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

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

MAR 31 2015

Lynn Sloan
[redacted]

Subject: Flight time and duty limitations for augmented crews under 14 CFR §135.269 in unscheduled (on-demand) operations

Dear Ms. Sloan:

This letter responds to your July 23, 2014 request for a legal interpretation of 14 C.F.R. §135.267 on behalf of a part 135 on demand air carrier. You raised several questions concerning the flight time and duty limitations and rest requirements that apply to unscheduled (on demand) operations with two particular scenarios included for our consideration. We note that both scenarios present issues regarding the use of augmented crews (*i.e.* three or four pilots) as opposed to traditional one or two pilot crews, which are covered by §135.267. Therefore, as explained in the discussion that follows, we have applied the requirements in 14 C.F.R. §135.269 to the scenarios presented.

Section 135.267 establishes the daily and cumulative flight time limitations and rest requirements for unscheduled operations using one and two-pilot crews. Section 135.269 establishes the daily and cumulative flight time limitations and rest requirements for unscheduled operations using augmented crews (*i.e.* crews consisting of three or four pilots).

While a pilot serving as part of a two-pilot crew subject to §135.267 may fly up to 10 hours (total flight time and other commercial flying) in any rolling 24 consecutive hour period; a pilot serving on an augmented crew is limited to "no more than 12 hours aloft for a three-pilot crew or 16 hours aloft for a four-pilot crew."[1] *See* §135.267(b)(2) and §135.269(b)(4).[2] In addition, operations using an augmented crew must be conducted on aircraft equipped with adequate sleeping facilities for the pilot being relieved. *See* §135.269(b)(5).

Scenario A – Van Nuys to Moscow
Your first four questions were raised based on the following scenario included in your letter:

> A flight departing Van Nuys, California to Moscow, non-stop using a GV aircraft and three flight crewmembers. The air carrier quoted the flight three weeks prior to the intended flight date using FOS, a computer quoting and flight planning system. Actual flight plans from Arinc were also calculated to verify flight times on the day the trip was quoted, one week

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[1] In previous legal interpretations, the agency has stated that the definition of "aloft" as used in a similar context (historical § 121.507(a)(2)) is equivalent to both the terms "flight time" and "block-to-block" time. *See* Legal Interpretation to Miller (Aug. 27, 1997), *citing* Hahn (July 7, 1989) and Gatmon (Apr. 9, 1991).

[2] In addition, a pilot serving as part of an augmented crew is limited to "no more than 8 hours of flight deck duty in any 24 consecutive hours" and "no more than 18 duty hours for a three-pilot crew or 20 duty hours for a four-pilot crew in any 24 consecutive hours." *See* §135.269(b)(2)-(3).

> later and again a week before the trip. The trip consistently planned for 11.1 to Moscow and 11.6 for the return flight…the actual flight plan to Moscow ran at 10.5 hours indicating that the winds had changed and the return leg, 3 days later, would likely be over 12 flight hours and over duty time of 14 hours, using §135.267….Additionally, the return trip now was close to the limits of the aircraft and a fuel stop was possible.

Question 1: Can a part 135 air carrier operate a GV aircraft[3] without a crew rest area using a three-pilot crew (two PICs and one SIC) under §135.267 flight time and duty limitations?

FAA Response: No. An unscheduled operation under part 135 using an augmented crew (*i.e.* three or four pilots) must comply with the requirements in §135.269. As we explained in the preamble to the NPRM proposing the addition of the flight time limits for augmented crews to part 135, the §135.269 limits "flight time to 8 hours in 24 consecutive hours, but [allows] for an extended duty period and extended period aloft *if the aircraft is equipped with [adequate][4] sleeping facilities for the relief pilot (emphasis added)*. *See* 49 Fed. Reg. 12136, 12141 (Mar. 28, 1984); 50 Fed. Reg. 29306, 29317 (July 18, 1985); *see also* Legal Interpretation to Origel (Aug. 16, 2013)(A determination of whether to apply §135.267 or §135.269 must be based on the number of pilots actually used in the operation.)

