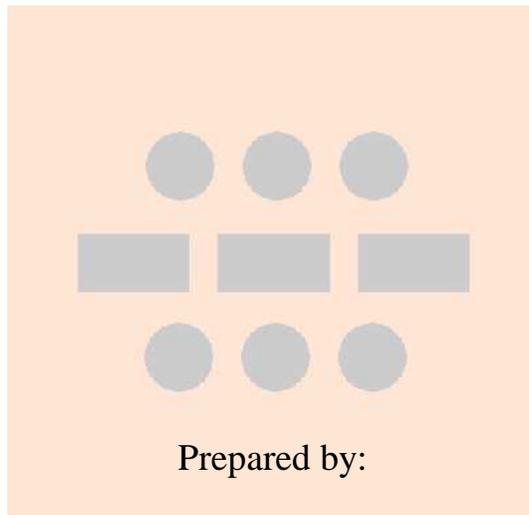


# Fair Treatment of Experienced Pilots Act - Part 2



The Committee for Fair Treatment of Experienced Pilots  
Also known as OPERATION ORANGE

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(Please note: this document incorporates issues related to the Flight Time/Duty Time Final Rule, released 12/21/11. This document is currently being updated to reflect issues regarding the AMR bankruptcy filing, and domestic code-share. Please check back periodically for the updated versions. This document is subject to change as conditions warrant.)

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## SECTION 1

### RAILWAY LABOR ACT ADDENDUM

#### A. SELF-HELP AND LENGTH OF PILOT CONTRACTS UNDER THE RAILWAY LABOR ACT

1. All collective bargaining agreements between pilot collective bargaining agents and certificate holders under the authority of the Railway Labor Act shall conform to the following specifications:
  - a. Maximum length of pilot contracts subject to the Railway Labor Act with an effective date<sup>1</sup> prior to the January 1 following the tenth anniversary of this act becoming law shall be 24 months.
    - i. 24 months subsequent to the effective date of the contract in dispute, should either or both parties request release from mediation, The National Mediation Board shall at once endeavor as its final required action to induce the parties to submit their controversy to arbitration, in accordance with §155 of the Railway Labor Act.
    - ii. No party, regardless of which party requests release from mediation, shall be compelled to accept such a proffer.
  - b. Maximum length of pilot contracts subject to the Railway Labor Act with an effective date on or subsequent to the January 1 following the tenth anniversary of this act becoming law shall be 36 months.
    - i. 36 months subsequent to the effective date of the contract in dispute, should either or both parties request release from mediation, The National Mediation Board shall at once endeavor as its final required action to induce the parties to submit their controversy to arbitration, in accordance with §155 of the Railway Labor Act.
    - ii. No party, regardless of which party requests release from mediation, shall be compelled to accept such a proffer.
2. Modification of Length of Existing Pilot Contracts
  - a. Should either party to a pilot contract under the Railway Labor Act with the most recent amendable date prior to January 1, 2011 request release from mediation, The National Mediation Board shall at once endeavor as its final required action to induce the parties to submit their controversy to arbitration, in accordance with §155 of the Railway Labor Act no later than the first day of the calendar month following the 90<sup>th</sup> day after this act becomes law.

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<sup>1</sup> This effective date is commonly known as the most recent amendable date.

- i. No party, regardless of which party requests release from mediation, shall be compelled to accept such a proffer.
- b. Should either party to a pilot contract under the Railway Labor Act with the most recent amendable date subsequent to December 31, 2010 and prior to July 1, 2011 request release from mediation, The National Mediation Board shall at once endeavor as its final required action to induce the parties to submit their controversy to arbitration, in accordance with §155 of the Railway Labor Act no later than the first day of the calendar month following the 180<sup>th</sup> day after this act becomes law.
  - i. No party, regardless of which party requests release from mediation, shall be compelled to accept such a proffer.
- c. Should either party to a pilot contract under the Railway Labor Act with the most recent amendable date subsequent to June 30, 2011 and prior to January 1, 2012 request release from mediation, The National Mediation Board shall at once endeavor as its final required action to induce the parties to submit their controversy to arbitration, in accordance with §155 of the Railway Labor Act no later than the first day of the calendar month following the 270<sup>th</sup> day after this act becomes law.
  - i. No party, regardless of which party requests release from mediation, shall be compelled to accept such a proffer.
- d. Should either party to a pilot contract under the Railway Labor Act with the most recent amendable date subsequent to December 31, 2011 and prior to this act becoming law request release from mediation, The National Mediation Board shall at once endeavor as its final required action to induce the parties to submit their controversy to arbitration, in accordance with §155 of the Railway Labor Act no later than the third anniversary of the effective date of the contract.
- e. Any pilot contract under the Railway Labor Act with an effective date subsequent to this act becoming law shall conform with §1.A.1.
- f. No pilot contract, regardless of when implemented, shall be construed to be exempted from the pay and scheduling provisions (Section 4) of this act upon implementation per section 7.D.

## B. BANKRUPTCY PROCEEDINGS

1. The various bankruptcy codes shall not be used to unilaterally amend pilot collective bargaining agreements subject to the Railway Labor Act.
  - a. Pilot contracts subject to the Railway Labor Act shall not be subject to 11 USC §1113 of the United States Bankruptcy Code, but shall be subject to the

protections of 11 USC §1167 of the United States Bankruptcy Code.<sup>2</sup>

2. Any changes to the pilot collective bargaining agreement shall only be accomplished in accordance with §156 of the Railway Labor Act.
3. Any pilot contract subject to the Railway Labor Act and abrogated per 11 USC §1113 during the period the certificate holder was in bankruptcy protection shall be subject to arbitration in accordance with §1.A.1 no later than 365 days after the certificate holder exits bankruptcy protection.
4. Any pilot contract negotiated during the period the certificate holder was in bankruptcy protection or any pilot contract with an effective date occurring within the period the certificate holder was in bankruptcy protection, or 60 days shall be subject to arbitration in accordance with §1.A.1.a.i no later than 365 days after the date this act becomes law, or 365 days after the applicable certificate holder exits bankruptcy protection, whichever occurs later.

#### C. JUDICIAL INTERPRETATION

1. Pilots exercising their rights and executing their responsibilities under appropriate federal, state and local laws or regulations, under an applicable collective bargaining

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<sup>2</sup> See *STATEMENT OF CAPTAIN ARNOLD D. GENTILE, GOVERNMENT AFFAIRS CHAIRMAN US AIRLINE PILOTS ASSOCIATION BEFORE THE SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW COMMITTEE ON THE JUDICIARY UNITED STATES HOUSE OF REPRESENTATIVES, Protecting Employees In Airline Bankruptcies*, December 16, 2009. This statement is available at [www.operationorange.org/gentile.pdf](http://www.operationorange.org/gentile.pdf)

Amending §1113, and §365 of the US Bankruptcy Code is an acceptable alternative, provided pilot class/craft of labor is protected by such amendment. Amended text is in [blue font](#).

**11 U.S.C. § 1113(a) is amended as follows:**

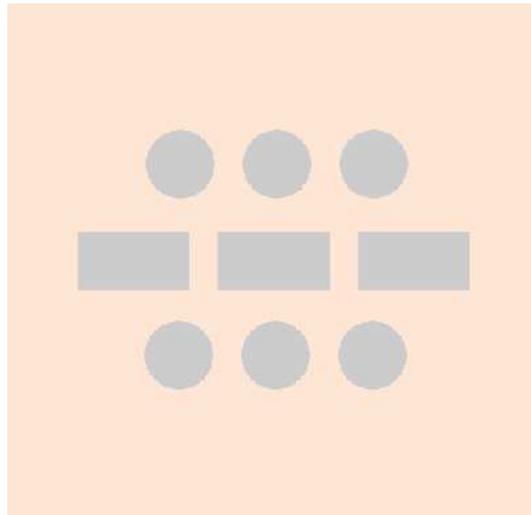
(a) The debtor in possession, or the trustee if one has been appointed under the provisions of this chapter, other than a trustee in a case covered by subchapter IV of this chapter and by title I of the Railway Labor Act, may assume or reject a collective bargaining agreement only in accordance with the provisions of this section. [Notwithstanding any provision in this section or any other section of U.S. Code Title 11, a debtor in possession or trustee of a debtor covered by title II of the Railway Labor Act may not assume or reject a collective agreement between pilots and a certificate holder for scheduled air transportation by common carrier covered by such Act, and the wages or working conditions of employees covered by such collective agreement may only be changed or modified in accordance with §156 of such Act.](#)

**11 U.S.C. § 365(a) is amended as follows:**

Except as provided in Sections 765 and 766 of this title and in subsections (b), (c), and (d) of this section, the trustee, subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor. [Notwithstanding any provision in this section, with respect to a debtor covered by title I or title II of the Railway Labor Act, neither the court nor the trustee may change the wages, or working conditions of pilots of the debtor established by a collective agreement that is subject to such Act except in accordance with §156 of such Act.](#)

agreement, or written policies of the certificate holder shall not be construed to be violating any “status quo” or conducting an illegal job action under the Railway Labor Act. This shall also extend to pilots refusing voluntary flying per the applicable collective bargaining agreement.

2. No collective bargaining agent, officer, director, employee, or volunteer thereof may be subject to criminal, civil, tort, or administrative liability for advocating compliance with applicable federal, state, and local laws or regulations, or the applicable collective bargaining agreement, or applicable written policies of the certificate holder. Such advocacy of established laws, regulations, agreements, and policies shall not be construed to be violation of the “status quo” or conducting an illegal job action under the Railway Labor Act.



## SECTION 2

### FATIGUE MITIGATION REGULATIONS

The following is an amended version of the recently published Federal Aviation Regulations, dated December 21, 2011. The subject matter is Flightcrew Member Duty and Rest Requirements. The principal changes to the Final Rule are:

- Elimination of the “Cargo Carve-out” provisions
- Elimination of the FRMS concept
- Enhanced sensitivity to operating within the “Window Of Circadian Low”
- Inclusion of deadhead transportation in the flight duty period
- “Whistleblower protection” for flightcrew members self-assessing too fatigued to accept or continue an assignment
- Fatigue mitigation for short, dual rest (18-33 hour) periods
- Non-applicability of domestic augmentation
- Non-applicability of split-sleep for passenger operations
- Limitations on reserve availability period shifting
- 12-18 hour report time for “long-call” reserve
- Inclusion of 7 day flight time limitations

Exclusions are in ~~italicized, red strikethrough~~ font. Additions/substitutions are in blue font.

For a discussion on the various changes to the “Final Rule,” please see Appendix B, of the “Fair Treatment of Experienced Pilots Act - Part 2.”

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#### List of Subjects

##### **14 CFR Part 117**

Airmen, Aviation safety, Reporting and recordkeeping requirements, Safety.

##### **14 CFR Part 119**

Air carriers, Aircraft, Aviation safety, Reporting and recordkeeping requirements.

##### **14 CFR Part 121**

Air carriers, Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements, Safety.

#### **The Amendment**

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations as follows:

1. Part 117 is added to read as follows:

## **PART 117—FLIGHT AND DUTY LIMITATIONS AND REST REQUIREMENTS: FLIGHTCREW MEMBERS**

### **Sec.**

117.1 Applicability.

117.3 Definitions.

117.5 Fitness for duty.

~~117.7 Fatigue risk management system.~~ **OMITTED.**

117.9 Fatigue education and awareness training program.

117.11 Flight time limitation.

117.13 Flight duty period: Unaugmented operations.

117.15 Flight duty period: Split duty.

117.17 Flight duty period: Augmented flightcrew.

117.19 Flight duty period extensions.

117.21 Reserve status.

117.23 Cumulative limitations.

117.25 Rest period.

117.27 Consecutive nighttime operations.

117.29 Emergency and government sponsored operations.

Table A to Part 117 – Maximum Flight Time Limits for Unaugmented Operations

Table B to Part 117 – Flight Duty Period: Unaugmented Operations

Table C to Part 117 – Flight Duty Period: Augmented Operations

### **§ 117.1 Applicability.**

(a) This part prescribes flight and duty limitations and rest requirements for all flightcrew members and certificate holders conducting ~~passenger~~ operations under part 121 of this chapter.

(b) This part applies to all operations directed by part 121 certificate holders under part 91, other than subpart K, of this chapter if any segment is conducted as a domestic ~~passenger~~, flag ~~passenger~~, or supplemental ~~passenger~~ operation.

(c) This part applies to all flightcrew members when participating in an operation under part 91, other than subpart K of this chapter, on behalf of the part 121 certificate holder if any flight segment is conducted as a domestic ~~passenger~~, flag ~~passenger~~, or supplemental ~~passenger~~ operation

(d) Notwithstanding paragraphs (a), (b) and (c) of this section, a certificate holder may conduct under part 117 its part 121 operations pursuant to 121.470, 121.480, or 121.500.

### § 117.3 Definitions.

In addition to the definitions in §§ 1.1 and 110.2 of this chapter, the following definitions apply to this part. In the event there is a conflict in definitions, the definitions in this part control.

**Acclimated** means a condition in which a flightcrew member has been in a **new** theater for 72 hours **and** has been given at least 36 consecutive hours free from duty.

**Acclimated Local Time** means the local time at the location where the pilot last had greater than 36 hours free from duty.

**Augmented flightcrew** means a flightcrew that has more than the minimum number of flightcrew members required by the airplane type certificate to operate the aircraft to allow a flightcrew member to be replaced by another qualified flightcrew member for in-flight rest.

**Calendar day** means a 24-hour period from 0000 through 2359 using Coordinated Universal Time or local time.

**Certificate holder** means a person who holds or is required to hold an air carrier certificate or operating certificate issued under part 119 of this chapter.

**Crew pairing** means the time a pilot is scheduled by the certificate holder to operate an aircraft or deadhead that is unbroken by a duty-free period at the pilot's home base.

**Deadhead transportation** means transportation of a flightcrew member as a passenger or non-operating flightcrew member, by any mode of transportation, as required by a certificate holder, excluding transportation to or from a suitable accommodation. All time spent in deadhead transportation is duty and is not rest. For purposes of determining the maximum flight duty period in Table B of this part, deadhead transportation is not considered a flight segment **if the flight duty period has less than 4 other flight segments and does not operate within the WOCL.**

**Duty** means any task that a crew member performs **on behalf of** the certificate holder, including but not limited to **reserve duty (other than long-call/assignable reserve)**, flight duty period, flight duty, pre- and post-flight duties, administrative work, training, deadhead transportation, aircraft positioning on the ground, aircraft loading, and aircraft servicing.

