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

Office of the Chief Counsel
800 Independence Ave., SW.
Washington, DC 20591

AUG 30 2013

Sean Masterson
[redacted]

Dear Mr. Masterson,

This letter responds to your June 4, 2013 e-mail requesting a legal interpretation from our office. Specifically, you requested a determination of whether two factual scenarios, raised in the context of operations conducted by a part 135 operator with a two helicopter program, comply with the applicable flight time and duty limitations and rest requirements. Your first scenario essentially raises an issue that was addressed in a previous legal interpretation issued by our office and your second scenario raises an issue related to the meaning of rest. Since your e-mail correspondence did not include extensive detail, we attempted to contact you by telephone for additional information, without success. We have nonetheless attempted to address the scenarios you presented in the discussion that follows.

The meaning of rest is pertinent to both of your factual scenarios. As explained in prior legal interpretations, a flightcrew member's rest period must be "(1) continuous, (2) determined prospectively (i.e., known in advance), and (3) free from all restraint by the certificate holder, including freedom from work or the present responsibility for work should the occasion arise." *See* Legal Interpretation to Mr. Daniel Berry from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (May 22, 2009); Legal Interpretation to Mr. Frederick W. Schwarz, from Rebecca MacPherson (Nov. 16, 2007); and Legal Interpretation to Mr. James R. Knight, from Donald P. Byrne, Assistant Chief Counsel for Regulations and Enforcement (Dec. 9, 1999).

I. Whether a certificate holder may require pilots to serve on standby or "on call" status "24/7" while awaiting an assignment for flight duty.

In your first scenario, you asked whether the regulations permit a part 135 operator to assign pilots to be on-call for a 24/7 schedule and treat the pilot's duty period as beginning only if and when the pilot is called for an assignment. You contend that this practice is inconsistent with the part 135 flight time and duty limitations as interpreted in our May 22, 2009 legal interpretation to Mr. Berry.[1] For the reasons that follow, we agree with your contention and reiterate our conclusion in the Berry interpretation. The practice of part 135 operators requiring pilots to be on-call or on standby status, while awaiting a possible assignment of flight duty 24 hours of the day, is not permitted to the extent that the on-call duty is not rest for purposes of 14 C.F.R.

[1] Further detail was not provided to explain what is meant by "a 24/7 schedule."

§ 135.267. *See* Legal Interpretation to Mr. Berry; *see also* Legal Interpretation to Mr. Jim Mayors from Rebecca B. MacPherson (Mar. 2, 2009).[2]

Given your reference to the 2009 legal interpretation to Mr. Berry, without providing additional or changed facts in your scenario, we assume your underlying question is whether the Berry interpretation remains valid. The Berry interpretation remains a valid interpretation of § 135.267 as to the factual scenario addressed therein, as do the interpretations on which Berry was based. For your convenience, we are including an overview of that interpretation.

Section 135.267 applies to "any operation that is not a scheduled passenger-carrying operation..." using a one or two-pilot crew.[3] *See* 14 C.F.R. §§ 135.261(c) and 135.267. Paragraph (b) of this section contains the general restriction on flight time and paragraph (d) contains the duty time limitation (i.e. rest requirement). *See* § 135.267(b) and (d).

In the Berry interpretation, we addressed the legality of an on-call schedule, which required pilots to standby for direction from the operator, respond to the operator's phone calls if contacted and report for immediate flight duty, 24 hours a day. *See* Legal Interpretation to Mr. Berry. We concluded that such a "24-hour on-call schedule does not meet the rest requirements of § 135.267(d)" since the required rest period was not known in advance by the pilot or free from all restraint. *See,* Legal Interpretation to Mr. Berry. Such a schedule deprives the pilot of the required period of rest in violation of § 135.267(d), because the pilot is not free from all present responsibility for work or duty while considered to be on-call. *Id.; see also* Legal Interpretation to Mr. Dan M. Malone from Donald P. Byrne (Mar. 30, 1993).[4]

Accordingly, the factual scenario that you provided could also result in a violation of the applicable rest requirements to the extent that the pilot's rest period is not determined in advance or free from all restraint by the certificate holder during the time spent on-call.

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[2] In the Mayors interpretation we addressed similarly the issue of whether a pilot who is kept in standby status is considered to be "on duty" if the pilot is later called for a flight assignment. We found that when the flightcrew member was in standby status (or on reserve) awaiting a potential flight assignment, he/she had a present responsibility for work if called by the operator. Therefore, the time spent in standby status could not count as rest because the pilot was not free from all restraint.

[3] Since you did not indicate that the operator uses an augmented crew of three or four pilots, we have assumed for purposes of this interpretation that your question refers to the assignment of a traditional one or two pilot crew. In addition, we have assumed that the hypothetical part 135 operator does not use "regularly assigned duty periods" referenced in § 135.267(c) to schedule pilots for duty given your references to an on-call schedule.

[4] In the Malone interpretation, we stated that "[c]arrying a beeper or being within telephone contact, for the purpose of maintaining the present responsibility for flight duty if called, would not be consistent with the Agency's interpretation of rest." Although the Malone interpretation specifically addressed pilot flight time and duty limitations in the context of HEMES operations conducted under § 135.271, the analysis applies similarly to the rest requirements in § 135.267 because the Agency has interpreted the requirement for rest in certain broad terms that apply to various operations within part 135. *See* Legal Interpretation to Mr. Schwarz.

