



U.S. Department
of Transportation
**Federal Aviation
Administration**

800 Independence Avenue, SW
Washington, DC 20591

July 1, 2011

Mr. Stephen A. Alterman
President
Cargo Airline Association
1620 L Street, N.W., Suite 610
Washington, DC 20036

Re: Docket No. FAA-2009-1093

Dear Mr. Alterman:

This is in response to your June 21, 2011 motion, written on behalf of the Cargo Airline Association (CAA), asking the Federal Aviation Administration (FAA) to reopen the record in this flightcrew member duty and rest requirements rulemaking in order to take into account two newly-emerging scientific developments.¹

The first development consists of a National Academy of Sciences (NAS) study that is being conducted to examine the effects of commuting on flightcrew member fatigue. Your motion asserts that commuting is a major fatigue factor, and as such, the FAA should wait to issue a final rule until NAS finishes its study, and the FAA has had a chance to review the final conclusions of that study.

The second development consists of a MITRE Corporation seminar in which five new working groups were established to continue studying fatigue in aviation. Your motion argues that the existence of the NAS study and the MITRE working groups indicates that more scientific information is needed before the FAA has an adequate scientific basis to issue a final rule as part of this rulemaking.²

Executive Order 13563 requires that federal regulations be “based on the best available science.” As the notice of proposed rulemaking (NPRM) acknowledged, sleep science is “still evolving and subject to individual inclinations.” 75 Fed. Reg. 55852, 55857 (2010). However, sleep science is clear in several respects, which formed the basis for the NPRM:

¹ In your motion, you indicate that the authority for the motion stems from 14 C.F.R. 302.11. However, section 302.11 only applies to “aviation economic proceedings before the Department of Transportation.” 65 Fed. Reg. 6446 (2000). Because this is a safety-oriented rulemaking being conducted by the FAA and not an economic proceeding before the Department of Transportation, section 302.11 does not apply to this rulemaking. As such, the FAA will construe this motion as a request to reopen the comment period.

² Your motion also contains arguments that this rule (1) is unduly expensive, (2) has minimal benefits, and (3) is not based on pragmatism and real world data. These arguments are duplicative of arguments that were raised in comments on this rulemaking, and the associated issues will be addressed in the final rule.

Most people need eight hours of sleep to function effectively, most people find it more difficult to sleep during the day than during the night, resulting in greater fatigue if working at night; the longer one has been awake and the longer one spends on task, the greater the likelihood of fatigue; and fatigue leads to an increased risk of making a mistake.

Id.

As the preceding paragraph points out, there are several fundamental aspects in which sleep science is clear. While the FAA acknowledges that there is ongoing research in the field of sleep science, it is unlikely that this research will alter, in the near future, the above fundamental aspects on which this rulemaking is based. As such, the FAA finds that the existing scientific data is sufficient to allow the FAA to proceed with this rulemaking. In addition, the FAA notes that if the ongoing scientific studies yield significant new fatigue-related data, this rulemaking does not foreclose the FAA from conducting a new rulemaking based on the newly-discovered data.

Accordingly, we do not find the reasons you provided to justify reopening the comment period to be persuasive.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Pratte', with a long horizontal line extending to the right.

Dennis R. Pratte
Acting Director, Office of Rulemaking