



NATIONAL TRANSPORTATION SAFETY BOARD

Office of Aviation Safety
Washington, D.C. 20594

August 24, 2021

Attachment 3: FAA Exemption 18510

OPERATIONAL FACTORS FACTUAL REPORT

CEN20LA215



U.S. Department
of Transportation

**Federal Aviation
Administration**

Aviation Safety

800 Independence Ave
Washington, DC 20591

In the matter of the petition of

**National Air Transportation
Association**

For an exemption from §§
135.245(c), 135.247(a), 135.301(a),
135.323(b), 135.337(g), 135.338(g),
135.339(b), 135.340(b), and
135.505(d) of Title 14, Code of
Federal Regulations

Exemption No **18510**

Regulatory Docket No. **FAA-2020-0292**

GRANT OF EXEMPTION

The National Air Transportation Association (NATA), on behalf of its members, requests an exemption from Title 14 Code of Federal Regulations (14 CFR) part 135 regulations pertaining to the timeframes for completing recurrent training and qualification requirements for ground personnel and crewmembers.¹ These requirements include training, testing, checking, evaluation, recency, and observation activities. For the reasons explained herein, the FAA is granting the requested relief to the extent necessary to allow NATA members and other part 135 air carriers/operators that submit a Letter of Intent (in the form and manner described below) to complete recurrent training and qualification activities for ground personnel and crewmembers up to three calendar months after the month that the activity was due to have been completed.

Under certain part 135 regulations, there is an existing “grace month” for completing certain training and qualification requirements. This exemption would allow two additional grace months for the completion of various training and qualification requirements, creating a total of either three or two grace months for completion depending on the requirement.

¹ For purposes of this exemption, crewmember refers to pilots and flight attendants.

The petitioner requests relief from the following regulations:²

Section 135.245(c) states, in pertinent part, that no certificate holder may use any person, nor may any person serve, as second in command under Instrument Flight Rules unless that person has met certain instrument flight experience requirements within the 6 calendar months preceding the month of the flight.

Section 135.247(a) states, in pertinent part, that no certificate holder may use any person, nor may any person serve, as pilot in command of an aircraft carrying passengers unless, within the preceding 90 days, that person has accomplished a certain number of takeoff and landings.

Section 135.301(a) states, in pertinent part, that if a crewmember who is required to take a test or a flight check under this part, completes the test or flight check in the calendar month before or after the calendar month in which it is required, that crewmember is considered to have completed the test or check in the calendar month in which it is required.

Section 135.323(b) states, in pertinent part, that whenever a crewmember who is required to take recurrent training under this subpart completes the training in the calendar month before, or the calendar month after, the month in which that training is required, the crewmember is considered to have completed it in the calendar month in which it was required.

Section 135.337(g) states, in pertinent part, that the flight segments or line-observation program required in § 135.337(f) are considered to be completed in the month required if completed in the calendar month before or the calendar month after the month in which they are due.

Section 135.338(g) states, in pertinent part, that the flight segments or line-observation program required in § 135.338(f) are considered completed in the month required if completed in the calendar month before, or in the calendar month after, the month in which they are due.

Section 135.339(b) states, in pertinent part, that the observation check required by § 135.339(a)(2) is considered to have been completed in the month required if completed in the calendar month before or the calendar month after the month in which it is due.

Section 135.340(b) states, in pertinent part, that the observation check required by § 135.340(a)(2) is considered to have been completed in the month required if completed in the calendar month before or the calendar month after the month in which it is due.

² The FAA has identified the following regulations to which grace month provisions already apply: §§ 135.293(a) and (b), 135.295, 135.297(a) and (b), 135.299(a), 135.337(f), 135.338(f), 135.339(a)(2), 135.340(a)(2), 135.343, 135.505(a).

Section 135.505(d) states, in pertinent part, that a person who satisfactorily completes recurrent hazardous materials training in the calendar month before, or the calendar month after, the month in which the recurrent training is due, is considered to have taken that training during the month in which it is due.

The petitioner supports its request with the following information:

This grant of exemption was initiated by the FAA Air Transportation Division after extensive discussions with NATA regarding the ability of NATA's members to satisfy impending recurrent training and qualification requirements for crewmembers and ground personnel due to concerns over the COVID-19 outbreak. Due to the extraordinary circumstances associated with the outbreak, the FAA is construing these conversations, which included a request for expedited relief, as a petition for exemption under 14 C.F.R. § 11.61(b).

