U.S. Department
of Transportation
Federal Aviation Administration

Office of the Chief Counsel

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

AUG 2 2 2017

SevenBar Aviation
Attention: Mr. Steve Moody
[redacted]

Re: Flight time limitations and rest requirements for unscheduled one and two pilot crews under 14 C.F.R. § 135.267.

Dear Mr. Moody:

This is in response to your letter dated September 24, 2015, presenting several questions pertaining to the flight and duty requirements of 14 C.F.R. § 135.267. For your convenience, we have restated your questions below, followed by our interpretation of pertinent parts of the applicable regulation.

Question 1: *Whether the flexibility afforded to flight crews under § 135.267(b), which allows for the extension of flight duty times in light of unforeseen circumstances beyond the control of the flight crew or the certificate holder who performed reasonable preflight planning, should be afforded to flight crews of certificate holders operating under §135.267(c).*

The goal of flight and duty time regulations is to prevent crew fatigue. Section 135.267 establishes two mechanisms to determine applicable flight time limitations and rest requirements for flight crews of certificate holders conducting unscheduled operations under 14 C.F.R. part 135, using one or two pilot crews. Such certificate holders can assign their flight crews to a: (a) moving 24-hour consecutive schedule, in which case, the requirements and limitations of § 135.267(b) apply, or (b) regularly assigned duty period of no more than 14 hours, in which case, the requirements and limitations of § 135.267(c) apply. *See* Legal Interpretation to Daniel Berry, from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (May 22, 2009).

FAA regulations allow flight crews of certificate holders operating under § 135.267(b) to exceed the maximum flight time established in § 135.267, if the extension is due to circumstances beyond the control of the flight crew and the certificate holder. In contrast, flight crew of certificate holders operating under § 135.267(c) cannot exceed the rigid, maximum duty period of 14 hours allowed for in such subsection. Any certificate holder or flight crew who conducts operations under § 135.267(c) and exceeds the 14-hour duty period threshold, violates § 135.267(c). This is an inflexible rule, which results from

industry interest in creating a standardized alternative to resolve the operational gap resulting from disruptions of flight crew utilization due to the extension of flight duty periods pursuant to § 135.267(b). Notwithstanding the above, the FAA will not consider the following to constitute a violation of § 135.267(c): if the certificate holder or flight crew reasonably anticipates that the flight segment(s) can be conducted under the 14 hour threshold, but the flight is unexpectedly delayed enroute due to unanticipated events, thereby exceeding the 14 hour maximum duty time mandated by § 135.267(c). *See* Legal Interpretation to Mr. Ross, from Donald P. Byrne, Assistant Chief Counsel, Regulations Division (August 30, 1993).

Question 2: *Whether a certificate holder is able to operate under § 135.267(c) if its flight crews commence their duty periods at a set time each day, but culminate their flight shifts at different times each day.*

Subsection 135.267(c) applies exclusively to regularly assigned duty periods. When operating under § 135.267(c), the commencement and conclusion of the 14-hour duty day should not vary on a daily basis. *See* Legal Interpretation to Daniel Berry, from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (May 22, 2009) and Legal Interpretation to John Barney, from Donald P. Byrne, Assistant Chief Counsel, Regulations and Enforcement Division (Dec 19, 1991) (Confirming that a regularly assigned duty period means a timeframe where a pilot "comes to work and…goes home at the same time every day").

The FAA allows infrequent deviations from a regularly assigned work schedule conducted under § 135.267(c). However, "if the pilot's schedule has intermittent periods where the duty time fluctuates from day to day or week to week, the operator is not maintaining a regular work pattern." In such case, the operation should be conducted under § 135.267(b). Therefore we must stress that if the flight crew's duty time fluctuates on a regular basis, it would not be able to operate under 135.267(c). *See* Legal Interpretation to Doug Holee, from Donald Byrne, Acting Assistant Chief Counsel, Regulations and Enforcement Division (July 22, 1989).

