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

Office of the Chief Counsel

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

SEP 27 2010

[redacted]

Dear Mr. Rogers:

We have received your letter requesting an interpretation of the flight and duty time regulations as they pertain to pilots who have completed an assigned rest period, but have not been assigned to their next flight. Your letter provides a factual scenario for how pilots are assigned to their next flight and the procedures by which they may refuse an assignment. It then asks if the scenario is consistent with current flight and duty time regulations. Your question focuses on the period of time between a pilot's assigned day off and when he reports to the company's office for duty.

The following is our understanding of certain facts not made explicit by your letter. Because your letter references part 135 non-scheduled operations, this interpretation will be limited to such operations and will not discuss part 121 commercial operations or part 135 scheduled operations. Your letter does not mention the number of pilots used per flight; but because it addresses a system in which pilots are placed in rotation and the second in rotation flies separately from the first we have inferred that one pilot is assigned to each flight. Further we understand that regularly assigned duty periods are not employed because the certificate holder contacts pilots to provide assignments on a rotational basis.

Part 135 of Title 14, Code of Federal Regulations, limits the amount of flight and duty time to which crewmembers may be assigned to prevent fatigue and promote safety. Section 135.267(b) provides that a one-pilot crew, not in a regularly assigned duty period, may not exceed 8 hours of flight time during any 24 consecutive hours. Each flight-time assignment must provide for at least 10 consecutive hours of rest during the 24-hour period preceding the planned completion time of the assignment.

The FAA has consistently interpreted its rest requirements to 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 from work should the occasion arise. *See* Dec. 19, 2005 Letter to Michael T. Brazill, from Rebecca B. MacPherson, Assistant Chief Counsel, Regulations Division. The obligation to be available for assignment while not on duty is also not considered rest because the pilot is not free from all restraint. *See* Dec. 15, 2005 Letter to Capt. Michael A. Citrano, Jr., from Rebecca B. MacPherson, Assistant Chief Counsel, Regulations Division. The FAA has also determined that a crewmember's rest period is not disturbed by one telephone call from the

certificate holder, but if the pilot is obligated to answer that call then he is not at rest. *See* Nov. 7, 2003 Letter to James W. Johnson, from Donald Byrne, Assistant Chief Counsel, Regulations Division.[1]

Your letter specifically discusses a scenario where following an assigned day off, a pilot is placed in rotation to receive the next assignment and given a designation indicating if he would be the first called, second called, and so on. Your letter states that upon being called a pilot has the choice to accept or decline the flight, and if he accepts, his duty time begins upon his arrival at your office. Once the pilot's duty has been completed he is placed in a rest period.

Your letter describes that when a pilot is not assigned to duty he is free to do "whatever activity" he chooses, with the understanding that he advises the operations center of his status "as necessary." It also states that the second-up pilot understands that he may likely be called to fly at night and would need to rest as appropriate to ensure fitness for duty.

From your letter it appears that a pilot may refuse an assignment based on (1) lack of fitness for the mission, (2) a valid reason as described in the certificate holder's policy, or (3) fatigue. The extent of the policy on refusals is not clear from your letter, nor is it clear whether a lack of fitness for the assignment solely relates to fatigue or encompasses additional reasons for why a pilot may elect not to accept an assignment.

You state that one reason that the second-up pilot may be called is if the first pilot is otherwise unavailable and that the second-up pilot understands that he may be likely to be called at night. It is not clear from this statement whether being unavailable means that a pilot who receives a call from the certificate holder is or is not required to answer the phone. However, assuming that the pilot is obligated to accept an assignment if contacted, the requirement for the pilot to advise the operations center of his status demonstrates a constraint on the pilot's activities and indicates that this period is not considered rest for the purposes of the regulation.

The certificate holder and the pilot must ensure that the pilot has at least 10 hours of consecutive rest during the 24-hour period that precedes the planned completion of the assignment. Accordingly, the certificate holder must ensure that at the completion of any flight, the pilot has been provided a 10-hour rest period within the 24 hours preceeding the planned completion time of the flight.

Finally, your letter states the certificate holder's policy permitting a pilot to refuse a duty assignment if he feels fatigued or otherwise not fit for duty. Section 91.13(a) provides that "[n]o person may operate an aircraft in a careless or reckless manner, so as to endanger the life or property of another." Both the flight crewmember and certificate holder would be in violation of the regulations if a crewmember flys when his lack of rest would endanger

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[1] Although the December 15, 2005, and November 7, 2003, letters address part 121 rest requirements, interpretations of what constitutes "duty" or "rest" are the same under part 121 or part 135. *See* Mar. 25, 1997 Letter to James Baxter, from Donald P. Byrne, Assistant Chief Counsel, Regulations Division.

others. As such, this portion of the certificate holder's policy is consistent with the regulations.

We trust this interpretation has answered your questions, but note that it is limited to the facts presented in your request as outlined above. If you wish to provide us with additional information regarding your pilot assignment policy so we may provide you with a more detailed response, please feel free to contact us at (202) 267-3073. 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.

Sincerely,

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