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

Office of the Chief Counsel

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

NOV 16 2018

Michael P. Carbone
Vice President, Associate General Counsel
JetBlue Airways Corporation
27-01 Queens Plaza North
Long Island City, NY 11101

Re: Part 117 Definition of "duty" and Activities during Commuting

Dear Mr. Carbone:

Thank you for your August 31, 2018, request for legal interpretation. You ask for clarification of the July 3, 2018 DeLancie letter.[1] Mr. DeLancie wrote to the FAA requesting interpretation of the 14 CFR part 117 definition of "duty" in the context of an air carrier requiring an employee to perform certain activities while commuting in exchange for commuting privileges, including "providing aircraft janitorial services, cleaning aircraft toilets, assisting with cabin baggage loading, or preparing the cabin for another flight." Mr. DeLancie's concern was that such practices circumvented the FAA's definition of "duty" and were "an instrument of coercion into involuntary work since most airline pilots rely on non-revenue privileges in order to report to their domicile for flight duty."

In the FAA's response to DeLancie, we noted that when a pilot voluntarily uses commuting privileges, that is not considered "duty." However, we also cited several previous letters of interpretation holding that duty is all actual work for the certificate holder, even if characterized differently, and may include preflight and post flight activities, because those activities can contribute to fatigue which could interfere with the ability to safely perform assignments.[2]

You indicate that commuting is a privilege, and as a result all JetBlue employees are required to assist in "light cleaning" of the aircraft. You emphasize that this cleaning "consists solely of…folding seatbelts and removing refuse from seats and the seatbacks" which "can take approximately five to ten minutes." Your position is that since commuting is not part of the duty period, a pilot who voluntarily commutes on JetBlue would not be on duty simply because of the expectation that he or she engages in "de minimus acts such as seat belt crossing" in order to maintain commuting privileges. You contend these circumstances are distinguished from the circumstances of the 1992 Laurenzano and 2013 Ewing letters of interpretation, where the FAA clarified that when a flightcrew member is

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[1] We note that the FAA does not publish closeout letters; however, this letter was shared with members of the aviation community in such a fashion that it came to the requester's attention.

[2] Letter of Interpretation to Laurenzano from Donald P. Byrne, Assistant Chief Counsel, Regulations and Enforcement Division (Apr. 8, 1992); Letter of Interpretation to Morris from Rebecca B. MacPherson, Assistant Chief Counsel, Regulations Division (Apr. 29, 2005); Letter of Interpretation to Ewing from Mark W. Bury, Assistant Chief Counsel for International Law, Legislation, and Regulations (Jan. 13, 2014).

required to be on call, the flightcrew member is on duty and not on rest because he or she is not free from all restraint. You also maintain that unlike the 2005 Morris letter of interpretation, where the FAA was concerned that required ground duties might contribute to fatigue and thus constitute duty, here the "light cleaning" is no more fatigue-inducing than the act of commuting itself, or "donning one's uniform, checking one's schedule, [or] checking in[.]"

Before beginning its analysis, the FAA notes that the circumstances discussed in this letter are ripe for labor-management issues. The FAA expects these issues to be addressed as part of the employer-employee relationship. In so far as the FAA takes a position, it is solely to address fatigue mitigation through the application of part 117.

The FAA welcomes the opportunity to clarify its position on activities required during commuting with the benefit of both flightcrew member and air carrier perspectives. The FAA reiterates its position in DeLancie that commuting is not considered duty because it is voluntary in nature and not required by the certificate holder. However, the FAA is also aware that while commuting is voluntary, if an employee does not comply with a carrier's requirement that he or she perform certain activities while commuting, it may result in the loss of non-revenue transport privileges on which many airline pilots rely.

In addition to considering whether the activity is required or voluntary, as discussed in DeLancie, the FAA is also concerned with whether the activities required of an employee during his or her commute may contribute to an employee's fatigue level. In a previous letter of interpretation (Morris 2005) the FAA determined that a flight attendant's airport ground activities should be included in "duty" because they could lead to fatigue that would interfere with the flight attendant's ability to safely perform cabin safety assignments.

Part 117 identifies the risks of flightcrew member fatigue to the traveling public and takes a systemic and flexible approach to mitigate those risks. Therefore, while the FAA does not consider "de minimus" cleaning or other light activities that are required during commuting to constitute duty, there may be circumstances where the activities required of the commuting employee may rise to a level where they significantly contribute to fatigue that could affect a flightcrew member's safe performance and thus constitute duty. (For example, baggage handling, strenuous cleaning, or activities more extensive than can be completed in a short period of time).

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 Sarah Yousaf, Operations Law Branch, Office of the Chief Counsel and coordinated with the Air Transportation Division of Flight Standards Service.

