



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

Office of the Chief Counsel

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

OCT 24 2018

Jeff Schnaubelt
185 Kimberly Rd
Barrington, IL 60010

Re: Request for Legal Interpretation of § 117.5(d) Fitness for Duty Affirmation for Augmented Flight Operations

Dear Mr. Schnaubelt:

This letter responds to your May 31, 2018, request for an interpretation concerning the 14 CFR § 117.5(d) requirement for fit-for-duty affirmation. In 2015, you received the Schnaubelt-Japeck Flightcrew Management Interpretation¹ which stated that “at the time the pilot makes the fit-for-duty affirmation, he or she must be fit for duty for that flight segment. That affirmation cannot be conditioned upon the pilot obtaining any rest or sleep during that flight segment.” You ask whether that means that at the time the pilot makes the fit-for-duty affirmation, he or she must be fit for the *entire* duty segment. You offer the following scenario:

A pilot wakes up in Chicago (home base) at 8 AM after getting a full 8 hours of sleep. He or she has a 5 PM sign-in for a 3-pilot augmented flight. The flight is a 6 PM departure from Chicago that arrives in London at 2:05 AM Chicago time. The pilot does not get any further sleep before reporting for duty at the airport at 5 PM. At 5:30 PM, the pilot feels alert and not fatigued in any way. At 5:30 PM the pilot affirms fit-for-duty for this flight segment with the expectation of obtaining 2 hours sleep during his or her in-flight rest break. The pilot knows with certainty that if he or she sleeps for 2 hours during the in-flight rest break, he or she will continue to remain fit-for-duty for the entire flight duty period. However, he or she also knows with certainty that if he or she does not sleep for 2 hours during the in-flight rest break, he or she will have an unsafe level of fatigue at approximately 1 AM Chicago time, and will no longer be fit-for-duty with approximately one hour remaining in the flight duty period.

¹ Letter to Jeff Schnaubelt from Lorelei D. Peter, Assistant Chief Counsel for Regulations (Aug. 12, 2015).

You ask under the given scenario: (1) would it be appropriate for the pilot to affirm fit-for-duty according to § 117.5(d). In other words, you are asking whether a pilot's fit-for-duty affirmation may be conditioned on the expectation of receiving in-flight rest; and (2) whether the answer to question 1 changes if the pilot affirming fit-for-duty is a relief pilot (a 3rd pilot in the augmented crew who would not be expected to be at the controls during the last hour of the flight duty period).

Section 117.5(a) requires that each flightcrew member must report for any flight duty period rested and prepared to perform his or her assigned duties. Section 117.5(d) requires that each flightcrew member must affirmatively state he or she is fit for duty prior to commencing flight.

Section 117.5 does not quantify the amount of fatigue that would render a flightcrew member unfit for duty. Instead, it employs a functional test: whether the individual flightcrew member is capable of performing the assigned duties at the highest level of safety. This individualized determination is based on a number of factors, and is personal to the flightcrew member who makes his or her own individual determination. Those factors include the length and difficulty of the assignment, the amount of time that flightcrew member has been continuously awake, and the flightcrew member's self-knowledge of how he or she reacts to different levels of fatigue.²

The Schnaubelt-Japeck Flightcrew Management Interpretation suggests that a pilot cannot affirm fit-for-duty when the pilot is relying on receiving future in-flight rest to maintain alertness because the pilot does not know if the anticipated in-flight rest period will occur or be effective. The interpretation states that the affirmation cannot be conditioned on the pilot obtaining rest or sleep during the flight segment. The FAA has reconsidered this position, and recognizes that the realities of the fit-for-duty affirmation for augmented operations require a more nuanced approach.

