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

Office of the Chief Counsel

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

JUN 14 2017

Mr. Henry Putek, Jr.
Allied Pilots Association Training Committee
P.O. Box 390538
Keauhou, HI 96739

Re: Clarification of voluntary distance learning during a rest period under 14 C.F.R. § 117.25

Dear Mr. Putek:

This letter is in response to your September 30, 2016 follow-up email requesting clarification with regard to the scheduling of required distance learning as it pertains to pilots of American Airlines. You initially wrote to us about your concerns by letter dated May 5, 2016, and we responded to your inquiry on September 5, 2016. Specifically, you now ask whether a certificate holder is required to schedule sufficient duty time to complete required distance learning, assuming a pilot chooses not to voluntarily complete the distance learning during any required rest period or other duty free period.

In our September 5 response to you, we referenced the controlling interpretation issued to Mr. Eric McEldowney from Mark W. Bury (Mar. 13, 2015). The following paragraph from that interpretation, at p. 2, is most pertinent to your initial and follow-up questions:

> Turning to Scenario 1, it is possible that the flightcrew member in Scenario 1 would also complete the distance learning training voluntarily. The flightcrew member in that scenario would be provided with approximately two months (from October 1 to November 30) to complete the distance learning training. Given the large amount of time that flightcrew member would be provided to complete the distance learning training, *it is possible that the flightcrew member would have an opportunity to complete the training outside of a rest period.* If that is the case, then if the flightcrew member in Scenario 1 chooses to complete the training during a rest period, the completion of the training during a rest period would be voluntary. *However, if the flightcrew member in Scenario 1 is scheduled such that he or she cannot complete the required training outside of a rest period, then the completion of the training during a rest period would not be voluntary and would act to interrupt the rest period.*

(Emphasis added).

This part of the *McEldowney* interpretation stands for the proposition that a certificate holder must allow flightcrew members an opportunity outside of rest periods to complete

any distance learning training that is required by the certificate holder. Completion of training required by the certificate holder (whether in a class room, via distance learning, or flight training) is work that is assigned by the certificate holder, and thus constitutes duty. *See* the Legal Interpretation to Norman W. Robinson, Jr. from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (July 14, 2011) ("The FAA has consistently interpreted duty to mean 'actual work for a certificate holder, or the present responsibility for work should the occasion arise.'"); *see also* the Legal Interpretation to Scott M. Ewing from Mark W. Bury, Assistant Chief Counsel for International Law, Legislation and Regulations (Jan. 13, 2014) (extending the conclusion set forth in *Robinson* to part 121 certificate holders). Although *Robinson* concerns 14 C.F.R. § 135.263(b) and *Ewing* concerns § 121.471(e), we find no substantive reason why distance learning should not also constitute duty under part 117 operations.

However, as stated in *McEldowney*, a certificate holder may provide for an extended period of time to complete the distance training, and a flightcrew member may complete the training outside of a rest period or voluntarily complete the training during a rest period. If, however, the flightcrew member is scheduled such that he or she cannot complete the distance learning training outside of a rest period, then the completion of the training during a rest period would not be voluntary and would act to interrupt the rest period.

Flightcrew member duty schedules vary significantly, of course. Whether a particular flightcrew member has a real opportunity to complete his or her certificate holder-required distance learning training outside of rest periods in any given timeframe will be assessed on a case-by-case basis.

Because the principles in *McEldowney* involving the voluntary completion of distance learning during a rest period applies equally to operations conducted under parts 117, 121, and 135, the *Robinson* and *Ewing* interpretations are withdrawn to the extent they suggest that distance learning cannot be voluntarily completed by a flightcrew member during a required rest period.

