



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  
§ 135.339(a)(2) of Title 14, Code of  
Federal Regulations

Exemption No. **18685**  
Regulatory Docket No. **FAA-2020-0694**

### **GRANT OF EXEMPTION**

By letters dated July 9 and August 21, 2020,<sup>1</sup> John McGraw, Vice President, National Air Transportation Association (NATA), 818 Connecticut Avenue, N.W., 900 Washington, DC 20006, petitioned the Federal Aviation Administration (FAA) on behalf of NATA's members authorized to conduct operations under 14 Code of Federal Regulations (CFR) part 135 for an exemption from § 135.339(a)(2). The proposed exemption, if granted, would extend the timeframe for a check airman to conduct a proficiency or competency check under the observation of an FAA inspector or an aircrew designated examiner from 24 to 36 months, subject to certain risk mitigations. This petition is directly related to the circumstances associated with the coronavirus disease 2019 (COVID-19) public health emergency. For the reasons explained herein, the FAA is granting the requested relief to NATA members and other part 135 air carriers and operators that submit a Letter of Intent (in the form and manner described below).

#### **The petitioner requests relief from the following regulation:**

Section 135.339(a)(2) states, in pertinent part, that no certificate holder may use a person nor may any person serve as a check airman unless, within the preceding 24 calendar months, that person satisfactorily conducts a proficiency or competency check under the observation of an FAA inspector or an aircrew designated examiner employed by the operator. The observation check may be accomplished in part or in full in an aircraft, in a flight simulator, or in a flight training device.

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<sup>1</sup> NATA requested that its August 21, 2020, petition replace its July 9, 2020, submission. Therefore, the FAA only considered supporting information in NATA's August 21, 2020, petition.

Throughout this petition, the FAA refers to the requirement in § 135.339(a)(2) as a check airman observation.

**The petitioner supports its request with the following information:**

The petitioner requests the time period for a check airmen observation be extended from 24 months to 36 months for a period of 365 days during the interruption of operations caused by the COVID-19 public health emergency. The petitioner states that operators performing flights under the provisions of part 135 conduct flights both inside and outside the United States (U.S.) and, therefore, requests that the exemption be applicable to operations both domestically and internationally. The petitioner asserts that business and other related medical relief efforts described in its request may involve international flights in order to transport goods or meet with foreign suppliers and medical experts.

The petitioner states that compliance with § 135.339(a)(2) requires a check airman to complete the observation event with either an FAA inspector or an aircrew designated examiner employed by the operator. The petitioner contends that significant numbers of smaller operators do not employ aircrew designated examiners, which forces these operators to rely solely on FAA inspectors to perform the required 24-month check airman observation.<sup>2</sup> The petitioner notes that its petition was submitted after extensive discussions with NATA members who have reported difficulties in obtaining support from FAA inspectors to satisfy check airman requirements under § 135.339(a)(2). The petitioner contends that current restrictions on FAA inspector travel (as described to its members by FAA employees), requirements for social distancing, and individual health concerns have significantly hampered the ability of operators to maintain currency.<sup>3</sup>

The petitioner notes that the FAA has previously granted NATA members relief for various proficiency check deadlines to accommodate the difficulties resulting from the COVID-19 public health emergency.<sup>4</sup> The petitioner argues that additional relief for check airman requirements is appropriate as the impact of the public health emergency continues. The petitioner contends that the ability of operators to maintain qualified check airmen is adversely impacted by the 24-month check airman observation requirement. The petitioner believes that, given the extraordinary circumstances currently facing the industry, temporarily extending the requirement of § 135.339(a)(2), provided certain mitigations are in place, will not adversely impact safety of

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<sup>2</sup> The petitioner notes that most small operators have only one or two aircraft and that, based upon available FAA data, at least 90% of part 135 operators have fewer than 10 aircraft.

<sup>3</sup> The petitioner indicated that relief was necessary to ensure instructor currency was maintained. The FAA believes this reference was in error, and petitioner meant to refer to check airman currency.

<sup>4</sup> The FAA issued Exemption No. 18510 on March 25, 2020 (Docket FAA-2020-0292). Exemption No. 18510, as amended, provides a total of three grace months after the due month to complete certain part 135 training and qualification requirements, including the check airman observation required by § 135.339(a)(2). As the COVID-19 public health emergency continues, Exemption 18510 has been extended three times to provide relief to additional cohorts of crewmembers, instructors, and check airmen. The current version, Exemption No. 18510C, granted September 30, 2020, provides a total of three grace months after the due month to complete check airman observations due through December 2020.

operations or increase risk in the short term and will serve to protect workers in this critical infrastructure field.

