U.S. Department
of Transportation
Federal Aviation Administration

Office of the Chief Counsel

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

NOV 19 2018

Noah Kalantari
Chief Pilot
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Re: On-call Standby for Part 135 On-Demand Charter Operations

Dear Mr. Kalantari:

This letter responds to your August 5, 2018, request for an interpretation concerning on-call standby for part 135 unscheduled, on-demand charter operations. You indicate that Premier Air is an on-demand charter operator which relies heavily on the ability to accept last-minute flights. You offer the following scenario: a flightcrew member is at home, not on a scheduled day off, has had the minimum 10 hours of rest following the prior duty period, and is standing by for a phone call to commence a flight assignment. Your request contained several questions, which have been condensed to the following:

1. Is on-call standby considered rest?
2. Is there a requirement for the flightcrew member to be assigned on and off duty times, or may he or she be at home on standby indefinitely for 24 hours a day?
3. If a flightcrew member is notified by phone at 12 p.m. of a 5 p.m. departure, when would duty time start?
4. If standby duty times are required, how far in advance must they be assigned? Can a flightcrew member be called at 12 p.m. to be assigned a time to start standby duty at 1 p.m., then assigned a flight at 2 p.m.?
5. If a pre-assigned standby period has been given, can it be revised to an earlier or later time after being assigned?

As an unscheduled, on-demand charter operation, the requirements of § 135.267(b) apply to your scenario, which provide that certificate holders may assign flightcrew member schedules under the "moving 24 consecutive hour" flight time limitations, with no explicit duty time limitation. The rest requirement for the moving 24 consecutive hour schedule is found in § 135.267(d), which states that each assignment under paragraph (b) of this section must provide for at least 10 consecutive hours of rest during the 24-hour period that precedes the planned completion time of the assignment.

The FAA has addressed the issue of rest requirements and on-call standby for part 135 operators in multiple letters of interpretation.[1] As explained in prior legal interpretations, 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.[2] The FAA has held that the practice of part 135 operators requiring pilots to be on-call or on standby status, while awaiting a possible assignment of flight duty, is not rest for the purposes of § 135.267.[3] In addition, if a standby or reserve pilot has a present responsibility to work if called, then he or she is on duty because he or she is not free from restraint.[4]

Question 1

In your scenario the flightcrew member is standing by for a phone call to commence a flight assignment, with the obligation that if he or she receives a call, he or she will go out on a flight assignment. As stated above, the FAA has long-held that on-call standby is not rest, and if the flightcrew member has an obligation to report for a flight assignment if contacted, the on-call standby is considered duty.[5]

Question 2

Because on-call standby under your scenario is duty, the on-call standby must be scheduled as duty time, and accordingly must have on and off duty times. While § 135.267(b) does not contain duty time limits, duty time is nonetheless limited by the requirement in § 135.267(d) that the certificate holder must provide at least 10 consecutive hours of rest during the 24-hour period that precedes the planned completion time of the assigned flight.

Question 3

As discussed in Mayors, because the flightcrew member has the duty to report for a flight assignment once notified by the certificate holder, he or she is on duty for the duration of his or her on-call shift. Therefore, duty time starts when the flightcrew member starts his or her on-call standby shift. Any resulting flight assignments from the on-call shift would be included in the duty period.

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[1] In answer to your comment that part 135 provides less instruction on this matter than part 121, please note that the FAA's interpretation of what constitutes "rest" or "duty" applies to both parts 121 and 135. *See* Legal Interpretation to Mayors from Rebecca B. MacPherson (Mar. 2, 2009).

[2] *See* Legal Interpretation to Masterson from Mark W. Bury, Acting Assistant Chief Counsel for International Law, Legislation and Regulations (Aug. 30, 2013); Legal Interpretation to Berry from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (May 22, 2009).

[3] Legal Interpretation to Masterson from Mark W. Bury, Acting Assistant Chief Counsel for International Law, Legislation and Regulations (Aug. 30, 2013) (internal citations omitted).

[4] Legal Interpretation to Mayors from Rebecca B. MacPherson (Mar. 2, 2009) (internal citations omitted).

[5] As noted in Mayors, scenarios like yours are distinct from the "one phone call policy" under which a flightcrew member may of his or her own volition receive one phone call from the certificate holder during a rest period without the contact being considered a break in the rest period.

Questions 4 and 5

In answer to how far in advance standby duty times should be scheduled, this letter notes that the scheduling considerations for on-call standby are no different than for other duty periods. The certificate holder must provide for at least 10 consecutive hours of rest during the 24-hour period that precedes the planned completion time of the assignment, and the rest period must be determined prospectively. Therefore, the rest period requirements affect when the certificate holder may schedule a standby duty period and may limit the ability to revise an already assigned standby duty period.

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 Sarah Yousaf, Operations Law Branch, Office of the Chief Counsel and coordinated with the Air Transportation Division of Flight Standards Service.

Sincerely,



Lorelei D. Peter

Assistant Chief Counsel for Regulations, AGC-200

August 5, 2018

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Dear Mr. Lorelei,

I am writing you with hopes of gaining clarification on an issue that we have spent countless hours discussing within our company and am hoping to learn the official stance of the FAA as it pertains to this subject.

The following is in regard to a Part 135, Unscheduled, On-Demand Operator.

While a crewmember is at home, not on a scheduled day off, assuming he/she has had the minimum 10 hours of rest following the prior duty period, and is standing by for a phone call to commence a flight assignment, is there a requirement for the crewmember to be assigned on and off duty times?

The confusion arises due to the fact that we are an Unscheduled, On-Demand Operator. We are not sure if for that reason, when the crew-member is at home and awaiting a call for a flight assignment, it is still considered rest until he/she gets called out. Or is being available to answer the phone while at home considered to be duty, thus limiting the crewmember to a maximum of 14 hours in which the company may call upon them?

If standing by at home, and not having an official start or end time, when would one actually be considered to be "on duty"? Our Operations manual states that duty time commences one hour prior to the scheduled departure time and ends 30 minutes after arrival. Therefore, if a crewmember which is at home is notified by phone at 12:00pm for a 5:00pm departure, when would the duty time actually start? Is it at 12:00pm or 4:00pm? Or is it simply not legal due to not having 10hrs of uninterrupted rest prior to the commencement of the assignment?

If standby duty times are indeed required, how far in advance must they be assigned? Can a crewmember be called at 12:00pm to be assigned a time to start his standby duty at 1:00pm, then assigned a flight at 2:00pm? Or must the standby period be assigned 10 hours prior to meet the requirements of 135.267?

If a pre-assigned standby period has been given, can it be revised to an earlier or later time afterwards?

As a charter operator that relies heavily on the ASAP business model, and the ability to accept last-minute flights, it is very important for both our sales team and flight department to gain a clear understanding on this matter as to make sure we are operating not only within the legal boundaries of the law but also in a safe and efficient manner.

As Part 135 in the CFR's does not discuss standby or reserve time in detail such as in parts 91, 117 and 121, where would one normally find the answers to such questions? It seems like part 135 has left a lot up for interpretation, or "grey areas" as they are commonly referred to. Does the FAA have any plans on revising part 135.267 in the future to clarify this area, thus illuminating the confusion surrounding this topic? It seems that when it comes to this topic in particular, everybody from the FSDO to the operators and their pilots have their own opinions as to what is the correct and legal interpretation. It would be very helpful to have it published in black and white in the CFR's so there is no-longer any confusion or misinterpretation.

Thank you in advance for taking the time to clear up this pressing issue for us. I look forward to your response.

Best Regards,

Noah Kalantari
Chief Pilot
Premier Air, Inc.