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

Office of the Chief Counsel

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

JAN 5 2011

Mr. Wesley C. Converse
Director of Flight Operations
Red Wing Aeroplane Company
W7245 Hwy 35
Bay City, WI 54723

Dear Mr. Converse:

This letter is in response to your August 17, 2010 request for legal interpretation of the provisions of 14 C.F.R. §§ 135.267(b) and 119.1(e)(3). In your request you posed two questions. First, you asked whether it would be permissible for a pilot to conduct a Part 91 ferry flight after the end of a day which would put a pilot over 10 hours of flight time for that day. Second, you asked how § 119.1(e)(3) applies to this scenario.

The answer to your first question is yes, a pilot who has exhausted the flight time limitations of § 135.267(b) may conduct a Part 91 ferry flight, although time spent conducting such flights may impact the pilot's upcoming flight assignments. The answer to your second question is that § 119.1(e)(3) establishes that certain ferry flights may be conducted under Part 91. Both answers are discussed in detail below.

The FAA interprets ferry flying to be "other commercial flying" which may be conducted under Part 91 operating rules. *See* § 119.1(e)(3) (excepting ferry flights from the Part 119 certification requirements); § 125.1(b)(4); Legal Interpretation to Richard L. Martindell, from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (Mar. 11, 2009) ("[O]ther 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."). According to long-standing interpretation, if this flying occurs prior to Part 135 operations it would count toward a pilot's daily flight time limits, and conversely, if the flying occurs after Part 135 operations it would not. *See* Legal Interpretation to James W. Johnson, from Donald P. Byrne, Assistant Chief Counsel for Regulations (May 9, 2003); Legal Interpretation to Jeff J. Jacober, from Donald P. Byrne, Assistant Chief Counsel, Regulations and Enforcement Division (June 24, 1991). Accordingly, a Part 91 ferry flight may be conducted by a pilot who had exhausted his 8 or 10 hours of flight time permitted by § 135.267(b).

However, even though the Part 91 flight time may not count against the § 135.267(b) flight time limits, that time does not exist in a vacuum. First, this flight time would count toward the pilot's quarterly and yearly flight time limitations found in § 135.267(a)(1)-(3). *See* Legal Interpretation to Richard L. Martindell (stating other commercial flying counts

towards total flight time limits under § 135.267). Second, a pilot conducting ferry flights assigned by a certificate holder would be performing duty for the certificate holder. *See* Legal Interpretation to Thomas T. Gasta, from Donald P. Byrne, Assistant Chief Counsel Regulations and Enforcement Division (Mar. 27, 1992) (stating that a ferry flight performed at the direction of a certificate holder is a duty assignment). Therefore, that time could not be considered rest when determining whether the pilot would have had 10 consecutive hours of rest during the 24-hour period that precedes the planned completion time of an upcoming assignment as required by § 135.267(d). *See* Legal Interpretation to Daniel Berry, from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (May 22, 2009) ("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.").

Your second question is how § 119.1(e)(3) applies to this scenario. Section 119.1(e)(3) establishes that, except for non-common carriage operations in airplanes with a passenger-seat configuration of 20 seats or more, or a payload capacity of 6,000 pounds or more, Part 119 does not apply to ferry or training flights and may therefore be conducted under the Part 91 operating rules. For larger aircraft, § 125.1(b)(4) provides a similar exception permitting such flights to be conducted under Part 91. As discussed above, whether a flight is a Part 135 flight or is a Part 91 ferry flight might impact how flight time is calculated under § 135.267.

This response was prepared by Dean E. 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 additional assistance.

Sincerely,

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