

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Parts 121 and 135****[Docket No. 28081; Notice No. 95-18]****RIN 2120-AF63****Flight Crewmember Duty Period Limitations, Flight Time Limitations, and Rest Requirements****AGENCY:** Federal Aviation Administration (FAA).**ACTION:** Notice of proposed rulemaking; extension of comment period.

SUMMARY: This action extends the comment period on Notice No. 95-18; Flight Crewmember Duty Period Limitations, Flight Time Limitations, and Rest Requirements, and publishes questions received from commenters and the FAA's response to those questions. The comment period is extended from March 19, 1996, to June 19, 1996. This action is in response to a request from several associations and individuals that the FAA allow all affected parties additional time to comment. The extension of the comment period is warranted because of the scope and complexity of the proposal and the need to allow time for commenters to consider the agency's response to the above questions.

DATES: The comment period on Notice No. 95-18 is extended until June 19, 1996.

ADDRESSES: Comments should be mailed in triplicate to: Federal Aviation Administration, Office of the Chief Counsel (Attention: Rules Docket, AGC-200), Docket No. 28081, 800 Independence Ave., SW, Washington, DC 20591. Comments on this notice may be examined in room 915G on weekdays, except on Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Larry Youngblut, Project Development Branch, AFS-240, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Ave., SW, Washington, DC 20591 Telephone (202) 267-3755.

SUPPLEMENTARY INFORMATION: On December 20, 1995, the Federal Aviation Administration (FAA) issued Notice No. 95-18; Flight Crewmember Duty Period Limitations, Flight Time Limitations, and Rest Requirements [60 FR 65951]. Comments to Notice 95-18 were to be received on or before March 19, 1996.

By letter dated December 27, 1995, the National Air Transportation Association (NATA) requested that the

FAA extend the comment period for Notice No. 95-18 for 90 days. NATA stated that on-demand, air taxi operators need additional time to analyze and respond to the proposal. In addition, the National Air Carrier Association, the Air Transport Association, the Allied Pilot Association, the National Business Aircraft Association, and several individuals also requested that the comment period be extended.

Due to the complexity and extensive nature of the proposal, the FAA has determined that operators and affected crewmembers should be given additional time to comment on the proposal. In response to NATA's request, the FAA invites specific comments on costs in sufficient detail to determine the burden for all operators. To allow time for commenters to provide this information, the FAA has determined that a 90-day extension of the comment period is in the public interest.

In addition, in response to questions raised by Federal Express Corporation on January 17, 1996, and American Airlines on January 16, 1996, the FAA publishes as an attachment to this notice, those questions and the FAA's responses so that all interested parties may benefit from this additional information.

Several commenters have expressed concern that the docket on this rulemaking is not complete, in that it specifically lacks a second NASA document referenced in the preamble to the notice. For this reason, the commenters feel that they are not yet able to comment fully on the proposed rule. In the notice, the FAA stated that it was basing its proposal on, among other things, the 1995 NASA Technical Memorandum, "Principles and Guidelines for Duty and Rest Scheduling in Commercial Aviation," and the NASA Technical Reports supporting that memorandum, which the agency placed in the public docket. The 1995 memorandum summarizes NASA findings and recommendations on fatigue and fatigue countermeasures. The FAA noted that this concise document focused on operational considerations and provided specific scientific input on this complex issue.

The preamble to the notice also noted that NASA was preparing a second document that would provide specific scientific references that support the principles and guidelines outlined in the 1995 memorandum. The FAA did not feel that this further scientific discussion was needed to support its proposal. The scientific conclusions and recommendations of the panel of experts who studied the underlying data

are already contained and thoroughly explained in the 1995 memorandum. Moreover, NASA has assured the FAA that the Technical Reports now in the docket contain the data on which the results and conclusions of the first document are based. The FAA did not mean to imply that the second NASA document would be ready prior to the close of the comment period. The FAA does not anticipate that the second NASA document will be available before the final rule is issued.

The FAA based Notice No. 95-18 not only on the 1995 NASA technical memorandum, which contains conclusions of independent experts, but also on other documents to be found in Docket No. 28081, on the industry input provided by ARAC, and on the FAA's own experience with the current regulations.

