121.503(e) and 121.515. The respective language in those sections that `No pilot may fly' and `No airman may be aloft' places the responsibility for the accounting of annual flight time on the pilot or airman. However**,** Section 121.683(0(1)(sic] of Subpart V requires each certificate holder to `Maintain current records of each crewmember...(e.g....flight time records)....' Therefore, the responsibilit**y** for accounting of annual flight time limitations is a dual responsibility between the pilot and the certificate holder.") (copy enclosed).

Flight Standards expects that the certificate holder will clearly articulate, in its §121.133 manual, the specific circumstances where the certificate holder has elected to operate under the "international rules**."**

Thus, in an operation involving multiple flight segments or legs in which there are intermediate stops on the U.S. mainland the issue of whether any of the U.S. mainland flight segments is eligible for the election under section 121.513(a) does not rest simply on an analysis of whether a segment fits the geographical test embodied in section 12I.513(a), but also on an inquiry about the nature or purpose of the stop(s) between U.S. mainland flight segments. In other words, the nature of the stop may cause the intra U.S. mainland flight segment to be ineligible to be operated under the "international rules."

> *(b) Between any two places outside the 48 contiguous States, the District of Columbia, and Alaska; or*

The flight segments or legs are performed entirely outside of the 48 contiguous States, the District of Columbia, and Alaska. Examples are the following hypothetical multiple-leg trip sequences: *Seoul-Tokyo-Honolulu; Milan-Rome-Algiers-Rome.*

> *within the State of Alaska or the State of Hawaii.*

The flight segments or legs are performed within Hawaii or within Alaska. Examples are the following hypothetical multiple-leg trip sequences: *Ketchikan-Juneau-Anchorage-Fairbanks-Anchorage; Honolulu-Hilo-Honolulu.*

In your Example No.1, a single-leg operation from Taipei to Anchorage, that you state is scheduled under section 121.521(a),' and that totals 9 hours block-to-block, you in essence ask whether the certificate holder is eligible to make an election under section 121.513 to operate under the "international rules," instead of under the "U.S. mainland rules." We find that the certificate holder is eligible to make the section 121.513 election for that flight, under paragraph (a). This would be so because the flight originates in a place outside Alaska (i.e., Taipei) and terminates in a place in Alaska (i.e., Anchorage).

° Note that the NYC-Baltimore flight segment retains its international character, as per the textual discussion regarding intra U.S. mainland flight segments, provided that the certificate holder does not enplane cargo or passengers at NYC. Similarly, the Baltimore-Atlanta flight segment also retains its international character, as per the textual discussion regarding intra U.S. mainland flight segments, provided that the certificate holder does not enplane cargo or passengers at Baltimore. *See supra* notes 4 and 5 and textual discussion regarding intra U.S. mainland flight segments.

(c) Between two places Similarly, your Example No. 2, a multiple-leg operation that departs Hong Kong for Anchorage with an intermediate stop in Osaka, scheduled under section 121.521(a), and that totals 10 hours and 42 minutes block-to-block (Hong Kong-Osaka, 3:11;Osaka-Anchorage, 7:31), would also be a flight (or series of 2 flight segments) for which, the certificate holder is eligible to make the section 121.513 election. The flight segment from Hong Kong to Osaka clearly meets the geographical test embodied in the provisions of section 121.513(b). The flight segment from Osaka to Anchorage clearly meets the geographical test embodied in the provisions of section 121.513(a). Thus, the certificate holder may elect under section 121.513 to operate both flight segments under the "international rules." [g]

Finally, as to the information you provided the FAA Office for the Alaska Region relating to your service in more than one kind of flight crew, we refer you, for guidance on the applicability of section 121.525, to our previous March 2, 1994, Letter to Mr. Caison, from Donald P. Byrne, Assistant Chief Counsel, Regulations Division [1994-3] (copy enclosed). We noted in the March 2, 1994, Letter that the requirements of section 121.525 only apply to those operations that are being conducted under the "international rules" in accordance with the air carrier's election under section 121.513. We further stated:

> [I]f the pilot is assigned to more than one type of flight crew in any 30-consecutive-day period because he operated various aircraft requiring different types of flight crews or

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[g] Section 121.521 **states in relevant part:**

§121.521 Flight time limitations: Crew of two pilots and one additional airman as required.

(a) No certificate holder conducting supplemental operations may schedule an airman to be aloft as a member of the flight crew in an airplane that has a crew of two pilots and at least one additional flight crewmember for more than 12 hours during any 24 consecutive hours.

Note that we find nothing in the language of §121.513 that restricts an operation (or operations) to qualifying under one paragraph only of that section. That is, a certificate holder is eligible to make the §121.513 election, in an operation involving multiple segments or legs, where one segment qualifies, e.g., under paragraph (a) and another under paragraph (b). You also appear to be asking, in regard to Example No. 2, whether a single flight segment, in an operation that is scheduled under § 121.521(a) and that involves multiple segments, must exceed 8 hours block-to-block. We find nothing in the language of §121.521(a) that requires that a single segment of a multiple-segment flight must exceed 8 hours block-to-block. In addition, although your hypothetical examples all deal with operations that are international in character, you refer in your letter to § 121.503(f), which is part of the "U.S. mainland rules." While we do not understand why you mention § 121.503(f), we note that it does not change our analysis or answers.

because he participated in various operations on one type of aircraft requiring different types of flight crews (to conform to flight, duty and rest rules), then the following analysis is applicable. When determining whether section 121.525(b) or 121.525(c) applies to a particular pilot, we must consider the number of pilots who are assigned to that crew. In the case of aircraft requiring two pilots and a flight engineer, section 121.525(b) applies because that is a crew consisting of two pilots, i.e., "two-pilot crews." Section 121.525(c) is not applicable by virtue of its prefatory language: except for a pilot covered by paragraph (b) of this section. Therefore, when a pilot is scheduled so that he falls within the parameters of section 121.525(b), his flight time limitations are governed by sections 121.503 through 121.509. Moreover, when a pilot's situation falls within section 121.525(b), he cannot be scheduled in accordance with section 121.521 because section 121.525(b) specifically requires otherwise.

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

Sincerely,

Donald P. Byrne Assistant
Chief Counsel Regulations
Division