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

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

JAN 13 2014

Captain Scott M. Ewing
[redacted]

Dear Captain Ewing:

This letter responds to your September 2, 2013 request for clarification of a legal interpretation of 14 CFR § 135.263(b) issued by our office to Mr. Norman W. Robinson Jr. on July 14, 2011, and for an applicability determination of the Robinson interpretation to 14 C.F.R. §§ 121.471(e).

In particular, you asked whether the July 14, 2011 Robinson interpretation of § 135.263(b), which addressed whether academic training constitutes "duty," is applicable to § 121.471(e) and whether it matters "if the air carrier names the [academic training] assignment something else." You also asked whether it is possible for the training section of a certificate holder's general operating manual (or any other air carrier manual) to supersede the federal aviation regulations. In addition, you asked whether the FAA or the principal operations inspector (POI) may "approve something that is contrary to the rule." We have answered each of these questions below.[1]

Section 121.471(e) prohibits certificate holders from assigning any flight crewmember, and flight crewmembers from accepting, an "assignment to any duty with the air carrier during any required rest period." Similarly, § 135.263(b) prohibits any certificate holder from "assign[ing] any flightcrew member to any duty with the certificate holder during any required rest period."

I. Applicability of Robinson Interpretation to part 121.

First, you asked whether the July 14, 2011 Robinson interpretation of § 135.263(b) is applicable to § 121.471(e). The Robinson interpretation addressed the issue of whether flightcrew member recurrent academic training, completed via distance learning methods, constitutes duty in the context of part 135 operations. As provided in that interpretation, time spent by a flightcrew member in academic training is considered duty regardless of whether the training is completed in person or via distance learning methods because completion of the certificate holder's training program "is work that is assigned by the certificate holder." Therefore, time spent on duty in training cannot be counted towards a required rest period.

---

[1] We note that several of the questions in your letter relate to issues of policy. Since our office responds to requests for legal interpretations of particular sections of the federal aviation regulations, we have focused this response on the questions that specifically pertain to regulatory provisions. We have also forwarded your letter, including the remaining questions of policy, to the Flight Standards Service for further consideration.

The Robinson interpretation, and those on which it was based, remain valid interpretations of current FAA flight time and duty limitations and rest requirements applicable to part 135 operations. In addition, interpretations of flight time and duty limitations and rest requirements in part 135 are generally treated as guidance with regard to requests for interpretation of similar provisions within part 121, and vice versa. *See e.g.* Legal Interpretation to Mr. James Baxter from Donald P. Byrne (Mar. 25, 1997)(Interpretations of what constitutes 'rest' or 'duty' are the same under part 121 or 135). In this instance, since the only substantive difference between § 121.471(e) and § 135.263(b) is the obligation imposed on the flightcrew member (as well as the certificate holder) in the part 121 provision, which was not at issue in the Robinson interpretation, the conclusion set forth in the Robinson interpretation applies equally for purposes of interpreting § 121.471(e). Thus, the time a flightcrew member spends completing the certificate holder's training program cannot be counted towards the current rest requirements for purposes of part 121, regardless of whether the training is completed in person or via distance learning.[2]

Moreover, in response to your question whether the name given by the air carrier to a training event or task (e.g. homework or pre-study) matters for purposes of compliance with § 121.471(e) or § 135.263(b), our response is no. As we have stated previously with some frequency, "duty" as used in both parts 121 and 135 is interpreted as meaning "actual work for a certificate holder, or the present responsibility for work should the occasion arise."[3] *See* Robinson, *citing* Legal Interpretation to Mr. Jim Mayors from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (Mar. 2, 2009) and Legal Interpretation to Mr. James W. Johnson from Donald P. Byrne, Assistant Chief Counsel for Regulations (May 9, 2003). In addition, the FAA has interpreted "rest" as "a continuous period of time during which the crewmember is free from all restraint by the certificate holder, including the freedom from work and freedom from responsibility to work should the occasion arise." *See* Masterson and Boyle interpretations. To the extent that a certificate holder assigns a flightcrew member to "any duty," including a training assignment, during a required rest period, the flightcrew member is not "free from all restraint" and there could be a regulatory violation. *See* §§ 121.263(b) and 121.471(e); Masterson and Boyle interpretations. An air carrier cannot circumvent the applicable regulatory requirements and legal interpretations by calling the training that it assigns to a crewmember by a different name.

