

November 15, 2010

Docket Operations, M-30
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Room W12-140
West Building Ground Floor
Washington, DC 20590-0001

Delivered electronically via www.regulations.gov

**RE: DOCKET NO. FAA-20009-1093, NOTICE OF PROPOSED RULEMAKING,
FLIGHTCREW MEMBER DUTY AND REST REQUIREMENTS**

The National Air Transportation Association (NATA), the voice of aviation business, is the public policy group representing the interests of aviation businesses before Congress, federal agencies and state governments. NATA's 2,000 member companies own, operate, and service aircraft. These companies provide for the needs of the traveling public by offering services and products to aircraft operators and others such as fuel sales, aircraft maintenance, parts sales, storage, rental, airline servicing, flight training, Part 135 on-demand air charter, fractional aircraft program management and scheduled commuter operations in smaller aircraft. NATA members are a vital link in the aviation industry providing services to the general public, airlines, general aviation, and the military.

The Notice of Proposed Rulemaking (NPRM) regarding pilot flight, duty and rest requirements is applicable only to Part 121 air carriers; however, in the preamble the Federal Aviation Administration (FAA) specifically states its intention to issue regulations for Part 135 certificate holders that are "very similar to, if not exactly like, the final rule" issued as part of this rulemaking (75 FR 55857).

This statement generated significant concern in the Part 135 community represented by NATA. Our comments are in direct response to the FAA's assertion. While the association has numerous specific concerns with the regulations proposed for Part 121, as they are specific to Part 121 operations, we are at this time refraining from submitting detailed comments in anticipation that prior to any rulemaking for Part 135 the FAA will conduct a comprehensive rulemaking effort specific to the on-demand air charter industry and that public comments specific to this additional rulemaking effort will be solicited and given proper consideration.

NATA has long worked with the FAA, as a member of various working groups and rulemaking committees, in an effort to craft new flight crewmember duty and rest regulations for Part 135 on-demand operations. NATA has previously stated, and now reasserts, our desire to update the existing regulations to address the concerns about pilot fatigue.

However, the FAA's stated desire to base new Part 135 rules on the outcome of a rule largely influenced by and/or taken directly from the Part 121-centric Flight and Duty Time Limitations and Rest Requirements Aviation Rulemaking Committee is concerning given the fact that in 2005 the Part 135 industry invested substantial effort to create comprehensive rulemaking recommendations addressing this subject.

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The Part 135 Flight, Duty and Rest (FDR) Subgroup was a part of the FAA Part 125/135 Aviation Rulemaking Committee. The FDR subgroup met several times over a one-year period, ending in 2005 and developed a comprehensive proposal to address unscheduled/on-demand operations under 14 CFR Part 135. The FDR subgroup proposal addresses all of the major areas of concern raised by the National Transportation Safety Board, the FAA and the industry, as applied to the unique Part 135 operating environment.

That the agency has largely adopted the proposals of the Part 121 industry representatives for crafting the current NPRM but seemingly intends to ignore the Part 135 industry's proposal (when those rules are subject to future rulemaking) is alarming for NATA and the industry.

The provisions of the Administrative Procedures Act, other laws and Executive Orders require the agency to give proper consideration to the small business impact, costs and benefits for any proposed rule. For the agency to state clearly in the preamble its predisposition to impose the Part 121 rules on Part 135 operations absent these analyses sends the unfortunate message to regulated parties that the FAA intends to follow neither the letter nor spirit of the law.

Therefore, NATA asks the FAA to state affirmatively that any future rulemaking initiated by the agency for Part 135 flight crewmember flight, duty and rest requirements will faithfully follow federal rulemaking requirements and will include: an objective, Part 135-specific analysis of the risk exposure; a review of pertinent safety data applicable to Part 135 operations; contemplation of the unique aspects of the Part 135 industry; and appropriate consideration of the impacts on small businesses, irrespective of the regulations ultimately adopted for Part 121.

Problems with applying Part 121 NPRM to Part 135

The current proposal for Part 121 takes into account the scheduling of flight crews for operations and routes that are known far in advance. The application of a scheduled pilot regime is problematic for the Part 135 industry because, by its very nature, flights are not always known in advance and for some operators a significant amount of their business depends upon short notice, ad-hoc missions. As illustrated in the points below there are many distinctions between Part 121 and Part 135 operations. These points demonstrate the need for a specific crew rest and duty regulatory structure for each category of operations.

