

1992 WL 12562384 (D.O.T.)

Department of Transportation (D.O.T.)
Federal Aviation Administration
*1 Legal Interpretation

Interpretation 1992-4

January 16, 1992

Fred R. Hutson

This is in response to your letter dated July 22, 1991, requesting an interpretation of Federal Aviation Regulation (FAR) § 135.267(d). Your letter was forwarded to us by Federal Aviation Administration (FAA) officials in your region. We apologize for the delay in responding to you.

Your letter first states the following scenario:

Pilot reports to work at 0600. Aircraft departs at 0700 with passengers on a two hour flight to another city. The passengers have scheduled the return departure time for 1700 but they do not show up for the return flight until 1830. Since it is over a two hour flight back to the departure city the pilot will go over the maximum 14 hours duty time. If the passengers had been on time the aircraft would have been back at the departure city with a full hour to spare before the 14 hour maximum duty time.

Question

1. What is the pilot's responsibility when the passengers show up late and he knows that he can not get back to the departure point without exceeding the 14 hour duty day?
2. Assuming my understanding of FAR § 135.267(d) is correct and that we relied on the *scheduled* return time of the passengers and my pilot flies back to the departure point and goes over the 14 hour duty day, what is our responsibility pertaining to rest that must be given to the pilot before he can fly again?

Answer

Paragraph (d) of FAR § 135.267 provides as follows:

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.

Section 135.267(d) does not contain an explicit limitation on duty time. This regulation provides limits on *flight time* rather than *duty time*. Thus, paragraph (d) of § 135.267 cannot be construed as a hard and fast rule that 14 hours of duty time must never, under

any circumstances, be exceeded.

The key to the applicability of § 135.267(d) is in the final phrase “*planned* completion time of the assignment” (emphasis added). If the original planning is upset for reasons beyond the control of the crew and operator, the flight may nevertheless be conducted, though crew duty time may extend beyond the planned completion. This assumes, of course, that the original planning was realistic.

As to what circumstances are beyond the control of the operator and crew, the FAA has taken the position that delays caused by late passenger arrivals, maintenance difficulties, and adverse weather constitute circumstances beyond the certificate holder's control.

We would like to point out, however, that a flight crew may not depart if the crewmembers' state of fatigue would endanger others. Section 91.13(a) provides as follows: “No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.” Both the crew and the certificate holder would be in violation of § 91.13(a) if crewmembers fly when their lack of rest would endanger others. Furthermore, the flight crew need not actually endanger others for a violation of § 91.13(a) to occur—a violation exists if the crew's fatigue subjects life and property to potential endangerment.

*2 Thus, in your first scenario, the pilot may fly the late returning passengers back to the original departure point without violating FAR § 135.267(d). Upon completion of the flight, the pilot may not accept his next assignment unless he is first given 10 hours rest. As indicated above FAR § 135.267(d) requires that the pilot be given 10 hours of rest during the 24-hour period preceding the planned completion of an assignment. The certificate holder, Commonwealth Jet Service in this case, must ensure that pilots receive their required rest period prior to scheduling their next flight.

Your second scenario states:

Pilot reports to work at 0600 and takes off at 0700, empty, to another city to pickup passengers at 0800 and fly a two hour flight to a third city. The passengers inform the pilot that they will not be ready to depart until 1730. The pilot determines that he can depart at 1730 and get to the airport that he picked up the passengers within the 14-hour duty day but will go over if he continues on for the extra hour to get him back to his home base.

Question

Since the FAA has previously determined that empty legs are considered to be conducted under FAR Part 91, does this pertain to duty time? Is the pilot allowed to fly back to his home base and exceed the 14 hour duty day since he has no passengers or freight on board?

Answer

Repositioning flights are governed by Part 91. The rule, however, applies to flight time limitations not duty time limitations. The rule with respect to flight time limitations is that any "other commercial flying" (*e.g.*, flights conducted under Part 91) must be counted towards the daily flight time limitations of Part 135 if such flying precedes the flight conducted under Part 135. Such would be the case of the first leg of flight in your second scenario. In contrast, if the Part 91 flight occurs after the Part 135 flying, as would be the case in the last leg of your second scenario, the Part 91 flight is not counted against the daily flight time limitations of Part 135.

As to duty time limitations, once again, if the original planning is upset for reasons beyond the control of the crew and operator, such as in your second scenario, the flight may nevertheless be conducted. As we pointed out there is no 14 hour duty time limitation. This assumes that the original planning was realistic and the crewmember's lack of rest would not endanger others.

This interpretation was prepared by Francis C. Heil, Attorney, Operations Law Branch; Richard C. Beitel, Manager. I hope this information satisfies your request.

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