U.S. Department
of Transportation
Federal Aviation
Administration

Office of the Chief Counsel

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

NOV 13 2012

Jason M. Kidd
[redacted]

Dear Mr. Kidd:

This is in response to your July 12, 2012 letter posing a number of questions about 14 C.F.R. part 135 operating rules.

Flight, Duty, and Rest Questions

Question 1: Phone Calls During a Rest Period

For your first question, you ask whether a certificate holder can require a flight crewmember to answer a phone call from the certificate holder during a rest period.

During a rest period, a crewmember must be free from all restraint by the certificate holder.[1] If a crewmember is required to answer the phone by the certificate holder, then that crewmember is not free from all restraint. Thus, that flight crewmember is not on a valid rest period. Accordingly, a certificate holder cannot require a flight crewmember to answer a phone call during a rest period.

We note, however, that the FAA has a "one phone call" policy that "generally allows a certificate holder to initiate one phone call during [a] crewmember's rest period."[2] If the crewmember voluntarily chooses to answer this phone call, then the FAA does not view the call as disruptive and breaking the rest period.[3] However, we emphasize that in order for the "one phone call" policy to apply, the crewmember cannot be required to answer the certificate holder's phone call, but must instead answer the phone on his own volition.

Question 2: Effect of Delays

For your next question, you pose the following scenario. A part 135 certificate holder operates unscheduled cargo and passenger operations pursuant to 14 C.F.R. § 135.267(d). That certificate holder schedules its flightcrew to be in rest from 2200z until 0800z. The flightcrew is then scheduled to start a duty assignment that is supposed to begin at 0800z and end at 2100z. The duty assignment consists of three flight segments, each of which is scheduled to be 3 hours long.

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[1] Letter to Glenn Jimenez from Rebecca MacPherson, Assistant Chief Counsel for Regulations (June 9, 2011).
[2] *Id.*
[3] *Id.*

The first flight segment is scheduled to depart at 0930z; the second segment is scheduled to depart at 1300z; and the final segment is scheduled to depart at 1800z.

You then list a number of delays that could happen during the flightcrew's assigned duty day. The delays specified in your letter consist of: (1) late-arriving passengers or cargo; (2) en-route flight delays due to low visibility; (3) a diversion due to a mechanical failure; and (4) a delayed takeoff clearance from air traffic control. Each of these delays would result in the flightcrew finishing its duty day after 2100z. You ask whether these delays would result in the flightcrew violating the rest requirement of § 135.267(d) if that flightcrew finishes all three flight segments of its originally-scheduled duty day.

Subsection 135.267(d) requires that an assignment "must provide for at least 10 consecutive hours of rest during the 24-hour period that precedes the planned completion time of the assignment." In a previous interpretation, the FAA emphasized that "[t]he key to the applicability of § 135.267(d) is in the final phrase '*planned* completion time of the assignment.'"[4] In that interpretation, the FAA concluded that if a crewmember is realistically scheduled to receive 10 hours of rest in a 24-hour period, then "if the original planning is upset for reasons beyond the control of the [certificate holder], the flight may nevertheless be conducted, even though crew duty time may extend beyond 14 hours" in a 24-hour period.[5]

The FAA has previously stated that delays due to air traffic control, mechanical problems, or adverse weather could constitute circumstances that are beyond the control of the certificate holder.[6] In addition, the FAA has stated that delays due to late-arriving passengers or cargo could also constitute circumstances that are beyond the control of the certificate holder.[7] Accordingly, the delays specified in your question (late-arriving passengers or cargo, low visibility, mechanical failure, and delayed takeoff clearance) could constitute circumstances that are beyond the control of the certificate holder that would permit the flightcrew to finish its duty day after the originally-planned 2100z completion time. However, we emphasize that in order for the circumstances-beyond-the-control-of-the-certificate-holder doctrine to apply, the original 2100z completion time must have been realistically scheduled.[8]