The final rule that established the requirements in § 117.5(d) was developed with the underlying philosophy that no single element of the rule mitigates the risk of fatigue to an acceptable level. Instead, carriers must provide an environment that permits sufficient sleep and recovery periods, and crewmembers bear the responsibility to take advantage of that environment.³ Section 117.5 places a joint responsibility for fitness for duty on the certificate holder and the flightcrew member. The flightcrew member must: (1) report for an FDP rested and prepared to perform his/her duties; (2) sign a statement before beginning a flight segment affirmatively stating that he or she is fit for duty; and (3) immediately notify the certificate holder if he/she is too fatigued to perform the assigned duties. The certificate holder must: (1) provide the flightcrew member with a meaningful rest opportunity that will allow the flightcrew member to get the proper amount of sleep; (2) immediately terminate a flightcrew member's FDP if the flightcrew member does not

² Letter to Jeff Schnaubelt from Lorelei D. Peter, Assistant Chief Counsel for Regulations (Apr. 4, 2016).

³ *Flightcrew Member Duty and Rest Requirements*, 77 FR 330, 330 (Jan. 4, 2012).

affirmatively state before beginning a flight segment that he/she is fit to safely perform the assigned duties; and (3) immediately terminate a flightcrew member's FDP if the flightcrew member informs the certificate holder that he/she is too tired to safely perform the assigned duties.⁴

For augmented flight crew operations, carriers must make available to pilots in-flight rest facilities and rest opportunities,⁵ so that the pilots can work in shifts and replace each other at the aircraft controls. The in-flight rest is designed to mitigate against the fatigue accumulated during the FDP, particularly in the longer flight segments that occur during augmented flight operations.⁶

A pilot beginning the first flight segment of an augmented flight is aware that the FAA requires carriers to provide in-flight rest facilities for augmented flights. The pilot would also be aware that since he or she is conducting a flight operation with an augmented flightcrew, the flight duty period will be longer, and the flight segments themselves may be longer than an unaugmented flight. As a result, the pilot may reasonably expect to take advantage of the in-flight rest facilities provided by the carrier. Under these circumstances, a pilot affirming fit-for-duty may take into account his or her reasonable expectation of in-flight rest when determining his or her level of fatigue. It would be unreasonable for the FAA not to allow a pilot to anticipate that in-flight rest would relieve his or her level of fatigue during an augmented operation when that is what the rest opportunity is designed to do, and what the carriers have an obligation to provide.

Accordingly, the pilot in your scenario may affirm fit-for-duty because he or she can reasonably expect to receive the two hours of rest during the anticipated in-flight rest period. However, that reasonable expectation is unique to the individual pilot. For example, if the pilot has flown this route multiple times and on multiple occasions has been unable to take advantage of the in-flight rest, then his or her fit-for-duty affirmation cannot be conditioned on a *reasonable expectation* for in-flight rest. The same is true for the relief pilot.

The FAA has put in place safeguards to mitigate fatigue. A flightcrew member must continually reassess his or her fitness for duty as the FDP progresses. If a flightcrew member does not receive the anticipated in-flight rest and determines that he or she is too fatigued to safely land at the intended destination, and non-fatigued flightcrew members are not available to take over the fatigued flightcrew member's duties, then he or she should declare an emergency and land the aircraft at the nearest suitable location.⁷

⁴ *Clarification of Flight, Duty, and Rest Requirements*, 78 FR 14166, 14169 (Mar. 5, 2013).

⁵ 14 CFR § 117.17(c).

⁶ *Flightcrew Member Duty and Rest Requirements*, 77 FR 330, 364 (Jan. 4, 2012).

⁷ Letter of Interpretation to Jeff Schnaubelt from Lorelei D. Peter, Assistant Chief Counsel for Regulations (Apr. 4, 2016).

We appreciate your patience and trust that the above responds to your concerns. If you need further assistance, please contact my staff at (202) 267-3073. This letter has been prepared by Sarah Yousaf, Operations Law Branch, Office of the Chief Counsel and coordinated with the Air Transportation Division of Flight Standards Service.

Sincerely,

A handwritten signature in black ink, appearing to read "Lorelei D. Peter". The signature is fluid and cursive, with a prominent initial "L" and a long, sweeping underline.

Lorelei D. Peter

Assistant Chief Counsel for Regulations, AGC-200