The Origel interpretation indicated a certificate holder could apply any requirements in §135.267 that are more restrictive than §135.269 to an augmented crew based on the general principle that while an "applicable regulation provides the minimum standard with which a person must comply; a certificate holder may choose to apply more restrictive limitations and requirements." However, there are some provisions in §135.269 unique to operations conducted with augmented crews, which are more restrictive than the requirements in §135.267. *Compare e.g.* §135.269(b)(2) with §135.267(b)(2); *see also* §135.269(b)(5). The requirement for adequate sleeping facilities is one of those provisions because it is required by § 135.269, but not by § 135.267. To that end, a certificate holder may not apply the requirements of §135.267 to an augmented crew, in lieu of §135.269, if the aircraft is not properly equipped with adequate sleeping facilities in accordance with §135.269(b)(5).

Since you indicated the GV aircraft used in the operation described in Scenario A is not equipped with adequate sleeping facilities, the operation described in your scenario violates the applicable requirements for augmented crews in §135.269(b). *See* §135.269 (b)(5). Moreover, since the pilot exceeded the 8 hour flight deck duty limitation in §135.269(b)(2), we also note that the pilot was required to have a compensatory rest period "before the next duty period of at least 16 consecutive hours," as required in §135.269(c).[5]

Lastly, we note that you indicated that the operator's general operating manual (GOM) includes a provision permitting three-pilot crews to be used on the GV aircraft without a rest area under §135.267, which was approved by your local Flight Standards District Office (FSDO). Therefore,

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[3] The type certification data sheet A12EA for the Gulfstream (GV) aircraft requires a minimum crew of two-pilots.

[4] "Adequate" was substituted in place of "approved" in the final rule for consistency with the flight time limits for augmented crews under part 121. *See* 50 Fed. Reg. 29317.

[5] We assume for purposes of our analysis and the remainder of the interpretation that at least one of the three pilot members of the flightcrew would have exceeded the 8-hour flight deck duty limit on the return trip. Based on the facts provided, the return trip was over 12 hours. Thus, it would not have been possible to keep each of the three pilots from spending more than 8 hours at the controls of the GV aircraft.

we are also forwarding your inquiry to the Air Transportation Division of the Flight Standards Service for additional consideration.

Question 2: When is a realistic plan created?

FAA Response: An air carrier's schedule must be realistic and represent a normal occurrence in the flight operations conducted by the carrier. *See* Legal Interpretation to Barrett (May 22, 1991), a copy of which is enclosed.[6] Whether a schedule is realistic depends upon an examination of all the facts and circumstances in a particular case in light of the applicable flight and duty regulations. *See* Legal Interpretation to Wilson (Mar. 30, 1992), a copy of which is enclosed. In the Wilson interpretation we described the applicable standard as follows:

> The original scheduling must represent a normal occurrence in the flight operations conducted by the carrier. A schedule deemed a pretext, in an attempt to circumvent the overall intent of a regulation, will not be considered to be 'realistic'...

Id.; see also Barrett Interpretation. Moreover, if actual flight time is consistently higher than the scheduled flight time allowed, the schedule should be adjusted. *See* Barrett Interpretation.

Your letter indicates that "[a]ctual flight plans from Arinc were also calculated to verify flight times" multiple times before the actual trip and "[t]he trip consistently planned for 11.1 to Moscow and 11.6 for the return flight." You were also apparently advised by "two top aviation attorneys and both said the return flight could be conducted using 'beyond the control of the certificate holder,' as the planed [sic] trip was realistic," however, adequate factual information was not provided about the schedule and whether the particular certificate holder's operations for us to opine definitively as to the realistic nature of the original plan. Therefore, assuming the Van Nuys-Moscow trip you described can be (and is usually) accomplished without exceeding the applicable flight time and duty limitations for augmented crews in §135.269, then the plan would be considered realistic.[7]

Question 3: Can the air carrier and the assigned pilots continue with the flight knowing that the return leg will be over 12 hours of flight time and over a 14 hour duty day?

