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

Office of the Chief Counsel

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

MAR 11 2009

Mr. Richard L. Martindell
King Schools
3840 Calle Fortunada
San Diego, CA 92123

Dear Mr. Martindell:

This is in response to your November 7, 2008, letter requesting an interpretation of the part 135 flight and duty time regulations specifically pertaining to other commercial flying.

You ask if flight instruction conducted under part 91 for compensation by an independent flight instructor is considered other commercial flying for the purpose of tracking flight and duty time in part 135. 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. *See* Legal Interpretation 1990-32 (Oct. 31, 1990). Accordingly, flight instruction under part 91 for compensation is other commercial flying and must be included in the calculation of flight time for the purposes of determining part 135 flight time limitations. *See* May 9, 2003, Letter to James W. Johnson, from Donald P. Byrne, Assistant Chief Counsel for Regulations (noting that an instructor engages in other commercial flying when providing flight training for compensation to another under part 91); *cf.* Mar. 6, 2008, Letter to Ryan Koepp, from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (noting that if the instructor is not compensated for the flight instruction, the time spent is not considered other commercial flying).

Next, you ask if a pilot, who works for a part 135 certificate holder, would need to count instruction time provided for a part 61 or part 141 operation as other commercial flying. Assuming that the instructor is receiving compensation, the FAA considers time spent acting as a flight instructor under parts 61 and 141 to be other commercial flying under part 135. Legal Interpretation 1990-32 (Oct. 31, 1990). Therefore, these hours should be included in the total flight time calculations as required under §§ 135.265 and 135.267.

Finally, you state that you are "clear that [p]art 91 flying assigned by the [p]art 135 certificate holder is commercial flying," but want to confirm that time spent flying for a part 91 operator, that was not assigned by the part 135 certificate holder, counts toward the crewmember's total flight time limits under part 135. As discussed above, 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. *See* Legal Interpretation 1990-32 (Oct. 31, 1990). Whether the flying time is assigned by a part 135 certificate holder or another entity is immaterial; if the crewmember meets the definition of

other commercial flying, that time must be included in the total flight time calculations required by §§ 135.265 and 135.267.

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