April 29, 2005

Scott Morris
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Office of Regional Counsel
Federal Aviation Administration
Northwest Mountain Region Headquarters
1601 Lind Avenue, S. W.
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Dear Mr. Morris:

This letter responds to your September 22, 2003 question whether regular office duty [1] performed by a flight attendant, which is followed by a flight assignment at the end of that regular office duty day, is part of "duty period" as defined in 14 C.F.R. section 121.467(a), and triggers applicable minimum daily rest requirements.

We understand that the situation that you present is one in which a flight attendant is scheduled[2] or assigned or told to report for and perform, perhaps, 8 hours of office duty. Further, the flight attendant is also scheduled, either in advance of such office duty, or at some time after reporting for such duty, to perform one or more flight assignments. Thus, we understand that the flight attendant's duty day could possibly involve the following scenario:

The flight attendant reports for office duty at 0800 hours on Day 1, and performs 8 hours of office duty during the period 0800 hours to 1600 hours on Day 1. At 1600 hours on Day 1, the flight attendant is told that he or she has been scheduled under section 121.467(b)(1) to serve as a flight attendant on 2 flight assignments: flight 1, from 1700 hours to 2000 hours on Day 1; flight 2, from 2300 hours on Day 1 to 0130 hours on Day 2. The flight attendant will perform pre-flight duties from 1601 hours to 1700 hours on Day 1. The flight attendant will be released at 0200 hours on Day 2 and will receive a 9-hour rest period (from 0200 hours on Day 2 to 1100 hours on Day 2). The total time from report at 0800 hours on Day 1 to 0200 hours on Day 2 is 18 hours.

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[1] Another requester has raised a similar question in a situation that involves a flight attendant who performs station manager duty followed by a flight assignment.

[2] Note that we have previously said, in the context of a flight crewmember, that the verb "schedule," which is analogous to "assign," is not limited to a published schedule -- "We do not regard the word `schedule' to be confined to the situation where a published schedule is used. In a dictionary definition, the verb `schedule' means `to appoint, assign, or designate for a fixed time.' Consequently, the word `schedule' includes any means by which a flight crewmember is assigned flight crewmember duty with the air carrier." *See* Nov. *7,* 1979 Letter to John C. Lenahan, from Edward P. Fabenman, Acting Assistant Chief Counsel, Regulations & Enforcement Division *[1979-67]* (copy enclosed).

> The flight attendant is scheduled to report at 1100 hours on Day 2 for a 14 hour duty day (1100 hours on Day 2 to 0100 hours on Day 3) that will involve serving as a flight attendant on 4 flights during the period 1200 hours on Day 2 to 0030 hours on Day 3. The flight attendant will be released at 0100 hours on Day 3 and will receive a 9-hour rest period (from 0100 hours on Day 3 to 1000 hours on Day 3).

Section 121.467(a) states, in relevant part:

> Duty period means the period of elapsed time between reporting for an assignment involving flight time and release from that assignment by the certificate holder conducting domestic, flag, or supplemental operations. The time is calculated using either Coordinated Universal Time or local time to reflect the total elapsed time.

The answer to your question whether office duty is counted as part of the "duty period" turns, in part, on the significance of the verbal forms "reporting" and "involving" (of the verbs "to report' and "to involve") in the phrase "reporting for an assignment involving flight time."

The dictionary[3] definitions of these verbs are, respectively:

> report...: to present oneself....
>
> involve...: to have within or as part of itself: contain, include....

.Thus, the plain language of section 121.467(a) contemplates within the definition of "duty period," the period from the time when the flight attendant presents herself for an assignment which includes, but is not necessarily limited to, flight time (i.e., serving on (a) flight segment(s)), and release from such segment(s). However, the language of section 121.467(a) does not address: 1) what "other duties" may be included in this period, and 2) when such "other duties" may occur and be considered eligible for inclusion in this period.

We turn to the Preambles of the final rule[4] and the Notice of Proposed Rulemaking (NPRM)[5] to ascertain the FAA's intent in promulgating section 121.467(a). The Preamble to the final rule contains the following relevant language on the purpose of the duty period limitations:

Duty period limitations are established to enhance the safety of the flying public by ensuring that flight attendants do not become overly fatigued during flight assignments.

See 59 Fed. Reg. at 42977-78.

The Preamble to the NPRM contains language indicating that the Agency contemplated that the "other duties" that may be performed and included in "duty period," besides flight segment(s), would be the typically required pre-flight duties and post-flight duties. However, the Agency also contemplated that a period of time spent waiting, not involving pre- or post- flight duties, but

Webster's Third New International Dictionary Unabridged 1191, 1925 (1961). ° 59 Fed. Reg. 42974 (Aug. 19, 1994).

[5] 58 Fed. Reg. 17024 (Mar. 31, 1993).

incurred because a flight attendant reported early, for example, due to an incorrectly scheduled or delayed assignment, would also be included in "duty period":

