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

Office of the Chief Counsel
800 Independence Ave., SW.
Washington, DC 20591

JUN 20 2014

David Perez
[redacted]

Dear Mr. Perez:

This letter responds to your May 1, 2014 e-mail concerning the application of the flight time limitation in 14 CFR §121.471(a)(4) and the exception thereto in §121.471(g) to a scenario presented in the context of cargo operations conducted pursuant to part 121.

The scenario you provided indicates that following a short duty day with subsequent 34-hour layover, a flightcrew was scheduled for flight duty consisting of a two-leg trip with a total scheduled flight time of 06:35 hours. However, the completion of the first leg was delayed due to "a ground stop that kept getting extended" after the aircraft had already pushed back from the gate. You indicated that before beginning the second leg, the flightcrew knew that the actual flight time for the day would total 08:01 hours. You asked whether it would have been "legal to start the second leg," knowing that completion of the second leg would cause the total flight duty time to exceed eight hours.

Section 121.471(a)(4) prohibits a certificate holder from scheduling a flightcrew member for, and a flightcrew member from accepting, "an assignment for flight time in scheduled air transportation or in other commercial flying if that crewmember's total flight time in all commercial flying will exceed...8 hours between required rest periods."

In addition, the exception in §121.471(g) provides that a flightcrew member will not be "considered to be scheduled for flight time in excess of flight time limitations if the flights to which he is assigned are scheduled and normally terminate within the limitations, but due to circumstances beyond the control of the certificate holder (such as adverse weather conditions), are not at the time of departure expected to reach their destination within the scheduled time."[1]

In a March 18, 2009 interpretation we responded to a similar request regarding the application of the eight-hour flight time limitation in §121.471(a)(4) and the exception thereto in §121.471(g) to a scenario involving an unforeseen weather delay.[2] In that scenario, the flightcrew was assigned to a two-leg trip with a total scheduled flight time of 06:28 hours. Due to weather on the first leg, the crew was diverted to an alternate airport, which added 01:27 hours of

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[1] As we have previously indicated, this exception applies only to the scheduling of flight time and "would not permit a flight crewmember to take off on a flight segment if the flight crewmember knows, prior to takeoff that completing the flight segment would infringe on a required rest period." *See* Legal Interpretations from Rebecca B. MacPherson, Assistant Chief Counsel, Regulations Division, to Mr. James Johnson (Nov. 5, 2012) and to Captain Peter Willums (Dec. 19, 2012); *see also* Legal Interpretation from James W. Whitlow, Deputy Chief Counsel, to Captain Richard R. Rubin (Nov. 20, 2000).

[2] *See* Legal Interpretation from Rebecca B. MacPherson to William E. Banks, Jr. (Mar. 18, 2009).

unanticipated flight time. As a result, the crew was delayed in reaching the departure location for the last leg of the scheduled trip. Before beginning the final leg as scheduled, the crew knew they would exceed the eight-hour flight time limitation in §121.471(a)(4) by 55 minutes. In the Banks interpretation, we concluded that "[a]ssuming the adverse weather conditions in this scenario were truly unforeseeable, the crew may have taken off on the last leg to Boston without being in violation of §121.471(a)(4)."[3] However, "if a flight crewmember is aware at the time of departure…that he or she has not had the required rest, he or she may not depart on the last leg."[4]

We also addressed a similar scenario in the December 19, 2012 legal interpretation issued to Captain Willums.[5] In the Willums interpretation, we reiterated that "so long as [the flightcrew] knew prior to takeoff on each segment of the scheduled flight that [the flightcrew's] rest requirements would not be infringed," and the schedule is normally completed within the eight-hour flight time limit, the delay would be excused under §121.471(g).

The Banks and Willums interpretations, and those on which they were based, remain valid interpretations of §121.471. In the scenario that you presented, the flightcrew could begin the second scheduled leg without violating §121.471(a)(4) – even though the flightcrew would have known prior to departing on that leg that the eight-hour limit would be exceeded – if the exception in §121.471(g) applies. As previously indicated, the delay would be excused under §121.471(g) so long as the duty schedule is usually completed within the flight time limitations and provided the "ground stop" delay was, in fact, due to circumstances beyond the control of the certificate holder. The FAA has "generally considered delays due to Air Traffic Control (ATC), adverse weather, or mechanical problems, as the incidents that qualify as circumstances beyond the control of the air carrier."[6] We do not have sufficient detail regarding the nature of the "ground stop" in your scenario to confirm the cause of delay was beyond the control of the certificate holder. However, we note that if the ground stop was ordered by ATC, then the delay would be excused. In addition, we reiterate that the exception in §121.471(g) does not excuse a violation of the rest requirements. Therefore, a violation would be avoided provided the additional flight time required to complete the second leg does not infringe upon the flightcrew's required rest.

This response was prepared by Bonnie C. Dragotto, an attorney in the International Law, Legislation and Regulations Division of the Office of the Chief Counsel, and was coordinated with the Air Transportation Division of the Flight Standards Service. If you need further assistance, please contact our office at (202) 267-3073.

Sincerely,

Mark W. Bury
Assistant Chief Counsel for International Law,
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[3] *Id.*
[4] *Id.*
[5] *See* footnote 1.
[6] *See* Willums, footnote 1.