Federal Aviation Administration

Memorandum

Date: JUN 18 2013

To: Heather French, ASO-007, Office of Regional Counsel, Southern Region

From: Mark W. Bury, Acting Assistant Chief Counsel for International Law, Legislation and Regulations, AGC-200

Prepared by: Robert H. Frenzel, Manager, Operations Law Branch, AGC-220

Subject: Application of 14 C.F.R. §§ 135.273(a) to Non-Flying Duty Time

We received a request for a legal interpretation on February 20, 2013 involving a question raised by a 14 C.F.R. part 135 single-pilot operator regarding how the regulations treat non-flying duty time under the definitions found in § 135.273(a)[1]. The operator has two businesses, one is the part 135 operation and the other is a Fixed Base Operation (FBO). You present two set of questions.

I. Section 135.273(a) defines rest period as "free from all responsibility for work or duty should the occasion arise." Does this mean that the individual cannot do anything work related or is it specifically talking to work related to the part 135 company? Specifically if the individual returned from a part 135 trip and was done working for the part 135 company but then started pumping gas for the FBO would that count against his rest period?

The short answer is that work performed for the certificate holder cannot take place during a required rest period. See, Legal Interpretation to Neal Boyle from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (Oct. 12, 2012) ("a pilot is on duty if the expectation exists that the pilot will work for the certificate holder if needed") and Legal Interpretation to David Bodlak from Donald P. Byrne, Assistant Chief Counsel (Oct. 28, 1991) (stating that work assigned by a certificate holder cannot be performed during a rest period). The Bodlak interpretation specifically addressed the performance of activities such as fueling, painting aircraft, etc. that would occur during a rest period.

Further, in a Legal Interpretation to Alexandra M. McHugh from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (May 18, 2010)[2] the FAA also clarified that while a

[1] While the section of the regulations that you refer to covers flight and duty limitations for flight attendants and not pilots, the definition of the terms "duty" and "rest" as used in § 135.273(a) have been similarly applied to pilots, flight engineers, flight attendants and maintenance personnel.

[2] In a recent Legal Interpretation to Mr. Craig Fabian from Rebecca B. McPherson, Assistant Chief Counsel for International Law, Legislation and Regulation (Dec. 26, 2012), the FAA rescinded a portion of the McHugh

certificate holder is not required to monitor employee activities after being relieved from work, the certificate holder must not create the appearance of requiring an employee to work during off hours for another facility that is "just a corporate sister" of the certificate holder. In the example given, if the flight assignment is finished and the pilot starts pumping gas or performs other work related to the certificate holder's businesses, the rest period has not started since the pilot has not been relieved from work. While non-flying work is not considered duty for purposes of the part 135 flight and duty limitations, work performed for one of the certificate holder's businesses cannot occur during a required rest period. Thus, the rest period would not start until the pilot is "free from all responsibility for work or duty should the occasion arise."

II. Section 135.273(a) defines duty period as "the period of elapsed time between reporting for an assignment involving flight time and release from that assignment by the certificate holder." So in our example, if the individual was at the FBO working (not part 135 related at all) and then takes a call for a part 135 trip later that day, when would the duty period start? Would it be when he took the call for the part 135 or when he first showed up at the FBO? Another way to ask the question would be what if the individual was working at a local restaurant. He then took a call to go on a part 135 trip that evening. When would the duty period start? Would his rest period have been compromised by the work at the restaurant?

The above analysis applies in this case as well. Using the scenarios presented in the Bodlak and McHugh interpretations noted above, if the work being performed is generally under the control of the certificate holder, whether directly or indirectly through a related business or corporation owned by the certificate holder, that work cannot take place during a rest period. Therefore, a duty period involving a flight assignment after performing duties for a business of the certificate holder could not start until the rest requirements of part 135 were met. In the example presented, if the pilot was at the FBO working and took a call for a part 135 trip later in the day, the time worked at the FBO would be considered part of that duty period. Thus, if the trip would meet the applicable duty and flight limitations when adding the time spent working at the FBO to the flight time for the trip, then that trip could take place. If not, the trip could not start until the pilot had *first* received the applicable required rest.

As noted above in McHugh, the certificate holder need not monitor employee activity that takes place after release from work, such as in the case of work at a restaurant or some other business, including flying for another certificate holder. See, Legal Interpretation to James L. Nauman from Donald P Byrne, Assistant Chief Counsel (Aug. 7, 1992) (stating that flying your own plane, flying for a corporate flight department, giving flight instruction or flying for another part 135 certificate holder would not interrupt the rest period given by the pilot's part 135 employer). In the example of working at a restaurant or other business not related to the certificate holder, the duty period would start when the pilot reported for duty with the expectation of a flight assignment. The assigned rest period by the certificate holder would not be compromised. However, the FAA also cautioned in Nauman that both the flight crewmember and certificate holder would be in violation of § 91.13 if a flight crewmember flies when his lack of rest would endanger others.

---

interpretation relating to the "equivalence" language in § 121.377. The portion of the McHugh interpretation cited here was not rescinded.