U.S. Department
of Transportation
Federal Aviation Administration

Office of the Chief Counsel

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

SEP 3 2015

Todd Nelson
[redacted]

Subject: Part 117.17 Interpretation Regarding In-Flight Rest for an Augmented Crew

Dear Mr. Nelson:

This letter is provided in response to your April 12, 2015 request for a legal interpretation regarding in-flight rest for an augmented crew. The provision at issue is 14 CFR § 117.17. The regulation states that "two consecutive hours in the second half of the flight duty period [must be] available for in-flight rest for the pilot flying the aircraft during landing." 14 C.F.R. § 117.17(c)(1). In addition, "ninety consecutive minutes [for in-flight rest must be] available," for the pilot performing monitoring duties during landing. § 117.17(c)(2).

In your request for interpretation, you asked a variety of questions about a single scenario in which an augmented crew of four is scheduled to operate a flight from Newark, NJ (EWR) to Mumbai, India (BOM). The flight time is scheduled at 15 hours in length and the flightcrew has determined, during the pre-flight briefing, that two rest breaks will be taken in flight. Each break amounts to 6:30 hours in length and each flightcrew member is offered the opportunity to choose which break he or she wishes to take. We will assume, for the purposes of this interpretation, that one rest break happens in the first half of the flight, and the second happens during the second half of the flight. We will also assume that the 15 hour flight is the entire flight duty period ("FDP"). Your questions will be answered in the below paragraphs.

1. The first question you asked is: "Given the above scenario, is the flying crew required to take the second of the two breaks in order to comply with FAR 117.17(c)?"

The answer is yes, for those flightcrew members who are flying the plane during landing. That flightcrew member would have to take the second break, although it would not have to be the full 6 hours and 30 minutes –only the two consecutive hours are required by the rule for the individual flying the plane during landing. If the flightcrew member is monitoring the aircraft during landing, ninety minutes are required during the course of the flight and the break could be taken at any point.

2. The second question you asked is: "Does the term 'available' as used in FAR 117.17 require the crewmember to in fact be on break for the time outlined in FAR 117.17?"

The answer is yes. The preamble to the final rule establishing § 117.17(c)(1) and (2) specifically states that this section "*requires* two hours of in-flight rest in the second half of the FDP for the pilot who will be flying the aircraft during landing."[1]

3. The third question you asked is: "If the flying crewmembers do not actually take any rest opportunities during the second half of the flight, are they operating in violation of FAR 117.17?"

The crewmember would be operating in violation of § 117.17(c)(1) and (2) assuming the flightcrew members at issue are those who are operating the landing. According to the plain language of the rule, if the carrier provided rest opportunities and the flying crewmember did not take any rest opportunities, the flying crewmember would not be permitted to accept an assignment. As long as the carrier provided the rest opportunity, the carrier is not in violation. If the carrier did not provide the rest opportunity but makes the assignment available to that crew member, then the carrier is in violation of § 117.17(c)(1) and (2).

We appreciate your patience and trust that the above responds to your concerns. If you need further assistance, please contact our office at (202) 267-3073. This letter was prepared by Courtney Freeman, an attorney in the 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

[1] Flightcrew Member Duty and Rest Requirements, 77 FR 330-01 at 61, emphasis added.