Finally, several commenters requested that the NPRM be withdrawn, and the agency will consider these petitions in further evaluating the proposal. As it would with any notice of proposed rulemaking, if the agency finds in the light of comments received that the proposed rulemaking is not warranted, the notice would be withdrawn.

In a preliminary review of the comments received thus far, it would appear that some commenters do not realize that if this rulemaking does not result in a final rule, the FAA will ensure that the current rules would be enforced. This may be contrary to the current understanding of those rules by some operators and airmen. For example, this would mean that under the "lookback" provisions of the current rules, a flight crewmember on reserve could not take a flight assignment unless he or she had a scheduled rest period in the previous 24 hours. Commenters may want to consider the impact this would have on their operations.

Issued in Washington, DC on March 15, 1996.

Thomas C. Accardi,

Director, Flight Standards Service.

Questions and Responses to the NPRM, Flight Crewmember Duty Period, Flight Time Limitations, and Rest Requirements

This is the FAA's response to the American Airlines January 22, 1996 letter requesting clarification of Notice No. 95-18 Flight Crewmember Duty Period Limitations and Rest Requirements. American Airlines questions and the FAA's responses are stated below.

Question 1: Is the duty period extension in actual operation up to 16

hours, or up to 2 additional hours beyond scheduled, as page 65958 says?

FAA Response: The duty period extension in actual operation is up to 2 hours more than the maximum scheduled duty period for that crew compliment, not 2 hours more than the scheduled termination of that duty period as stated on page 65958. The wording on page 65958 was incomplete. It should have stated "If at any time during a duty period it is determined that, due to operational delays, a scheduled flight will not terminate within the maximum scheduled duty period, then the flight crewmembers must be relieved of duty before initiating that flight segment." The explanation on page 65961 under "Additional Duty Period Limitations and Reduced Rest" section is correct in the rule language at sections 121.473, 121.475 and 135.263.

Question 2: If we release a flight crewmember assigned to reserve time for one reserve day in the middle of a reserve block can we then change reserve categories?

FAA Response: A reserve time option and its associated rest requirements as stated in proposed section 121.477 may be changed by removing the flight crewmember from a reserve time assignment. Page 65959, "Reserve and Standby Assignments", states that reserve time ends when the crewmember is released, the crewmember is notified of a future duty period assignment and released from all further responsibility until the report time for that assignment, or the flight crewmember reports for a duty period. It should be noted that the only requirement prior to assigning a flight crewmember to another reserve time option is the 10-hour rest requirement stated in proposed section 121.477(b).

Question 3: Can't we change reserve categories fairly by either extending the rest period or shortening the duty day? Shouldn't some degree of shift in category from one reserve day to the next be reasonable? In fact, wouldn't a shift from the 18-hour type to the sliding scale type always be reasonable? A shift from the sliding scale to an 18-hour day if notified the day before?

FAA Response: Reserve categories can be changed from one reserve assignment to the next reserve assignment as outlined above in question 2.

Question 4: If we can assign a flight crewmember to a reserve time assignment the day before, why should there be any limitations on the duty period he can fly? e.g., Someone is serving reserve on the 10th-13th days of the month. For the 10th day, he was assigned a 0000-0600 rest period, but

was not given a trip. On the 11th, shouldn't we be able to assign him a trip on the 12th which terminates at 0100? Clearly he would have more time to be rested.

FAA Response: The NPRM provides a certificate holder the flexibility to assign a flight crewmember on reserve time a duty period with no reduction in the maximum scheduled duty time providing the flight crewmember is advised of the assignment and released from all duty or responsibilities to rest for a minimum of 10 hours (taken off reserve time) before reporting for that assignment (section 121.477(b)(1)). This provision is applicable to a flight crewmember on reserve time regardless of which reserve assignment option the crewmember is assigned.

Question 5: If a flight crewmember on reserve time is being assigned to an augmented crew, shouldn't he have a longer duty period, just like the regular augmented crew members have? Otherwise you get into some nonsensical situations. This question applies to both types of reserve.

