U.S. Department
of Transportation
**Federal Aviation
Administration**

Office of the Chief Counsel

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

AUG - 5 2016

Captain Derry Anderson
1645 Thunder Gulch Pass
Suwanee, GA 30024

Re: Fitness for duty under 14 C.F.R. § 117.5.

Dear Captain Anderson,

This is in response to your letter of May 15, 2016 posing two questions about the extent to which a flightcrew member is required to be sufficiently rested prior to the beginning of a longer flight duty period (FDP) than was originally assigned.

Building upon an earlier legal interpretation (issued to Jeff Schnaubelt)[1] that concerned the fitness-for-duty requirements of 14 C.F.R. § 117.5, you asked two questions involving a hypothetical scenario in which a flightcrew member who, having originally been scheduled for a two-hour FDP, was (due to unforeseen circumstances) subsequently rescheduled to a FDP of exactly fourteen hours, the maximum FDP hours that could have been scheduled.

Question 1: Is the flightcrew member required to report sufficiently rested only for the known assigned FDP of two hours, or required to report sufficiently rested for the full length of the maximum FDP that could have been assigned?

The flightcrew member's responsibility is to report sufficiently rested for the FDP that was known and assigned, not the entire length of the FDP that could have been assigned. The same logic from the *Schnaubelt* interpretation applies to your hypothetical. Section 117.5(a) requires a flightcrew member to "report for any flight duty period rested and prepared to perform his or her *assigned* duties" (emphasis added). Under the FAA's *Schnaubelt* interpretation, the fitness-for-duty requirement applies to duties that are assigned, not duties that could be assigned. Until a certificate holder decides that a longer FDP than originally scheduled is necessary, a flightcrew member's fitness-for-duty determination is based on the assumption that the longer-than-expected FDP will not occur. Should a longer-than-expected FDP occur, a flightcrew member must reassess his or her fitness-for-duty to determine whether he or she can continue to serve on the longer FDP. If the flightcrew member determines that he or she cannot serve on a longer FDP, the flightcrew member must immediately notify the certificate holder.

We also emphasize that, under § 117.5(d), a flightcrew member must continually reassess his or her fitness for duty as the FDP progresses. "This is because a flightcrew member who is alert at the beginning of an FDP may become dangerously fatigued once the FDP is underway."[2] The requirement to continually reassess fitness for duty applies regardless of whether the assigned FDP has changed since the initial assignment.

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[1] Legal Interpretation to Jeff Schnaubelt (April 4, 2016)

[2] *Flightcrew Member Duty and Rest Requirements Final Rule*, 77 FR 330, 350 (Jan. 4, 2012).

Question 2: Could a company policy require a flightcrew member to be sufficiently rested for the entire length of the FDP that could have been, but was not, assigned originally?

Yes. Certificate holders may adopt policies that supplement or go beyond the FAA's regulatory requirements. The FAA's requirements establish a baseline of safety, while air carriers' operational rules may impose more stringent requirements. *See* Legal Interpretation to Rebecca B. MacPherson (April 19, 2016) (applying this principle to airworthiness standards). We emphasize, however, that certificate holder policies may not authorize conduct that would be a violation of FAA regulations. We also note that compliance with company policies that go beyond FAA requirements will be up to the individual company to monitor and enforce.

We also emphasize that, as discussed earlier, § 117.5(d) requires a flightcrew member to continually reassess his or her fitness for duty as an FDP progresses. A fitness-for-duty certification made at the beginning of the duty day would not, by itself, be sufficient to satisfy the requirements of § 117.5(d).

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 coordinated with the Air Transportation Division of Flight Standards Service.

Sincerely,

Lorelei Peter
Assistant Chief Counsel for Regulations, AGC-200

May 15, 2016

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RE: Request for legal interpretation related to 14 C.F.R. § 117.5

Dear Ms. Peter,

When asked whether a flightcrew member must report to a FDP sufficiently rested to accommodate a possible two-hour FDP extension, you responded in an April 4, 2016 letter that §117.5 (a) requires a flightcrew member to "report to any flight duty period rested and prepared to perform his or her *assigned duties*. (emphasis added)." You noted that the emphasized portion of the §117.5 (a) regulatory text indicates that the fitness-for-duty requirement applies to duties that are assigned, not duties that could be assigned. You went on to state that "until a certificate holder decides that an FDP is necessary, a flightcrew member's fitness-for-duty determination is based on the assumption that the FDP will not be extended."

