

Fatigue Risk Management Systems (FRMS) will not be a panacea for non-scheduled airlines

FAA states in the NPRM that FRMS will provide flexibility to “...accommodate the vast majority of operations conducted today without imposing unreasonable costs...” and “...it would likely be used when the carrier cannot meet the more prescriptive rules because of the nature of the specific operations.” FAA expects to have an FRMS approval process in place prior to the final rule becoming effective.

It is a fact, however, that FRMS is in development and the outcome of how it will be used is very unclear. FAA states, “No country has adopted FRMS as a regulatory alternative.”

Public briefings by Jon Allen, FAA’s director of flight standards, John Duncan, manager of flight standards in the air transportation division, and Dale Roberts, an aide to John Duncan, in September and October 2010 and January, February, March, and June 2011 have stressed the following:

1. FAA will consider applications for deviations using FRMS by scheduled legacy and cargo carriers, first.
2. All applications must be on a route-by-route basis for these carriers.
3. FAA’s Rulemaking office will review applications and, if appropriate, will grant an ‘exemption’ from the rule [Rulemaking office is unaware of its involvement].
4. Carriers will, then, submit an application to FAA’s Flight Standards office, seeking a permanent ‘exception’ from the rule. They will operate under the ‘exemption’ until a decision is made regarding the ‘exception’.
5. FAA will expect scheduled carriers to file data from 30-40 flights on a given segment before making findings for either an ‘exemption’ or ‘exception’.
6. FAA is still uncertain how to handle deviation applications from non-scheduled carriers; it is considering an ‘area of operation’ or some kind of ‘east-west routings’ format but recognizes that will lack the specificity required of scheduled airlines.

7. FAA originally stated a separate office will be established (staffed by up to five individuals, including two PhDs in sleep science) to consider and rule on exceptions; this plan has apparently been scrapped in light of budget restrictions, with FAA saying in June it would ‘do the best it could to handle exceptions.
8. Applications for deviations on Department of Defense missions may be handled through 14 CFR Parts 119.55/.57, which are either applicable to flights when CRAF is activated or are one-off deviations.

The non-scheduled airline industry cannot rely on what may be the best intentions for FAA to have FRMS provide flexibility from new Part 117 prescriptive rules, whether for commercial or military flights.

Non-scheduled commercial flights will be well down the list of priorities for FAA, and there is no information from the agency about specific criteria to be used to grant either ‘exemption’ or ‘exception’. Nor does FAA say how long granting ‘exemptions’ and ‘exceptions’ will take. This lack of clarity is improper for a whole class of airlines – nonscheduled carriers.

How non-scheduled military flights are to be evaluated is even more clouded. FAA suggests use of Parts 119.55/.57 for deviations, but current missions in support of Air Mobility Command fit neither rule. FAA has, further, stated it is not possible to define “unsafe areas” with any specificity, but, at the same time, it will not allow operations into “safe areas” in support of U.S. military to invoke the proposed exception. So, how is a carrier to know whether a particular flight to an area is “safe” or “unsafe” and, accordingly, whether it can apply for a deviation under its FRMS?

Any system must be uniform, predictable, and applicable to all environments. The use of FRMS as the basis for deviations from Part 117 does not meet this essential test. FAA’s demonstrated lack of reasoning and application of fatigue science regarding crew duty and rest requirements (as seen in the NPRM and proposed rule) gives no positive assurance on the agency’s handling of applications for exemptions and exceptions.

It is not reasonable to expect an un-defined, opaque program such as FRMS to 'bail out' prescriptive duty and rest rules not written for non-scheduled carriers.

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