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

Office of the Chief Counsel

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

FEB 2 2009

Mr. D. Ward MacKenzie
[redacted]

Dear Mr. MacKenzie:

This is in response to your October 22, 2008, letter requesting an interpretation of the part 121 flight and duty time regulations specifically pertaining to "other commercial flying."

Your letter indicates that you are currently a Captain at Southwest Airlines in Phoenix, Arizona, and have been offered a part time position flying B-737s in Canada for a Canadian company. You note that Southwest Airlines permits pilots up to 15 hours per month of commercial flying not associated with Southwest with company approval. You ask if the regulations make a distinction between domestic and non-domestic commercial flying that would permit you to fly more than 100 hours per month. Secondly, you ask if there is a regulatory basis permitting you to fly for both companies for a total of up to 120 hours a month.

In general, operations conducted outside of the United States are governed by the rules of the country in which the aircraft is registered. May 18, 1999 Letter to Kathleen Roy from Donald Byrne, Assistant Chief Counsel Regulations Division [1999-6]. However, the flight and duty time regulations pertaining to U.S. operators and crewmembers do not distinguish between "other commercial flying" conducted domestically or for a non-U.S. operator solely in a foreign country. Rather the key inquiry in determining if an activity is "other commercial flying" is whether the crewmember is compensated for his or her services.[1]

"Other commercial flying" means any nonmilitary flying as a required crewmember, other than in air transportation, for which the crewmember is paid for his or her services. Oct. 31, 1990 Letter to Manager, NE-FSDO-03, from Donald P. Byrne, Acting Assistant Chief Counsel, Regulations and Enforcement Division [1990-32]. From your letter, it appears that the proposed position would be non-military, you would be a required crewmember, and that you would be paid. Therefore, flying for the Canadian company would be considered "other

[1] Although there are different flight and duty time requirements for domestic, flag, and supplemental operations, it is the time limitations that change, not the definitions pertaining to the requirements. *See* 14 C.F.R. § 121.471, .483, .509.

commercial flying" and would count towards the flight time requirements outlined in section 121.471.[2]

Consistent with the section 121.471, you would not be able to accept flight time assignments from Southwest for domestic operations if your total flight time, including other commercial flying, would exceed 100 hours in a calendar month.

Finally, you note that your current employer places a 15 hour per month limitation on other commercial flying. We would like to emphasize that certificate holders may elect to establish policies that are consistent with, or more stringent than, what is required by the FAA's regulations. Employment decisions made pursuant to such policies are not within the scope of FAA operations regulations.

This response was prepared by Dean Griffith, Attorney in the Regulations Division of the Office of the Chief Counsel, and was coordinated with the Flight Standards Service AFS-200. 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

[2] Operations conducted in Canada, for a Canadian operator would not be considered "air transportation" because they would not be "interstate, overseas, or foreign air transportation or the transportation of mail by aircraft" as defined in part 1. *See* 14 C.F.R. § 1.1.