April 29, 2005

Candace K. Kolander
Coordinator, Air Safety, Health and Security Association of Flight Attendants
1275 K Street, N.W.
Washington, D.C. 20005-4006

Dear Mrs. Kolander:

This letter responds to your March 29, 2004 letter requesting confirmation of the Agency's view on various flight attendant rest issues, namely:

1- That the definition of rest, as previously defined by the FAA, also applies to flight attendants.
2- That the FAA policy regarding the "one phone call exception" also applies to flight attendants.
2- That a flight attendant may also submit a "do not call" letter of her/his desire not to be contacted while on a rest period.

Question No. 1: Whether the definition of rest, as previously defined by the FAA, also applies to flight attendants.

The agency has previously said that the nature, of rest is the same, regardless of the operation or the subpart under which a flight assignment is performed. Rest must satisfy three conditions in order to qualify as a rest period: It must be 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 present responsibility from work should the occasion arise. *See* Oct 29. 2002 Letter to James W. Johnson, from Donald P. Byrne, Assistant Chief Counsel, Regulations Division [No. 2003-6] (copy enclosed); August 5, 2004 Letter to Don Treichler, from James W. Whitlow, Deputy Chief Counsel (copy enclosed); and Dec. 9, 1999 Letter to James R. Knight, from Donald P. Byrne, Assistant Chief Counsel [2001-1] (copy enclosed).

Under section 121.467(a) of the flight attendant duty period limitations and rest requirements regulations, rest period is defined as "the period free of all restraint or duty for a certificate holder conducting domestic, flag, or supplemental operations and free of all responsibility for work or duty should the occasion arise." The agency has not previously addressed, via a letter of interpretation, whether this definition of rest is similar to the definition of rest in the cited interpretations.

As written, the definition of rest period in section 121.467(a) appears to focus on criterion number 3 of the nature of rest (i.e., a period "during which a crewmember is free from all restraint by the certificate holder, including freedom from present responsibility for work should the occasion arise"). The regulatory history of section 121.467 provides insight into the FAA drafters' intent about the nature of the section 121.467(a) rest period. The Preamble to the final rule notes that "this final rule requires that a flight attendant `be given' a scheduled rest period. This provision makes the operator responsible for ensuring that a flight attendant is scheduled for and receives the scheduled rest period. The FAA recognizes that how the flight attendant utilizes this rest period cannot be regulated. Requiring operators to schedule rest periods ensures that flight attendants know in advance when rest periods will occur and that they will be of a specified duration." [1] (Emphasis added).

We believe that the cited regulatory history supports the view that the FAA drafters' intended that a flight attendant's rest period satisfy not only criterion number 3 of the nature of rest (a period "during which the crewmember is free from all restraint by the certificate holder, including freedom from present responsibility for work should the occasion arise), but also criteria numbers 1 and 2 ("a continuous period of time" that is "determined prospectively"). Thus, we conclude that the Agency's definition of rest stated, in various legal interpretations, also applies to flight attendants.

Questions Nos. 2 and 3: Whether the FAA policy regarding the "one phone call exception" also applies to flight attendants and whether a flight attendant may also submit a "do not call" letter of her/his desire not to be contacted while on a rest period.

In our November 7, 2003 letter, we responded to the Air Line Pilots Association's (ALPA's) question whether a carrier is limited to one phone call or can continue calling until they actually contact and speak to the pilot. We confirmed the continued existence of the FAA policy on the "one phone call exception," stating at footnote 1:

[T]he Federal Aviation Regulations do not explicitly allow `one phone call' from the carrier during a pilot's rest period. However, the FAA established the `one phone call policy,' based on certain narrow conditions and the fact pattern presented to us. Generally speaking, an air carrier can initiate a phone call and a pilot can--on his or her own volition--receive one phone call from an air carrier without the phone call being viewed as disruptive and breaking the continuous rest period. *See* Nov. 7, Letter to James W. Johnson, from Donald P. Byrne, Assistant Chief Counsel (copy enclosed).