Navigation and Chart Databases

Questions 3 and 4: Pilot-Performed Updates on Avionic Devices

Two questions you pose concern pilot performed updates to aeronautical information avionic devices. First you ask whether the pilot of an aircraft operated under part 135 may update a GPS and/or FMS navigation database (such as the Collins FMS-3000, GNS500 series or G1000). Second, you ask whether the same pilot may update the charts displayed electronically on a Multifunction Display, such as the Jeppesen approach charts on the Collins Proline 21. Because

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[4] Letter to Kevin Wilson from Donald P. Byrne, Assistant Chief Counsel of Regulations and Enforcement Division (Mar. 30, 1992) (quoting and emphasizing a portion of the regulatory text from § 135.267(d)).
[5] *Id. See also* Letter to Mr. Ross from Donald P. Byrne (Aug. 30, 1993).
[6] *See* Letter to William E. Banks, Jr. from Rebecca MacPherson (Mar. 18, 2009) (citing previous legal interpretations).
[7] *See* Letter to Kevin Wilson and Letter to Mr. Ross.
[8] *See* Letter to Kevin Wilson.

both of these questions deal with a rule that the FAA is currently finalizing, we cannot answer these questions at this time. Instead, we will answer these questions in a separate letter once the pertinent rulemaking has concluded.

Weight and Balance Computations

Question 5: Load Manifest Duplicate

For your next question, you state that 14 C.F.R. § 135.63(c) requires you to prepare a load manifest before each takeoff. You ask whether a copy of this load manifest must be left with the certificate holder and/or departure airport personnel or whether it is sufficient to keep the only copy of the load manifest on board the aircraft.

Subsection 135.63(c) requires the certificate holder of a multiengine aircraft to prepare a load manifest in duplicate containing information concerning the loading of the aircraft. Pursuant to § 135.63(d), the pilot-in-command must carry the load manifest in the aircraft to its destination, and the certificate holder must then keep the load manifest for at least 30 days at its principal operations base, or at another location used by the certificate holder and approved by the FAA.

When § 135.63 was originally proposed it included a requirement that the pilot-in-command arrange at the takeoff airport for a copy of the load manifest to be retained in a suitable place at that airport.[9] However, this part of the proposed rule was withdrawn in response to comments.[10] As such, § 135.63 does not specify what must be done with the duplicate of the load manifest.

While § 135.63(d) does not specify how the duplicate copy of the load manifest should be handled, the FAA advises certificate holders to incorporate procedures in their operations' manuals for the disposition of the duplicate copy.[11] The certificate holder should work with its principal operations inspector to develop such procedures. This is because the duplicate copy of the load manifest could provide valuable information to investigators regarding passengers, crewmembers, and aircraft weight and balance if there is an accident and the load manifest carried on-board the aircraft is destroyed.[12]

Enforcement Action

Question 6: Manual that Violates FAA Regulations

For your next question, you pose a scenario in which an operator has submitted a required manual containing procedures that violate FAA regulations. You ask whether in that scenario the FAA would hold responsible: (1) the certificate holder for submitting and enforcing improper procedures; and (2) the crewmember for complying with company procedures that violate FAA regulations.

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[9] *See* 42 FR 43490, 43515 (Aug. 29, 1977).
[10] See 43 Fed. Reg. 46742, 46764 (Oct. 10, 1978); Letter to Stanley L. Bernstein from Rebecca MacPherson (Nov. 13, 2009); Letter to Nettie Dickerson, from Edward P. Faberman, Acting Assistant Chief Counsel (Nov. 5, 1980).
[11] *See* Letter to Stanely Bernstein.
[12] *Id.*

Anyone who violates FAA regulations could be subject to an enforcement action. In order to actually determine who would be held responsible by the FAA in your scenario, we would need additional details concerning the company procedures that violate FAA regulations.

Operation Specifications C055 and A097

You also ask a number of questions about operation specifications (OpSpecs) C055 and A097. Your questions about these OpSpecs are policy questions, and as such, we have referred them to the AFS-200 program office.

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 Viola Pando and Alex Zektser, Attorneys, Regulations Division of the Office of the Chief Counsel, and coordinated with the Air Transportation Division of Flight Standards Service.

Sincerely,

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