

Time to Resolve FAR 135 Rest and Duty Times



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Part 135 needs different regs than those of the scheduled carriers.

THE NTSB HAS LISTED “REDUCE ACCIDENTS AND Incidents Caused by Human Fatigue” on its “Most Wanted” list for nearly 20 years now and wants the FAA to “set working hour limits for flight crews, aviation mechanics and air traffic controllers based on fatigue research, circadian rhythms, and sleep and rest requirements and to develop a fatigue awareness and countermeasures program for air traffic controllers.” Recent accidents have once again brought attention to the matter of human fatigue as a factor, along with a call for action. The pattern underscores the frequent observation that the FARs are “written in blood.”

The current rest and duty regulations for Part 121 and 135 operations date back to 1985. In 1992, the FAA created a Flight Crewmember Flight/Duty/Rest Requirements working group under its Aviation Rulemaking Advisory Committee (ARAC). After two years, while the ARAC had not reached a consensus on several key issues, it did agree on the major areas it felt the FAA should address in future rulemaking. Accordingly, in 1995, the FAA issued an NPRM with a goal of establishing one set of regulations for Part 121 and 135 flight crewmembers. That notice generated approximately 2,000 comments, most of which were negative. Generally operators did not like the proposal of shortening the maximum duty day to 14 hours and pilots disliked the proposal to expand the eight-hour flight time limit to 10 hours between rest periods.

Management vs. labor disputes have prevented consensus in the Part 121 world ever since (this, despite the fact that a 1998 ARAC submitted five different proposals).

However, Part 135 is different. In 2003, the FAA established a Joint FAA/Industry Aviation Rulemaking Committee (ARC) to provide the agency recommendations regarding the safety and applicability standards of Parts 125 and 135. The ARC did achieve consensus on recommendations for revising the commuter and on-demand flight/rest requirements in Part 135.

The ARC workgroup that drafted the rest and duty recommendations for Part 135 included a wide range of viewpoints. ALPA and the International Brotherhood of Teamsters were at the table as was NetJets, and a number of participants from smaller operations. One of the key differences between an ARAC and an ARC is the FAA’s participation in the latter. That doesn’t bind the FAA to accept ARC recommendations, but it allows the FAA participants to shoot down unacceptable proposals before the group invests time in them. Good rulemaking means thinking out loud. Without the FAA in the room, the participants may waste months pursuing an idea that the FAA cannot accept for legal reasons. Having the FAA in the room

also sends a sobering, unspoken message: “Work together and be productive, or we will take this back from you.”

The oldest rest and duty joke is this: A union representative bursts into a hangar full of expectant pilots and announces: “I just negotiated the best contract ever! From now on, we only fly on Wednesdays!” Expecting exuberant cheers, the rep is bewildered by the silence of the pilots. Finally, a pilot stands up and says: “Every Wednesday?” That joke works in the scheduled air carrier world, but not among charter operations since Part 135 pilots rarely know when they’ll be flying.

The ARC recommendations for flight/rest requirements in Part 135 deal directly with the challenges of charter flying. For example, a midday break was one of its ideas.

Under current rules, if a full-day trip calls for a return the same evening, the charter pilots must be permitted to check into a hotel and get 10 hours of undisturbed rest. After that the crews are legal to restart their clocks and fly for another 14 hours. This arrangement ignores circadian rhythm issues, and raises concerns about pilot alertness on an approach to minimums at 3 a.m.

The napping proposal would give pilots a realistic opportunity to rest (preferably after lunchtime when the body wants a siesta) and return home before midnight, thereby providing shorter trips and avoiding the dangers of flying on the back side of the clock.

Another “back side of the clock” issue is commonly referred to as “tail-end ferry” flights. Currently, a pilot may fly an empty repositioning flight under Part 91 after dropping off all Part 135 passengers at another airport. This is a tough issue for both pilots and management. Pilots on the rest and duty workgroup were vocal about wanting to retain their ability to decide whether to reposition the aircraft back home at the end of a long day. On the other hand, those same pilots did not want to be required to make such a flight. One of the fundamental problems with these typically late night flights is that most of the research done on fatigue issues demonstrates that tired people cannot accurately assess their own level of fatigue. Regulating tail-end ferry flights would go a long way toward reducing fatigue. Both the industry and the FAA invested an enormous amount of time, money and resources in developing the ARC recommendations for Part 135 flight and rest limitations. However, the FAA has yet to produce an NPRM on them. It is time to finish the work that was started six years ago. Raising the bar and modernizing Part 135 rest and duty rules shouldn’t wait for the sparring denizens of the Part 121 world to settle their differences. ■