

**Subject**

(d) Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 55: Stabilizers.

**Unsafe Condition**

(e) This AD was prompted by a report of a crack found in the upper center skin panel at the aft inboard corner of a right horizontal stabilizer. We are issuing this AD to detect and correct cracks in the horizontal stabilizer upper center skin panel. Uncorrected cracks might ultimately lead to the loss of overall structural integrity of the horizontal stabilizer.

**Compliance**

(f) Comply with this AD within the compliance times specified, unless already done.

**Inspections**

(g) Before the accumulation of 20,000 total flight cycles, or within 4,379 flight cycles after the effective date of this AD, whichever occurs later, do eddy current inspections to detect cracking of the left and right upper center skin panels of the horizontal stabilizer, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD80-55A068, dated July 16, 2010.

(1) If no crack is found during any inspection required by paragraph (g) of this AD, repeat the applicable inspections thereafter at the applicable times specified in paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin MD80-55A068, dated July 16, 2010.

(2) If any crack is found during any inspection required by paragraph (g) of this AD, before further flight, replace the skin panel with a serviceable skin panel, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD80-55A068, dated July 16, 2010. Within 20,000 flight cycles after the replacement, do eddy current inspections as required by paragraph (g) of this AD.

**Alternative Methods of Compliance (AMOCs)**

(h)(1) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD.

(2) Before using any approved AMOC, notify your Principal Maintenance Inspector or Principal Avionics Inspector, as appropriate, or lacking a principal inspector, your local Flight Standards District Office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Los Angeles ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane and 14

CFR 25.571, Amendment 45, and the approval must specifically refer to this AD.

**Related Information**

(i) For more information about this AD, contact Roger Durbin, Aerospace Engineer, Los Angeles ACO, Airframe Branch, ANM-120L, FAA Los Angeles Aircraft Certification Office, 3960 Paramount Blvd, Lakewood, CA 90712-4137; telephone: (562) 627-5233; fax: (562) 627-5210; e-mail: [roger.durbin@faa.gov](mailto:roger.durbin@faa.gov).

(j) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800-0019, Long Beach, California 90846-0001; telephone 206-544-5000, extension 2; fax 206-766-5683; e-mail [dse.boeing@boeing.com](mailto:dse.boeing@boeing.com); Internet <https://www.myboeingfleet.com>. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, the FAA, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425-227-1221.

Issued in Renton, Washington, on December 16, 2010.

**Ali Bahrami,**

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010-32209 Filed 12-22-10; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 135**

[Docket No. FAA-2010-1259]

**Interpretation of Rest Requirements**

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

**ACTION:** Notice of proposed interpretation.

**SUMMARY:** This action proposes to interpret the application of 14 CFR 135.263 and the rest requirements of § 135.267(d) to situations in which a flight crewmember's flight time exceeds the permissible limits due to circumstances beyond his or her control. As discussed below, the FAA issued several interpretations addressing this issue in the 1990s. However, because the proposed interpretation relies heavily on a seminal FAA interpretation issued in 2000, the proposed interpretation would supersede any previous contrary interpretations of §§ 135.263 and 135.267(d).

**DATES:** Comments must be received on or before January 24, 2011.

**ADDRESSES:** You may send comments identified by docket number FAA-

2010-1259 using any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and follow the online instructions for sending your comments electronically.

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

- *Hand Delivery:* Take comments to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493-2251.

**FOR FURTHER INFORMATION CONTACT:** Alex Zektser, Attorney, Regulations Division, Office of Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; *telephone:* (202) 267-3073; *e-mail:* [Alex.Zektser@faa.gov](mailto:Alex.Zektser@faa.gov).

**SUPPLEMENTARY INFORMATION:****Comments Invited**

The FAA invites interested persons to submit written comments, data, or views concerning this proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, please send only one copy of written comments, or if you are filing comments electronically, please submit your comments only one time.

The FAA will file in the docket all comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposal. Before acting on this proposal, the FAA will consider all comments received on or before the closing date for comments and any late-filed comments if it is possible to do so without incurring expense or delay. The FAA may change this proposal in light of comments received.

**Availability of This Proposed Interpretation**

You can get an electronic copy using the Internet by—

- (1) Searching the Federal eRulemaking Portal (<http://www.regulations.gov>);
- (2) Visiting the FAA's Regulations and Policies Web page at [http://www.faa.gov/regulations\\_policies/](http://www.faa.gov/regulations_policies/); or
- (3) Accessing the Government Printing Office's Web page at <http://www.gpoaccess.gov/fr/index.html>.

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-9680. Make sure to identify the docket number or notice number of this proposal.

### Background

The FAA has been asked to provide a legal interpretation regarding the application of 14 CFR 135.263 and 135.267(d) to the following factual scenario.

An operator plans a flight that is anticipated to be completed within a 13.5-hour duty day. However, unanticipated delays (such as late passengers and late cargo) occur before the last leg of the flight, and these delays would extend the flight beyond a 14-hour duty day if the last leg is completed. The proposed interpretation would clarify whether the crew may take off on the last leg of the flight, knowing in advance that they will not receive the 10 hours of rest required in a 24-hour period by section 135.267(d).