FAA Response: Yes, assuming the operation is conducted in accordance with the flight time and duty limitations for augmented crews in §135.269(b), the aircraft is equipped with adequate sleeping facilities, the original schedule is realistic, and the delay is "due to circumstances truly unforeseeable or beyond the carrier's control." *See* Legal Interpretation to McCabe (Mar. 10, 2011) and Barrett (May 22, 1991).

Section 135.269 limits a pilot serving on an augmented flightcrew of three pilots to 8 hours of flight deck duty, 18 total duty hours, and 12 hours aloft within any consecutive 24-hour period. *See*

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[6] In Barrett, the agency interpreted the flight time and duty limitations under part 121; as we have previously indicated, interpretations of similar regulatory provisions under other parts of title 14 CFR are treated as guidance for purposes of interpreting the part 135 flight and duty rules.

[7] As previously explained, §135.267 establishes the daily and cumulative flight time limitations and rest requirements for unscheduled operations using one and two-pilot crews, while §135.269 establishes the daily and cumulative flight time limitations and rest requirements for unscheduled operations using augmented crews (i.e. crews consisting of three or four pilots).

§135.269(b)(2)-(4). Based on the limited information provided in your first scenario, on the return trip, the flightcrew would likely have exceeded the 12-hour aloft limit and the 8 hour flight deck duty limit, but not the 18 hour duty limit. *Id.*

While §135.269(c) includes a compensatory rest provision in the event the 8-hour flight deck duty limitation is exceeded "because of circumstances beyond the control of the certificate holder," that provision does not excuse exceeding the 12-hour aloft limit for three pilot crews. However, exceeding the 12-hour aloft limit could be excused by the broader reaching circumstances-beyond-the-control-of-the-certificate-holder exception in §135.263(d). [8] Our analyses for the exception in §135.269(c) and 135.263(d) are the same.

The key to the applicability of the circumstances-beyond-the-control-of-the-certificate-holder exception in is the unforeseen weather conditions or other unforeseen delays disrupting an otherwise properly scheduled flight. *See* Legal Interpretation to Stringer (June 19, 1991). If the original scheduling is upset because the weather causes a diversion, the final segment may be conducted even though the final segment would be completed outside the period originally planned. *Id.* The FAA has consistently interpreted delays due to weather, air traffic control, and mechanical delays as examples of circumstances beyond the control of the certificate holder under FAR 135.263(d). *See e.g.* Legal Interpretation to Muntzing (July 15, 1992). However, the FAA has further cautioned that these conditions do not automatically trigger an excuse of the certificate holder's violation of applicable flight time and duty limitations. *See* Legal Interpretations to Johnson (May 4, 2012) and Ryan (Feb. 23, 2006).

It appears the original planned schedule did not exceed the applicable limitations in §135.269(b). However, the scenario implies the certificate holder and the flightcrew knew the return segment of the trip would be delayed three days in advance of that flight segment. Therefore, exceeding the time-aloft limit is not automatically excused because the delay was related to a change in weather conditions. Indeed, the certificate holder had a duty to evaluate schedule and route changes or other appropriate actions within its operational control that could be taken to prevent exceeding the time-aloft limit of §135.269(b)(4).

Therefore, if the weather delay on the day of the return trip could not be mitigated within the certificate holder's operational control, then the circumstances-beyond-the-control-of-the-certificate-holder exceptions could apply to excuse the violations of §135.269(b)(2) and (4), so long as the original schedule was also realistic (see response to Question 2 above) and the extension of the time aloft does not infringe on the flightcrew's required rest.[9]

Question 4: If the fuel stop was required in Seattle [due to the delay on the return trip], could the flight crew continue to the final destination in Van Nuys?

