

November 15, 2010

Docket Operations  
M-30  
US Department of Transportation  
1200 New Jersey Ave, SE  
West Building Ground Floor  
Room W12-140  
Washington, DC 20590

**Re: Docket No. FAA-2009-1093, Flightcrew Member Duty and Rest Requirements**

The National Business Aviation Association (NBAA) represents the aviation interests of 8,000 Member companies that use business aircraft to support their company travel needs. NBAA's Members have been actively engaged in managing duty and rest issues for decades. NBAA has participated in several duty and rest rulemaking efforts with the FAA and we appreciate the opportunity to offer these comments in response to the Agency's latest effort.

**Background**

At the conclusion of the FAA's Part 125/135 Aviation Rulemaking Committee (ARC) in 2005, the group submitted an extensive set of recommendations that addressed, among other issues, updating duty and rest rules for operations conducted under FAR Part 135. The duty and rest recommendations, developed over a year of work from dozens of industry and government experts, included many of the fundamental issues the FAA sought to address in this latest rulemaking. The ARC based its report on scientific studies, the effects of circadian rhythms, past FAA regulatory interpretations and pilot experience.

Since 2005, many of the ARC's recommendations, including duty and rest, have gone unanswered. Despite many attempts to encourage the FAA to address the duty and rest recommendation, the recommendation remains unanswered.

In 2009, the FAA chartered the Flight and Duty Time Limitations and Rest Requirements Aviation Rulemaking Committee. The FAA chose industry representatives best able to address issues for operations conducted under FAR Part 121. Although this ARC's charter stated that the group was to consider and address "a single approach to addressing fatigue that consolidates and replaces existing regulatory requirements for parts 121 and 135," there were no Part 135 representatives included in the ARC membership.

On August 7, 2009, NBAA wrote to the FAA requesting a change in the ARC's charter since there were no Part 135 representatives included in the ARC meetings. NBAA's letter went unanswered. For FAA to suggest that Part 135 operators should be on notice regarding this rulemaking in which they had no opportunity to participate is insulting to the dozens of industry volunteers that donated thousands of hours to develop a Part 135 flight and rest proposal and clearly requires either ignoring the past 15 years that Part 135 operators have been involved duty and rest issues or ignorance of recent requests to provide relevant input.

In addition, it appears that the FAA has already determined the outcome of a yet-to-be-released rulemaking effort for Part 135 duty and rest requirements. This appears to contradict the requirements of the Administrative Procedures Act and several other laws for developing rules. We sincerely hope that this is not FAA's intention and that the FAA will engage the Part 135

community in an effort similar to that used to develop this proposal for the Part 121 community prior to releasing a duty and rest proposal for Part 135 operations.

### **Applicability to Part 135**

As discussed above, FAA indicates that Part 135 operators could face a duty and rest rule nearly identical to that established for Part 121 operations. That naïve statement, unfortunately, suggests a lack of basic knowledge of Part 135 operations. The proposal is unclear how many of the concepts contained within this proposal, such as theater of operations, consecutive nighttime flights, and long-call and short-call reserve would apply to an on-demand Part 135 operation.

Other issues such as the applicability of the rule to personnel with management duties, other duties, and split duty rest in a Part 135 environment raise even more concern about FAA's attempt to find a one-size fits all solution when none is warranted.

There are simply too many concepts in play which have had no analysis on their impact for Part 135 operations. NBAA and our Member companies stand ready to assist the FAA in developing an updated duty and rest proposal for Part 135 operations, despite our previously unacknowledged efforts.

Thank you for the opportunity to submit these comments. Please contact us if we can provide any additional information.

Sincerely,

A handwritten signature in black ink that reads "Douglas Carr". The signature is fluid and cursive, with a large, stylized initial 'D'.

Douglas Carr  
Vice President  
Safety, Security & Regulation