II. Whether an operation manual may supersede the regulations.

Second, you asked generally (without reference to a particular section of the federal aviation regulations) whether it is possible for the training section of a certificate holder's general operating manual (or any other air carrier manual) to supersede the federal aviation regulations. The answer to your question is no. The regulations provide that the part 121 operating manual

---

[2] We also suggest that you refer to the Flightcrew Member Duty and Rest Requirements Final Rule published in the Federal Register on January 4, 2012 (77 Fed. Reg. 330) and related amendments (Docket No. FAA-2009-1093) for changes to the flightcrew member duty and rest requirements applicable to certain part 119 certificate holders, which took effect January 4, 2014.

[3] *See also* Legal Interpretation to Mr. Sean Masterson from Mark W. Bury, Acting Assistant Chief Counsel for International Law, Legislation and Regulations (Aug. 30, 2013); Legal Interpretation to Mr. Neal Boyle from Rebecca B. MacPherson (Oct. 12, 2012); and Legal Interpretation to Mr. James Baxter from Donald P. Byrne (Mar. 25, 1997).

"must not be contrary to any applicable federal regulation and...any applicable foreign regulation, or the certificate holder's operations specifications or operating certificate." *See* § 121.135(a)(4). A similar requirement applies to the part 135 operating manual. *See* § 135.21(c). Therefore, manual provisions that are inconsistent with applicable regulatory provisions will not be approved by the FAA.

III. Whether the FAA or its inspectors may approve conduct contrary to the regulations.

Third, you asked whether the FAA or a principal operations inspector (POI) may "approve something that is contrary to the rule." In general POIs are not authorized to independently approve a course of action by a certificate holder or operator that would not be in compliance with the applicable federal aviation regulations. However, a process exists for certificate holders and operators to request approval from the FAA for relief from a particular regulatory requirement by filing a petition for exemption with the agency. *See* 14 CFR §§ 11.15 and 11.81-11.103. The FAA grants certain exemptions if granting such relief is in the public interest and would not adversely affect safety. *Id.* Although the FAA has received requests for an exemption from the requirements set forth in §§ 121.471 and 135.263, we note that none of those requests for exemption have met the standard for a grant.

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 was coordinated with the Air Transportation Division of the Flight Standards Service. If you need further assistance, please contact our office at (202) 267-3073.

Sincerely,

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

"must not be contrary to any applicable federal regulation and...any applicable foreign regulation, or the certificate holder's operations specifications or operating certificate." *See* § 121.135(a)(4). A similar requirement applies to the part 135 operating manual. *See* § 135.21(c). Therefore, manual provisions that are inconsistent with applicable regulatory provisions will not be approved by the FAA.

III. Whether the FAA or its inspectors may approve conduct contrary to the regulations.

Third, you asked whether the FAA or a principal operations inspector (POI) may "approve something that is contrary to the rule." In general POIs are not authorized to independently approve a course of action by a certificate holder or operator that would not be in compliance with the applicable federal aviation regulations. However, a process exists for certificate holders and operators to request approval from the FAA for relief from a particular regulatory requirement by filing a petition for exemption with the agency. *See* 14 CFR §§ 11.15 and 11.81-11.103. The FAA grants certain exemptions if granting such relief is in the public interest and would not adversely affect safety. *Id.* Although the FAA has received requests for an exemption from the requirements set forth in §§ 121.471 and 135.263, we note that none of those requests for exemption have met the standard for a grant.

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 was coordinated with the Air Transportation Division of the Flight Standards Service. If you need further assistance, please contact our office at (202) 267-3073.

Sincerely,

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