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

Office of the Chief Counsel

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

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First Officer Les Edwards
Captain Billy Israel
Captain Neil Baffoni
First Officer Jorge de Cubas
US Airline Pilots Association
200 E. Woodlawn Road, Suite 250
Charlotte, NC 28217

Re: Scheduling of consecutive nighttime operations under 14 C.F.R. § 117.27

Dear Messrs. Edwards, Israel, Baffoni, and de Cubas:

This is in response to your August 2014 letter asking about the applicability of the consecutive-nighttime flight-duty-period (FDP) provisions of 14 C.F.R. § 117.27. Your letter posits the following scenario.

A flightcrew member is assigned to four consecutive FDPs, none of which have scheduled mid-duty rest opportunities.[1] FDPs 1, 2, and 4 are all scheduled to infringe on the window of circadian low (WOCL). FDP 3 is not scheduled to infringe on the WOCL, but, due to delays, the FDP ultimately infringes on the WOCL. Your letter asks whether § 117.27 allows the flightcrew member to operate on FDP 4 given the fact that no mid-duty opportunities were provided to that flightcrew member in FDP 1, 2, and 3.[2]

Part 117 contains a set of flight, duty, and rest regulations that apply to all part 121 passenger operations and certain part 91 operations.[3] Section 117.27 states that "no certificate holder *may schedule* and no flightcrew member may accept more than three consecutive flight duty periods that infringe on the window of circadian low" unless the flightcrew member is provided with a mid-duty rest opportunity that is at least two hours long during each of those FDPs.[4]

As the emphasized portion of the § 117.27 regulatory text states, the prohibition in § 117.27 is a prohibition on what the certificate holder "may schedule." Thus, based on the plain language of § 117.27, if a certificate holder does not schedule an FDP to

[1] For ease of reference, we will refer to these FDPs as FDP 1, 2, 3, and 4 based on the order in which the FDPs are taken.
[2] For the sake of clarity and brevity, we will limit our discussion to § 117.27 and assume that the FDPs would satisfy all other provisions of part 117. Consequently, the analysis in this letter does not extend beyond the provisions of § 117.27.
[3] 14 C.F.R. § 117.1.
[4] § 117.27 (emphasis added). A WOCL is defined as "a period of maximum sleepiness that occurs between 0200 and 0559 during a physiological night." § 117.3.

infringe on the WOCL, that FDP would not count as a WOCL-infringing FDP for purposes of § 117.27 even if the FDP winds up ultimately infringing on the WOCL during actual operations.

We emphasize, however, that the FDP scheduling must be realistic. Thus, even if an FDP is scheduled to not infringe on the WOCL, that FDP could count as a WOCL-infringing FDP for purposes of § 117.27 if that FDP was not scheduled realistically. Otherwise, the provisions of § 117.27 would be meaningless, as a certificate holder could simply schedule a nighttime FDP to not infringe on the WOCL regardless of how disconnected from reality that schedule may be.

Applying the above discussion to your scenario, FDPs 1, 2, and 4 are scheduled to infringe on the WOCL, but FDP 3 is not. As long as the schedule for FDP 3 is realistic, your scenario would not violate § 117.27, as FDP 3 is not scheduled to infringe on the WOCL. Because FDP 3 is a non-WOCL-infringing FDP that comes between FDP 2 and FDP 4, it interrupts the chain of consecutive FDPs that infringe on the WOCL, which means that the flightcrew member in your scenario is never scheduled for more than three consecutive FDPs that infringe on the WOCL.

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,

Mark W. Bury
Assistant Chief Counsel for
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