### Discussion of the Proposal

Section 135.267(d) of Title 14 of the Code of Federal Regulations requires that a flight assignment operating under section 135.267(b) and (c) must provide for at least 10 consecutive hours of rest during the 24-hour period that precedes the planned completion time of the assignment. Under this section, a duty day may not exceed 14 hours in a 24-hour period without infringing on the required rest time. However, section 135.267(d) works in conjunction with 14 CFR 135.263(d), which provides that:

A flight crewmember is not considered to be assigned flight time in excess of flight time limitations if the flights to which he is assigned normally terminate within the limitations, but due to circumstances beyond the control of the certificate holder or flight crewmember (such as adverse weather conditions), are not at the time of departure expected to reach their destination within the planned flight time.

In the 1990s, the FAA interpreted sections 135.263(d) and 135.267(d) to permit flight crewmembers to take off on flights that were scheduled to be completed within a 14-hour duty period even though circumstances beyond the crewmembers' control extended the actual duty time beyond the permissible 14-hour period. *See, e.g.*, Aug. 30, 1993, Letter to Mr. Ross from Donald P. Byrne, Assistant Chief Counsel for Regulations and Enforcement; Mar. 30, 1992, Letter to Kevin Wilson from Donald P. Byrne.

However, in 2000, the FAA issued a seminal interpretation of a section that

is nearly identical to section 135.263(d). That section, 14 CFR 121.471(g), states that:

A flight crewmember is not considered to be scheduled for flight time in excess of flight time limitations if the flights to which he is assigned are scheduled and normally terminate within the limitations, but due to circumstances beyond the control of the certificate holder (such as adverse weather conditions), are not at the time of departure expected to reach their destination within the scheduled time.

The FAA's 2000 interpretation stated that the language of section 121.471(g) created an exception to pilot flight time limitations, but did not provide an exception for pilot rest requirements. *See* Nov. 20, 2000, Letter to Captain Richard D. Rubin from James W. Whitlow, Deputy Chief Counsel ("Whitlow Letter"). The Whitlow Letter's validity was subsequently upheld by the U.S. Court of Appeals for the DC Circuit, and since that time, the FAA has consistently applied the Whitlow Letter in its interpretations of section 121.471(g). *See Air Transport Ass'n of America, Inc. v. F.A.A.*, 291 F.3d 49 (DC Cir. 2002) (upholding the validity of the Whitlow Letter). *See, e.g.*, Mar. 18, 2009, Letter to William E. Banks, Jr. from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (noting that section 121.471(g) does not provide an exception for rest requirements); Jan. 11, 2005, Letter to Jan Marcus from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (same).

The FAA has determined that it is illogical that the nearly-identical regulatory language in sections 121.471(g) and 135.263(d) is interpreted in two different ways. *See Air Transport Ass'n*, 291 F.3d at 51 n.1 (stating that "[t]he substance of the rules in Parts 121 and 135 is essentially the same and the rules are likewise interpreted"). As such, the FAA proposes to apply the Whitlow Letter's interpretation of 121.471(g) to sections 135.263(d) and 135.267(d). Because the Whitlow Letter and the subsequent interpretations based on the Whitlow Letter are more recent than the 1990s interpretations of sections 135.263(d) and 135.267(d), the Whitlow Letter line of interpretations best reflects the FAA's current understanding of the pertinent regulatory language. As such, the proposed application of the Whitlow Letter to sections 135.263(d) and 135.267(d) would supersede any contrary pre-Whitlow interpretations of these sections.

Under the proposed interpretation, section 135.263(d) would not create an exception for flight crewmember rest requirements. As such, if a flight

crewmember was to be aware at the time of departure on the last leg of the flight that he or she has not had the required rest, 14 CFR 135.267(d) would prohibit him or her from departing on the last leg of the flight.

Issued in Washington, DC, on December 17, 2010.

**Rebecca B. MacPherson,**

*Assistant Chief Counsel for Regulations,*  
*AGC-200.*

[FR Doc. 2010-32234 Filed 12-22-10; 8:45 am]

**BILLING CODE 4910-13-P**

## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Part 39

RIN 3038-AD10

### End-User Exception to Mandatory Clearing of Swaps

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commodity Futures Trading Commission ("CFTC" or "Commission") is proposing new requirements governing the elective exception to mandatory clearing of swaps available for swap counterparties meeting certain conditions under Section 2(h)(7) of the Commodity Exchange Act, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act. The Commission is requesting comments on the proposed rule and related matters.

**DATES:** Comments must be received on or before February 22, 2011.

**ADDRESSES:** You may submit comments, identified by RIN number 3038-AD10, by any of the following methods:

- *Agency Web site, via its Comments Online process:* <http://comments.cftc.gov>. Follow the instructions for submitting comments through the Web site.
- *Mail:* David A. Stawick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as mail above.
- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow instructions for submitting comments.

Please submit your comments using only one method. All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to <http://www.cftc.gov>. You should submit only information that you wish to make