The petitioner states that a grant of exemption is in the public interest because part 135 operators are providing vital services during the COVID-19 public health emergency. According to the petitioner, this includes transport of urgently needed medical supplies and personnel, transport of business travelers engaged in relief efforts, and the distribution of supplies needed as part of the nation's response to the emergency. The petitioner contends that, without the requested relief, many check airmen will be unable to provide the required checks and, therefore, pilots who would have been qualified by virtue of receiving that check will be unable to perform their duties. The petitioner states that this will result in flight cancellations and a general inability of the industry to support the public health and safety embodied in the relief efforts. The petitioner asserts that operators are unable to generate revenue through part 135 charter operations without qualified pilots, creating economic hardship for operators and inconvenience to the traveling public due to canceled flights and reduced national system capacity.

The petitioner notes that, on May 19, 2020, the President issued Executive Order 13924 directing Federal agencies to "address this economic emergency by rescinding, modifying, waiving, or providing exemptions from regulations and other requirements that may inhibit economic recovery, . . ." The petitioner asserts that its petition provides the FAA with an opportunity to meet this directive by providing regulatory and economic relief to certificate holders while maintaining the current level of safety.

The petitioner states that the exemption would result in cost and potential health care savings to the FAA, creating additional public benefits. The petitioner anticipates savings from decreased travel costs for FAA inspectors who would otherwise need to travel to perform these checks. The petitioner asserts that the exemption would allow FAA employees to protect their health by limiting or eliminating the number of close contacts to which they are exposed that could lead to COVID-19 infection or spread.

The petitioner stresses that the difficulty in obtaining authorized FAA inspectors to conduct the observations that this exemption would relieve is directly related to the extraordinary circumstances associated with the COVID-19 public health emergency. The petitioner asserts that travel limitations, stay-at-home orders, exposure to illness, and guidance on personal actions necessary to minimize risk of exposure to COVID-19 are creating logistic challenges in completing the required observation checks within the allotted time. NATA requests expedited relief, as a petition for exemption under 14 CFR § 11.61(b).

The petitioner submits the following risk mitigation measures for consideration that it believes will maintain at least an equivalent level of safety with current operations. In addition, the petitioner states that its members report very few failures resulting from these observation checks. The petitioner contends that this low risk of failure coupled with its proposed mitigations would ensure that the current level of safety is maintained.

The petitioner offered the following prerequisites for exercising the relief if granted:

- The exemption may be used by an existing, current authorized check airmen at a carrier operating under part 135.
- Check airmen must not have had a violation of Federal Aviation Regulations while exercising the privileges of their airman certificate, in the past 60 months preceding the date the check airman's observation is due.
- Check airmen must be a current and qualified as a pilot-in-command (PIC) on the part 135 operating certificate.
- Individuals must be currently qualified as a check airman for at least one type of aircraft operated by the certificate holder.

**The FAA's analysis is as follows:**

A summary of the petition was published in the Federal Register on September 1, 2020 (85 FR 54473). The National Business Aviation Association (NBAA) submitted comments in support of the petition. NBAA stated that most part 135 operators do not employ an aircrew designated examiner due to their size; therefore, these operators are dependent on FAA inspectors to conduct the required 24-month check airman observations. NBAA noted that, as a result of the COVID-19 health emergency, the availability of FAA inspectors to conduct the check airman observations is extremely limited. NBAA stressed that without the requested relief, many check airmen will be unable to complete the required checks, which will result in grounded pilots and aircraft.

The FAA has determined that granting the exemption is necessary because without this relief, check airman qualifications would lapse, and air carriers and operators would be unable to maintain a sufficient number of qualified pilots due the inability of check airmen to perform duties necessary to keep pilots qualified.<sup>5</sup> The scope of the adverse consequences resulting from lapses in qualifications among part 135 check airman (and by extension pilots) has a significant impact on the public. Part 135 air carriers and operators are critical to the U.S. air transportation system because they operate at smaller airports that are not serviced by part 121 air carriers. Many small part 135 air carriers and operators provide the only air service available to remote communities and are, therefore, essential for the movement of people, goods, and mail. The FAA finds that providing relief to check airman who have lapsed or will lapse on their observation is appropriate and does not present a risk to aviation safety that cannot be mitigated under the conditions and limitations of this grant of exemption. In addition, although the petitioner did not explain how the impact of COVID-19 necessitated the duration of the relief requested – an additional 12 months for check airmen to be observed for a period of 365 days – the FAA has granted the requested relief beyond the anticipated extent of the COVID-19 public health emergency for the reasons explained below.

