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

Office of the Chief Counsel

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

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Robert P. Silverberg
Silverberg, Goldman & Bikoff, L.L.P.
1101 30th Street N.W.
Suite 120
Washington, D.C. 20007

Dear Mr. Silverberg,

This is in response to questions you raised, on behalf of ABX Air, Inc. (ABX), in a January 2011 meeting with FAA attorneys and in several follow-up e-mails. Your questions concern the application of 14 C.F.R. § 121.503(b) to the following factual scenario.

In your scenario, a flightcrew operating under supplemental rules is scheduled to fly three flight segments in a 24-hour period. Those segments are as follows:

Segment 1: JFK to CVG
Segment 2: CVG to BFI
Segment 3: BFI to YVR

The scheduled flight time for the JFK-to-CVG segment is 2 hours and 12 minutes, the scheduled flight time for the CVG-to-BFI segment is 4 hours and 48 minutes, and the scheduled flight time for the BFI-to-YVR segment is 52 minutes. The total scheduled flight time for these three segments is 7 hours and 52 minutes.

Delays then occur during the first two flight segments. In the JFK-to-CVG segment, the delays increase that segment's flight time by 40 minutes. In CVG-to-BFI segment, the delays increase the segment's flight time by 25 minutes. These delays mean that prior to the start of the last scheduled flight segment (BFI-to-YVR), the flightcrew has accumulated 8 hours and 5 minutes of actual flight time.

In your contacts with FAA personnel, you posed two questions: (1) whether, under the facts set out in your scenario, § 121.503(b) requires the flightcrew to receive 16 hours of rest prior to commencing their third scheduled flight segment (BFI-to-YVR); and (2) whether the "circumstances beyond the control of the certificate holder" exception exempts the flightcrew from the requirements of § 121.503(b) until the final scheduled flight segment has been completed. Your emails also cited several previous FAA interpretations, which we will address. For this analysis, the FAA will assume that the schedule in your scenario is realistic.

I. Whether § 121.503(b) requires pilots to receive 16 hours of rest prior to commencing a previously-scheduled flight segment if, prior to commencing the segment, the pilots' actual flight time exceeds 8 hours in a 24-hour period

The regulations in Subpart S of part 121 prescribe flight time limitations and rest requirements for supplemental operations conducted under part 121. Section 121.503(b) states that "[e]ach pilot who has flown more than eight hours during any 24 consecutive hours must be given at least 16 hours of rest before being assigned to any duty with the certificate holder."

The earliest letter of interpretation that you referenced in your emails was issued in 1969. This letter analyzed a fact pattern in which a pilot was scheduled for less than 8 hours of flight time, but, due to bad weather, the pilot flew over 8 hours before beginning the last scheduled flight segment. *See* Letter from Anthony W. Lalle, Associate General Counsel for Regulations and Enforcement (Jan. 14, 1969). The *Lalle* letter stated, without elaboration, that section 121.503(b) would not require a 16-hour rest period prior to commencing the last flight segment in the schedule. *Id.*

Another interpretation cited in your emails as addressing § 121.503(b) was issued in 1975 by an FAA associate regional counsel. *See* Letter to John R. Griffith from George L. Thompson, Associate Regional Counsel, ANE-7 (Feb. 5, 1975). One of the questions this letter addressed (Question No. 3(b)) was whether unforeseen delays could result in a pilot having to receive 16 hours of rest between previously-scheduled flight segments. In response to this question, the letter discussed an "occasional deviation" from the requirements of § 121.503(a) due to circumstances beyond the control of the certificate holder. The only mention of § 121.503(b) in this letter is a sentence stating that "[i]ndeed, the purpose of Section 121.503(b) is to assure an adequate rest period when [deviations from § 121.503(a)] do occur." Because the *Griffith* letter does not actually explain how § 121.503(b) "assure[s] an adequate rest period" and because the pertinent discussion in that letter focuses on § 121.503(a), which contains different requirements than § 121.503(b), the *Griffith* letter does not specifically explain how § 121.503(b) would apply in this case. We also note that when there is a conflict between interpretations, interpretations issued by a regional counsel's office are superceded by interpretations issued by the Assistant Chief Counsel of Regulations. *See* Letter to Taylor S. Perry from Rebecca MacPherson, Assistant Chief Counsel, Regulations Division (July 28, 2010). As discussed below, the *Griffith* letter is no longer valid because it has been superceded by subsequent interpretations issued by the Assistant Chief Counsel of Regulations.

