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

Office of the Chief Counsel

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

MAY 22 2009

Mr. Daniel Berry
[redacted]

Dear Mr. Berry:

This letter is in response to your December 1, 2008 request for interpretation of the flight crewmember rest and scheduling requirements of 14 C.F.R. § 135.267.

In your request you present the following scenario. A part 135 certificate holder, authorized to conduct unscheduled operations, assigns its employee pilots to a rotating schedule of seven consecutive days during which the pilot is on-call, followed by four consecutive days off. Pilots are on-call 24-hours a day during the on-call period. When on-call, a pilot is required by the certificate holder to answer the phone if called by the company dispatch department and to immediately report for flight duty. The pilot is not informed in advance of when his rest periods will take place during the seven-day on-call period. Rather, the certificate holder considers the pilot adequately rested if the dispatch department does not require the pilot to report for flight duty during any given 10 consecutive hours.

You first ask whether the certificate holder may use an on-call schedule that requires pilots to respond to the certificate holder's phone calls and report for immediate flight duty 24-hours a day. Second, you ask if the certificate holder must schedule a pilot's rest period in advance and whether the pilot must be free from obligation to report for flight duty or answer the certificate holder's phone calls during those rest periods.

In the scenario you present, a pilot on a 24-hour on-call schedule awakens at 0700 after 7 hours of sleep. The pilot is not contacted for duty until 2300 that day. At the time the pilot is contacted for duty, the certificate holder considers the pilot to have been on rest for the 10 hours preceding the 2300 report time. Prior to the beginning of the 10 hours that it considers a rest period, the certificate holder did not inform the pilot that he would be required to report at 2300, nor did it inform the pilot that those 10 hours would be a rest period. In this situation, the certificate holder considers the pilot rested and available for a flight assignment until 1300 the following day.

Section 135.267 establishes flight time limitations and rest requirements for unscheduled one- and two- pilot crews.[1] Certificate holders may establish flight crewmember schedules

[1] Sections 135.267 and 135.269 establish flight time limitations and rest requirements for part 135 unscheduled operations. Alternatively, an operator may elect to comply with § 135.265, the flight time limitations and rest

under the "moving 24 consecutive hour" flight time limitations of § 135.267(b), or the regularly assigned duty period of no more than 14 hours flight time limitations of § 135.267(c). *See* Legal Interpretation to Mr. Ross, from Donald P. Byrne, Assistant Chief Counsel, Regulations Division (Aug. 30, 1993). A key component of the regularly assigned duty period provision, § 135.267(c), is that the start and end time of a 14-hour duty day does not vary from day-to-day. *See* Legal Interpretation to John Barney, from Donald P. Byrne, Assistant Chief Counsel, Regulations and Enforcement Division (Dec. 19, 1991) (stating that a pilot under a regularly assigned duty period "comes to work and . . . goes home at the same time every day"); *cf.* Legal Interpretation to Jim Mayors, from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (Mar. 2, 2009) (discussing application of the regularly assigned 14-hour duty day). Pilots in your scenario may be called to fly at any time during their 24-hour on-call period; therefore, it appears that the certificate holder has chosen to not establish regularly assigned duty periods for flight crewmembers under § 135.267(c). Accordingly, this interpretation focuses on the flight time limitations and rest requirements of § 135.267(b) and does not further address your scenario under § 135.267(c).

You question whether the certificate holder may use an on-call schedule that requires pilots to respond to the certificate holder's phone calls and report for immediate flight duty 24-hours a day, as set forth in your example. Although § 135.267(b) does not contain an explicit duty time limitation, it appears the 24-hour on-call situation you present would not meet the rest requirements of § 135.267(d). Section 135.267(d) requires that flight crewmembers must have at least 10 consecutive hours of rest during the 24-hour period preceding the planned completion time of an assignment made under § 135.267(b). A rest period 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* Legal Interpretation to Frederick W. Schwarz, from Rebecca MacPherson, Assistant Chief Counsel, Regulations Division (Nov. 16, 2007); Legal Interpretation to James R. Knight, from Donald Byrne, Assistant Chief Counsel (Dec. 9, 1999).

Under the facts you present, the pilot has an obligation to respond to the certificate holder if he is contacted. Furthermore, the pilot is not informed in advance of when his 10-hour rest period will begin. In order to meet the rest requirement in the situation you present, if the certificate holder assigned a pilot to a flight with a report time of 2300, the pilot must be informed that he will be on rest from 1300-2300 no later than 1300 that same day. Additionally, if the certificate holder contacts the pilot during that rest period to notify him to report for his flight assignment at 2300, it cannot require the pilot to answer or respond to its call because the rest period would not be free from restraint. *See* Legal Interpretation to Michael T. Brazill, from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (Dec. 19, 2005) (stating that if a pilot is obligated to respond to contact from the certificate holder he is not at rest); Legal Interpretation to Candace K. Kolander from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (Apr. 29, 2005) (discussing flight crewmember contact during rest periods); Legal Interpretation to James R. Knight, from

---

requirements for scheduled passenger carrying operations, provided that it obtains operations specifications to that effect.

Donald Byrne, Assistant Chief Counsel (Dec. 9, 1999); Legal Interpretation to Frederick G. Pappas, Jr., from Donald P. Byrne, Assistant Chief Counsel Regulations and Enforcement Division (June 24, 1991). In this instance, because the rest period is not known in advance, nor free from all restraint by the certificate holder, the 24-hour on-call schedule does not meet the rest requirements of § 135.267(d).

This response was prepared by Dean Griffith, Attorney in the Regulations Division of the Office of the Chief Counsel, and was coordinated with the Air Transportation Division of Flight Standards Service. Please contact us at (202) 267-3073 if we can be of further assistance.

Sincerely,

Rebecca B. MacPherson
Assistant Chief Counsel for Regulations, AGC-200