FAA Response: The proposed NPRM does permit longer duty periods for flight crewmembers on reserve time when serving on an augmented crew providing the flight crewmember is given 10 hours notification of the assignment and released from all duty or responsibilities until report time for that assignment. Flight crewmembers on the 6/18-hour reserve time option may have their duty periods extended provided the duty period is scheduled for completion before the expiration of the 18-hour reserve time.

Question 6: Concerning table 1 on page 65959, isn't footnote 1 inappropriate for augmented crews? For example, in a 4-pilot crew, the duty period can go up to 24 hours and minimum scheduled rest is 22 hours. The rest can be reduced to 20 hours in actual operation, but the compensatory rest must start no later than 24 hours after the beginning of the reduced rest, i.e. within 4 hours after the end of the reduced rest. A 4-hour duty period is inconsistent with this kind of flying and is not reasonable.

FAA Response: The flexibility to extend the length of duty periods and allow reduced rest is included in the NPRM. The NPRM requires that any compensatory rest period be scheduled to begin no later than 24 hours after the beginning of the reduced rest. This is different from the current rule that says the compensatory rest must begin within 24 hours of the compensatory rest.

In the case of a 4-pilot crew, the subsequent duty following a reduced

rest would be limited to 4 hours because of the requirement to schedule the compensatory rest period within 24 hours of the commencement of the reduced rest period. Clearly, this is limiting. The carrier needs to consider this limitation when exercising the flexibility to reduce the required rest period, especially when the duty period for 4 pilots may be up to 24 hours.

Question 7: The "36-in-7" rule states that a flight crewmember must be relieved from all duty for 36 consecutive hours during any 7 consecutive calendar days. Duty is defined as involving flight time. Therefore, if a pilot has been on reserve but not assigned a trip for 36 hours, doesn't that satisfy 36-in-7? What if he had been to training for 2 days—that does not involve flight time either, so doesn't that also satisfy 36-in-7? What if the flight crewmember had a 36-hour rest period followed by 7 days of reserve duty, during the first 5 of which he was not assigned a trip. Would the flight crewmember have to be removed from flying on the 6th and 7th days to satisfy "36-in-7" or would the flight duty 7-day clock not start until he was actually assigned a trip (Flight Attendant Duty Act interpretation)?

FAA Response: Proposed sections 121.483(e) and 135.271(e) state that "Each certificate holder must provide each flight crewmember who is assigned to one or more duty periods, standby duty, or reserve time a rest period of at least 36 consecutive hours during any 7 consecutive calendar days." Therefore, flight crewmembers on standby duty or reserve time, even if no assignment involving flight time is given (duty period), must be given a rest of 36 consecutive hours in each 7-day period. Assigned time, which includes training, is not included in the requirement of the 36 hour rest. Therefore a flight crewmember could be assigned training on the 7th day without a 36 hour rest (and the 8th day, etc.). However, before being assigned a duty period, standby duty, or reserve time, the flight crewmember would be required to be given a 36-hour rest period, free from all duty. In essence, the application of this provision would be that a flight crewmember could perform assigned time on the 7th day of a 7 consecutive day period without a 36-hour rest but could not be assigned a duty period, reserve period, or standby duty. This NPRM differs considerably from the recent final rule applicable to flight attendants.

Question 8: The economic analysis suggests that there are some cost savings included within the NPRM to offset or partially offset the costs of the reserve time rest requirements. Did the FAA

consider that the airline would have to get union approval to obtain virtually any of these benefits?

FAA's Response: The economic analysis assumes that most certificate holders will benefit from any productivity measures included in the NPRM, if not immediately, at some time in the future when agreement is obtained through labor management agreements.

Question 9: In the event of operational delays, particularly something like a creeping mechanical delay, a regular crewmember's duty period can be extended up to 16 hours. Would a reserve crewmember be allowed to fly into his 6-hour rest period under those circumstances? A problem based on this question is that regulars and reserves will now have different legalities, ref: creeping delay.

Answer: A flight crewmember on reserve assignment option 2 (section 121.477(b)(2)) cannot be scheduled for a duty period that intrudes on the 6 hours of protected time. In the case of operational delays as stated on page 65960 under "Reserve and Standby Assignments", any duty period must be scheduled to be completed within the 18-hour reserve time.