In 1989, the FAA issued a letter adopting a definitive interpretation of § 121.503(b) that took a different approach than the interpretation set out in the 1969 *Lalle* letter. *See* Letter to Robert D. Gray from Donald P. Byrne, Acting Assistant Chief Counsel, Regulations and Enforcement Division (July 17, 1989). The *Gray* interpretation, which was issued to one of ABX's management officials, analyzed three flight segments in which the combined flight time for the first two flight segments exceeded eight hours. *Id.* In that letter, the FAA concluded that "[w]ith respect to when the 16-hour rest must commence, the provisions of 121.503(b) are clear," the 16-hour rest period must be provided between the second and third flight segments. *Id.*

Since 1989, the FAA has repeatedly followed the interpretation of § 121.503(b) that was set out in the *Gray* letter. In 2000, the FAA issued a letter in which it applied the *Gray* interpretation to a factual situation that is almost identical to the one at issue in this case. *See* Letter to Thomas Kehmeier from Donald Byrne (Jan. 21, 2000). The factual situation that the FAA analyzed in *Kehmeier* is as follows. A flightcrew was scheduled to fly on a series of four flight segments. The first three flight segments were scheduled such that the flight time for these three flight segments would be less than 8 hours in a 24-hour period. However, the actual flight time for the three segments turned out to be 8 hours and 8 minutes in a 24-hour period. The *Kehmeier* letter explained that "[o]nce a pilot has flown over 8 hours in any 24 consecutive hours, section 121.503(b) is triggered," and the pilots who had flown for 8 hours and 8 minutes had to be provided with a 16-hour rest period prior to commencing their final scheduled flight segment. *Id.*

The FAA reaffirmed this position through another interpretation in 2004, stating that "[u]nder the Subpart S regulations, when a pilot has landed and has already flown more than 8 hours in a 24-consecutive-hour period, he may not take off on any remaining flight legs until he has received the rest required by section 121.503(b)." *See* Letter to Randall C. Kania from Rebecca MacPherson (Apr. 29, 2004).

Examining the interpretations cited above, since 1989, the FAA has repeatedly stated, through its formal interpretations, that once a flightcrew exceeds 8 hours of flight time in a 24-hour period, § 121.503(b) requires that the flightcrew be provided with 16 hours of rest prior to commencing the next scheduled flight segment. *See Gray*, *Kehmeir*, and *Kania* letters.

We also note that the *Gray*, *Kania*, and *Kehmeier* letters are consistent with the position that ABX put forward in an exemption request that it made in 1990 after the *Gray* letter was issued to Robert Gray, who was, and still remains, one of ABX's managers. *See* Exemption No. 5167. In that request, ABX asked to be exempt from the requirements of § 121.503(b) because, ABX stated, § 121.503(b) required ABX to provide pilots who exceeded 8 hours of flight time in a 24-hour period with 16 hours of rest before those pilots could commence their final flight segment. The FAA granted ABX the requested exemption from the requirements of § 121.503(b) in limited circumstances, and ABX operated under this exemption from 1990 until the exemption expired in 2002. *See* Exemption Nos. 5167 and 5167A through 5167F.

Accordingly, pursuant to § 121.503(b), if a pilot has accumulated more than 8 hours of flight time in a 24-hour period, that pilot must be provided with 16 hours of rest before he or she commences another flight segment. The FAA emphasizes that because the rest requirement in § 121.503(b) is based on actual and not scheduled flight time, once a pilot exceeds 8 hours of flight time in a 24-hour period, that pilot may not delay receiving 16 hours of rest until after the completion of the previously-assigned schedule.[1] *See Kehmeier* letter (requiring a 16-hour rest period, pursuant to § 121.503(b), between flight segments even though the flight segments were scheduled such that the flight time did not exceed 8 hours in a 24-hour period).

[1] We note that some of the other rest requirements in Subpart S are based on scheduled flight time instead of actual flight time. *See, e.g.*, § 121.505(a). However, those rest requirements operate independently of § 121.503(b). *See, e.g.*, Letter to Capt. Rodney C. Ennis from Rebecca MacPherson (Nov. 21, 2011).

II. To what extent does the "circumstances beyond the control of the certificate holder" exception apply to the requirements of § 121.503(b)?

Now that we have discussed the requirements of § 121.503(b), we examine whether there are any exceptions to those requirements. The pertinent exception can be found in § 121.471(g), which states that:

> 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 certificate holder (such as adverse weather conditions), are not at the time of departure expected to reach their destination within the scheduled time.

