U.S. Department
of Transportation
Federal Aviation Administration

Office of the Chief Counsel

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

JUN 16 2016

Richard D. Remsen
[redacted]

Dear Mr. Remsen:

This is in response to your February 15, 2016 letter asking whether, in a flightcrew of three pilots, 14 C.F.R. part 117 requires a landing pilot to "take a break during a certain period of the flight regardless of his personal choice."

Your letter cites the Nelson interpretation issued on September 3, 2015, which addresses a four-person crew. You state the provisions of the regulations that set forth requirements for in-flight rest apply more suitably to flightcrews of four pilots, rather than three. You also state captains often assign a particular break to the pilot who will be landing the aircraft, yet the pilot landing rarely volunteers to choose the "last break." Based on these factors, you ask whether the Federal Aviation Administration (FAA) intends to require a landing pilot to take a break, notwithstanding personal choice or the perceived need for a break. The answer is yes; the regulations require the landing pilot to take a break close to the time he or she will be landing the aircraft.

As you know, part 117 contains a set of flight, duty, and rest regulations that apply to all part 121 passenger operations, as well as certain operations under part 91.[1] These rules limit the length of a flightcrew member's daily flight duty period (FDP). Daily FDP limits for augmented operations, as described in your request for interpretation, are codified at § 117.17 and Table C. Specifically, § 117.17(c)(1) prohibits certificate holders from assigning, and flightcrew members from accepting, an assignment unless two consecutive hours in the second half of the FDP are available for in-flight rest for the pilot who flies the aircraft during landing. Table C includes a chart distinguishing between three- and four-pilot compositions, to provide higher maximum FDPs for crews of four pilots. As explained in the FAA's preamble adopting the provisions of Table C, the maximum FDPs permissible for three-pilot crews are distinct from the maximums applicable to four-pilot crews because, "in a three-pilot crew, each pilot spends more time piloting the aircraft." 77 Fed. Reg. 330, 368 (Jan. 4, 2012). Three-pilot crews spend less time resting; therefore, Table C sets forth lower FDP limits for such crews. This distinction between three- and four-pilot crews in Table C indicates the provisions of § 117.17(c)(1) are not more suitable for four-pilot crews, but rather demonstrates the

[1] 14 C.F.R. § 117.1.

FAA's consideration for different compositions of flightcrews. The FAA addressed both types of flightcrew compositions in its rule, and explained its rationale for the distinction in the preamble that describes the requirements.

As the FAA stated in its 2012 adoption of the changes to § 117.17(c)(1), the section allows air carriers flexibility with scheduling flight segments for augmented FDPs, while ensuring the landing flightcrew member receives at least two hours of continuous rest close to the time he or she will be landing the aircraft. The Nelson interpretation to which your letter refers is consistent with this description. Regardless of whether the landing pilot is part of a three- or four-pilot crew, and regardless of his or her personal choice, the landing pilot must have an opportunity for rest that is consistent with the plain language of 117.17(c)(1) and Table C.

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 letter has been prepared by Katie Inman and Robert H. Frenzel, Manager, Operations Law Branch, Office of the Chief Counsel and coordinated with the Air Transportation Division of Flight Standards Service.

Sincerely,



Lorelei Peter
Assistant Chief Counsel for Regulations, AGC-200

Mark W. Bury Deputy Chief Counsel
Office of the Chief Counsel
800 Independence Avenue SW
Washington, DC 20591

Feb 15, 2016

Richard D Remsen
[redacted]

Subject: Part 117.17(c)(1) Interpretation Regarding In-Flight Rest for an Augmented Crew

Dear Mr. Bury,

The Nelson Legal interpretation letter of Sept. 3, 2015 only addresses a 4 pilot crew. The problem I have seen below occurs mostly on a 3 pilot crew. Flights with 4 pilots seem to naturally fit better into the FAR.

The FAR says the break must be "available" during the last half of the flight for the pilot landing. Numerous Capt's are now assigning a particular break to the pilot landing. I have rarely seen the pilot landing voluntarily choose the "last break" during my 28 years of augmented crew experience. And to accomplish this, the Capt is usually splitting up the break of the 3rd crew member, again something we have not done in the past. Is it the FAA's intent to require a landing pilot to take a break during a certain period of the flight regardless of his personal choice?

Thank you,

Rich Remsen

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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.