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

Office of the Chief Counsel

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

SEP 27 2016

Arnold J. Kleiner
[redacted]

Re: Rest requirements under 14 C.F.R. § 135.267(b) and (d)

Dear Mr. Kleiner:

This letter responds to your May 24, 2016 request for clarification with regard to rest requirements provided in 14 C.F.R. § 135.267(b) and (d).

You present a hypothetical schedule concerning a pilot who provides a list of prospective days to a certificate holder, in which he is available for assignment. You state the available period of Monday through Friday consists of the pilot going home after an assignment on Monday, and is not called for another assignment until Thursday. Your scenario also includes the fact that the pilot is not required to answer phone calls from the certificate holder, or may opt to answer his phone but decline to take an assignment. You cite the "moving consecutive 24-hour limitations" principle and ask whether this type of schedule complies with the requirements of § 135.267(b) and (d). You also ask whether a pilot who calls the certificate holder's operator back after seeing a missed phone call on his phone is permissible under the "one phone call policy."

As explained in the following summary of the applicable regulatory provisions and prior FAA legal interpretations, the answer to your question depends upon whether the period of Monday through Friday is considered rest, such that the "rest" is determined prospectively. In addition, the "one phone call policy" analysis applies to decisions to return phone calls.

"Duty" and "Rest" Under § 135.267

Section 135.267(b) provides that a one-pilot crew, not in a regularly assigned duty period, may not exceed 8 hours of flight time during any 24 consecutive hours. Each flight-time assignment must provide for at least 10 consecutive hours of rest during the 24-hour period that precedes the planned completion time of the assignment. In addition, under the "moving 24 consecutive hour" limitations of § 135.267(b), operators may use a duty or on-call schedule that requires pilots to respond and report for duty at varying times from day to day. Although § 135.267 does not contain an explicit duty time limitation, crewmember schedules must fulfill the rest requirements of § 135.267(d). The FAA has consistently interpreted the term "duty" for purposes of § 135.267 to mean actual work for an air carrier or present responsibility to work should the occasion arise. Legal

Interpretation to Mr. David Bodlak from Donald P. Byrne, Chief Counsel, Regulations and Enforcement Division (Oct. 28, 1991).

Regarding rest, a pilot's rest for purposes of § 135.267 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 freedom from present responsibility from work should the occasion arise. The hypothetical scenario you present for consideration does not clarify whether the pilot's rest would be determined in advance; the scenario only states the pilot may be considered for assignments at various times. Therefore, based on the scenario you posit, the FAA cannot determine whether the rest is determined prospectively, or known in advance.

For purposes of § 135.267, the period of rest cannot consist of required on-call or standby status while awaiting a possible assignment of flight duty throughout the entire 24-hour day. See, e.g., Legal Interpretation to Mr. Sean Masterson from Mark W. Bury, Acting Assistant Chief Counsel for International Law, Legislation, and Regulation (2013); Legal Interpretation to Mr. Daniel Berry from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (May 22, 2009). A 24-hour on-call schedule cannot meet the rest requirements of 135.267(d) because, in such a situation, the rest period is not known in advance nor is it free from all restraint.

One Phone Call Policy

You also ask, when a pilot who sees a missed call from the certificate holder on his phone and decides "of his own volition" to call the operator back, whether such an action would be consistent with the "one phone call policy." The definition of "duty" includes the obligation to return phone calls. The pilot has the *option* to answer one phone call during a rest period without disrupting the rest period. The one phone call exception applies when the certificate holder *makes contact* with the pilot one time by telephone, pager or the like. Legal Interpretation to Mr. James W. Johnson from Donald P. Byrne (Nov. 7, 2003). Overall, "duty" is defined as including an *obligation* to answer a phone call because the crewmember is not free from all restraint, and therefore fails the third prong of the "rest" definition provided above. Id. .

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 letter has been prepared by Katie Inman, Operations Law Branch, Office of the Chief Counsel and coordinated with the Air Transportation Division of Flight Standards Service.

Sincerely,

Lorelei Peter
Assistant Chief Counsel for Regulations, AGC-200

Arnold J. Kleiner
[redacted]

Federal Aviation Administration
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800 Independence Ave., S.W.
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Dear Sir or Madam,

I am requesting clarification of an earlier interpretation given by your office of 14CFR § 135.267. In your interpretation given to Mr. Jimenez, dated June 9, 2011, you state that "Under the 'moving consecutive 24 hour' limitations of 14CFR § 135.267 (b), operators may use a duty or on-call schedule that requires pilots to report for duty at varying times from day to day".

I would like to present a hypothetical scenario for your consideration to determine if, in your opinion, it complies with 14CFR § 135.267 (b) and (d):

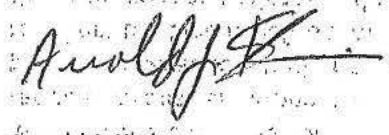
A pilot gives an operator a list of days that he is available to fly in any given month. The first week of that month, he is available Monday through Friday. The operator calls the pilot in for assignment on Monday. The pilot goes home after the flight to start his rest period. Provided that the pilot is not required to answer his phone, and that the operator complies with the "one phone call policy", if that pilot is not called for another assignment until Thursday of that same week, would he be considered in rest from the time he left on Monday until the time he showed up for the Thursday assignment? Again, this scenario is assuming that the pilot is not required to answer his phone and that he may answer his phone and turn down the assignment if he is not fit to take the flight (illness, less than 8 hours since his last alcoholic beverage, etc.) without any repercussions from the operator.

If the operator and pilot (or pilots) adhere to this type of schedule, does it comply with all of the requirements of 14CFR § 135.267 (b) and (d).

One other question is, if the pilot does not answer his phone when the operator calls, but then a few minutes later sees on his phone that he missed a call from the operator, if he decides of his own volition to call the operator back, would that still be considered in compliance with the "one phone call policy"?

Thank you for your attention to this matter and I look forward to your response.

Sincerely,



Arnold J. Kleiner