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 prepared by Richard Doan, 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
Assistant Chief Counsel for Regulations, AGC-200

Enclosure

September 30, 2016

US Department of Transportation
Federal Aviation Administration

To: Ms. Lorelei Peter, Assistant Chief Counsel for Regulations AGC-200
To: Mr. Mark W Bury, Assistant Chief Counsel for Regulations
To: Mr. Alex Zektser, Attorney, Regulations Division, Office of Chief Counsel

Sent via: Email

Re: Your response to me dated September 12th, 2016

Dear Ms. Peter:

Thank you for your response to my request for clarification regarding distance learning, however there may be some confusion about the specific question that I asked, as your response *did not address my concern.*

In your response to me, you reference an FAA reply to hypothetical questions from Mr. Eric McEldowney. Your reply references, "Voluntary Distance learning during a rest period under 14 CFR s117.25". I understand that the McEldowney interpretation allows pilots to voluntarily conduct mandatory and required distance learning [which is duty[1]] during a rest period under FAR 117.

However, my question has nothing to do with a pilot conducting "Voluntary Distance Learning" during an FAR 117 rest / duty free period". My specific question is asked below:

Question: Should a pilot choose **not to** voluntarily conduct his required distance learning during any required rest period, or any other duty free period[2], **then, is a certificate holder required to schedule sufficient duty time** in which the crewmember will conduct required distance learning without violating 14 CFR 117?

[1] The FAA considers required "distance learning training" to be "duty". Letter to Eric McEldowney from Mark W. Bury, Assistant Chief Counsel for AGC-200 dated March 13th 2015.

[2] Duty free periods are those in which the flight crewmember is free from all duty obligation(s) to the certificate holder 14 CFR 117.3 / 14 CFR 117.25.

Since the FAA has already ruled that any required distance learning training is "duty", then I suggest that there must be an opportunity to accomplish that required duty during "scheduled duty periods" if a pilot chooses not to conduct such required distance learning voluntarily[3], and that the certificate holder is responsible to schedule such required distance learning training duty period(s).

Additionally, please understand that certain required distance learning training courses consist of duty times equal to, or greater than 26 hours to complete.

Your Expedited Response is Respectfully Requested,

Mr. Henry W Putek Jr
PO Box 390538
Keauhou, Hawaii 96739
808-990-1883

Attachment 1: Letter to Mr. Putek from Ms. Lorelei Peter, Assistant Chief Counsel for Regulations AGC-200:

Attachment 2: Letter to Eric McEldowney from Mark W. Bury, Assistant Chief Counsel for AGC-200 dated March 13th 2015.

[3] Letter to Eric McEldowney from Mark W. Bury, Assistant Chief Counsel for AGC-200 dated March 13th 2015.

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SEP 12 2016

Mr. Henry Putek, Jr.
Allied Pilots Association Training Committee
P.O. Box 390538
Keauhou, HI 96739

Dear Mr. Putek:

This is in response to your May 5, 2016 letter requesting clarification with regard to the scheduling of required distance learning as it pertains to pilots of American Airlines. Your request cited 14 C.F.R. part 117 as the basis for your conclusion that a pilot's self-scheduling of transition distance learning, is "illegal regarding some of the provisions and intent of [part 117]." Your request included an attachment of a draft schedule with annotations made by yourself, presented to show that a pilot would be incapable of completing the required training time while maintaining compliance with the flight, duty, and rest regulations of part 117. You also attached a copy of a Legal Interpretation to Mr. Eric McEldowney from Mark W. Bury (Nov. 13, 2014) to support your position. However, that interpretation dealt with whether the reporting of a disrupted sleep opportunity would terminate a rest period.

The controlling interpretation on this issue is a different Legal Interpretation issued to Mr. Eric McEldowney from Mark W. Bury (Mar. 13, 2015), which addresses 14 C.F.R. § 117.25 and participation in a training program that includes "distance learning" and the impact of that training on any required rest period. The FAA views such self-scheduled training to occur on a voluntary basis, unless the certificate holder schedules the training to occur at a specific time. Please find a copy of the March 13, 2015 McEldowney interpretation enclosed. I trust it responds to your request for an opinion on the paper and draft schedule you submitted.

