

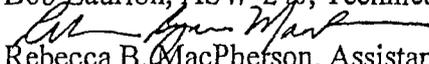


Federal Aviation Administration

Memorandum

Date: AUG 28 2012

To: Bob Laurion, ASW-240, Technical Support Branch, Air Carrier

From: 
Rebecca B. MacPherson, Assistant Chief Counsel, Regulations Division,
AGC-200

Prepared by: Robert H. Frenzel, Manager, Operations Law Branch, Regulations Division,
AGC-220

Subject: March 27, 2012 Legal Interpretation definition of "interruption to a flight"

This memorandum responds to your concerns about the definition of words "interruption to a flight" as they were defined in a March 27, 2012 Legal Interpretation issued by my office to Michael Pallatto in the Atlanta Certificate Management Office ("Pallatto"). The term is used in 14 C.F.R. § 121.705(a) to describe the type of mechanical difficulty that must be reported in the monthly Mechanical Interruption Summary Report required by § 121.705. The legal interpretation ended with a determination that "each interruption to a flight" means from takeoff to landing, or "during flight." Your concern is whether this was the original intent of the regulations as they were first written as part of CAR 40, 41 and 42, and recodified as § 121.705 in 1964.

As your memorandum points out, when § 121.705(a) was first published in 1964, it contained the phrase "each interruption to a scheduled flight." The word "scheduled" was subsequently removed from the regulation by Amendment 121-10 in 1965. In the preamble, the FAA stated:

Section 121.705(a) which is based on former CAR §§ 40.509, 41.509, and 42.509, requires the reporting of each interruption to a "scheduled" flight. Since this section is based on § 42.509 as well as the comparable Parts 40 and 41 requirements, the word "scheduled" is inappropriate and therefore is being deleted. (30 FR 10025, August 12, 1965)

The removal of the word "scheduled" forms the basis for your concern that § 121.705(a) should apply to interruptions to a flight due to mechanical difficulties while at the gate or while taxiing prior to takeoff, not just to interruptions that occur during flight. However, the removal of the word "scheduled" was appropriate as that word was not a part of CAR 42.509(a), since Supplemental operations did not have "scheduled" flights. So it appears on its face that the removal of the word was required since three different parts of the CAR were combined into the new part 121.

This reading of the removal of the word “scheduled” is also supported by the fact that, if we were to read the word “scheduled” under CAR 40 and 41 as originally requiring the reporting of interruptions at the gate or during taxi out to the runway, we would have to read CAR 42 as *not* requiring the same reporting, even though an on-demand Supplemental operation also has a scheduled departure time from a gate (or ramp) and taxies out to the departure runway in the same way as a scheduled flight.

You also reference an internal memorandum sent to Mike Zenkovich, Manager, Flight Standards Division, ASW-200 from Carol E. Giles, Manager, Aircraft Maintenance Division, AFS-300 on August 25, 2010. We cannot verify that AGC reviewed that memorandum prior to it being issued. The memorandum has several inconsistencies with prior legal interpretations, two of which are relevant to this discussion. In her reply to a question asking for a definition of “a flight,” Ms. Giles used the definition of “flight time” found in § 1.1; which is used to determine pilot time in relation to flight and duty regulations or in relation to the logging of pilot time. In a legal interpretation to Charles Lewis from Don Byrne, Assistant Chief Counsel for Regulations (Apr. 1997), addressing whether the use of a minimum equipment list under § 121.268 is applicable to discrepancies occurring after push-back, but prior to take-off, the FAA stated:

Note that the term “flight” as used in § 121.628(a)(2) is *not* synonymous with “flight time” (i.e., “block to block” time), but rather refers to when the aircraft has left the earth’s surface. *See, e.g.*, September 21, 1988 Letter re: Definition of Enroute, *supra.*, (“No matter how one defines “flight” the connotation is that the object must literally be flying through the air.”)(emphasis in original)

Thus, the term “flight” as used in § 121.705 could not be defined as “flight time.”

However, the term “flight time” is specifically used in § 121.563, which details the requirement for a pilot in command to enter into the maintenance log of the airplane all mechanical irregularities that occur during *flight time*. This stands in direct contrast to the use of only the word *flight* in § 121.705 for items that must be included in the monthly MISR. Both terms cannot have the same meaning as noted in the above Lewis Interpretation. As a result, a reading of those two sections together would conclude that:

- all mechanical irregularities that occur during flight time (“block to block” time) must appear in the airplane log (§ 121.563), and
- those mechanical irregularities in the log that caused an interruption during a flight (from take-off to landing) must be included in the monthly MISR (§ 121.705(a)).

