Federal Aviation Administration

Memorandum

Date: MAY 17 2013

To: Les Smith, Manager, Air Transportation Division, AFS-200

From: Mark W. Bury, Acting Assistant Chief Counsel for International Law, Legislation and Regulations, AGC-200

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Subject: Interpretation of the Rest Requirements for Supplemental Operations: 14 C.F.R. Parts 121.503-.511, 121.515, and 121.521-.525

I. Background

The purpose of this interpretation is to address whether a supplemental air carrier may conduct an international nonstop flight scheduled for more than 12 hours without crew rest facilities on board the aircraft.

The FAA published a draft of this interpretation in the Federal Register and sought comment to ascertain whether there would be unintended consequences for regulated parties that merited a further examination of how the agency's regulatory provisions should be applied in conjunction with agency policy and guidance material. *See* 78 Fed. Reg. 19630 (Apr. 2, 2012). We received one comment, which was submitted by the Air Line Pilots Association, International (ALPA).

ALPA stated that it is not aware of unintended consequences that would result from a requirement for supplemental air carriers to provide adequate sleeping facilities for flight crew on flights scheduled for longer than 12 hours. It also stated its belief that flights scheduled for longer than 12 hours must be operated with four pilots on an aircraft with an adequate onboard rest facility that complies with FAA Advisory Circular 117-1, Flightcrew Member Rest Facilities (Sept. 19, 2012).[1]

Therefore, because we did not receive any comments that would cause us to further examine our application of the regulatory provisions, we are issuing the interpretation as published in the Federal Register without substantive change.

II. Scenario

This interpretation addresses a hypothetical supplemental air carrier operator which has scheduled four pilots to conduct a non-stop flight lasting 12.5 hours that departs from a point

[1] The FAA published AC 117-1 to assist air carriers in complying with the 2012 Flightcrew Member Duty and Rest Requirements rule. *See* 77 Fed. Reg. 330 (Jan. 4, 2012).

outside of the contiguous United States and arrives at a point in the contiguous United States. The aircraft is type certificated for two-pilot operation.

Supplemental air carriers conducting overseas and international supplemental operations may elect, pursuant to § 121.513, to comply with the flight time limitations of § 121.515 and §§ 121.521 through 121.525 (commonly referred to as the "international rules"), rather than the flight time limitations found in §§ 121.503 through 121.511 (commonly referred to as the "U.S. mainland rules"). *See* 14 C.F.R. § 121.513. Because this hypothetical flight would operate from a point outside the contiguous United States, the carrier would be eligible to make the election. *See* 121.513(a) (stating that a flight between a "place in the 48 contiguous states . . . and any place outside thereof" qualifies for the election).

We will first evaluate whether the operation could be conducted under the "U.S. mainland rules" and then discuss how the operation could be conducted under the "international rules."

III. Flight Time Limitations on Supplemental Operations Conducted Within the 48 Contiguous United States

Section 121.503 sets out the basic flight time limitations and rest requirements for pilots during supplemental operations. Section 121.503(a) establishes that a pilot may be scheduled to "fly in an airplane for eight hours or less during any 24 consecutive hours without a rest period during those eight hours."[2] The FAA has interpreted the eight-hour period of § 121.503(a) to be a hard scheduling limit on block-to-block time for supplemental operations without an intervening rest prior to the eighth hour flown. *See* Legal Interpretation to G.L. Davison, from Edward P. Faberman, Deputy Assistant Chief Counsel, Regulations and Enforcement Division (July 17, 1979) (stating that § 121.503 "contains an 8 hour limitation").

Section 121.503(f) provides an exception to the above 8-hour limit for transcontinental non-stop flights, allowing a crewmember to be scheduled for "more than eight but less than 10 hours of continuous duty without an intervening rest period" under certain conditions.

This exception to the hard limit of 8 hours came about as a result of the improvements in aircraft capabilities and range, which led to the ability to conduct transcontinental non-stop flights. *See* 20 Fed. Reg. 2675 (Apr. 22, 1955); 19 Fed. Reg. 3759 (June 19, 1954). In other words, a flight conducted under the "U.S. mainland rules" cannot be scheduled to be aloft continuously for more than 8 hours unless operating under the exception found in § 121.503(f).

