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

Office of the Chief Counsel

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

JUL 0 2 2012

Arturo Rodriguez
[redacted]

Dear Mr. Rodriguez:

This is in response to your February 28, 2012 letter asking whether flight instruction conducted under part 91 by an independent flight instructor is considered other commercial flying for purposes of tracking flight and duty time in part 121. Your letter does not specify whether the flight instruction is done for compensation.

"Other 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."[1] In March 2009, the FAA issued an interpretation of an analogous part 135 provision to Richard Martindell, which is attached to this letter, stating that "flight instruction under part 91 for compensation is other commercial flying."[2] However, flight instruction that is done without compensation is not considered other commercial flying.[3]

In your letter, you cite to an interpretation issued in 2008 to Daniel Murphy, and you argue that, per the *Murphy* interpretation, someone acting as a pilot in command (PIC) is not a required crewmember and thus, is not engaged in other commercial flying.[4] However, the *Murphy* interpretation does not actually state that a PIC is not a required crewmember. In addition, the *Murphy* interpretation does not address whether acting as a flight instructor constitutes other commercial flying for purposes of the flight, duty, and rest regulations. Accordingly, the *Murphy* interpretation is not applicable in this case.

To sum up, under the FAA's previously-issued *Martindell* interpretation, flight instruction that is done for compensation is considered other commercial flying for purposes of tracking flight and duty time in part 121. However, flight instruction that is done without compensation is not considered other commercial flying.

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 Alex Zektser, Attorney, Regulations Division of the Office of the Chief

---

[1] Letter to Richard L. Martindell from Rebecca MacPherson, Assistant Chief Counsel for Regulations (Mar. 11, 2009).
[2] *Id.*
[3] *See id.*; Letter to Ryan Koepp from Rebecca MacPherson (Mar. 6, 2008).
[4] *See* Letter to Daniel Murphy from Rebecca MacPherson (Dec. 22, 2008).

Counsel, and coordinated with the Air Transportation Division of Flight Standards Service.

Sincerely,

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