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

Office of the Chief Counsel

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

MAR 2 2009

Mr. Jim Mayors
[redacted]

Dear Mr. Mayors:

This is in response to your October 22, 2008, letter requesting an interpretation of the flight and duty rules articulated in Code of Federal Regulations Title 14, Section 135.267(d).

Section 135.267(d) provides that:

> Each assignment under paragraph (b) of this section [setting flight time limitations for unscheduled one- and two-pilot crews] must provide for at least 10 consecutive hours of rest during the 24-hour period that precedes the planned completion time of the assignment.

Your letter poses six questions – three inquiring generally about flight and duty issues, and three asking specifically about how the flight and duty rules of 14 C.F.R. § 135.267 would apply to a hypothetical company's operations. We will first address your general flight and duty questions and then address your specific scenarios.

I. General Flight and Duty Questions

A. You asked whether there is any difference in the application of the definitions of "rest" and "duty" between part 121 and part 135. Specifically, you asked whether the FAA regulatory interpretations of part 121 flight and duty rules regarding "beeper duty, reserve pilot, on-call, etc." would also apply to part 135.

The FAA's interpretations of what constitutes "rest" or "duty" apply to both part 121 and part 135. *See* Legal Interpretation 1997-3 (Mar. 25, 1997); *see also* Legal Interpretation dated May 9, 2003, to James W. Johnson, from Donald P. Byrne, Assistant Chief Counsel for Regulations (addressing the meaning of duty and standby). It follows that our legal interpretations regarding the use of beepers, reserve pilots, on-call or standby status, and crewmember rest apply to both part 121 and part 135 notwithstanding the specific section addressed in the interpretation.

B. You asked whether there is any merit to the following statement regarding an "on-call" requirement under part 135: "You can be both off rest and not on duty. Therefore, you are not on duty until a flight assignment is generated by paging the pilot."

Your question deals with standby status – that is, when a crewmember has not been assigned duty but is awaiting contact from the certificate holder. We have consistently interpreted that if a standby or reserve pilot has a present responsibility to work *if* called, then he is on duty because he is not free from restraint. Thus, the time a flight crewmember is on reserve or standby status, with an obligation to report for a flight assignment if called or paged, is not rest. *See* Legal Interpretation dated May 9, 2003, to James W. Johnson from Donald P. Byrne, Assistant Chief Counsel for Regulations; Legal Interpretation 1992-14 (Mar. 26, 1992).

C. Who is responsible for ensuring that the flight and duty requirements, as defined, are met?

Responsibility for compliance with the part 135 flight and duty requirements resides with both the certificate holder and the crewmember. Section 135.263(a) states that a certificate holder may assign a crewmember flight time, and a crewmember may accept an assignment of flight time, only if the assignment would meet the applicable requirements. Therefore, if a certificate holder inappropriately assigns flight time, and the crewmember accepts the assignment, then both parties would not be in compliance with section 135.263(a).

II. Factual Scenarios

We will now address the specific factual scenarios presented in your request for legal interpretation. Your three specific questions involve a hypothetical company that operates a 24-hour full-time on-demand single-pilot air taxi service under part 135. The company employs four pilots. Each pilot works a 12-hour duty day for a week, and then takes the following week off. The first shift is 0600-1800; the second shift is from 1800-0600. Pilots are not required to physically report to work at the beginning of their shift, but may remain at home until notified of a flight assignment by cell phone or pager. Once notified, the pilot must physically report to the airport in a timely manner to serve as a crewmember on a flight.

The questions that follow are quoted from your letter:

A. "If the 'day' pilot who began his 'availability' at 0600 was never paged for a flight all day, and was relieved by the 'night' pilot at 1800 who now became 'available,' did the 'day' pilot incur a *duty* period under Part 135 even though he was never paged?"

The FAA defines "duty" as "actual work for the air carrier or the present responsibility for such should the occasion arise." Legal Interpretation 1993-31 (Dec. 13, 1993). The period of time during which a pilot is obligated to answer a carrier's page or call, whether or not such a page or call is received, is not a rest period. *Id.* Therefore, because the pilot in your hypothetical has the duty to report for a flight assignment once notified by the certificate holder, he is on duty for the duration of his shift.

This situation is distinct from the "one phone call policy" under which a crewmember may, on his own volition, receive one phone call from an air carrier during a rest period without

the phone call being viewed as disruptive and breaking the continuous rest period because the crewmember here must accept the call and report for work. *See* Legal Interpretation to Candace K. Kolander from Rebecca B. MacPherson, dated Apr. 29, 2005.

B. "If the 'day' pilot who began his 'availability' at 0600 was 'notified' for a flight assignment at 1600 and reported to the airport, what is the latest time he can operate an aircraft under FAR Part 135 without violating section 135.267(d)? Should he be concluded by 2000 (14 hours from 0600), or can he operate the aircraft until 0600 the next morning (14 hours from the time he was 'notified')?"

This answer assumes the hypothetical company is operating single pilot flight crews. In this situation, because the flight crew operates under a regularly assigned duty day, the provisions of 14 C.F.R. § 135.267(c) apply. Under section 135.267(c), a regularly assigned duty period may not exceed 14 hours.[1] Section 135.267(d) does not apply in this situation because it pertains to unscheduled part 135 operations not using regularly assigned duty periods. Accordingly, the pilot in your hypothetical must conclude flight time by 2000 hours – 14 hours from the start of his regularly assigned shift. *See* Legal Interpretation 1993-21 (Aug. 30, 1993). Note that although 14 hours is the maximum length of a regularly assigned duty day prescribed by regulation, operators, such as the one in your hypothetical, may elect to use a shorter duty day.

C. "For the purpose of FAR 135.267(d), if a pilot does <u>any</u> work for Company A, regardless of a requirement to answer a pager, does that work tax the pilots *rest* period? (e.g., suppose the pilot participates in a two-hour meeting at 0900 that is <u>not</u> related to an assignment involving flight time, but then later reports again at 1600 for a flight assignment. When applying FAR part 135.267(d), at what time would the pilot have to be concluded, assuming the pilot received 10 hours of *rest* prior to 0900? Can the period the pilot participated in the meeting be included as part of the pilot's *rest* period since the meeting was <u>not</u> 'an assignment involving flight time?')"

As noted above, time that is not free from all work obligations is not rest, but rather, constitutes part of the flight crew member's duty period. Because the hypothetical company maintains regular assigned duty periods for its pilots, the flight time, duty time, and rest requirements of section 135.267(c) apply to its operations. Therefore, the pilot on duty from 0600 to 1800 would need to complete any flight assignment by 2000, 14 hours from the end of his regularly scheduled shift. The pilot going on duty at 1800 would not be able to participate in the 0900 meeting, which occurs during his 10-hour consecutive rest period,

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[1] 14 C.F.R. § 135.267(c). A flight crewmember's flight time may exceed the flight time limits of paragraph (b) of this section if the assigned flight time occurs during a regularly assigned duty period of no more than 14 hours and –

(1) If this duty period is immediately preceded by and followed by a required rest period of at least 10 consecutive hours of rest;

(2) If flight time is assigned during this period, that total flight time when added to any other commercial flying by the flight crewmember may not exceed—

(i) 8 hours for a flight crew consisting of one pilot; or

(ii) 10 hours for a flight crew consisting of two pilots; and

(3) If the combined duty and rest periods equal 24 hours.

without it counting as time on duty because "rest" requires that a crewmember be free from all work obligations.

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