U.S. Department
of Transportation
Federal Aviation Administration

Office of the Chief Counsel

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

NOV 17 2015

Timothy Slater
[redacted]

Subject: Request for Interpretation of Part 91 Tail-End Ferry Flights

Dear Mr. Slater:

This letter is provided in response to your request for a legal interpretation regarding part 91 tail-end ferry flights conducted by a combined 14 CFR part 121 Supplemental and 14 CFR part 135 On-Demand certificate holder. You ask a series of questions based on the following scenario:

> Presume a properly trained, qualified, and rested crew conducts a series of passenger-carrying, revenue flights. They conclude this series of flights at the maximum permissible flight time for the applicable part under which they are operating. The final destination of the aircraft is away from home base. The flight time to home base from the present location is one hour.

If the "passenger-carrying revenue flights" were conducted as part 135 on-demand operations, tail-end ferries under part 91 would be permitted. However, passenger-carrying, revenue flights conducted under part 121 supplemental rules are required to meet the applicable flight and duty limitations located in part 117, which "prescribes flight and duty limitations and rest requirements for all flightcrew members and certificate holders conducting passenger operations under part 121," per § 117.1(a). As such, all ferry flights must be also be included in the applicable flight, duty and rest limitations of part 117 unless separated by a rest period as required by § 117.25(e).

Specifically, 14 CFR 117.11 contains the flight time limitations for an operation as described in your scenario. It states:

> **(a)** No certificate holder may schedule and no flightcrew member may accept an assignment or continue an assigned flight duty period if the total flight time:
>
> > **(1)** Will exceed the limits specified in Table A of this part if the operation is conducted with the minimum required flightcrew.
> > **(2)** Will exceed 13 hours if the operation is conducted with a 3-pilot flightcrew.

(3) Will exceed 17 hours if the operation is conducted with a 4-pilot flightcrew.

(b) If unforeseen operational circumstances arise after takeoff that are beyond the certificate holder's control, a flightcrew member may exceed the maximum flight time specified in paragraph (a) of this section and the cumulative flight time limits in 117.23(b) to the extent necessary to safely land the aircraft at the next destination airport or alternate, as appropriate.

Question 1: Would it be legal for the operator to offer the pilot-in-command (PIC) the following choice: If all flight crew are fit to fly, the PIC may ferry the aircraft back to home base under 14 CFR Part 91 or the crew can remain the night and return tomorrow?

No, it would not be legal under § 117.11(a) for the operator to offer the PIC, or the PIC to accept, the choice between flying to home base or staying the night. Under § 117.11(b), the maximum permissible flight time can only be exceeded if unforeseen operational circumstances arise ***after*** takeoff. That would not be the case under your scenario. The only time a ferry flight may be conducted under part 91 before, between or after a passenger-carrying operation conducted under part 121 is if that flightcrew member has received the minimum 10 hour rest period found in § 117.25 (e).

Question 2: Would it make a difference if the crew were assigned by the operator to ferry the aircraft to home base?

As noted above, it is not permissible for the operator to assign the flightcrew to ferry the aircraft back to home base if it exceeds the flight time limitations in § 117.11. If the maximum permissible flight time had not been reached, the operator would be permitted to assign the flightcrew to ferry the aircraft back to home base. However, your scenario presumes that the maximum permissible flight time has been reached.

Question 3: Would duty time make a difference in the above scenario? For instance the 91 flight could be completed with the original FDP vs. outside of the original FDP?

Duty time is separate from flight time. The certificate holder and the flightcrew member must meet both the flight time limits in § 117.11(a) and the FDP limits in Tables B or C. As noted above in Question #2, the applicable flight time limitations can only be extended due to unforeseen operational circumstances after takeoff, so pre-takeoff extension of a flightcrew member's FDP will not affect the applicable flight time limitation in Table A.

Question 4: What is the required rest period prior to flight assignment for part 91 flights as authorized in OpSpec A001(d) (ferry, maintenance, training, repositioning) conducted by a 14 CFR Part 121 or 135 certificate holder?

Under your scenario and as noted above, for a flightcrew member operating a passenger-carrying revenue flight under part 121, the applicable rest time prior to a flight assignment under part 91 would be 10 hours as provided in § 117.25(e). This would apply whether the ferry flight was before, between or after any assigned flight segments. . For flights operated under part 135, the required rest times as provided in §§ 135.263 through 135.271 would apply to any part 91 flights that occur before or between any flight segments, but not to part 91 flights that take place after flight segments. However, the part 91 flights would not be considered rest, so the applicable rest requirements would need to be met prior to assigning a flightcrew member to additional part 135 duty and flight time.

We appreciate your patience and trust that the above responds to your concerns. If you need further assistance, please contact us at (202) 267-3073. This letter has been 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 the Flight Standards Service.

Sincerely,

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