Question 10: Does military leave qualify as being free from all duty for "36-in-7" purposes?

FAA Response: Yes, military leave, sick leave, family leave, and other types of personal leave are for the purpose of this NPRM classified as "rest". As stated in "Terms and Definitions" on page 65956, these are periods of time free of all restraint or duty for the certificate holder and free of all responsibility for work or duty should the occasion arise.

Question 11: Does military flying count towards "32-in-7" flight time limits? If so, who keeps track of it?

FAA Response: Proposed 121.487 and 135.275 apply only to flying conducted for one or more air carrier certificate holders. It does not apply to private or military flying.

Question 12: Will "commuting flight crewmembers" have to be responsible for reporting duty period violations or is that "personal business"?

FAA Response: By "commuting flight crewmembers" we assume American is describing those who travel to work from a location which is not the same as their domicile, not the deadhead transportation described in proposed section 121.485. This NPRM proposes duty period and flight time limits and rest requirements. It does not propose any restrictions on a flight crewmember's activities during a rest period. Flight crewmembers are

expected to use rest periods for obtaining rest.

Question 13: For a flight crewmember assigned to reserve time whose protected time is 0000-0600, can we expect him to sign in for a trip at 0601 if notified the day before? If only contacted at 0601, when can we expect him to sign in? 0800? If so that reduces his effective availability to 16 hours.

FAA Response: In order to require a reserve whose protected time is from 0001-0600 to report at 0601, the certificate holder would have to change the crewmember's reserve time category by methods previously addressed in the response to question #4. Flight crewmembers assigned to reserve time must be given 1 hour or more to report after notification of a duty assignment (section 121.471(b)(7)). Therefore, if a crewmember was contacted at 0601, the earliest he could report would be 0701.

Question 14: How far in advance must we notify an 18-hour reserve of his protected time (or the "sliding scale reserve" of his status)?

FAA Response: Before beginning a reserve time assignment as stated in proposed 121.477(b).

Question 15: What constitutes valid reasons for operational delays? Air traffic control? Company air traffic control? Deicing? Maintenance calls for non-essential (non-MEL) items, e.g. passenger light bulb burned out? Baggage belt jam? Computer outage? Ramp congestion delay? Fuel topoff? Precautionary check ground interrupt or aircraft precautionary inspection? Local noise curfews?

FAA Response: The definition of operation delays is stated in proposed section 121.471(b)(5). Delays that are associated with air traffic control, weather, or aircraft maintenance would be considered beyond the certificate holder's control.

Questions and Responses to the NPRM, Flight Crewmember Duty Period Limitations, Flight Time Limitations, and Rest Requirements

This document responds to questions received from Federal Express Corporation (FedEx) January 17, 1996.

Question 1: "Reserve Time" is defined as a period of time when a flight crewmember must be available to report upon notice for a duty period. The NPRM implies a reserve period is a 24-hour period(s). Is a reserve period considered (required) to be a 24-hour period of time?

FAA Response: The NPRM defines reserve time as a period of time that a flight crewmember is required by the certificate holder to be available to report upon notice for duty involving

flight time and the certificate holder allows at least 1 hour to report. Reserve time assignments are at the discretion of the certificate holder. The NPRM does not require any specific length of time for reserve time assignments. Reserve time assignments end whenever a flight crewmember is notified of a future duty period assignment and released from all further responsibility until the report time for that assignment, or the crewmember reports for a duty assignment, or the crew member is relieved of the reserve time assignment by the certificate holder for other assignments or rest. The NPRM defines 5 different categories of time. A flight crewmember is always in one of these categories. The NPRM defines these under "Terms and Definitions" on page 65965. They include "assigned time", duty involving flight time (referred to as "duty period"), reserve time, rest (referred to as "rest period"), and "standby duty".

Question 2: If a non-reserve pilot is assigned a hotel standby activity, is his duty limit treated like a standby reserve?

