February 23, 2006

Patrick M. Ryan
Aviation Safety Inspector
FAA Detroit FSDO-23
Willow Run Airport-East Side
8800 Beck Rd.
Belleville, MI 48111

Dear Mr. Ryan:

This letter responds to your May 12, 2005 request for an interpretation of 14 C.F.R. section 121.503(a) (subpart S).

SCENARIO AND QUESTION PRESENTED

The scenario you present involves a 2-pilot crew, scheduled for a 3-leg as follows: outcome:

	Scheduled	**Actual**
Legs 1 & 2:	3.5 hours	4.5 hours
Leg 3:	4 hours	4 hours
Total:	7.5 hours	8.5 hours

You state that "the crew and company know what is scheduled and what is likely to be actual." In addition, the crew and company also know that the actual times will exceed 8 hours, as per 14 C.F.R. 121.503(a) without an intervening rest, prior to conducting Leg 3.

Your question is whether the company may dispatch the crew and the crew launch out on Leg 3 knowing ahead of time that they will exceed 8 hours. Your view is that the company may not dispatch, nor may the crew take, Leg 3.

ANSWER

We understand your view to be that the crew may not be deemed, by operation of the "circumstances beyond the control of the certificate holder" rule, to be scheduled to fly for 8 hours or less in any 24 consecutive hours under section 121.503(a),[1] because the crew and company know before taking leg 3 that they will exceed 8 hours of flight time. Instead, the crew is in effect scheduled under section 121.505 (a),[2] applicable to a crew scheduled to fly more than 8 hours in any 24 consecutive hours, and would be operating in violation of that section which requires an intervening rest period at or before the end of 8 hours. We address below, the relevant legal and policy issues that pertain to a resolution of your question.

Subpart S operations are also subject, by interpretation, to the "circumstances beyond the control of the certificate holder" rule, stated in section 121.471(g) [3] of subpart Q that, in certain situations, excuses a carrier's violation of the section 121.471(a)(4)[4] scheduled flight time limits. *See* Nov. 8, 1990 Letter to John H. DeWitt, from Donald P. Byrne, Assistant Chief Counsel, Regulations and Enforcement Division [1990-33] (copy enclosed)(stating that "past Agency interpretations have applied the same 'circumstances beyond the control of the air carrier' rule to flight time questions concerning flag air carriers and supplemental air carriers & commercial operators").

Prior interpretations applying section 121.471(g) to the scheduled flight time limit in section 121.471(a)(4) articulate the safety rationale that underpins the rule. The Agency has said that flights may exceed the flight time limits in a narrowly drawn context, namely:

a. The delay results from circumstances beyond the control of the carrier; and

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[1] Section 121.503(a) states: A certificate holder conducting supplemental operations may schedule a pilot to fly in an airplane for eight hours or less during any 24 consecutive hours without a rest period during those eight hours.

[2] Section 121.505(a) states: If a certificate holder conducting supplemental operations schedules a pilot to fly more than eight hours during any 24 consecutive hours, it shall give him an intervening rest period at or before the end of eight scheduled hours of flight duty. This rest period must be at least twice the number of hours flown since the preceding rest period, but not less than eight hours. The certificate holder conducting supplemental operations shall relieve that pilot of all duty with it during that rest period.

[3] 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.

[4] Section 121.471(a)(4) states: 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 –

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(a) 8 hours between required rest periods.

b. The air carrier's original schedule is realistic.

See Feb. 9, 1993 Letter to David S. Parent, from Donald P. Byrne, Assistant Chief Counsel, Regulations and Enforcement Division [1993-3] (copy enclosed).

a. What the Agency considers to be a circumstance beyond the certificate holder's control

The Agency considers delays due to air traffic control (ATC), adverse weather, or mechanical problems, as the incidents that, in general, qualify as circumstances beyond the control of the carrier and, in general, justify the relief afforded by application of the rule. *See e.g.,* Interpretation No. 1993-3; and Dec. 13, 1993 Letter to David S. Parent, from Donald P. Byrne, Assistant Chief Counsel, Regulations Division [1993-32] (copy enclosed). In other words, the Agency believes that the conditions that fall within the scope of the exception from the prohibition against scheduling flight time in excess of flight time limitations should be truly unforeseeable or outside of the carrier's control. Further, because ATC or weather delays, are sometimes known in well in advance of the day of a flight's operation, and mechanical problems may be within a carrier's control, those conditions do not automatically trigger an excuse of the carrier's violation of 121.471(a)(4). Note, in addition, that the conditions are limited to those that are most important to the safe operation of a flight sequence.

b. What the Agency considers realistic or reasonable scheduling

Over the years, the Agency has issued pronouncements that address realistic scheduling. *See* Oct. 21, 1958 Letter to J.P. O'Brien from G.S. Moore, Acting Chief, Air Carrier Safety Division (copy enclosed); Sept. 17, 1990 Letter to James W. Johnson, from Donald P. Byrne, Assistant Chief Counsel, Regulations and Enforcement Division, [1990-25] (copy enclosed); and Mar. 20, 1991 Letter to James W. Johnson, from Donald P. Byrne, Assistant Chief Counsel, Regulations and Enforcement Division [1991-8] (copy enclosed).

