Jan. 11, 2005

Mr. Jan Marcus
[redacted]

Dear Mr. Marcus:

This letter responds to your letter of August 14, 2003 in which you seek an interpretation of the flight and duty regulations relating to supplemental operations (Subpart S, 14 C.F.R. §§ 121.500-121.525).

You refer to sections 121.505(b),' 121.507(b)[2] and 121.509(b)[3] that state duty limits of 16, 18, and 20 hours, respectively.

You ask three specific questions:

1. A pilot is delayed, and now just before gate pushback he is scheduled to exceed the supplemental duty time limits. Can he go?
2. What will constitute a break in the duty to allow a new duty period to start fresh? Commonly we ask for 8 hours in the hotel to break the duty.
3. Are there circumstances or a set of rules the company can choose to avoid complying with the duty time limitations and if yes, what would the rules be and what constitutes the company's ability to switch to those rules for a certain occurrence?

In addition, your letter contains the following statement: "The company is saying that in supplemental operation, `legal to start-legal to finish,' meaning that if a pilot is scheduled for less than the duty time limit, but unforeseen delays cause the duty day to extend beyond the limit, he is legal to go. The company does state that under scheduled domestic ops a pilot cannot exceed the duty day limit under any circumstances. It seems that the same should be applicable to supplemental operations."

At the outset, we note that while the provisions in sections 121.505(b), 121.507(b) and 121.509(b) state explicit duty limits, section 121.471 does not explicitly specify a duty limit for flight crewmembers. Rather, under section 121.471, it is the mandatory rest requirements that inherently limit the length of duty periods. *See* Oct. 29, 2002 Letter to James W. Johnson, from Donald P. Byrne, Assistant Chief Counsel, Regulations Division [2003-6] (copy enclosed) and 50 Fed. Reg. 29,306, at 29, 308 (July 18, 1985).

' Section 121.505(b) states: No pilot of an airplane that has a crew of two pilots may be on duty for more than 16 hours during any 24 consecutive hours.[2] Section 121.507(b) states: No pilot of an airplane that has a crew of three pilots may be on duty for more than 18 hours in any 24 consecutive hours.

2 Section 121.509(b) states: No pilot of an airplane that has a crew of four pilots may be on duty for more than 20 hours in any 24 consecutive hours.

The domestic regulations contain an exception to the flight time limits. We have previously emphasized that this exception--the "circumstances beyond the control of the certificate holder exception"[4]-- applies only to the regulatory flight time limits. It does not apply to the regulations' mandatory rest requirements. *See* Oct. 29, 2002 Letter to James W. Johnson; *see also* Air Transp. Ass'n of America v. FAA, 291 F.3d 49, 52 n.3 (D.C. Cir.2002). Thus, the "legal to start legal to finish" cliché may not be used, in operations under the domestic regulations, to ignore the mandatory rest requirements because these mandatory rest requirements in effect limit a pilot's duty period. *See* Oct. 29, 2002 Letter to James W. Johnson.

Although subpart S does not contain a similar exception, via interpretation, the Agency has also applied the "circumstances beyond the control of the certificate holder exception" to flight time questions concerning supplemental air carriers and commercial operators. *See* Dec. 2, 1991 Letter to John H. Dewitt, from Donald P. Byrne, Assistant Chief Counsel, Regulations and Enforcement Division [1990-33]. However, it is important to note that the 1991 Letter specifies flight time questions, not duty time questions.

We have previously recognized that the duty limit stated in sections 121.505(b) is a "hard" limit that may not be exceeded. In other words, this limit is a "cut-off' point beyond which a certificate holder may not use a pilot. This view is implicit in our response in an early interpretation:

> *Question:* Assume a pilot commences a flight at 0000, and flies [sic] for a total of 7 hours and 59 minutes. Assume further, that because of additional ground time during the various legs, the flight actually ends at 9:29 a m. Would it be legal for this pilot to start this route again the next day at 0001?
> *Answer:* Section 121.505(b) states: No pilot of an airplane that has a crew of two pilots may be on duty for more than 16 hours.
> As long as the actual flying time does not exceed eight hours, and the *total duty time does not exceed 16 hours,* the pilot may begin the same route the next day at 0001. (Emphasis added.)

See Feb.5, 1975 Letter to John Griffith, from George L. Thompson, Associate Regional Counsel, ANE-7 [1975-7] (copy enclosed).

Therefore, the answer to your first question is that the pilot may not leave the gate if just before pushback he is scheduled to exceed the duty time limit.

A recent opinion involving a scenario governed by section 121.505(b), addresses the question whether a 3-hour break spent in a hotel room in a duty day that from report to off duty totaled 17 hours and 15 minutes qualified as a rest period or was, instead, an extension of the 16-hour duty limit. *See* August 5, 2004 Letter to Don Treichler from James W. Whitlow, Deputy Chief Counsel (copy enclosed). We concluded that the 3-hour period did not satisfy the three conditions necessary to qualify as rest. It was not a period of at least 8 continuous hours that was known in advance to the

---

Section 121.471(g) states: A flight crewmember is not considered to be scheduled for flight time in excess of flight time limitations if the flights to which he is assigned are scheduled and normally terminate within the limitations, but due to circumstances beyond the control of the certificate holder (such as adverse weather conditions), are not at the time of departure expected to reach their destination within the scheduled time.

flight crew. It also appeared that the flight crew was in effect "on call" for the 3-hour break it spent in the hotel, and thus had a present responsibility for work. Instead, the 3-hour break was duty time that extended the crew's duty period beyond the 16-hour limit stated in section 121.505(b). The Treichler opinion supports the conclusion that only a minimum rest period may constitute a break in the section 121.505(b) 16-hour duty limit. Under the supplemental regulations, the minimum stated rest period is 8 hours. *See* Section 121.505(a). Thus, the answer to your second question is that only a minimum 8-hour rest period may break a duty period and allow it to start fresh.

Finally, you inquire whether there are any circumstances or rules that allow a company to avoid compliance with the duty time limits. The answer is no. There are no circumstances or rules that allow a company to avoid compliance with the duty time limits. However, if at the time of take-off for the last flight, an operator has a reasonable basis for believing that it can complete the flight within the duty limits, but it actually exceeds the duty limits, and if the operator presented evidence to the FAA that the delay was due to a circumstance beyond its control that first manifested itself when the flight was in midair, the FAA would take those factors into consideration in the exercise of its prosecutorial discretion.

This letter was prepared by Joseph A. Conte, Manager, Operations & Air Traffic Law Branch and Constance M. Subadan, Attorney, Operations & Air Traffic Law Branch. It was coordinated with The Air Transportation Division of the Flight Standards Service at FAA Headquarters.

Sincerely,

Rebecca B. MacPherson, Assistant
Chief Counsel Regulations Division