



U.S. Department
of Transportation
Federal Aviation
Administration

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Mr. James W. Edwards
Principal Operating Inspector
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Mr. Russ Callison
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Dear Mr. Edwards and Mr. Callison:

This letter responds to the October 27, 2003 request from one of our regional certificate management offices for our opinion on what is the nature of the relief provided in the “24 consecutive hours during any 7 consecutive calendar days” provision of section 121.467(b)(13), and when this period of time must be received. We also respond to a February 2004 request from the Professional Flight Attendants Association that also asks for our opinion on the question of what is the nature of the relief provided in section 121.467(b)(13) as well as on the question whether a flight attendant must receive advance notification of when this period of time will occur.

The following provisions of section 121.467 are pertinent to the questions raised:

Section 121.467(a):

Calendar day means the period of elapsed time, using Coordinated Universal Time or local time, that begins at midnight and ends 24 hours later at the next midnight.

Duty period means the period of elapsed time between reporting for an assignment involving flight time and release from that assignment by the certificate holder conducting domestic, flag, or supplemental operations. The time is calculated using either Coordinated Universal Time or local time to reflect the total elapsed time.

Rest period means the period free of all restraint or duty for a certificate holder conducting domestic, flag, or supplemental operations and free of all responsibility for work or duty should the occasion arise.

Section 121.467(b)(13):

Each certificate holder conducting domestic, flag, or supplemental operations must relieve each flight attendant engaged in air transportation and each commercial operator must relieve each flight attendant engaged in air commerce from all further duty for at least 24 consecutive hours during any 7 consecutive calendar days.

We examine the regulation's history to ascertain what was the Agency's intent in promulgating section 121.467(b)(13) and answer the question about the nature of the relief the Agency provided in the "24 consecutive hours during any 7 consecutive calendar days" provision.

The Preamble to the final rule¹ contains a discussion of comments received on the Notice of Proposed Rulemaking (NPRM) and the FAA's responses concerning proposed section 121.466(n)² [the NPRM's proposed section number for what is now codified as section 121.467(b)(13)] under the heading: "*24-Consecutive-Hour Rest Period During Any 7 Consecutive Calendar Days.*"³ This heading in the Preamble is shortened in the textual discussion, as follows: "For convenience, hereafter, this requirement will be referred to as the 24-hour-in-7-day rest requirement."⁴ In the accompanying text, the drafters stated the purpose of this requirement: "The 24-hour-in-7-day rest requirement is designed to supplement daily rest requirements and to ensure that flight attendants receive the opportunity to obtain adequate rest."⁵

We believe that the above-quoted provisions from the Preamble indicate the Agency's intent that the period of time required to be given to a flight attendant under section 121.467(b)(13) be a rest period, to wit:

- (1) the heading in the Preamble -- "*24-Consecutive-Hour Rest Period During Any 7 Consecutive Calendar Days*" (emphasis added);
- (2) the Preamble writers' use of an abbreviated reference to describe this rule -- "For convenience, hereafter, this requirement will be referred to as the 24-hour-in-7-day rest requirement" (emphasis added); and
- (3) the Preamble writers state that the purpose of section 121.467(b)(13) is "to supplement daily requirements and to ensure that the flight attendants receive the opportunity to obtain adequate rest."

The Preamble also discusses whether reserve may satisfy the rest requirements stated in section 121.467(b)(13). In the text under the heading "*Reserve Status, Stand-by Status, or Similar Assignments[,]*"⁶ the FAA drafters responded to a set of comments urging the FAA to hold that reserve assignments should fulfill the "24-hour-in-7-day rest requirement" if no duty is assigned during that 24-hour period. Below is the FAA's response:

¹ 59 Fed. Reg. 42974 (Aug. 19, 1994).

² Proposed section 121.466(n) states: Each domestic, flag, or supplemental air carrier shall relieve each flight attendant engaged in scheduled air transportation and each commercial operator shall relieve each flight attendant engaged in air commerce from all further duty for at least 24 consecutive hours during any 7 consecutive calendar days.