As alluded to by the FAA in the preamble, where the alternatives considered are explained,¹ the substantial majority of Part 135 certificate holders are small businesses. A significant number have fewer than 10 aircraft, 25 or fewer employees and less than \$5 million in annual revenue. At least one third of all Part 135 operators have only one aircraft. For those operators with one aircraft, or with only one of a particular type of aircraft, requiring the hiring of even one pilot to meet new requirements easily presents a 50% staffing increase. Operations may not justify those additional employment costs, resulting in operators instead turning business away.

¹ 75 FR 55882

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There are a large number of owner/operator businesses within Part 135. These Single Pilot Operators generally run the entire business, including pilot duties. These operators are prohibited by the FAA from having additional pilots. Their only option to comply with more restrictive rules is to reduce business, which can easily cause them to be out of business.

Approximately 10% of all Part 135 certificates are operators based in Alaska. Part 135 aircraft are the ideal solution to the Alaska's unique transportation challenges. By comparison, we are able to identify in Alaska only two purely Part 121 carriers (both cargo) and four carriers that hold dual Part 121 and Part 135 certification.

Many aircraft operated in Part 135 can be flown by a single pilot. These are predominantly small, piston-powered airplanes and helicopters. Neither piston-engine airplanes nor helicopters are eligible to operate in a Part 121 environment. No Part 121 operations are single-pilot and nearly all Part 121 aircraft are larger cabin multi-engine turbojet airplanes.

Part 121 rules are created around the premise of having two layers of pilots – line holders and reserve. Reserve pilots are purely viewed as “back-up” crews. Part 135 has no such redundancy. There are only “pilots.”

Summary of the 125/135 ARC Proposal²

When the FAA moves forward with new regulations for Part 135, NATA urges the agency to do so based upon the Part 125/135 ARC rather than to attempt to implement one-size-fits-all rules by applying rules developed by and for Part 121.

The recommendations for pilot flight, duty and rest regulations submitted by the FAA Part 125/135 Aviation Rulemaking Committee would dramatically improve upon current regulations while still permitting the operational flexibility inherent to the continued ability to conduct on-demand operations. The following offer a brief overview of the merits of that proposal.

- Science-based fatigue principles were applied to all areas. The window of circadian low is accounted for by requiring operators to establish pilots on a regularly planned, predictable sleep/wake cycle. Changing a particular pilot's cycle requires provision of ample transition time.
- Rest is defined and protected. When a rest period is assigned, it would be at least 10 hours. There is no provision for reducing rest under any circumstances. The system recognizes circadian rhythms by establishing a predictable rest opportunity. A pilot is assigned a

² The flight, duty and rest subgroup of the ARC developed a comprehensive proposal to address unscheduled/on-demand operations under 14 CFR Part 135. See docket FAA-2002-13923, document ID FAA-2002-13923-0127. Most operations would fall under the proposed Crewmember Availability Method (CAM). Part 135 scheduled operations *were not* addressed. The specific elements described deal with the CAM regulations, as proposed by the ARC.

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protected time period that is perpetual unless changed under a specific process that provides for an adequate adjustment period. The pilot may not be contacted or assigned to duty during that protected time.

- Pilots are provided more days off than current rules require, and days off would be provided on a monthly, rather than quarterly basis, so as to address the issue of cumulative fatigue better.
- Duty periods include hard limits. A duty period including a flight assignment is limited to 14 hours (for a 2-pilot crew). Duty may be extended up to one hour if specific circumstances occur after engine startup and before takeoff (e.g., a temporary ground hold). Continuing a flight once airborne if a delay is encountered is left to the pilot's authority. Importantly, any duty extension requires compensatory rest to mitigate the potential effects of cumulative fatigue.


In addition, the 125/135 ARC proposal also includes provisions related to:

- Long Range (Multi-time zone) flights
- Tail-end ferry and positioning flights
- Fatigue Management Programs

Summary

NATA appreciates the opportunity to have our comments considered by the FAA. We are hopeful that just as the FAA was very willing to accept the recommendations from the 121 ARC in crafting this NPRM that you will be just as willing to accept the proposal submitted by the 125/135 ARC when proposing future rules for Part 135 on-demand operators.

Sincerely,



James K. Coyne
President