**Fatigue** means a physiological state of reduced mental or physical performance capability resulting from lack of sleep, increased physical activity, **long periods of mental strain, immobility, heavy mental workload, strong emotional pressure, or monotony** that can reduce a flightcrew member's alertness and ability to safely operate an aircraft or perform safety-related duties. **Acute fatigue is prevented by adequate rest and sleep, as well as by**

regular exercise and proper nutrition. Chronic fatigue results from inadequate recovery from acute fatigue and may impair performance, essential to flight safety, even after recovery from acute fatigue. Recovery from chronic fatigue requires a prolonged period of rest.

~~***Fatigue risk management system (FRMS)** means a management system for a certificate holder to use to mitigate the effects of fatigue in its particular operations. It is a data-driven process and a systematic method used to continuously monitor and manage safety risks associated with fatigue-related error.*~~

**Fit for duty** means physiologically and mentally prepared and capable of performing assigned duties in flight at the highest degree of safety.

**Flight duty period (FDP)** means a period that begins when a flightcrew member is required to report for duty with the intention of conducting a flight, a series of flights, deadhead transportation, or positioning or ferrying flights, and ends when the aircraft is parked after the last flight, there is no intention for further aircraft movement or deadhead transportation by the same flightcrew member, and the flightcrew member is released into a rest period per §117.25.

Deadhead transportation for the sole purpose of simulator training, ground-based training, or administrative duty, shall not be considered part of a flight duty period, provided the flightcrew member receives rest, per §117.25, prior to being assigned a flight duty period.

A flight duty period includes the duties performed by the flightcrew member on behalf of the certificate holder that occur before a flight segment or between flight segments without a required intervening rest period per §117.25. Examples of tasks that are part of the flight duty period include deadhead transportation, training conducted in an aircraft or flight simulator, and airport/standby/immediately assignable reserve, if the above tasks occur before a flight segment or between flight segments without an intervening required rest period.

Airport/standby/immediately assignable reserve is always part of a flight duty period, without regard to the flightcrew member being assigned a flying or deadhead transportation segment.

**Flight time** means the quantity of time used to calculate FAR legalities. For part 121 operations, flight time shall accrue whenever a qualified pilot-in-command is on the aircraft and, for purpose and intention of flight, at least one of the following occurs: the aircraft has been moved from its original location, or fuel has been introduced to at least one of the engines. Flight time shall continue to accrue until both: the aircraft comes to a rest for the purposes of granting access and/or egress of crew, passengers, cargo, or ground personnel; and fuel to the aircraft engines is terminated, whichever occurs last.

An auxiliary power unit shall not be construed to be an aircraft engine per this definition.

**Home base/domicile** means the location designated by a certificate holder where a flightcrew member normally begins and ends his or her crew pairings.

**Lineholder** means a flightcrew member who has an assigned flight duty period not given as a result of a reserve assignment and is not acting as a reserve flightcrew member.

**Physiological night's rest means** 10 hours of rest that encompasses the hours of 0100 and 0700 at the flightcrew member's home base, unless the individual has acclimated to a different theater. If the flightcrew member has acclimated to a different theater, the rest must encompass the hours of 0100 and 0700 at the acclimated location.

**Report time** means the time that the certificate holder requires a flightcrew member to report for an assignment.

**Reserve availability period** means a duty period during which a certificate holder requires a flightcrew member on short call reserve to be available to receive an assignment for a flight duty period.

**Reserve duty** means duty assigning a flightcrew member to be available to accept an assignment on relatively short notice for the purposes of covering flying that is not presently assigned or awarded by the certificate holder. Reserve duty falls into three categories:

**Long-call/assignable reserve** means a reserve period in which a flightcrew member receives a required rest period no less than 12 to 18 hours, following notification by the certificate holder to report for duty.

**Short-call/reasonably assignable reserve** means a period of time in which a crewmember does not receive a required rest period following notification by the certificate holder to report for a flight duty period. This type of reserve would normally not preclude the pilot from remaining at the place of his or her choosing within the customary and reasonable local area for pilot residences.

**Airport/standby/immediately assignable reserve** means a defined duty period during which a crewmember is required by a certificate holder to be at, or in close proximity to, an airport for a possible assignment. This proximity would normally preclude the pilot from remaining at the place of his or her choosing within the customary and reasonable local area for pilot residences.

**Reserve flightcrew member** means a flightcrew member who a certificate holder requires to be available to receive an assignment for duty.

**Rest facility** means a bunk or seat accommodation installed in an aircraft that provides a flightcrew member with a sleep opportunity.

**(1) Class 1 rest facility** means a bunk or other surface that allows for a flat sleeping position, [suitably padded and reasonably comfortable and suitable for sleeping](#), and is located separate from both the flight deck and passenger cabin in an area that is temperature-controlled, allows the flightcrew member to control light, and provides isolation from noise and disturbance.

**(2) Class 2 rest** facility means a seat in an aircraft cabin that allows for a flat or near flat sleeping position; is separated from passengers by a minimum of a curtain to provide darkness and some sound mitigation; [suitably padded and reasonably comfortable and suitable for sleeping](#); and is reasonably free from disturbance by passengers or flightcrew members.

**(3) Class 3 rest facility** means a seat in an aircraft cabin or flight deck that reclines at least 40 degrees and provides leg and foot support. [Seating in coach or economy class shall not be considered a rest facility under any circumstances.](#)

**Rest period means** a continuous period determined prospectively during which the flightcrew member is free from all restraint by the certificate holder, including freedom from present responsibility for work should the occasion arise.

**Scheduled** means to appoint, assign, or designate for a fixed time.

**Split duty** means a flight duty period that has a scheduled break in duty that is less than a required rest period.

**Suitable accommodation** means [single-occupancy hotel room or equivalent with a bed, sound mitigation, and light and temperature controls that is reasonably free from disturbances](#). Suitable accommodation only applies to ground facilities and does not apply to aircraft onboard rest facilities.

**Theater** means a geographical area where local time [of the flightcrew member's last acclimation and that of the local time of his or her present location differ by no more than three time zones, or the departure point of the flightcrew member's last acclimation and the current location differ by no more than 60 degrees of longitude, whichever is more restrictive](#).

[For changes of time zone that include crossing of the International Date Line, only relative change, corrected for day, shall be considered for purposes of determining theater, under this definition.](#)

**Unforeseen operational circumstance** means an unplanned event of insufficient duration to allow for adjustments to schedules, including unforecast weather, equipment

malfunction, or air traffic delay that is not reasonably expected.

**Window of circadian low (WOCL)** means a period of maximum sleepiness that occurs between 0200 and 0559 during a physiological night.

**§ 117.5 Fitness for duty.**

(a) Each flightcrew member must report for any flight duty period rested and prepared to perform his or her assigned duties.

(b) No certificate holder may assign and no flightcrew member may accept assignment to a flight duty period if the flightcrew member has reported for a flight duty period too fatigued to safely perform his or her assigned duties.

(c) No certificate holder may permit a flightcrew member to continue a flight duty period if the flightcrew member has reported him or herself too fatigued to continue the assigned flight duty period.

~~(d) As part of the dispatch or flight release, as applicable, each flightcrew member must affirmatively state he or she is fit for duty prior to commencing flight.~~

(d) No certificate holder may bring about disciplinary action or harassment against any flightcrew member declining an assignment due to self-assessed fatigue. Any flightcrew member who is discharged, threatened, harassed, disciplined, or suffers any other manner of adverse discrimination in the terms and conditions of employment by the applicable certificate holder because of refusing or continuing a flight duty period, or reserve availability period, due to self-assessed fatigue, shall be entitled to no less than three times all relief necessary to make the employee whole, plus applicable recovery costs, including customary legal fees.

(1) The Administrator may fine certificate holders for violations of this paragraph \$27,500 per incident.

~~**§ 117.7 Fatigue risk management system.**~~

~~(a) No certificate holder may exceed any provision of this part unless approved by the FAA under a Fatigue Risk Management System that provides at least an equivalent level of safety against fatigue-related accidents or incidents as the other provisions of this part.~~

~~(b) The Fatigue Risk Management System must include:~~

~~(1) A fatigue risk management policy.~~

~~(2) An education and awareness training program.~~

~~(3) A fatigue reporting system.~~

~~(4) A system for monitoring flightcrew fatigue.~~

~~(5) An incident reporting process.~~

~~(6) A performance evaluation.~~

### **§ 117.9 Fatigue education and awareness training program.**

(a) Each certificate holder must develop and implement an education and awareness training program, approved by the Administrator. This program must provide annual education and awareness training to all employees of the certificate holder responsible for administering the provisions of this rule including flightcrew members, dispatchers, individuals directly involved in the scheduling of flightcrew members, individuals directly involved in operational control, and any employee providing direct management oversight of those areas.

(b) The fatigue education and awareness training program must be designed to increase awareness of:

- (1) Fatigue;
- (2) The effects of fatigue on pilots; and
- (3) Fatigue countermeasures

(c) (1) Each certificate holder must update its fatigue education and awareness training program every two years and submit the update to the Administrator for review and acceptance.

(2) Not later than 12 months after the date of submission of the fatigue education and awareness training program required by (c)(1) of this section, the Administrator shall review and accept or reject the update. If the Administrator rejects an update, the Administrator shall provide suggested modifications for resubmission of the update.

### **§ 117.11 Flight time limitation.**

(a) No certificate holder may schedule and no flightcrew member may accept an assignment or continue an assigned flight duty period if the total flight time:

(1) Will exceed the limits specified in Table A of this part if the operation is conducted with the minimum required flightcrew.

*(i) For flight duty periods falling under the limitations of Table B of this part and which operate within the WOCL, maximum flight time is limited to 8 hours.*

(2) Will exceed 12 hours if the operation is conducted with a 3-pilot flightcrew.

(3) Will exceed 17 hours if the operation is conducted with a 4-pilot flightcrew.

(4) Will exceed the cumulative limits specified in §117.23 of this part.

(b) If unforeseen operational circumstances arise after takeoff that are beyond the certificate holder's control, a flightcrew member may exceed the maximum flight time specified in paragraph (a) of this section and the cumulative flight time limits in 117.23(b) to the extent necessary to safely land the aircraft at the next destination airport or alternate, as appropriate.

(c) Each certificate holder must report to the Administrator within 10 days of any flight time that exceeded the maximum flight time limits permitted by this section. The report must contain the following:

- (1) A description of the extended flight time limitation and the circumstances surrounding the need for the extension; and
- (2) If the circumstances giving rise to the extension were within the certificate holder's control, the corrective action(s) that the certificate holder intends to take to minimize the need for future extensions.

(d) Each certificate holder must implement the corrective action(s) reported in paragraph (c)(2) of this section within 30 days from the date of the extended flight time limitation.

### **§ 117.13 Flight duty period: Unaugmented operations.**

(a) Except as provided for in § 117.17, no certificate holder may assign and no flightcrew member may accept an assignment for an unaugmented flight operation if the scheduled flight duty period will exceed the limits in Table B of this part.

(b) If the flightcrew member is not acclimated:

- (1) The maximum flight duty period in Table B of this part is reduced by 30 minutes.
- (2) The applicable flight duty period is based on the local time at the theater in which the flightcrew member was last acclimated.

### **§ 117.15 Flight duty period: Split duty.**

For an unaugmented operation only, if a flightcrew member is provided with a rest opportunity (an opportunity to sleep) in a suitable accommodation during his or her flight duty period, the time that the flightcrew member spends in the suitable accommodation is not part of that flightcrew member's flight duty period if all of the following conditions are met:

- (a) The rest opportunity is between the hours of 22:00 and 05:00 local time.
- (b) The time spent in the suitable accommodation is at least 4 (four) hours, measured from the time that the flightcrew member reaches the suitable accommodation.
- (c) The rest opportunity is scheduled before the beginning of the flight duty period in which that rest opportunity is taken.
- (d) The rest opportunity that the flightcrew member is actually provided may not be less than the rest opportunity that was scheduled.
- (e) The rest opportunity is not provided until the first segment of the flight duty period has been completed.

(f) The combined time of the flight duty period and the rest opportunity provided in this section does not exceed 14 hours.

(g) This provision is not applicable to passenger transportation where seating configuration exceeds 19.

**§ 117.17 Flight duty period: Augmented flightcrew.**

(a) For flight operations conducted with an acclimated augmented flightcrew, no certificate holder may assign and no flightcrew member may accept an assignment if the scheduled flight duty period will exceed the limits specified in Table C of this part.

(b) If the flightcrew member is not acclimated:

(1) The maximum flight duty period in Table C of this part is reduced by 30 minutes.

(2) The applicable flight duty period is based on the local time at the flightcrew member's home base.

(c) No certificate holder may assign and no flightcrew member may accept an assignment under this section unless during the flight duty period:

(1) Two consecutive hours in the second half of the flight duty period are available for in-flight rest for both flightcrew members occupying a control seat during landing.

(d) No certificate holder may assign and no flightcrew member may accept an assignment involving more than three flight segments under this section.

(e) At all times during flight, at least one flightcrew member qualified in accordance with § 121.543(b)(3)(i), § 121.433, § 121.434, and § 121.439 of this chapter must be at the flight controls.

(f) No certificate holder may assign and no flightcrew member may accept an assignment involving two consecutive flight duty periods with an intervening rest period greater than 18 hours and less than 33 hours unless,

(1) at least one of the flight duty periods is less than 6 hours in duration or,

(2) neither flight duty period operates within the window of circadian low by greater than 90 minutes for flight duty periods less than 8 hours or,

(3) neither flight duty period originates within nor penetrates the window of circadian low for flight duty periods of 8 hours or greater or,

(4) each flight duty period which operates within the window of circadian low is augmented with at least 3 pilots with a Class III, or better, rest facility available.

(g) Augmented flight crews shall be limited to the unaugmented flight time limits of Table A of this part and the flight duty time limits of Table B of this part if the flight duty period originates and terminates within the continental United States, Canada, Mexico, Bermuda, Bahamas, and the Caribbean islands.

**§ 117.19 Flight duty period extensions.**

(a) For augmented and unaugmented operations, if unforeseen operational circumstances arise prior to takeoff:

(1) The pilot in command and the certificate holder may extend the maximum flight duty period permitted in Tables B or C of this part up to 2 hours.