Section 121.509 establishes flight time limitations for four pilot crews in addition to those specified in § 121.503(a). This section provides that, in a 24-hour period, a pilot may not be scheduled for more than 8 hours of flight deck duty, 16 hours of duty aloft, and 20 hours of duty. 14 C.F.R. § 121.509(a)-(b). Read in the context of § 121.503(a), a pilot may be scheduled for a total of 16 hours of duty aloft, *but that time aloft must not occur in legs scheduled for*

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[2] We note that the term "fly in" as used in the regulation refers to "block to block time" rather than flight deck duty time. *See* 14 C.F.R. § 42.48-1 (1956); Legal Interpretation to Timothy D. Miller, from Donald Byrne, Assistant Chief Counsel (Aug. 27, 1997).

longer than 8 hours.[3] To read § 121.509(a)(2) as permitting up to16 hours of continuous duty aloft would nullify the prohibition in § 121.503(a) on scheduled operations of longer than 8 hours without a rest period during those 8 hours. Such a reading would not be consistent with FAA legal interpretation and would conflict with the fundamental principle of statutory interpretation that specific provisions must be read in the context of the larger rule. *See* Legal Interpretation to Michael Daly, from James B. Minor, Associate General Counsel, Regulations and Codification Division (June 29, 1966) (stating that § 121.503(a)-(f) "contain[s] general flight time limitation provisions that apply to all [part 121] supplemental air carrier or commercial operations under that Part, regardless of the size of the crew"); *see, e.g., United States Sav. Ass'n v. Timbers of Inwood Forest Assocs.*, 484 U.S. 365, 371 (1988) ("A provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme . . . because only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law." (citation omitted)); *Weinberger v. Hynson, Westcott & Dunning, Inc.*, 412 U.S. 609, 631-32 (1973) ("It is well established that our task in interpreting separate provisions of a single Act is to give the Act 'the most harmonious, comprehensive meaning possible' in light of the legislative policy and purpose.").

Accordingly, unless the hypothetical operation is scheduled in segments of eight hours or less it cannot be conducted under the flight time limitations contained in §§121.503-.511.[4] In other

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[3] As an example, the following schedule for a four pilot crew in an aircraft type certificated for two pilots would comply with §§ 121.503(a) and 121.509. A pilot is scheduled to report at 0000 for preflight duty. The pilot's first flight is scheduled to depart "A" at 0100 and arrive at "B" at 0900 (8 hours of flight time). Assuming that the four pilots evenly divide time at the controls, on that flight the pilot will be on flight deck duty for 4 hours. After the first flight lands the pilot will perform 1 hour of post-flight duty (0900-1000), then rest from 1000 to 1400. From 1400-1600 the pilot will perform preflight duty for his second scheduled flight that is scheduled to depart "B" at 1600 and arrive at "A" at 2359 (7:59 of flight time). Again, assuming the four pilot crew evenly divides time at the controls, on that flight the pilot will be on flight deck duty for 4 hours. Accordingly, the pilot will have accrued 8 hours of flight deck duty, 16 hours aloft, and performed 20 hours of duty during the 24-hour period in compliance with §§ 121.503(a) and 121.509.

[4] We note that operations using the flight time limitations of §§ 121.503 through 121.511 may exceed the 8-hour flight segment time limit under two circumstances. First, transcontinental operations may be scheduled for a continuous flight time of up to 10 hours under an exception to § 121.503(a). *See* § 121.503(f). This exception permits certificate holders to schedule a flight crewmember for a transcontinental non-stop flight consisting of "more than eight but not more than 10 hours of continuous duty aloft without an intervening rest period" if certain conditions are met. In 1954 the Civil Aeronautics Board (CAB) adopted an exception (similar to current § 121.503(f)) applicable to domestic scheduled operations that were then subject to an 8 hour limitation on duty aloft without an intervening rest period. *See* 14 C.F.R. § 40.320(b) (1954) (flight time limitations for domestic air carriers); 19 Fed. Reg. 3759 (June 19, 1954) (adopting SR-405). The CAB stated that the then current, 8-hour rule "prohibits domestic nonstop flight operations of more than eight hours' duration." *See* 19 Fed. Reg. 3760. The change was effected to permit non-stop transcontinental flights between the east coast and the west coast, which unlike flights in the opposite direction, could not be completed in the 8-hour period. *Id.* The CAB noted "if west-bound nonstop service is to be continued to be made available to the public, some modification of the eight-hour rule will be necessary." *Id.*

