U.S. Department
of Transportation
Federal Aviation Administration

Office of the Chief Counsel

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

SEP 13 2018

Nicholas Sonnenberg
Director of Operations
Watermakers Air
2331 NW 55th Ct
Hangar 19
Ft. Lauderdale, FL 33309

Re: Request for Legal Interpretation of part 135 Substitute Operations under § 119.53 and part 135 Dual Operations under §§ 135.265 and 135.267.

Dear Mr. Sonnenberg:

This letter responds to your May 15, 2018, request for an interpretation concerning scheduled and unscheduled operations. You state that your company is a 14 CFR part 135 commuter and on-demand air carrier conducting scheduled and on-demand service with appropriate authorizations from the FAA and DOT. You ask (1) if the company sells tickets to passengers for part 135 scheduled services and has a mechanical issue or anything that would prevent it from using its own aircraft and pilots, is it still permissible to contract the services of another part 135 on-demand air carrier to conduct its scheduled operations; and (2) if company pilots fly a mix of both scheduled and on-demand flights, which regulations should they adhere to.

Question One

To conduct an operation for another certificate holder, § 119.53(e) requires, in part, that "[t]he certificate holder conducting the substitute operation must conduct that operation in accordance with the same operations authority held by the certificate holder arranging for the substitute operation." The regulatory history emphasizes that the operational authority of both certificate holders must be the same.[1] In both the notice of proposed rulemaking and the final rule for § 119.53, the FAA underscored that a certificate holder

[1] Memorandum to Les Smith, Manager, Air Transportation Division, from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (Aug. 9, 2012), p. 1.

may not contract to perform any flight it is not authorized to perform by its own operations specifications.[2]

However, § 119.53(f) provides relief from § 119.53(e) when passengers are stranded because of the cancellation of their scheduled flights. In the notice of proposed rulemaking, the FAA recognized that there may be instances where certificate holders conducting scheduled operations are forced to cancel a flight and find it impractical on extremely short notice to arrange for a substitute carrier with operations specifications that fully meet the requirements of § 119.53(e).[3] In the rare situation where passengers could be stranded, the FAA gave passengers the option of taking a charter flight in place of the flight originally scheduled.[4] Under § 119.53(f), a certificate holder conducting interstate commuter operations, if authorized by the Department of Transportation under § 380.3 and the Administrator, and a certificate holder conducting intrastate common carriage operations, if authorized by the Administrator, may conduct one or more flights for passengers who are stranded because of the cancellation of their scheduled flights. For a part 135 certificate holder, the flights must be conduct under the rules of part 135 on-demand operations.

Question Two

Sections 135.265 and 135.267 provide the flight time limitations and rest requirements for scheduled operations and unscheduled one- and two-pilot crews, respectively. As you note, operating both scheduled and unscheduled operations under part 135 requires different flight time limitations under those two regulations.

In the preamble to the final rule,[5] the FAA responded to a comment on dual operations. The FAA acknowledged that its long-standing policy is to permit dual operators to use the same flightcrew members for different types of operations.

A pilot who flies both part 135 scheduled and unscheduled operations must comply with the flight time limitations and rest requirements for the particular operation being conducted. For example:

> Dual operators who assign pilots interchangeably on a daily basis must also see that the pilot has satisfied all of the flight time limits and rest requirements. Thus, for any assigned flight hours, a pilot must have had the required amount of rest and must fly within the daily flight time limitations for the particular type of operation. For example, a pilot who

[2] *Commuter Operations and General Certification and Operations Requirements*, 60 FR 16230, 16262 (Mar. 29, 1995); 60 FR 65832, 65884 (Dec. 20, 1995).
[3] *Commuter Operations and General Certification and Operations Requirements*, 60 FR 16230, 16262-16263 (Mar. 29, 1995).
[4] *Id.* at 16263.
[5] *Flight Time Limitations and Rest Requirements*, 50 FR 29306 (July 18, 1985).

> flies both Part 135 scheduled operations and Part 135 unscheduled operations on a daily basis must be in compliance with both sets of rest and flight requirements. If a pilot is flying scheduled operations morning and afternoon, the pilot must have had at least the required rest under § 135.265 and may not fly more than 8 hours between rests. If in addition to scheduled flights, the pilot is flying unscheduled operations in the middle of the day, the pilot must have had at least 10 hours of rest in the 24 hours preceding the completion of any flight. On a daily basis, in instances where the requirements are not parallel (most cases), the more restrictive limits will necessarily apply. A certificate holder who plans less than 8 hours of flight time for combined scheduled and unscheduled flights must schedule at least 10 hours of rest preceding the flight hours. Certificate holders who plan more than 9 hours of scheduled and unscheduled flights must give 11 hours of rest in the preceding 24 hours.[6]

The preamble to the final rule provides more detail on complying with both sections' flight time and rest requirements on a daily basis.[7] However, the FAA also gave operators a way to simplify their dual operations. Section 135.261(b) was amended to allow any part 135 operator the option of conducting all part 135 operations under the rules for scheduled operations after obtaining an appropriate operations specification amendment. Therefore, as an alternative to complying with the flight time limitations and rest requirements for the particular operation being conducted, a dual operator may conduct both scheduled and unscheduled operations under the flight time limitations and rest requirements for scheduled operations.

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

[6] *Id.* at 29315.
[7] See *Id.*

May 15th, 2018

WATERMAKERS AIR

FAA National Headquarters
800 Independence Ave. SW
Washington, DC 20591

Re: LEGAL INTERPRETATION

Dear Mr. Stevenson,

We would like to request a legal interpretation of the regulations as it pertains to the following hypothetical scenario. Our company is a §135 Commuter and On-Demand air carrier. We utilize aircraft to conduct all of our scheduled and on-demand service. The company has been authorized for both commuter and on-demand operations by the FAA and holds economic authority from The Department of Transportation.

Question No. 1:
If the company sells tickets to passengers for §135 scheduled services and has a mechanical issue, or anything that would prevent us from using one of our own aircraft and pilot, is it still permissible to contract the services of another §135 On-Demand air carrier to conduct our scheduled operations?

Question No. 2:
Operating both scheduled and unscheduled operations under Part 135 calls for different flight time limitations and rest requirements (§135.265 and §135.267). §135.265 as opposed to §135.267 reduces the amount of flight time that pilots can fly annually, monthly and weekly yet allows for the reduction of required rest periods between flights. §135.267(c)(1)&(d), requires that a pilot's duty period be preceded by a required rest period of at least 10 consecutive hours of rest. If company pilots fly a mix of both scheduled and on-demand flights, which regulation should be adhered to?

Thank you for taking the time to review our questions and we look forward to a response.

Sincerely,

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