Federal Aviation Administration

Memorandum

Date: JAN 20 2012

To: Melvin O. Cintron, Manager, General Aviation and Commercial Division, AFS-800

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

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Subject: Interpretation as to whether part 91 allows a required pilot to take an in-flight rest period on an unaugmented flight

This is in response to your November 7, 2011 memorandum, written on behalf of the FAA Flight Standards Alaska Regional Office, requesting an interpretation as to whether 14 CFR part 91 permits a required flight crewmember to take a "controlled rest period" when an augmented crew is not present.

The regulatory provision that controls this issue is 14 CFR § 91.105(a)(1), which states that, subject to two exceptions discussed in the next paragraph, each required flight crewmember must be at his or her crewmember station during takeoff and landing, and while en route. This regulatory provision implicitly requires that the crewmember must actually perform his or her duties while at the crewmember station, as otherwise there would be no need for the crewmember to be at the crewmember station. Because a flight crewmember who is asleep is not performing his or her duties, § 91.105(a)(1) does not permit a required flight crewmember to sleep at his or her crewmember station.

There are two instances in which § 91.105(a)(1) permits a required flight crewmember to leave his or her crewmember station. First, the crewmember may leave his or her station if "the absence is necessary to perform duties in connection with the operation of the aircraft." Because in-flight sleep is not a duty that is necessary to operate the aircraft, a flight crewmember would not be able to leave his or her crewmember station for that reason. Second, § 91.105(a)(1) permits a required flight crewmember to leave his or her crewmember station if the absence is "in connection with physiological needs." However, the "physiological needs" exception has been interpreted narrowly to only permit short breaks for activities such as using the restroom or stretching one's limbs

briefly during a long flight.[1] As such, this exception would not extend to sleeping during a flight. Accordingly, since neither exception to the requirements of § 91.105(a)(1) applies to in-flight sleep, § 91.105(a)(1) prohibits a required flight crewmember from taking a "controlled rest period" during an unaugmented flight.

We note, however, that the above discussion would apply differently if a flight is augmented. In an augmented flight, a flight crewmember can be replaced at his or her crewmember station by another qualified flight crewmember. Once an augmented flight crewmember has been replaced at his or her crewmember station, that crewmember is no longer a "required" flight crewmember within the meaning of § 91.105(a)(1) because his or her presence is no longer needed to safely operate the aircraft. Consequently, § 91.105(a)(1) does not bar a flight crewmember from sleeping on an augmented flight after another qualified flight crewmember replaces him or her at the crewmember station.[2] However, we emphasize that all flight crewmembers are responsible for ensuring that they are sufficiently rested and able to perform their required duties prior to accepting a planned flight.

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[1] *See* Letter to Manager, Flight Standards Staff, AEU-200 from Donald P. Byrne, Acting Assistant Chief Counsel of the Regulations and Enforcement Division (June 5, 1990). *See also Administrator v. Brown & Freebairn*, 1 NTSB 2041, 2044 (1972) (holding that absence from the crewmember station was not justified by the physiological needs exception because the absence was longer than reasonably necessary to take care of the physiological needs).

[2] For guidance on in-flight napping, see AC 120-100, sec. 11(b).