Table B to Part 117 provides guidance on how to determine the maximum flight duty period that could be assigned for unaugmented operations, based upon the scheduled (acclimated) time of the start of the duty period and the number of flight segments. Table B sets a limitation on the certificate holder as to the maximum flight duty period that *could be assigned* (emphasis added) to a flightcrew member. It is axiomatic that the length of flightcrew member duty periods that are assigned is not always the same as the maximum flightcrew member duty period that could be assigned as set forth in Table B.

A flightcrew member on a scheduled rest period plans his or her physiological needs (sleep, nutrition, exercise, etc…) based upon his or her known scheduled assigned duties for the subsequent flight duty period. The knowledge ahead of time that a flightcrew member has been scheduled for a flight duty period of fourteen hours will result in a completely different physiological preparation had the flightcrew member's expectation that he or she were to be report sufficiently rested for only a two-hour flight duty period.

In your April 4, 2016 response (Question #4) to Mr. Schnaubelt, you answered the question as to "whether a flightcrew member must report an FDP sufficiently rested to accommodate a possible two-hour FDP extension." In Mr. Schnaubelt's hypothetical, he

stipulated that a flightcrew member is assigned a flight duty period of exactly twelve hours and inquired whether the "flightcrew member is required to report sufficiently rested and prepared to accommodate a two-hour §117.19 flight duty period extension that would bring that flightcrew member to a fourteen-hour flight duty period." Since Mr. Schnaubelt's hypothetical was based upon a scheduled flight duty period equal to the maximum flight duty period (without an extension) that could have been assigned, and since his inquiry relates only to the question as to the two-hour extension, the question remains as to the extent to which a flightcrew member is required to be sufficiently rested prior to the beginning of a flight duty period for circumstances that do not involve a §117.19 FDP extension, but rather flight duty periods that are extended beyond the duties that were originally assigned.

It seems settled that a flightcrew member and certificate holder would not be in violation of the pertinent flight duty period limits of §117 if the flightcrew members were to operate up to the maximum flight duty period that could have been, but were not originally, assigned, provided the flightcrew members complied with the §117.5 (d) requirement to determine fitness for duty prior to each flight segment. If the same logic is applied using the distinction between assigned duties and duties that could be assigned (under Table B), until a certificate holder determines that a flight duty period is going to increase beyond what was originally assigned, would not a flightcrew member's responsibility be to report sufficiently rested only for the duration of the flight duty period that was known and *assigned*, not the entire length of the flight duty period that *could have been* assigned?

Hypothetical: Scheduled time of start of FDP is 0700 (unaugmented operations). The flightcrew member is originally scheduled for a two-hour flight duty period consisting of two flight segments with the scheduled flight duty period to end at 0900. Due to circumstances (weather, mechanical, reroute, etc..) that were unknown to the certificate holder and the flightcrew member at the beginning of the flight duty period, the flightcrew member is subsequently re-scheduled to depart on the second flight segment such that, the termination of that flight duty period results in a flight duty period of exactly fourteen hours, the maximum flight duty period hours that *could have been* scheduled.

Question 1: Based on the hypothetical above, is the flightcrew member required to report sufficiently rested only for the known assigned flight duty period of two hours, or is the flightcrew member obligated to be report sufficiently rested for the full length of the maximum flight duty period that could have been assigned, in this example, fourteen hours? It is stipulated that the flightcrew member has a responsibility to comply with §117.5 (d) prior to beginning the final flight segment and could, theoretically, operate that flight legally if he or she determined that they were "physiologically and mentally prepared and capable of performing assigned duties at the highest degree of safety." In other words, is a flightcrew member required to report to a FDP sufficiently rested only for his or her known assigned duties, i.e. the length of the FDP that is actually assigned to a flightcrew member prior to reporting for a FDP? Or, must a flightcrew member be sufficiently rested for unknown possible duty extending beyond his or her

assigned duties up to the maximum flight duty period that could have been assigned based on the scheduled start of the duty period and number of flight segments? Would not the same logic from the Schnaubelt interpretation apply in that a flightcrew member must reassess his or her fitness for duty to serve on a flight duty period that is longer than the originally scheduled flight duty period *at the time* it is determined that such flight duty period will extend beyond the length of the originally scheduled flight duty period?

Question 2: Assuming that §117 limits the maximum duration that a flightcrew member is required to be sufficiently rested prior to beginning a flight duty period to the length of his or her *assigned* duties, what is the effect of a company policy that requires a flightcrew member to be sufficiently rested, prior to beginning a flight duty period, for the entire length of the flight duty period that *could have been*, but were not, *assigned* originally? Would not the more stringent of the two, i.e. the §117 requirements apply and the company policy rendered moot?

Thank you for your time.

Respectfully,

Captain Derry Anderson

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