(i) For unaugmented operations, no extensions of the flight duty period are allowed if the flight duty period will contain more than 4 flight segments or operate within the WOCL.

(2) An extension in the flight duty period under paragraph (a)(1) of this section of more than 30 minutes may occur only once in a 168 hour period, as measured from the end of the previous extension.

(3) A flight duty period cannot be extended under paragraph (a)(1) of this section if it causes a flightcrew member to exceed the cumulative flight duty period limits specified in 117.23(c).

(4) Each certificate holder must report to the Administrator within 10 days any flight duty period that exceeded the maximum flight duty period permitted in Tables B or C of this part by more than 30 minutes. The report must contain the following:

(i) A description of the extended flight duty period and the circumstances surrounding the need for the extension; and

(ii) If the circumstances giving rise to the extension were within the certificate holder's control, the corrective action(s) that the certificate holder intends to take to minimize the need for future extensions.

(5) Each certificate holder must implement the corrective action(s) reported in paragraph (a)(7) of this section within 30 days from the date of the extended flight duty period.

(b) For augmented and unaugmented operations, if unforeseen operational circumstances arise after takeoff:

(1) The pilot in command and the certificate holder may extend maximum flight duty periods specified in Tables B or C of this part to the extent necessary to safely land the aircraft at the next destination airport or alternate airport, as appropriate.

(2) An extension of the flight duty period under paragraph (b)(1) of this section of more than 30 minutes may occur only once in a 168 hour period, as measured from the end of the previous extension.

(3) An extension taken under paragraph (b) of this section may exceed the cumulative flight duty period limits specified in § 117.23(c).

(4) Each certificate holder must report to the Administrator within 10 days any flight duty period that exceeded the maximum flight duty period limits permitted by Tables B or C of this part. The report must contain a description of the circumstances surrounding the affected flight duty period.

(c) Extension of a flight duty period beyond the limitations permitted by Tables B or C of this part, or the allowable extension permitted by § 117.19(a) and § 117.19(b), for the sole purpose of returning the flightcrew member to his or her home base/domicile is permissible

under the following conditions:

- (1) the extension consists solely of deadhead transportation.
- (2) the deadhead transportation is the last event in the flight duty period and crew pairing.
- (3) the extension is done at the request of the flightcrew member.
- (4) the flightcrew member cannot be scheduled or assigned any duties with the certificate holder until after legal rest provided per section §117.25, which does not begin until after the scheduled time the flightcrew member would have arrived had the flight duty period not been extended per this paragraph.
- (5) such deadhead transportation is considered part of the cumulative limits in §117.23(c).
  - (i) If the flightcrew member elects deadhead transportation to a destination not associated with his or her home base/domicile, such transportation is only considered part of the cumulative limits in §117.23(c) for the scheduled time to return the flightcrew member to his or her home base/domicile, or to the actual destination, whichever is less.

(d) Reports to The Administrator per §117.19(a)(4), and §117.19(b)(4) and actions per § 117.19(a)(5), are not required for flight duty period extensions per §117.19(c).

(e) No flightcrew member shall be compelled to accept an extended flight duty period if he or she believes he or she is too fatigued to complete per § 117.5(c).

(1) No certificate holder may bring about disciplinary action or harassment against any flightcrew member refusing to accept an extension of a flight duty period provided in §117.19. Any flightcrew member who is discharged, threatened, harassed, disciplined, or suffers any other manner of adverse discrimination in the terms and conditions of employment by the applicable certificate holder because of refusing to accept an extension of a flight duty period provided in §117.19 shall be entitled to no less than three times all relief necessary to make the employee whole, plus applicable recovery costs, including customary legal fees.

(2) Refusal to accept an extension of a flight duty period provided in §117.19, or advocacy of such, shall not be construed by any arbitrator, mediator, or court to be an illegal job action under, or a violation of the “status quo” under the Railway Labor Act,

(3) The Administrator may fine certificate holders for violations of §117.19(e) \$27,500 per incident.

#### **§ 117.21 Reserve status.**

(a) Unless specifically designated as airport standby/**immediately assignable reserve** or short call/**reasonably assignable** reserve by the certificate holder, all reserve is considered long-call/**assignable** reserve.

(b) Any reserve that meets the definition of airport standby/**immediately assignable** reserve must be designated as airport standby/**immediately assignable** reserve. For airport standby/**immediately assignable** reserve, all time spent in a reserve status is part of the flightcrew member’s flight duty period. **This flight duty period shall only be terminated**

when the flightcrew member is released into a rest period per §117.25(e),

- (c) For short call/**reasonably assignable** reserve,
- (1) The reserve availability period may not exceed 14 hours.
  - (2) For a flightcrew member who has completed a reserve availability period, no certificate holder may schedule and no flightcrew member may accept an assignment of a reserve availability period unless the flightcrew member receives the required rest in §117.25(e).
  - (3) For an unaugmented operation, the total number of hours a flightcrew member may spend in a flight duty period and a reserve availability period may not exceed the lesser of the maximum applicable flight duty period in Table B of this part plus 4 hours, or 16 hours, as measured from the beginning of the reserve availability period.
  - (4) For an augmented operation, the total number of hours a flightcrew member may spend in a flight duty period and a reserve availability period may not exceed the flight duty period in Table C of this part plus 4 hours, as measured from the beginning of the reserve availability period.
  - (5) No certificate holder may assign and no flightcrew member may accept any reserve availability period beginning prior to 20 hours subsequent to the start of the previous reserve availability period.
  - (6) All time within the reserve availability period is duty.
- (d) For long-call/**assignable** reserve, if a certificate holder contacts a flightcrew member to assign him or her to a flight duty period, or a reserve availability period, ~~that will begin before and operate into the flightcrew member's window of circadian low,~~ the flightcrew member must receive an 18 hour notice of report time, or beginning of the reserve availability period, from the certificate holder.
- (1) The period of time that the flightcrew member is in a long-call/assignable reserve status does not count as duty.
  - (2) The flightcrew member may waive any part of the 18 hour rest period provided in §117.21(d) to no less than 12 hours.
    - (i) No certificate holder may bring about disciplinary action or harassment against any flightcrew member refusing to waive any part of the rest period provided in §117.21(d). Any flightcrew member who is discharged, threatened, harassed, disciplined, or suffers any other manner of adverse discrimination in the terms and conditions of employment by the applicable certificate holder because of refusing to waive any part of the long-call/assignable reserve rest period provided in §117.21(d) shall be entitled to no less than three times all relief necessary to make the employee whole, plus applicable recovery costs, including customary legal fees.
    - (ii) Refusal to waive rest provided in §117.21(d), or advocacy of such, shall not be construed by any arbitrator, mediator, or court to be an illegal job action under, or a violation of the “status quo” under the Railway Labor Act.
    - (iii) The Administrator may fine certificate holders for violations of §117.21(d)(1)(i) \$27,500 per incident.

~~(e) A certificate holder may shift a reserve flightcrew member's reserve status from long-call to short-call only if the flightcrew member receives a rest period as provided in § 117.25(e).~~

**§ 117.23 Cumulative limitations.**

(a) The limitations of this section include all flying by flightcrew members on behalf of any certificate holder or 91K Program Manager during the applicable periods.

(b) No certificate holder may schedule and no flightcrew member may accept an assignment if the flightcrew member's total flight time will exceed the following:

(1) 30 hours in any 7 consecutive calendar day period containing more than ten flight segments or,

(2) 34 hours in any 7 consecutive calendar day period containing ten or fewer flight segments or,

(3) 100 hours in any 28 consecutive calendar day period or,

(4) 1,000 hours in any 365 consecutive calendar day period.

(5) All flying, whether augmented or unaugmented, count against the limitations in this section.

(6) The certificate holder may schedule and the flightcrew member may accept an assignment exceeding the limitations in (b)(1) or (b)(2) of this section, provided the entire flight duty period containing any exceedance is conducted as an augmented operation per §117.17.

(c) No certificate holder may schedule and no flightcrew member may accept an assignment if the flightcrew member's total Flight Duty Period will exceed:

(1) 60 flight duty period hours in any 168 consecutive hours and

(2) 190 flight duty period hours in any 672 consecutive hours.

**§ 117.25 Rest period.**

(a) No certificate holder may assign and no flightcrew member may accept assignment to any reserve or duty with the certificate holder during any required rest period.

(b) Before beginning any reserve or flight duty period, a flightcrew member must be given at least 30 consecutive hours free from all duty in any 168 consecutive hour period.

(c) If a flightcrew member operating in a new theater has received 36 consecutive hours of rest, that flightcrew member is acclimated and the rest period meets the requirements of paragraph (b) of this section.

(d) If a flightcrew member travels more than 60° longitude during a flight duty period or a series of flight duty periods that require him or her to be away from home base for more than 168 consecutive hours, the flightcrew member must be given a minimum of 56

consecutive hours rest upon return to home base. This rest must encompass three physiological nights' rest based on local time.

(e) No certificate holder may schedule and no flightcrew member may accept an assignment for any reserve or flight duty period unless the flightcrew member is given a rest period of at least 10 consecutive hours immediately before beginning the reserve or flight duty period measured from the time the flightcrew member [arrives at the hotel or suitable accommodation](#).

The 10 hour rest period must provide the flightcrew member with a minimum of 8 uninterrupted hours of sleep opportunity.

(1) [A flightcrew member who operates to a new theater shall be given at least 13 consecutive hours of rest, beginning upon arrival at the hotel or suitable accommodation, before beginning a reserve availability period or flight duty period.](#)

(2) [A flightcrew member who completes a flight duty period that impinges upon the WOCL shall be given at least 13 consecutive hours of rest, beginning upon arrival at the hotel or suitable accommodation, before beginning a reserve availability period or flight duty period.](#)

(f) If a flightcrew member determines that a rest period under paragraph (e) of this section will not provide eight uninterrupted hours of sleep opportunity, the flightcrew member must notify the certificate holder. The flightcrew member cannot report for the assigned flight duty period until he or she receives a rest period specified in paragraph (e) of this section.

(g) If a flightcrew member engaged in deadhead transportation exceeds the applicable flight duty period in Table B of this part, the flightcrew member must be given a rest period equal to the length of the deadhead transportation but not less than the required rest in paragraph (e) of this section before beginning a flight duty period.

#### **§ 117.27 Consecutive nighttime operations.**

A certificate holder may schedule and a flightcrew member may accept up to five consecutive flight duty periods that infringe on the window of circadian low if the certificate holder provides the flightcrew member with an opportunity to rest in a suitable accommodation during each of the consecutive nighttime flight duty periods. The rest opportunity must be at least **4 (four)** hours, measured from the time that the flightcrew member reaches the suitable accommodation, and must comply with the conditions specified in §117.15(a), (c), (d), and (e). Otherwise, no certificate holder may schedule and no flightcrew member may accept more than three consecutive flight duty periods that infringe on the window of circadian low. For purposes of this section, any split duty rest that is provided in accordance with §117.15 counts as part of a flight duty period.

**§117.29 Emergency and government sponsored operations.**

(a) This section applies to operations conducted pursuant to contracts with the U.S. Government and operations conducted pursuant to a deviation under §119.57 of this chapter that cannot otherwise be conducted under this part because of circumstances that could prevent flightcrew members from being relieved by another crew or safely provided with the rest required under § 117.25 at the end of the applicable flight duty period.

(b) The pilot-in-command may determine that maximum applicable flight duty periods must be exceeded to the extent necessary to allow the flightcrew to fly to the closest destination where they can safely be relieved from duty by another flightcrew or can receive the requisite amount of rest prior to commencing their next flight duty period.

(c) A flight duty period may not be extended for an operation conducted pursuant to a contract with the U.S. Government if it causes a flightcrew member to exceed the cumulative flight time limits in § 117.23(b) and the cumulative flight duty period limits in § 117.23(c).

(d) The flightcrew shall be given a rest period immediately after reaching the destination described in paragraph (b) of this section equal to the length of the actual flight duty period or 24 hours, whichever is less.

(e) Each certificate holder must report within 10 days:

(1) any flight duty period that exceeded the maximum flight duty period permitted in Tables B or C of this part, as applicable, by more than 30 minutes; and

(2) any flight time that exceeded the maximum flight time limits permitted in Table A of this part and § 117.11, as applicable.

(f) The report must contain the following:

(1) a description of the extended flight duty period and flight time limitation, and the circumstances surrounding the need for the extension; and

(2) if the circumstances giving rise to the extension(s) were within the certificate holder's control, the corrective action(s) that the certificate holder intends to take to minimize the need for future extensions.

(g) Each certificate holder must implement the corrective action(s) reported pursuant to paragraph (e)(2) of this section within 30 days from the date of the extended flight duty period.

**Table A to Part 117—Maximum Flight Time Limits**

<b>Time of Start</b>  (acclimated)	<b>Maximum Flight Time (hours)</b>		
	Min Crew	3 Pilots	4 Pilots
0000-0559	8	12	17
0600-1559	9	12	17
1600-2359	8	12	17

**Table B to Part 117—Flight Duty Period: Un-augmented Operations**

<b>Time of Start</b>  (acclimated)	<b>Maximum Flight Duty Period (hours) for Lineholders Based On Number of Flight Segments</b>						
	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7+</b>
0000-0359	9	9	9	9	9	9	9
0400-0459	10	10	10	10	9	9	9
0500-0559	12	12	12	11	10	10	10
0600-0659	13	13	12	12	11.5	11	10.5
0700-1159	14	14	13	13	12.5	12	11.5
1200-1259	13	13	13	13	12.5	12	11.5
1300-1359	12	12	12	12	11.5	11	10.5
1400-1459	12	12	12	11	11	11	10.5
1500-1559	12	12	12	11	10	10	9
1600-1659	12	12	12	11	9	9	9
1700-1859	12	12	11	11	9	9	9
1900-2159	12	12	11	10	9	9	9
2200-2259	11	11	10	10	9	9	9
2300-2359	10	10	10	9	9	9	9

**Table C to Part 117—Flight Duty Period: Augmented Operations**

Time of Start (acclimated)	Maximum Flight Duty Period (hours) Based on Rest Facility and Number of Pilots					
	Class I Rest Facility		Class II Rest Facility		Class III Rest Facility	
	3 Pilots	4 Pilots	3 Pilots	4 Pilots	3 Pilots	4 Pilots
0000-0559	15	17	14	15.5	13	13.5
0600-0659	16	18.5	15	16.5	14	14.5
0700-1259	17	19	16.5	18	15	15.5
1300-1659	16	18.5	15	16.5	14	14.5
1700-2359	15	17	14	15.5	13	13.5

**PART 119— CERTIFICATION: AIR CARRIERS AND COMMERCIAL OPERATORS**

2. The authority citation for part 119 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 1153, 40101, 40102, 40103, 40113, 44105, 44106, 44111, 44701–44717, 44722, 44901, 44903, 44904, 44906, 44912, 44914, 44936, 44938, 46103, 46105.

