

Flightcrew Member Duty and Rest Requirements

FAA Proposed Rule
Docket No. FAA-2009-1093

Presentation to the
Office of Management and Budget by:



CARGO AIRLINE ASSOCIATION
The Voice of the Air Cargo Industry

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July 26, 2011

The FAA Rule

- On September 14, 2010, the FAA issued a proposed rule that, if finalized, would drastically overhaul existing flightcrew member duty and rest requirements with an unduly complicated and unworkable “one-size-fits-all” rule.
- Stakeholder comments were filed on November 15, 2010.
- The Cargo Airline Association (“CAA”) filed comments that included an alternative proposal which enhances safety based on our members’ and our crews’ extensive operational experience.

Cargo Airline Association Position

- The proposed FAA rules are fatally flawed and must not be permitted to be finalized.
- They:
 - Provide virtually no safety benefits, produce far greater costs than benefits and are not based on accepted scientific principles.
 - Apply a “one size fits all” approach to an industry that consists of widely differing operational models.
 - Will degrade, not enhance, safety.
 - Will substantially harm all-cargo airlines and shippers, including the military; negatively impact the U.S. economy and cost U.S. jobs.

Cargo Airline Association Position (con't)

- The rules should be returned to the FAA with instructions to ensure that any regulations comply with regulatory guidelines set forth in Executive Orders 13563 and 12866. Interested parties must be given the opportunity to comment on any rules that differ substantially from those initially proposed through the issuance of a Supplemental Notice of Proposed Rulemaking.
- Rules applicable to the all-cargo industry segment should mirror the detailed proposal submitted by the Cargo Airline Association that provides substantially greater rest and shorter duty days for flight crews.

Overview of All-Cargo Industry

- The U.S. all-cargo air carriers are a unique industry segment with substantially different operational characteristics from other members of the aviation community.
- All-cargo pilots fly far fewer hours than their passenger airline counterparts, with express air carrier CAA members averaging approximately 28.0 block hours **per month per pilot** (compared to over 40 block hours for passenger airlines).
- All-cargo services typically:
 - take place during evening and nighttime hours,
 - do not transport “passengers”,
 - involve relatively few take-offs and landings, and
 - require considerably lower utilization of aircraft and crews.

Overview of All-Cargo Industry (con't)

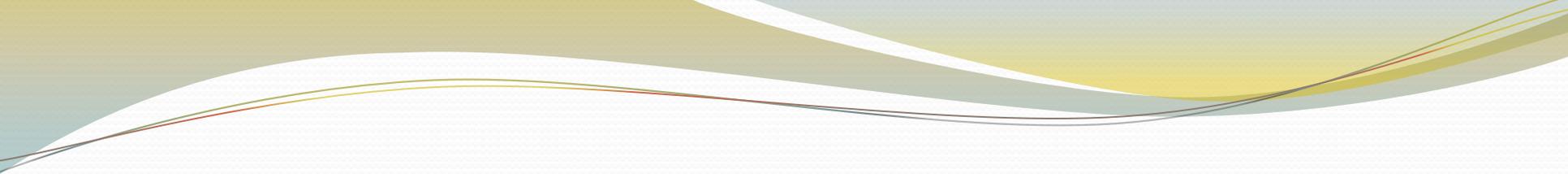
- All-cargo industry members can and do provide significantly more opportunities for crew member rest.
- Since 2003, all-cargo carriers have conducted approximately 7.6 million mainline operations with absolutely **no** fatigue-related accidents.
- In a broader context, the recent NRC Study on crewmember commuting practices noted that, since 1982, the NTSB investigated 863 accidents and concluded that fatigue was a cause or contributing factor in only 9. *The Effects of Commuting on Pilot Fatigue*, National Research Council of the National Academy of Sciences, July 2011, pp. 3-7, 3-8 (NRC Study). Only 2 of these 9 accidents were cargo-related and the proposed rules would not have prevented either one.

Fundamental Regulatory Principles

- EO 12866 and EO 13563 require agencies to:
 - Ensure benefits justify costs through a transparent analysis;
 - Identify and assess alternatives to the proposed regulations;
 - Use sound scientific evidence and technical findings;
 - Assess the impact on regional and national economies; and
 - Maximize net benefits.

The Administrative Process

- OMB Circular A-4 requires:
 - Clear indication of methodologies used and explanation of any deviations from the prevailing state of knowledge,
 - Presentation of estimates based on alternative approaches, and
 - Disclosure of different methodologies used for different alternatives.
- As required by the Administrative Procedure Act:
 - The “Administrative Record” must include the Agency’s own research and background documentation, data and supporting documents, and
 - Proper notice and comment via a Supplemental Notice of Proposed Rulemaking is appropriate if there is a significant change from NPRM to Final Rule, as required by the “logical outgrowth” doctrine.



**THE FAA'S NPRM FAILS EVERY ONE OF
THESE REQUIREMENTS!**

FAA's Regulatory Analysis Is Fatally Flawed

- Even the FAA's own flawed analysis shows benefits equal to just 58% of costs for the **entire** airline industry.
- Industry estimates are even more dramatic. The CAA analysis **for the all-cargo industry segment** estimates \$3,800 of costs for every dollar of benefits.
- By failing to assess impacts on the all-cargo industry segment (as opposed to the aviation industry as a whole), the FAA hides the fact that costs far exceed benefits for the all-cargo segment.
- FAA claims notwithstanding, the proposed rules cannot be found to be based on established scientific principles.
- FAA failed to consider costs and benefits of reasonable alternative proposals, including the CAA proposal.