That letter went on to reemphasize the voluntary nature of receiving phone calls and suggested examples of methods a pilot could take to prevent being contacted by the carrier, and thus have an uninterrupted rest period. We mentioned the following, as an example:

[I]f the pilot is staying at a hotel, the front desk can hold any incoming calls; or if the pilot is at home, the telephone ringer can be turned off and an answering machine can pick up calls. Further, a flight crewmember can provide written notification to the air carrier of his or her desire not to be contacted while on rest periods (or the conditions under which contact should not be attempted). If an air carrier receives such a `do not call' letter from a flight crewmember, then the carrier is on actual notice that its attempts to contact the pilot during

[1]59 Fed. Reg. 42974, 42980 (August 19, 1994).

the rest period could disrupt the pilot's attempt to sleep. In such a situation, unlike the situations summarized in footnote 1, even one phone call from the carrier to the pilot is evidence that the carrier has broken the pilot's continuous rest period, and the rest period must begin anew before the carrier could use the pilot in part 121 domestic operations.

Because the example of a "do not call" letter was misconstrued by the aviation community to mean that the FAA was requiring such a letter to be sent by the pilot and honored by the carrier, the Agency subsequently issued a clarification letter to ALPA on May 11, 2004. We said in the May 11 letter that:

"The [November 7] letter was not intended, and does not establish, a new policy or a new rule by the FAA with respect to our rest requirements. Nor does the letter override FAA's existing policy that a rest period is not viewed as interrupted simply because the air carrier makes contact with the pilot one time by telephone, pager, and the like.

Because the question you posed could not be answered in the abstract, an example was provided to illustrate the *kind of evidence* that could indeed suggest that a pilot's continuous rest had been

interrupted. I must emphasize that by providing this example the FAA was neither requiring air carriers to honor or process such a notice if sent, nor advising pilots to send such notices in order to communicate a desire not to have their rest interrupted. Such details should be left to the parties. The establishment of a rule imposing a regime of "do not call" letters on pilots or air carriers would require notice and comment rulemaking because it would do more than interpret our existing rules and would impose new, substantive requirements on the aviation community.

See May 11, 2004 Letter to James W. Johnson, from Andrew B. Steinberg, Chief Counsel (copy enclosed).

The Agency has not previously addressed via a letter of interpretation whether the "one phone call exception" applies to flight attendants. The safety rationale that underpins the policy allowing "one phone call" to pilots is based on the agency's judgment that a single phone call that a pilot in a rest period does not expect to receive, is not required to accept, but does in fact accept, would not impose a great psychological or physiological burden on such a pilot. Nor in general, would such a call undermine the protection against fatigue that is afforded by the continuous rest period. We believe that a similar rationale applies to a flight attendant's rest period and that the exception should also apply to a flight attendant. Note, however, as previously stated in the November 7 letter, that the exception is very narrow. The flight attendant must not be obligated to answer the call or be available to answer the call. Note, in addition, that if the call is made during a period when it could be expected that the flight attendant would be sleeping (e.g., at 2:00 a.m.), then although "legally" the continuous period of rest has not been interrupted, the carrier may have interrupted the flight attendant's actual sleep and may thereby cause the flight attendant to be fatigued for the next duty day.

Our May 11 letter of clarification to ALPA that the FAA was not in the November 7 letter imposing a regime of "do not call" letters on pilots or carriers is also applicable to flight attendants. Thus, as to your question whether a flight attendant may also submit a "do not call" letter of his/her desire not to be contacted while on a rest period, note that the FAA may not impose, via a letter of interpretation, a regime of "do not call" letters on flight attendants or air carriers. The establishment of a rule imposing a regime of "do not call" letters on flight attendants or air carriers would require notice and comment rulemaking because it would do more than interpret our existing rules and would impose new, substantive requirements on the aviation community.

This response was prepared by Joseph A. Conte, Manager, Operations Law Branch, and Constance M. Subadan, Attorney, Operations Law Branch. It was coordinated with the Flight Standards Service at FAA Headquarters.

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