U.S. Department of Transportation
Federal Aviation Administration

Office of the Chief Counsel

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

MAR 13 2015

Eric McEldowney
[redacted]

Re: Voluntary distance learning during a rest period under 14 C.F.R. § 117.25

Dear Mr. McEldowney:

This is in response to your December 10, 2014 e-mail asking several questions about distance learning conducted by a flightcrew member during a rest period taken under 14 C.F.R. § 117.25. Your e-mail poses the following scenarios.

Scenario 1: The certificate holder makes available distance learning training material on October 1 and requires all flightcrew members to complete the training no later than November 30.

Scenario 2: The certificate holder makes available distance learning training material on October 1, and schedules the flightcrew member to initiate and complete his/her training on October 22 between the hours of 1300 and 1900.

Your e-mail then asks a number of questions about these scenarios. Our answers to your questions are set out below.[1]

1. Whether completion of the above training during a rest period would be voluntary and whether it would interrupt a rest period.

For your first two questions, you ask us to assume that a flightcrew member completes the distance learning training in both scenarios on October 15. You then ask whether the completion of training on October 15 would be voluntary or whether it would be a restraint that interrupts a rest period.

Part 117 contains a set of flight, duty, and rest regulations that apply to all part 121 passenger operations and certain part 91 operations.[2] Among other things, part 117 requires a certificate holder to provide a flightcrew member with certain minimum rest periods.[3] A rest period is defined as "a continuous period determined prospectively

[1] In answering your questions, we will assume that the certificate holder and flightcrew member are both operating under the provisions of 14 C.F.R. part 117. We have also rearranged the order of some of your questions for ease of readability.
[2] 14 C.F.R. § 117.1.
[3] 14 C.F.R. § 117.25.

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."[4]

The FAA has previously stated that, under part 117, activities that a flightcrew member voluntarily conducts during a rest period are not a restraint by the certificate holder and do not act to interrupt a rest period.[5] In a March 20, 2014 letter, the FAA was asked to consider whether a pilot could opt into a voluntary program under which he agreed to check his schedule during a certain predetermined timeframe.[6] In response, the FAA stated that, as long as the program was in fact voluntary, participation in the program would not act to interrupt a rest period required by part 117.[7]

Applying the above analysis to your scenarios, if the flightcrew member in Scenario 2 was to complete distance learning training on October 15, then that distance learning training would be voluntary and would not act to interrupt a rest period. This is because the certificate holder in Scenario 2 would provide the flightcrew member with specific duty time during which the flightcrew member could complete the training. If the flightcrew member decides not to use the provided duty time and instead completes the training on October 15 (outside of the duty time scheduled for that training) then that decision would be voluntary.

Turning to Scenario 1, it is possible that the flightcrew member in Scenario 1 would also complete the distance learning training voluntarily. The flightcrew member in that scenario would be provided with approximately two months (from October 1 to November 30) to complete the distance learning training. Given the large amount of time that flightcrew member would be provided to complete the distance learning training, it is possible that the flightcrew member would have an opportunity to complete the training outside of a rest period. If that is the case, then if the flightcrew member in Scenario 1 chooses to complete the training during a rest period, the completion of the training during a rest period would be voluntary. However, if the flightcrew member in Scenario 1 is scheduled such that he or she cannot complete the required training outside of a rest period, then the completion of the training during a rest period would not be voluntary and would act to interrupt the rest period.

We emphasize, however, that, for both scenarios, § 117.5 requires a flightcrew member to report for a flight duty period (FDP) "rested and prepared to perform his or her assigned duties" and to immediately notify the certificate holder if that is not the case. Thus, whatever activities the flightcrew member chooses to voluntarily conduct during a rest period must not render that flightcrew member too fatigued to safely operate an aircraft once the rest period ends and the flightcrew member begins his or her next FDP.

