

# NOTICE

## U.S. DEPARTMENT OF TRANSPORTATION FEDERAL AVIATION ADMINISTRATION

N 8400.60

2/03/04  
Cancellation  
Date: 2/03/05

### **SUBJ: "PHYSIOLOGICAL NEEDS" DURING SUPERVISED OPERATING EXPERIENCE**

**1. PURPOSE.** This notice is for principal operations inspectors (POI) of all certificate holders operating under Title 14 of the Code of Federal Regulations (14 CFR) part 121. It is to advise those inspectors and applicable certificate holders of a legal determination clarifying that bunk rest, time spent in the jump seat, or any other prolonged absence from an assigned duty position does not qualify under part 121, section 121.543(b)(2), as a "physiological need" excusing a pilot from an assigned pilot duty position. It is to advise further that supervised operating experience in accordance with section 121.434 does not continue in effect during such times. Hence, when a check airman leaves a duty position for a prolonged period, a pilot meeting operating experience requirements would need to be paired with another check airman or would need to relinquish his/her duty position. Additionally, both pilot duty positions would need to be filled by fully qualified pilots.

**2. DISTRIBUTION.** This notice is distributed to the division level in the Flight Standards Service in Washington headquarters; to the branch level in the regional Flight Standards divisions; to the Flight Standards District Offices, and to the Regulatory Standards Division at the Mike Monroney Aeronautical Center. This notice is also distributed electronically to the division level in the Flight Standards Service in Washington headquarters and to all regional Flight Standards divisions and district offices. This information is also available on the Federal Aviation Administration's (FAA) Web site at: <http://www.faa.gov/avr/afs/notices/8400/N8400-60.doc>.

### **3. BACKGROUND.**

**a.** In *Administrator v. Good*, National Transportation Safety Board (NTSB) Order No. EA-5026 (2003), the NTSB's administrative law judge found that a qualified pilot was in violation of section 121.543 and 14 CFR part 91, section 91.13, when he left his assigned duty station and designated two pilots who had not completed their supervised operating experience qualification phase to take his place as operators of the flight.

**b.** The respondent argued that his absence from the flight deck was excused by "physiological needs," in accordance with the provisions of section 121.543(b)(2). He specifically referred to "issues of circadian rhythm, sleep deprivation, and fatigue."

c. The Board rejected these arguments, concluding that while physiological needs might excuse a pilot from being at his assigned duty position under some circumstances, it did not do so in this case, in which the pilot had admitted to having left the flight deck for “probably four round trips for 15 minutes an hour.”

**4. ACTION.** POIs affected by this notice should make the following information known to the director of safety of the respective part 121 certificate holder:

a. **Information Pertaining to the Legal Determination of “Physiological Needs.”** See section 121.543. A full account of the decision may be obtained at the following public Web site maintained by the NTSB: [http://www.nts.gov/alj/O\\_n\\_O/docs/AVIATION/5026.pdf](http://www.nts.gov/alj/O_n_O/docs/AVIATION/5026.pdf).

b. **Applicability to Supervised Operating Experience Requirements in Section 121.434.** A qualifying pilot meeting operating experience requirements may not be paired with any pilot other than a qualified check airman. Hence, when a check airman leaves his/her assigned duty position for any prolonged period of time – not including absences for physiological needs, such as brief bathroom breaks – the qualifying pilot must be paired with another check airman or must relinquish his/her seat, and two fully qualified pilots must take over flying duties.

c. **Enforceability.** The FAA’s enforcement of section 121.543 was upheld in *Administrator v. Good*. Similarly, the FAA has full authority to enforce section 121.434. Part 121 certificate holders should immediately take whatever steps are necessary to bring crew scheduling and crew pairing practices into compliance with the regulations and into conformance with the great majority of certificate holders who do comply.

**5. PROGRAM TRACKING AND REPORTING SUBSYSTEM (PTRS).** Document the conveyance of the information contained in this notice for each air carrier affected:

a. Use PTRS code 1385.

b. Enter “N840060” (without the quotes) in the “National Use” field.

c. Once the above information has been provided to the air carrier, close out the PTRS.

**6. DISPOSITION.** This notice will not be incorporated into Order 8400.10, Air Transportation Operations Inspector’s Handbook. Questions concerning this notice should be directed to the Air Carrier Training Branch, AFS-210, at (202) 267-9836.

/s/ John M. Allen for  
James J. Ballough  
Director, Flight Standards Service