U.S. Department
of Transportation
Federal Aviation Administration

Office of the Chief Counsel

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

DEC 19 2012

Captain Peter Willums
[redacted]

This letter responds to your request for a legal interpretation concerning the application of 14 C.F.R. § 121.471(a)(4), which provides in pertinent part that no flight crewmember may accept an assignment for flight time in domestic scheduled air transportation or in other commercial flying if that crewmember's total flight time in all commercial flying will exceed 8 hours between required rest periods. In this context, your letter also deals with the application of the circumstances-beyond-the-control-of-the-certificate-holder rule found in § 121.471(g) as discussed below.

You question a situation where you were scheduled for a Las Vegas (LAS) – Grand Rapids (GRR) round-trip of 7 hours and 35 minutes. Three hours prior to departure, you were notified that the weather at GRR at the scheduled arrival time would require the addition of an alternate airport to the dispatch release. Due to high ambient temperatures in LAS, the additional fuel required for the alternate would exceed the take-off performance capability for the operation. As a result, dispatch added a fuel stop in Des Moines (DSM). The recalculated round-trip flight time would be 8 hours and 20 minutes due to the fuel stop.

You initially refused the assignment as given by the dispatcher, saying that it would exceed the limitation in § 121.471(a)(4). You then received a phone call a few minutes later from the Director of Operations, who relayed his position that the weather conditions in GRR fell within the "circumstances beyond the control" exception found in § 121.471(g), which provides:

> (g) 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.

After additional discussions with your Chief Pilot and the Senior VP of Flight Operations, who also told you that the flight would be legal based on the circumstances caused by the weather in GRR, you accepted and operated the flight, which resulted in an

actual round-trip time of 8 hours and 17 minutes. For the reasons explained below, you operated a legal flight.

In a Legal Interpretation from Rebecca B. MacPherson to Patrick M. Ryan (February 23, 2006) we stated, "(p)rior interpretations applying section 121.471(g) to the scheduled flight time limit in section 121.471(a)(4) articulate the safety rationale that underpins the rule. The Agency has said that flights may exceed the flight time limits in a narrowly drawn context, namely:

a. The delay results from circumstances beyond the control of the carrier; and

b. The air carrier's original schedule is realistic.

See, Feb. 9, 1993 Letter to David S. Parent, from Donald P. Byrne, Assistant Chief Counsel, Regulations and Enforcement Division [1993-3]."

Thus, "an air carrier will not be found to be in violation of the limits on scheduled flight time if the air carrier's schedule is based on realistic assumptions about the circumstances of the flight, and the delay is due to circumstances truly unforeseeable or beyond the air carrier's control." *See,* Legal Interpretation from Rebecca MacPherson to Kevin McCabe (March 10, 2011) and cases cited therein[1]. The Agency generally considers delays due to air traffic control (ATC), adverse weather, or mechanical problems, as the incidents that qualify as circumstances beyond the control of the carrier and justify the relief afforded by application of the rule.

The FAA emphasizes that the rule only applies to flight time limitations. In 2000, the FAA "issued a seminal interpretation known as the Whitlow Letter[2]. 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." *See*, Legal Interpretation from Rebecca B. MacPherson to Mr. James Johnson (Nov. 5, 2012).

Based on your letter, the circumstances surrounding the rescheduling of the LAS-GRR round-trip flight seem to present an isolated, unanticipated weather-related reason for exceeding the scheduled flight time for the LAS-GRR round-trip. Although the high

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[1] *See e.g.* Legal Interpretation 1990-25 (accepting United's statistics showing that approximately 67 percent of flights during a single month that were completed within the scheduled flight time, as representative of realistic scheduling); Legal Interpretation 1991-8 (explaining that after an audit of United' s scheduled and actual flight times for winter and summer Pacific operations, it appeared that United's flights operated within the scheduled time approximately 85 percent to 95 percent of the time, which in the agency's view, demonstrated that United was scheduling realistically).

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

ambient temperatures in LAS impacted the operation of the flight, the reason for that impact was the additional fuel required by the designation of an alternate airport due to the weather in GRR. There are no facts presented in your letter to indicate that the flight frequently operates in excess of the scheduled time. Also, your letter does not allege that any rest requirements were infringed by the flight in question. As such, so long as you knew prior to takeoff on each segment of the scheduled flight that your rest requirements would not be infringed, under § 121.471(g), you would not be considered to be scheduled for flight time in excess of flight time limitations if the flight would normally operate and terminate within the limitations of § 121.471(a)(4).

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 letter has been prepared by Robert H. Frenzel, Manager, Operations Law Branch, Office of the Chief Counsel and coordinated with the Air Transportation and Aircraft Maintenance Divisions of Flight Standards Service.

Sincerely,

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Assistant Chief Counsel for International
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