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**Federal Aviation
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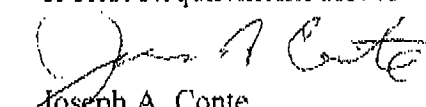
Memorandum

Subject Miscellaneous Flight Time Limitations
& Rest Requirements Issues

Date:

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From:


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Reply to
Attn of:

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The following discussion addresses three miscellaneous issues relating to the flight time limitations and rest requirements provisions of 14 C.F.R. § 121.471--issues on which some people might misstate the regulation or might assert confusion about the meaning of the regulation.

The following discussion should help FAA Inspectors to succinctly respond to misstatements or assertions of confusion.

1. The Misleading Cliché--"Legal to Start, Legal to Finish"

Discussion

Some people have tried to summarize and simplify the regulatory exception to flight time limitations under § 121.471(g) with the dangerously misleading and overbroad cliché--"legal to start, legal to finish." In fact, some have tried to use the cliché to justify keeping pilots on flight duty indefinitely despite the rest requirements. The Agency has previously noted that it does not subscribe to the "legal to start, legal to finish" cliché. See Feb. 9, 1993 Letter to David S. Parent from Donald P. Byrne, Assistant Chief Counsel, Regulations and Enforcement Division [1993-3]. The conclusions of other FAA interpretations also constitute a rejection of the cliché. See Sept. 24, 1998 Letter to James W. Johnson from Donald P. Byrne, Assistant Chief Counsel, Regulations Division (both the air carrier and the crewmembers were potentially in violation of § 121.471(b)(1) because they knew, prior to departure, that the scheduled arrival time of the last flight segment (of several flight segments) would force the crew to begin its compensatory rest period later than 24 hours after the commencement of the reduced rest period, and thus

the requirements of the § 121.471(c)(1) exception were not met)[1998-7]; Nov. 20, 2000 Letter to Captain Richard D. Rubin from James W. Whitlow, Deputy Chief Counsel (lookback rest is computed using actual expected flight time and taxi-in time based on the specific conditions that exist on the day to determine the scheduled arrival time for purposes of determining whether a flight should be commenced) [2000-7]; and (Air Transp. Ass'n of America v. FAA, No. 01-1027, 2002 U.S. App. LEXIS 10270, at *23-24 (D.C. Cir. May 31, 2002)(when the FAA declared in the Sept. 24, 1998 interpretation that both the carrier and its crewmembers would violate § 121.471 if they knew prior to departure that due to a ground hold for weather the scheduled arrival time of the last flight segment would force the crew to begin its compensatory rest period later than 24 hours after the commencement of the reduced rest period, the FAA's conclusion was based on the actual expected arrival time calculated prior to departure and is therefore consistent with its approach in the Whitlow Letter).

The "legal to start, legal to finish" cliché does not accurately summarize legal exceptions to flight time limitations. Furthermore, that cliché does not accurately reflect that the minimum lookback reduced rest periods (at least 8 hours during the 24 consecutive hours preceding the scheduled completion of any flight segment) and the minimum compensatory rest periods (at least 10 hours that must begin no later than 24 hours after the commencement of the reduced rest period), under § 121.471(c), are "absolute and may not be further reduced under any circumstances." *See* 50 Fed. Reg. 29,306, at 29,312 (July 18, 1985).

It is important to reemphasize the following two points in regard to this misleading cliché. First, in regard to flight time limitations, if circumstances exist that are actually within the air carrier's control, and they cause more flight time than originally and "legally" planned, neither the air carrier nor the pilot is "legal to finish" flight legs that would exceed the regulatory flight time limits. *See* §§ 121.471(a)(4) and 121.471(g). Second, despite the limiting language in § 121.471(g), that allows only for flight time limits to be exceeded in circumstances beyond the control of the certificate holder (*see Air Transp. Ass'n of America v. FAA* at *5 n.3), some have inappropriately used the cliché to ignore mandatory rest requirements. Thus, the cliché is dangerous because it might leave the mistaken impression and suggest the illogical conclusion that simply because a pilot had the minimum required rest at the beginning of a series of flights, he would be "legal to finish" that series of flights, even if lookback reduced rest requirements are not met and even if the mandatory beginning of compensatory rest is delayed. The FAA issued rest requirements to fulfill its statutory duty to "set maximum hours or periods of service" for flight crewmembers. *See* 49 U.S.C. § 44701(a)(4). The lookback reduced rest minimum of at least 8 hours in the preceding 24 hours and the on-time beginning of compensatory rest in essence limit the pilot's duty period. As a matter of enforcement policy, the FAA will not charge a violation of the rest requirements only in the very limited circumstances where a delay, outside the control of the certificate holder, first manifests itself after the flight is in the air, and where the full compensatory rest is given at the completion of that flight segment. *See e.g.*, Sept. 24, 1998 Letter to James W. Johnson.

