U,S,Department
of Transportation
Federal Aviation
Administration

MAR - 2 2012

Mr. Stephen P. Whitaker
[redacted]

Dear Mr. Whitaker,

This letter is in response to your October 22,2011 letter regarding the application of 14 CF.R. §§ 121.505, 121.513 and 121.523 to various scenarios. Specifically, you ask (1) what constitutes a pilot's "base of operation" for purposes of § 121.523(e) rest, (2) the minimum crew complement that § 121.523 applies to, (3) whether § 121.513 allows for a different duty time limit than the duty time limits of § 121.505, and, (4) whether § 121.513 permits a certificate holder to schedule under either the "U.S. mainland rules" or the "international rules" on a flight-by-flight basis? The answers to your questions follow below.

I. Base of Operations

The pertinent part of § 121.523(e) states that a certificate holder must provide the rest required by that paragraph to an airman "upon return to his operations base from any flight or series of flights." Your letter states that in the case of the airline you are employed by, there is only one "base" and that is the company headquarters. Your question is whether the FAA would consider a pilot's home or "resident" airport to be an "operations base" for purposes of § 121.523(e) rest. The answer is yes, a pilot's home airport would be an acceptable base for purposes of the regulation.

In a legal interpretation to Mr. Richard Burns from Assistant Chief Counsel Rebecca B. MacPherson (Jun 2007) dealing with a similar "home base" question under the flag rules, we stated that "the FAA has allowed carriers to give pilots the required Section 121.485(b) rest at another base in the U.S." In your situation, where the only base of operations is the corporate headquarters of the certificate holder (and flight crewmembers generally do not report there), it would be reasonable to use a pilot's home or resident airport for the required § 121.523(e) rest.

II. Flight time limitations

In your letter, you restate the title of § 121.523 - Flight time limitations: Crew of three or more pilots and **additional** airmen as required (emphasis as added in your letter) and ask whether § 121.523(d) would be inapplicable to crews consisting of only two or three

pilots. This paragraph of the supplemental rules applies when a certificate holder assigns an augmented crew to a flight. For example, if the aircraft is certificated as a two-pilot aircraft, at least one additional pilot is necessary to operate under the provisions of § 121.523. If the aircraft requires a flight engineer or navigator in addition to the two pilots, there must still be at least one additional pilot added in order to augment the flight under § 121.523. Depending upon the length of a flight schedule, an additional flight engineer or navigator may also be required under § 121.503(a), which prohibits a flight engineer or navigator from being on flight deck duty for more than 12 hours in a 24 hour period.

III. Election under § 121.513

You next ask a number of questions regarding whether § 121.505(b) establishes an exclusive duty time limit of 16 hours for a two-pilot crew in a Boeing 747-400 or does § 121.513 allow for different duty limits and whether § 121.513 would apply to a two-pilot crew. "Under Subpart S, when an operation is (or operations are) international in character, a certificate holder has the option, under § 121.513, of electing to comply with the provisions found in §§ 121.515 and 121.521 through 121.525 ("international rules"), instead of the provisions found in §§ 121.503 through 121.511 (the "U.S. mainland rules")." *See,* Letter to Mr. David Shinn from Assistant Chief Counsel Donald P. Byrne (Apr 2003). In order to make this election, the operation must be conducted:

> (a) Between a place in the 48 contiguous States and the District of Columbia, or Alaska, and any place outside thereof;
> (b) Between any two places outside the 48 contiguous States, the District of Columbia, and Alaska; or
> (c) Between two places within the State of Alaska or the State of Hawaii.

When the § 121.513 election is made, the certificate holder is no longer required to comply with the provisions of the "U.S. mainland rules." As a result, the § 121.503(b) duty time limitation of 16 hours for a crew of two pilots would not apply if the election is made. Instead, the certificate holder would follow the flight time limitations of § 121.521 for a two-pilot crew, which are based on the amount of time a crewmember is "aloft." That limit is 12 hours in any 24 consecutive hours (§ 121.521(a)). Additionally, if an airman is aloft 20 or more hours during any 48 consecutive hours or 24 or more hours in any 72 consecutive hours, then that crewmember must be given at least 18 hours of rest (§ 121.521(b)). Finally, an airman must be relieved of all duty for at least 24 hours in any seven consecutive days (§ 121.521(b)). There is no specific duty limit in § 121.521 similar to that in § 121.505.

You also ask about the use of a "double crew (four pilots)" and the applicable duty time limit and the regulatory basis for that limit. In the case of an augmented flight as you describe (a two-pilot Boeing 747-400 being operated by four pilots), a certificate holder would follow either the "domestic" provisions under §§ 121.503 and 121.509 or, if the flight was conducted between the required points noted above, make the § 121.513 election and operate the flight under § 121.523. If the certificate holder makes the

election, § 121.523 limits flight engineers and navigators to no more than 12 hours of flight deck duty during any 24 hour period (§ 121,523(a»). This limit applies only to flight engineers and navigators, not pilots.

IV. Making the § 121.513 election

Your last question involves how and when a § 121.513 election is made. There is no specific requirement stated in the regulation itself. However, "(i)t is evident that a certificate holder may not make the § 121.513 election by inaction because the provisions of the "U'S. mainland rules" and the "international rules" differ from each other, with each set of rules subjecting the operation to different requirements. Finally, because a flight crewmember is also responsible for ensuring compliance with various provisions of the regulations, a certificate holder must communicate its election to the flight crewmember." *See,* Legal Interpretation to David Shinn from Donald P. Byrne, Assistant Chief Counsel (Apr 2003). Therefore, a certificate holder may choose to operate international flights under either segment of the rules and is not required to make the election for all flights, so long as the election is clearly communicated when the flight or series of flights is scheduled.

We appreciate your patience and trust that the above responds to your questions and concerns. If you need further assistance, please contact my staff at (202) 267-3073. This response was prepared by Robert Frenzel, Manager, Operations Law Branch, 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