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

Office of the Chief Counsel

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Washington, D.C. 20591

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Dear Ms. McHugh:

This is in response to Pratt & Whitney's letter of May 19, 2008, concerning the application of §121.377 to maintenance personnel at Pratt's repair facility certified under Part 145 of the Federal Aviation Regulations. Based on the several factual scenarios contained in the letter and subsequent conversations between Pratt and my office, I have organized this response into three general issues. The first deals with whether Pratt can view as non-duty time the time an employee spends completing non-maintenance work or tasks while being compensated by Pratt, even while away from Pratt's facility. The second explores the extent to which Pratt may view as non-duty time the time an employee spends at other employment while off duty from Pratt, even if it is aviation related work. The last issue concerns the limit of scheduling flexibility provided by the regulation. I believe you will be able to apply the answers to these three questions to all of the specific scenarios you posited in your letter.

For repair stations certificated under Part 145 that perform maintenance work for air carriers operating under Part 121, §121.377 establishes a maximum duty period for maintenance personnel working for that repair station. That section reads:

> Within the United States, each certificate holder (or person performing maintenance or preventive maintenance functions for it) shall relieve each person performing maintenance or preventive maintenance from duty for a period of at least 24 consecutive hours during any seven consecutive days, or the equivalent thereof within any one calendar month.

14 C.F.R. §121.377. Thus, generally, maintenance personnel must be allowed 24 consecutive hours of rest during any seven consecutive days. In the context of discussing Maintenance Resource Management concepts, the FAA has stated in Advisory Circular (AC) 120-72 (September 28, 2000) that addressing fatigue-related errors ensures the safety of flight in passenger carrying operations. Fatigue often leads to decreased vigilance and impaired short term memory, resulting in a likely increase in human error. A common known cause of fatigue is "time on duty." AC 120-72, para. 9(h)(2)(f). Therefore, the

general rule in §121.377 is intended to reduce the likelihood of fatigue-related maintenance errors in air carrier operations.

Section 121.377 requires that a person performing maintenance or preventative maintenance be relieved from "duty" for, generally, one day out of every seven. One question, then, is what is considered "duty." In other contexts, the FAA has defined duty as "actual work for the [employer] or the present responsibility for such should the occasion arise." *See* Legal Interpretation 1993-31 (Dec. 13, 1993). Prior interpretations have concluded that performing a mix of tasks, some of which do not involve work for a Part 121 air carrier or even non-aviation related tasks, but are tasks assigned to the employee by the employer, still fall within the category of "duty" for purposes of applying §121.377. Legal Interpretation to Ron Webb from Donald P. Byrne, Assistant Chief Counsel, Regulations (June 21, 1991); *cf.* Legal Interpretation to Jim Mayors from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (Mar. 2, 2009) (noting that the time a pilot participated in a 2-hour company meeting that was not related to a company assignment of flight time, must still be calculated as part of his duty day because he was not free from all work obligations during that time); Legal Interpretation to Jay Wells from Rebecca McPherson, Assistant Chief Counsel, Regulations Division (October 29, 2007); Legal Interpretation to James W. Johnson from Donald P. Byrne, Assistant Chief Counsel for Regulations (May 9, 2003).

Therefore, for purposes of applying §121.377, any time for which an employee "has actual work for the employer, or the present responsibility for such work, should it arise," constitutes "duty" time. Accordingly, the time an employee is engaged in maintenance tasks, attending a bargaining unit meeting, attending a training session, doing work related to Pratt's educational benefit, traveling from the point on Pratt's campus where the employee "clocked in" to the employee's work area, or working for another unit within Pratt's corporate umbrella, constitutes time that must be included in the calculation of duty time to determine the rest required under §121.377, whether or not that unit itself must adhere to the requirements of §121.377. An employee using accrued vacation or credit time is not "on duty" even though the employee may receive compensation for that time. Nevertheless, the regulation aims to require repair stations to give its maintenance personnel at least one day off every week without requiring that employee to use accrued vacation time to be free from any responsibility for work.

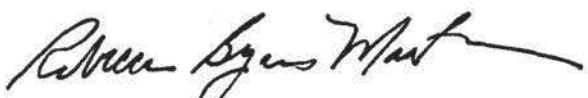
Once Pratt relieves the employee from duty, the regulation does not require Pratt to monitor the employee's activities. The scenario where an employee uses the time off from Pratt to work at another maintenance facility does not implicate Pratt's compliance with §121.377. Unlike the regulations governing crewmember duty time, §121.377 does not contain a limit on an employee's total accumulated working hours within a specified period of time. The FAA does not recommend this practice, however, for the reasons discussed in AC 120-72 related to fatigue. Thus, an employee relieved from duty by Pratt may perform other aviation related maintenance, even for other facilities which themselves are bound by §121.377, provided the employee is provided the requisite time off by each facility for which the employee works. Pratt must use caution, however, not to create the appearance of requiring an employee to work during off hours for another facility that is just a corporate sister to the Pratt facility.

You also raise the question of whether a facility can schedule employees to work more than six consecutive days, thereby grouping required days off, and still remain in compliance with §121.377. The regulatory standard requires 24 consecutive hours off duty during any seven consecutive days but also contains some flexibility in the phrase "or the equivalent thereof within any one calendar month." The FAA intended that the regulation allow employees to work in excess of six consecutive days in the event of a national emergency or unusual occurrence in the air carrier industry. *See* Legal Interpretation 1987-15 (June 14, 1987). The regulatory flexibility found in §121.377 allows maintenance personnel to work a schedule that maintains the "equivalent" to one day off every week even though that schedule might provide for more than six consecutive days of work.

The equivalent standard does have limits, however. The tenants of statutory and regulatory interpretation suggest that the specific standard of one day off every week cannot be rendered completely inoperative by the more general equivalent standard. A previous interpretation allowed that a work schedule that provides for personnel to have a group of 4 days off followed by up to 24 days of work, or vice versa, would still meet the standard of being "equivalent" to one day off in every seven within a month. Legal Interpretation to Ron Webb from Donald P. Byrne, Assistant Chief Counsel, Regulations (June 21, 1991). That interpretation, however, was issued prior to the findings relating fatigue to maintenance related errors in the air carrier industry discussed in AC 120-72. Webster's dictionary defines "equivalent" as having logical equivalence, or corresponding or virtually identical in effect or function. Today, we would not view as compliant a schedule that provides over the course of eight weeks for four days off followed by 48 straight days of duty followed by four more days off. Such a work schedule that generally provides for an average of one day off over several weeks cannot be said to be "equivalent" to the more specific standard requiring one day off out of every seven days.

Lastly, you correctly note that the regulation does not address the length of the work day, only the length of the required time off work. The legal interpretation from Mr. Byrne to Mr. Webb also makes clear that the general equivalency provision in §121.377 does not apply to the specific requirement to give 24 consecutive hours of time off. Time off may not be provided in smaller increments over several days even though the total time off over any seven day period may equal or exceed 24 hours.

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 Aircraft Maintenance and Air Transportation divisions of Flight Standards Service.



Rebecca B. MacPherson
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