As noted by NBAA, the majority of part 119 certificate holders operating under part 135 do not employ aircrew designated examiners, making these air carriers and operators reliant on FAA

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<sup>5</sup> Under part 135, check airmen perform various duties including supervising pilot operating experience under § 135.244, administering pilot competency checks under § 135.293, administering pilot instrument proficiency checks under § 135.297, administering pilot line checks under § 135.299, and conducting instructor observation under § 135.340. Without sufficient check airmen to perform these duties, air carriers and operators would be unable to maintain a sufficient number of qualified pilots and instructors.

inspectors to conduct the check airman observations required by § 135.339(a)(2) every 24 calendar months. The petitioner and NBAA stated that their members are experiencing difficulties obtaining FAA inspectors to conduct these check airman observations due to the challenges imposed by the COVID-19 public health emergency. The FAA agrees that the vast majority of part 135 air carriers and operators depend solely on FAA inspectors to accomplish the check airman observations required by § 135.339(a)(2). The FAA recognizes that COVID-19 continues to create challenges for part 135 air carriers and operators and the FAA that hinder the ability to schedule and accomplish the check airman observations required under § 135.339(a)(2). While there is no general restriction on FAA inspector travel, the availability of FAA personnel to conduct check airman observations varies across the oversight system. FAA inspectors are geographically dispersed at duty stations throughout the United States. There are approximately 1,942 certificate holders operating under part 135 in the United States, and one FAA Principal Operations Inspector (POI) is typically responsible for overseeing multiple certificate holders. A POI's duty station is often far from the certificate holder's home base or the location from which the check airman observation is planned to occur. Generally, the air transportation industry is seeing increases in flight operations and improvements in the availability of facilities and personnel to provide air carrier and operator training, testing, and checking. However, like certificate holders, the FAA is coping with intermittent facility closures and operational disruptions due to COVID-19 and increased spikes in certain geographic areas. FAA Flight Standards offices are making risk-based determinations regarding inspector travel and ability to support checks and observations based on individual circumstances and COVID-19 conditions in certain geographic areas. At the same time, the closure of training centers and disruption to operations at the onset of the COVID-19 public health emergency resulted in backlogs of air carrier and operator training, testing, and checking. As a result, the demand for FAA inspectors to accommodate the overall backlog of checking and observations exceeds the reduced capacity in many locations, which is likely to cause check airman and crewmember qualifications to lapse unnecessarily because of the inability to complete the required observations.

The FAA finds that maintaining the qualification of check airman is particularly critical at this time so that part 135 air carriers and operators can address backlogs of training, testing, and checking. The FAA highlights the essential role that check airman perform within part 135 operations. A check airman is a person approved by the FAA who has the appropriate training, experience, and demonstrated ability to evaluate and to certify the knowledge and skills of other airmen. This evaluation occurs through various checks conducted as part of the certificate holder's FAA-approved training and qualification program. The petitioner and NBAA contend that, without the requested relief, many check airmen will be unable to provide the required checks and, therefore, pilots who would have been qualified by virtue of receiving those checks will be unable to perform their duties. In addition, check airmen typically conduct the instructor observations necessary for a part 135 air carrier or operator to comply with § 135.340(a)(2). Therefore, as noted, a part 135 air carrier or operator's ability to maintain qualified instructors and trained pilots is dependent on its ability to maintain qualified check airmen to conduct the required instructor observations. The FAA agrees that it is reasonable to assume that lapsing check airman qualifications will hinder part 135 air carrier and operator ability to maintain qualified pilots, particularly for small operators that have few check airmen.

The FAA places importance on the role of check airmen and established the 24-month observation requirement under § 135.339(a)(2) to ensure that check airmen maintain their qualifications and their abilities to perform all other duties as appropriate for check airmen.<sup>6</sup> The requirement that check airmen be observed in the performance of their functions serves to increase the quality assurance of check airmen.<sup>7</sup> Without providing any specific data, the petitioner asserted that very few failures result from check airman observations. As previously noted, the vast majority of part 135 check airman observations are conducted by FAA inspectors since, unlike air carriers operating under part 121, most part 135 air carriers and operators do not employ aircrew designated examiners. Following an observation event, FAA inspectors document the outcome of each check airman observation in the FAA database.<sup>8</sup> In considering the petition, the FAA reviewed its data from the last several years, which confirmed that, of the approximately 9,700 check airman observations conducted by the FAA, the check airman's performance was found to be unsatisfactory in less than one percent of the observations conducted. Based on this low failure rate, coupled with the additional mitigations imposed by the conditions and limitations of this exemption, the FAA finds that a grant of exemption would have no adverse impact on safety.