3. Amend § 119.55 to revise paragraph (a) to read as follows:

(a) The Administrator may authorize a certificate holder that is authorized to conduct supplemental or on-demand operations to deviate from the applicable requirements of this part, part 117, part 121, or part 135 of this chapter in order to perform operations under a U.S. military contract.

\* \* \* \* \*

**121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS**

4. The Authority section for part 121 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 40119, 44101, 44701-44702, 44705, 44709-44711, 44713, 44716-44717, 44722, 46901, 44903-44904, 44912, 46105.

5. Amend § 121.467 to revise paragraph (c) introductory text to read as follows:

**§ 121.467 Flight attendant duty period limitations and rest requirements: Domestic, flag, and supplemental operations.**

\* \* \* \* \*

(c) Notwithstanding paragraph(b) of this section, a certificate holder conducting domestic, flag, or supplemental operations may apply the flightcrew member flight time and duty limitations and requirements of part 117 of this chapter to flight attendants for all operations conducted under this part provided that—

(1) The flightcrew is subject to part 117;

(2) \*\*\*

\* \* \* \* \*

**Subpart Q**

6. Amend § 121.470 and add § 121.473 to read as follows:

**§ 121.470 Applicability.**

This subpart prescribes flight time limitations and rest requirements for domestic all-cargo operations, except that:

(a) Certificate holders conducting operations with airplanes having a passenger seat configuration of 30 seats or fewer, excluding each crewmember seat, and a payload capacity of 7,500 pound or less, may comply with the applicable requirements of §§ 135.261 through 135.273 of this chapter.

(b) Certificate holders conducting scheduled operations entirely within the States of Alaska or Hawaii with airplanes having a passenger seat configuration of 30 seats or fewer, excluding each crewmember seat, and a payload capacity of 7,500 pound or less, may comply with the applicable requirements of subpart R of this part for those operations.

~~(c) A certificate holder may apply the flightcrew member flight time and duty limitations and requirements of part 117 of this chapter. A certificate holder may choose to apply part 117 to its—~~

~~(1) Cargo operations conducted under contract to a US government agency.~~

~~(2) All cargo operations not conducted under contract to a US Government agency;~~

~~(3) A certificate holder may elect to treat operations in paragraphs (1) and (2) differently but, once having decided to include operations under paragraph (1) or (2) under part 117, may not segregate those operations between this subpart and part 117.~~

~~\*\*\*~~

~~§ 121.473 Fatigue risk management system.~~

~~(a) No certificate holder may exceed any provision of this subpart unless approved by the FAA under a Fatigue Risk Management System.~~

~~(b) The Fatigue Risk Management System must include:~~

- ~~(1) A fatigue risk management policy.~~
- ~~(2) An education and awareness training program.~~
- ~~(3) A fatigue reporting system.~~
- ~~(4) A system for monitoring flightcrew fatigue.~~
- ~~(5) An incident reporting process.~~
- ~~(6) A performance evaluation.~~

**Subpart R**

7. Amend § 121.480 and add § 121.495 to read as follows:

**§ 121.480 Applicability.**

This subpart prescribes flight time limitations and rest requirements for flag all cargo operations, except that certificate holders conducting operations with airplanes having a passenger seat configuration of 30 seats or fewer, excluding each crewmember seat, and a payload capacity of 7,500 pound or less, may comply with the applicable requirements of §§ 135.261 through 135.273 of this chapter.

~~(b) A certificate holder may apply the flightcrew member flight time and duty limitations and requirements of part 117 of this chapter. A certificate holder may choose to apply part 117 to its—~~

- ~~(1) All cargo operations conducted under contract to a US government agency.~~
- ~~(2) All cargo operations not conducted under contract to a US Government agency.~~
- ~~(3) A certificate holder may elect to treat operations in paragraphs (1) and (2) differently but, once having decided to include operations under paragraph (1) or (2) under part 117, may not segregate those operations between this subpart and part 117.~~

~~\*\*\*~~

~~§ 121.495 Fatigue risk management system.~~

~~(a) No certificate holder may exceed any provision of this subpart unless approved by the FAA under a Fatigue Risk Management System.~~

~~(b) The Fatigue Risk Management System must include:~~

- ~~(1) A fatigue risk management policy.~~
- ~~(2) An education and awareness training program.~~
- ~~(3) A fatigue reporting system.~~

- ~~(4) A system for monitoring flightcrew fatigue.~~
- ~~(5) An incident reporting process.~~
- ~~(6) A performance evaluation.~~

## Subpart S

8. Amend § 121.500, § 121.583(a), and add § 121.527 to read as follows:

### **§ 121.500 Applicability.**

This subpart prescribes flight time limitations and rest requirements for supplemental all-cargo operations, except that certificate holders conducting operations with airplanes having a passenger seat configuration of 30 seats or fewer, excluding each crewmember seat, and a payload capacity of 7,500 pound or less, may comply with the applicable requirements of §§ 135.261 through 135.273 of this chapter.

~~(b) A certificate holder may apply the flightcrew member flight time and duty limitations and requirements of part 117 of this chapter. A certificate holder may choose to apply part 117 to its—~~

- ~~(1) All cargo operations conducted under contract to a US government agency.~~
- ~~(2) All cargo operations not conducted under contract to a US Government agency.~~
- ~~(3) A certificate holder may elect to treat operations in paragraphs (1) and (2) differently but, once having decided to include operations under paragraph (1) or (2) under part 117, may not segregate those operations between this subpart and part 117.~~

~~\*\*\*~~

### **§ 121.583 - Carriage of persons without compliance with the passenger-carrying requirements of this part and part 117**

(a) When authorized by the certificate holder, the following persons, but no others, may be carried aboard an airplane without complying with the passenger-carrying airplane requirements in §§ 121.309(f), 121.310, 121.391, 121.571, and 121.587; the passenger carrying operation requirements in part 117 and §§ 121.157(c) and 121.291; and the requirements pertaining to passengers in §§ 121.285, 121.313(f), 121.317, 121.547, and 121.573: \* \* \*

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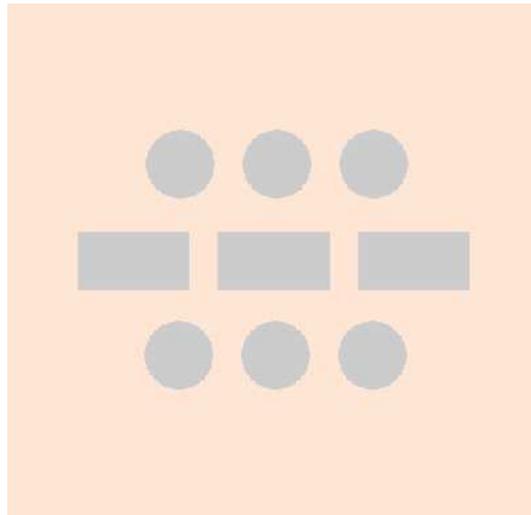
### ~~**§ 121.527 Fatigue risk management system.**~~

~~(a) No certificate holder may exceed any provision of this subpart unless approved by the FAA under a Fatigue Risk Management System.~~

~~(b) The Fatigue Risk Management System must include:~~

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- ~~(1) A fatigue risk management policy.~~
- ~~(2) An education and awareness training program.~~
- ~~(3) A fatigue reporting system.~~
- ~~(4) A system for monitoring flight crew fatigue.~~
- ~~(5) An incident reporting process.~~
- ~~(6) A performance evaluation.~~



### SECTION 3

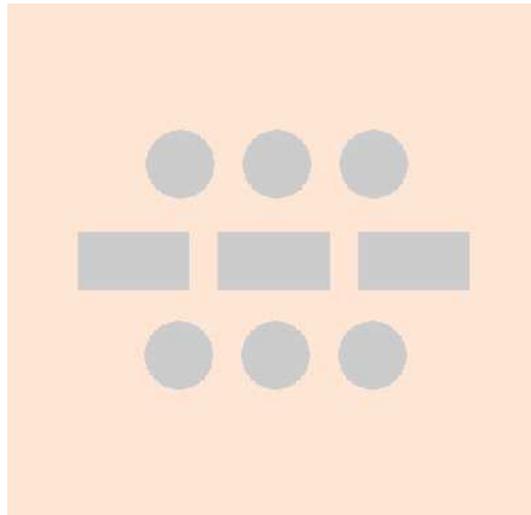
#### AUTHORITY OF COLLECTIVE BARGAINING AGENT FOR PILOT EMPLOYEES COVERED BY COLLECTIVE BARGAINING AGREEMENTS SUBJECT TO THE RAILWAY LABOR ACT

##### A. ORDERING OF PILOT SENIORITY LISTS

1. Seniority lists for pilots operating under collective bargaining agreements with certificate holders subject to the Railway Labor Act shall be subject to modification by the collective bargaining agent (CBA) per this section.
2. The relative order on the seniority list shall not be altered for the duration of employment with the certificate holder, unless specified by this section, and shall succeed any change in CBA.
3. The relative order on the seniority list may be changed in the following manner and circumstance:
  - a. Pilots on the seniority list acting as “strike breakers” during a lawful job action by the collective bargaining agent may be placed in any position junior to their present position, without regard to relative order or their consent.
  - b. No pilot from the seniority list shall be considered a “strike breaker” unless:
    - i. the pilot is exercising the privileges of his/her airman’s certificate during a legal job action for a certificate holder or contractor of the certificate holder in a lawful dispute with the CBA and,
    - ii. the pilot does not immediately desist performing in a “strike breaker” capacity upon learning of a legal job action and,
    - iii. it was reasonable to understand that a legal job action was in progress.
  - c. The CBA shall have been defined as serving notice by sending such notice by certified mail or courier to the pilot’s address of record with the CBA detailing that said pilot is acting as a “strike breaker,” was observed or recorded as acting as such, lists the approximate time and date, and that the CBA is in a lawful labor dispute with the certificate holder. The notice shall specify that loss of seniority may occur subsequent to the resolution of the labor dispute. The notice shall also specify how a pilot may confirm that he/she no longer is acting in a “strike breaker” capacity for the duration of the dispute and specify how a pilot may dispute that he/she had acted in a “strike breaker” capacity.
  - d. No pilot may have a valid claim ignorance of a lawful job action subsequent to 72 hours after its onset. This shall not be construed to validate claims of ignorance

- within the first 72 hours of a lawful job action.
- e. It is the responsibility of the pilot to understand that a legal job action is in progress, not to take unreasonable steps to prevent from being informed of such and, to check with the address of record on file with the CBA, the CBA website, the telephone of record, and the email of record to ensure errors are rectified in a timely manner.
  - f. A pilot on the seniority list discovered per this section to have exercised the privileges of his airman's certificate during a legal job action for a certificate holder or contractor of the certificate holder in a lawful dispute with the CBA may be considered a "strike breaker" under this section unless the pilot can demonstrate that it was not reasonable to understand that a legal job action was in progress and that the pilot did not take unreasonable steps to prevent being informed of such.
  - g. No pilot shall be considered to be a "strike breaker" if the pilot is operating a flight segment where the "block out" event occurs prior to the onset of the lawful job action, or the pilot's learning of the lawful job action, and continues to operate that flight segment until a "block in" event occurs.
    - i. Knowingly exercising the privileges of an airman certificate during a lawful job action for the purposes of returning the pilot to his/her domicile is not included in the exemption listed in 3.A.3.g.
4. Pilots not on the seniority list at the onset of the lawful job action acting as "strike replacements" may be defined as "strike replacements" by the CBA and placed on the seniority list in positions junior to pilots hired five years subsequent to the conclusion of the applicable labor dispute.
    - a. Pilots defined as "strike replacements" in such a capacity may have recall rights abrogated by the CBA, in the event of a reduction in manpower.
  5. Any CBA for the pilots of a Part 121 or Part 135 certificate holder may place pilots lawfully identified as "strike replacements" or "strike breakers," per this act, from any lawful Part 121 or Part 135 labor dispute on its seniority list junior to any pilot subsequently hired, up to a maximum of 5 years.
    - a. Pilots defined as "strike replacements" in such a capacity may have recall rights abrogated by the CBA, in the event of a reduction in manpower.
  6. Discovery of pilots acting as "strike replacements" or "strike breakers" may continue for 180 days after the conclusion of the legal job action or 90 days after records are furnished to the CBA, whichever occurs later.

7. Pilots errantly identified as “strike replacements” or “strike breakers” shall have their names removed from all lists falsely identifying them as such and all seniority restored.
8. No reordering of the seniority list per this section shall be effective until ratified by the governing body of the CBA. This vote shall take place within 366 days of the conclusion of the lawful job action.
9. Nothing in this section shall be construed as any protocol for the combining of two or more seniority lists.



## SECTION 4

### PAY AND SCHEDULING

#### A. DEFINITIONS

1. **Block time.** Flight time per §117.3. Flight time generally refers to FAR legalities whereas block time generally refers to pay and scheduling under this section.
2. **Flight Duty Period.** A flight duty period shall be defined per §117.3.
  - a. There is no requirement for the flight duty period to align with the calendar day.
  - b. For pay purposes, a flight duty period shall be defined as not started provided all duties (deadhead or operational) for which the flightcrew member was scheduled were cancelled prior to 4 hours after the flightcrew member reported for duty (the earlier of one hour prior to scheduled departure or as specified by the certificate holder), and for which no block time was accrued.
  - c. Reserve availability periods per section 4.E.1-2 are credited as flight duty periods, regardless of their length.
  - d. Flight duty periods exclusively consisting of training conducted in flight simulators, or flight training devices shall not be counted toward pay metrics under this section. This does not preclude such flight duty periods from being otherwise paid.
  - e. The provisions of Section 4.A.2.b are solely for pay and credit purposes per this section, and are not to be used for FAR legalities under any circumstances.
3. **Rest Period.** a continuous period determined prospectively during which the crewmember is free from all restraint by the certificate holder, including freedom from present responsibility for work should the occasion arise.
4. **Crew Pairing.** Crew pairing shall be defined as the time a flightcrew member is scheduled by the certificate holder to operate an aircraft or deadhead that is unbroken by a duty-free period at the flightcrew member's home base. All crew pairings must originate and terminate at the same airport, unless the governing collective bargaining agreement states that certain airport pairs are suitable alternatives and suitable surface transportation has been provided by the certificate holder to return the flightcrew member to the point of origin. Such transportation is not to be considered rest.
5. **Widebody Aircraft.** A widebody aircraft is any aircraft operated under Part 121 or Part 135 by a qualified pilot-in-command with a maximum certified gross takeoff weight equal to, or greater than 220,600 pounds (100,000 kg).
6. **Narrowbody Aircraft.** A narrowbody aircraft is any aircraft operated under Part 121 or Part 135 by a qualified pilot-in-command with a maximum certified gross takeoff

weight less than 220,600 pounds (100,000 kg) that does not meet all the exemptions listed in this section.

