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

Office of the Chief Counsel

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

SEP 07 2012

Timothy Slater
[redacted]

Dear Mr. Slater:

This is in response to your June 25, 2012 letter posing six questions about the flight, duty, and rest rules applicable to supplemental operations operating under part 121.

Your first three questions deal with the following scenario.

A certificate holder operates a supplemental round-trip flight between California and Hawaii under the flight, duty, and rest rules of Subpart S of part 121. The total flight time for the two flight segments that make up the round-trip flight is approximately 11 hours and those flight segments will be conducted within a 24-hour period. The flightcrew consists of three pilots and no pilot is assigned to be on the flight deck in excess of 8 hours.

Question 1: May a flightcrew of three pilots operate under 14 C.F.R. § 121.521?

For your first question you ask whether the three-pilot flightcrew in your scenario can operate under the provisions of 14 C.F.R. § 121.521.

A certificate holder operating a supplemental flight between a place inside the 48 contiguous states, such as California, and a place outside the 48 contiguous states, such as Hawaii, can elect, pursuant to 14 C.F.R. § 121.513(a), to operate under the flight time limitations of 14 C.F.R. §§ 121.515 and 121.521 through 121.525. Because this question asks about § 121.521, we will assume that the certificate holder that this question refers to has elected to operate under §§ 121.515 and 121.521 through 121.525.

The flight, duty, and rest provisions in § 121.521 apply only to a "crew of two pilots and at least one additional flight crewmember."[1] The FAA has previously stated that the "additional flight crewmember" can be a third pilot.[2] Thus, the three-pilot flightcrew in your scenario could operate under the provisions of § 121.521.

[1] 14 C.F.R. § 121.521(a).
[2] Letter to A. Joel Eisenberg from Bert Z. Goodwin, Chief Counsel (Aug. 12, 1976).

Question 2: Does the flightcrew have to be given 16 hours of rest at the conclusion of two flights totaling 11 hours?

For your second question, you emphasize that in your scenario no pilot has been assigned flight deck duty in excess of 8 hours. You then ask whether § 121.503(b) requires the flightcrew to receive 16 hours of rest at the conclusion of the flight back from Hawaii. Because this question asks about § 121.503, we will assume that the certificate holder that this question refers to has not made a § 121.513 election.[3]

Section 121.503(b) requires 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." In 2011, the FAA issued an interpretation explaining that "in situations in which a pilot is put on an airplane to serve as a flight crewmember at some point between origin and destination, the FAA has interpreted the phrase 'flown' in § 121.503(b) as encompassing the entire time that the pilot is on the airplane and not simply the time that the pilot is on the flight deck."[4]

The 2011 interpretation addressed a situation in which each pilot, in an augmented crew, spent six hours on the flight deck and three hours resting during a 9-hour flight. In that interpretation, the FAA found that "since each of the pilots is going to be a flight crewmember at some point during the flight, each pilot will have 'flown' the entire 9 hours of the flight regardless of how long he or she is off the flight deck." Accordingly, the interpretation concluded that "each of these pilots will have flown over eight hours in a 24-consecutive-hour period and § 121.503(b) would then require that each pilot receive 16 hours of rest before being assigned to any further duty with the certificate holder."

Applying the above discussion to the facts of your scenario, each of the three pilots in your scenario is going to be a flight crewmember at some point during each of the two assigned flights. As such, each pilot will have "flown" the entire 11 hours of the two flights regardless of how long he/she is off the flight deck. Because each pilot will have flown over eight hours in a 24-consecutive-hour period, § 121.503(b) would "require that each pilot receive 16 hours of rest before being assigned to any further duty with the certificate holder."[5]

Question 3: Does the 16-hour rest requirement in § 121.503(b) allow non-flying duty before the rest is provided?

For your third question, you ask whether, at the conclusion of the flight back from Hawaii, the certificate holder can assign the pilots in your scenario to non-flying duties, such as training or office work, before releasing them for the 16-hour rest period required by § 121.503(b).

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[3] Because Questions 3 and 4 also ask about § 121.503, we will likewise assume that the certificate holder in Questions 3 and 4 has not made a § 121.513 election.

[4] Letter to Scott Dickson from Rebecca MacPherson (Jan. 4, 2011).

[5] *Id.*

As discussed above, once a pilot has flown more than 8 hours in a 24-hour period, § 121.503(b) requires that the pilot be provided with at least 16 hours of rest "before being assigned to any duty with the certificate holder."[6] However, this requirement is limited by § 121.500, which limits the applicability of Subpart S to supplemental operations.[7] As a result, the FAA has determined that a crewmember can perform non-part-121-flying duties, such as a ferry flight or deadheading, prior to being given the 16 hours of rest required by § 121.503(b).[8] Because non-flying duties such as training or office work are also non-part 121 duties, the pilot in your scenario can be assigned those duties prior to being given the 16 hours of rest required by § 121.503(b).

Question 4: Does the 24-hour rest requirement in § 121.503(c) trigger when a pilot has non-flying duty?

For your fourth question, you ask whether the 24-hour rest requirement in § 121.503(c) applies to non-flying duty. You provide a scenario in which a pilot works for 8 consecutive days on non-flying duties, then gets 24 hours off, and is then assigned a part 121 supplemental flight. You ask whether this scenario would violate the 24-hour rest requirement in § 121.503(c).

