U.S. Department
of Transportation
Federal Aviation
Administration

Office of the Chief Counsel

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

AUG 24 2015

Aaron Enzer
[redacted]

Re: International flight, duty, and rest rules of part 121, Subpart S as applied to different flightcrew complements.

Dear Mr. Enzer,

This is in response to your letter posing questions about the flight, duty, and rest regulations applicable to different compositions of flightcrew in an all-cargo operation conducted under the international rules of Subpart S of 14 C.F.R. part 121. Specifically, you ask what is the maximum flight deck duty time and maximum duty time that applies to a two-pilot flightcrew, a three-pilot flightcrew, and a four-pilot flightcrew operating under the international rules of Subpart S.[1]

Normally, air carriers conducting all-cargo supplemental operations under part 121 must operate pursuant to the flight, duty, and rest provisions of §§ 121.503 through 121.509. However, supplemental air carriers conducting overseas and international all-cargo operations may elect, pursuant to § 121.513, to comply with the flight time limitations of § 121.515 and §§ 121.521 through 121.525 (commonly referred to as the "international rules").[2]

1. Two-Pilot Crew

In response to your question as to the applicable flight, duty, and rest regulations applicable to all-cargo operations under the international Subpart S rules, the FAA published a proposed interpretation in the Federal Register and invited public comment.[3] In this proposed interpretation, the FAA pointed out that § 121.521 governs the smallest-size flightcrew that can operate under the international rules of Subpart S and that the regulatory text of § 121.521 states that this section applies only to a "crew of two pilots and at least one additional flight crewmember."[4] Thus, "the plain text of § 121.521 states that there must be at least three flight crewmembers in order for § 121.521 to apply: (1) two pilots; and (2) at least one additional flight crewmember."[5] The proposed interpretation noted that the FAA reaffirmed this plain-text

[1] For purposes of answering your question, we will assume that the pilots on the flightcrew are the only flightcrew members who are participating in the operation.
[2] 14 C.F.R. 121.513.
[3] *Interpretation of Flight Time Limitations*, 80 FR 19251 (Apr. 10, 2015).
[4] *Id.* at 19252 (quoting § 121.521(a)).
[5] *Id.*

reading of § 121.521 in a 2012 interpretation issued to Timothy Slater[6] in which the FAA found that a flightcrew consisting of three pilots would be subject to § 121.521.

The FAA received two comments on this proposed interpretation. The first comment came from the Air Line Pilots Association, International (ALPA). ALPA supported the proposed interpretation, noting that it is "consistent with precedent and prevention of fatigue, and consistent with the intent and plain language of the rule."

The other comment was submitted by an individual commenter who opposed the proposed interpretation. The individual commenter noted that when § 121.521 was first created, aircraft utilized in transport category operations used a flight engineer (and sometimes a navigator) as part of the flightcrew. As aircraft became more advanced these positions were eliminated from the flightcrew, but, the individual commenter argued, § 121.521 has not been updated to keep pace with those advancements.

The individual commenter also stated that the title of § 121.521 is: "Flight time limitations: Crew of two pilots and one additional airman *as required.*"[7] The commenter argued that this means that § 121.521 envisioned an unaugmented flightcrew because if a flight engineer or navigator is not necessary to safely fly the aircraft, then that crewmember is not "required" as stated in the title of § 121.521. The commenter asserted that the FAA had previously adopted a similar position in a 2012 interpretation issued to Stephen Whitaker, in which it stated that a two pilot flightcrew could operate under § 121.521 while a three-pilot flightcrew could operate under § 121.523.[8]

As the individual commenter pointed out, there is a conflict between two of the FAA's current interpretations. The *Slater* interpretation states that a three-pilot flightcrew is subject to § 121.521 while the *Whitaker* interpretation states that a three-pilot flightcrew is subject to § 121.523 and § 121.521 applies only to a two-pilot flightcrew. After considering the comments and the pertinent regulatory text, we find that the *Slater* interpretation is correct and we reverse the pertinent portions of the *Whitaker* interpretation.

