October 28 1991

Mr. David Bodlak
Director of Flight Operations
Elliott Beechcraft of Omaha, Inc.
P.O. Box 19064
Omaha, NE 68119

Dear Mr. Bodlak:

Thank you for your letter of March 15, 1991, which was referred to this office by the Assistant Chief Counsel for the Central Region. We apologize that the press of other inquiries and regulatory matters have prevented us from answering sooner.

In your letter you ask several questions pertaining to rest periods required under Part 135 of the Federal Aviation Regulations (FAR). You specifically ask about the boundaries of responsibility assigned to the certificate holder when operations unrelated to FAR Part 135 are conducted by a corporation holding an FAR Part 135 Operating Certificate.

The hypothetical situation you give is as follows:

ABC Company, Inc. (ABC) holds FAA operating certificates under FAR Parts 135, 141, and 145. ABC is engaged in the following activities:

Aircraft Maintenance (FAR Part 43, 145)
Aircraft Refurbishing
Aircraft Refueling
Aircraft Sales
On-demand Aircraft Charter (FAR Part 135)
Flight Training (FAR Part 141)
Contract Flight Operations (FAR Part 91)

Your first question asks whether a crewmember (we assume you mean a pilot) who is Part 135 qualified may participate in any of the activities listed below during a required rest period and still accept an assignment for ABC's Part 135 flight operations at the end of the rest period. The activities include:

Work for ABC's Certified Repair Station. (Part 145)
Painting an aircraft for ABC
Fueling an aircraft for ABC
Making an aircraft sales call for ABC

Conduct of a training flight for ABC (Part 141)
Acting as a crewmember on a FAR Part 91 contract flight dispatched by ABC.

FAR 135.263(b) is quoted:

> No certificate holder may assign any flight crewmember to any duty with the certificate holder during any required rest period.

None of the activities listed above may be performed by the flight crewmember during a rest period because they are all assigned by the certificate holder and thus in violation of FAR 135.263(b). The FAA has consistently interpreted a "rest period" to be a continuous period of time that is free from all restraint. This includes freedom from work, and freedom from responsibility for work should the occasion arise.

"Duty" has been interpreted to mean actual work for an air carrier or present responsibility to work should the occasion arise.

Your second question asks if this same flight crewmember may participate in the activities previously listed during a rest period if the work was done for another company, not ABC, and whether the flight crewmember could then accept an assignment with ABC for flight operations under Part 135, at the end of the rest period.

The answer is a qualified yes. ABC, as the certificate holder, has no way of forcing the flight crewmember to rest during a rest period. The prohibition against "other commercial flying" during a rest period applies to flying assigned by the certificate holder. The other commercial flying done by the flight crewmember does count against the daily 8 hour limitation if it is done before the Part 135 flying, and also counts against the pilot's quarterly and yearly flight time limitations. For example, 2 hours of "freelance" flight instruction by the pilot during his rest period limits him to only 6 hours of Part 135 flying time during that 24 consecutive hour period. Any other commercial flying done after the Part 135 flying does not count against the daily limitation, but still counts against quarterly and yearly totals.

An additional caution is that it is a violation of FAR 91.13 for a certificate holder or a flight crewmember to operate an aircraft in a careless or reckless manner so as to endanger the life or property of another. Lack of rest of the pilot is certainly a circumstance which could endanger others, and it is not necessary that the situation devolve into actual endangerment for there to be a violation of FAR 91.13. A certificate holder who uses a crewmember with knowledge of

his or her lack of rest may be equally culpable along with the flight crewmember.

This interpretation has been prepared by Arthur E. Jacobson, Staff Attorney, Operations Law Branch, Regulations and Enforcement Division; Richard C. Beitel, Manager, and has been coordinated with the Air Transportation Division of the Flight Standards Service at FAA Headquarters. We hope it has satisfactorily answered your inquiry.

Sincerely,

Donald P. Byrne Assistant
Chief Counsel
Regulations and Enforcement Division