7. **Hourly Rate of Pay.** Hourly rate of pay is the amount of dollars paid per credited and/or payable hour and is not to be construed to be any metric by which credited hours for pay are calculated.
8. **Credited Hours For Pay.** Credited hours for pay are the sum total of payable hours credited to a flightcrew member for a given contract month per the minimums specified in this section and does not include premium pay or additional contractual pay.
9. **Contract Month.** Contract months are 28, 30, 31, or 35 day segments for the purposes of calculating credited hours for pay, premium pay, and flight duty period limitations. All contract months are defined by home base time, not the point of departure or landing.
  - a. All contract months must be determined prospectively, no less than 183 days prior to the beginning of the contract month, and be uniformly applied to every flightcrew member employed by the certificate holder.
  - b. For certificate holders using 30 and 31 day contract months:
    - i. Calendar years of 365 days in duration shall have 5 contract months of 31 days in duration.
    - ii. Calendar years of 366 days in duration shall have 6 contract months of 31 days in duration.
    - iii. All January contract months shall begin on January 1.
    - iv. All December contract months shall terminate on December 31.
10. **Home Base Time.** The time at the flightcrew member's domicile (crew base) where the flightcrew member is scheduled to originate and terminate crew pairings.
11. **Duty Free Period.** A period at the flightcrew member's home base/domicile for which the flightcrew member can not be scheduled for any duty with the certificate holder.

## B. CALCULATION OF CREDITED HOURS FOR PAY

1. Minimum credited hours for pay shall be calculated to the nearest minute and the sum of:
  - a. All credited hours for pay for each crew pairing wholly contained within the applicable contract month.
  - b. All credited hours for pay for each flight duty period wholly contained within the

- applicable contract month for crew pairings originating in the applicable contract month, and terminating in the subsequent contract month.
- c. All credited hours for pay for each flight duty period wholly contained within the applicable contract month for crew pairings originating in the previous contract month, and terminating in the applicable contract month.
  - d. All block time occurring within the applicable contract month for flight duty periods originating in the previous contract month and terminating in the applicable contract month.
  - e. All block time occurring within the applicable contract month for flight duty periods originating in the applicable contract month and terminating in the subsequent contract month.
  - f. All credited hours for pay for any crew pairing and/or flight duty period originating in the previous contract month and terminating in the applicable contract month which was not credited to the previous contract month.
  - g. All credited hours for pay for any reserve availability flight duty periods credited to the applicable contract month.
2. Minimum credited hours for pay for a flight duty period shall be the greater of:
- a. Actual block time
  - b. 4 hours 30 minutes (4.500 hours)
  - c. One minute of pay for every two minutes of the duration of the flight duty period (50%) calculated to the nearest minute.
3. Minimum credited hours for pay for a crew pairing shall be the greater of:
- a. Sum of the credited hours of pay for each flight duty period in the applicable crew pairing per Section 4.B.2
  - b. 5 hours and 45 minutes (5.750 hours) for each flight duty period in the applicable crew pairing.
  - c. Three minutes of pay for every ten minutes of the duration of the applicable crew pairing (30%), calculated to the nearest minute.
4. Any credited hours for pay for purposes of minimum pay per flight duty period or minimum pay per crew pairing above actual block time applicable to said flight duty period or crew pairing shall be credited to the contract month the flight duty period or crew pairing terminates.
5. Credited hours for pay for a flight duty period or crew pairing per the applicable collective bargaining agreement may be calculated by different metrics provided the minimums specified in 4.B.1-4 are met.

## C. CALCULATION OF MINIMUM PREMIUM PAY

1. For contract months of 30 or 31 days in duration:
  - a. Any flightcrew member credited with 13 or fewer flight duty periods in a contract month shall be credited premium pay for all credited hours for pay as calculated in section 4.B.1-3 in excess of 96 hours on a 1:1 basis plus, all hours in excess of 90 hours and less than or equal to 96 hours on a 2:3 basis plus, all hours in excess of 84 hours and less than or equal to 90 hours on a 1:3 basis.
  - b. Any flightcrew member credited with 14 or 15 flight duty periods in a contract month shall be credited premium pay for all credited hours for pay as calculated in section 4.B.1-3 in excess of 93 hours on a 1:1 basis plus, all hours in excess of 87 hours and less than or equal to 93 hours on a 2:3 basis plus, all hours in excess of 81 hours and less than or equal to 87 hours on a 1:3 basis.
  - c. Any flightcrew member credited with 16 or 17 flight duty periods in a contract month shall be credited premium pay for all credited hours for pay as calculated in section 4.B.1-3 in excess of 90 hours on a 1:1 basis plus, all hours in excess of 84 hours and less than or equal to 90 hours on a 2:3 basis plus, all hours in excess of 78 hours and less than or equal to 84 hours on a 1:3 basis.
  - d. Any flightcrew member credited with 18 to 20 flight duty periods in a contract month shall be credited premium pay for all credited hours for pay as calculated in section 4.B.1-3 in excess of 84 hours on a 1:1 basis plus, all hours in excess of 78 hours and less than or equal to 84 hours on a 2:3 basis plus, all hours in excess of 72 hours and less than or equal to 78 hours on a 1:3 basis.
2. For contract months of 28 days in duration:
  - a. Any flightcrew member credited with 12 or fewer flight duty periods in a contract month shall be credited premium pay for all credited hours for pay as calculated in section 4.B.1-3 in excess of 90 hours on a 1:1 basis plus, all hours in excess of 84 hours and less than or equal to 90 hours on a 2:3 basis plus, all hours in excess of 78 hours and less than or equal to 84 hours on a 1:3 basis.
  - b. Any flightcrew member credited with 13 or 14 flight duty periods in a contract month shall be credited premium pay for all credited hours for pay as calculated in section 4.B.1-3 in excess of 87 hours on a 1:1 basis plus, all hours in excess of 81 hours and less than or equal to 87 hours on a 2:3 basis plus, all hours in excess of 75 hours and less than or equal to 81 hours on a 1:3 basis.
  - c. Any flightcrew member credited with 15 or 16 flight duty periods in a contract month shall be credited premium pay for all credited hours for pay as calculated in section 4.B.1-3 in excess of 84 hours on a 1:1 basis plus, all hours in excess of 78 hours and less than or equal to 84 hours on a 2:3 basis plus, all hours in excess of 72 hours and less than or equal to 78 hours on a 1:3 basis.
  - d. Any flightcrew member credited with 17 to 19 flight duty periods in a contract month shall be credited premium pay for all credited hours for pay as calculated in

section 4.B.1-3 in excess of 84 hours on a 1:1 basis plus, all hours in excess of 72 hours and less than or equal to 78 hours on a 2:3 basis plus, all hours in excess of 66 hours and less than or equal to 72 hours on a 1:3 basis.

3. For contract months of 35 days in duration:
  - a. Any flightcrew member credited with 15 or fewer flight duty periods in a contract month shall be credited premium pay for all credited hours for pay as calculated in section 4.B.1-3 in excess of 108 hours on a 1:1 basis plus, all hours in excess of 102 hours and less than or equal to 108 hours on a 2:3 basis plus, all hours in excess of 96 hours and less than or equal to 102 hours on a 1:3 basis.
  - b. Any flightcrew member credited with 16 or 17 flight duty periods in a contract month shall be credited premium pay for all credited hours for pay as calculated in section 4.B.1-3 in excess of 105 hours on a 1:1 basis plus, all hours in excess of 99 hours and less than or equal to 105 hours on a 2:3 basis plus, all hours in excess of 93 hours and less than or equal to 99 hours on a 1:3 basis.
  - c. Any flightcrew member credited with 18 to 20 flight duty periods in a contract month shall be credited premium pay for all credited hours for pay as calculated in section 4.B.1-3 in excess of 102 hours on a 1:1 basis plus, all hours in excess of 96 hours and less than or equal to 102 hours on a 2:3 basis plus, all hours in excess of 90 hours and less than or equal to 96 hours on a 1:3 basis.
  - d. Any flightcrew member credited with 21 to 23 flight duty periods in a contract month shall be credited premium pay for all credited hours for pay as calculated in section 4.B.1-3 in excess of 96 hours on a 1:1 basis plus, all hours in excess of 90 hours and less than or equal to 96 hours on a 2:3 basis plus, all hours in excess of 84 hours and less than or equal to 90 hours on a 1:3 basis.
4. Credited hours for pay defined in section 4.E.2.a shall not be used for calculation of premium pay in section 4.C.
5. Any flightcrew member who performs an unaugmented flight duty period containing more than 8.000 hours of flight time shall be credited premium pay, in addition to all other premium pay calculations, 1.000 hour for every unaugmented flight duty period containing more than 8.000 hours of flight time.
6. Any flightcrew member who performs any portion of an unaugmented flight duty period which brings the flightcrew member's cumulative flight time in excess of 30 hours in any consecutive seven calendar day period shall be credited premium pay, in addition to all other premium pay calculations, 1.000 hour for every hour, or portion thereof, in excess of 30 hours in any consecutive seven calendar day period.

**D. FLIGHT DUTY PERIODS SPLIT BETWEEN CONTRACT MONTHS**

1. Any flight duty period scheduled to have the first event originate (as defined by scheduled “block-out” time) prior to 1800 on the last day of the contract month and terminating in the next contract month shall be credited to the contract month the flight duty period originated.
2. Any flight duty period scheduled to have the first event originate (as defined by scheduled “block-out” time) at or after 1800 and before 2100 on the last day of the contract month shall be credited to the contract month that holds the majority of the scheduled flight duty period.
3. All other flight duty periods split between contract months shall be credited to the month the flight duty period terminates.

**E. CALCULATION OF MINIMUM CREDIT HOURS FOR PAY AND FLIGHT DUTY PERIODS FOR RESERVE DUTY.**

1. Any flightcrew member assigned by a certificate holder to be on airport/standby/ immediately assignable reserve to accept a flying or deadhead assignment, shall be considered to be in a flight duty period as defined in this section when the availability period begins and terminating when released into rest period as defined in Section 4.A.3 or a duty free period as defined in 4.A.11.
2. Any flightcrew member assigned by a certificate holder to be on short-call/reasonably assignable reserve to accept a flying or deadhead assignment, shall be considered to be in a flight duty period as defined in this section when the availability period begins and terminating when released into rest period as defined in Section 4.A.3 or a duty free period as defined in 4.A.11.
  - a. If the reserve duty period, as defined in section 4.E.2, expires or is terminated without resulting in block time or deadhead transportation, the minimum credited hours for pay per section 4.B.2.b-c do not apply. Minimum credit hours for pay in such instances shall be 3.000 hours. Such flight duty periods shall be credited to the applicable contract month.
  - b. Reserve flight duty periods (as defined in section 4.E.2) that do not contain any block time or deadhead transportation shall not be considered part of any crew pairing per section 4.B.3.
  - c. Only reserve flight duty periods performed at the flightcrew member’s home base shall be exempted per section 4.E.2.a-b.
3. Any flightcrew member assigned by a certificate holder to be on long-call/assignable reserve to accept a flying, deadhead, short-call/reasonably assignable reserve, or airport/standby/immediately assignable reserve assignment, shall not be required to be

considered to be in a flight duty period as defined in this section and no minimum credited hours for pay apply.

4. No flightcrew member may be assigned, scheduled, or perform more than the following amount of calendar days of reserve availability, as defined by 4.E.1-3, or fraction thereof in any contract month:
  - a. 20 days in contract months of 30 or 31 days in duration.
  - b. 19 days in contract months of 28 days in duration.
  - c. 23 days in contract months of 35 days in duration.

#### F. MINIMUM HOURLY RATES OF PAY

1. Flightcrew member payable hours shall consist of:
  - a. any credited hours for pay as calculated by section 4.B. plus,
  - b. any premium pay hours as calculated in section 4.C. plus,
  - c. any pay hours stipulated by the applicable collective bargaining agreement in addition to and/or in excess of the stipulated minimums in this section.
2. Minimum hourly rates of pay for payable hours in section 4.F shall be:
  - a. \$300.00 per hour for widebody aircraft PIC/Captain,
  - b. \$225.00 per hour for narrowbody aircraft PIC/Captain,
  - c. \$200.00 per hour for widebody aircraft SIC/First Officer,
  - d. \$150.00 per hour for narrowbody aircraft SIC/First Officer.
3. Any defined benefit pension plan shall be exempted from using minimum hourly rates of pay defined in Section 4.F.2 as part of the calculation of the defined benefit. Any such defined benefit pension plan shall only be required to use the last negotiated hourly rate of pay prior to the passage of this act for calculation of the defined benefit.
  - a. Any defined benefit pension plan negotiated subsequent to the passage of this act shall not be exempted per 4.F.3.
  - b. Negotiated hourly rates of pay, for the purposes of defined benefit pension plans, may be used for existing defined benefit pension plans, subsequent to the January 1 subsequent to the fifteenth anniversary of this act becoming law.

#### G. EXEMPTED PASSENGER AIRCRAFT OPERATING UNDER PART 121.

1. Aircraft operated under Part 121 with all of the following characteristics are exempt from the pay provisions enumerated in this section:
  - a. Must have a Maximum Certified Takeoff Weight of less than 35,000 pounds (15,865 kg) and a passenger configuration capacity less than 35.

## SECTION 5

### LABOR PROTECTIVE PROVISIONS

(Pilot Layoffs Due to Reductions In Manpower, Cessation of Operations, or Permanent Strike Replacement.)