Sincerely,

Lorelei D. Peter
Assistant Chief Counsel for Regulations, AGC-200

jetBlue

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August 31, 2018

VIA FEDERAL EXPRESS & EMAIL

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JetBlue Airways Corporation ("JetBlue") writes to see clarification of your July 3, 2018 response letter to an inquiry from John Q. de Lancie. ("de Lancie letter"). JetBlue respectfully seeks clarification of the 14 CFR 117 definition of "duty" and "flight duty period" in the context of a pilot who elects to commute on JetBlue. By way of background, as part of its Pass Riding Guide and out of recognition that non-revenue travel is a privilege, JetBlue sets forth the expectation that all Crewmembers (a term which applies to all JetBlue employees, including pilots) assist in light cleaning of the aircraft to speed the turn process.[1] This light cleaning consists solely of assisting working Inflight Crewmembers and other non-revenue Crewmembers with folding seatbelts and removing refuse from seats and the seatbacks. Depending on a variety of factors, including the aircraft type, the

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[1] **3.23 - Cleaning Expectations** (pg. 24) - All Pass Riding Crewmembers whether traveling for leisure, duty or commuting to work are expected to assist with cleaning the aircraft to speed the turn process. If you are traveling with small children, we ask that you please clean your row and then you may deplane. Buddy Pass Riders & family members should clean their row and deplane. Employees from other airlines do not need to help. Crewmembers should introduce themselves to an Inflight Crewmember and request a pair of blue gloves prior to the start of final descent to be prepared to begin cleaning as Customers are deplaning. In some circumstances you may be directed by the Inflight Crew to depart prior to cleaning, please follow any special instructions promptly. Do not delay or impede the deplaning of customers when cleaning. Crewmembers failing to assist our Inflight Crew may be subject to suspension or loss of Pass Riding privileges, for up to one year.

Customer load, the number of other non-revenue Crewmembers, and the Crewmember's seat location, this can take approximately five to ten minutes. International flights and domestic flights that remain overnight at the airport do not require any such cleaning or straightening.

Crewmembers reserve the option to commute or enjoy leisure travel on other airlines should they prefer to do so. In fact, many pilots do not commute on JetBlue either because of more desirable schedules on other airlines or geographic considerations.

Recently, an inquiry was submitted to the Federal Aviation Administration seeking to clarify whether light cleaning while voluntarily commuting on a carrier constitutes "duty" so as to begin a "flight duty period.[2] This inquiry resulted in an interpretation/response letter dated July 3, 2018. See attached, Exhibit A.

Compellingly, the referenced interpretation acknowledged very clearly that "when a pilot voluntarily commutes from his home to his place of work utilizing the certificate holder's commercial air carriage, that is not typically considered deadhead transportation, and thus not part of the duty period." This is true even if commuting entails multiple legs over many hours and lengthy walks to connecting terminals.

It stands to reason then, that if commuting is clearly not part of the duty period, a pilot who voluntarily commutes on JetBlue would not be "on duty" simply because of the expectation that he or she, like any other Crewmember, will engage in de minimus acts such as seat belt crossing as part of that privilege.

Such analysis remains consistent with the authority cited the in FAA response.. For example, in the 2005 *Morris* letter of interpretation cited by Ms. Peter, the FAA concluded that airport ground duty prior to report time should be included in the duty period to mitigate fatigue. *Morris* is critically distinguishable in two regards. First, the light cleaning duties are not uniquely required for commuting pilots. Rather, they are expectations for all pass riders who decide to enjoy non-revenue travel on JetBlue. Second, unlike in *Morris,* where the FAA indicated concern that ground duties might exacerbate fatigue because they essentially constituted an extension of the duty day, here the pilots are commuting, which is clearly non duty time and, as a practical matter, no more fatigue-inducing than the act of commuting itself or, for example, donning one's uniform, checking one's schedule, checking in, or assisting a working Inflight Crewmember in lifting an overhead bag when commuting.

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[2] The initial inquiry submitted by "John Q. de Lancie" misleadingly suggested that the light cleaning may include cleaning aircraft toilets and assisting with cabin baggage loading, which presented a much more onerous process than reality.

Similarly, the *Laurenzano* decision is inapposite in that it involved the interpretation of whether a pilot on reserve who was expected to await a phone call for an assignment was considered in rest. Again, unlike *Laurenzano*, JetBlue is not requiring duty as the pilot can quite permissibly avoid cleaning altogether by reaching work in myriad other ways (aside from voluntarily electing to commute on JetBlue).

Finally, the *Ewing* decision similarly supports JetBlue's interpretation. In *Ewing*, the FAA focused on the notion that "duty" constitutes any situation in which the crewmember is not "free from all restraint" by the Company. Again, pilots are completely unrestrained to avoid cleaning altogether should they so choose. JetBlue appreciates your attentiveness to this matter and thanks you in advance for your consideration. Please feel free to contact me at 718-709-2276 should you require additional information.

Sincerely,

MICHAEL P. CARBONE
Vice President, Associate General Counsel
JetBlue Airways Corporation
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cc: sarah.yousef@faa.gov