The Giles memorandum answered a second question asking whether the interruption of a flight begins at or prior to the scheduled gate departure, relying on portions of FAA Order 8900.1, Volume 3, Chapter 32, Section 14, Paragraph 3-3432 (A)(1) and (2), which states in full:

1) Sections 121.563 and 135.63 require each certificate holder to provide an aircraft maintenance log for recording or deferring mechanical irregularities, as applicable, and the subsequent corrective actions performed. This log must be carried on board each aircraft.

2) The operator's manual should provide a method where the pilot in command (PIC) will inform the operator of mechanical irregularities or defects that appear before, during, and after a flight. The operator uses this information to let the maintenance personnel know of any suspected problems so that corrective action can be taken. This method of reporting is the basis for the required MISR.

The memorandum used portions of this guidance to establish a connection between the requirement to log mechanical irregularities under § 121.563 and the MISR required by § 121.705(a). The log book may well be the basis for the information necessary to complete the monthly MISR, but as the discussion above points out, there are two different meanings to the words "flight" and "flight time." Otherwise, the MISR would simply become a copy of the logbook.

As a result, we believe that the Pallatto interpretation correctly defines the word "flight" and makes the appropriate distinctions between the content of the reports required by § 121.705 and § 121.703. AFS-300 should issue a new memorandum and review the appropriate guidance material based upon this interpretation and the Pallatto interpretation.

If there is a policy reason to consider expanding what is required to be reported, then AFS-300 should evaluate whether a rulemaking effort is appropriate. We would note that any expansion of the reporting requirements may significantly increase the paperwork burden for certificate holders and require substantial benefits to outweigh the costs of such rulemaking.

We trust this explains the reasoning behind the Pallatto interpretation. If you should have any additional questions, you may contact my office at 202-267-3073,

June 2, 2000

James W. Johnson, Esq.
Supervisory Attorney
Air Line Pilots Association, Intl
535 Herndon Parkway
P.O. Box 1169
Herndon, Virginia 20172-1169

Dear Mr. Johnson:

This is in response to your letter of March 11, 1999, requesting a legal interpretation concerning the crediting of flight time for crewmember flight time limitations within the meaning of 14 C.F.R. §§ 1.1 and 121.471. We apologize for the delay in responding to you.

The facts that you provide are as follows. Sun Country Airlines (SCA) does not credit the taxi time a flight crew incurs when taxiing the aircraft under its own power from the gate to a de-icing pad. At the de-icing pad, the aircraft's engines are shut down and the aircraft is de-iced. The engines are restarted and the aircraft then proceeds to the active runway for departure. SCA credits the taxi time from the de-icing pad forward as flight time.

Your contention is that the entire time should be credited as flight time because when the aircraft leaves the gate, it is "with the intention of flight," and flight does follow the de-icing procedure. Our response, including a discussion of relevant authority, is set forth below.

Section 1.1 defines "flight time," in pertinent part, as pilot time that commences when an aircraft moves under its own power for the purpose of flight and ends when the aircraft comes to rest after landing. That section also provides that "operate" with respect to aircraft, means "use, cause to use or authorize to use aircraft, for the purpose...of air navigation including the piloting of aircraft...." In addition, section 121.629 (c) requires

¹ Section 121.629 provides, in part, as follows:

(c) Except as provided in paragraph (d) of this section, no person may dispatch, release, or take off an aircraft any time conditions are such that frost, ice, or snow may reasonably be expected to adhere to the aircraft, unless the certificate holder has an approved ground deicing/anti-icing program in its operations specifications and unless the dispatch, release, and takeoff comply with that program. The approved ground deicing/anti-icing program must include at least the following items:

(4) Aircraft deicing/anti-icing procedures and responsibilities, pre-takeoff check procedures and responsibilities, and pre-takeoff contamination check procedures and responsibilities.... [A

The conclusion of a prior FAA interpretation involving the issue of when flight time begins in the context where pushback procedures are utilized is also noteworthy. Specifically, we responded to the question whether the time spent in moving an airplane from the loading point to another point, not under the airplane's own power, but by means of a tractor or other conveyance that pulls the airplane into position to begin a flight, must be counted in calculating the duty aloft of flight crewmembers under section 121.471. See October 18, 1972 Memorandum to AGL-7, from Dewey R. Roark, Jr., Acting Associate General Counsel, Regulations and Codification Division (copy enclosed). We stated, as follows:

Since "duty aloft" was defined in old CAR § 40.5 in terms of flight time, and since "flight time," as defined in FAR § 1.1 is defined as the time from the moment the aircraft first moves under its own power for the purpose of flight until the moment it comes to rest at the next point of landing (block-to-block time), we conclude that the time spent towing the airplane prior to the moment it first moves under its own power for the purpose of flight is not flight time and, therefore, is not duty aloft for the purpose of § 121.471.