II. Whether the time spent by an air ambulance pilot to complete required training on a given day counts as duty or rest for purposes of a subsequent flight assignment made later in the same day (24-hour period).

In the second scenario, you questioned whether the regulations permit a part 135 operator to assign a pilot to an evening EMS flight after participating in required pilot training during that same day. You contend that such a practice violates the part 135 flight time and duty limitations, and in particular, the requirement for uninterrupted rest. For the reasons that follow, we agree with your contention that this scenario could present a regulatory violation if the training infringes on the applicable rest requirements.

Since the scenario presented implies that training is considered "duty" for purposes of the part 135 flight time and duty limitations, we address this threshold issue first. Section 135.263(b) provides that "[n]o certificate holder may assign any flight crewmember to any duty with the certificate holder during any required rest period." *See* 14 C.F.R. § 135.263(b). We have consistently interpreted "duty" as meaning "actual work for an air carrier or present responsibility to work should the occasion arise." *See* Legal Interpretation to Mr. David Bodlak from Donald P. Byrne (Oct. 28, 1991) (concluding that completion of a training flight and other work for the certificate holder do not count as rest). Also, as explained in previous interpretations, "[c]ompletion of the certificate holder's training program…is work that is assigned by the certificate holder, and thus constitutes duty." *See* Legal Interpretation to Mr. Norman W. Robinson, Jr. from Rebecca B. MacPherson (Jul. 14, 2011) and Legal Interpretation to Mr. James Baxter from Donald P. Byrne (Mar. 25, 1997). Therefore, in the present scenario, the operator must "consider the time spent completing training in determining whether [the pilot] has had the requisite rest to accept the [flight] assignment." *See* Legal Interpretation to Mr. Robinson.

Next, we note that the second scenario was presented for our review in the context of air ambulance operations. Part 135 air ambulance operations are generally conducted in accordance with the flight time and duty provisions for unscheduled operations in § 135.267, discussed previously, or in accordance with the more restrictive flight time and duty provisions applicable to helicopter emergency medical evacuation service (HEMES) operations in 14 C.F.R. § 135.271. Since you indicated that the operations specifications of the operator at issue may or may not include HEMES operations, we address the factual scenario as arising under either § 135.267 or § 135.271.

Under § 135.267(d), a pilot may only be assigned to certain duty if he has had the requisite rest prior to that assignment. For air ambulance operations conducted under § 135.267, each pilot generally must receive 10 consecutive hours of rest in the 24-hour period before the expected completion time of an assignment. *See* § 135.271(d). For HEMES operations conducted under § 135.271, each pilot must receive "at least 10 consecutive hours of rest immediately preceding reporting to the hospital for availability of flight time." *See* § 135.271(b). During any 24-hour HEMES duty assignment, the pilot must also receive 8 or more consecutive hours of rest. *See* § 135.271(d). In addition, the pilot must have a period of post-assignment rest. *See* § 135.271(h). Lastly, pilots may not be assigned "any other duties" during a HEMES assignment. *See* § 135.271(g).

The rest period required under § 135.267(d) must be continuous, known in advance, and free from all restraint. Freedom from restraint means that the pilot must be free from work and free "from responsibility for work should the occasion arise." *See* Legal Interpretation to Mr. David Bodlak. As explained previously, the completion of required training events cannot be counted as rest.

Therefore, for air ambulance operations conducted under § 135.267, the time spent by a pilot to complete training requirements in a given 24-hour period could infringe on the pilot's requirement to have "10 consecutive hours of rest" depending on the completion time of any flight assignment within the same 24-hour period. See § 135.267(d).

For air ambulance operations conducted as HEMES operations under § 135.271, the rest requirements also effectively restrict the assignment of a pilot to HEMES duty, if training received before the start of the HEMES assignment infringes on the "10 consecutive hours of rest immediately preceding reporting to the hospital for availability of flight time" as required under § 135.271(b). Moreover, § 135.271(g) explicitly prohibits the assignment of a pilot to "any other duties" during a HEMES assignment because the HEMES assignment "is intended to be used in bona fide emergency situations." *See* Legal Interpretation to Mr. Malone (A HEMES assignment is for emergency medical evacuation purposes only). Indeed, we have interpreted this provision as a prohibition against any assignment of a pilot to tasks "other than those consistent with [or that support] a HEMES assignment." *Id.*

Accordingly, whether the air ambulance operations in your scenario are conducted under § 135.267 or § 135.271, the completion of training requirements by a pilot may not infringe upon the pilot's applicable rest requirements. Moreover, training may not be completed *during* a HEMES assignment. *See* § 135.271(g).

This response was prepared by Bonnie C. Dragotto, an attorney in the International Law, Legislation and Regulations Division of the Office of the Chief Counsel, and coordinated with the Air Transportation Division of Flight Standards Service. If you need further assistance, please contact our office at (202) 267-3073.

Sincerely,

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