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[4] 14 C.F.R. § 117.3 (definition of "rest period").
[5] Letter to Don Wykoff and Douglas Mullen from Mark W. Bury, Assistant Chief Counsel for AGC-200 (Mar. 20, 2014) (answer to Question 13).
[6] *Id.*
[7] *Id.*

2. Effect of having a standing obligation during a 60-day period.

For your next question, you ask whether part 117 allows a certificate holder "to impose a standing obligation on a flightcrew member over a 60-day period and still consider the flightcrew member to have been free from all restraint during the same period or some period(s) within those 60 days?"

Your question misunderstands the nature of a rest period taken under part 117 and the joint responsibility between the certificate holder and the flightcrew member. Part 117 prohibits a certificate holder from requiring a flightcrew member to perform an action during a rest period. As long as a certificate holder does not require a flightcrew member to perform an action during a rest period, part 117 does not require that certificate holder to micromanage what the flightcrew member does during his or her rest period. Instead, it is the flightcrew member who decides what actions he or she wishes to take during his/her rest period. In making those decisions, the flightcrew member must keep in mind the provisions of § 117.5, which require the flightcrew member to report for an FDP "rested and prepared to perform his or her assigned duties."

Thus, a flightcrew member could choose to spend a portion of his or her rest period engaged in fatigue-inducing actions such as housework, driving a car, or playing with his/her kids. None of these actions would terminate a rest period because the flightcrew member and not the certificate holder would be the one making the choice that these actions should be undertaken during the rest period. Similarly, a flightcrew member's decision to take work home and do it during a rest period instead of some other time would also not terminate a rest period if the flightcrew member and not the certificate holder is the one to make that choice.

Turning to your specific question, if, during the 60-day window in your scenario, a flightcrew member has the option to complete the "standing obligation" outside of a rest period but instead opts to complete it during the rest period, then that is a voluntary decision by the flightcrew member. Conversely, if the flightcrew member is required to complete the "standing obligation" during a rest period, then that would not be a voluntary decision by the flightcrew member and would act to interrupt the rest period.

3. Certificate holder obligation to track training.

For your next question, you ask whether "the certificate holder is under any obligation to track when the training is actually performed to ensure legal rest is reflected."

The rest requirements of 117.25 do not require the certificate holder to track voluntary activities that are conducted by a flightcrew member during a rest period. However, if the training is not being voluntarily conducted during a rest period, then the certificate holder may need to track the training to ensure compliance with part 117. In addition, if the training is being conducted to satisfy other FAA regulations, then the certificate holder may need to track that training in order to ensure that the specific training

regulations are satisfied regardless of whether the training is voluntarily being conducted during a rest period.

4. Completing distance learning training prior to an FDP.

For your next question, you ask us to consider a scenario in which a flightcrew member completes distance learning training immediately prior to the end of a rest period. You ask whether an FDP that follows the rest period would have to be adjusted to reflect that the flightcrew member reported for duty the moment he began the distance learning training.

The answer to this question depends on whether the flightcrew member voluntarily chose to conduct the distance learning training during the rest period. If the flightcrew member made a voluntary choice to conduct this training during the rest period, then this training was part of the rest period and no adjustments need to be made to the FDP that follows the rest period. If the flightcrew member was required to perform the flight distance training during the rest period, then that requirement terminated the rest period and the FDP that follows the rest period would need to be adjusted accordingly.

5. Effect of this interpretation on prior part 135 interpretations.

For your final question, you ask whether this interpretation supersedes prior interpretations of the flight, duty, and rest rules of 14 C.F.R. part 135. In response, we note that part 117 contains a different regulatory framework than the flight, duty, and rest rules of part 135. In addition, your request did not ask us to reconsider our prior part 135 interpretations. Accordingly, this interpretation has no effect on our existing interpretations of part 135.

We appreciate your patience and trust that the above responds to your concerns. If you need further assistance, please contact my staff at (202) 267-8018. 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,

Mark W. Bury
Assistant Chief Counsel for Regulations