Sincerely,

Lorelei Peter
Assistant Chief Counsel for Regulations, AGC-200

Enclosure

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

MAR 13 2015

Eric McEldowney
1535 East Mission Lane
Phoenix, AZ 85020

Re: Voluntary distance learning during a rest period under 14 C.F.R. § 117.25

Dear Mr. McEldowney:

This is in response to your December 10, 2014 e-mail asking several questions about distance learning conducted by a flightcrew member during a rest period taken under 14 C.F.R. § 117.25. Your e-mail poses the following scenarios.

Scenario 1: The certificate holder makes available distance learning training material on October 1 and requires all flightcrew members to complete the training no later than November 30.

Scenario 2: The certificate holder makes available distance learning training material on October 1, and schedules the flightcrew member to initiate and complete his/her training on October 22 between the hours of 1300 and 1900.

Your e-mail then asks a number of questions about these scenarios. Our answers to your questions are set out below.[1]

1. **Whether completion of the above training during a rest period would be voluntary and whether it would interrupt a rest period.**

For your first two questions, you ask us to assume that a flightcrew member completes the distance learning training in both scenarios on October 15. You then ask whether the completion of training on October 15 would be voluntary or whether it would be a restraint that interrupts a rest period.

Part 117 contains a set of flight, duty, and rest regulations that apply to all part 121 passenger operations and certain part 91 operations.[2] Among other things, part 117 requires a certificate holder to provide a flightcrew member with certain minimum rest periods.[3] A rest period is defined as "a continuous period determined prospectively

[1] In answering your questions, we will assume that the certificate holder and flightcrew member are both operating under the provisions of 14 C.F.R. part 117. We have also rearranged the order of some of your questions for ease of readability.
[2] 14 C.F.R. § 117.1.
[3] 14 C.F.R. § 117.25.

during which the flightcrew member is free from all restraint by the certificate holder, including freedom from present responsibility for work should the occasion arise."[4]

The FAA has previously stated that, under part 117, activities that a flightcrew member voluntarily conducts during a rest period are not a restraint by the certificate holder and do not act to interrupt a rest period.[5] In a March 20, 2014 letter, the FAA was asked to consider whether a pilot could opt into a voluntary program under which he agreed to check his schedule during a certain predetermined timeframe.[6] In response, the FAA stated that, as long as the program was in fact voluntary, participation in the program would not act to interrupt a rest period required by part 117.[7]

Applying the above analysis to your scenarios, if the flightcrew member in Scenario 2 was to complete distance learning training on October 15, then that distance learning training would be voluntary and would not act to interrupt a rest period. This is because the certificate holder in Scenario 2 would provide the flightcrew member with specific duty time during which the flightcrew member could complete the training. If the flightcrew member decides not to use the provided duty time and instead completes the training on October 15 (outside of the duty time scheduled for that training) then that decision would be voluntary.

Turning to Scenario 1, it is possible that the flightcrew member in Scenario 1 would also complete the distance learning training voluntarily. The flightcrew member in that scenario would be provided with approximately two months (from October 1 to November 30) to complete the distance learning training. Given the large amount of time that flightcrew member would be provided to complete the distance learning training, it is possible that the flightcrew member would have an opportunity to complete the training outside of a rest period. If that is the case, then if the flightcrew member in Scenario 1 chooses to complete the training during a rest period, the completion of the training during a rest period would be voluntary. However, if the flightcrew member in Scenario 1 is scheduled such that he or she cannot complete the required training outside of a rest period, then the completion of the training during a rest period would not be voluntary and would act to interrupt the rest period.

We emphasize, however, that, for both scenarios, § 117.5 requires a flightcrew member to report for a flight duty period (FDP) "rested and prepared to perform his or her assigned duties" and to immediately notify the certificate holder if that is not the case. Thus, whatever activities the flightcrew member chooses to voluntarily conduct during a rest period must not render that flightcrew member too fatigued to safely operate an aircraft once the rest period ends and the flightcrew member begins his or her next FDP.

