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

Office of the Chief Counsel

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

JUN - 9 2011

Glenn Jimenez
[redacted]

Dear Mr. Jimenez,

This letter is in response to your request for a legal interpretation received on February 8, 2011 regarding the crewmember flight time and duty period limitations and rest requirements of 14 CFR § 135.267 and 14 CFR § 135.271. In your letter, you present several scenarios and question whether they comply with Part 135. Background information, summary of the scenarios you present, and responses to the questions follow below.

Your first two questions involve 14 CFR § 135.267 Flight time limitations and rest requirements: Unscheduled one- and two- pilot crews. § 135.267 establishes two methods of determining crewmember flight time limitations and rest requirements. Certificate holders may assign flight crewmember schedules under the "moving 24 consecutive hour" flight time limitations of § 135.267(b) or the regularly assigned duty period of no more than 14 hours flight time limitations of § 135.267(c). *See* Legal Interpretation to Daniel Berry from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (May 22, 2009). Under the "moving 24 consecutive hour" limitations of § 135.267(b), operators may use a duty or on-call schedule that requires pilots to respond and report for duty at varying times from day to day. Although § 135.267(b) does not contain an explicit duty time limitation, crewmember schedules must meet the rest requirements of § 135.267(d).[1] Alternatively, in order to fall under the regularly assigned duty period provision of § 135.267(c), the start and end time of the 14 hour duty day should not vary from day to day and must be immediately preceded and followed by a required rest period of at least 10 consecutive hours. *See* 14 CFR § 135.267(c).[2]

First, you ask whether "an EMS crew operating under 135.267 [that] has been on call (carrying a pager) for 13 hours and 58 minutes" may take a flight in the last two minutes of their duty period knowing that a typical flight lasts 3 hours. The answer is no. When applying the "moving 24 consecutive hour" flight time limitations of § 135.267(b), this scenario would not comply with the rest requirements of § 135.267(d). Even if the crewmember received 10 consecutive hours of rest before the start of the duty period, taking

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[1] § 135.267(d) requires that flight crewmembers have at least 10 consecutive hours of rest during the 24-hour period preceding the planned completion time of an assignment made under § 135.267(b).

[2] *See also* Legal Interpretation to Daniel Berry from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (May 22, 2009) (describing the key components of the regularly assigned duty period).

a flight that extended his duty period beyond 14 hours would not ensure that the crewmember has been provided with a 10 hour rest period within the *24 hours preceding the planned competition of the flight*. Additionally, if the crewmember were to take the flight, it would extend his duty period beyond the 14 hour limit of § 135.267(c).

Second, you present a scenario where an "operator uses a flight schedule to assign duty periods of 12 hours for each day and night crew." You question whether a member of the night crew, who has just completed a 12 hour night shift, may volunteer to be on duty and subsequently take a flight the morning following the night shift if a day crewmember falls ill. You further explain that in this scenario the night crew member "has slept all night and has not had to respond to any company assigned duty other than keeping a pager."

This scenario would not comply with the requirements of the "moving 24 consecutive hour" flight time limitations of § 135.267(b) or the regularly assigned duty period limitations of § 135.267(c). If crewmembers' schedules are established under the "moving 24 consecutive hour" flight time limitations of § 135.267(b), then 135.267(d) requires that flight crewmembers have at least 10 consecutive hours of rest during the 24-hour period preceding the planned completion time of an assignment. A crewmember that has been on duty for 12 hours may only complete 2 more hours of duty in order to ensure that the pilot has had at least 10 hours of consecutive rest during the 24-hour period that precedes the completion of the assignment. Additionally, § 135.267(c) prohibits the crewmember from exceeding a regularly assigned duty period of 14 hours, and as such, the crewmember may not work the additional 12 hour duty period. Therefore, the crewmember may not work the entire 12 hour duty period for the ill crewmember.

Furthermore, under the facts you present, a crewmember that "has slept all night and has not had to respond to any company assigned duty other than keeping a pager" is not on rest. The FAA has consistently required rest to be 1) continuous, 2) determined prospectively (i.e. known in advance) and 3) free from all restraint by the certificate holder. Here, the rest was not prospective, i.e. determined in advance. Additionally, assuming the "company assigned duty" to keep a pager required the crewmember to answer any calls, the rest was not free from all restraint since you required the crewmember to keep this company pager during the 12 hours. *See* Legal Interpretation to Tom Rogers from Rebecca MacPherson, Assistant Chief Counsel for Regulations (Sep. 27, 2010).

Third, you ask about § 135.271 Helicopter hospital emergency medical evacuation service (HEMES). Specifically, you refer to § 135.271(d), which defines the rest required for flight crewmembers involved in HEMES operations during any 24 consecutive hour period. You question how a "crew can be on assignment for 24 hours if they are required to have 8 hours of rest," and if it is "possible for a crew to be on call/duty/assignment for 24 hours and if not called out to fly achieve their 8 hours rest while being available to be called for a flight?" You also ask for clarification of the "one phone call" policy.

If the operator establishes flight crewmember schedules under § 135.271, it requires that each flight crewmember receive at least 8 consecutive hours of rest during any 24 consecutive hour period of a HEMES assignment. *See* 14 CFR § 135.271(d). Therefore, it

is not possible for a crew to be on call, duty, or assignment for a 24 consecutive hour period unless they receive 8 consecutive hours of rest time during that 24 hour period. The rest must be determined prospectively. Your crew may not achieve their 8 hours of rest simply because the crew was "not called out to fly" during the assignment since the rest period cannot be determined in a retrospective fashion. *See* Legal Interpretation to Dan M. Malone from Donald P. Byrne, Assistant Chief Counsel for Regulations and Enforcement (Mar. 30, 1993). Additionally, as explained above, rest must be free from all restraint by the certificate holder. A crewmember on call or assignment is not free from all restraint and therefore that is not a valid rest period. While FAA regulations do not explicitly allow a phone call from the certificate holder during a crewmember's rest period, the "one phone call" policy generally allows a certificate holder to initiate one phone call during the crewmember's rest period. A certificate holder that contacts a crewmember during the rest period cannot require the pilot to answer or respond to the call. The crewmember may, on his own volition, receive the phone call without the phone call being viewed as disruptive and breaking the continuous rest period. *See* Legal Interpretation to James W. Johnson from Donald P. Byrne, Assistant Chief Counsel (Nov. 7, 2003); *see also* Legal Interpretation to Jim Mayors from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (Mar. 2, 2009).

Finally, the FAA notes that both the certificate holder and the crewmembers are responsible for ensuring compliance with flight and duty requirements. § 135.263(a) provides that the certificate holder may assign a crewmember flight time, and a crewmember may accept an assignment of flight time, only if the assignment meets the applicable requirements of part 135. Therefore, if a certificate holder inappropriately assigns flight time, and the crewmember accepts the assignment, then both parties would not be in compliance with § 135.263(a).

We appreciate your patience and trust that the above responds to your concerns. This response was prepared by Nancy Sanchez, an attorney in the Regulations Division of the Office of the Chief Counsel, and coordinated with the Air Transportation Division of Flight Standards Service. Should you have any further questions regarding this matter, please contact us at (202) 267-3073.

Sincerely,

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