³ 59 Fed. Reg. 42974, at 42980.

⁴ *Id.*

⁵ *Id.* at 42981.

⁶ *Id.*

[I]n response to ATA’s, NACA’s, and Southwest Airlines’ suggestions that reserve assignments should fulfill the 24-hour-in-7-day rest requirement if no duty period is assigned, the FAA reiterates that rest period requirements are not met when a flight attendant is assigned to reserve status even if the flight attendant is not given a duty period assignment...For example, a flight attendant who has been assigned to reserve status for 24 hours but has not reported for a duty period assignment *during that time* will not have satisfied the 24-hour-in-7-day rest requirement. The rest requirement is not satisfied because the reserve assignment is a restraint and includes present responsibility for work as a flight attendant if the occasion arises....[R]eserve status may not be performed during a rest period. The definition of rest period in §§121.467(a) and 135.273(a) of the final rule states that ‘Rest period means the time period free of all restraint or duty for a domestic, flag, or supplemental air carrier or commercial operator and free of all responsibility for work or duty should the occasion arise.’⁷ (Emphasis added.)

The drafters rejected the ATA’s, the NACA’s and Southwest Airlines’ suggestions that reserve assignments should fulfill the “24-hour-in-7-day rest requirement” if no duty is assigned, stating that “a flight attendant who has been assigned to reserve status for 24 hours but has not reported for a duty period assignment *during that time* will not have satisfied the 24-hour-in-7-day rest requirement.” (Emphasis added.) The Agency pointed out that “rest period requirements are not met when a flight attendant is assigned to reserve status...[t]he rest requirement is not satisfied, because the reserve assignment is a restraint and includes present responsibility for work as a flight attendant if the occasion arises.”

Thus, the Agency’s intent was that section 121.467 (b)(13) be a rest period and a period on which reserve may not infringe. Thus, a certificate holder may not treat the “24-hour-in-7-day rest requirement” under section 121.467(b)(13) as a time in which the flight attendant is required to receive calls about duty even if the flight attendant is not assigned to any duty during that period, because doing so would make that period of time ineligible as rest.

Next, we answer the question when this “24 hour-in-7-day rest requirement” must be received. We first address the meaning of the terms “seven consecutive calendar days.” The Preamble states that a period of “seven consecutive calendar days,” as used in section 121.467(b)(13), is a “period of 7 consecutive days beginning at midnight on the first day and ending at midnight 7 days later.”⁸ The pilot rest rules contain a requirement that is worded similarly to section 121.467(b)(13). *See e.g.*, §121.471(d) and §135.265(d).⁹ In interpreting the provision in the pilot rules, we noted that the word “day” means “calendar day,” i.e., commencing at 12:01 a.m. and ending 24 hours later at 12 midnight. Thus, we conclude that the period of “seven consecutive calendar days” in section 121.467(b)(13) begins at 12:01 a.m. on the first day and ends at 12 midnight on the seventh day. *See*

⁷ *Id.* at 42982.

⁸ *Id.* at 42981.

⁹ Section 121.471(d) states: Each certificate holder conducting domestic operations shall relieve each flight crewmember engaged in scheduled air transportation from all further duty for at least 24 consecutive hours during any 7 consecutive days.

Section 135.265(d) states: Each certificate holder shall relieve each flight crewmember engaged in scheduled air transportation from all further duty for at least 24 consecutive hours during any 7 consecutive days.

also, March 27, 1992 Letter to Brendan Twomey, from Donald P. Byrne, Assistant Chief Counsel, Regulations and Enforcement Division [1992-16] (copy enclosed).