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[4] 14 C.F.R. § 117.3 (definition of "rest period").
[5] Letter to Don Wykoff and Douglas Mulien from Mark W. Bury, Assistant Chief Counsel for AGC-200 (Mar. 20, 2014) (answer to Question 13).
[6] *Id.*
[7] *Id.*

2. Effect of having a standing obligation during a 60-day period.

For your next question, you ask whether part 117 allows a certificate holder "to impose a standing obligation on a flightcrew member over a 60-day period and still consider the flightcrew member to have been free from all restraint during the same period or some period(s) within those 60 days?"

Your question misunderstands the nature of a rest period taken under part 117 and the joint responsibility between the certificate holder and the flightcrew member. Part 117 prohibits a certificate holder from requiring a flightcrew member to perform an action during a rest period. As long as a certificate holder does not require a flightcrew member to perform an action during a rest period, part 117 does not require that certificate holder to micromanage what the flightcrew member does during his or her rest period. Instead, it is the flightcrew member who decides what actions he or she wishes to take during his/her rest period. In making those decisions, the flightcrew member must keep in mind the provisions of § 117.5, which require the flightcrew member to report for an FDP "rested and prepared to perform his or her assigned duties."

Thus, a flightcrew member could choose to spend a portion of his or her rest period engaged in fatigue-inducing actions such as housework, driving a car, or playing with his/her kids. None of these actions would terminate a rest period because the flightcrew member and not the certificate holder would be the one making the choice that these actions should be undertaken during the rest period. Similarly, a flightcrew member's decision to take work home and do it during a rest period instead of some other time would also not terminate a rest period if the flightcrew member and not the certificate holder is the one to make that choice.

Turning to your specific question, if, during the 60-day window in your scenario, a flightcrew member has the option to complete the "standing obligation" outside of a rest period but instead opts to complete it during the rest period, then that is a voluntary decision by the flightcrew member. Conversely, if the flightcrew member is required to complete the "standing obligation" during a rest period, then that would not be a voluntary decision by the flightcrew member and would act to interrupt the rest period.

3. Certificate holder obligation to track training.

For your next question, you ask whether "the certificate holder is under any obligation to track when the training is actually performed to ensure legal rest is reflected."

The rest requirements of 117.25 do not require the certificate holder to track voluntary activities that are conducted by a flightcrew member during a rest period. However, if the training is not being voluntarily conducted during a rest period, then the certificate holder may need to track the training to ensure compliance with part 117. In addition, if the training is being conducted to satisfy other FAA regulations, then the certificate holder may need to track that training in order to ensure that the specific training

regulations are satisfied regardless of whether the training is voluntarily being conducted during a rest period.

4. Completing distance learning training prior to an FDP.

For your next question, you ask us to consider a scenario in which a flightcrew member completes distance learning training immediately prior to the end of a rest period. You ask whether an FDP that follows the rest period would have to be adjusted to reflect that the flightcrew member reported for duty the moment he began the distance learning training.

The answer to this question depends on whether the flightcrew member voluntarily chose to conduct the distance learning training during the rest period. If the flightcrew member made a voluntary choice to conduct this training during the rest period, then this training was part of the rest period and no adjustments need to be made to the FDP that follows the rest period. If the flightcrew member was required to perform the flight distance training during the rest period, then that requirement terminated the rest period and the FDP that follows the rest period would need to be adjusted accordingly.

5. Effect of this interpretation on prior part 135 interpretations.

For your final question, you ask whether this interpretation supersedes prior interpretations of the flight, duty, and rest rules of 14 C.F.R. part 135. In response, we note that part 117 contains a different regulatory framework than the flight, duty, and rest rules of part 135. In addition, your request did not ask us to reconsider our prior part 135 interpretations. Accordingly, this interpretation has no effect on our existing interpretations of part 135.

We appreciate your patience and trust that the above responds to your concerns. If you need further assistance, please contact my staff at (202) 267-8018. This response was prepared by Alex Zektser, Attorney, Regulations Division of the 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