2. Prospective

Discussion

Some people in industry seem to have incorrectly applied FAA descriptions of the nature of a rest period (as reflected in the phrase "determined prospectively") to when the rest period was given. In other words, they have cited FAA statements about one of the necessary conditions for a period to be considered a rest period and incorrectly applied that condition to the issue of when (e.g., how recently, in the case of lookback rest) the rest period was given. According to them, the text and purpose of § 121.471 as well as the FAA's previous statements that § 121.471 is prospective in application mean both that a scheduled rest period is a rest period that has been determined prospectively (i.e., set up in advance under § 121.471(b)) and that the air carrier is not required to find that the pilot recently received lookback rest (i.e., at least 8 hours of rest within the previous 24 hours). They argue that § 121.471 only requires that a rest period be properly scheduled. They say that a rest period is lawfully scheduled and the rest period regulations are not violated if: 1) the rest period was legal at the time it was first scheduled, and 2) circumstances beyond the control of the air carrier result in an inability to meet minimum lookback rest requirements or the on-time receipt of compensatory rest. The United States Court of Appeals for the D.C. Circuit and the FAA have rejected that argument. *See Air Transp. Ass'n of America v. FAA*, No. 01-1027, 2002 U.S. App. LEXIS 10270, at *9-14, 22 n.11 ("this argument ignores the structure of the regulation itself...[m]oreover, ATA's prospective-only view of "scheduled" is inconsistent with the ordinary meaning of the word...[f]urther the Whitlow Letter is not inconsistent with the purpose of the 1985 amendment to FAR 121.471...[n]or does the fact that the FAA previously referred to the regulation as 'prospective in application' suggest any inconsistency with the Whitlow Letter").

a. What Is the Nature of a Rest Period? ✓

In regard to the rest requirements, the FAA uses the word "prospective" or the phrase "determined prospectively" to describe the nature of a rest period. The FAA has consistently stated that there are 3 necessary conditions for a period to qualify as a rest period. *See e.g.*, June 25, 1996 Letter to R.C. McCormick from Donald P. Byrne, Assistant Chief Counsel, Regulations Division (the FAA has consistently interpreted the rest required by § 121.471 as: 1) a continuous period of time, 2) determined prospectively, and 3) during which the crewmember is free from all restraint by the certificate holder, including freedom from work or freedom from present responsibility for work should the occasion arise) [1996-6]. "Determined prospectively" means that a rest period must be disclosed to the pilot in advance, i.e., the flight crewmember is told in advance of the rest period when the rest period will take place. Disagreements about the issue of whether a period was a rest period most often arise in reserve pilot situations. It is in the reserve pilot situations that the FAA frequently discusses the "determined prospectively" condition for qualifying a period as a rest period. The FAA uses the "determined prospectively" concept to convey the idea that a period would not be

considered a rest period if the crewmember only discovered, afterwards, that such a period was going to be considered the rest period. Being informed, afterwards, and thus surprised, that a past period would be considered a rest period, would undermine the very safety purpose in the domestic rules for having a rest period, namely-- the flight crewmember has the opportunity to plan for and take advantage of actual pre-work sleep.

**b. When Must the Rest Period Occur and
What Is the Required Duration for the Rest Period?**

A person's knowledge about the nature of a rest period has to be joined with a recognition of when the rest period must occur and with a recognition of the minimum duration required for the particular rest period. If the air carrier and the flight crewmember can look back 24 hours from the actual expected completion of the next flight segment (including taxi-in time) and find at least 9 hours of rest, then that satisfies both how recently the previous full lookback rest period occurred and the duration requirements for that lookback rest. See § 121.471(b)(1). If, for example, looking back 24 hours from the actual expected completion of the flight segment (including taxi-in time), one can find more than 8 but less than 9 hours of rest, then in terms of the recency of the receipt of the reduced lookback rest period and in terms of the minimum amount of reduced lookback rest, the rest regulations are not violated. See § 121.471(c)(1). However, when the lookback rest is reduced, on-time receipt of the full compensatory rest is required. See § 121.471(c)(1). All of these 3 rest periods-- full lookback rest, reduced lookback rest, and compensatory rest-- must also satisfy the 3 conditions necessary for a period to be considered a rest period: 1) a continuous period of time, 2) determined prospectively, and 3) during which the crewmember is free from all restraint by the certificate holder, including freedom from work or freedom from present responsibility for work should the occasion arise.

3. On-Time Receipt of Compensatory Rest

Discussion

Some people have advanced the view that the phrase "next (required) (scheduled) rest period," in the context of receipt of compensatory rest, does not mean the rest period that must immediately follow the termination of a flight for which looking back 24 hours one cannot find that the pilot actually had at least an 8-hour reduced rest period. See §§ 121.471(b)(1), 121.471(c)(1), and 121.471(c)(4). Instead, these people argue, compensatory rest does not have to be provided until after completion of another day of duty. This argument misstates the clear language of the regulation that states that compensatory rest "must begin" no later than 24 hours after the commencement of the reduced rest period. See § 121.471(c); see also Sept. 24, 1998 Letter to James W. Johnson from Donald P. Byrne, Assistant Chief Counsel, Regulations Division (both the air carrier and the crewmembers were potentially in violation of § 121.471(b)(1) because they knew, prior to departure, that the scheduled arrival time of the last flight segment (of

several flight segments) would force the crew to begin its compensatory rest period later than 24 hours after the commencement of the reduced rest period, and thus the requirements of the § 121.471(c)(1) exception were not met)[1998-7]. This argument is also inconsistent with the FAA's intent, as expressed in the preamble to § 121.471. *See* 50 Fed. Reg. 29,306, at 29,312 (July 18, 1985) ("reduced and compensatory rest periods are absolute and may not be further reduced under any circumstances....[i]n order to assure that a flight crewmember receives both the reduced and compensatory rests within a reasonable period, the final rule requires, in all appropriate sections, that the compensatory rest begin no later than 24 hours after the commencement of the reduced rest period").