

**BEFORE THE  
FEDERAL AVIATION ADMINISTRATION  
WASHINGTON, D.C.**

**Flightcrew Member Duty and Rest Requirements  
Docket No. FAA-2009-1093**

**MOTION TO REOPEN RECORD**

Communications with respect to this filing shall be made to:

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June 21, 2011

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The Cargo Airline Association (hereinafter “the Association”), the nationwide organization representing members of the United States all-cargo air carrier industry, respectfully requests that the Federal Aviation Administration reopen the record in the above-captioned proceeding to take into account material developments in the area of fatigue science that have occurred subsequent to the filing of Comments on November 15, 2010 and that have significant bearing on the FAA’s proposed rules.<sup>1</sup> CAA submits that for the reasons stated below, reopening the record is necessary to take into consideration these new developments before any rule can be finalized.

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<sup>1</sup> This pleading is filed pursuant to authority provided in 14 C.F.R. § 302.11.

In support of this request, the Association states as follows:

On January 18, 2011, President Barack Obama issued Executive Order 13563 detailing general principles of regulation that agencies must follow in issuing rules under their various jurisdictions. One of the very first points made in this Executive Order is that “Our regulatory system . . . must be based on the best available science.” In this case, the “best available science” not only has not been applied in the proposed crew member duty and rest requirements, what little science exists has largely been ignored as detailed in the numerous comments filed with the FAA on November 15, 2010. Moreover, recent events have served to underscore just how undeveloped fatigue science is. Newly-emerging scientific evidence should be placed in the record and considered before any Final Rule is issued.

First, as requested by the FAA in response to a statutory mandate contained in The Airline Safety and Federal Aviation Administration (FAA) Extension Act of 2010 (H.R. 5900), the National Academy of Sciences (NAS) is conducting a study on the effects of commuting on flight crewmember fatigue. The NAS-constituted committee, consisting of volunteer members from the fatigue research and scientific community, has had several meetings, but has not yet issued a final report detailing its findings. The final published report is scheduled to be available by November 2011. Since commuting was the major impetus for the FAA rule and is a major fatigue factor, it is absolutely necessary that the NAS report be considered, with the opportunity for public comment, before any final rule is issued. The Docket should therefore be held open to receive this report, and the final rule should not be issued until the report can be evaluated.

Second, on June 6-7, 2011, MITRE Corporation convened a seminar entitled: **Aviation Fatigue Research Roadmap: A Framework for Partnership** to bring together all parties to the aviation fatigue debate in an attempt to advance the understanding of the role of fatigue in the aviation environment. In addition to a number of presentations by experts in various areas of both fatigue and aviation operations, MITRE established five new Working Groups to continue exploring the fatigue issue.

These Working Groups were charged with studying:

**Scheduled Operations:** Focus on research pertaining to scheduled domestic and international, long-haul and short-haul/multi-segment operations.

**On-Demand Operations:** Focus on operations that occur in the civilian and military environments, including EMS and other medical transport flights, firefighting flights, search-and-rescue flights, charter flights and wartime flight operations.

**Shift Work:** Focus on fatigue related to traditional shift work environments, including aircraft maintenance, air traffic control, dispatch/planning and technical operations.

**Tools:** Focus on developing guidance for the use of objective and subjective measures of fatigue in support of fatigue modeling and fatigue risk mitigation.

**Modeling:** Focus on developing a Fatigue Risk Management System (FRMS), including methods of assessing risk, education and training, monitoring and mitigating human fatigue risk.

The only conclusion that can be drawn from the ongoing NAS study on crew member commuting and the establishment of the MITRE Working Groups is that, with respect to the science of fatigue in the aviation workplace, much more scientific information needs to be known before there is an adequate basis for the FAA to finalize a major rewrite of longstanding existing regulations – especially where, as here, the safety benefits of the proposed rule are minimal and the costs of the rule greatly exceed the benefits. As CAA previously pointed out, every dollar of benefit will produce a staggering \$3,800 in costs to the all-cargo airlines. In order to comply with Executive Order 13563’s mandate that new regulations be based on the best available science, at the least, the FAA must await the conclusions of the commuting study and the MITRE Working Groups and take those conclusions into account in any new rule.

Third, the Administrator of the Office of Management and Budget’s Office of Information and Regulatory Affairs, Cass Sunstein, wrote in the Wall Street Journal on May 25, 2011 that “[a] 21<sup>st</sup>-century regulatory system must promote economic growth, innovation and job creation while also protecting public health and welfare.” He further states that “Our goal is to change the regulatory culture of Washington by constantly asking what’s working and what isn’t. To achieve that goal, we need to obtain *real-world evidence and data*.” Mr. Sunstein correctly insists on rules that are “pragmatic”, “evidence-based” and “cost-effective”. The FAA’s proposed rule is not based on “real-world evidence and data” and lacks pragmatism and cost-effectiveness. Before the rule can be finalized, it needs to be informed by the scientific information that will be product of the NAS and MITRE initiatives.

Accordingly, the Cargo Airline Association respectfully requests that the record in this proceeding be reopened to await the scientific analyses underway and that any final rule take into account the findings presented.

Respectfully submitted,



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<sup>2</sup> Pursuant to Title 18 United States Code Section 1001, I, Stephen A. Alterman, in my individual capacity and as the authorized representative of the pleader, have not in any manner knowingly and willfully falsified, concealed or failed to disclose any material fact or made any false, fictitious, or fraudulent statement or knowingly used any documents which contain such statements in connection with the preparation, filing or prosecution of the pleading. I understand that an individual who is found to have violated the provisions of 18 U.S.C. Section 1001 shall be fined or imprisoned not more than five years, or both.