> The duty-hour approach is based on the flight attendant's typical work day. For the purposes of assignments involving flight time, the duty period includes the total elapsed time between when the flight attendant reports for a flight assignment, as required by the air carrier, and when the flight attendant is relieved from duty by the air carrier. Flight attendant duties include pre- and post-flight safety—related duties.
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> Pre-flight safety duties include emergency equipment checks and passenger boarding. The Industry Study [9/12/89 Report on the Study of Current Industry Practice-Flight Attendant Flight, Duty, and Rest Times] noted that air carriers vary in how early they require flight attendants to check in to begin their duty periods and pre-flight duties. This check-in or report time varies depending on the type of equipment flown and the flight destination. Carriers typically require flight attendants to arrive 30 minutes to 1 hour before scheduled departure. The Industry Study noted that some carriers require flight attendants to report for duty up to 2 hours before departure on international flights.
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> Post-flight safety duties include the safe deplaning of passengers, duties related to securing the aircraft, and administrative responsibilities such as reporting inoperative cabin safety equipment to maintenance personnel. Typically, flight attendants are required to remain on duty after the aircraft arrives at the gate to accomplish these post-flight duties before they are relieved from duty. Thus, a flight attendant's work is not solely a function of whether the aircraft is airborne, because they perform very important safety duties during boarding and deplaning.
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> Under the proposal, if a flight attendant reported for duty as required and *found* that the flight assignment was incorrectly scheduled or that the flight was delayed or canceled, a duty period nevertheless would have begun. For example, a flight attendant may report for duty as scheduled, only to find that the assigned report time is incorrect and that duty actually begins 2 hour later. The carrier could either keep the flight attendant on duty or release the flight attendant for a complete rest period under the applicable section of this proposed rule.

See 58 Fed. Reg. at 17027.

While the Agency intended that the performance of airport ground duties, alone or solely, such as *training* periods or gate duty periods, without any flight assignment would not be included in "duty period," the Agency was concerned about the possibility of practices, such as the situation you present, in which air carriers mix airport ground duties and flight assignments.

> Training, gate duties (such as assigning seats, collecting tickets and boarding passes), or other ground duties not directly associated with a particular flight assignment, such as ticketing or reservations, are not considered as assignments *involving* flight time for purposes of this proposal. The proposed rules are intended to regulate activities that are normally performed by flight attendants. The rules are not intended to
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> > regulate activities unrelated to normal flight attendant duties; nevertheless, these types of duties could not be performed for a carrier during a required rest period.

> Proposed § 121.466 (a) [adopted in the final rule as § 121.467(a)]...of this NPRM contain[s] a list of terms and definitions applicable to the proposed amendments. Under the proposal[], "duty period" is defined as the period of elapsed time between when the flight attendant reports for an assignment involving flight time, and ends when the air carrier or certificate holder releases the flight attendant from duty. The proposed rule is intended to ensure that flight attendants are rested between duty periods that entail flight assignments, rather than assignment to training or ground duties. The FAA believes that restricting the applicability of this notice to duty periods entailing flight assignments will not pose problems of carriers scheduling flight attendants to ground duty followed by flight duty. The agency solicits comments, however, on this issue. (Emphasis added)

See 58 Fed. Reg. at 17027-28.

In the Preamble to the final rule, the Agency also stated that a layover period of time spent at a hotel room does not break the duty period, and is part of a duty period:

> Four commenters, including NAA, recommended revisions to the proposed duty period limitations. NAA recommended that a layover of 4 to 5 hours during which a hotel room is provided should not count as duty time.
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> In response to NAA, all duty period assignments, including those assignments with a 4- to 5-hour break in duty at a hotel, must be assigned within duty period limitations and must meet minimum rest requirements. The FAA would not consider this to be a break in, or cessation of, the duty period.

See 59 Fed. Reg. at 42977-78.

As previously noted, the FAA's purpose in establishing duty period limitations was "to enhance the safety of the flying public by ensuring that flight attendants do not become overly fatigued during flight assignments." The drafters believed that even the time spent merely waiting after an early report or the time in a hotel room between flight assignments could contribute to a flight attendant's fatigue. The situation that you present in which the certificate holder mixes airport ground duties with flight assignments and the flight attendant is assigned, for example, to 8 hours of office duty before commencing the pre-flight duties for a flight assignment, results in a much more fatigued flight attendant, and presents a greater danger to the safety of the flying public than both the time a flight attendant spends waiting after an early report and the time a flight attendant spends in the break between flight assignments in a hotel room that the drafters said would be included in "duty period." We conclude that it is reasonable to interpret the regulation to include airport ground duties in "duty period" when a flight attendant is assigned a mix of airport ground duties, such as office duty, station manager duty, gate duties (e.g., ticket collecting) along with flight assignments, because we believe that such industry practices (i.e., mixing airport ground duties with flight assignments) are activities that can lead to fatigue that could interfere with flight attendants' ability to safely perform their cabin safety assignments. We conclude that regardless of the point in time after reporting for airport ground duties at which a flight attendant is told that he or she will have a flight assignment, the period of time after reporting but before the flight assignment or the period of time in between flight assignments in which airport ground duties are performed must be included in the "duty period" limit. The flight attendant is entitled to the post-duty rest period that corresponds to the hours of that duty period. Thus, in the scenario you present, if the certificate holder wishes to be subject to providing only the 9-hour stated in section 121.467(b) (2) or (3) (or the reduced 8-hour rest period followed subsequently by at least a 10-hour rest period (section 121.467(b) (3)), it must limit the flight attendant's above-described mix or sequence of office duty and flight assignments to no more than 14 hours. In addition, any other flight attendants who serve in the same minimum crew complement as the flight attendant who performed a mix of ground duties and flight assignments may not exceed a duty period of more

than 14 hours. In other words, if the certificate holder assigns the flight attendant to the 18-hour duty period in the scenario you present, such a duty period is not legal under section 121.467(b)(1) because a duty period under section 121.467(b)(1) is limited to 14 hours. We note that the regulations provide for duty periods in excess of 14 hours, however, they prescribe additional requirements, namely, augmentation of flight attendants and a 12-hour minimum rest period. *See e.g.* §§ 121.467(b)(5) and (7). Finally, while any period of time after completing post-flight duties, in which a flight attendant performs airport ground duties is not considered part of the duty period; it also may not be considered part of any of the rest periods stated in section 121.467(b).

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.

Sincerely,

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