U.S. Department
of Transportation
Federal Aviation Administration

Office of the Chief Counsel

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

APR 16 2013

Arthur Agramonte
[redacted]

Dear Mr. Agramonte,

This letter is in response to your request for an interpretation of the application of one of the provisions in the Federal Aviation Administration (FAA) Modernization and Reform Act of 2012, signed into law on February 14, 2012 (PL. 112-95) and certain flight and duty rules for supplemental carriers.

I. Part 121 Tail-End Ferry Flight Provision in PL. 112-95

Your first question deals with a flight schedule that departs Miami (MIA) and flies non-stop to Istanbul, Turkey (TBA). The flight is scheduled for 9.6 hours of flight time with a scheduled duty day of 14.5 hours. The crew consists of one pilot in command (PIC) and three International Reserve Officers (IRO). After a two-hour ground stop in TBA, the same crew is scheduled to return to MIA as a part 91 tail-end ferry. The aircraft does not have rest facilities on-board. You ask if this schedule is consistent with PL. 112-95.

Section 345(a) of PL. 112-95 requires the FAA to initiate a rulemaking addressing the applicability of part 121 flight and duty rules to part 91 tail-end ferry flights. The FAA has initiated such a rulemaking and the current status of that effort can be followed at: http://www.dot.gov/regulations/march-2013-significant-rulemaking-report (March, 2013). Until a final rule is issued, the current regulations remain in effect, which allow for a tail-end ferry to be conducted under part 91.

Prior interpretations involving the part 121 rules applicable to supplemental operations have found that part 91 ferry flying constitutes "other commercial flying," and is considered when determining whether a subsequent part 121 flight may be conducted. *See e.g.*, Jan.13, 1992, Letter to Peter E. Beckner, from Donald P. Byrne, Assistant Chief Counsel, Regulations and Enforcement Division [1992-1](stating that a ferry flight flown between two part 121 legs, i.e., a part 91 flight that occurs between 2 supplemental part 121 flight legs, would be counted toward the flight time limitations of §§121.521(a) and 121.523(a); *but if part 121 flying does not follow the ferry flight, the part 121 limitations applicable to a period of 24 consecutive hours do not apply. Emphasis added*). As a result, a part 91 tail-end ferry *following* the MIA – TBA flight fits within the supplemental flight and duty regulations. The FAA notes that § 121.523(c) contains a

maximum continuous duty limitation of 30 hours. As long as the total time, including the tail-end ferry, does not exceed that duty limitation, the operation would meet the regulation. However, "that does not necessarily mean that the carrier will not be in violation of other safety rules. *See*, e.g. 14 C.F.R. § 91.13." *See*, Letter to Jay Wells from Assistant Chief Counsel Rebecca B. MacPherson (Oct 2007).

You also mention in your letter that the aircraft in question did not have crew rest facilities on board. Section 121.523(b) does not require sleeping quarters on board the aircraft unless an airman is scheduled to be aloft as a flightcrew member for more than 12 hours during any 24 consecutive hours. In this instance, since the tail-end ferry flight is not counted in this specific flight limitation, crew rest facilities were not required on board the aircraft.

II. Look Back Rest For Supplemental Operations

Your second question deals with whether the supplemental rules for international flights contain a look back rest requirement. The rest provisions under subpart S do not include what is typically referred to for domestic rules under subpart Q as look back rest. In evaluating this same question in relation to the flag provisions of subpart R, which are similar in construction to subpart S, the FAA found:

> "if a pilot is on reserve three days in a row, and assuming that the day before the first day of reserve was a full 24-hour rest period, the carrier does not violate the explicit pre-duty rest requirements by assigning the pilot to a flight on the fourth day." *See*, Letter to Jay Wells, *id.*

Thus, as long as the beginning of a reserve period is preceded by a 24-hour rest period or other required rest period under subpart S, there is no 24-hour look back requirement for each day of reserve. As noted above, this does not preclude taking into consideration other safety rules such as § 91.13, depending on the circumstances.

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 Division of Flight Standards Service.

Sincerely,

Mark W. Bury
Acting Assistant Chief Counsel for International
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