The petitioner requested a 365-day exemption that would extend the timeframe for a check airman observation from 24 to 36 months based on challenges resulting from the COVID-19 public health emergency, as discussed above. In general, the FAA has granted only short-term relief based on COVID-19 to allow the agency the opportunity to continually assess the changing circumstances associated with the public health emergency and adapt as appropriate. With the positive news of several vaccines becoming broadly available in the coming months, the FAA does not find the COVID-19 public health emergency alone merits relief from check airman observations for the extended period of time requested by the petitioner. However, in the course of considering the petition and assessing the safety impact, the FAA finds there is justification to extend the timeframe for check airman observations from 24 to 36 months for check airmen who are due to be observed from January 2021 through December 2021.<sup>9</sup> This relief will allow check airmen to continue to perform critical tasks for an additional 12 months beyond the period specified in § 135.339(a)(2). To accommodate check airmen due to be observed in December 2021—the last cohort covered under the relief provided—this exemption will expire on December 31, 2022. As set forth in Condition and Limitation No. 3, if a check airman who qualifies for relief under this exemption completed or completes an observation between

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<sup>6</sup> 61 FR 30734, 30737 (June 17, 1996).

<sup>7</sup> 61 FR at 30738.

<sup>8</sup> FAA inspectors document the outcome of each check airman observation that they conduct in the Safety Assurance System. For check airman observations conducted by aircrew designated examiners, the aircrew designated examiner documents the outcome of each check airman observation in accordance with the part 135 air carrier's or operator's recordkeeping process. This documentation is not maintained in the FAA database. However, in accordance with § 119.59, FAA inspectors may inspect the part 135 air carrier's or operator's records at any time.

<sup>9</sup> The FAA notes that, for purposes of this exemption, check airman whose observations would have expired between September and December 2020, but who obtained three grace months of relief under Exemption No. 18510C, are considered to be current and qualified by virtue of the relief previously granted. Accordingly, the FAA finds the new relief in Exemption No. 18685 is applicable to these individuals. This approach is reflected in the timeframe established in Condition and Limitation No. 3.

September 2020 through December 2021, that check airman must complete his or her next check airman observation in the timeframe required by the regulation.<sup>10</sup>

The FAA finds that a grant of exemption is in the public interest because part 135 air carriers and operators are essential to the U.S. air transportation system, and disruptions at this critical time would have a serious impact on the public, including the small communities many of these air carriers and operators serve. In addition, considering FAA's review of its data indicating that less than one percent of the check airman observations result in a finding that the check airman performed unsatisfactorily, the FAA finds a grant of exemption with the conditions and limitations contained herein is in the public interest because it is consistent with the direction provided to Federal agencies in Executive Order 13924 to promote economic recovery while maintaining safety. The FAA notes that, in accordance with Executive Order 13924, the FAA will closely monitor the use and outcomes of this exemption to determine whether to pursue appropriate notice and comment rulemaking to make the relief provided in this exemption permanent.

To ensure check airmen maintain their abilities as check airmen, Condition and Limitation No. 4 requires the part 119 certificate holder to validate the check airman's knowledge through recurrent ground training of the topics described in § 135.339(c)(1) through (6). As outlined in Condition and Limitation No. 5 below, this exemption applies to requirements for currently qualified check airmen only. It does not apply to requirements for qualifying new check airmen. It also does not apply if a check airman has had a regulatory violation or unsatisfactory check airman observation within the 60 calendar months before the observation is due.

Because NATA is a trade association and not a certificate holder, NATA 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. Consistent with this policy, Condition and Limitation No. 1 requires those members of NATA and other part 119 certificate holders 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. 18685 prior to conducting any operation under Exemption No. 18685. Letters of Intent should be submitted to the Federal eRulemaking Portal: Go to <http://www.regulations.gov> and follow the online instructions for submitting documents electronically. Certificate holders should retain documentation to verify proper and timely submission of the Letter of Intent.

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 check airman observations were extended through the exemption and mitigates the potential risk of extending the timeframe for those observations through documented means of risk assessment

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<sup>10</sup> A check airman who completes an observation in 2020 or 2021 may not rely on the relief provided in this exemption to extend their next observation from 24 months to 36 months as that would extend the relief beyond the expiration date of the exemption.

