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

Office of the Chief Counsel

800 Independence Ave., S.W.
Washington, D.C. 20591

MAR 18 2009

William E. Banks, Jr.,
FAA Pittsburgh CMO-19
One Thorn Run Center
1187 Thorn Run Rd
Coraopolis, PA 15108

Dear Mr. Banks,

This is in response to your request for a legal interpretation submitted on behalf of a U.S. Airways pilot regarding the application of 14 C.F.R. §121.471(g) to the following scenario.

You note that two pilots, operating under the domestic rules, were scheduled to fly from Phoenix, AZ, to Las Vegas, NV, and from Las Vegas NV, to Boston, MA. The scheduled block time for the first trip was one hour, eight minutes; and the scheduled block time for the second trip was five hours, twenty minutes, for a total scheduled block time of six hours and twenty-eight minutes.

Due to weather in Las Vegas, NV on the first leg, the crew was unable to land and was diverted to Los Angeles, CA, resulting in an actual flight time of two hours and eight minutes. From Los Angeles, CA, the crew returned to Las Vegas, NV on an unscheduled leg, which resulted in an additional one hour and twenty-seven minutes of actual block time. Upon arriving in Las Vegas, NV, the crew had accrued three hours and thirty-five minutes of actual flight time. Prior to starting the final leg of the scheduled sequence to Boston, MA, the crew realized that by the end of the flight, they will have exceeded the eight hour flight time limitation in §121.471(a)(4) by fifty-five minutes. Noting §121.471(g), you question whether the crew may take off on the last leg of the flight, knowing in advance that they will exceed the 8-hour flight time limitation of §121.471(a)(4).

Section 121.471(g) is an exception to the daily flight time limitation set forth in §121.471(a)(4). This provision allows for the daily flight time limits to be exceeded only if circumstances beyond the control of the certificate holder prevent the operation from concluding within the scheduled time. The FAA has previously interpreted that delays due to air traffic control, mechanical problems, or adverse weather (as is the case in the scenario you present), qualify as "circumstances beyond the control of the certificate holder." *See* Legal Interpretation, Letter to Patrick M. Ryan from Rebecca B. MacPherson (Feb. 23, 2006); Legal Interpretation 1993-32 (Dec. 13, 1993); Legal Interpretation 1993-3 (Feb. 9, 1993). Assuming the adverse weather conditions in this scenario were truly unforeseeable, the crew may have taken off on the last leg to Boston without being in violation of

§121.471(a)(4). However, the total actual flight time for the day must be used in the calculations of the cumulative flight time limitations set forth in §121.471(a)(1)-(4).

In these situations, however, it is important to note that §121.471(g) is only an exception to the pilot flight time limitations; it is not an exception to rest requirements. Thus, if a flight crewmember is aware at the time of departure on the third leg that he or she has not had the required rest, he or she may not depart on the last leg. *See* Legal Interpretation 2003-6 (Oct. 29, 2002); *see also* Nov. 20, 2000, Letter to Captain Richard D. Rubin from James W. Whitlow, Deputy Chief Counsel (noting that look-back rest is computed using actual expected flight time and tax-in time based on the specific conditions that exist on the day to determine the scheduled arrival time for purposes of determining whether a flight should be commenced).

We appreciate your patience and trust that the above responds to your concerns. If you need further assistance, please contact my staff at (202) 267-3073. This response was prepared by Anne Bechdolt, Acting Manager of the Operations Law Branch of the Regulations Division of the Office of the Chief Counsel, and coordinated with the Air Transportation Division of Flight Standards Service.

Sincerely,

Rebecca B. MacPherson
Assistant Chief Counsel for Regulations, AGC-200