In our opinion, the logic and principles of the enforcement cases and our prior interpretation support the conclusion that FAA-required de-icing procedures are "preparatory to flight," and when the aircraft taxis under its own power from the gate to the de-icing pad, it is "for the purpose of flight." Thus, we further conclude that flight time starts at the moment when the aircraft taxis under its own power from the gate to the de-icing pad, and flight time continues until the moment the aircraft comes to rest at the next point of landing. And, all of that time is flight time, and must be credited for purposes of the flight time limitations of section 121.471.

This opinion was prepared by Constance M. Subadan, Attorney, Operations Law Branch, and Joseph A. Conte, Manager. It has been coordinated with the Director of the Flight Standards Service and the Air Transportation Division of the Flight Standards Service at FAA Headquarters. We hope it has satisfactorily answered your inquiry.

Sincerely,

Donald P. Byrne
Assistant Chief
Counsel

DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

WASHINGTON, D.C. 20591

DATE: 18 OCT 1972

IN REPLY
REFER TO: AGC-20



SUBJECT: Interpretation of § 121.471 and § 1.1 of the Federal Aviation Regulations

TO: AGL-7
Attention: Mr. Pierre de Vincentis

It is our understanding that it has been the practice of Northwest to maneuver its airplanes into position for beginning a flight by moving them from the loading point to another point not under the airplane's own power but by means of a conveyance that pulls the airplane. You ask whether the time spent in moving the airplane by means of the tractor or other conveyance must be counted in calculating the duty aloft of flight crewmembers for purposes of § 121.471. We are also in receipt of a copy of the letter of 24 July 1972, from Northwest Airlines, Inc., that prompted your inquiry.

Since "duty aloft" was defined in old CAR § 40.5 in terms of flight time, and since "flight time", as defined in FAR § 1.1 is defined as the time from the moment the aircraft first moves under its own power for the purpose of flight until the moment it comes to rest at the next point of landing (block-to-block time), we conclude that the time spent towing the airplane prior to the moment it first moves under its own power for the purpose of flight is not flight time and, therefore, is not duty aloft for the purpose of § 121.471.

We are enclosing two interpretations that include discussions as to what constitutes "flight time" and "duty aloft." We trust that this responds to your request.

A handwritten signature in cursive script that reads "Dewey R. Roark, Jr.".

DEWEY R. ROARK, JR.
Acting Associate General Counsel
Regulations and Codification Division

Enclosures (2)



U.S. Department
of Transportation

Federal Aviation
Administration
MAY 28 1992

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

James W. Johnson
Staff Attorney
Air Line Pilots Association
535 Herndon Parkway, P.O. Box 1169
Herndon, Virginia 22070

Dear Mr. Johnson:

This is in response to your March 6, 1991, request for interpretation of the meaning of "flight time" as defined in the Federal Aviation Regulations (FAR) Section 1.1. We have considered your question in the context of the flight time, duty time, and rest regulations.

The additional information you provided in your most recent letter dated May 7, 1992, has been noted. You stated that "it is your understanding that some carriers, while paying the pilots for taxi time in situations where they depart the gate with the intention of flight but return to the gate because of mechanical problems or company orders, do not consider that taxi time as 'flight time'."

Section 1.1 of the FAR states that "flight time is the time from the moment the airplane first moves under its own power for the purpose of flight until it comes to rest at the next point of landing ("block-to-block" time.)

We are not aware of any prior interpretations on this point. It is our current position that this definition, as drafted, contemplates the usual taxi-flight-taxi situation. If the definition is to include taxi time which is not followed or preceded in an unbroken sequence by flight, then we believe the rule should be amended. As you know, Part 11 prescribes procedures for the filing of petitions for rulemaking which you may follow if you wish to have the rule amended.

We trust that we have answered your question.

Sincerely,

for Richard C. Berte

Donald P. Byrne
Assistant Chief Counsel
Regulations and Enforcement Division

RECEIVED
MAY 1 1992

SCANNED



AIR LINE PILOTS ASSOCIATION

535 HERNDON PARKWAY □ P.O. BOX 1169 □ HERNDON, VIRGINIA 22070 □ (703) 689-2270

May 7, 1992

Richard Beitel, Esq.
Chief, Operations Law Branch
Federal Aviation Administration
800 Independence Avenue, S.W.
Washington, DC 20591

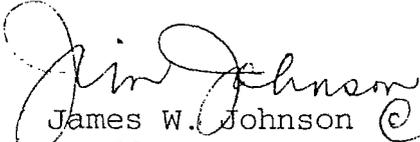
Dear Mr. Beitel:

This is in response to your letter of May 5. We appreciate your advising us that you expect to respond within 90 days to our March 6, 1991 request for interpretation regarding the meaning of "flight time" as defined in FAR 1.1.

In response to your request for additional information, it is my understanding that some carriers, while paying the pilots for taxi time in situations where they depart the gate with the intention of flight but return to the gate because of mechanical problems or company orders, do not consider that taxi time as "flight time."