The body of the regulatory text of § 121.521 unambiguously states that this section applies only to a "crew of two pilots *and* at least one additional flight crewmember."[9] It is a basic canon of statutory construction that the plain meaning of statutory text must control how that text is interpreted.[10] Thus, as the proposed interpretation pointed out, the plain text of § 121.521 states unambiguously that there must be at least three flight crewmembers in order for § 121.521 to apply: (1) two pilots; "and" (2) at least one additional flight crewmember.

The individual commenter correctly pointed out that the title of § 121.521 includes the phrase "as required" when discussing the additional airman that is part of the two-pilot flightcrew.

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[6] Letter to Timothy Slater from Rebecca MacPherson, Assistant Chief Counsel for Regulations (Sept. 7, 2012). (answer to Question 1).
[7] § 121.521 (emphasis added).
[8] Letter to Stephen Whitaker from Rebecca MacPherson, Assistant Chief Counsel for Regulations (Mar. 2, 2012)
[9] § 121.521(a) (emphasis added).
[10] *See INS v. St. Cyr*, 533 U.S. 289, 309-10 (2001).

However, the "as required" phrase is limited solely to the title of § 121.521, as this phrase is not used in the body of § 121.521. The Supreme Court has explained that the title of a statutory section does not, by itself, control the interpretation of that statute, and that the title "cannot limit the plain meaning of the text."[11] Because the regulatory text in the body of § 121.521 states that this section applies to a crew of two pilots "and" at least one additional flightcrew member, the plain meaning of this text is that there must be a crew of two pilots and one other flightcrew member. With regard to the individual commenter's viewpoint that § 121.521 needs to be updated to take into account advances in technology that took place after this regulation was first promulgated, the FAA notes that, under the Administrative Procedure Act, the unambiguous regulatory text of § 121.521 can only be changed via legislative rulemaking and not through an interpretation.[12]

Accordingly, we find that § 121.521 does not apply to a flightcrew consisting solely of two pilots. Instead, that flightcrew would be subject to the provisions of § 121.503 and § 121.505. Each pilot's maximum daily duty time would be 16 hours in a 24-consecutive-hour period per § 121.505(b). In addition, the two-pilot flightcrew would also have to abide by all of the other requirements specified in § 121.503 and § 121.505.

2. Three-Pilot Crew

Turning to a three-pilot flightcrew, because a three-pilot crew would consist of two pilots and one additional flight crewmember, that crew would be subject to § 121.521.[13] While § 121.521 imposes requirements on how much rest an airman must be provided and restricts the amount of time that an airman can be aloft, § 121.521 does not directly restrict the maximum amount of duty time or flight deck duty time that an airman can be assigned.

We note, however, that the other restrictions of § 121.521 can indirectly affect the permissible amount of duty time and flight deck duty time that is available to an airman. For example, § 121.521(a) prohibits an airman from being aloft for longer than 12 hours in a 24-consecutive-hour period. While this regulation does not directly limit flight deck duty time, limiting the time that an airman can be aloft also indirectly limits flight deck duty time. An airman operating under § 121.521 is responsible for abiding by all applicable requirements of § 121.521.

3. Four-Pilot Crew

Turning to a four-pilot flightcrew, because this flightcrew consists of three pilots and one additional airman, this crew would be subject to § 121.523. A flight crewmember subject to § 121.523 cannot be scheduled for more than 30 hours of continuous duty, pursuant to § 121.523(c). Section 121.523 does not directly restrict flight deck duty time for pilots,[14] but as discussed previously with regard to other flight, duty, and rest provisions, the other provisions of

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[11] *Id.*

[12] *See* 5 U.S.C. § 553 (specifying the requirements for a rulemaking).

[13] For purposes of answering your questions with regard to a three or four-pilot crew, we will assume that the pilots in your hypothetical are not assigned to more than one type of flightcrew during any 30 consecutive days.

[14] Section 121.523(a) limits flight deck duty time for flight engineers and navigators to 12 hours during a 24-consecutive-hour period.

§ 121.523 may indirectly limit the amount of flight deck duty time that is available to an airman. An airman operating under § 121.523 is responsible for abiding by all applicable requirements of § 121.523.

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, Regulations Division of the Office of the Chief Counsel, and coordinated with the Air Transportation Division of Flight Standards Service.

Sincerely,



Lorelei Peter
Acting Assistant Chief Counsel for Regulations, AGC-200