The Coronavirus (COVID-19) was detected in China in December 2019. On January 30, 2020, the World Health Organization declared the outbreak a public health emergency of international concern. On January 31, 2020, the Department of Health and Human Services declared a public health emergency for the United States to aid in responding to COVID-19.³

As the COVID-19 pandemic progressed, the petitioner contacted the FAA to discuss limited relief from certain recurrent training, testing, checking, evaluation, recency, or observation requirements in light of the COVID-19 national emergency. During discussions with the FAA, the petitioner expressed concern that the COVID-19 pandemic will disrupt training and qualification activities, resulting in crewmember qualifications lapsing because either crewmembers cannot access training facilities or FAA inspectors are unavailable to conduct required tests, checks, or observations. Further, the petitioner expressed concern that classroom-training environments may introduce personnel to unnecessary risks of exposure. Some crewmembers who may require recurrent training during the next few months are in categories that the Centers for Disease Control and Prevention (CDC) have identified as at a higher risk for severe illness resulting from COVID-19.⁴ In addition to the concern about unnecessary health risk, the petitioner expressed concern that a reduction in the number of qualified crewmembers could jeopardize the continuity of air transportation at a critical time when the movement of food, supplies, mail, and personnel is essential to the public interest.

The FAA's analysis is as follows:

³ The FAA observes further that on March 11, 2020, the World Health Organization (WHO) characterized COVID-19 as a pandemic, as the rates of infection continued to rise in many locations around the world and across the United States. On March 13, 2020, the President proclaimed that the COVID-19 outbreak in the United States constitutes a national emergency. COVID-19 cases have been reported in all 50 states as well as the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands.

⁴ The CDC advises that COVID-19 poses a serious risk to older adults, people who are pregnant, or people of any age who have underlying medical conditions, such as asthma, diabetes, or a weakened immune system.

The FAA finds that there is good cause not to publish a summary of the petition in the Federal Register because delaying action on the petition would have an adverse and potentially immediate impact on the petitioner's ability to ensure continuity of critical aviation operations essential to the public interest. Because NATA is a trade association and not a certificate holder, it cannot be granted an exemption from FAA operating requirements. Accordingly, the FAA will grant the relief requested by NATA to its members and all part 119 certificate holders conducting operations under part 135 when requested. To make this exemption effective, each affected certificate holder must submit to the FAA a request in the form of a Letter of Intent to use this exemption and affirm its intentions to comply with the conditions and limitations of this exemption.

Under the unprecedented circumstances associated with the COVID-19 pandemic, the FAA finds that relief is justified, subject to the conditions and limitations outlined below, from timeframes for completing certain training and qualification requirements due through May 31, 2020. The FAA agrees that allowing two additional grace months for completing these requirements is in the public interest during this time.⁵ Certain training environments, such as crowded classrooms, may pose an unnecessary risk of exposure to crewmembers who are among the population that CDC has identified as high risk. This co-location of critical personnel increases the likelihood that significant portions of the certificate holder's qualified personnel could be exposed to COVID-19, possibly necessitating at a minimum a period of quarantine resulting in fewer personnel to rely upon in maintaining operations. It is reasonable to assume that the qualifications of crewmembers may lapse unnecessarily because certificate holders and their personnel do not want to assume this health risk. The FAA finds that this same analysis applies to recurrent hazardous materials training and testing requirements for ground personnel.

The FAA finds that granting this exemption supports the continuity of air transportation, which is essential in this national emergency. Part 119 certificate holders operating under part 135 are a key part of the United States infrastructure that transports food, supplies, mail, and personnel. The stability of the U.S. transportation system is particularly critical at this time because of the increased demand for food and medical supplies prompted by the COVID-19 pandemic. Furthermore, given the immediacy of the public health concerns and the urgency of sustaining continuity in air transportation, it would not be feasible for the FAA to timely address ad hoc requests for relief from certificate holders individually.

⁵ For example, for a crewmember who was due to complete recurrent training in May as to a requirement that already allowed for one grace month, the original grace month is June. With this two-month extension, the crewmember's grace months are June, July, and August. If the crewmember completes the training in June-August, the crewmember will be considered to have completed it in May. However, the FAA notes that, unlike the other regulatory sections included in the relief provided by this exemption, 14 CFR §§ 135.245(c) and 135.247(a) do not already permit a grace month. The FAA finds that providing certificate holders a two-calendar-month extension to meet the recency of experience requirements of these sections is also appropriate based on the same circumstances and analysis. Accordingly, for a crewmember who is due to meet the requirements of §§ 135.245(c) or 135.247(a) in May, the crewmember's grace months are June and July, but not August.