FAA Response: "Standby duty" is defined in proposed section 121.471(a)(9). If a flight crewmember is required to report for a flight assignment in less than 1 hour from the time of notification the flight crewmember is assigned to "standby duty". If the flight crewmember is required to report in 1 hour or more, the flight crewmember is not on "standby duty". If the certificate holder provided hotel accommodations with the provision that report for a flight assignment would be 1 hour or more from the time of assignment, then such assignment would be considered reserve time, and the provisions outlined in proposed section 121.477(b)(1) or (b)(2) would apply.

Question 3: If a reserve period for a carrier is defined to be a 12-hour period, is each 12-hour period a "reserve time assignment" requiring a 6-hour free window during that 12-hours under this option? Is a number of consecutive A-period (12 hrs) R-days one reserve time assignment?

A A A A A

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The above represents 5 consecutive reserve days, where each day is a 12-hour period followed by 12 hours of rest. Are these 5 R-days considered to be 1 reserve time assignment or 5 reserve time assignments?

FAA Response: Under the example, the certificate holder could determine if these 5 reserve days are to be considered as one consecutive or 5 separate reserve time assignments. However, the flight

crewmember must be advised in advance of how each of these days are to be considered and the method of assignment to be used, i.e., assignment under section 121.477(b)(1) or 121.477(b)(2).

This option exists because the NPRM requires 10 hours of rest before beginning reserve time and 6 hours of protected time in each 24-hour period of reserve time. The structure of 12 hours rest and 12 hours duty could satisfy both requirements. The protected time would have to be established in advance and be consistent for each reserve time period. If the 5 days are designated as separate periods, the method of assignment could be varied for each period. If the 5 days were designated as one consecutive reserve time assignment, the method of assignment for the entire 5 days must be consistent.

Question 4: Clarify the requirement that the intent of any duty period assignment must be scheduled to be completed within the 18-hour reserve time, exclusive of the 6 hours of protected time.

FAA Response: Flight crewmembers on reserve time under § 141.477(b)(2) are guaranteed 6 hours of protected time for uninterrupted rest. Outside of the

protected time, flight crewmembers are available for an assignment to a duty period with 1 or more hours of notice to report.

Question 5: Under the 6-hour of protected rest option, does any trip assigned to a reserve during his block of R-days (reserve time assignment) have to contain uninterrupted rest during that 6-hour window for all days of the trip?

FAA Response: No, this requirement is applicable only to the time that a flight crewmember is on reserve time. When given a duty assignment, the first duty period must terminate within the 18-hour reserve period. The length of the duty period and the subsequent rest time, duty time, and flight time for the remainder of the trip would be in accordance with 121.473 or 121.475.

Question 6: At the end of a trip assignment to a reserve, one that begins and ends within a block of R-days (one reserve time assignment) can the 6-hour window be changed for the remainder of the R-day block?

FAA Response: Yes. When released from a duty period, the flight crewmember must be given rest appropriate to that duty period, but no less than 10 hours before being placed back on reserve time. It is the certificate

holder's prerogative as to which reserve time option will be used. The certificate holder must advise the flight crewmember of any changes in a subsequent reserve time assignment and release the flight crewmember for a minimum of 10 hours of rest before beginning the new reserve time assignment with the different protected time.

Question 7: What is a subsequent reserve assignment considered to be? For example, in 5 consecutive R-days, could the 6-hour period of protected time be 1800–2400 for R1 and R2, but for R3, R4, and R5, be 0000–0600? (R1 represents the first R-day, R2 represents the second R-day, etc.)

FAA Response: No, the 6 hours of protected time must be the same for the entire reserve time assignment. Changing the 6 hours of protected time is discussed in Question 6 above.

Question 8: If deadhead can be considered to be "assigned time" following a duty period, is there any limit on how long the deadhead travel time can be? Based on the example cited, is there a need for an intervening rest period between the duty period and the deadhead?