Subsection 121.503(c) requires a certificate holder conducting supplemental operations to "relieve each pilot from all duty for at least 24 consecutive hours at least once during any seven consecutive days." However, like the rest requirement of § 121.503(b) discussed above, the requirement in § 121.503(c) is also limited by § 121.500, which limits the applicability of Subpart S to supplemental operations.[9] As such, the rest requirement in § 121.503(c) does not trigger until a pilot is assigned to fly on a supplemental operation.

Applying the above discussion to your scenario, a pilot assigned to non-flight duties for 8 consecutive days would not be in violation of § 121.503(c) because the 24-hour-rest requirement in § 121.503(c) does not trigger until the pilot is assigned to fly on a supplemental operation. The pilot in your scenario is eventually assigned to a supplemental flight, and this assignment would trigger the "look back" rest requirement of § 121.503(c). Since the pilot in your scenario would receive 24 hours of rest immediately before being assigned to the supplemental flight, he would satisfy the § 121.503(c) requirement to receive 24 hours of rest within the seven-day period that precedes the flight.

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[6] § 121.503(b).
[7] *See* § 121.500 (setting out the applicability of Subpart S).
[8] *See* Letter to Norman W. Waters from Edward P. Faberman, Acting Assistant Chief Counsel (Sep. 15, 1980).
[9] *See* § 121.500 (setting out the applicability of Subpart S).

Question 5: What is the effect of deaugmenting the flightcrew after the first flight segment?

For your fifth question you provide the following scenario. The flightcrew consists of three pilots: A, B, and C. Each of these pilots flies the aircraft during Flight 1, which is a 5-hour flight. Pilot C flies the aircraft for the entire 5 hours. Pilots A and B each pilot the aircraft for 2.5 hours and spend the other 2.5 hours "relaxing in the cabin." You state that "[a]t destination, pilot A has flown 5.0 hours and B & C have each flown 2.5 hours." You then ask whether, at this time, Pilot A can leave the flightcrew and whether Pilots B and C can fly the 5-hour return flight unaugmented. For this question, we will assume that the flightcrew is operating under Subpart S of part 121.

As an initial matter, we note that the FAA has consistently interpreted the phrases "flown," "flight time," and "aloft" as encompassing the time "from the moment the aircraft first moves under its own power for the purpose of flight until the moment that it comes to rest at the next point of landing."[10] Thus, as discussed above, the amount of time that a pilot has "flown" an aircraft is not limited to the time that pilot has spent on the aircraft's flight deck. Applying this concept to your scenario, Pilots A, B, and C would each have "flown" the aircraft for 5 hours at the conclusion of Flight 1 because that is the length of the flight segment on which each of those pilots was a required crewmember. If Pilots B and C are scheduled to pilot the aircraft for another 5-hour flight, then their total flight time would be 10 hours at the conclusion of the second flight (5 hours for Flight 1 plus 5 hours for the second flight).

Because the second flight in your scenario would be conducted with only two pilots, would have to be conducted under the provisions of § 121.505 and § 121.503. This is because § 121.521 only applies to a crew of "two pilots and at least one additional flight crewmember," and as such, a flightcrew consisting of only two pilots cannot operate under § 121.521.[11]

Because § 121.503 and § 121.505 do not prohibit a pilot from accumulating 10 hours of flight time in a 24-hour period, Pilots B and C would be able to fly the 5-hour return flight if doing so would be consistent with the pertinent cumulative limits. However, if the two five-hour flights in your scenario are being flown in a single 24-hour period, Pilots B and C would need to be provided with an intervening rest period that satisfies the requirements of § 121.505(a), as those pilots would be scheduled for over 8 hours of flight time in a 24-hour period. Pilots B and C would also need at least 16-hours of rest at the conclusion of the second flight, as, at that time, they would have flown over 8 hours during a 24-hour period.[12]

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[10] Letter to Timothy D. Miller from Donald Byrne (Aug. 27, 1997). *See also* Letter to Scott Dickson from Rebecca MacPherson (Jan. 4, 2011); Letter to James W. Johnson from Donald Byrne (Oct. 1, 1990).
[11] *See* § 121.521(a); Letter to A. Joel Eisenberg from Bert Z. Goodwin (Aug. 12, 1976).; Letter to AIFO-NY-1 from Martin J. White, Regional Counsel (May 14, 1978).
[12] § 121.503(b).

Question 6: Does being tugged to de-icing count as flight time?

For your final question, you posit the following scenario. An aircraft is tugged to a de-icing pad and is de-iced. You ask whether the time spent being tugged to the de-icing pad and de-icing would constitute flight time.

Section 1.1 defines flight time as "time that commences when an aircraft moves under its own power for the purpose of flight and ends when the aircraft comes to rest after landing." Based on this definition, the time before an aircraft moves under its own power is not flight time. Thus, the FAA has stated that "the time spent towing the airplane prior to the moment it first moves under its own power for the purpose of flight is not flight time."[13] Conversely, the FAA has found that if an aircraft "taxies under its own power" from the gate to the de-icing pad, then the time spent taxiing to the de-icing pad and de-icing is flight time.

Applying this concept to your question, if an aircraft is tugged to a de-icing pad, it is not moving under its own power. Thus, if this procedure occurs before the aircraft first moves under its own power, then the time spent tugging the aircraft and de-icing would not be flight time. The flight time in your scenario would begin once the aircraft first moves under its own power for purposes of flight.

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 Regulations, AGC-200

[13] Letter to James W. Johnson from Donald Byrne (June 22, 2000) (quoting Memorandum to AGL-7, from Dewey R. Roark, Jr., Acting Associate General Counsel, Regulations and Codification Division (Oct. 18, 1972)).