While this exception is located in Subpart Q, which governs domestic operations, "by interpretation, the Agency has applied the 'circumstances beyond the control of the certificate holder' exception to flight time questions concerning certificate holders operating under subparts R and S." *Kania* letter. In *Kania*, the FAA explained how this exception applies to the rest requirements of § 121.503(b). There, the FAA stated that the "[i]n a situation where a pilot exceeds 8 hours [of flight time] after take off, because of circumstances beyond the certificate holder's control that develop during that flight leg . . . the certificate holder, as a matter of enforcement policy, would not be deemed to be in violation of the section 121.503(b) rest requirement." However, the *Kania* letter emphasized that "[u]pon landing . . . the pilot must be given 16 hours of rest before he may continue with another flight." Thus, under *Kania*, the "circumstances beyond the control of the certificate holder" exception permits a pilot to exceed 8 hours of flight time while he or she is in the air, but it does not create an exception for the 16 hours of rest that the pilot must receive once he or she is on the ground after exceeding 8 hours of flight time in a 24-hour period.

The *Kania* interpretation is consistent with the *Ryan* interpretation that is relied on heavily in your e-mails. *See* Letter to Patrick M. Ryan from Rebecca MacPherson (Feb. 23, 2006). In *Ryan*, the FAA analyzed a factual scenario in which a flightcrew was scheduled for three flight segments that were supposed to last for less than 8 hours of flight time. However, due to circumstances beyond the control of the certificate holder, the first two flight segments actually took up 4.5 hours of flight time instead of the scheduled 3.5 hours of flight time. The *Ryan* letter concluded that the flightcrew could take off on the final flight segment even though they knew that they would exceed 8 hours of flight time while they were in the air on the final flight segment. This conclusion is consistent with *Kania* because at the time that they took off on the final flight segment, the flightcrew in *Ryan* had accumulated only 4.5 hours of flight time. Since the rest requirement of § 121.503(b) does not trigger until the flightcrew exceeds 8 hours of flight time, the *Ryan* flightcrew did not need to receive 16 hours of rest between flight segments. While the flightcrew ultimately exceeded 8 hours of flight time while they were in the air on their final flight segment, as *Kania* explains, exceeding 8 hours of flight time while in the air is a legitimate application of the "circumstances beyond the control of the certificate holder" exception to § 121.503(b).

Your e-mails also cite two other interpretations: (1) Letter to Richard Dutton from Edward P. Faberman, Assistant Chief Counsel (May 7, 1981); and (2) Letter to Norman W. Waters from Edward P. Faberman (Sep. 15, 1980). With regard to the *Dutton* interpretation, the FAA has already addressed the applicability of that interpretation to § 121.503(b) in *Kehmeier*, which found the *Dutton* interpretation to be irrelevant to the matter of required rest between flight segments. In *Kehmeier*, the FAA stated:

> [T]he May 7, 1981 interpretation to Mr. Dutton did not address the issue of how to apply section 121.503(b) to a situation when a pilot exceeds the 8 hour in 24 consecutive hour flight time limit after landing a flight segment but before completing a flight schedule that was legal under section 121.503(a). The facts set forth in that letter do not specify the time difference between the scheduled and actual time so that on the basis of the interpretation one cannot discern the point at which the crew exceeded the 8 hour flight time limit. Consequently, we do not find the interpretation to Mr. Dutton relevant to this issue.

Turning to the *Waters* interpretation, that interpretation analyzed how the "circumstances beyond the control of the certificate holder" exception applied to the domestic flight time limits in § 121.471(b), which governs "the *scheduling* of a flight crewmember for duty aloft."[2] Because the *Waters* interpretation examined a regulation that governed scheduled crewmember time, the analysis in that interpretation does not explain how the "circumstances beyond the control of the certificate holder" exception applies to § 121.503(b), which governs actual rather than scheduled flight time.

To sum up, if, while piloting an aircraft, a pilot exceeds 8 hours of flight time due to circumstances beyond the control of the certificate holder, that pilot may finish the flight segment that he or she is on and land the aircraft without violating § 121.503(b). However, once that pilot is on the ground, § 121.503(b) requires that the pilot be provided with 16 hours of rest before he or she can begin another flight segment.

Applying this discussion to your factual scenario, due to circumstances beyond the control of the certificate holder, the pilots in your scenario would exceed 8 hours of flight time while they are in the air on their second flight segment (CVG-to-BFI).[3] In that case, the "circumstances beyond the control of the certificate holder" exception would permit the pilots to conclude the CVG-to-BFI segment and land at BFI. However, because the pilots will have exceeded 8 hours of flight time, § 121.503(b) would require that the pilots be provided with 16 hours of rest immediately upon completing the CVG-to-BFI segment. This rest would need to be provided before the pilots commence their next flight segment (BFI-to-YVR). As discussed above, because the rest requirement of § 121.503(b) is triggered by actual and not scheduled flight time, the pilots' schedule would have no effect on this requirement.

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

[2] Waters Letter (emphasis in the original).

[3] For the sake of discussion, we are assuming that the delays affecting the pilots' flight time are due to circumstances beyond the control of the certificate holder.

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 Regulations, AGC-200