U.S. Department
of Transportation
Federal Aviation Administration

Office of the Chief Counsel

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Washington, D.C. 20591

MAY 10 2012

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Dear Mr. Wells

This is in response to your letters, originally dated August 13, 2007 and October 5, 2007. In those letters, you sought clarification of points made in a letter dated June 11, 2007 to Mr. Richard Burns, an FAA Inspector in the New York City Flight Standards District Office, which addressed concerns raised by the Air Line Pilots Association (ALPA) and a Captain Fernando Rivera, a pilot for Polar Air Cargo. You requested that we withdraw some of the conclusions reached in that letter regarding 14 C.F.R. §121.485(b).

In your August 13 letter, among other scenarios, you set forth the following series of flights:

Date	Route	Schedule (Z)	Block	# of Pilots
16	ORD-INC	0225-1645	14:20	4
17	INC-LAX	1255-0035	11:40	3
19	LAX-INC	1415-1655	12:40	4
20	INC-NRT	0815-1035	2:20	2
22	NRT-ORD	0001-1136	11:35	3
25	ORD-NRT	0910-2200	12:50	4
26	NRT-ORD	1230-0005	11:35	3

One of your questions was how much rest does § 121.485(b) require when the pilots return to the United States at LAX on the 18th. We assume for purposes of this interpretation that the crew base for these pilots is ORD, not LAX. We addressed a similar, although not identical, situation in our June 11, 2007 letter. In that letter, we said that if the crew base was ORD, but the carrier had the crew first land at a gateway city and then proceed to ORD, then the § 121.485(b) rest could be given at ORD. We also said that the carrier would not be permitted to circumvent the safety underpinnings of the regulation by sending the crew from New York, to Dallas, to Las Vegas, to LAX and then back to ORD. We said that if such routing occurs, "...the FAA would consider

issuing [the] certificate holder...operations specification to make sure the flightcrew gets its § 121.485(b) rest within a reasonable period upon returning to the US."

The situation you describe above meets the rest requirements of §121.485(b). The crew lands at LAX (not its crew base) after 26 hours of total flight time in flag operations (but, significantly only 14:20 of that time was with three pilots and an additional flight crewmember – in this example a fourth pilot) and gets about 38 hours of rest at LAX before flying from LAX to INC on the 19th. Because § 121.485(b) requires a carrier to provide twice the amount of rest as the flight time accumulated with a flight crew of three or more pilots and an additional flight crewmember, only the first leg's flight time needs to be doubled (2 x 14:20 = 28:40) in order to calculate the amount of home base rest due. In the above scenario, the company provided the crew with well more than the 28:40 of home base rest required under § 121.485(b) before the company had the crew take a flight from LAX to INC. The same would be the case for the arrivals in ORD on the 22nd (2 x 12:40 = 25:20) and the 27th (2 x 12:50 = 25:40). The planned rest would meet the requirements of §121.485(b).

The heart of ALPA's letter appears to be a belief that anytime one flight in a series of flights under the flag rules consists of three or more pilots and an additional flight crewmember, then all of the flight time from each of the flight legs (even the flight legs where there are fewer than three or more pilots and an additional flight crewmember) must be used in calculating the amount of home base rest due.

ALPA supports its position by citing a December 14, 1979 note by then FAA Assistant Chief Counsel Edward Faberman. In that note, Mr. Faberman refers to an issue regarding a Mr. Gay, who was a Pan Am pilot. Mr. Faberman stated that the FAA did "not interpret the rest at home provision in section 121.485(b) to be limited to the one flight segment on which Mr. Gay was a member of a crew of three pilots and an additional flight crewmember."

If one were to read this statement by itself, one could mistakenly conclude that the FAA was interpreting §121.485(b)'s home base minimum-rest-period calculations to apply anytime one flight segment, in a series of flag flights, had three or more pilots and an additional flight crewmember. However, that note must be read in context.

