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

Office of the Chief Counsel

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

DEC 12 2014

Captain Jae J. Yu
Scheduling Committee, Chair
Southwest Airlines Pilots Association
1450 Empire Central Dr., Suite 737
Dallas, TX 75247

Re: Pilot in Command (PIC) Concurrence With Flight Duty Period (FDP) Extensions

Dear Captain Yu,

We are in receipt of your request that the FAA clarify how a PIC may "affirmatively concur" with an FDP extension request by a certificate holder. Your letter refers to several recent interpretations[1] where the FAA explained what was needed to effectuate a concurrence on the part of the PIC and the certificate holder. Your letter also relates your understanding, based on those interpretations, that a PIC must know of the need for the extension at the time of the "affirmative concurrence." Your understanding is correct.

As the FAA stated in a Letter to Marc Anderson from Mark W. Bury, Assistant Chief Counsel for International Law, Legislation and Regulations (Jul. 11, 2014):

> "(i)n order to use an extension under 14. C.F.R. § 117.19, 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] Letter to Don Wykoff and Douglas Mullen from Mark W. Bury, Assistant Chief Counsel for International Law, Legislation and Regulations (Mar. 20, 2014) and Letter to John McFadden from Mark W. Bury, Assistant Chief Counsel for International Law, Legislation and Regulations (May 13, 2014)
[2] See 14 C.F.R § 117.19(a)(1) and (b)(1)]
[3] *Clarification of Flight, Duty and Rest Requirements,* 78 FR 14166, 14174 (Mar. 5, 2013)].
[4] Id

Thus, under these interpretations, there must be an affirmative concurrence by the PIC once the need for an extension is known to the PIC and substantiated by any reasonable record of the concurrence.

Your letter presents several questions based on "Southwest Airline's current policy that the PIC signature on the dispatch release combined with the PIC taking an FDP extension is considered PIC's concurrence with the extension." You first ask whether this policy is sufficient to meet the affirmative concurrence requirement. Your letter also asks if the need for the extension occurred after pushback and the release has already been signed, would the same level of affirmative concurrence be required. Finally, you ask if the same level of affirmative concurrence is needed for post-takeoff extensions.

In the Wykoff-Mullen interpretation, the FAA stated that the § 117.5 fitness for duty certification could serve as the record of concurrence for extensions of 30 minutes or less. However, the concurrence given by the PIC cannot be prospective. The PIC must still give concurrence at the time the need for an extension becomes known. If concurrence for an extension of 30 minutes or less is given at the time the PIC is certifying his or her fitness for duty, then the § 117.5 certification may be used as the record. For extensions greater than 30 minutes, as stated in the Wykoff-Mullen interpretation and the preamble to the final rule[5], an affirmative concurrence separate from the § 117.5 certification is necessary.

While the concurrence decision needs to be contemporaneous with knowledge of the need for the extension in order to properly determine the length of the extension and whether the crew is able to complete the flight with the proposed extension, the creation of the record of that concurrence may be substantiated by any reasonable means. Thus, the record could be part of a dispatch release if, at the time the release is signed, the PIC knows about and has concurred with an extension. The record could also be, for example, an ACARS message sent at cruise altitude in the case of a concurrence that needed to take place after an aircraft has pushed back from the gate and the PIC is engaged in the operation of the aircraft.[6] The record of the concurrence is not meant to interfere with the duties of the PIC in relation to the safe operation of the flight. There is flexibility for both the PIC and the certificate holder in accomplishing this recordkeeping requirement.

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 letter has been

[5] Flightcrew Member Duty and Rest Requirements (77 FR 330, January 4, 2012)
[6] These two examples were generally discussed in the *Clarification of Flight, Duty and Rest Requirements* notice, Id.

prepared by Robert H. Frenzel, Manager, Operations Law Branch, 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