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

Office of the Chief Counsel

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

MAR 10 2011

Mr. Kevin McCabe
Local 1224 Steward
Atlas Pilots Scheduling Committee Chairman
1850 Parkway Drive
Anchorage, AK 99504

Dear Mr. McCabe:

In a letter dated December 1, 2009 (attached to an e-mail dated March 17, 2010) you requested legal interpretations in response to a number of issues related to flight time limitations for flag operations. Specifically, you sought an interpretation as to whether the relief from the rest requirement in 14 C.F.R. § 121.485(b), granted by Exemption 4317L was determined to be applicable based on scheduled time or dispatch time.[1] You also sought answers to questions regarding deadhead time and responsibility for compliance with 14 C.F.R. § 121.483.

In a letter dated February 18, 2011, we responded to your requests regarding deadhead time and responsibility for compliance with § 121.483. This letter responds to your remaining requests for interpretation regarding Exemption 4317L.

14 C.F.R. § 121.485 applies to air carriers conducting flag operations using an airplane that has a crew of three or more pilots and one additional crewmember. It requires a certificate holder to provide a pilot, when he returns to his base from a flight or series of flights, with a rest period that is at least twice the total number of hours he flew since the last rest period at his base.

Exemption 4317L, however, allows Air Transport Association member airlines and other similarly situated part 121 air carriers to conduct flag operations with a crew of three or more pilots and one additional crewmember, for up to 12 hours within a 24 hour period without providing the "double out" rest requirement found in § 121.485(b). When Exemption 4317 was originally issued in May 1985, this exemption was subject to two conditions and limitations:

- Condition 1: "No pilot may be scheduled to fly in an airplane that has a crew of three or more pilots and an additional flight crewmember for more than 12 hours during

[1] On February 2, 2011, Flight Standards (AFS) extended Exemption 4317L to April 30, 2013. This extension makes no substantive changes, although the exemption number has been changed to 9825A. Thus, for purposes of consistency with the request for interpretation, we will continue to refer to Exemptions 4317 and 4317L throughout this response.

any 24 consecutive hours unless the certificate holder complies with the provisions of Section 121.485." *See* Exemption 4317.

- Condition 2: "Any pilot who is away from his/her base on an airplane that has a crew of three or more pilots and an additional flight crewmember and is scheduled to fly on any flight or series of flights for more than 12 hours during any 24 consecutive hours, shall be given, upon return to his/her base from any flight or series of flights, a rest period that is at least twice the total number of hours he/she flew since the last rest period at his/her base." *See* Exemption 4317.

These two conditions have not been changed since the original exemption was issued. *Compare* Exemption 4317 *with* Exemption 4317L. Thus, in order for an air carrier to be exempt from the "double out" rest requirement of § 121.485(b) the air carrier must meet these same conditions and must not schedule those flightcrew members to fly for more than 12 hours during any 24 consecutive hours.[2]

In your letter, you ask whether Exemption 4317L is available if a flight that is scheduled for less than 12 hours is ultimately dispatched with a flight time greater than 12 hours. You express concern that it may be possible to schedule a flight that fits within the scheduling requirements of the exemption by "using a higher mach number, or using older fixed seasonal block times" but then dispatch the flight for a time that exceeds the maximum flight time that may be scheduled in order to take advantage of the exemption (i.e., 12 hours).

If an air carrier's flight time scheduling practices are be based on realistic assumptions regarding the circumstances of the flight, but at the time of departure (i.e. dispatch), a flight is not expected to reach its destination within the scheduled time due circumstances beyond the control of the air carrier, the FAA does not consider a flight crewmember to be scheduled for flight time in excess of the flight time limitations. In examining whether an air carrier's scheduling practices comply with the limitations for the scheduling of flight time contained in subpart R (flight time limitations applicable to flag operations) the agency considers the "circumstances beyond the control of the air carrier" exception applicable to domestic operations. *See* 14 C.F.R. § 121.471(g); Legal Interpretation 1991-8 (applying the § 121.471(g) exception to Subpart R). The exception, found in 14 C.F.R. § 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 air carrier (such as adverse weather conditions), are not at the time of departure expected to reach their destination within the scheduled time.

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[2] Exemption 4317L allows "ATA-member airlines and other similarly situated part 121 air carriers to conduct flights of less than 12 hours duration with an airplane…without requiring the rest period following that flight to be twice the hours flown since the last rest period at each flight crew's home base." The introductory language of the exemption refers to flights of "less than 12 hours." However, the conditions that must be met for an air carrier to take advantage of the exemption state that a pilot must not be scheduled for "more than 12 hours." Since the conditions state the requirements for the exemption, the breakpoint in the conditions (i.e., "more than 12 hours") must be given meaning throughout the exemption.

See 14 C.F.R. § 121.471(g). This exception should also be considered when making a determination regarding whether the conditions of Exemption 4317L have been met because the scheduling language in Exemption 4317L is similar to the flight time scheduling language in Subpart R to which the exception applies.

Pursuant to the "circumstances beyond the control of the air carrier" exception, an air carrier will not be found to be in violation of the limits on scheduled flight time if the air carrier's schedule is based on realistic assumptions about the circumstances of the flight, and the delay is due to circumstances truly unforeseeable or beyond the air carrier's control. *See* Legal Interpretation from Rebecca B. MacPherson to Patrick M. Ryan (February 23, 2006); Legal Interpretation 1991-8; Legal Interpretation 1991-29. We note that "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." *See* Legal Interpretation from Rebecca B. MacPherson to Patrick M. Ryan (February 23, 2006). Therefore, since some air traffic control or weather events likely to result in delay are known well in advance of a particular flight, the facts surrounding a particular carrier's scheduling practices and a comparison of scheduled and actual flight times must be examined to determine whether the carrier creates realistic schedules. *See* Legal Interpretation from Rebecca B. MacPherson to Patrick M. Ryan (February 23, 2006). Legal Interpretation 1991-29. *See e.g.* Legal Interpretation 1990-25 (accepting United's statistics showing that approximately 67 percent of flights during a single month that were completed within the scheduled flight time, as representative of realistic scheduling); Legal Interpretation 1991-8 (explaining that after an audit of United's scheduled and actual flight times for winter and summer Pacific operations, it appeared that United's flights operated within the scheduled time approximately 85 percent to 95 percent of the time, which in the agency's view, demonstrated that United was scheduling realistically).

Thus, for an air carrier's schedule to fit within the limitations of Exemption 4317L notwithstanding a greater dispatch time, the air carrier's schedule must be based on realistic assumptions about the circumstances of the flight. However, given the limited information provided with your request regarding the criteria Atlas Air uses in its scheduling practices and the absence of information regarding actual flight times, we cannot make a determination as to whether Atlas Air is creating such realistic schedules.

We appreciate your patience and trust that the above responds to the outstanding concerns raised in your request for interpretation. If you need further assistance, please contact my staff at (202) 267-3073. This response was prepared by Sara Mikolop, Attorney, Operations Law Branch of the Regulations Division of the Office of the Chief Counsel, and coordinated with the Air Transportation Division of the Flight Standards Service.

Sincerely,

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