An FAA letter and an FAA exemption issued in a period that was contemporaneous with the issuance of the Faberman note, regarding the same question that Mr. Faberman faced, do not support ALPA's argument. Shortly after Mr. Faberman's note, FAA chief Counsel Clark H. Onstad wrote a letter to Pan Am's Senior Vice-President for Flight Operations. *See,* Dec. 26, 1979 letter to Walter Mullikin. In that letter, Mr. Onstad stated that the manner in which §121.485(b) was written meant that *the number of flight crewmembers serving on a flight* (regardless of whether that flight was more than 12 hours or less than 12 hours) *was the determining factor in whether section 121.485(b) rest was due*. Mr. Onstad emphasized that the "section applies to all three pilot crews plus additional flight crewmember, whether or not all are 'required.'"

The issue in controversy at the time was whether a carrier's contractual obligation (which went beyond the regulatory requirements) to staff a flight with three or more pilots and an additional crewmember created a regulatory obligation for the carrier to provide those crewmembers with rest that equaled twice the amount of flight time. Thus, the FAA Chief Counsel recognized that § 121.485(b) – by its very terms – applied or did not apply depending upon the number of flight crewmembers serving on a particular flight.

Pan Am and later the Air Transport Association on behalf of its members, sought and received an exemption which had the effect of imposing §121.485(b) rest only if the flight or series of flights in a duty day would exceed 12 hours (thus requiring four pilots or three pilots and a flight engineer). The exemption recognized the dispute discussed above[1] and created a trade-off. On the one hand, the exemption holder was not obligated to provide § 121.485(b) home base rest based on flights or series of flights with fewer than 12 hours – even if by contract the flight crew consisted of four pilots or three pilots and a flight engineer. In return for that exemption relief, the FAA stipulated that the carrier that used the exemption would have to count all flight legs for 121.485(b) purposes, including flights with fewer than four flight crewmembers, if any of the flag flight legs exceeded 12 hours of flight time. The key point here is that the counting of the flights that had fewer than four flight crewmembers was a condition for granting the exemption. It was not part of the underlying regulation and it was not something that the carriers sought or were exempt from. Only if the carrier relied on the terms of the exemption would it be obligated to count flight time from flight legs that used fewer than four flight crewmembers.

As ALPA itself noted in its correspondence, another factor that must be taken into account when reading earlier flight and duty interpretations is the fact that, for example, the 747-100 was type-certificated to be operated by two pilots and a flight engineer. Thus, FAA's earlier flight and duty discussion about the addition of a "third" pilot did not mean that the FAA was referring to a situation in which there were only three flight crewmembers on the flight deck – all of them being pilots. Those earlier aircraft required the presence of a flight engineer. With modern long-range aircraft, flight engineers are no longer required by the aircraft certification rules. Thus, when a flight or series of flights in a duty period will be longer than 12 hours[2] and when the carrier uses aircraft that do not require the presence of a flight engineer, then § 121.485(b) only applies when four or more pilots are required.

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[1] The exemption summarized the dispute as follows: "By letter dated November 29, 1979, Pan American World Airways, Inc. (PAA), requested that the FAA reconsider an interpretation which had been given verbally by an FAA Assistant Chief Counsel [Faberman] to one of PAA's pilots. This verbal interpretation, later confirmed in writing [see Onstad letter], of section 121.485 had the effect of increasing the rest requirements for pilot members of a crew solely as a result of the addition to the crew of a third pilot who was not required by the FAR for operation being conducted, the third pilot being added to satisfy contractual requirements or to perform check airman duties. Subsequently, PAA was advised by letter dated January 11, 1980...that the written interpretation was the formal position of the FAA, and that PAA was expected to be in full compliance[.]

[2] In essence, through Exemption 4317 and its predecessors, the FAA has limited the applicability of § 121.485 to flights of 12 or more hours, provided certain conditions are met.

The June 11, 2007 interpretation continues to be the current interpretation of § 121.485. It is consistent with the plain language of the regulation and the plain language of the interpretations cited in the letter. We do not believe that the interpretations cited in the letter are old or stale as ALPA suggests. They clearly point to a long-held understanding of how § 121.485 works. Furthermore, the June 11, 2007 letter is consistent with the Faberman note when one understands the nature of the controversy that arose concerning the note and, as a result, does not represent a retreat from anything stated in the note.

We thank you for your patience in this matter. Should you have any additional questions, you may contact Robert H. Frenzel, Manager, Operations Law Branch in the Regulations Division of the Office of the Chief Counsel, at (202) 267-3073.

Sincerely,

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