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

Office of the Chief Counsel

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

OCT - 6 2015

Mr. Hernan E. Orellana
[redacted]

RE: Request for Interpretation of 14 CFR Part 135 and Rest Rules

Dear Mr. Orellana:

This responds to your March 7, 2015 request for a legal interpretation addressing whether your company's "rolling rest" policy is consistent with 14 C.F.R. §135.267, "Flight time limitations and rest requirements: Unscheduled one- and two-pilot crews." You enclosed a copy of an August 30, 2013 legal interpretation issued by Mark W. Bury, Acting Assistant Chief Counsel for International Law, Legislation, and Regulations, AGC-200, to Mr. Sean Masterson ("Masterson interpretation"), which specifically addresses the rest requirements of §135.267. Your letter raises four questions.

You first present a hypothetical wherein you finish your assigned duties on a Wednesday at 2200 Eastern Standard Time (EST), at which time your rest period starts and continues until 0800 EST on Thursday. After completing this 10-hour rest period, you are not called to report for duty until you receive a "2 hour callout" on Friday morning at 0200 EST for a 0400 EST takeoff time. You state that you did not know of the 0400 EST takeoff sufficiently in advance to get 10 hours of rest immediately before the flight and ask whether this "rolling rest" policy violates §135.267.

In response to your question, the above company policy would not meet the requirements of §135.267. The "rolling rest" policy in your hypothetical falls short because, as pointed out in the Masterson interpretation, 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." What you describe is the same 24-hour, on-call schedule that the Masterson Interpretation found would not meet §135.267 because the required rest period is neither known in advance by the pilot nor free from all restraint. *See also*, Legal Interpretation from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations to Daniel Berry (May 22, 2009). Simply put, rest must be prospective (*i.e.*, determined in advance). In this case, that rest ended at 0800 on Thursday, and you would not be free from all present responsibility for work or duty if considered to be on-call. If you are required to answer the phone by your company, then you are not free from all restraint. *See* Legal Interpretation from Mark W. Bury to Darin M. Moody (Feb. 3, 2015), citing Legal Interpretation from Rebecca MacPherson, Assistant Chief Counsel for Regulations to Jason M. Kidd (Nov. 13, 2012). You would not be

permitted to fly the 0400 EST flight because you would not be able to meet the look-back requirement of §135.267(d), which provides that flightcrew members must have at least 10 consecutive hours of rest during the 24-hour period preceding the planned completion time of an assignment made under §135.267(b).[1] You would not have had that required 10 consecutive hours of rest, since being on-call, or on standby or reserve status with an obligation to report for a flight assignment, if called or paged, is not rest.

You next ask, if the Federal Aviation Administration (FAA) has already deemed a certain practice to be in violation of §135.267, "why is a [principal operations inspector (POI)] still allowing this practice of a certificate holder? Why is the POI not held accountable for the violation?"

The federal aviation regulations have the force and effect of law. Certificate holders and flightcrew members operating under part 135 are required to comply with §135.267. Whether a POI should be held accountable for not enforcing a requirement is an internal agency matter and is separate and apart from a certificate holder's duty to comply with the regulations.

Your third question is, "legally speaking, does the [Masterson] letter … obligate a certificate holder to follow the interpretation" made in that opinion?

A legal interpretation issued by the Office of the Chief Counsel is the FAA's official position concerning the meaning of a statute, regulation, or other legal requirement. Legal Interpretation from Mark W. Bury, Assistant Chief Counsel for Regulations, to Darin M. Moody (Feb. 3, 2015). Validly adopted legal interpretations issued by the Regulations Division of the Office of the Chief Counsel are coordinated with relevant program offices at FAA Headquarters and have FAA-wide application. They inform policy guidance and enforcement of agency regulations.

Your final question is: "How can [the certificate holder] be made to abide by 14 CFR 135.267?" The FAA has broad statutory authority to conduct investigations into possible violations of federal aviation statutes and regulations. The FAA has a range of responses to such violations, including warning notices and letters of correction, suspension and revocation of certificates, and civil penalties. For more information about the FAA's compliance and enforcement program, you may want to review FAA Order 2150.3B, "FAA Compliance and Enforcement Program," which is available online at http://www.faa.gov/regulations_policies/orders_notices/index.cfm/go/document.information/documentid/17213.

Often times an investigation of a possible regulatory violation is based on information provided by private persons and there are a number of ways to provide such information. Under 14 C.F.R. §13.5, you may file a formal complaint. A copy of the complaint is forwarded to the person allegedly violating the regulations for response, and the FAA then decides, based on the information in the complaint and the response, if any, whether to begin its own investigation.

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[1] Under §135.267, certificate holders may establish flight crewmember schedules under the "moving 24 consecutive hour" flight time limitations of §135.267(b), or the regularly assigned duty period of no more than 14 hours flight time limitations of §135.267(c). Your company's policy is analyzed under the former since the pilot in your scenario may be called to fly at any time during their on-call period (*i.e.*, there are no established regularly assigned duty periods for flight crewmembers).

Another option is to bring your concerns to a Flight Standards District Office or Certificate Management Office. You may not consider this a viable option because of your view that the principal operations inspector is allowing violations to occur. You can, however, report your concerns to a regional Flight Standards division manager or the Director, Flight Standards Service, at FAA Headquarters.

Finally, there is an FAA Safety Hotline where you can provide information, and you may request that your identity remain confidential. The Hotline's telephone number is (202) 267-3934 and email address is 9-AWA-AVS-AAI-safetyhotline@faa.gov.

This response was prepared by Jonathan Cross, Senior Attorney for Airport Certification, Regulations Division, Office of the Chief Counsel, and coordinated with the Enforcement Division, Office of the Chief Counsel, and the Air Transportation Division of Flight Standards Service. If you need further assistance, please contact our office at (202) 267-8013.

Sincerely,

Lorelei Peter
Acting Assistant Chief Counsel
for Regulations, AGC-200