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

Office of the Chief Counsel

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James W. Johnson
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Dear Mr. Johnson:

This is in response to your August 14 and August 17, 2012 letters asking two questions about the domestic and flag flight, duty, and rest provisions of part 121. Our answers to your questions are set out below.

Question 1: Can a pilot delay the beginning of the rest period required by § 121.471(d)?

For your first question, you pose the following scenario. A pilot is assigned a schedule that would provide the pilot with 24 hours of rest on Day 7 of the schedule. The schedule accomplishes this by having the pilot's final Day 6 flight segment end at 2354 on Day 6. However, on Day 6, there is a weather-related issue that delays the start of the pilot's final flight segment for that day. This flight segment is a domestic flight. As a result of the delay, the final Day 6 flight segment would not be completed until sometime during Day 7. You ask whether 14 C.F.R. § 121.471(d) permits the pilot in this scenario to commence the final Day 6 flight segment. You also point to a 1991 FAA interpretation that discusses this issue and you ask whether that interpretation is still valid.[1]

Subsection 121.471(d) requires a certificate holder conducting domestic operations to provide each flight crewmember engaged in scheduled air transportation with at least 24 consecutive hours free from duty during any 7-consecutive-day period. However, § 121.471(g) allows a flight crewmember to exceed flight time limits as a result of circumstances that are beyond the control of the certificate holder. In 1991, the FAA issued an interpretation stating that the circumstances-beyond-the-control-of-the-certificate-holder exception allows a flight crewmember to complete a previously-scheduled flight segment even if completing that segment would infringe on the rest period required by § 121.471(d).[2]

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[1] For this question, we will assume that the pilot in your scenario does not receive a 24-hour consecutive rest period on Days 1 through 6.

[2] Letter to James W. Johnson from Donald P. Byrne, Assistant Chief Counsel of the Regulations and Enforcement Division (Mar. 21, 1991).

Subsequently, in 2000, the FAA issued a seminal interpretation known as the Whitlow Letter.[3] The Whitlow Letter clarified that the circumstances-beyond-the-control-of-the-certificate-holder exception in § 121.471(g) "applies only to the scheduling of flight time" and does not apply to rest periods. Thus, the Whitlow Letter determined that circumstances beyond the control of the certificate holder would not permit a flight crewmember to take off on a flight segment if the flight crewmember knows, prior to takeoff, that completing the flight segment would infringe on a required rest period.

Because § 121.471(d) requires that a flight crewmember be free from duty for 24 hours in a 7-day period, the requirement in § 121.471(d) is a rest requirement and not a flight-time limitation. Pursuant to the Whitlow Letter, since § 121.471(d) sets out a rest requirement, the circumstances-beyond-the-control-of-the-certificate-holder exception does not apply to § 121.471(d). As such, a flight crewmember may not take off on a flight segment if the flight crewmember knows that completing the flight segment would infringe on the 24-hour rest period required by § 121.471(d). Because the Whitlow Letter was issued more recently and because the Whitlow Letter is a seminal FAA interpretation, the analysis in the Whitlow Letter supersedes the 1991 interpretation.

Applying the above discussion to your scenario, the pilot in your scenario knows, prior to takeoff, that the final flight segment of Day 6 will spill over into the 24-hour rest period that was scheduled for Day 7. Because this 24-hour rest period is required by § 121.471(d), the pilot in your scenario may not take off on the final flight segment of Day 6, as doing so would infringe on a required rest period.

Question 2: Does the circumstances-beyond-the-control-of-the-certificate-holder exception apply to the flight-time limit of § 121.481(d)?

For your next question, you pose the following scenario. A pilot working in flag operations on a seven-day schedule has accumulated 23 hours and 42 minutes of total flight time for Days 1 through 6. On the seventh day, that pilot is scheduled to fly two flight segments. The first segment is scheduled to take 4 hours and 5 minutes and the second segment is scheduled to take 3 hours and 40 minutes, which results in a total flight time of 7 hours and 45 minutes for Day 7. When the scheduled flight time is added to the 23 hours and 42 minutes that were accumulated on Days 1 through 6, the result is 31 hours and 27 minutes of flight time. However, due to circumstances beyond the control of the air carrier, the first flight segment on Day 7 winds up taking 5 hours and 25 minutes of flight time instead of the scheduled 4 hours and 5 minutes. As a result of this delay, if the pilot takes off on the second flight segment of Day 7, at the conclusion of the segment, that pilot will have exceeded 32 hours of flight time in a 7-consecutive-day period. You ask whether 14 C.F.R. § 121.481(d) would permit the pilot to take off on this flight segment.

Subsection 121.481(d) applies to flag operations involving one or two-pilot crews, and it states, among other things, that "[n]o pilot may fly more than 32 hours during any seven consecutive days." However, § 121.471(g) allows a flight crewmember to exceed flight

[3] Letter to Captain Richard D. Rubin from James W. Whitlow, Deputy Chief Counsel (Nov. 20, 2000).

time limits as a result of circumstances that are beyond the control of the certificate holder. The FAA has previously stated that this circumstances-beyond-the-control-of-the-certificate-holder exception applies to flag operations.[4] As such, a pilot may exceed the 32-hour flight-time limit of § 121.481(d) if the pilot's exceedance is a result of circumstances that are beyond the control of the certificate holder.

In your scenario, the first flight segment of Day 7 takes longer than anticipated due to circumstances that are beyond the control of the certificate holder. Consequently, the circumstances-beyond-the-control-of-the-certificate-holder exception would permit the pilot in your scenario to exceed the 32-hour flight-time limit of § 121.481(d). As a result, the pilot in your scenario may take off on the second flight segment that was scheduled for Day 7.

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 Alex Zektser, Attorney, 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 International Law, Legislation and Regulations

[4] Letter to Manuel Estela from Donald P. Byrne (May 6, 1991).