#### A. DEFINITIONS.

1. **Qualified Certificate Holder**. A qualified certificate holder under this section is any Part 121 certificate holder meeting the following criteria:
  - a. Employed more than 200 active pilots in the previous calendar year.
  - b. Operated more than 20 aircraft having a Maximum Certified Takeoff Weight greater than 95,000 pounds (43,064 kg), or greater, at any point in the previous calendar year.
  
2. **Qualified Offer**. A qualified offer is an offer of employment as a pilot under the terms and conditions of the collective bargaining agreement or, company policy in the event no such collective bargaining agreement exists, meeting the following qualifiers:
  - a. Any certificate holder that reduces its manpower to the point where pilots are involuntarily furloughed in reverse seniority order shall not count any pilot so furloughed as receiving a qualified offer unless that pilot has completed 15 contract months (or portion thereof) in service as a pilot to the certificate holder.
  - b. Certificate holders recalling furloughed pilots who had not previously completed 15 months of service toward a qualified employment offer may count the previous service toward the total needed to satisfy the requirements of a qualified employment offer.
  - c. Any pilot who voluntarily terminates his/her employment with a certificate holder after the first day of employment with the certificate holder may be counted as receiving a qualified employment offer.
  - d. Any pilot who voluntarily withdraws from the interview process, as specified in Section 5.C.4, with a qualified certificate holder may be counted as receiving a qualified employment offer.
  - e. Only pilots requesting employment as a pilot via the normal, reasonable, and customary method for applying for such employment shall be considered to have received a qualified employment offer in the event the pilot withdraws or refuses to respond to an interview invitation.
  - f. Only those employment offers resulting in employment within 150 days from the initial interview shall be considered a qualified employment offer.
  - g. Employment offers for the purpose of replacing pilots conducting a legal job action under the Railway Labor Act shall in no way be considered a qualified employment offer.

3. **Involuntary Furlough**. Involuntary furlough is defined as loss of employment as a pilot due to reductions in manpower and no person junior to the pilot remaining employed, as a pilot, by the certificate holder. Pilots volunteering for furlough in-lieu of a junior pilot are considered to be voluntarily furloughed until all pilots junior to them are furloughed, at which point they are involuntarily furloughed.
4. **Active pilot**. An active pilot is any pilot employed by the certificate holder in the previous calendar year meeting any of the following criteria:
  - a. Flightcrew member (PIC or SIC) with 20 or more flight duty periods within the last six contract months of the previous calendar year.
  - b. Flightcrew member (PIC or SIC) with 30 or more flight duty periods within the previous calendar year.
  - c. Flightcrew member (PIC or SIC) with 120 or more credited hours for pay within the last six contract months of the previous calendar year.
  - d. Flightcrew member (PIC or SIC) with 240 or more credited hours for pay within the previous calendar year.
  - e. Check airmen employed by the certificate holder who are qualified to exercise the privileges of their airmen certificates performing any payable duties for the certificate holder in three of the last six contract months of the previous calendar year.
  - f. Check airmen employed by the certificate holder who are qualified to exercise the privileges of their airmen certificates performing any payable duties for the certificate holder in five contract months of the previous calendar year.
5. **Total Hiring**. The amount of pilots hired for purposes of calculating compliance with hiring requirements of this section per 5.D.2. A qualified certificate holder is defined as hiring the sum of the following:
  - a. the amount of qualified offers of employment to pilots in the applicable preferential hiring pool per this section plus,
  - b. the amount of pilots placed upon the applicable seniority list under the terms and conditions specified in the governing collective bargaining agreement or company policy, should such collective bargaining agreement not exist, who were not drawn from the applicable preferential hiring pool. These totals shall be per calendar year with the effective date defined per Section 5.A.6.
6. **Effective Date of Hiring**. For purposes of compliance with this section, the effective date of hiring of a pilot by a qualified certificate holder is the date the pilot is placed on the applicable seniority list per the terms and conditions of the governing collective bargaining agreement or company policy, should such collective bargaining agreement not exist.

- a. For pilots in the preferential hiring pool refusing a qualified offer of employment per this section, the effective date of hiring shall be at the discretion of the certificate holder within 150 days following an invitation to interview per section 5.C or 150 days from the pilot's voluntary withdrawal from the recruitment process.

## B. PLACEMENT OF PILOTS IN THE PREFERENTIAL HIRING POOL

1. Any pilot suffering involuntary loss of employment as a pilot from a qualified Part 121 certificate holder under this section due to reductions in manpower (commonly known as "furlough" or "layoff"), cessation of operations of the certificate holder, or by permanent strike replacements shall be placed in a single hiring pool of pilots suffering involuntary loss of employment, for the reasons stated in paragraph 5.B.2 of this section, entitling them to preferential hiring by other qualified Part 121 certificate holders under the terms and conditions of this section.
2. Only pilots who suffer loss of employment from involuntary furlough, layoff, cessation of operations, or permanent strike replacement are eligible for placement in the respective preferential hiring pool.
  - a. Pilots must suffer loss of employment from a qualified certificate holder to be placed in the preferential hiring pool.
3. No pilot currently employed by a qualified certificate holder under this section, as a pilot, may be simultaneously listed in the preferential hiring pool.
4. Pilots employed less than one consecutive year for any qualified certificate holder since September 1, 2000 are not eligible for placement in the preferential hiring pool. Absences caused due to military service to the United States shall not be used in any way to disqualify a pilot from membership in the preferential hiring pool.
  - a. This provision shall be liberally construed to benefit pilots serving in the United States military.
5. Any pilot hired from the preferential hiring pool by a qualified certificate holder, who suffers subsequent loss of employment under this section, shall be placed in the preferential hiring pool provided the pilot was not hired as a strike replacement during a lawful job action under the Railway Labor Act.
6. No pilot shall be in the preferential hiring pool longer than ten consecutive years. Time spent in active duty military service to the United States shall not count against longevity limits within the preferential hiring pool.

### C. INTERVIEWS

1. Qualified certificate holders may require specific qualifications or ratings for employment and may select interviewees based upon those qualifications provided the selection criteria are objective in nature, published in advance of selecting interviewees, and are no way adversely discriminatory against pilots in the preferential hiring pool.
2. Interview procedures cannot have unreasonable differences between those conducted with preferential hiring pool pilots and those pilots not in the preferential hiring pool.
3. The interview process may not be adversely discriminatory against pilots in the preferential hiring pool.
  - a. Pilots from the preferential hiring pool subjected to adversely discriminatory standards during the interview process for the purpose of justification of not extending a qualified employment offer shall be able to seek remedy under this section.
4. If a company extends an invitation to interview to a pilot in the preferential hiring pool and that pilot refuses to accept or voluntarily withdraws from the interview process, the company shall be considered to have conducted a qualified interview and employment offer, provided:
  - a. The invitation to interview was timely enough to allow reasonable travel and preparation of required interview materials.
  - b. The accommodation of pilots in the preferential hiring pool is not adversely discriminatory.
  - c. The invitation to interview was made known to the pilot by the reasonable and customary means normally employed to deliver invitations to interview by either letter delivered via courier or USPS, email, or telephonic contact.
5. Any pilot in the preferential hiring pool who receives an invitation for interview with a qualified certificate holder shall respond to such invitation within 30 calendar days of receipt. Failure to respond within 30 calendar days may be construed by all interested parties as a refusal to interview and may also be counted as a qualified employment offer by the certificate holder, unless the pilot had previously withdrawn his/her application for employment as a pilot from that certificate holder or said pilot is employed as a pilot by another qualified certificate holder.

### D. OFFERS OF EMPLOYMENT

1. Any qualified certificate holder under this section, who within one calendar year, hires more than 2.5% of the number of the active pilots on its seniority list in the

previous calendar year or 50 pilots (whichever is less), shall be required to hire pilots from the appropriate preferential hiring pool under the terms and conditions and as defined in this section.

2. Two-thirds of all qualified offers of employment defined in this section shall be made to pilots within the preferential hiring pool subject to the limitations of this section.
  - a. No certificate holder shall be required to hire any pilot from the preferential hiring pool who has not applied for employment with the certificate holder per the certificate holder's normal procedures for pilot recruitment.
  - b. No single certificate holder shall be required to interview more than half of the applicants from the respective pool in any calendar year.
  - c. No certificate holder shall be required to hire a pilot from the preferential hiring pool unless that pilot can be reasonably expected to be employed for a period of five years.
  - d. No certificate holder shall be required to hire a pilot from the preferential hiring pool if the certificate holder's written policies would disqualify such pilot to serve as a pilot with that certificate holder provided:
    - i. the criteria are published in advance and,
    - ii. the criteria are not adversely discriminatory to pilots in the preferential hiring pool and,
    - iii. the criteria do not adversely discriminate against pilots engaged or formerly engaged in labor organization activities and,
    - iv. the criteria are otherwise lawful.
3. No certificate holder shall be required to interview or hire any pilot from the preferential hiring pool who has not applied for employment as a pilot under the normal procedures established for such employment. Such pilots in the preferential hiring pool not applying for employment as a pilot under the normal procedures for such employment shall not be counted as receiving a qualified offer of employment under this section.
4. No certificate holder shall be able to count any pilot in the preferential hiring pool as having receiving a qualified offer of employment more than once per calendar year or more than twice in five consecutive calendar years, unless that pilot completes 15 contract months (or portion thereof) of employment with the certificate holder. No pilot shall be counted as having received more than 4 qualified offers of employment with any single certificate holder.
5. Recalling of furloughed pilots is not defined as hiring under this section. Only hiring of pilots not subject to recall from furlough ("off the street") require hiring under this section.
6. Pilots in the preferential hiring pool selected for interview may be granted a

conditional employment offer pursuant to the obtaining of a specific qualification or rating provided:

- a. The qualification and/or rating was specified prior to the interview and applied to all applicants, regardless of membership in the preferential hiring pool.
  - b. The pilot is given a reasonable amount of time subsequent to the conditional employment offer to obtain the qualification and/or rating.
  - c. The qualification and/or rating is either part of the past practice of the certificate holder, reasonably necessary for the operations of the certificate holder, or required by government regulation.
7. Each qualified certificate holder required to hire from the labor pool defined in this section shall be required to “look back” at all hiring within the previous two calendar years and be able to satisfy all provisions of this section.
- a. Any certificate holder hiring from the pool in excess of the amount of pilots required by this section shall be credited the difference to the next calendar year for which the certificate holder would be required to hire from the preferential hiring pool.
  - b. Any certificate holder failing to meet the hiring requirements of this section shall be required to hire from the preferential hiring pool in the first calendar year the deficiency for any previous calendar year is made known in sufficient quantities as to satisfy the “look back” requirements. Under no circumstances shall hiring of pilots to rectify such deficiencies be counted toward satisfaction of current requirements to hire from the preferential hiring pool.
8. A pattern of significantly lower hiring rates among preferential hiring pool pilots selected for interview versus non-preferential hiring pool pilots selected for interview, without substantiated justification, shall be evidence of perfunctory interviewing practice and remedied under this section.
9. United States military veteran status and military flying experience may be justification for preferential hiring by qualified certificate holders.
10. Pilots in the preferential hiring pool shall not be required to pay more than a \$50 processing fee for submitting an application for employment, regardless of the certificate holder’s policies and procedures. No certificate holder may adversely discriminate against a pilot in the preferential hiring pool for not paying more than a \$50 processing fee.
11. Rebating of pilot earnings for the purposes of defraying costs to train pilots to company procedures and/or operating qualifications or, any scheme which serves as the functional equivalent, shall be prohibited.

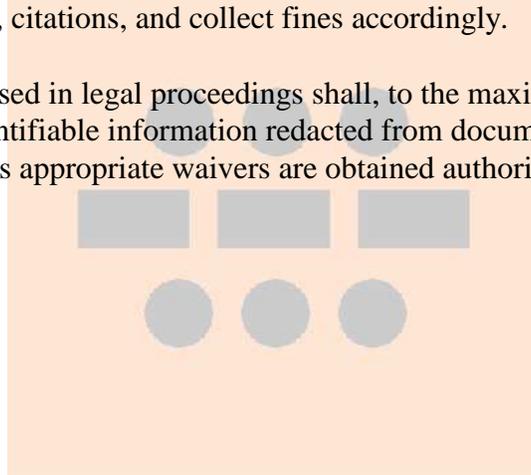
E. REMEDIES AND ENFORCEMENT

1. The judiciary shall liberally interpret the provisions of this section to ensure the labor protective provisions therein are enforced and applied as to achieve the goals of ameliorating involuntary unemployment of experienced pilots in the United States passenger air transportation industry. The courts shall have wide latitude to examine the practices of the various airlines, regarding the hiring of pilots in the preferential hiring pool, to ensure that the spirit of the law is met with both reasonable and full compliance.
2. Any qualified certificate holder required to hire from the preferential hiring pool, without the ability to demonstrate substantiated justification for significantly lower hiring rates for pilots selected from the preferential hiring pool as compared to other pilots hired by the certificate holder during a calendar year, shall be subject to a civil fine of no less than \$27,500 and no more than \$50,000 per preferential hiring pool pilot applicant rejected without substantiated justification. Such justification must be documented and timely with the discontinuance of the pilot recruitment process.
3. Any qualified certificate holder required to hire from the applicable preferential hiring pool who conducts the pilot recruitment process in an adversely discriminatory manner toward pilots in the applicable preferential hiring pool shall be subject to a civil fine of no less than \$50,000 and no more than \$250,000.
4. Any pilot within the preferential hiring pool, subjected to adversely discriminatory pilot recruitment practices, and denied employment with a qualified certificate holder found to be engaged in adversely discriminatory pilot recruitment practices by the Department of Labor during the pilot's involvement in the recruitment process, shall be able to recover damages of no more than \$50,000, plus recovery costs and customary legal fees.
5. Any qualified certificate holder required to hire from the applicable preferential hiring pool failing to meet the hiring requirements of this section and also failing to rectify the deficiency per this section within one calendar year of discovery of such deficiency shall be subject to a civil fine of no less than \$100,000 and no more than \$150,000 times the amount of pilots from the preferential hiring pool needed to rectify such deficiency per year the deficiency exists.
6. Any qualified certificate holder requiring, as a condition of employment, the rebating of pilot earnings to defray training costs per section 5.D.11, or engaging any scheme to disguise the functional equivalent of such, shall be subject to a civil fine of no less than \$500,000.
  - a. Any pilot required to rebate such earnings to defray training costs shall be able to recover three times actual damages plus customary recovery costs.