I hope this information is helpful to you in resolving this question.

Sincerely,


James W. Johnson ©
Staff Attorney

JWJ:avt



AIR LINE PILOTS ASSOCIATION

535 HERNDON PARKWAY □ P.O. BOX 1169 □ HERNDON, VIRGINIA 22070 □ (703) 689-2270

April 28, 1992

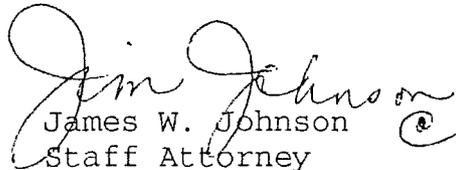
Richard Beitel, Esq.
Chief, Operations Law Branch
Federal Aviation Administration
800 Independence Avenue, S.W.
Washington, DC 20591

Dear Mr. Beitel:

On March 6, 1991 I requested an interpretation of the meaning of "flight time" as defined by FAR 1.1. A copy of my request is enclosed for your easy reference. You circulated that request for comment on April 19, 1991, allowing 20 days to respond. We are anxiously awaiting your interpretation; and since one year has passed, we are hopeful we can expect it soon.

Would you please advise me of the status of this request.

Sincerely,


James W. Johnson
Staff Attorney

JWJ:avt
Enclosure



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

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

MAY 5 1991

James W. Johnson
Staff Attorney
Air Line Pilots Association
535 Herndon Parkway, P.O. Box 1169
Herndon, Virginia 22070

Dear Mr. Johnson:

This is in response to your letter of April 28, 1992, regarding your March 6, 1991 request for interpretation of the meaning of "flight time" as defined in FAR 1.1.

We regret that due to staffing shortages and heavy workload we have been unable to answer your request for interpretation. We hope to be able to answer it in the next 90 days. You should know that although we circulated this interpretation request for comment, we received few responses.

In reviewing the request for interpretation, we note a question, the answer to which would aid us in responding to the request. Our question is, what is the current practice of Parts 121 and 135 air carriers regarding the situation you pose in your request for interpretation.

We appreciate your patience and we look forward to hearing from you regarding our question.

Sincerely

Richard C. Beitel
Manager, Operations Law Branch
Office of the Chief Counsel

MAY - 7 1992



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

JB

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

APR 19 1991

Addressees:
(See attached list)

Ladies/Gentlemen:

The enclosed was submitted to the Federal Aviation Administration for an interpretation of Part 121 of the Federal Aviation Regulations (FAR). It is being sent to your organization for comment in accordance with procedures used by the Federal Aviation Administration to solicit information from interested parties on interpretations of the flight and duty time regulations of the FAR (See 45 FR 30424, May 8, 1980 (enclosed)).

The specific question(s) and supplemental information are set out in a letter, a copy of which is enclosed.

Your comments are invited on the question(s) for interpretation. Commenters should supply the information set forth in the FAA's established comment procedures, referenced above, and should send copies of their comments to the other interested parties listed. In particular, you should furnish copies of interpretations in your files which you believe may be dispositive of the questions raised by the interpretation requests. Mere statements of position which are not accompanied by analysis or by copies of interpretations or other supporting documents will be of little assistance to the FAA. All comments will be considered in preparing our interpretation.

You should send us your comments within 20 calendar days of receipt of this letter. In your reply letter, please reference control number 200910063.

Sincerely,

Richard C. Beitel
Manager, Operations Law Branch
Regulations and Enforcement Division

Enclosures

RECEIVED

APR 23 1991

Allied Pilots Association
P.O. Box 5524
Arlington, TX 76011

Regional Airline Association
Suite 700
1101 Connecticut Avenue, N.W.
Washington, DC 20036

Mr. Edward J. Driscoll
President and Chief Executive Officer
National Air Carrier Association
Suite 710
1730 M Street, N.W.
Washington, DC 20036

Mr. Jerry L. Austin
Flight Engineer International Association
905 16th Street, N.W.
Washington, DC 20006

Mr. Walter Coleman
Air Transport Association
1709 New York Avenue, N.W.
Washington, DC 20006

Senior Vice President
Flight Operations
United Air Lines
P.O. Box 66100
Chicago, IL 60666

President
National Air Taxi Association
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Alexandria, VA 22302

James W. Johnson
ALPA
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General Counsel
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421 Aviation Way
Frederick, MD 21701



AIR LINE PILOTS ASSOCIATION

535 HERNDON PARKWAY □ P.O. BOX 1169 □ HERNDON, VIRGINIA 22070 □ (703) 689-2270

March 6, 1991

Richard Beitel, Esq.
Chief, Operations Law Branch
Federal Aviation Administration
800 Independence Avenue, S.W.
Washington, DC 20591

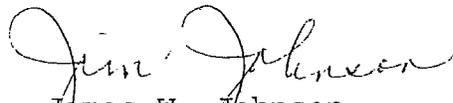
Dear Mr. Beitel:

This is to request an interpretation of the meaning of the term "Flight Time" as defined by FAR 1.1. This request is based upon a practice at Henson Airlines where pilots depart the gate and taxi to the active runway with the intention of flight. However, before takeoff, either a mechanical problem arises or the company calls them back to the gate for some reason. In most instances after a delay for repairs or other problems are resolved the flight operates as scheduled.

