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

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

Dec. 19, 2005

Mr. Michael T. Brazill
Director of Operations
Summit Jet L.L.C.
7144 Republic Airport
Farmingdale, N.Y. 11735

Dear Mr. Brazill:

This letter is in response to your March 12, 2004 request for an interpretation of 14 C.F.R. section 135.267(f) (Subpart F).

Scenario Presented:

1. Summit Jet employs a crew of 2 pilots designated to operate a specific aircraft in it's Part 135 feet. This crew has been selected by the owner of this aircraft.

2. The crew has been informed by Summit Jet that their expected response time to any potential duty assignment would be "as available" but no longer than 24 hours from time of notification.

3. The crew is notified by means of a 2-way text messaging device that may be turned to "silent" mode during periods of rest. [The] crew is only required to respond to messages if directed to do so in the message. Response to messages can be at [the] crewmember ['s] discretion.

4. The crew has been informed by Summit Jet to make monthly requests for specific "hard time" off as necessary. There has been no restriction on the number of "hard time" off requests made nor any requirement for the crew to request any "hard time" off. Summit Jet would provide replacement crews in the event the crew was unavailable.

5. The crew has averaged 11 days per month as "not scheduled" during a given calendar quarter. The definition of a day "not scheduled" is a day (a period of 24 hours or more) where there are no flights, rest overnights or duty of any kind required by Summit Jet.

Question:

Has the requirement to provide each crewmember at least 13 rest periods of at least 24 consecutive each in each calendar quarter as defined in FAR 135.267(f)[1] been satisfied in the above scenario?

Answer:

We point out some unclear language in the above scenario as well as our understanding of what some of Summit Jet's language means:

Sentence 1 of Paragraph 3 appears to suggest that a pilot's rest period is not interrupted because of the pilot's ability to turn the 2-way text messaging device to "silent" mode during periods of rest. Yet, at the same time, it states in sentence 2 that the crew is "required to respond to messages if directed to do so in the message." We do not see how, in practice, a pilot may ever exercise the option turn the device to "silent" when any random incoming message could require a response. In addition, if as stated in sentence 3, responses may be at the "crewmember['s] discretion," this negates the previous statement that a message may require a crewmember to respond. Thus, it is unclear if a pilot may, in practice, use the "silent" mode to avoid interruptions of rest and if he is required or not required to respond to any message.

Paragraph 4 discusses monthly requests for specific "hard time" off. While the requester does not specify what "hard time" means, we assume that it is not a reference to the 24 hour rest periods in section 135.267(f). Rather, it may be a reference to personal time to be used for vacation or other reason.

Paragraph 5 states that the crew has "averaged 11 days per month as "not scheduled" during a given calendar quarter," and defines the "not scheduled" day as a period of 24 or more hours in which there are no flights, rest overnights or duty of any kind required by Summit Jet. We cannot tell from this average number what actual number of "not scheduled" days each of Summit Jet's pilots, subject to the requirement in section 135.267(e), receives. We also understand that Summit Jet considers the "not scheduled" days as 24 consecutive hour rest periods.

The nature of the "daily" rest period is the same, regardless of the applicable subpart. Rest must be 1) continuous, 2) determined prospectively (i.e., known in advance), and 3) free from all restraint by the certificate holder, including freedom from work or freedom from present responsibility for work should the occasion arise. *See e.g.*, April 29, 2005 Letter to Candace K. Kolander, from Rebecca B. MacPherson, Assistant Chief Counsel, Regulations Division [2005-5] (copy enclosed); and Oct. 29, 2002 Letter to James W. Johnson, from Donald P. Byrne, Assistant Chief Counsel, Regulations Division [2003-6] (copy enclosed). In addition, the nature of the 24-hour rest period is the same as the nature of the "daily" rest period.

Under the facts provided, it is unclear to us if a pilot may ever put the messaging device in "silent" mode to avoid interruption of rest, as it is unclear if he is required or not required to respond to any message. If under Summit Jet's practice the pilot is obligated to respond to a message during the 24-hour rest period (or "not scheduled" day), thus pilots cannot use the "silent" feature in that period,

[1] Section 135.267(f) states: The certificate holder must provide each flight crewmember at least 13 rest periods of at least 24 consecutive hours each in each calendar quarter.

that so-called "rest period" is neither uninterrupted nor continuous. It is also not free from all restraint. Therefore, it would not satisfy the nature of rest test.

Finally, the regulation requires the certificate holder to "provide each flight crewmember at least 13 rest periods of at least 24 consecutive hours." (Emphasis added.) Summit Jet has stated high average numbers of "not scheduled" days, but we cannot tell if there are pilots for whom the average number disguises receipt of less than the regulatory minimum of 13 days. The relevant showing that Summit Jet must make under the regulation is that each flight crewmember actually receives at least 13 rest periods in every quarter. If Summit Jet cannot do so, it has not satisfied the regulation's plain requirement.

This letter was prepared by Joseph A. Conte, Manager, Operations Law Branch and Constance M. Subadan, Attorney, Operations Law Branch. It was coordinated with the Flight Standards Service at FAA Headquarters.

Sincerely,

Rebecca B. MacPherson
Assistant Chief Counsel
Regulations Division

Enclosures

The FAA has not published this interpretation in the Federal Register for pre-issuance comments because it does not present a new issue. This is consistent with the Dec. 16, 2005 Federal Register Notice of Reinstatement of 1980 Public Comment Procedures for Requests for Interpretation of the Flight Time, Rest and Duty Period Regulations (70 Fed. Reg. 74863). That Notice states that Federal Register public comment procedures would be subject to three limitations: 1) pre-issuance comments would be solicited for requests presenting new issues, i.e., not for repetitive type questions; 2) even for new issues, the Agency may issue an interpretation immediately, subject to post-issuance comments; and 3) the Agency reserves the right to modify or discontinue the use of the procedures, at the Office of the Chief Counsel's election.