In our interpretations of the pilot rules provision, the “24-hour-in-7-day rest requirement” must occur in every 7-consecutive-day period in which the pilot performs or will perform flight time under Part 121 or Part 135. This means that one must be able to find this rest period when one looks back 7 consecutive days from midnight of the day of the planned Part 121 or Part 135 operation. Our 1997 Letter addressed the question whether there was a violation of section 135.265(d) in a situation where a pilot has flown for three days in a row, was on reserve a fourth day, and then was scheduled to fly another four days. We concluded that in the specific scenario there would be a violation of section 135.265(d). Having noted that reserve was not rest, we said that the pilot would have been without rest for 8 days, and although he could have flown for two days after the reserve day, on the 7th day he must be given the required rest before another flying assignment. *See* March 25, 1997 Letter to James Baxter, from Donald P. Byrne, Assistant Chief Counsel, Regulations Division [1997-3] (copy enclosed).

The March 1997 Letter also restates the Agency’s longstanding safety policy that a pilot who has been on reserve for *any number* (e.g., 7 days) of consecutive days must be given the 24-hour rest period prior to performing any flight time in Part 135 operations. In this situation, the certificate holder must be able to look back 7 consecutive days from midnight of the day in which the flight time of the pilot who had been on reserve ends, and find that the pilot received the 24-hour rest period. In the Letter, the FAA said that it is possible for a pilot to be scheduled on reserve for 7 days and not be in violation of the regulation as long as the pilot does not fly. However, once the pilot takes a flight in Part 135 operations, the rest requirements activate in order to ensure that the pilot has had sufficient rest prior to the flight. Thus, if the pilot has not had a scheduled rest period during the previous 7 days, the air carrier and the pilot could be held in violation of section 135.265(d). *See also* June 24, 1991 Letter to B. Stephen Fortenberry, from Donald P. Byrne, Assistant Chief Counsel, Regulations and Enforcement Division [1991-43] (copy enclosed).

The Preamble contains language that supports the view that the drafters intended for section 121.467(b)(13) to apply similarly¹⁰ to section 121.471(d). We conclude that the rest period under section 121.467(b)(13) is not triggered until the flight attendant is assigned to a “duty period,” and this rest period must occur within a 7-consecutive-day lookback period. This means that one must be able to find this rest period when one looks back 7 consecutive days from midnight of the day when the flight attendant will be serving as a crewmember on a flight. In addition, when a flight attendant has been on reserve for *any number* of consecutive days (e.g., 7 days), he or she may not subsequently perform a duty period without first receiving the 24-hour rest period. In this situation, one must be able to look back 7 consecutive days from midnight of the day in which the duty period that will be performed by the flight attendant who had been on reserve ends, and find that the flight attendant received the 24-hour rest period. This conclusion is consistent with the Agency’s interpretations and safety policy regarding the pilot rest provision in section 121.471(d).¹¹

¹⁰ Note the following discussion under the Preamble heading “24 Consecutive-Hour Rest Period During Any 7 Consecutive Calendar Days”: “The FAA notes that the NPRM used language contained in the current flight crewmember flight time limitations rule....This final rule imposes restrictions for flight attendants that parallel the restrictions that currently exist for flight crewmembers.” 59 Fed. Reg. 42974 at 42981.

¹¹ We note that the Preamble states that the 24-hour rest period may be delayed for reasons “beyond the control of the operator.” More specifically, it states: “The absence of provisions to permit the 24-hour-in-7-day rest requirement to be

The following hypothetical situation illustrates a legally correct application of the “24-hour-in-7-day rest requirement” in section 121.467(b)(13):

Hypothetical: A flight attendant is assigned a 7-day sequence in which she is given a 24-hour rest period on Day 1 (from 12:01 on Day 1 to 12 midnight on Day 1); a 14-hour duty period followed by a 10-hour rest period on each of Days 2, 3, 4, and 5; 24 hours of reserve in a hotel on Day 6; and 14 hours of duty followed by a 10-hour rest period, on Day 7.

Question: Does the 24-hour reserve¹² period on Day 6 have to be a 24-hour rest period?

