

subscription levels based on the size of their firm and the number of clients that subscribe to the service.<sup>6</sup>

The Commission has reviewed carefully the proposed rule change and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>7</sup> In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(4) of the Act,<sup>8</sup> which requires that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Exchange states that it established the proposed tiered pricing structures for enhanced sentiment data based upon a survey of financial services industry participants regarding their level of interest in proprietary market data offerings, a business plan it developed based on the results of that survey, and the advice of a consultant retained to opine on the structure and amount of fees to charge for the product.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change as amended be, and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

[FR Doc. E6-7201 Filed 5-10-06; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

[Docket No. FAA-2005-23438]

#### Notice of Request for Public Comments on Interpretation of the On-Demand Flight Time and Rest Period Rules

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice, request for comments.

**SUMMARY:** The FAA has received several related requests for interpretation of the On-Demand Flight and Rest Rules, 14 CFR Sections 121.263(d) and 121.267(b), (d) and (e). The FAA has decided that it would be beneficial to request public

comments on the requesters' questions, before the FAA issues its responses. See Notice of Reinstatement of 1980 Public Comment Procedures for Requests for Interpretation of Flight Time, Rest and Duty Period Regulations (70 FR 74863, Dec. 16, 2005). Copies of the requests from members of the public can be found at the DOT public electronic docket, using the docket number FAA-2005-23438.

**DATES:** Comments must be received on or before July 10, 2006.

**ADDRESSES:** Address your comments to the docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590-0001. You must identify the docket number FAA-2005-23438 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also electronically submit comments through the Internet to <http://dms.dot.gov>. You may review the public docket containing comments concerning this document in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at <http://dms.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:**

Constance Subadan, Regulations Division, AGC-200, Office of the Chief Counsel, 800 Independence Avenue, SW., Washington, DC 20591; telephone 202-267-3073.

#### Background

The FAA has received several related requests for interpretation of sections 135.263(d) and 135.267(b), (d), and (e). The FAA has previously issued interpretations on some, but not all, of the questions. The Agency will take into consideration in developing its responses the public comments it receives. For example, in its response, the FAA intends to clarify two issues on which it has previously stated an opinion, namely: (1) Whether late arriving passengers or cargo may be considered an unforeseen circumstance or circumstance beyond the certificate holder's or crewmember's control under section 135.263(d); and (2) whether the rest period under section 135.267(d) must be timely received. The Agency will consider whether to recede from statements or suggestions in prior interpretations that late arriving

passengers or cargo are an unforeseen circumstance, because such statements or suggestions may not represent good safety policy. The Agency will also consider whether to recede from statements or suggestions that the implied 14-hour test period, because such statements or suggestions may not represent a valid interpretation of section 135.267(d).

#### Requesters' Questions

The requests for interpretation of the On Demand Flight Time and Rest Rules raised the questions set forth below. To put these questions in full context, respondents should look at the letters from the members of the public that are posted on the DOT public electronic docket.

*No. 1 (William Gruening): Scenario/Questions:* The crew receives a 10-hour rest period and is scheduled for a 14-hour duty day, starting at 0600, with the first flight at 0700. Total scheduled flight time for the day is 5 hours. They do not receive 10 consecutive hours of rest during the day. The last flight is scheduled to arrive at home base at 1930, and the crew has 30 minutes to complete [post flight] duties. They are scheduled to be off duty at 2000. The certificate holder wants to invoke section 135.263(d) ("circumstances beyond the control") for the last flight for any of the following reasons: (a) Passengers are caught in traffic, (b) there is a 1 hour ground hold for weather, (c) there is a 1 hour ATC hold in flight, (d) there is a 1 hour delay for unscheduled maintenance, or (e) it takes 1 hour longer to taxi out than expected. Because of any of the above circumstances, the crew will arrive 1 hour late and will not have 10 consecutive hours within the preceding 24 hours.

1. May the crew complete the flight or must they be on the ground in time to have 10 hours of rest within the preceding 24 hours, consistent with the interpretation of the similar provision in section 121.471?

2. If the crew may complete the flight, how must the records be documented for record inspections?

*No. 2 (Eagle's Wings Aviation Corp): Scenario/Question:* Three situations are presented: (1) The passengers or cargo arrive late and cause a crew to exceed the duty limit for a charter flight that was scheduled to arrive within duty time limits; (2) winds or weather more adverse than forecast cause the crew to exceed duty time limits; and (3) the passengers on a passenger charter flight request a change in itinerary or an additional stop and cause the crew to

<sup>6</sup> See Notice, *supra* at note 3.

<sup>7</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. See 15 U.S.C. 78c(f).

<sup>8</sup> 15 U.S.C. 78f(b)(4).

<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

exceed scheduled completion time and exceed the duty time limit.

Does section 135.263(d) excuse a certificate holder or pilot from exceeding the 14-hour duty time limitation in the above situations?

