U.S. Department
of Transportation
Federal Aviation Administration

Office of the Chief Counsel

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

FEB -3 2015

Don Wykoff
Air Line Pilots Association, Int'l
535 Herndon Parkway
P.O. Box 1169
Herndon, VA 20172-1169

Dear Mr. Wykoff,

We are in receipt of your request for interpretation and clarification of the definition of "unforeseen operational circumstance" as it relates to its use in 14 C.F.R. § 117.19(a) – Flight duty period extensions – unforeseen circumstances. Your letter sets forth several scenarios for consideration as examples of operational circumstances that you would not consider as a proper basis to extend a pilot's flight duty period (FDP).

Part 117 contains a set of flight, duty, and rest regulations that apply to all part 121 passenger operations and certain part 91 operations.[1] The regulations of part 117 limit, among other things, the length of an FDP that a flightcrew member can work on. However, § 117.19 allows these FDP limits to be extended if unforeseen operational circumstances arise.[2] The definition of "unforeseen operational circumstances" is set out in § 117.3:

> Unforeseen operational circumstance means an unplanned event of insufficient duration to allow for adjustments to schedules, including unforecast weather, equipment malfunction, or air traffic delay that is not reasonably expected.

In reading the definition, there are two distinct components that need to be taken into consideration. First, there needs to be an unplanned event that has actually occurred *and* the duration of that unplanned event must be too short to allow for adjustments to schedules. Your letter proposes that the FAA look to whether the event was foreseeable at some previous point.. However, the definition only speaks to "an unplanned event." The definition goes on to include several qualifiers (*unforecast weather, equipment malfunction, or air traffic delay that is not reasonably expected)*, which further inform what may or may not be considered to be an unplanned event.

The second component of the definition is that the unplanned event (however determined) must be *of insufficient duration to allow for adjustments to schedules*.

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[1] 14 C.F.R. § 117.1.
[2] *See* 14 C.F.R. § 117.19(a) and (b).

In a recent letter of interpretation to Manuel Garciglia from Mark W. Bury, Assistant Chief Counsel for International Law, Legislation and Regulations (Jul 8, 2014), the FAA stated, after quoting from the preamble to the final rule[3], that "as long as the unplanned event is not relatively short, it can give rise to an unforeseen circumstance sufficient to allow an extension under § 117.19." However, in Garciglia the FAA also found that "(s)ince there are a *wide variety of different operations with a number of different unplanned events that could arise*, we cannot give a specific timeframe for how long the unplanned event must be." (emphasis added) Thus, the question of whether an unplanned event has occurred and whether it was long enough to allow for an adjustment to schedules is a fact-specific determination.

If you need further assistance, please contact my staff at (202) 267-3073. This letter has been 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 Regulations, AGC-200

[3] [T]he phrase "insufficient duration to allow for adjustments to schedules" is intended to exclude unplanned events of relatively short duration. For example, the FAA would not consider a five-minute air traffic delay as an unforeseen operational circumstance that justifies the need for a two-hour FDP extension. Because relatively short unplanned events should not be used as a basis for extending an FDP, the FAA has decided to retain "insufficient duration to allow for adjustments to schedules" in the definition of unforeseen operational circumstances. *Flightcrew Member Duty and Rest Requirements*, 77 FR 330, 348 (Jan. 4, 2012).