In view of the extraordinary situation presented by the COVID-19 pandemic, the FAA finds that allowing two additional grace months for completing the covered training and qualification requirements—many of which already permit one grace month—does not present a risk to aviation safety that cannot be mitigated under the conditions and limitations of this grant of exemption. These conditions and limitations ensure that certificate holders demonstrate a plan to mitigate any potential risk introduced by extending the crewmember or ground personnel qualification. The relief applies to requirements for currently qualified crewmembers and ground personnel only. It does not apply to requirements for the training and qualification of new personnel.

Consistent with the above policy, Condition and Limitation No. 1 requires those members of NATA who want to exercise the relief provided in this exemption to submit a Letter of Intent to use the relief provided in FAA Exemption No. 18510 prior to conducting any operation under Exemption No. 18510. Letters of Intent should be submitted by email to the following address: 9-AVS-AFS200-COVID-Exemptions@faa.gov. The FAA will place the letters in the exemption docket in the Federal eRulemaking Portal at: <http://www.regulations.gov>. Certificate holders should retain documentation to verify proper and timely submission of the Letter of Intent. Given the time sensitive nature of the relief required, the FAA will also accept Letters of Intent from other part 119 certificate holders conducting operations under part 135 who are not members of NATA.

As outlined in Condition and Limitation No. 2 below, each certificate holder seeking to use this exemption must obtain authorization in Operations Specification A005. A key factor for obtaining authorization to use this exemption is that the certificate holder tracks personnel whose grace months were extended through the exemption and mitigates the potential risk of extending those grace months through documented means of risk assessment and control. Some certificate holders operating under part 135 have voluntarily implemented a safety management system (SMS), and those without a formal SMS may have systematic procedures, practices, and policies for the management of safety risk. As outlined in Condition and Limitation No. 5 below, each certificate holder seeking to use this exemption must demonstrate and document how the potential risk associated with extending grace months will be assessed and mitigated.

The FAA's Decision

In consideration of the foregoing, I find that a grant of exemption is in the public interest. Therefore, pursuant to the authority contained in 49 U.S.C. §§ 106(f), 40113, and 44701, delegated to me by the Administrator, part 119 certificate holders conducting part 135 operations are granted an exemption from 14 CFR §§ 135.245(c), 135.247(a), 135.301(a), 135.323(b), 135.337(g), 135.338(g), 135.339(b), 135.340(b), and 135.505(d). This exemption is subject to the conditions and limitations listed below.

Conditions and Limitations

1. This exemption applies only to part 119 certificate holders who have submitted a Letter of Intent to the FAA at the following address: 9-AVS-AFS200-COVID-Exemptions@faa.gov. The Letter of Intent must state the certificate holder's intention to exercise the relief granted in this exemption and affirm the intention to act consistently with the conditions and limitation herein.
2. This exemption applies only to part 119 certificate holders who have been granted authorization by their assigned principal operations inspector in operations specification A005.
3. This exemption applies only to crewmembers and ground personnel who are required to complete recurrent training, testing, checking, recency, or observation through May 31, 2020.
4. Personnel who complete recurrent training, testing, checking, recency, or observation up to either two⁶ or three⁷ calendar months after the calendar month in which the training, testing, checking, recency, or observation is required, will be considered to have taken or completed the training, testing, checking, recency, or observation in the calendar month in which it was required.
5. Any part 119 certificate holder requesting to use this exemption must provide a plan to its assigned principal operations inspector with the following information.
 - a. For certificate holders with an accepted SMS, a safety risk assessment.
 - b. For certificate holders without an accepted SMS, a safety analysis and corresponding risk mitigations to be implemented by the certificate holder.
 - c. The method(s) the certificate holder will use in accordance with § 135.329(e)(1) to ensure that each crewmember using relief under paragraphs 3 and 4 above remains adequately trained and currently proficient for each aircraft, duty position, and type of operation in which the person serves.
6. Certificate holders may operate outside of the United States under this exemption, unless otherwise prohibited by a foreign country.

⁶ With this exemption, a total of two grace months are available to complete the requirements of 14 CFR §§ 135.245(c) and 135.247(a).

⁷ With this exemption, a total of three grace months are available to complete the requirements of 14 CFR §§ 135.293(a) and (b) 135.295, 135.297(a) and (b), 135.299(a), 135.337(f), 135.338(f), 135.339(a)(2), 135.340(a)(2), 135.343, and 135.505(a).

If you request an extension to this exemption, please submit your request by using the Regulatory Docket No. FAA-2020-0292 (<http://www.regulations.gov>).

Any extension or amendment request must meet the requirements of 14 CFR § 11.81.

This exemption terminates on 08/31/2020, unless sooner superseded or rescinded.

Issued in Washington, D.C., on .

Robert Carty  Digitally signed by Robert Carty
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