Federal Aviation Administration

Memorandum

Date: AUG 16 2013

To: Leslie H. Smith, Manager, Air Transportation Division, AFS-200

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

Prepared by: Bonnie C. Dragotto, Attorney, Operations Law Branch, AGC-220

Subject: Legal interpretation of 14 C.F.R. § 121.467(b)(14)

On April 30, 2013, we received your request, on behalf of the Air Carrier Branch (ASO-240), for a legal interpretation of the flight attendant duty provision at 14 C.F.R. § 121.467(b)(14). The Air Carrier Branch raised several questions and provided a sample flight attendant duty period record, which sets forth the scheduled and actual duty time served by a flight attendant. Specifically, we were asked to determine whether the sample flight attendant duty record and accompanying scenario comply with the flight attendant duty limitations in part 121 of the federal aviation regulations. For the reasons that follow, we conclude that the scenario provided for our review demonstrates that the certificate holder has complied with the requirements in § 121.467.[1]

I. Background on flight attendant duty limitations and the "circumstances beyond the control of the certificate holder" exception in § 121.467(b)(14).

A certificate holder may only assign a flight attendant to duty "when the applicable duty period limitations and rest requirements" are met. *See* 14 C.F.R. § 121.467(b). For purposes of this section, "[d]uty period means the period of elapsed time between reporting for an assignment involving flight time and release from that assignment by the certificate holder conducting domestic, flag, or supplemental operations." *See* 14 C.F.R. § 121.467(a). This definition provides the foundation for the flight attendant duty and rest scheme. As explained in the preamble to the final rule, "[a] flight attendant's duty period begins when the flight attendant reports for a flight assignment and ends when the flight attendant is released by the air carrier." *See* 59 Fed. Reg. 42,977 at 42,978 (Aug. 19, 1994). Notably, duty period is not defined in terms

[1] This interpretation focuses primarily on an analysis of the sample flight attendant timekeeping record provided by the Air Carrier Branch. The remaining questions specifically asked by the Air Carrier Branch are resolved in the course of that discussion.

of a single flight assignment and in fact the definition itself, as well as the rulemaking history, contemplates that a duty period could include multiple flight segments.

The rulemaking history of § 121.467 further provides that "[d]uty periods are established to enhance the safety of the flying public by ensuring that flight attendants do not become overly fatigued during flight assignments." *See Id.* at 42,977-78; *see also* January 13, 2011 Legal Interpretation to Ms. Candace K. Kolander from Rebecca B. MacPherson, Assistant Chief Counsel, Regulations Division (discussing the intent behind § 121.467 and duty period concept generally).

Generally, a certificate holder may not schedule a flight attendant for a duty period that exceeds 14 hours (§ 121.467(b)(1)), unless an augmented crew (i.e. additional flight attendants) is assigned "to the flight or flights in that duty period" in accordance with § 121.467(b)(4)-(6). If an augmented crew is assigned and additional rest is provided pursuant to § 121.467(b)(7), a flight attendant may be scheduled for an extended duty period of up to 20 hours. *See* § 121.467(b)(6).

Section 121.467(b)(14) creates one exception to the flight attendant duty period limitations and provides, in pertinent part:

> A flight attendant is not considered to be scheduled for duty in excess of duty period limitations if the flights[2] to which the flight attendant is assigned are scheduled and normally terminate within the limitations but due to circumstances beyond the control of the certificate holder conducting domestic, flag, or supplemental operations (such as adverse weather conditions) are not at the time of departure expected to reach their destination within the scheduled time.[3]

This "circumstances beyond the control of the certificate holder" exception essentially permits certificate holders to exceed the duty period limitations by allowing flight attendants "to continue on duty beyond the time when duty would normally terminate, if circumstances exist that are unanticipated and beyond the control of the air carrier…" such as delays due to adverse weather or air traffic control. *See* 59 Fed. Reg. 42,978.

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[2] We note that the Air Carrier Branch also specifically asked whether the word "flights" in this context refers to a single flight only, or multiple flights within a given duty period. The rules of construction codified at 14 C.F.R. § 1.3 provide that "[w]ords importing the singular include the plural" and "[w]ords importing the plural include the singular" unless the context requires otherwise. *See* § 1.3(a)(1)-(2). The use of the word "flights" in the plural form in this instance is interpreted as meaning a single flight or multiple flights since the context does not dictate otherwise. Moreover, related paragraphs within the same section of regulatory text specifically refer to "the flight or flights in that duty period." *See* § 121.467(b)(4)-(6). The regulatory scheme thus contemplates that the flight attendant duty period may include one or more flight segments.

[3] The regulatory text was based on the preexisting provision applicable to flightcrew at 14 C.F.R. § 121.471(g). *See* 58 Fed. Reg. 17,024 at 17,027 (Mar. 31, 1993).

II. Whether the scenario provided complies with part 121 flight attendant duty limitations.

The Air Carrier Branch provided a sample timekeeping record for a single duty period worked by a flight attendant who resides in Ft. Lauderdale, Florida. The table below reflects the duty period for which the flight attendant was scheduled and the actual time the flight attendant spent on duty.

