U.S. Department
of Transportation
Federal Aviation Administration

Office of the Chief Counsel

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

MAR - 7 2019

Garry L. Kravit
[redacted]

Re: Request for Legal Interpretation of § 117.5(c) when a Pilot in Command becomes Unfit for Duty while Airborne

Dear Mr. Kravit:

This letter responds to your September 2, 2018, request for an interpretation concerning the 14 CFR § 117.5 requirement on fitness for duty. You ask for clarification of the Schnaubelt letter of interpretation[1] which states that "[i]f a flightcrew is augmented and there are non-fatigued flightcrew members who are able to take over a fatigued flightcrew member's duties, then they should do so to allow the fatigued flightcrew members to obtain inflight rest."

You present the following scenario: the Captain of the flight, which is augmented with three first officers who are type-rated in the aircraft, takes the last break on a fourteen-hour flight and is unable to get any rest. He or she becomes fatigued and feels unable to continue the flight to the destination. The aircraft is an hour or two from the destination, and there is no time for the Captain to attain rest that would allow him or her to safely continue to the destination.[2] There are suitable alternate airports between the aircraft's current position and the planned destination. The three first officers are not fatigued.

You state that the Schnaubelt letter of interpretation does not address a situation in which the Captain becomes fatigued and there is not enough time to achieve rest to overcome the fatigue. You ask whether the Captain should land at the nearest suitable airport to avoid additional amounts of fatigue while operating the aircraft, or exercise emergency

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[1] Letter of Interpretation to Jeff Schnaubelt, from Lorelei D. Peter, Assistant Chief Counsel for Regulations (Apr. 4, 2016).

[2] The FAA assumes under § 117.17(c) that the required in-flight rest opportunity is available, but the PIC has determined that the rest will not be sufficient to mitigate his or her fatigue.

authority, remove him or herself from command, and allow one of the non-fatigued first officers to fly in the Captain's place, to the planned destination.

Section 117.5 places a joint responsibility for fitness for duty on the certificate holder and the flightcrew member. The flightcrew member must immediately notify the certificate holder if he or she is too fatigued to perform the assigned duties. No certificate holder may permit a flightcrew member to continue a flight duty period (FDP) if the flightcrew member has reported him or herself too fatigued to continue the assigned FDP.[3]

Schnaubelt addressed a set of circumstances in which due to the flight crew being augmented, a non-fatigued flightcrew member was able to replace the fatigued flightcrew member, who was then able to mitigate his or her fatigue by taking in-flight rest. However, in the requester's scenario, while the crew is augmented, the fatigued individual is the only designated PIC on the flight, and will not recover from fatigue even if able to take advantage of the in-flight rest prior to reaching the final destination. Under these facts, § 117.5(c) is clear that the certificate holder is required to immediately terminate the PIC's FDP when the PIC reports that he or she is too tired to safely perform assigned duties. Accordingly, if the PIC determines that he or she cannot safely continue to the intended destination, then the PIC must declare an emergency and land at the nearest suitable location.

While the FAA has not previously issued an interpretation on how to apply the requirement in § 117.5(c) to a situation where the only designated PIC becomes too fatigued to perform his or her duties while airborne, the FAA is aware that air carriers have developed policies and procedures to address situations where flightcrew members become unfit for duty while airborne. One option which would allow the flight to continue to the final destination under the given scenario would be for the certificate holder to have designated and assigned more than one PIC to the flight prior to takeoff. The FAA recognizes that air carriers may use their discretion in complying with this requirement.

[3] 14 CFR § 117.5(c); *Clarification of Flight, Duty, and Rest Requirements*, 78 FR 14166, 14169 (Mar. 5, 2013).

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

Garry L Kravit
[redacted]

September 2, 2018

Ms. Lorelei Peter
U.S Department of Transportation
Federal Aviation Administration
Office of the Chief Counsel
800 Independence Ave., S.W.
Washington, D 20591

Dear Ms. Peter,

In the spirit of the Small Business Regulatory Enforcement Fairness Act, I am requesting a legal interpretation as related to Fitness for duty under 14 C.F.R. 117.5. and the Schnaubelt interpretation dated April 4, 2016, I have a specific question about the interpretation that was not clear and I believe needs further clarification.

With regard to the interpretation prepared by Alex Zektser, item #5 Becoming unfit for duty while airborne, the interpretation letter states:

> *"For your final question, you ask what a flightcrew members should do if he discovers that he is unfit for duty while flying in an airborne aircraft. You ask whether the flight crewmember should declare an emergency and land at the nearest suitable airport or whether non-fatigued flightcrew members should continue the flight while the fatigued flightcrew members takes an inflight nap.*
>
> *If a flightcrew is augmented and there are non-fatigued flightcrew members who are able to take over a fatigued flightcrew member's duties, then they should do so to allow the fatigued flightcrew members to obtain inflight rest. If a flightcrew is unagumented then the decision of whether to conduct an emergency landing will depend on the flightcrew member's fatigue level. If the fatigued flightcrew member determines that he is too fatigued to safely land at the intended destination, then he should land the aircraft at the nearest suitable location to avoid accumulating additional amounts of fatigue while operating the aircraft."*

My question refers to an augmented flight. Suppose that the Captain of the flight, which is augmented with three first officers who are type-rated in the aircraft, takes the last break on a fourteen hour flight and is unable to get any rest for whatever reason and he/she becomes fatigued to the point of feeling like he/she would be unable to continue the flight to the destination. Further, assume that the aircraft is in such a position that it is an hour or two from

the destination, that there is not time for the Captain to attain rest that will allow him/her to feel rested enough to safely continue to the destination, and assume that there are suitable alternate airports between its current position and planned destination. Further assume that the three first officers are not fatigued. Because the interpretation letter does not address an augmented crew in a situation wherein the Captain becomes fatigued and there is **not** enough time to achieve rest to overcome the fatigue. If that is the case does FAA expect that:

A) The Captain will make a decision to land at the nearest suitable airport to avoid accumulating additional amounts of fatigue while operating the aircraft, or
B) That the Captain will exercise emergency authority, remove himself from command, and place one of the non-fatigued first officers in the Captain's seat so that the flight may continue and land with the first officer in the Captain's seat, so that the flight may continue to its planned destination?

Respectfully,



Garry L. Kravit

Attachments: Jeff Schnaubelt letter, January 06, 2016
Response to Schnaubelt, April 4, 2016