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

Office of the Chief Counsel

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

NOV 26 2013

John R. Del Turco
[redacted]

Dear Mr. Del Turco:

This is in response to your June 12, 2013 letter posing two questions concerning the provisions of 14 C.F.R. § 121.523(b). Our answers to your questions are set out below.[1]

1. Number of Segments Permitted by § 121.523(b)

First, you ask whether § 121.523(b) limits the number of flight segments that a carrier may schedule a flight crewmember to operate. You suggest that § 121.523(b) was created in order to allow ultra-long-range flights, and as such, flights to which this provision applies can only contain a limited number of flight segments.

The flight, duty, and rest provisions of § 121.523(b) may be applied to overseas and international operations operating under the supplemental regulations of Subpart S of part 121.[2] Section 121.523(b), states that:

> Each certificate holder conducting supplemental operations shall schedule its flight hours to provide adequate rest periods on the ground for each airman who is away from his principal operations base. It shall also provide adequate sleeping quarters on the airplane whenever an airman is scheduled to be aloft as a flight crewmember for more than 12 hours during any 24 consecutive hours.

As can be seen from the above, the regulatory text of § 121.523(b) does not state that there is a limit on the number of flight segments that can be flown under this provision. Accordingly, based on its plain text, § 121.523(b) does not prohibit a certificate holder from scheduling multiple flight segments. The regulation instead requires that: (1) each airman who is away from his principal operations base must be provided with adequate rest periods; and (2) adequate sleeping quarters are provided when total time aloft exceeds 12 hours in any 24 consecutive period, no matter how many segments are scheduled.

2. Using Sleep Facilities Provided Pursuant to § 121.523(b)

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[1] As mentioned in your letter, you previously asked us whether the sleeping quarters provided by your airline were adequate. Because this was a safety policy issue, we referred the matter to AFS-200. Accordingly, in order to address your other questions concerning § 121.523(b), this letter assumes, *arguendo*, that the sleeping quarters your airline provides are adequate.

[2] *See* § 121.513.

Next, you ask for "the FAA's position on crewmembers who cannot or have never been able to sleep in the sleeping quarters of the airplanes." You state that, due to the manner in which your airline conducts augmented operations, crewmember cannot invoke fatigue because there is "immense" pressure to not invoke fatigue.

Our analysis of this question involves two regulatory provisions: § 121.523(b) and § 91.13(a). Looking first at the regulatory text of § 121.523(b), that text requires a certificate holder to "*provide* adequate sleeping quarters on the airplane."[3] Because the regulatory text of § 121.523(b) requires the certificate holder to only "provide" the adequate sleeping quarters, § 121.523(b) is satisfied if an aircraft contains adequate sleeping quarters.

Turning to § 91.13(a), that section prohibits operating an aircraft in a "careless or reckless manner so as to endanger the life or property of another." The FAA has repeatedly stated that "[b]oth the flight crewmember and certificate holder would be in violation of section 91.13(a) if a flight crewmember flies when his lack of rest would endanger others."[4] "[T]he flight crewmember need not actually endanger others for a violation of section 91.13 (a) to occur."[5] Rather, "[a] violation [of § 91.13(a)] exists if the flight crewmember's fatigue subjects life or property to potential endangerment."[6] FAA's prior interpretations of § 91.13(a) unequivocally state that "[i]f a flight crewmember is so fatigued that he believes he is incapable of safely operating an aircraft, he should immediately inform his employer."[7]

Applying the above discussion to your question, if you are so fatigued that you believe yourself to be incapable of safely operating an aircraft, you should immediately inform your employer. For the purposes of § 91.13(a), the source of your fatigue is irrelevant – what matters is whether you are capable of safely operating an aircraft. Thus, if you are unable to sleep on your aircraft's sleeping facilities and you become too fatigued to safely operate an aircraft, then § 91.13(a) prohibits you from flying the aircraft while you are so fatigued.

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, International, Legislation and Regulations Division of the Office of the Chief Counsel, and coordinated with the Air Transportation Division of Flight Standards Service.

Sincerely,

Mark W. Bury
Assistant Chief Counsel for International Law, Legislation and Regulations

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[3] § 121.523(b) (emphasis added).
[4] Letter to James L. Nauman from Donald Byrne, Assistant Chief Counsel, Regulations and Enforcement Division (Aug. 7, 1992). *See also* Letter to Gary Haskins from Donald Byrne (Oct. 3, 1991).
[5] Letter to James L. Nauman.
[6] *Id.*
[7] *Id.*; Letter to Gary Haskins. We also note that InFO 10017 provides additional guidance about how flightcrew members may be able to report fatigue as part of their carrier's fatigue risk management plan.