In 1955, the CAB established SR-410 which extended the 8-hour rule for supplemental air carriers to 10 hours for transcontinental nonstop flights on "substantially the same basis as they are currently applied to scheduled air carriers." *See* 20 Fed. Reg. 2675 (Apr. 22, 1955) (establishing SR-410). Therefore, based on the language of § 121.503(f), which is derived from SR-410, it is clear that the maximum time aloft for a nonstop flight would be 10 hours, and only if it meets the requirements contained in the rule. All other flights conducted pursuant to the §§ 121.503-.511 rules would be limited to a maximum 8 hours continuously aloft.

words, a supplemental carrier would not be able to conduct this operation as a non-stop flight under the "U.S. mainland" rules.

IV. Overseas and International Supplemental Operation Flight Time Limitations

The next question is whether the flight could be conducted under the "international rules" found in § 121.515 and §§ 121.521 through 121.525 if the certificate holder makes that election under § 121.513. In connection with that question is the issue of when and under what circumstances "adequate sleeping quarters" are required.

First, § 121.521 states that an airman may not be scheduled to be "aloft as a member of the flight crew in an airplane that has a crew of two pilots and at least one additional flight crewmember for more than 12 hours during any 24 consecutive hours." Because the hypothetical flight in question is scheduled to be aloft for 12.5 hours, it could not be conducted with only two pilots and one additional flight crewmember because a certificate holder may only schedule this crew complement for 12 total hours aloft or less.

Next, § 121.523 establishes the flight time limitations for a crew of three or more pilots and additional airmen as required. Unlike § 121.521, this section allows flights lasting longer than 12 hours. In consideration of the longer flights, § 121.523 requires a crew of at least three pilots and additional airmen as required, provides additional rest provisions, limits flight deck duty time for flight engineers and navigators, and requires the certificate holder to "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." § 121.523(b). Because the operation in question is scheduled with a four-pilot complement, it would meet the crew requirements under this section. However, in order to operate under this provision, the certificate holder would need to comply with all of the provisions of § 121.523, including the need to provide adequate sleeping quarters on the airplane.[5]

Additionally, when scheduled realistically, flights may exceed the 8-hour continuous flying time limit due to circumstances beyond the control of the certificate holder. In such circumstances, § 121.503(b) requires the pilot to have 16 hours of rest prior to being assigned any duty with the certificate holder. *See* Legal Interpretation to Randall C. Kania, from Rebecca MacPherson, Assistant Chief Counsel, Regulations Division (Apr. 29, 2004) (stating that a pilot who has already flown more than 8 hours in a 24-hour period may not take off until he has received the rest required by § 121.503(b)); Legal Interpretation to John R. Griffith, from George L. Thompson, Associate Regional Counsel, ANE-7, (Feb. 5, 1975) (stating that the purpose of § 121.503(b) "is to assure an adequate rest period when such deviations do occur").

[5] The FAA has consistently interpreted "adequate sleeping quarters on the airplane" to mean a bunk or a berth, but that it is a matter of safety policy to consider each air carrier's means of compliance on its individual merits. *See* Legal Interpretation to Daniel J. Wells, from Donald P. Byrne, Assistant Chief Counsel for Regulations (Sept. 22, 2003); Legal Interpretation to William W. Edmunds, Jr., from John Cassady, Assistant Chief Counsel, Regulations and Enforcement Division (Apr. 22, 1986). A passenger seat, even if it reclines, is not considered to be adequate sleeping quarters. *Id.* We note that the FAA recently implemented new requirements for crew rest facilities on aircraft that are not addressed by this interpretation. *See* 77 Fed. Reg. 330 (Jan. 4, 2012).

V. Conclusion

The hypothetical supplemental air carrier operation in which four pilots are scheduled to conduct a non-stop flight lasting 12.5 hours, between a point outside the contiguous United States and a point in the contiguous United States, or other locations permitting the § 121.513 election, could only be operated under the flight time limitations of § 121.523 (including the required crew rest facilities on board the aircraft). It could not be conducted as proposed under the provisions of §§ 121.503, 121.509, or 121.521.

This interpretation has been coordinated with the Air Transportation Division of Flight Standards Service. Please contact us at (202) 267-3073 if we can be of additional assistance.