Negative Economic Impacts of the Proposed Regulation

- The proposed rule would increase the annual cost of transportation to all-cargo customers by \$592 million.
- These added transport costs will increase delivered prices, resulting in lost sales and the associated earnings and employment, and a diversion of traffic from air to surface modes.
- Reduced air trade will decrease air cargo revenues for U.S. all-cargo airlines.
- The reduction in air trade and all-cargo air carrier revenues will have a total impact of 7,000 lost jobs and \$13.6 billion in U.S. economic activity over 10 years.

Impact on U.S. Economy: 7,000 Lost Jobs and \$1.4 Billion Lost Annual Sales

	Impact of Rule on All-Cargo Airline Costs		
	Output (Sales) (millions)	Employee Earnings (millions)	Employment (Jobs)
Direct Impacts	\$541	\$110	2,699
Induced Impacts	\$821	\$173	4,307
Total Impacts	\$1,362	\$283	7,006

10-Year Impacts	
- Nominal Value	\$13.6 Billion
- NPV @ 7%	\$9.6 Billion

Specific Defects in FAA's Regulatory Impact Analysis

- FAA's analysis did not report cargo and passenger airline costs separately on a consistent basis.
 - FAA extrapolated benefits for both passenger and cargo carriers, but did not analyze costs separately.
 - Benefits start in 2011 and costs in 2013 leading to an erroneous analysis as benefits should follow costs.
- Benefits should be based on forecast of “avoided” accidents and fatalities, rather than an extrapolation of past 20 years of accidents, almost none being fatigue-related or related to the proposed rule.
- Benefits should be restricted to an analysis of recent accidents which would have been avoided by the proposed rule.
- FAA failed to factor in large segments of costs such as:
 - Cost of on-airport rest facilities, and
 - Associated revenue loss for cargo carriers.

Seven of Eight Cargo Accidents Are Not Affected by Rule

Date	Location	Group Identifier	No NTSB Finding On Fatigue	FAA's Impact from Rule = o Percent	Wrong Fatigue Classification	Prohibited With Current Rule	Allowable With Proposed Rule	Impact Of Proposed Rule	Comment
8/18/1993	Guant. Bay	DT1			X	X		None	Wrong duty time shown
12/16/2004	Ontario, Canada	DT5	X	X	X			None	Duty time not over 10 hours
2/17/1991	Cleveland, OH	LN1	X		X			None	Operational Not Pilot Error
2/15/1992	Swanton, OH	LN2	X					None	
7/31/1997	Newark, NJ	LN4	X	X	X			None	Pre-midnight at crew base
8/13/2004	Florence, KY	LN5	X	X	X		X	None	Pre-midnight at crew base
2/16/1995	Kansas City, MO	RT2				X		None	
7/26/2002	Tallahassee, FL	RT4						Minor	Pilot not affected by rule

Rule Is Not Supported by Science

- FAA failed to incorporate science-based justifications and even admitted “sleep science has not been validated in the aviation context”. See FAA Response to CAA’s Motion to Reopen the Record”, July 1, 2011.
- Fatigue science in the aviation environment is not well developed and has certainly not been analyzed separately for the all-cargo industry segment.
- National Academy of Sciences study on pilot commuting found “a lack of evidence to support the basis for issuance of a regulation pertaining to commuting”, perhaps the most important element of pilot fatigue. NRC Study at S-4.
- MITRE-established working groups on fatigue in the aviation environment just initiated.

Rule Is Not Based on Operational Data Of All-Cargo Segment of the Industry

- “[T]he airline industry is heterogeneous, with great variability across the entire industry, in each segment of the industry”
NRC Study at S-2.
- FAA based its rule on the mainline passenger airline segment and did not take into account real world operational data and uniqueness of all-cargo industry.
- FAA’s attempt to apply a “one size fits all” model to all Part 121 operators is neither justified nor desirable. Different rules based on operational characteristics and unique industry segment data and experiences are essential.

FAA Failed To Consider the CAA Proposal

- The CAA proposal was designed to avoid major operational problems with the FAA rule, while, at the same time providing significant benefits for all-cargo flightcrews.
- The FAA dismissed the CAA proposal out of hand in the preamble to the NPRM and did not consider it an alternative for the all-cargo segment of the airline industry.

Summary of CAA Proposal to FAA

- Opportunities for rest are a key element in mitigating fatigue. CAA's proposal substantially increases minimum daily and cumulative rest opportunities.
- The proposal also would provide reduced hours for duty days.
- It also establishes limits in areas where currently there are no limits and takes into account:
 - Time of day,
 - The impact of crossing multiple time zones, and
 - The impact of multiple take-offs and landings.
- CAA also advocated increased training to improve crew understanding and ability to deal with sleep-performance issues.

Comparisons Between Current FAR and CAA Proposal

Flight Duty Period (Hours)		
	Current	CAA Proposal
Domestic	16	9-13
3 Crew Domestic	16	9-13
International	16	11:30-14
3 Crew International	No Regulation	14:30-16:30

Rest (Hours)		
	Current	CAA Proposal
Domestic	8	10
3 Crew Domestic	8	10
International	8	12
3 Crew International	8	12

Conclusions

- The Flightcrew Member Duty and Rest Requirements rule, as proposed by the FAA in September 2010, is wholly inconsistent with applicable regulatory standards established in Executive Orders 13563 and 12866 and should be returned to the FAA for further analysis and revised recommendations.
- Interested stakeholders must have the opportunity to comment on any substantially changed regulations or underlying rationale.
- The Association stands behind its proposal submitted to the FAA and urges that, if any Final Rules are implemented, that this industry proposal be implemented for the all-cargo industry segment.