The question is whether the time the crew operated the aircraft with the intention of flight but did not takeoff is considered "flight time" and whether such time should be included for determining compliance with the flight limitation regulations.

We would appreciate your prompt response.

Sincerely,


James W. Johnson
Staff Attorney

JWJ:avt

AIR LINE PILOTS ASSOCIATION

DATE: March 4, 1991
TO: ~~Jim Johnson, Legal~~ BE
FROM: Bill Edmunds, Staff Engineer, Engineering & Air Safety
SUBJECT: Flight Time at Henson

As I mentioned to you, enclosed is a copy of the Henson memo to pilots regarding "Non-Airborne Block." According to the memo, Henson pilots who taxi their aircraft to fly but abort prior to takeoff are not to log the taxi time as flight time. From the FAR definition of flight time, this appears to be a clear violation of the rule. Do you have anything in writing which will address this issue?

The Henson MEC has talked to the company regarding this and the company is adamant in their position. I don't know if they have talked to the Henson POI.

If we don't have anything in writing, do you have any suggestions on how to get something from the FAA in an expedited manner which will help the pilots?

BE:jeg
enclosure

USAir
EXPRESS

ATTN: Joe Schwind
Joe Tolbert

Operated by
Henson Aviation, Inc.
Salisbury/Wicomico Airport
Salisbury, MD 21801
Phone: 301.742.2996

TO: The Pilots
FROM: John Buchanan & Dawn Stofko
DATE: February 22, 1991
SUBJECT: Non-Airborne Block

Occasionally your aircraft will pull off the gate with the intent to fly a flight and for some reason, usually weather or maintenance, you are asked to return to your gate. When this "non-airborne block" occurs there are a few things you must remember:

- 1) Do not add this time in with flight or block time on the flight log.
- 2) Do not add this time in with your Rev. Bk. on your FL-14.
- 3) Do not add this time in with your 30/7 calculations.
- 4) Do add an entry to your Pay Credit Adjustment Sheet to receive compensation for this time.

Please pay close attention to the example Flight Log and Pay Credit Sheet below. Your help in doing this accurately is greatly appreciated.

7831

HENSON AVIATION FLIGHT LOG

FLIGHT NO.	TYPE	CLASS	DATE	TIME	STATUS	REASON
4579	PF	PF	02	10		
4579	PF	PF	02	12		

FLIGHT NO.	TYPE	CLASS	DATE	TIME	STATUS	REASON
4579	PF	PF	02	10		
4579	PF	PF	02	12		

7831

FLIGHT NO.	TYPE	CLASS	DATE	TIME	STATUS	REASON
4579	PF	PF	02	10		
4579	PF	PF	02	12		

USAir
EXPRESS

FLIGHT CREW PAY CREDIT ADJUSTMENT SHEET

Emp. No. _____ Name: _____ Pos: _____ Date: _____ Month: _____

Reason for Adjustment	Estimated Pay Credit	OFFICE USE ONLY	
		Calculation	Date Adjust To
NON-AIRBORNE BLOCK, FLIGHT 4579 PFH-PHF, 24 MINUTES, RETURNED TO GATE DUE TO WEATHER.			

DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

WASHINGTON, D.C. 20591



25 SEP 1979

RECEIVED
DCA
LEGAL DEPT.
SEP 27 1979

Mr. John C. Lenahan, Esq.
Legal Department
Air Line Pilots Association
1625 Massachusetts Avenue, N.W.
Washington, DC 20036

Dear Mr. Lenahan:

In your letter of July 31, 1979, you referred to Mr. Eisner's letter of July 7, 1977, and requested an interpretation of section 121.471(b) of the Federal Aviation Regulations with respect to a Northwest Airlines flight from Breswick in Scandanavia to Minneapolis with a stop at Boston. You asked two questions as follows:

- (1) Does the term "duty aloft" used in section 121.471(b) mean "off to on" time, or "block to block" time?
- (2) Does section 121.471(b) allow one flight crew to be scheduled for the following flight:

<u>Flt.</u>	<u>Points</u>	<u>Dept.*</u>	<u>Arvl.*</u>	<u>Block-to-Block</u>
35	PIQ-BOS	1450	1620	6:30
	BOS-MSP	1830	2015	2:45
			Total	9:15

*Local times.

