U.S. Department
of Transportation
Federal Aviation Administration

Office of the Chief Counsel

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

FEB -3 2015

William G. Jones
[redacted]

Re: Early termination of a rest period and difference between rest and duty

Dear Mr. Jones,

This is in response to your November 17, 2014, e-mail asking two questions about the flight, duty, and rest rules of 14 C.F.R. part135. Our answers to your questions are set out below.

1. Early termination of a rest period

For you first question, you provide the following scenario. You work for a certificate holder operating under 14 C.F.R. § 135.267(d). At the conclusion of a series of flights, you are put into a five-day rest period. After three days of the rest period have elapsed, the certificate holder calls you and asks you to report for duty either immediately or in three hours. You ask whether this behavior is permissible under the flight, duty, and rest rules of part 135. For the purposes of answering your question, we will assume that the certificate holder does not require you to answer its call and that you answered the phone voluntarily.

In a 1991 interpretation issued to Philip E. Brooks, the FAA considered whether a certificate holder can terminate a rest period early.[1] In that case, the pilot was scheduled for a multi-day rest period. After two days of the rest period had elapsed, the pilot was contacted by the certificate holder and asked to report for duty about 9 hours later at 8:55am. In its interpretation, the FAA found that the pilot's rest period continued until the moment he had to report for duty at 8:55am.

Based on the longstanding analysis in the *Brooks* interpretation, we conclude that the flight, duty, and rest regulations of part 135 allow a certificate holder to terminate a rest period early. However, we emphasize that if a certificate holder chooses to exercise this option, then the amount of rest that is provided to the flight crewmember is not the amount of rest that was originally scheduled, but the amount of rest that the flight crewmember received prior to reporting for duty. We also emphasize that prior to beginning duty, the flight crewmember must be able to show that he or she has received the amount of rest mandated by the flight, duty, and rest regulations of part 135.

[1] Letter to Philip E. Brooks from Donald P. Byrne, Assistant Chief Counsel for Regulations and Enforcement (Dec. 27, 1991).

2. Difference between duty and rest

For your next question, you ask us to clarify the difference between not being on duty (which you call "off duty") and being on a rest period. In answering this question, we will assume that you are still asking about the flight, duty, and rest rules of § 135.267.

The FAA defines duty as "actual work for the employer or the present responsibility for such work should it arise."[2] Conversely, a rest period is defined as a period of time that is: 1) continuous, 2) determined prospectively (i.e. known in advance) and 3) free from all restraint by the certificate holder.[3] Based on these definitions, a rest period will always be free from duty but an "off duty" period will not always be a rest period because freedom from duty is only one of the three elements that need to be satisfied in order to have a valid rest period.

For example, consider a scenario in which a certificate holder relieves a flight crewmember from duty but does not tell the flight crewmember in advance that the flight crewmember will be free from duty during this time. The flight crewmember in this example is not on duty because the certificate holder has relieved that flight crewmember from duty. However, the flight crewmember is also not on a rest period, because he was not told in advance that he would be free from duty during this period of time. Thus, a flight crewmember can be "off duty" without necessarily being on a rest period.

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

Sincerely,

Mark W. Bury
Assistant Chief Counsel for Regulations, AGC-200

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[2] Letter to Alexandra M. McHugh from Rebecca MacPherson, Assistant Chief Counsel for Regulations (May 18, 2010).
[3] Letter to Glenn Jimenez from Rebecca MacPherson (June 9, 2011).