Answer: No. In looking back 7 consecutive days from midnight of Day 7 one finds that the flight attendant received a legal 24-hour rest period on Day 1. Note that the schedule also complied with the daily requirement in section 121.467(b)(2) for at least 9 hours of post-duty daily rest. In addition, in this situation, the carrier may legally place the flight attendant on 24 hours reserve on Day 6.

Finally, we conclude that the flight attendant must know in advance that he or she will receive a 24-hour rest period for it to constitute a valid rest period. Referring to the requirement for a daily rest period, the Preamble states that “[r]equiring operators to schedule rest periods ensures that Flight Attendants *know in advance* when rest periods will occur and that they will be of a specified duration.” (Emphasis added.) The Preamble states that “the rest requirements proposed in the NPRM and adopted in this final rule are adequate to ensure that flight attendants are provided the opportunity to be sufficiently rested to perform their routine and emergency safety duties without imposing a significant burden on operators.” It also states and that the purpose of the 24-hour-in-7-day rest requirement is to “to supplement daily rest requirements and to ensure that flight attendants receive the opportunity to obtain adequate rest.”¹³ When a flight attendant is notified in advance by

delayed does not preclude a flight attendant from completing a duty period assignment that has extended into the seventh calendar day because of a delay that is beyond the control of the operator.... However, if the requirement is delayed, the flight attendant must be given the 24-consecutive hour rest period before beginning any subsequent duty period assignment.”¹¹ This language means that the Agency has a “non-enforcement policy” toward the 24-hour-in-7-days rest requirement that is akin to our non-enforcement policy position for violation of the daily rest requirements under section 121.471. That is, when *enroute* delays beyond the control of the certificate holder occur after take-off of a flight and are the *cause* for the flight to end at a time where one cannot find that the pilot received minimum lookback rest, the Agency’s policy position is not to take enforcement action. See *e.g.*, Oct. 29, 2002 Letter to James W. Johnson, from Donald P. Byrne, Assistant Chief Counsel, Regulations Division [2003-6](copy enclosed). Similarly, when *en route* delays beyond the control of the certificate holder are the *cause* for the flight to end at a time when it will infringe on the start of the 24-hour rest period, the Agency’s policy position is not to take enforcement action.

Finally, the Preamble states: “The 24-hour-in-7-day rest requirement may be delayed for reasons such as deadheading, assignment to training, and others. However, if the requirement is delayed, the flight attendant must be given 24-consecutive hour rest period before beginning any subsequent duty period assignment.”¹¹ This language means that a flight attendant may participate in several days or weeks of activities that do not involve a flight assignment, such as training, without being given a 24-hour rest period. However, after the training and before the flight attendant receives another duty period assignment, the flight attendant must be given a 24-hour rest period.

¹² Although industry practice varies in the use of the term “reserve,” when the FAA uses the term “reserve” we mean that the crewmember is at home or some other location away from the person’s work station, and the crewmember’s only obligation is to contact the carrier or be available to be contacted by the carrier about a flight assignment. Note that under section 121.467 the reserve period of time is not part of a rest period, and it also is not part of a duty period.

¹³ 59 Fed. Reg. at 42980, 42981.

the schedule of when the daily or 24-hour rest period will be received this furthers the safety purpose of the regulation-- the flight attendant can plan to get sufficient rest in order to perform cabin safety duties. Thus, a carrier must notify a flight attendant before the start of the applicable consecutive hours of daily post-duty rest to which a flight attendant is entitled, or before the start of the 24-hour rest period to which a flight attendant is entitled. For example, having a written trip schedule that labels the daily rest period and the 24-hour rest period would satisfy the notification requirement.

This response was prepared by Joseph A. Conte, Manager, Operations Law Branch, and Constance M. Subadan, Attorney, Operations Law Branch. It was coordinated with the Flight Standards Service at FAA Headquarters.

Sincerely,

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Enclosures