		Scheduled Time		Actual Time	
Start of Duty Period		0600		0600	
Leg	**From/To**				
1	FLL/MHH	0700	0800	0925	1035
2	MHH/FLL	0830	0930	1055	1212
3	FLL/TCB	1150	1250	1315	1420
4	TCB/FLL	1320	1420	1445	1555
5	FLL/TLH	1520	1705	1730	1925
6	TLH/FLL	1735	1920	2000	2145
End of Duty Period		1935		2200	
Total Length of Duty Period		**13:35**		**16:00**	

In the sample timekeeping record, the flight attendant was scheduled for six flight segments to be completed within 13:35 hours. The scenario provided indicates that the first scheduled flight segment within the duty period was delayed by 2:25 hours and we were asked to assume the delay was, in fact, caused by reasons "beyond the control of the certificate holder." *See* § 121.467(b)(14). The scenario also indicates that the excused delay of the first flight segment is the cause of the delays to the successive flight segments throughout the remainder of the duty period. As a result, the flight attendant's actual duty period worked was 16 hours.[4]

The Air Carrier Branch asserts that the certificate holder had multiple opportunities during the course of the flight attendant's duty period to prevent the flight attendant from serving on duty for more than 14 hours. For example, the flight attendant might have been relieved following the fourth scheduled segment, if not earlier, and replaced with another qualified flight attendant.

Notably, the sample record provided by the Air Carrier Branch closely resembles the example used by the agency in responding to comments received and explaining the intent behind, and practical application of, the exception in § 121.467(b)(14). *See* 59 Fed. Reg. 42,974, 42,978-79 (Aug. 19, 1994).[5] In addressing the hypothetical in the final rule, we concluded that:

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[4] The analysis that follows relies upon certain assumptions that were required since certain details were left out of the scenario provided for our review. First, we assume that the certificate holder has not used an augmented crew as discussed in Section I herein. Second, we assume the certificate holder has fully complied with the flight attendant rest requirements before and after the duty period at issue. Third, we assume that the scheduled flights listed in the flight attendant's duty period are "realistic" since the Air Carrier Branch did not indicate otherwise.

[5] The example included in the final rule provides that: "A flight attendant is scheduled for a 13-hour duty period on flight staffed with the minimum cabin crew complement. The duty period consists of two flight segments—a flight from New York to Frankfurt followed by a flight from Frankfurt to Rome. Because of adverse weather conditions, the flight leaving New York is delayed 2 hours, causing the flight attendant's duty period to exceed the scheduled 14-hour duty period limitation." 59 Fed. Reg. 42,979.

> Although it is apparent at the time of departure that the flight attendant's duty period will exceed 14 hours, completion of the assignment will still comply with duty period limitations, because the flight attendant was scheduled and assigned to flights that normally terminate within the allowable duty period limitations. *Id.* at 42979.

Additionally, in an earlier interpretation of the related flightcrew provision at § 121.471(g), we stated generally that "[i]f the original scheduling is upset" due to an unforeseen circumstance, "the final segment(s) may, nonetheless, be conducted..." even though they would be completed outside the original schedule. *See* November 12, 1992 Legal Interpretation to Mr. Richard P. Schweitzer from Donald P. Byrne, Assistant Chief Counsel, Regulations and Enforcement Division.[6]

In the scenario provided by the Air Carrier Branch, it may be clear to the certificate holder early on in the duty period that the flight attendant will exceed 14 hours as a result of the first flight segment being delayed. However, the certificate holder has nonetheless complied with § 121.467(b) because the scheduled start and end times for the duty period included "flights that normally terminate within the allowable duty period limitations." *See* 59 Fed. Reg. 42979. But for the excused delay of the first flight segment, the duty period would have been completed within the 14 hour time limit, as scheduled. Indeed, this is the type of scenario contemplated by the exception codified at § 121.467(b)(14).

Accordingly, §121.467(b)(14) permits the extension of the flight attendant's duty period for longer than 14 hours in the scenario provided because the initial delay was excused. Neither the regulatory text nor the rulemaking history indicates that the certificate holder would be obligated to reassign the flight attendant simply because the excused delay occurred early on in the duty period.

The Air Carrier Branch expressed concern that a certificate holder could potentially extend a flight attendant's duty period for an indefinite amount of time under § 121.467(b)(14). We have previously cautioned against the over-use of this exception and have clarified the obligations imposed on the certificate holder in a number of past legal interpretations.

Indeed we noted that "[a] flight attendant's schedule may not be extended on a regular basis" under the guise of § 121.467(b)(14). *See* April 29, 2005 Legal Interpretation to Mr. Edgar C. Fell from Rebecca B. MacPherson. The operator's original schedule must therefore be realistic. We reiterate that:

> ...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

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[6] The referenced interpretation, as well as the McCabe and Ryan interpretations referenced in Section II, addresses the "circumstances beyond the control of the certificate holder" exception in the context of current flightcrew flight and duty rules. However, the agency has previously stated that such interpretations are treated as guidance that may inform interpretations of the flight attendant provisions. *See* Legal Interpretation to Mr. Fell ("Previous interpretations of § 121.471(g) may be used as guidance for interpreting § 121.467(b)(14) in similar factual situations.")

> the flight, and the delay is due to circumstances truly unforeseeable or beyond the air carrier's control.

See March 10, 2011 Legal Interpretation to Mr. Kevin McCabe from Rebecca B. MacPherson *citing* February 23, 2006 Legal Interpretation to Mr. Patrick M. Ryan from Rebecca B. MacPherson. If it becomes evident that a particular schedule cannot be accomplished under normal conditions within the 14-hour duty limitation for unaugmented flights provided in § 121.467(b)(1), then the certificate holder should take necessary action to ensure an augmented crew or adjust the schedule to ensure compliance with § 121.467. *See* Legal Interpretation to Mr. Fell.

This response was coordinated with the Air Transportation Division of Flight Standards Service. If you need further assistance, please contact our office at (202) 267-3073.