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

Office of the Chief Counsel

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

AUG 17 2009

Flight Dispatchers, Meteorologists & Operations Specialists Union
Mr. John E. Plowman
1201 Airport FWY., Suite 386
Euless, TX 76040-4171

Dear Mr. Plowman,

This is in response to your request for a legal interpretation regarding §121.465. You note that in 2008, your company drafted a plan to prepare for the hurricane season. That plan required relocation of the dispatch department to a back-up bunker facility further inland that could withstand any hurricane. All dispatchers who would work at the bunker facility would be scheduled to work 12-hour scheduled shifts, on the presumption that such a situation would be a circumstance beyond the control of the certificate holder, such that the duty day limitation could be exceeded. You note that during Hurricane Ike, this emergency plan was invoked and that some dispatchers remained on duty well beyond the scheduled 12-hour shifts, some approaching 20-hour shifts. You question if this predetermined contingency plan that schedules dispatchers to work in excess of the 10-hour duty day limitation of §121.465 is a circumstance beyond the control of the certificate holder.

As provided in §121.465(b), "Except in cases where circumstances or emergency conditions beyond the control of the certificate holder require otherwise, no certificate holder conducting domestic or flag operations may schedule a dispatcher for more than 10 consecutive hours of duty. If a dispatcher is scheduled for more than 10 hours of duty in a 24 consecutive hours, the certificate holder shall provide him or her a rest period of at least eight hours at or before the end of 10 hours of duty." The FAA has previously interpreted that delays due adverse weather qualify as "circumstances beyond the control of the certificate holder." *Cf.* 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).

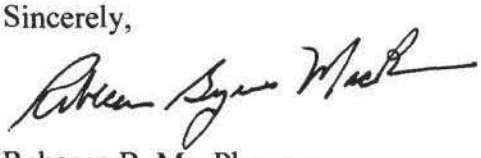
In this instance, a hurricane would constitute a circumstance beyond the control of the certificate holder such that a decision made while the hurricane is actually occurring that permits dispatchers to exceed the 10-hour duty day limitation, may be permissible. However, a contingency plan that purposefully schedules dispatchers in advance to exceed the duty day limitations of §121.465 is not what is contemplated by this provision. This provision, for example, would allow certificate holders to require dispatchers, on the day of the event, to stay on duty beyond the 10-hour limit if the emergency weather conditions prevented a relief dispatcher from reporting for duty. It does not allow certificate holders to

purposefully require dispatchers to exceed the duty day limitations by scheduling for such in advance of an actual emergency.

The FAA notes that pursuant to §121.395, each certificate holder conducting domestic or flag operations is required to provide enough qualified aircraft dispatchers at each dispatch center to ensure proper operational control of each flight. While the FAA strongly supports emergency planning, the purpose of such planning is to ensure that adequate staff will be available to provide sufficient support during the emergency conditions. In this instance, it does not appear that the certificate holder, as required under §121.395, and operating in accordance with the provisions of §121.465, has not ensured that adequate staff will be rested and available to work under the emergency conditions that a hurricane presents.

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