U.S. Department
of Transportation
Federal Aviation
Administration

Office of the Chief Counsel

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

MAY 13 2014

John McFadden
Captain
United Airlines
5513 Acacia Court
Crystal Lake, IL 60012

Dear Captain McFadden,

This is in response to your March 19, 2014 letter posing two scenarios and several questions about the provisions of 14 C.F.R. part 117. Our analysis of your questions is as follows.

Scenario 1:
Your first scenario is as follows. A pilot who is on rest on a Monday is contractually obligated to check his schedule and acknowledge a reserve assignment. This acknowledgement must take place between the hours of 1800 and 2359. You ask two questions concerning this scenario. In our response to your questions, we will assume that the pilot is not required to check his schedule prior to 1800.

Q1: In your first question, you ask whether the certificate holder must account for assigning the pilot duty at 1800 even in cases when the pilot does not carry out that duty until 2359.

Part 117 defines a "rest period" as "a continuous period determined prospectively during which the flightcrew member is free from all restraint by the certificate holder, including freedom from present responsibility for work should the occasion arise."[1] The FAA has previously stated that a requirement to check a schedule or acknowledge a trip assignment is duty and not rest even when the requirement is imposed by a collective bargaining agreement.[2] Because the pilot in your example is required to carry out a duty for the certificate holder at a time period that begins at 1800, that pilot ceases to be free from all restraint by the certificate holder at that time. Accordingly, the pilot's rest period terminates at 1800.

Q2: In your second question, you ask whether this scenario would satisfy the 30-hour rest requirement of § 117.25(b) if the pilot needs to be free from duty until 2300 in order to obtain 30 hours of rest.

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[1] 14 C.F.R. § 117.3.
[2] *Clarification of Flight, Duty, and Rest Requirements*, 78 FR 14166, 14168 (Mar. 5, 2013).

Subsection § 117.25(b) states that "[b]efore beginning any reserve or flight duty period a flightcrew member must be given at least 30 consecutive hours free from all duty within the past 168 consecutive hour period." As discussed in the preceding answer, because the pilot in your scenario is subjected to duty beginning at 1800, his rest period terminates at 1800. Accordingly, this rest period would not satisfy § 117.25(b) if it is necessary for the pilot to be free from duty until 2300 in order to obtain 30 hours of rest.

Scenario 2:
Your second scenario is as follows. Immediately prior to the beginning of the final scheduled flight segment, the pilot-in-command (PIC) realizes that he will be unable to complete that segment without a 2-hour FDP extension. You ask two questions about this scenario.

Q1: Does the fitness-for-duty affirmation that the PIC signed prior to when he found out about the delay serve as concurrence to an extension?

Subsection 117.19(a) allows an FDP to be extended up to 2 hours beyond the pertinent FDP limit in response to unforeseen operational circumstances that arise prior to takeoff. This extension is subject to a number of limitations, one of which is that the PIC and the certificate holder must both concur with the extension.[3] A document that the PIC signed before he found out about the need for an extension would not be sufficient to concur with the extension because a person cannot concur with something that he or she does not know about. Instead, the PIC must affirmatively concur with the extension.

Q2: For this question, you ask us to assume that the length of the extension in the above scenario is 30 minutes instead of two hours. You ask us whether this changes our analysis in the previous question.

In a recently-issued interpretation the FAA stated that all FDP extensions taken pursuant to § 117.19 require PIC concurrence.[4] However, the FAA noted that PIC concurrence with extensions of 30 minutes or less can be accomplished via a fitness-for-duty affirmation.[5]

In this case, however, even though the extension would only be 30 minutes, the PIC's fitness for duty affirmation would be insufficient to concur with the extension because the affirmation took place before the PIC found out about the need for an extension. This is because the PIC cannot concur with something that he does not know about. Thus, even though the PIC's concurrence with extensions of 30 minutes or less can be done via a fitness-for-duty affirmation, an affirmation that takes place prior to when the PIC finds out about the need for an extension would not be sufficient as a concurrence.

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[3] 14 C.F.R. § 117.19(a)(1).
[4] Letter to Don Wykoff & Douglas Mullen from Mark W. Bury, Assistant Chief Counsel for International Law, Legislation and Regulations, at 2 (Mar. 20, 2014).
[5] *Id.*

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