- b. The requirement for a pilot to possess certain qualifications, that are reasonable to the operation of a certificate holder, prior to employment shall not be construed as requiring the rebating of pilot earnings, provided such qualifications can be reasonably obtained from sources other than those controlled, owned, or financially beholden to the certificate holder or corporate parent.

**F. MONITORING AND ENFORCEMENT BY UNITED STATES DEPARTMENT OF LABOR**

1. The United States Department of Labor or its authorized agent shall monitor the hiring practices of Part 121 passenger air certificate holders to ensure compliance with the provisions of this section.
2. The United States Department of Labor or its authorized agent shall have the authority to inspect and audit any Part 121 passenger air certificate holder's policies, procedures, applications, and pilot recruitment activities and have the authority to declare certificate holders in violation of the provisions of this section and issue compliance metrics, citations, and collect fines accordingly.
3. Personnel records used in legal proceedings shall, to the maximum extent practical, have personally identifiable information redacted from documents released into the public record, unless appropriate waivers are obtained authorizing such release.



SECTION 6

MISCELLANEOUS

A. DETERMINATION OF TEMPORARY UNFITNESS FOR FLIGHT

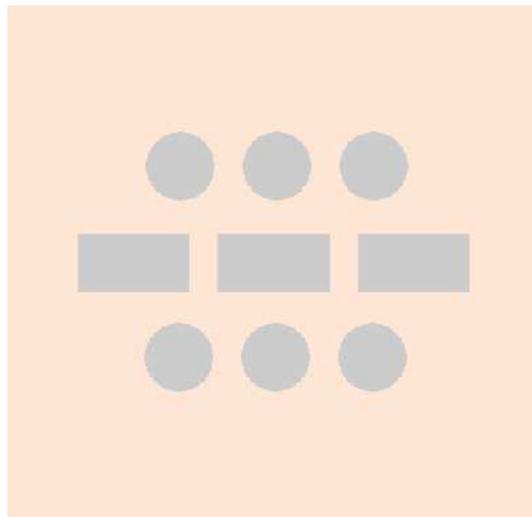
1. In such instances where a pilot determines he or she is temporarily unfit to exercise the privileges of his or her airman certificate, in accordance with any part of the Federal Aeronautical Information Manual, Chapter 8, section 1-1, dated 2/11/2010 and 8/25/2011, the pilot shall be the sole and final authority and such decision shall be binding on all parties. This right shall not be diminished due to other pilots exercising their authority to determine their temporary unsuitability for exercise of airman certificates.
- b. No certificate holder may bring about disciplinary action or harassment against any a pilot who determines he or she is temporarily unfit to exercise the privileges of his or her airman certificate, in accordance with any part of the Federal Aeronautical Information Manual, Chapter 8, section 1-1, dated 2/11/2010 and 8/25/2011. Any flightcrew member who is discharged, threatened, harassed, disciplined, or suffers any other manner of adverse discrimination in the terms and conditions of employment by his or her employer because of a temporary and self-assessed determination of unfitness to exercise the privileges of his or her airman certificate, in accordance with any part of the Federal Aeronautical Information Manual, Chapter 8, section 1-1, dated 2/11/2010 and 8/25/2011, shall be entitled to no less than three times all relief necessary to make the employee whole, plus applicable recovery costs, including customary legal fees.
  - a. The Administrator may fine certificate holders for violations of this paragraph \$27,500 per incident.

B. LEGAL SEPARABILITY

1. If any provision of this act or application thereof to any person or circumstance is held invalid, the remainder of such sections and the application of such provision to other persons or circumstances shall not be affected thereby.

C. DOMESTIC CODE SHARING

(in development)



SECTION 7

IMPLEMENTATION

A. Railway Labor Act Addendum (Section 1)

1. All provisions in Section 1 shall become effective upon this act becoming law.
2. All metrics for the modification of the length of contracts per section 1.A.2 shall be from the date this act becomes law.

B. Fatigue Mitigation (Section 2)

1. All provisions in Section 2 shall become effective on December 21, 2013 or the first day of the first calendar month following the 90<sup>th</sup> day after this act becomes law, whichever occurs later.

C. Collective Bargaining Agent Authority (Section 3)

1. All provisions in Section 3 shall become effective on the first day of the first calendar month following the day this act becomes law.

D. Pay and Scheduling Provisions (Section 4)

1. All provisions in Section 4 shall become effective on the first day of the first calendar month following the 280<sup>th</sup> day after this act becomes law.

E. Labor Protective Provisions (Section 5)

1. All provisions in Section 5 shall become effective on the January 1 following this act becoming law.

- F. All provisions not otherwise specified shall become effective upon this act becoming law.

SECTION 8

LEGAL IMMUNITY

- A. No person shall be subject to criminal, civil, tort, or administrative or any other legal liability for failing to exercise the privileges of his/her airman certificate in conjunction with other pilots for the purpose of petition of redress of government action, regulation, or laws pertaining to the piloting profession. Any such activity shall be construed to be protected speech, assembly, and petition for redress under the First Amendment to the United States Constitution.
  
- B. No person or organization shall be subject to criminal, civil, tort, administrative, or any other legal liability for participation or support of such efforts calling for, or resulting in, widespread or selected exercise of the privileges of airman certificates. Any such activity shall be construed to be protected speech, assembly, and petition for redress under the First Amendment to the United States Constitution.
  
- C. No certificate holder may bring about disciplinary action or harassment against any person participating in or supporting such efforts calling for, or resulting in, widespread or selected exercise of the privileges of airman certificates. Any employee who is discharged, threatened, harassed, disciplined, or suffers any other manner of adverse discrimination in the terms and conditions of employment by his or her employer, or qualified certificate holder while in a preferential hiring pool, because of participation in, or support of, widespread refusal of the exercise of airman certificate privileges for the purpose of petition of redress of government action, regulation, or laws pertaining to the piloting profession, shall be entitled to no less than the greater of \$27,500 or three times all relief necessary to make the employee whole, plus applicable recovery costs, including customary legal fees.

## APPENDIX A - SUMMARY

### SECTION 1 - RLA Addendum

**1.A.1.a** - Provides for shorter and defined lengths of pilot contracts under the RLA. This feature provides for a more granulated and realistic timeframe to address both the needs of pilots and management, allowing each side to address their contractual relationships on a more frequent basis. Part of the unrealistic and acrimonious nature of contract negotiations under the RLA stems from the infrequency for each side to seek a more equitable representation of current conditions. These provisions are only applicable to pilot contracts.

**1.A.2** - Provides for all airline pilot contracts to reset their conclusion date thus removing any unfair advantage brought about by this act.

**1.B** - Prevents abuse of the various bankruptcy codes to achieve pilot concessions. Judges should not be part of management's negotiating team. The industry-wide abuse of the bankruptcy process over the past decade should suffice as inspiration for this section.

**1.C.1** - Removes the "damned if you do; damned if you don't" interpretation of what constitutes an illegal job action by removing compliance with applicable laws and governing agreements from what constitutes an illegal job action.

**1.C.2** - Removes advocacy of legal, regulatory, contractual, and policy compliance from being conflated with calling for an illegal job action.

### SECTION 2 - Fatigue Mitigation

Refer to APPENDIX B, and our "FAA FATIGUE MITIGATION RESPONSE" document for explanation of all aspects falling under this section. Both are available at [OPERATIONORANGE.org](http://OPERATIONORANGE.org).

### SECTION 3 - CBA Authority

**3.A** - Brings about parity between the risks borne by strikers and strike replacements. If a striking pilot is permanently replaced, he will be put at the bottom of any seniority list for a new employer, provided such employment is possible. This provision removes any incentive for strike breakers to gain seniority by breaking a strike.

**3.A.3.b** - Nobody is to be considered a strike breaker through no fault of their own or by splitting hairs over minutes. Only willful activity as a strike breaker is grounds for loss of seniority.

**3.A.3.c** - Collective bargaining agents must be held to reasonable standards for notifying members of their strike breaking activities.

**3.A.3.d** - Feigning ignorance of a strike is no justification for engaging in strike breaking activities.

**3.A.3.e** - Pilots must be held to reasonable standards for knowing that their activities constitute strike breaking activities.

**3.A.3.f** - It is the responsibility of the pilot to understand that a lawful strike is being carried out by his or her CBA. The burden rests on the pilot to show that it was unreasonable to understand that his or her actions would constitute strike breaking activity.

**3.A.4-5** - Removes any incentive for pilots to act as strike replacements in order to gain advantage over pilots who refuse to work in such capacity.

**3.A.6** - Allows the CBA to examine flight records and collect testimony to identify pilots acting as strike replacements or strike breakers. This is intended to allow a more accurate listing of strike breakers and/or strike replacements.

**3.A.7** - Any error must be rectified and all seniority restored regardless of when the error is found.

**3.A.8** - Only by ratification of the governing body of the CBA shall seniority be realigned. This provision is intended to ensure that such realignment be done openly where the facts can be challenged.

## SECTION 4 - Pay and Scheduling

**GENERAL** - This section would make the operation of shadow flight schools economically unviable by raising the standards of all large scale passenger transportation to that of mainline carriers. Industry has availed themselves to pilots seeking to “pay their dues.” At one time, these small operations were not affiliated nor integrated with large, scheduled passenger operations and the flying public knew the experience level may be in short supply. Since almost all “regional” operations are now fully integrated into the larger “mainline” operation, with similar paint schemes, customer service, ticketing, and the overall “seamless” experience, these “dues paying” operations are really just outsourced operations.

Pilots seeking to build experience and “pay their dues” may certainly do so in a manner used by previous generations: military, freight, corporate, flight instruction, bush pilots,

small charter, etc. Inexperienced pilots and reckless certificate holders using scheduled passenger transportation as flight schools will be economically discouraged from doing so.

Colgan Air's crash in February 2009, and more importantly, Congress' callous subordination of safety to concerns over industry profit and labor relations goals is the obvious reason for this. There is no reason that a market, which is capable of supporting three NFL teams and 4 NHL franchises, from using larger gauge aircraft, as was done in the past.

By bringing the outsourced, smaller operations up to the pay and scheduling standards of the mainline operation, the pressure on industry will be to use fewer, larger gauge aircraft staffed by a smaller and more experienced piloting corps. This will also serve to unclog the airspace over the busier parts of the United States, lessening taxi times, delays for weather and arrival slots, and making meaningful advances envisioned by the framers of the "Passenger Bill of Rights."

Without the provisions of this section, industry will continue to seek competitive advantage through gross differences in pay and scheduling, which ultimately means that safety will go to the lowest bidder.

This section also addresses the government sanctioned, wholesale destruction of the life earnings of tens of thousands of airline pilots and the support of the unconscionable avarice of financial sociopaths masquerading as airline executives. This also has the unintended consequence of creating a very powerful disincentive for talented individuals to choose part 121 piloting as a career field, thus jeopardizing the traveling public by subjecting them to having their lives in the hands of pilots from lower tiered talent pools. By having codified minimums in piloting contracts under the authority of the Railway Labor Act, this serves as liquidated damages and incentives to make the pool of future aspirants more competitive.

**4.B** - Minimum "duty rigs" are now statutory. This prevents excessive unpaid duty time and also discourages inefficient scheduling and gaining competitive advantage via pilot working conditions. Certificate holders may choose to calculate their pay metrics by any means they wish, provided all can satisfy the minimums in this section as calculated in this section.

**4.C** - Provides financial incentives not to over schedule pilots as the credited flight hours for pay accelerate for excessive duty periods as well as flight hours. More hours can be flown without fatigue over fewer duty periods. Rested pilots are cheaper to schedule than fatigued pilots. The provisions of this section are delineated by the length of contract month the certificate holder uses, but still keeping with the overall concept that pilot pushing will encounter financial restraint prior to regulatory restraint.

**4.E.1** - Airport standby shall be considered a flight duty period carrying all the minimum provisions for crediting hours for pay.

**4.E.2** - Normal reserve shall allow for a reasonable call-out time which may vary from domicile to domicile, and airline to airline. It is intended for this to be the traditional “short call” reserve system used by most certificate holders. It is presumed that both sides will attempt to be as reasonable as practical in the expectations of report times so as not to unreasonably disrupt the certificate holder’s operations nor the pilot day-to-day activities.

**4.E.2.a** - Provides relief for certificate holders if reserves are not used. Duty period minimums are reduced to 3.000 hours and are not used to calculate premium pay.

**4.E.2.b** - Provides relief from non-productive reserve duty periods being used to calculate crew pairing minimums.

**4.E.2.c** - Only those reserve duty periods at the pilot’s domicile are exempted. This prevents mid-sequence reserve periods from being discounted per 4.E.2.a-b.

**4.E.3** - Provides relief for certificate holders for true “long call” reserve. 18 hours is enough time to fully rest and report for reserve assignments, not fatiguing, and should not be counted against the certificate holder.

**4.E.4** - Maximum duty periods in a contract month are limited by the length of the contract month.

**4.F.2** - Minimum wage brings all carriers up to approximate the current industry leader in morale, customer service, & profitability - Southwest Airlines, corrected for wide body aircraft where applicable.

**4.F.3** - Provides relief for certificate holders obligated to pay defined benefit pension plans. Defined benefit plans, where applicable, are not subject to windfall enrichment due to this act and every attempt should be made to preserve the benefit as if this act had never become law. Both the certificate holder and the collective bargaining agent have a minimum of 5 contract cycles to address competitive issues regarding their defined benefit plan.

## SECTION 5 - Labor Protective Provisions

**GENERAL** - Provides a mechanism to keep highly experienced pilots in the cockpits across the industry and provides incentives for industry not to shed this experience in favor of more compliant pilots. This section also addresses some of the abuses of the pilot recruitment process prevalent in the age of deregulation.

**5.A.1** - Only large scale part 121 operations are the subject of this section.

**5.A.2** - The purpose of this section is to ensure that the experience pool is maintained at a high level by offering experienced pilots priority in hiring with carriers requiring such experience. The provisions of this part are to ensure that no carrier can evade the provisions of this section by creating disingenuous employment offers. Likewise, no carrier shall be required to redouble their efforts due to caprices of pilots declining continuation of employment.

