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

Office of the Chief Counsel

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Washington, D.C. 20591

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Dear Mr. Anderson,

This is in response to your April 24, 2014 letter posing questions about the flight duty period (FDP) extension provisions of 14 C.F.R. § 117.19. Specifically, you ask for greater detail as to how FAA regulations affect the relationship between the pilot-in-command (PIC) and the certificate holder when the PIC chooses not to concur with an FDP extension. Our answers to your questions are set out below.

1. Certificate holder inquiry into the PIC's reasons for refusing an FDP extension.

You first ask whether a certificate holder can require the PIC to state the reason why the PIC is not willing to concur with an FDP extension. The simple answer is yes.

Part 117 contains a set of flight, duty, and rest regulations that apply to all part 121 passenger operations and certain part 91 operations.[1] The regulations of part 117 limit, among other things, the length of an FDP that a flightcrew member can work on. However, section 117.19 allows these FDP limits to be extended in certain circumstances.

In order to use a § 117.19 extension, both the PIC and the certificate holder must concur with the extension.[2] Section 117.19 is silent as to how this concurrence between the certificate holder and the PIC is achieved. Thus, § 117.19 does not limit certificate holders and PICs to a single prescriptive extension-concurrence approach that must be utilized in all cases. We note, however, that regardless of the approach used to achieve concurrence, there must be a record of PIC concurrence in an extension taken under § 117.19.[3] The FAA has previously stated that "[a] record of PIC concurrence can take any reasonable form as long as there is evidence that the PIC concurred with the extension."[4]

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[1] 14 C.F.R. § 117.1.
[2] *See* 14 C.F.R. § 117.19(a)(1) and (b)(1).
[3] *Clarification of Flight, Duty, and Rest Requirements*, 78 FR 14166, 142174 (Mar. 5, 2013).
[4] *Id.*

Turning to your specific question, § 117.19 neither encourages nor prohibits a certificate holder from requiring the PIC to state the reason for refusing to concur with an FDP extension. Thus, a certificate holder who makes this inquiry would not be in violation of an FAA regulation. Similarly, a PIC who refuses to respond to the certificate holder's inquiry would also not be in violation of an FAA regulation. The FAA expects this issue to be addressed as part of the certificate holder and PIC's employer-employee relationship.

We emphasize, however, that an FDP extension under § 117.19 cannot be taken without the concurrence of both the certificate holder and the PIC.

2. Requiring pilot to change status to "fatigued" or "ill."

You next ask whether a certificate holder can require a PIC who is unwilling to concur with an extension to change his or her status to "fatigued" or "ill." As discussed in the answer to the previous question, § 117.19 is silent as to the details of how concurrence with an FDP extension is to be achieved. Thus, it neither prohibits the certificate holder from requiring the PIC to change his or her status to "fatigued" or "ill" nor prohibits the PIC from refusing to comply with the certificate holder's requirement. As mentioned previously, we expect this issue to be addressed as part of the certificate holder and PIC's employer-employee relationship.[5]

3. Disciplinary action for refusing an FDP extension.

In your next question, you ask whether a certificate holder may take disciplinary action against a pilot for refusing to concur with an FDP extension.

During the rulemaking process that created part 117, commenters asked the FAA to add a non-retaliation provision to part 117 to protect flightcrew members from disciplinary action. However, the FAA rejected this suggestion, explaining in the final rule that:

> [C]arriers are entitled to investigate the causes for an employee's fatigue. If a carrier determines that the flightcrew member was responsible for becoming fatigued, it has every right to take steps to address that behavior. However, if the flightcrew member's fatigue is a result of the carrier not following the regulatory requirements of this rule, the FAA may initiate enforcement action against the carrier.[6]

As discussed in the final rule preamble, part 117 does not prohibit air carriers from investigating the causes of their employees' behavior and acting on the results of their

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[5] We note that §117.5 prohibits a flightcrew member from working on an FDP when he or she is too fatigued to do so safely. However, we interpret the question as simply asking how a flightcrew member should be designated on scheduling paperwork. As long as a flightcrew member who is too fatigued to fly safely is not operating on an FDP, there is no requirement as to the specific designation that must be applied to that flightcrew member on internal certificate holder paperwork.

[6] *Flightcrew Member Duty and Rest Requirements*, 77 FR 330, 350 (Jan. 4, 2012) (internal quotation marks and citations omitted).

investigation nor does it require such an investigation. In addition, the regulatory text of § 117.19 neither prohibits nor requires a certificate holder to take disciplinary action against a flightcrew member. We note, however, that, as discussed in the final rule preamble, if the air carrier's actions are a result of the carrier not following the provisions of part 117, then the FAA may initiate enforcement action against the carrier.

4. Refusing an FDP extension on non-fatigue grounds.

In your last set of questions you ask whether a PIC can refuse an FDP extension for reasons other than being fatigued. If so, you then ask whether the certificate holder can take disciplinary action against the PIC for the refusal.

As an initial matter, § 117.5 prohibits a flightcrew member from working on an FDP when that flightcrew member is too fatigued to safely perform his or her work. Thus, if the PIC is too fatigued to safely work on an extended FDP, that PIC may not concur with an FDP extension without violating § 117.5.

However, the regulatory text of §§ 117.5 and 117.19 does not require the PIC to concur in an FDP extension if he or she is not fatigued. Thus, the PIC would not violate part 117 if he or she refuses to concur with an FDP extension for reasons other than fatigue. We note, however, that, as discussed in the response to the previous question, part 117 also neither prohibits nor requires the certificate holder to take disciplinary action in response to the PIC's decision. As with several other issues in this interpretation, we expect this issue to be addressed as part of the certificate holder and PIC's employer-employee relationship. The management-labor issues as presented in your scenarios are beyond the scope of part 117.

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

Sincerely,

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