With respect to your first question, the term "duty aloft" means work as a flight crewmember during flight time. "Flight time" is defined in Part 1 as follows:

'"Flight time" means the time from the moment the aircraft first moves under its own power for the purpose of flight until the moment it comes to rest at the next point of landing. ("Block-to-block" time).'

We think it is clear from the above discussion that "duty aloft", as used in section 121.471(b), means block-to-block time.

With regard to your second question, it appears that Northwest Airlines has certificate authority to fly from Breswick to Boston, enplane and deplane passengers, and then fly to Minneapolis.

SCANNED

Page 2

Under these circumstances, although the points served differ from those which were the subject of our July 7, 1977, interpretation involving the same carrier, the same principles apply. The flight from Breswick to Boston would be subject to the flag air carrier flight time limitations and the domestic flight time limitations of section 121.471 would apply to the Boston-Minneapolis leg. Accordingly, the flight crewmembers could not be scheduled for the Boston-Minneapolis leg because they would exceed eight hours of duty aloft without a rest period.

We hope these interpretations adequately respond to your inquiry.

Sincerely,

A handwritten signature in cursive script that reads "Edward P. Faberman".

EDWARD P. FABERMAN
Acting Assistant Chief Counsel
Regulations & Enforcement Division

December 9, 1975

Captain B. R. Reeves

Dear Captain Reeves:

This is in reply to your letter of August 14, 19975, asking two questions concerning the flight time limitations that are set forth in Section 121.471 of the Federal Aviation Regulations (FARs).

Specifically, you ask for responses to the following questions:

1. Is the definition of the term "flight" limited to scheduled nonstop flights, that is, a single departure and landing? Further, does the term "series of flights" mean a scheduled flight from point of origin to final destination, with intermediate stops, that is, more than one takeoff and landing?

2. With respect to a portion of the schedule set forth in your Document #1, you ask, in the event that actual duty aloft after completion of Flight Number 727 exceeds 8 hours, can the pilot originate and fly Flight Number 624?

Our answers to your questions are as follows:

1. The term "flight" is not defined in the FARs. The term "flight time", as defined in FAR Section 1.1, means "the time from the moment the aircraft first moves under its own power for the purpose of flight until the moment it comes to rest at the next point of landing." ("Block to block" time.) As used in Section 121.471, flight time is synonymous with "duty aloft." The term "series of flights" that is used in Section 121.471(c) has been interpreted by the FAA to mean a predetermined combination of flights scheduled to be initiated and completed within any period of 24 consecutive hours.

2. With respect to your second question, the regulation that applies to the scheduling example that you present is Section 121.471(b) and (c) which states:

Section 121.471(b) - No domestic air carrier may schedule a flight crewmember for duty aloft for more than eight hours during any 24 consecutive hours without a rest period at or before the end of that eight hours, equal to twice the number of hours of duty aloft since the last rest period, but not less than 8 hours.

Section 121.471(c) - Each flight crewmember who has been on duty aloft for more than eight hours during any 24 consecutive hours must be given, upon completion of his assigned flight or series of flights, at least 16 hours of rest before being assigned to any duty with the air carrier.

In the light of Section 121.471(b) and (c), our analysis of the schedule you have presented is as follows: The twenty four consecutive hour period that begins at 13:35 with Flight number 144 and extends to 13:34, which occurs during Flight Number 624, consists of 8:29 hours of scheduled duty aloft. It must be

noted that, after Flight Number 144 which consists of 4:38 hours of duty aloft, a rest period of 11:01 hours, more than double the duty aloft time for Flight Number 144, was afforded the flight crew. The 11:01 hour rest period after duty of 4:38 hours satisfies that portion of section 121.471(b) which calls for a rest period "at or before the end of eight hours" duty aloft; however, if the complete pattern from 13:35 to 13:34, twenty four hours later, is said to represent a "series of flights", then the 16 hour rest period that is required by Section 121.471(c) should have been scheduled to occur at the end of the 24 hour period, that is, at 13:34 or before.

For many years the FAA has interpreted the term "series of flights" in FAR Section 121.471(c) to mean a predetermined combination of flights scheduled to be initiated and completed within a 24 hour period. As we currently interpret FAR 121.471(c), if a flight crewmember has been on duty aloft for more than eight hours during any 24 consecutive hours (either because he was scheduled for more than eight hours under FAR Section 121.471(b) or because due to circumstances beyond the control of the air carrier, he was actually on duty aloft for more than eight hours during 24, even though scheduled for eight hours or less) he must be given 16 hours of rest when he completes the scheduled series of flights.

With respect to the problem of flight time limitations in general, we wish to point out that proposals were made in the FAA's First Biennial Operations Review to amend the flight time limitations sections. A Notice of Availability of the Compilation of Proposals and Invitation to Submit Comments was published in the Federal Register June 4, 1975 (40 FR 24041). Those recommendations which begin on page 743 of the Compilation of Proposals will, we believe, be of interest to you.

