U.S. Department
of Transportation
**Federal Aviation
Administration**

Office of the Chief Counsel

800 Independence Avenue SW
Washington, DC 20591

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Mr. Jay Wells
Senior Attorney
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535 Herndon Parkway
Herndon, VA 20172-1169

Dear Mr. Wells:

This is in response to your letter, dated September 27, 2007, concerning the rest requirements under the Federal Aviation Administration's (FAA's) Part 121 Flag Rules.

You first ask the following: whether there are any past FAA interpretations that define or specify what amount of rest, if any, is required before commencing flight duty in international (flag) operations?

Answer: There are at least two kinds of Flag rest rules that require that the carrier provide a rest period to a pilot before commencing flight duty in part 121 Flag operations. To the extent that a 24-hours-off in any seven-consecutive-day rule applies (*see e.g.,* 14 C.F.R. §§ 121.481(d), 121.483(b)), that rule requires the carrier to provide the pilot a rest period before he or she commences flag flight duty. Also, intervening rest periods (i.e., rest periods required after a pilot has flown more than x hours) are required before commencing, or continuing, subsequent flight legs. *See e.g.* 14 C.F.R. § 121.481(c).

You next ask whether there are any quantitative standards that specify the amount of rest a short-call international reserve pilot must receive before commencing flight duty. Although not explicitly stated in this second question, we believe the thrust of your inquiry is really whether there are any Flag rest rules that require x hours of a rest period to have been provided *recently or shortly before* the flight assignment. You also ask whether the period in which a pilot is obligated to answer the phone or a beeper is considered part of the rest period.

Answer:

First, we note that this question assumes that there are no Flag rules that require that the pilot receive rest prior to commencing flight duty. However, as we stated above in response to your first question, there are at least two kinds of rest rules in our Flag rules that require rest periods prior to commencing flight duty in Flag operations.

Further, as you know, the FAA has repeatedly stated in interpretations that if a pilot has a present responsibility for work should the occasion arise (often labeled as "reserve" assignment), then that time is not rest. Any period during which the pilot is under such an

obligation to the carrier is not considered part of the rest period. As you also know, unlike the subpart Q rules applicable to part 121 Domestic Operations, subpart R rules do not require what is often referred to as daily lookback rest before a pilot begins his or her flag flight duty day. Thus, for example, if a pilot is on reserve three days in a row, and assuming that the day before the first day of reserve was a full 24-hour rest period, the carrier does not violate explicit pre-duty rest requirements by assigning the pilot to a flight on the fourth day. However, that does not necessarily mean that the carrier will not be in violation of other safety rules. *See e.g.* 14 C.F.R. § 91.13.

In your last inquiry, you present us with a scenario in which three pilots are on a three-day, 24-hour a day, reserve call-out schedule. You state that the pilots are awake from 0600 to 2000 on all three days. On the third day, at 1900, the carrier notifies all three pilots to report at 2315 for an 0015 (day 4) departure to Europe. You state that the pilots will have been awake for 18:15 hours at the time of the scheduled departure. You also state that the pilots arrive in Europe at 0800 (EST) on the fourth day, and thus, the pilots have been awake for 26 hours at the time of arrival. You also ask if we have issued any interpretation regarding 14 C.F.R. § 91.13 that might be instructive.

Answer: First, for the purposes of this scenario and our following answer, we will assume that the pilots first learned about the flight assignment at 1900 on the third day. We also have issued an interpretation regarding a similar issue to FAA Inspector Conrad Mora, dated May 31, 2002, which is instructive. *See* Interpretation 2003-4 from Donald P. Byrne, Assistant Chief Counsel, Regulations Division, to Conrad Mora. In the scenario you presented, the Flag rules do not require that the carrier provide "adequate sleeping quarters" because the flight is less than 12 hours. Assuming that the carrier in your scenario did not provide onboard sleeping quarters for the flight crewmembers (quarters that are equivalent to the sleeping quarters required for flights over 12 hours), then the safety experts in the FAA believe that it is reckless for a carrier to allow a situation where its flight crewmembers will have been awake for 26 hours at the time of landing. The FAA has worked with the air carrier industry and with fatigue experts for years and is not aware of any scientifically valid study that would support any claim that pilots are sufficiently alert after having been awake 26 hours. In fact, starting a flight assignment near the beginning of a circadian low, after having been awake during the previous 18 hours, seems to be careless or reckless.

This letter of interpretation was written by Joseph A. Conte, Manager of the Operations Law Branch. This letter has been coordinated with the Air Transportation Division of Flight Standards Service and the Office of the Federal Air Surgeon.

Sincerely,



Rebecca B. MacPherson
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