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

Office of the Chief Counsel

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

NOV 13 2014

Eric McEldowney
[redacted]

Re: Whether reporting a disrupted sleep opportunity terminates a rest period under 14 C.F.R. part 117

Dear Mr. McEldowney,

This is in response to your July 7, 2014 letter asking whether a company requirement to report lack of a sleep opportunity would interrupt a rest period taken under 14 C.F.R. § 117.25. Your letter posits the following scenario.

An air carrier has a company policy that requires a pilot to notify the company if for any reason he or she will be unable to report for duty as scheduled.[1] A pilot working for that carrier is released from duty at 2200 and is scheduled to report for the next flight duty period (FDP) at 0810 the following day. At 0010, the pilot determines that it will no longer be possible to complete an 8-hour uninterrupted sleep opportunity within the scheduled rest period and notifies the carrier. You ask what is the earliest time that the pilot can be required to report for an FDP. You also ask whether the requirement to notify the air carrier when a pilot's sleep opportunity is disturbed interrupts that pilot's rest period. In answering your question, we assume that the pilot's sleep opportunity has been interrupted under circumstances beyond his control such that he is in a situation where he cannot reasonably be expected to obtain 8 hours of uninterrupted sleep.[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] Those regulations govern, among other things the amount of rest that a flightcrew member must receive in order to safely carry out his or her duties. Under § 117.25(e), a flightcrew member must be provided with 10 consecutive hours of rest immediately prior to beginning a reserve or FDP. Those 10 hours of rest must provide the flightcrew member with a minimum of 8 uninterrupted hours of sleep opportunity. If a flightcrew member determines that a rest period will not provide 8 uninterrupted hours of sleep opportunity, § 117.25(f) requires that flightcrew member to "notify the certificate holder."

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[1] We note that our analysis of this policy is limited strictly to the application of that policy to the facts in your scenario. This policy could have other applications that are not analyzed here.
[2] For example, if a fire alarm goes off in his building, making sleep impossible.
[3] 14 C.F.R. § 117.1.

Looking at your scenario, the pilot's conclusion at 0010 that he will be unable to obtain 8 uninterrupted hours of sleep would interrupt his 8-hour sleep opportunity. Thus, this pilot would have to be provided with a new 8-hour sleep opportunity that begins at 0010.

However, the pilot's 0010 conclusion that his sleep opportunity is interrupted and the mandatory reporting of that conclusion to the air carrier would not interrupt the 10-hour rest period. As your letter notes, the FAA has previously stated that any duty that is assigned to a flightcrew member by a certificate holder acts to interrupt a rest period.[4] However, part 117 defines duty as a "task that a flightcrew member performs *as required by the certificate holder*."[5] As mentioned previously, the requirement for a flightcrew member to report a problem with the 8-hour sleep opportunity to the certificate holder is imposed by the FAA through § 117.25(f). Because this requirement is required by the FAA and not by the certificate holder, compliance with this requirement is not duty and does not interrupt a pilot's rest period. The mere fact that a certificate holder utilized § 117.25(f) in its internal policy document would not transform compliance with that requirement into duty.[6]

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
International Law, Legislation, and Regulations, AGC-200

[4] *See, e.g.*, Letter to Michael Phelan from Mark Bury, Assistant Chief Counsel, International Law, Legislation, and Regulations (July 8, 2014).
[5] 14 C.F.R. § 117.3 (emphasis added).
[6] We note that this analysis is limited to § 117.25(f).