We trust that this information responds to your request.

Sincerely,

/s/

DEWEY R. ROARK, JR.

Assistant Chief Counsel

Regulations and Codification Division

Office of the Chief Counsel

May 7, 1975

Mr. P. A. Brennaman

Dear Mr. Brennaman:

This is in response to your letters of February 3, 1975, and March 4, 1975, addressed to Mr. Marvin H. Law of our Minneapolis air Carrier District Office, in which you pose certain questions concerning the application of Section 121.471 (flight time limitations).

Your first inquiry is whether the time required for a crew to perform preflight (1 hour) and post flight (15 minutes) duties is to be credited toward any required rest period [Section 121.471(e)]. The answer is "no" and that time should be excluded from any required period of rest. Our Chief Counsel has consistently construed "duty" to mean actual work for an air carrier or present responsibility for work should the occasion arise; "rest" means freedom from any restraint. Therefore, the crew's performance of pre and post flight duty is "duty" within the meaning of Section 121.471(e).

Next, you inquire concerning the applicability of Section 121.471(b) and (c). The laboratory example you pose for consideration is:

A to B - 4 hours duty aloft

At B - 11 hours "rest - block to block"

B to C - 7 1/2 hours duty aloft

At C - 15 hours "rest - block to block".

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Duty aloft time means flight time which is block to block time (Section 1.1); however, what you refer to as "rest - block to block" may not necessarily be rest time. If we apply the 1 hour preflight and 15 minutes post flight time to the above, the 11 hours "block to block" would not all be legal rest time. Applying the "8 in 24" [Section 121.471(b)], the more than 8 hour duty aloft assignment is broken by adequate rest period. However, if this pattern is said to represent a "series of flights", the 15 hours at C is not adequate. Section 121.471(c) requires at least 16 hours of rest before the flight crewmember is assigned to any further duty with the carrier. As you know, what constitutes a "series of flights" has been a problem of interpretation for many years. Our Chief Counsel has consistently held that the term means a predetermined schedule of flights to be initiated and terminated within any period of 24

consecutive hours. As you also know, a moratorium has been in effect for some time which has the effect of staying any literal application of the "series of flights" rule if, in the judgment of the Federal Aviation Administration, the crew scheduling otherwise adequately assures safety and lack of fatigue. We are unaware of the precise schedules of Northwest Airlines that have been reviewed by our local air carrier offices.

Applying the above flight schedules submitted with your March 4th letter, it appears that both patterns 13 and 18 contain schedules which violate Section 121.471(b). In patten 13, trip numbers 154, 70, and 307 comprise a 24 hour period with duty aloft of 8:16 (1300 to 1107). Since this is more than 8 in 24, the 8 must be broken by rest equal to at least twice the previous duty aloft. the 11:21 layover after trip number 70 is not adequate if the 1 hour preflight and 15 minutes post flight duties were performed, inasmuch as 10:38 hours of rest were required ($2 * 5:19 - 10:38 + 1:15 = 11:53$). Similarly, in pattern 18, trip number 166, 230, 203, and 434 comprise a 24 hour period with duty aloft of 8:47 (1310 to 1214). the layover after trip number 230 is only 11:36. Considering the 1 + 15 (pre and post time), the rest period is only 10:21 when 11:02 was required ($2 * 5:31$).

The 16 hour rule of Section 121.471(c) should be automatically applied to the schedules following each 24 hour segment in which the 8 in 24 is exceeded.

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We trust the foregoing satisfies your request. If we can be of further assistance, please advise.

Very truly yours,

/s/

HAYS V. BETTINGER

Associate Regional Counsel

February 18, 2011

{New-2012-06}

Mr. Kevin McCabe

Local 1224 Steward

Atlas Pilots Scheduling Committee Chairman

1850 Parkway Drive

Anchorage, AK 99504

Dear Mr. McCabe:

In a letter dated December 1, 2009 (attached to an e-mail dated March 17, 2010) you requested legal interpretations in response to a number of issues related to flight time limitations for flag operations. Specifically, you sought an interpretation as to whether the relief from the rest requirement in 14 C.F.R. § 121.485(b), granted by Exemption 4317L was determined to be applicable based on scheduled time or dispatch time. You also sought answers to questions regarding deadhead time and responsibility for compliance with 14 C.F.R. § 121.483.

We apologize for the delay in responding to your request. With this letter we are providing a partial response to your requests, responding to the questions regarding deadhead time and responsibility for compliance with 14 C.F.R. § 121.483. We will continue to examine your questions regarding Exemption 4317L.