FAA Response: Yes, assuming the operation is conducted pursuant to the flight time and duty limitations for augmented crews under §135.269, including the requirement that the aircraft be

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[8] Section 135.263(d) provides that "[a] flight crewmember is not considered to be assigned flight time in excess of flight time limitations if the flights to which he is assigned normally terminate within the limitations, but due to circumstances beyond the control of the certificate holder or flight crewmember (such as adverse weather conditions), are not at the time of departure expected to reach their destination within the planned flight time."

[9] *See e.g.* Legal Interpretation to Perez (June 20, 2014).

properly equipped with adequate sleeping facilities. The same analysis and reasoning applied in question 3 applies here.

Under §135.269, each member of the three-pilot flightcrew could be assigned up to 8 hours of flight deck duty, 18 total duty hours, and 12 hours aloft within the consecutive 24-hour period. *See* §135.269(b)(2)-(4). Provided the original schedule discussed in your first scenario was indeed realistic (addressed in response to Question 2 above) and the exception in §135.263(d) applies to the return trip based on the weather delay (addressed in response to Question 3 above), then the flightcrew would be permitted to complete the return trip after stopping for fuel in Seattle.

Scenario B – LAX to Teterboro
Your remaining questions were based on the following scenario:

> On another flight, the air carrier used two pilots to get the aircraft from Los Angeles to Teterboro, 5 hours of flight and 7 hours of duty, then put on two fresh pilots in Teterboro and left one of the pilots from the previous flights to make a three pilot crew. This was needed as the next leg was scheduled for 11 flight hours. Rotating the pilots again allowed for no pilot to exceed 10 hours of flight time....The pilot [carried over from the first leg] had no duty after the first hour of the flight on the second leg. Duty time for this pilot would have exceeded 14 hours if he could not duty off on the aircraft.

Question 5: Can a pilot "duty off" on board an aircraft?

FAA Response: No, a flightcrew member, while aloft, cannot be considered relieved from all duty for purposes of accumulating rest, unless the transportation is local in character.[10] Although an augmented crew configuration in compliance with §135.269 may provide a pilot flightcrew member with any opportunity for sleep, any time spent sleeping would not count as "rest."

We again note that your letter implies §135.267 should apply to this scenario. We therefore reiterate that part 135 operations with an augmented crew (three or four pilots) must comply with the requirements of §135.269.

As previously discussed, §135.269 limits a pilot serving on an augmented flightcrew of three pilots to 8 hours of flight deck duty, 18 total duty hours, and 12 hours aloft within any consecutive 24-hour period. *See* §135.269(b)(2)-(4). We are unable to determine whether the flight assignment in scenario two complies with the applicable flight time and duty limitations in §135.269(b)(2)-(4) based on the limited information you provided about the schedule. However, we emphasize that if the operation at issue was conducted in the GV aircraft referenced in your first scenario, which you indicated was not equipped with adequate sleeping facilities, the operation would not comply with §135.269(b)(5).

While the pilot carried over from the first leg to the second leg in this scenario may have been relieved from flight deck duty after the first hour of the second leg, the remainder of the pilot's time aloft would nonetheless count as flight time, since flight time does not end until "the aircraft comes

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[10] *See e.g.* Legal Interpretations to Johnson (July 14, 1992 and May 9, 2003) and Converse (Mar. 10, 2011), addressing deadhead transportation, copies of which are enclosed. While deadheading does not necessarily constitute duty, a flightcrew member cannot be considered relieved from all duty for purposes of accumulating rest, unless the transportation is local in character. *See* Converse Interpretation.

to rest after landing." 14 CFR §1.1; *see also* Legal Interpretations to Miller (Aug. 27, 1997), Hahn (July 7, 1989), and Gatmon (Apr. 9, 1991).

This response was prepared by Bonnie C. Dragotto, an Attorney in the Regulations Division of the Office of the Chief Counsel and coordinated with the Air Transportation Division of Flight Standards Service. If you need further assistance, please contact our office at (202) 267-3073.

Sincerely,

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Enc.