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

Office of the Chief Counsel

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

JUL 14 2011

Mr. Norman W. Robinson, Jr.
[redacted]

Dear Mr. Robinson,

This is in response to your request for a legal interpretation that our office received on March 23, 2011. You request guidance on whether flightcrew member recurrent academic training, completed via distance learning methods, constitutes duty. In the scenario you present, a part 135 operator allows its flightcrew members to use the first 60 days of the 90 day timeframe to complete the academic training on their own time. The only restriction the operator places on the flightcrew member during this time is that he or she cannot complete training on a day that he or she is assigned to a flight. The operator would not count the time spent completing the training in this 60-day period as duty time because completion of the training is done at the convenience of the flightcrew member. If the fligthcrew member fails to complete the training within the 60 days, the operator would assign a specific block of time and date for the training to be completed within the last 30 days. You note that the operator would count training done during this time, even if completed via distance learning methods, as duty time because the operator has assigned the training. Based on the following analysis, the FAA has concluded that this training, done under either scenario, would constitute duty.

Section 135.263(b) states that "no certificate holder may assign any flight crewmember to any duty with the certificate holder during any required rest period." The FAA has consistently interpreted duty to mean "actual work for a certificate holder, or the present responsibility for work should the occasion arise." *See* Legal Interpretation to Mr. Jim Mayors from Rebecca B. MacPherson, Assistant Chief Counsel of Regulations (Mar. 25, 2009) (addressing duty and rest requirements for part 135 operators); *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). Completion of the certificate holder's training program, whether it is academic training, completed in a class room or via distance learning methods, or flight training, is work that is assigned by the certificate holder, and thus constitutes duty. The certificate holder, despite affording the flightcrew member some flexibility in completing the training within the first 60 days, has still assigned the flightcrew member to complete the training. As such, this training must not be completed by the flightcrew member during a required rest period. Further, when the certificate holder assigns the flightcrew member to flight time, the certificate holder must consider the time spent completing training in determining whether the flightcrew member

has had the requisite rest to accept the assignment. *See* Legal Interpretation 1997-3 (Mar. 25, 1997) (noting that ground school or CRM training would not qualify as rest once a crewmember initiates a flight).

We appreciate your patience and trust that the above responds to your concerns. If you need further assistance, please contact my staff at (202) 267-3073. This response was prepared by Anne Bechdolt and coordinated with the Air Transportation Division of Flight Standards Service.

Sincerely,

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