Our 1958 letter examined: 1) ALPA's charge that Northwest Airlines (Northwest) unrealistically scheduled DC-7C aircraft flights on the Anchorage-Tokyo nonstop westbound route, under the (predecessor) flag regulations; and 2) Northwest's assertion that "if a pilot is properly scheduled, he can exceed flight time limitations."

In assessing ALPA's charge of unrealistic scheduling, the Air Carrier Safety Division of the Civil Aeronautics Administration (CAA), the FAA's predecessor, reviewed data on the numbers of flights scheduled during the months of July and August of 1957 and 1958 that exceeded scheduled flight time. The CAA found that sufficient flights were not conducted in the 1957 period to make a conclusion on the adequacy of the schedule. As to the 1958 flights, 11 out of 15 flights met the scheduled flight time limit in the early

part of July 1958, but there was an increase in flight time in the latter part of July and in August due to far greater headwind components encountered than those forecasted. Northwest discontinued the nonstop flight in September of 1958 and instituted a crew change in Shemya. The CAA concluded that no further action was contemplated against Northwest.

In response to Northwest's assertion that a pilot who is properly scheduled may exceed flight time limitations, the CAA said that exceeding flight time limitations was excused only in certain situations, namely, because of exigencies beyond the carrier's control, such as adverse weather conditions. The CAA also stated the standard for what it did not consider realistic scheduling. It said:

> If it is determined over a period of 90 days or more that the flight schedule over a particular route cannot be completed by the pilots within the period of the scheduled flight time by more than 50 percent of the flights flown, then such schedules cannot be considered to adequately reflect the actual time required for flights over such route, and the carrier will be required to take corrective action.

In Interpretations Nos. 1990-25 and 1991-8 the Agency noted that the determination of whether a schedule is realistic depends upon an examination of all the facts and circumstances of a particular case. In addition, we said that the original scheduling must be realistic and represent a normal occurrence in the flight operations conducted by the carrier. A schedule deemed a pretext, in an attempt to circumvent the overall intent of the regulation, will not be considered to be "realistic."

Interpretation No. 1990-25 involved an assessment of United Airlines' (United) scheduling practices for flights operated under section 121.471(a)(4)'s 8 hour limit. The Agency relied on the carrier's data for the month of June 1990 involving a total of 151 flights with the crew scheduled between 7:50 and 7:59 hours of flight time, of which 101 (67%) were completed in scheduled flight time and 50 (33%) exceeded scheduled flight time. We concluded that the flights were operated within scheduled flight time approximately 67% of the time, and that such a rate showed that United was scheduling realistically.

Interpretation No. 1991-8 involved an assessment of United's scheduling practices for Pacific operations flights operated under section 121.483(a)'s 12 hour limit. The carrier's data for 1987 and 1988 winter and summer operations for flights scheduled between 11 hours and 15 minutes and 1200 hours showed that for 1987, 94.9% of the summer flights and 91.5% of the winter flights were completed within 12 hours. For 1988, the percentages of flights completed within 12 hours were 92.2% for summer flights and 83.7% for winter flights. The Agency concluded that the flights were operated within the scheduled flight time 85% to 95% of the time, and such a rate showed that United was scheduling realistically.

The Flight Standards Service believes that the technological innovations in communications, weather reporting, and flight planning have greatly enhanced an air

carrier's ability to accurately compute and predict scheduled flight times. In light of the above discussion and the limited factual information accompanying your request, the appropriate response regarding the question you raise is for the FSDO to conduct a review, consistent with Flight Standards Service's policy, of the carrier's data for the last three calendar months, to determine compliance with section 121.503 (a) scheduled flight times. To the extent that the scheduled flight times are determined to be realistic and to the extent that the causes for the delays for Legs 1 and 2 were legitimately beyond the control of the air carrier, then the carrier and the pilots are permitted to complete Leg 3. This, of course assumes, that at that point the crew is not so fatigued by the amount of the delays and the amount of time on duty so as to create a careless or reckless situation in violation of Section 91.13 of the regulations.

This letter 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,

Rebecca B. MacPherson
Assistant Chief Counsel
Regulations Division

Enclosures