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

Office of the Chief Counsel

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

NOV 12 2013

Gerald P. New
[redacted]

Dear Mr. New:

This is in response to your July 25, 2013 letter posing several scenarios and asking questions about how the flight, duty, and rest provisions of 14 C.F.R. § 135.267(c) would apply to those scenarios. Our analysis of your scenarios is set out below.

1. Changing a Schedule

For your first scenario, you pose the following. A pilot is assigned to a base and the certificate holder needs that pilot and his airplane to reposition to another base during the course of the pilot's 15-day shift. The two bases have different assigned duty days. You ask about the acceptable way to change the pilot's start time for duty as part of the switch from one base to another.

Subsection 135.267(c) contains a set of flight, duty, and rest regulations that are applicable only if, among other things, a flight crewmember's assigned flight time "occurs during a regularly assigned duty period of no more than 14 hours." "A key component of the regularly assigned duty period provision . . . is that the start and end time of a 14-hour duty day does not vary from day-to-day."[1]

In previous interpretations, the FAA emphasized that "regularly assigned duty periods are not intended to be implemented for short periods of time."[2] The FAA stated that it considers "a schedule of at least four weeks a reasonable amount of time to establish a regularly assigned duty period."[3]

In addition, to this four-week period, the FAA has also articulated the following list of factors that it uses to determine whether there is a regularly assigned duty period:

> 1) The actual schedule to which a certificate holder's pilots must adhere will be a major factor in determining whether the certificate holder is maintaining a regularly assigned duty period. A schedule with no

[1] Letter to Daniel Berry from Rebecca MacPherson, Assistant Chief Counsel for Regulations (May 22, 2009). *See also* Letter to Martin Murat from Rebecca MacPherson (July 26, 2011).
[2] Letter to Bill Comee from Donald Byrne Assistant Chief Counsel, Regulations and Enforcement Division (Jan. 21, 1991).
[3] Letter to John Barney from Donald Byrne (Dec. 19, 1991). *See also* Letter to Bill Comee.

> prescriptive period as to when it will end tends to show that a pilot is on a regularly assigned duty period, whereas a schedule with intermittent periods where a pilot's duty time fluctuates from day-to-day or week-to-week will indicate that the operator is not maintaining a regular work pattern;
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> 2) Past practices of the carrier, with respect to repeated changes in scheduling, will tend to show that there is no regularly assigned duty period; and
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> 3) The intent of the certificate holder as manifested by objective criteria (e.g., written memoranda and other formalized documents which allow one to make an objective determination) may be relevant in determining whether its pilots are on regularly scheduled work patterns. Clearly, a present intent to maintain a schedule indefinitely, with no foreseeable changes, will demonstrate a true, fixed, and permanent schedule. Given the mobility of pilots and the nature of the aviation industry, schedule changes are commonplace; thus, the permanency component of the scheduling is not an absolute prerequisite to trigger paragraph (c) coverage. The key is what evidence is available to establish a bona fide present intent to maintain a particular schedule for a reasonable period of time.[4]

Applying the above discussion to your scenario, there are insufficient facts to determine whether the pilot in that scenario operates under a regularly assigned duty period. The pilot in your scenario operates on a 15-day shift, which is less than the four-week period that the FAA previously specified as a reasonable amount of time to establish a regularly assigned duty period. Your letter does not specify how that pilot was scheduled prior to beginning the 15-day shift, and it does not specify how long the pilot will operate under a new schedule after being transferred to a new base and assigned the new schedule. Your letter also does not specify how frequently the pilot's schedule has been changed in the past prior to his transfer to a new base. Consequently, because we lack sufficient information to determine whether § 135.267(c) applies to the pilot in your scenario, we are unable to answer your question with regard to how that pilot can transfer to a new schedule under § 135.267(c).

2. Infrequent Deviations from Regularly Assigned Duty Time

For your next scenario, you pose the following. A pilot has a regularly assigned 14-hour duty day that begins at 8am. One day, he is asked if he can fly an early morning charter that begins at 7am. The pilot would receive 10 hours of rest prior to the charter, and he would be given 12 hours of rest following the charter so that he reports for his next duty day during the regularly scheduled time of 8am. You ask whether, given these facts, the pilot can accept this assignment under the provisions of § 135.267(c).

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[4] Letter to Bill Comee.

As discussed above, § 135.267(c) applies only to a regularly assigned duty period, and a key component of a regularly assigned duty period "is that the start and end time . . . does not vary from day-to-day."[5] However, the FAA previously stated that § 135.267(c) permits an infrequent deviation from an otherwise regularly assigned work schedule.[6] "The regularly assigned duty period may be resumed the next day provided the pilot is given 10 consecutive hours of rest [as required by § 135.267(c)(1)] before resuming the regularly assigned duty period."[7] The FAA's past interpretations emphasize that the deviations must be infrequent, and "if the pilot's schedule has intermittent periods where the duty time fluctuates from day to day or week to week, the operator is not maintaining a regular work pattern."[8]

The pilot in your scenario operates under a regularly assigned duty day both before and after the charter flight and receives at least a 10-hour rest period both before and after the charter flight. If this pilot's schedule is not subject to frequent deviations from the regularly assigned duty period, the pilot would be able to operate the charter flight under § 135.267(c) as an infrequent deviation to the regularly assigned duty period. However, we again emphasize that if the pilot's duty time fluctuates on a regular basis, that pilot would not be able to operate under § 135.267(c).

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, International Law, Legislation and Regulations Division of the Office of the Chief Counsel, and coordinated with the Air Transportation Division of Flight Standards Service.

Sincerely,

Mark W. Bury
Assistant Chief Counsel for International Law, Legislation and Regulations

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[5] Letter to Daniel Berry.
[6] Letter to Assistant Chief Counsel, AGL-7 from Donald Byrne (July 5, 1991); Letter to Doug Holee from Donald Byrne (July 22, 1989).
[7] Letter to Assistant Chief Counsel, AGL-7.
[8] Letter to Doug Holee.