April 20, 1992

Mr. Jeffrey Stout
[redacted]

Dear Mr. Stout:

This is in response to your letter of March 31, 1992, and phone conversation of April 14, 1992, re... interpretation of Federal Aviation Regulation (FAR) 135.265(a)(3). Your facts and surrounding circumstances have been summarized below followed by our answer.

You state that you are a pilot employed by Jetstream International Airlines (JIA), a scheduled Part 135 operator. On February 28, 1992, your 5th consecutive day of flying, you informed JIA scheduling personnel that you would be unable to fly the last scheduled trip of the day, scheduled for 2 hours and 20 minutes, because it would place you over the 34 hours in 7 days flight time limitation under FAR 135.265(a)(3). In your phone conversation you stated that at the time you informed JIA scheduling personnel of your concern, your actual total accumulated flight time, including those flights that were completed on day 5, was 32 hours and 6 minutes. You stated that some flights completed on day 5 were delayed because of adverse weather conditions and mechanical delays, causing the actual flight time for day 5 to be in excess of what you were originally scheduled for. You stated that your actual total accumulated flight time at the end of day 4 was 26 hours and 29 minutes and your scheduled flight time for day 5 was 7 hours and 0 minutes.

You further state that after conversations with FAA personnel, union representatives and company officials, you elected to fly the last scheduled flight. Although FAA personnel and union officials believed otherwise, JIA officials believed you would not be violating FAR 135.265(a)(3) because at the beginning of the day you were "legal to start" therefore you were "legal to finish." Apparently, JIA's Director of Operations had an interpretation issued by the (FAA), which you recall stated that, so long as a flight crewmember was legal to start the day they may continue, regardless of actual accumulated flight time for that day. You believe that under FAR 135.265 a pilot must not knowingly begin additional flights if it is clear at the time of departure that he would exceed the limitations in FAR 135.265.

You ask for an interpretation of FAR 135.265(a) (3) as it applies to the above facts.

The applicable sections of the FAR, in pertinent part, state:

> §135.265(a) No certificate holder may schedule any flight crewmember, and no flight crewmember may accept an assignment, for flight time in scheduled operations or in other commercial flying if that crewmember's total flight time in all commercial flying will exceed-
>
> (3) 34 hours in any 7 consecutive days.
>
> §135.263(d) A flight crewmember is not considered to be assigned flight time in excess of flight time limitations if the flights to which he is assigned normally terminate within the limitations, but due to circumstances beyond the control of the certificate holder or flight crewmember (such as adverse weather conditions), are not at the time of departure expected to reach their destination within the planned flight time.

We have attached a copy of a prior interpretation issued to Captain Lloyd W. Barry dated September 9, 1987, which discusses the 30 hours in 7 days limitation of FAR 121.471(a)(3). A correct interpretation of the "30 in 7" rule, together with the flexibility provision of subparagraph (g), results in a requirement to add a flight crewmember's actual flight time accumulated in the previous 6 days to the flight time scheduled to be flown in the 7th day. If this total is less than 30 hours, the flight crewmember may begin and complete the day's scheduled flying even if events beyond the carrier's control cause total actual flight time to exceed 30 hours. The same process is repeated for each successive day of flying.

The FAA interprets FAR 135.265(a)(3) and 135.263(d) in the same manner. That is, if the flight crewmember's actual flight time, in this case for the first 4 days, plus the scheduled flight time for the 5th day, is 34 hours or less, then the flight crewmember may complete all flight segments for the 5th day. The attached prior interpretation issued in 1987 discusses in full the applicable principles involved.

Lastly, we point out that in the course of a day's scheduled events, delays due to adverse weather conditions or unscheduled maintenance may cause a flight crewmember to become significantly fatigued. If the state of fatigue would endanger or potentially endanger the life or property of other persons, then the certificate holder should relieve the flight crewmember from further duty aloft. In this respect, note the provisions of FAR 91.13 entitled "Careless or Reckless Operation."

This interpretation was prepared by Francis C. Heil, Attorney, Operations Law Branch; Richard C. Beitel, Manager. We hope this information satisfies your request.

Sincerely,

Donald P. Byrne

Assistant Chief Counsel
Regulations and Enforcement Division