We trust that the above adequately responds to your concerns. If you need further assistance, please contact my staff at (202) 267-3073. This response was prepared by Francisco E. Castillo, General Attorney in the Regulations Division of the Office of the Chief Counsel, and coordinated with the Air Transportation Division of the Flight Standards Service.

Sincerely,

Lorelei Peter
Assistant Chief Counsel for Regulations, AGC-200

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September 24, 2015

SUBJECT: Clarification of past interpretations of 14 CFR 135.267(c)

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Dear Sir,

After review of the many legal interpretations surrounding this rule, I am writing to gain one element of clarification regarding the application of §135.267(c). Please consider the facts of our operation described below.

1. We operate under Air Carrier Certificate GNLA390E, as an on-demand operator in common carriage of passengers and cargo.
2. We operate helicopters and airplanes solely for the purpose of air transportation of critically ill and injured patients under OpSpec A021 and A024.
3. We do not operate under §135.271.
4. Our General Operations Manual states that we comply with §135.267(c), and not §135.267(b). Furthermore, it states that rest periods must meet the three requirements for rest as defined in earlier legal interpretations.
5. Our pilots report for regular duty periods (shifts) each day at specific times without variation.
6. Pilots are assigned 4 shifts every 8 days, and each shift is scheduled for between 10 and 12 hours depending on hospital preferences.
7. Each shift is immediately preceded by and followed by a required rest period of at least 10 hours.
8. Flight requests for patient transports are initiated by hospital communication centers. Pilots may or may not fly during their shift.
9. Our General Operations Manual states that no flight request may be accepted if planning shows that the aircraft would return after 14 hours has elapsed since the beginning of the crew member's shift, or if flight time limits would be exceeded.

In a 2012 letter from Assistant Chief Counsel MacPherson to Jason Kidd, Ms. MacPherson references §135.267(d) when she explains that a flight may continue beyond the originally "planned" completion of 14 hours if the flight crew if the original planning is upset by for reasons beyond the control of the certificate holder or the pilot. She continues to explain that based on prior interpretations in this matter, late-arriving passengers do indeed constitute circumstances beyond our control.

Paragraph 135.267(d) specifically references flights assigned under §135.267(b), and many interpretation letters focus on the flight time limitations and rest requirements therein. Furthermore, letters consistently state that air carriers must choose whether to operate under the Rolling 24-hour-clock rule of §135.267 (b), or the Assigned-duty-period rule of paragraph (c).

Each letter I have reviewed mentions that late arriving passengers are beyond our control, and flights may continue to their final destination under 135.267(d), even though these flights would return beyond 14 hours if reasonable preflight planning showed otherwise. These same letters unfortunately to not specifically address paragraph c, and even suggest that the same latitude may not be granted to operations under 135.267(c) because of an assumption that the end times of these duty period do not vary.

In the on-demand Air Medical business, our pilots begin their duty assignment each day at the same time, however, the shift *end* times may vary routinely. If a crew flies during a duty assignment, many factors are faced which can upset the original planning, and force a flight crew to operate beyond their original planned completion time. These are usually due to unpredictable patient complications and ground transportation delays. In some cases, the flight may be forced to return after 14 hours of continuous duty.

If the FAA recognizes that flights may be continued beyond 14 hours for uplanned events under 135.267(d) [Kidd, 2012 and Ross 1993] then would it not be reasonable to expect the same flexibility to be applied in operations conducted under subsection 135.267(c)? Clearly whether they are operating under paragraph b or c is irrelevant since they are both equally subject to the same kinds of unplanned circumstance.

Please provide your feedback to these two key positions:

1. The same level of flexibility should be applied for unplanned circumstances and their potential to impact extended duty periods regardless of whether an air carrier choose to operate under 135.267(b) or 135.267(c); and
2. Although duty periods for a crewmember may begin at the same time each day, the fact that they may not always *end* at the same, would not disqualify an operator from exercising the privileges of 135.267(c), and the extended flight time limits it allows.

Please return your interpretation of these positions at your earliest convenience.

Thank you for your time,

Steve Moody
Director of Operations
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