In your letter, you provided an example of a flightcrew member schedule, about which you ask a series of questions. For purposes of this interpretation, we have assumed that the hours of flight, rest and deadhead times you described in the sample schedule represent scheduled blocks. We have also assumed that the blocks of time described represent consecutive blocks. Based on these assumptions, the crewmember schedule is as follows:

Block 1: 12:40 hours flight time

Block 2: 12 hours rest

Block 3: 8 hours flight time

Block 4: 11 hours rest

Block 5: 2 hours deadhead

Block 6: 18 hours rest

Your questions involve the application of 14 C.F.R. § 121.483(b) to this schedule. 14 C.F.R. § 121.483(b) applies to air carriers conducting flag operations using an airplane that has a crew of two pilots and one

additional crewmember. The certificate holder must provide a pilot who has flown 20 or more hours during any 48 consecutive hours or 24 or more hours during any 72 consecutive hours, with 18 hours of rest before that pilot can be assigned to any duty with the air carrier. See 14 C.F.R. § 121.483(b). In addition, a pilot must be given at least 24 consecutive hours of rest during any seven consecutive days. See 14 C.F.R. § 121.483(b).

Specifically, you ask whether the deadhead leg required by the certificate holder in the above schedule, constitutes duty and whether the 18 hours of rest required by § 121.483(b) must be taken prior to the deadhead leg or prior to the next "flight deck duty". For the reasons stated below the scenario you present complies with § 121.483(b).

The scenario you present involves an operation conducted under § 121.483 which establishes flight time limitations for flag operations with two pilots and one additional crewmember. Neither §§ 121.483(a) or (b) use the term, "flight deck duty" nor do they set limits on flight deck duty. 1 Cf. 14 C.F.R. §§ 121.507 and 121.509 (establishing limitations on flight deck duty for pilots in supplemental operations). Specifically, § 121.483(b) limits pilots' "block to block time" or "time aloft" in that if a pilot "has flown 20 or more hours during any 48 consecutive hours or 24 or more hours during any 72 consecutive hours, he must be given at least 18 hours of rest. . . ." (emphasis added). The agency has interpreted the terms "flight time" and "flown" as equivalent to total "block to block time" or "time aloft". See Legal Interpretation 1989-1; Legal Interpretation 1997-20. Consequently, § 121.483(b) provides a flight time limitation, rather than a duty time limitation. See Legal Interpretation 1979-42; Legal Interpretation 1977-67. The provision can only be violated when the pilot acts as an operating flightcrew member. See *id.*

Thus, the agency allows air carriers to assign a pilot a deadhead leg at the end of a duty period before providing the rest required by § 121.483(b) because the pilot is not assigned as a flightcrew member in this instance. See Legal Interpretation 1979-42; Legal Interpretation 1977-67. This approach is consistent with the intent of the rule - to prevent a flightcrew member's fatigue from adversely affecting the safety of flight. See Legal Interpretation 1979-66; 1977-67. "Requiring the pilot to deadhead prior to the start of any rest period specified in Section 121.483(b) has no effect on safety since the pilot becomes a passenger and in no way acts as a flight crewmember while engaged in deadhead transportation." See Legal Interpretation 1979-42. See also Legal Interpretation to Captain Michael A. Citrano, Jr. from Rebecca B. MacPherson (December 15, 2005) (stating that a pilot in deadhead transportation is not performing flight time); Legal Interpretation 1977-76. But, as mentioned above, a certificate holder must provide the pilot with the rest required by §121.483(b) before assigning any further duty to the pilot. We do caution however, that in determining whether a pilot has been provided the appropriate amount of rest, time spent in deadhead transportation is not considered part of the rest period. See 14 C.F.R. §121.491. See also Legal Interpretation 1997-4 (explaining that" ... [W]hen a crewmember is in deadhead transportation, he is not relieved from all duty with an air carrier, whether he travels on a company plane or on another carrier. The FAA policy is that deadhead travel does include a 'present responsibility for work if the occasion should arise' and thus, cannot be considered part of a rest period.")

You also ask whether compliance with the regulation is a joint responsibility between the certificate holder and the crewmember or whether responsibility for compliance rests completely with one of the parties. Given the context, we are assuming that your question in this instance refers to compliance with § 121.483. Compliance with this regulation is a joint responsibility. The scheduling burden rests with the air carrier and therefore the carrier is responsible for creating schedules that comply with the regulation. See §§ 121.483(a) and 121.483(b); Legal Interpretation 1991-29. In that §121.483(c) specifically states, "No pilot may fly ...," the pilot also has a responsibility to refrain from flight duty in violation of the duty limits of the regulation.

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 Sara Mikolop, Attorney, Operations Law Branch of the Regulations Division of the Office of the Chief Counsel, and coordinated with the Air Transportation Division of the Flight Standards Service.

Sincerely,

Rebecca B. MacPherson

Assistant Chief Counsel for Regulations, AGC-200