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. 6 below, each certificate holder seeking to use this exemption must demonstrate and document how the potential risk associated with extending the check airman observation will be assessed and mitigated.

The petitioner asserts that business and other related medical relief efforts described in its request may involve international flights in order to transport goods or meet with foreign suppliers and medical experts. The FAA has included Condition and Limitation No. 9 to indicate that certificate holders may operate outside of the U.S. under this exemption, unless otherwise prohibited by a foreign country.

In accordance with § 135.339(a), the part 119 certificate holder and the individual check airman have a dual responsibility to ensure the check airman meets the observation requirement. Therefore, the FAA is also granting relief to the check airmen employed by those certificate holders who are granted authorization in Operations Specification A005 in accordance with Condition and Limitation No. 2.

### **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, and part 135 check airmen employed by those certificate holders, are granted an exemption from 14 CFR 135.339(a)(2) to extend the timeframe for a check airman to conduct a proficiency or competency check under the observation of an FAA inspector or an aircrew designated examiner from 24 to 36 months, 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 Federal eRulemaking Portal, under Docket No. FAA-2020-0694. Go to <http://www.regulations.gov> and follow the online instructions for submitting documents electronically. 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 limitations 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 check airmen who are required to complete a check airman observation in accordance with § 135.339(a)(2) between September 2020 and December 2021, in order to allow the check airman to continue performing check airman duties. For individuals who complete a check airman observation between September 2020 and December 2021, this relief does not extend the period for their



next check airman observation, which must be completed under the timeframe set forth in the regulation.

4. The timeframe for a check airman to conduct a proficiency or competency check under the observation of an FAA inspector or an aircrew designated examiner may be extended from 24 to 36 months when the part 119 certificate holder has validated the check airman's knowledge through recurrent ground training of the topics described in § 135.339(c)(1)-(6).
5. Each check airman who receives an extension under this exemption must –
  - a. Be a current, qualified check airman for the certificate holder in accordance with §§ 135.337 and 135.339, except for completing the recurrent check airman observation required by § 135.339(a)(2).<sup>11</sup>
  - b. Have no unsatisfactory check airman observations within the 60 calendar months before the month the check airman observation is due.
  - c. Have no violations of 14 CFR in the 60 calendar months before the month the check airman observation is due.
6. 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.
7. If this exemption is used with any other exemption, no certificate holder may use a person nor may any person serve as a check airman unless that person has satisfactorily conducted a proficiency or competency check under the observation of an FAA inspector or an aircrew designated examiner employed by the operator within the preceding 36 calendar months.<sup>12</sup>
8. Each certificate holder authorized to use this exemption must maintain check airman records in accordance with § 135.63 that demonstrate compliance with the conditions and limitations of this exemption.
9. Certificate holders may operate outside of the U.S. under this exemption, unless otherwise prohibited by a foreign country. Crewmembers must have in their

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<sup>11</sup> A check airman who has exercised the relief provided by FAA Exemption No. 18510, as amended, Regulatory Docket No. FAA-2020-0292, is considered to be current and qualified for the purposes of Condition and Limitation No. 5 of this exemption.

<sup>12</sup> FAA Exemption No. 18510 provides National Air Transportation Association members and other part 135 air carriers and operators that have been authorized to use the exemption a total of 3 grace months after the due month to complete the check airman observation required by § 135.339(a)(2). For example, for a check airman observation due in June, the grace months under Exemption No. 18510 are July, August, and September. If the check airman completes the observation in July-September, the check airman will be considered to have completed it in June. Check airman who received a total of 3 grace months provided by Exemption No. 18510 can receive further extension under this exemption. However, no check airman can go longer than 36 calendar months without completing the check airman observation required by § 135.339(a)(2).

physical possession, or readily accessible in the airplane, a copy of this grant of exemption when exercising the relief provided. In accordance with the Convention on International Civil Aviation (Chicago Convention), and its Annexes, crewmembers must present a copy of this grant of exemption for inspection upon request by a foreign civil aviation authority.

If you request an extension to this exemption, please submit your request by using the Regulatory Docket No. FAA-2020-0694 (<http://www.regulations.gov>). In addition, you should submit your request no later than 120 days prior to the exemption's expiration date listed below.

If you require an amendment to this exemption, please submit your request no later than 120 days prior to the date you need the amendment using the process indicated above.

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

This exemption terminates on December 31, 2022, unless sooner superseded or rescinded.

Issued in Washington, D.C., on .