*No. 3 (Samaritans Air, Aviation Consultants):* Scenario/Questions: A pilot is required to respond to a pager and be at the airport within 30 minutes of the page. He is also required to be "on call" at the airport starting from 0700. The "call" may not come in until 1600. His duty time is considered to start at 1600 and continues until 0600 the next day.

1. May the pilot perform the above operation without an uninterrupted rest period "free from all restraint" from the certificate holder?

2. May a Part 135 pilot fly under Part 91 rules for a "reposition" or "ferry" flight with non-essential flight crew or passengers on board who are non-paying "customers" of the certificate-holder, when the "sole" intent is to

circumvent the 14-hour duty limitation and weather limitations if the flight had to be flown under Part 135 rules?

3. May late arriving passengers be called an "unexpected" delay as a way to circumvent and extend the 14-hour duty time limitation?

*No. 4 (Era Aviation):* Scenario/Questions: A Part 135 (one pilot crew) comes on duty at 5:30 a.m. and completes three hours of commercial flight time by 15:15 p.m. The operator receives a mission for the next day in another state and the pilot must depart immediately to ferry the aircraft to the new location at which he will give it to the pilot who will fly the new mission. At that point, the pilot ferrying the aircraft will be free of any duty with the carrier for a week.

1. If it becomes necessary to deliver the aircraft to the new pilot, may the ferry pilot overfly the 14-hour duty day which began at 5:30 a.m., assuming he will be off duty for a week upon delivering the aircraft?

2. If it becomes necessary to deliver the aircraft to the new pilot, may the ferry pilot overfly his original eight hours of flight time, assuming he will be off duty for a week upon delivering the aircraft?

3. Is the assumption correct that all flight time following the original three hours flown under Part 135 may be considered Part 91 flight time and thus free of Part 135 restrictions?

4. Is the assumption correct that all duty after the original Part 135 duty period that ended at 12:30 p.m. may be considered non-Part 135 duty, and thus free of Part 135 restrictions?

*No. 5 (Kyle Opp):* Scenario/Questions: A 2-pilot crew receives 24 hours free of duty [on Day 1]. Duty time starts 1 hour prior to scheduled departure, and ends 30 minutes after actual arrival time. Duty time includes 1 hour before scheduled departure and 30 minutes after actual arrival. On Day 2 duty time started at 0700z. The scheduled and actual data are as follows:

Scheduled	Actual	Flight time	Duty time at arrival
Leg 1 0800-1000 .....	0900-1100 .....	2.0	4:00
Leg 2 1300-1430 .....	1415-1545 .....	1.5	8:45
Leg 3 1730-2000 .....	1900-2130 .....	2.5	14:30
Scheduled: 13.5 hrs .....	Actual: 15 hrs .....		

1. Is the crew prohibited from taking off or boarding Part 135 passengers knowing they will exceed their 14-hour duty day and will actually arrive without the required lookback rest within the previous 24 hours?

2. Can it still be "circumstances beyond the control of the operator" when the operator and crew has the knowledge that Leg 3 while on the ground using actual flight/arrival times knows they will violate the lookback rest requirements? If they proceed anyway, under what section would the FAA take enforcement action?

3. Can the 30 minutes of duty time after actual arrival be waived by the crew, even if it is proscribed in the FAA approved operations manual? If not, must the crew calculate that into the final leg to insure they return with at least 30 minutes left in their duty period?

**Comments**

Your comments should address the 6 points raised below. Responses that include these elements provide the FAA a meaningful basis for determining its final responses.

1. What are your views on how the FAA should answer the requesters' questions stated above?

2. What are your views on how the FAA intends to address the issues about late arriving passengers or cargo being an unforeseen circumstance under section 135.263(d) and the timely receipt of section 135.267(d) rest?

3. What industry operational practices support your views? Please provide documentation of such practices.

4. What is the safety policy that supports your views or practices?

5. What regulatory history supports your position?

6. In your opinion, are there any prior FAA interpretations that are controlling or that are at least instructive on the matter?

Issued in Washington, DC on May 5, 2006.

**Rebecca B. MacPherson,**

*Assistant Chief Counsel, Regulations Division.*

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**BILLING CODE 4910-13-M**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**Twenty-Seventh (27th) Joint Meeting, RTCA Special Committee 189/ EUROCAE Working Group 53: Air Traffic Services (ATS) Safety and Interoperability Requirements**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of RTCA Special Committee 189/EUROCAE Working Group 53 meeting.

**SUMMARY:** The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 189/ EUROCAE Working Group 53: Air Traffic Services (ATS) Safety and Interoperability Requirements.

**DATES:** The meeting will be held June 20-23, 2006, starting at 9 a.m.

**ADDRESSES:** The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036-4001.

**FOR FURTHER INFORMATION CONTACT:** RTCA Secretariat (Hal Moses), 1828 L Street, NW., Suite 805, Washington, DC 20036, (202) 833-9339, fax (202) 833-9434; Web site <http://www.rtca.org>. Additional information on