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

Office of the Chief Counsel

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

JAN 28 2015

Jeffrey W. Perdue
Director of Operations
SP Aviation, Inc.
8517 Earhart Rd., Suite 300
Oakland, CA 94621

Re: Tail-end deadhead under the flight, duty, and rest rules of 14 C.F.R. part 135

Dear Mr. Perdue,

This is in response to your September 22, 2014 letter asking how the flight, duty, and rest rules of 14 C.F.R. part 135 would apply to the following scenario. A flightcrew subject to § 135.267(d) is given an assignment to fly from Oakland, California (OAK) to Colorado Springs, Colorado (COS) and then on to Teterboro, New Jersey (TEB). Upon arrival in TEB, the flightcrew would have a total duty period of 10 hours. You ask us to assume that prior to beginning the duty period, the flightcrew received the 10 hours of rest required by § 135.267(d) and neither crewmember had any other commercial flying to report.

You ask two questions dealing the above scenario. Our responses to your questions are set out below.

1. Deadheading after the conclusion of a duty period.

For your first question, you ask whether the flightcrew in the above scenario may "elect to airline home to Oakland, CA. immediately upon concluding their duty period in TEB, with the understanding that it will take approximately 8 hours to complete the airline travel." You emphasize that the flightcrew "will be placed into a rest period of at least 10 hours immediately upon arrival in Oakland and that rest period must be completed in its entirety before that crew can be given and/or accept another flight assignment." In answering this question, we will assume that the flightcrew in your scenario will conduct the 8-hour flight back to Oakland as passengers on a flight that is piloted by a different flightcrew.

Subsection 135.267(d) requires a flight assignment for a duty period that is not regularly scheduled to "provide for at least 10 consecutive hours of rest during the 24-hour period the precedes the planned completion time of the assignment." However, § 135.267(d) does not state that the rest period must commence immediately upon the completion of a duty period.

Thus, in a 2011 interpretation examining a similar regulatory provision of part 121 (§ 121.483(a)), the FAA stated that "the agency allows air carriers to assign a pilot a deadhead leg at the end of a duty period before providing [a required rest period] because the pilot is not assigned as a flightcrew member" on the deadhead flight.[1] However, the interpretation cautioned that the certificate holder must provide the pilot with the required rest period "before assigning any further duty to the pilot."[2] The interpretation also emphasized that "time spent in deadhead transportation is not considered part of the rest period."[3]

Because the 2011 interpretation analyzed a part 121 flight, duty, and rest provision that is similar to § 135.267(d), the pertinent analysis in that interpretation is applicable to § 135.267(d). Thus, applying that interpretation to your scenario, the flightcrew in your scenario can deadhead back to Oakland after the conclusion of their duty day in TEB as long as they are limited to a passenger role on the flight back to Oakland. Upon arrival in Oakland, that flightcrew must be provided with the 10-hour rest period specified in § 135.267(d) before commencing any further duty. Finally, the time spent deadheading back to Oakland from TEB would not be considered part of that flightcrew's rest period.

2. Whether deadheading constitutes duty and length of deadhead.

For your second question, you again state that the air carrier plans to deadhead the crew back to home base at the conclusion of their duty period. However, this time you ask us to assume that the time spent deadheading would be 15 hours. You ask whether this 15-hour deadhead would be considered duty and whether 15 hours is an acceptable length of time for deadhead transportation.

In a 1988 interpretation, the FAA stated that, with some exceptions not applicable here, deadhead time is generally not counted as duty time.[4] Thus, the 15-hour deadhead in your question would not constitute duty time. We note, however, that, since the 15-hour deadhead would likely consist of transportation that is not local in character, the time spent in deadhead transportation would also not be part of a rest period.[5]

In response to your question about whether deadhead transportation that is 15 hours long is permissible, we note that there is no specific limit in § 135.267 as to the permissible length of a deadhead. However, § 91.13(a) prohibits the operation of an aircraft in a careless or reckless manner. The FAA has previously stated that, under § 91.13(a), a person who is too fatigued to safely operate an aircraft may not operate that aircraft but must instead immediately notify his or her employer.[6] Thus, while there is no explicit

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[1] Letter to Kevin McCabe from Rebecca MacPherson, Assistant Chief Counsel for Regulations (Feb. 18, 2011).
[2] *Id.*
[3] *Id.*
[4] Letter to Regional Counsel, ANM-7 from John H. Cassady, Assistant Chief Counsel, AGC-200 (Apr. 5, 1988).
[5] 14 C.F.R. § 135.263(c).
[6] *See, e.g.,* Letter to John R. Del Turco from Mark W. Bury, Assistant Chief Counsel for International Law, Legislation, and Regulations (Nov. 26, 2013).

regulatory prohibition in § 135.267 on assigning a crewmember to 15 hours of deadhead transportation, we caution that a deadhead of this length that commences at the end of a full duty day may increase the risk that the flightcrew member would be too fatigued to safely operate subsequent flights.

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 Regulations, AGC-200