For a 2 Pilot Crew:

| | | BLK | DTY | |
|----------|-------------------|------|------|----------------|
| DH | MEM-CDG | 7:00 | 8:30 | Duty Period. |
| DH | CDG-JFK | 0:00 | 8:00 | Assigned Time. |
| | JFK-MEM | 0:00 | 2:00 | Assigned Time. |
| | Rest Period | | | 10 Hours. |

FAA Response: The certificate holder has the option of considering assigned time as part of a duty period and scheduling the appropriate rest for that duty period after completion of the assigned time, or considering assigned time exclusively as assigned time and ensuring that the flight crewmember is

given at least 10 hours of rest before commencing a subsequent duty period. If assigned time is considered part of a duty period and attached to the end of that duty period, the rest before commencing a subsequent duty period must be appropriate to the duty period as required in proposed § 121.473 or

121.475 but no less than 10 hours. In the example above, there is no requirement for an intervening rest period before the deadhead.

Question 9: Does the "48 consecutive hours in a time zone" include block time, or is it just ground time? When does the 48-hour clock start and stop?

| | Dept | Arrive | Layover |
|---------------------------------|------|--------|---------|
| MEM-CDG | 1800 | 0200 | |
| Layover | | | 47:30 |
| CDG-MEM | 0130 | 0830 | |
| Taxi/Ground Time@CDG 0:45 | | | 1:30 |
| | | | 49:00 |

Does pilot receive 48 hours of rest upon return to MEM?

FAA Response: The 48-hour clock commences with "block in" time in a time zone who set time is 6 hours or more different than the flight crewmember's domicile time and ends with "block out" time in a time zone less than 6 hours different than the

flight crewmember's domicile. Assuming a :30 debrief period on arrival at CDG and a 1:00 report time before departure at CDG, this flight crew did not remain in the CDG time zone for 48 consecutive hours. Therefore a 48-hour rest on return to domicile is not required.

Question 10: Does 36 hours of rest in 7 consecutive days apply to "assigned time"?

F F F F F AT AT AT
1 2 3 4 5 6 7 8
(F—flight duty, AT—assigned time)

In the above example where a pilot has 5 days of flight duty with no layover greater than 36 hours, is a 36 hour rest

period required during day 6, 7, or 8 which are scheduled as assigned time such as deadhead or training?

FAA Response: A 36-hour rest is not required during days 6, 7, or 8. However, before the flight crewmember

could be assigned a duty period, a standby period, or reserve time, 36 consecutive hours of rest would be required.

Question 11: How are management pilots and instructor pilots to be treated?

Are they considered to be on "assigned time" when at work performing administrative function or training functions?

BILLING CODE 4910-13-M

| Admin Duties | Flight Time |
|---------------------------------|-------------|
| I<<<<<<<>>>>>>>>I<<<<<<<>>>>>>I | |
| 2300 | 0200 0500 |

BILLING CODE 4910-13-C

Is it permissible for a management pilot to perform flight duty after performing 3 hours of Administrative duties as indicated above?

FAA Response: Administrative duties and ground training accomplished by management pilots and instructor pilots is considered assigned time. Assigned time may be included as part of a duty period (scheduled in accordance with proposed § 121.473) or considered separately and a rest period provided prior to any subsequent duty period.

Question 12: Why do reserves rest before work and non-reserves rest after work?

FAA Response: Rest periods are provided to give the flight crewmember

a predetermined opportunity to rest prior to duties which could involve flight time (duty periods). Rest periods are provided between duty periods, reserve time assignments, and standby duty assignments. If assigned time was accomplished, a rest period is required prior to a duty period.

Question 13: A carrier assigns a pilot to a trip with the first duty period consisting of a deadhead to a field location, followed by a legal rest period, and the second duty period containing flight time. If the pilot chooses, on his own accord, to deviate from the planned first duty period deadhead, does the carrier have to ensure that the pilot receives a legal rest period before any flight time?

FAA Response: First, deadhead is considered to be assigned time if it is not included as part of a duty period. Second, proposed § 121.473 states that "A certificate holder may assign a scheduled duty period and a pilot may accept the assignment only when the applicable duty period limitations, flight time limitations, and rest requirements of this section are met." It is the certificate holder's responsibility to schedule its flight crew members in accordance with the applicable regulations. It is the flight crewmember's responsibility to use scheduled rest periods so that they are rested for subsequent assignments.

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