**5.A.4** - Provides objective and reasonable criteria for defining active pilots. This is to ensure that no dispute arises over defining furloughed pilots, those pilots on active-duty military leave-of-absence, medically disqualified pilots (both temporary and permanent), or any other non-flying pilot as “active.”

**5.B** - Pilots suffering involuntary loss of employment from qualified carriers are to be placed into a pool of similarly afflicted pilots for the purposes of expeditious hiring by other qualified carriers. There is no seniority system within the pool. Military service to the United States shall not be detrimental to the hiring prospects of pilots in the preferential hiring pool.

**5.C** - Certificate holders may require certain qualifications or use procedures particular to their company for selecting interviewees, provided these features are not subjective nor adversely discriminatory toward pilots in the preferential hiring pool.

**5.D** - Requires that certificate holders actively hire from the preferential hiring pool for 2/3 of their total hiring, or half of the applicants from the preferential hiring pool, whichever is less. This motivates certificate holders to be aggressive in their hiring from the preferential hiring pool so as to afford themselves the greatest flexibility in the candidates they choose.

**5.D.4** - Prevents certificate holders from establishing professional pool applicants whose purpose is to accept interviews and then subsequently terminate to help the certificate holder evade the provisions of this section.

**5.D.7** - Credits certificate holders who aggressively hire from the preferential hiring pool with a carry-forward provision to offset the need for preferential pool hiring in subsequent years. This is to encourage preferential pool hiring. This provision likewise requires aggressive action for those certificate holders who have failed to meet the provisions of this section to rectify the deficiency. This also encourages aggressive hiring from the preferential hiring pool.

**5.D.8** - The justification of significantly lower hiring rates for preferential hiring pool applicants needs to be substantiated and subject to review.

**5.D.10** - Application fees, where lawful, may not exceed \$50 for preferential hiring pool applicants.

**5.D.11** - “Pay for Training” schemes are prohibited. This is the exact practice that transformed passenger air travel into shadow flight schools and has undercut the viability of the piloting profession.

**5.E** - No certificate holder is required to hire pilots who fail to meet their objective standards. Certificate holders who fail to meet the provisions of this section are subject to civil fines and recovery from pilots harmed by their malfeasance. These fines are generally less than those imposed under the so-called “Passenger Bill of Rights.”

**5.F** - Department of Labor has authority to inspect certificate holder records to ensure compliance with this section.

## SECTION 6 - Miscellaneous

**6.A** - Pilots shall be the final authority in assessing their temporary unsuitability of fitness for flight, per the Federal Aeronautical Information Manual. Self-assessment for the temporary unsuitability for flight shall not be construed as an illegal job action. Federal whistleblower protection shall apply to any pilot subjected to harassment for exercising his or her authority to assess temporary unsuitability for flight.

**6.C** - Certificate holders that “code share” flying with other airlines on domestic city pairings shall be subject to increased liability in the event a passenger was injured or killed on a “code share” flight. This provision is designed to coax airlines out of the travel agency business and into the business of safely transporting the public at a profit.

Colgan Air / Continental Connection 3407 is the inspiration for this. Continental Airlines outsourced the expertise of their piloting corps to the under experience and general low-standards of the regional airline, for no other reason than for saving money. Airline executives were asked to report to Congress on this very concept (increased liability for mainline carriers for the safety of their code share partners), and the airlines balked.

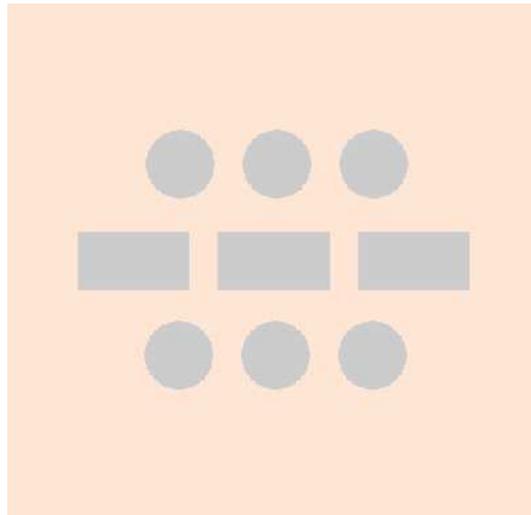
This section is currently under development and awaiting analysis of the American Airlines bankruptcy proceedings, in this regard.

## SECTION 7 - Implementation

**GENERAL** - Allows for certificate holders to make adjustments in scheduling and fares to accommodate the implementation of this act.

SECTION 8 - Legal Immunity

**GENERAL** - Prevents legal or administrative recourse against those participating or supporting efforts to petition the government, via peaceful protest, for laws and regulations pertaining to the piloting profession; provides federal whistleblower protections for pilots harassed by their employers for participation or advocacy of such protests.



## APPENDIX B

### DISCUSSION OF FATIGUE MITIGATION REGULATIONS

#### **Prelude and Overview**

The Federal Aviation Administration released its final rule regarding flightcrew member flight time and duty time regulations on December 21, 2011. This release comes months overdue, largely due to the time allotted for part 121 cargo operators' lobbying efforts to exempt themselves, in whole or in part, from the regulations whose purpose is to ostensibly remedy the dangerous industry trends regarding pilot fatigue and preventable aircrew errors descending from fatigue.

The original "Notice of Proposed Rule Making" (NPRM) came about due to political fallout from the Continental Connection / Colgan Air 3407 aircraft crash on February 12, 2009, where two under experienced pilots misdiagnosed and inappropriately responded to an approach-configuration stall, resulting in the loss of aircraft, all 49 persons on board the Q400, and one person on the ground. Rather than using the opportunity to discuss the primary danger to the flying public, outsourcing of pilot expertise for the purposes of cost cutting, those with regulatory oversight authority used the opportunity to issue regulations under the guise of fatigue abatement.

Fatigue abatement is an issue whose time is long overdue, and genuine efforts to address that issue is welcome by all part 121 pilots. However, both the NPRM and the "final rule" do not address the underlying issue of "pilot pushing" by the part 121 certificate holders, which is the root-ball of the fatigue issue. Instead, the final rule codifies much of the pilot pushing and will do little to ameliorate the present trajectory of pilot fatigue and preventable errors due to fatigue.

Continental Connection 3407 was a preventable crash, but it was not due to fatigue, as the pilots of Colgan Air 3407 were inferred to be fatigued, based solely upon where they slept, rather than how they performed, or any other evidence.<sup>1</sup> What impairment they displayed was swept aside as insignificant, and fatigue was inserted as the unofficial, but underlying cause. While the NTSB explored the experience level and aptitude of the crew, nothing was stated in the final summary that would indicate that the dangerous trend of eschewing expertise as a cost-cutting measure is the underlying cause of the deaths of 50 people, and poses a risk for the entirety of the passenger transportation system of the United States.<sup>2</sup>

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<sup>1</sup> OPERATION ORANGE, *Colgan Air 3407: Questions, Answers, and Discussion*, [www.operationorange.org/colganQ&A.pdf](http://www.operationorange.org/colganQ&A.pdf)

<sup>2</sup> NTSB Vice Chairman Hart did indicate in his personal statement that the trend of code sharing with airlines staffed by pilots lacking a solid foundation of flight training is a growing concern.

Instead, we have been given an entire regulatory bulwark attempting to address a problem that does exist, but falsely uses the Continental Connection 3407 crash as a pretext. Even so, an entire “carve-out” has been allowed for the very segment of part 121 that is most prone to fatiguing flying, while at the same time, reduces rest for the most fatiguing flying in part 121 passenger carriage (international), and increases “time on task” for domestic operations.

Even more ominous is the entire concept of tailor-made exemptions to the regulatory text, under the guise of an “equivalent level of safety.” Combine this with the new requirements for formalized pilot certification of “fitness for flight,” without effective legal protections against coercive actions by the certificate holder, and the entire concept of self-assessment is removed.

Safety will be outsourced to the lowest bidder and pilots will be nothing more than disposable functionaries with the responsibilities to make operational dreams come true against the unforgiving backdrop of physiological reality.

### **§ 117.1 Applicability**

The tardy release of the “final rule” was to allow the part 121 cargo carriers an opportunity to sell the idea that they should be immune from increased regulatory oversight regarding fatigue. Quite simply, this boiled down to money and how the part 121 cargo carriers would have to spend more money to carry out their current operation. More pilots for the same flying doesn’t fit their agenda, so they bought an exemption.

We could elaborate on the motives and cynicism inducing actions of the regulatory authorities in Washington, but the IPA (pilot association representing the UPS pilots) has already done this.<sup>3</sup> Their response is available on the OPERATIONORANGE.org website, under the masthead menu category of “Supporting Documentation.”

We have amended the § 117.1 Applicability text, as well as §§ 121.470, 121.480, 121.500, and 121.583 to remove the exclusivity of passenger operations, so as to include part 121 cargo operations.

### **§ 117.3 Definitions**

The section below provides a discussion on the specific definitions used in the final rule, and where applicable, additions and modifications have been used to address inadequacies in the definitions in the final rule.

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<sup>3</sup> Independent Pilots Association, *Additional Points Relating to the IPA Court of Appeals Challenge to FAA Final Flight and Duty Time Rule*, available at [www.operationorange.org/IPApoints.pdf](http://www.operationorange.org/IPApoints.pdf)

**Acclimated.** The FAA's definition falls short in two aspects. First the definition in the final rule provides for acclimation if the flightcrew member has been "in a theater" for 72 hours. The definition of "theater" only captures that it differs from the flightcrew member's flight duty period departure point by more than 60 degrees of longitude. This is largely a failure of the definition of "theater," for purposes of acclimation.

It is possible, under the final rule definition, that a flightcrew member could be acclimated to the Pacific Time Zone and operate in London, and still be considered "acclimated" and in the "same theater."

Example: Flightcrew member (FCM) is acclimated to UTC -8.

FDP #1: SFO-MEM, MEM-MIA. FCM has experienced 45 degrees of longitude change and three time zones of time change. Result: no theater change.

FDP#2: MIA-GRU. FCM has experienced 30 degrees of longitude change and 3 zones of time change. Result: no theater change.

FDP#3: GRU-LHR. FCM has experienced 45 degrees of longitude change and 2 zones of time change. Result: no theater change.

Questions: What theater is the FCM operating? UTC+0, UTC-2, UTC-5, or UTC-8? If the FCM operates a single-leg FDP that takes him back to MEM, that incorporates 90 degrees of longitude and 6 zones of time change. Was he always on UTC-6, or on UTC-8? If the FCM spent 40 hours in London, did he need to acclimate, since he, by definition, did not change theater because there is only 45 degrees of longitude change between Sao Paulo and London? How does one acclimate to a new theater if one does not change theater?

Such minutiae in the regulations have been exploited in years past by an industry that insisted it was within its regulatory right to *schedule* an FCM for a FDP that included 15:55 of duty, only to have delays take the FCM well past 18 or even 20 hours, and still call it legal. This is an industry that seeks twisted and elastic definitions of "days" and where the term "active pilot" can include a pilot that has been furloughed for years.

There may be instances of a FCM crossing the International Date Line where he or she experiences a 24 hour instant time zone change. Such time zone change, if not coupled with a significant change between other time zones, is not applicable to acclimation. This is best demonstrated by example:

A FCM is acclimated to UTC-10 and operates a flight from HNL to AKL. HNL is UTC-10 and AKL is UTC+12, for a total change of 22 hours. In reality, the body does not distinguish between days, but only hours. The actual change is -2 hours, corrected for one day. These types of circumstances should not be construed to be a change in theater, based upon the time zone definition.

Theater and Acclimated need to be changed to reflect that there are more than two “theaters” on the face of the earth, and due to political considerations, time and longitude are not necessarily congruent. A FCM is acclimated in one time/location until he positively acclimates to another.

**Acclimated Local Time.** This definition is needed to properly understand the definitions of “acclimated,” “theater,” “nighttime flight duty period,” “physiological night’s rest,” or any other concept where the locality of a flightcrew member’s acclimation is a question. The FAA uses 36 hours as a basis for acclimation, and that definition logically flows from the concept of “acclimated” to the local time where the acclimation occurs.

**Crew pairing.** This definition is needed to define the limits of a FDP extension due to deadhead transportation for purposes of returning a FCM to his or her crew base/domicile. Without this definition, a certificate holder could abuse the provisions to return a FCM to his or her domicile in order to schedule an FCM to an operational deadhead between flight duty periods, in violation of the FDP time constraints. This is further discussed in § 117.19.

**Deadhead transportation.** This definition needed to be modified to capture the concept that deadhead transportation cannot be a free ride for the certificate holder. Deadhead transportation taken at the behest of the certificate holder can be fatiguing, as the FCM is likely put in economy class, with all the disruptions associated with that mode of transport. Without limiting the amount of flight segments combined with deadhead transportation, a certificate holder could schedule a FCM to 6 flight segments, with 6 additional deadhead segments, for a total of 12 flight segments. Additionally, being scheduled to operate in the WOCL is fatiguing, by definition. The FCM would either be operating within the WOCL, subsequent to a deadhead segment, or be in a deadhead segment during the WOCL and then scheduled to perform a full FDP.

Limiting the certificate holder to three segments, plus a deadhead segment, all of which are outside the WOCL, is more than reasonable for most scheduling scenarios. If the certificate holder needs to operate more than three flight segments, additional personnel should be scheduled to complete the operation.

The regulatory imperative should be to limit fatiguing situations, not to reduce payroll via the FARs.

**Duty.** “Short-call” reserve was eliminated from inclusion in the concept of “duty” at industry request. The people who perform “short-call” reserve (ALPA, CAPA, FEDEX-ALPA, SWAPA, and APA) all asked that it be included as duty.

The argument the FAA adopted came from industry, under the reasoning that,

*...the only requirement or company task a pilot has on short call reserve is to be available to be contacted. Otherwise, the pilot is free to do what he or she wants and plans the day to take advantage of rest opportunities or any other activities as he or she desires, just as a lineholder would.<sup>4</sup>*

This is the reality of a pilot on “long-call” reserve, not “short-call” reserve, and as such, the definition should be changed to reflect that reality.

“Short-call” reserve has many encumbrances to the pilot being free to do whatever he or she wants and take advantages of rest opportunities as he or she desires. The pilot can be called at any time and put into a rest period, so as to obligate the pilot to be prepared for an assignment at odds with his or her most recent sleep opportunity. The pilot can be called away at a moment’s notice for a flight obligation lasting anywhere from a few hours to well over a week. Often times, “short-call” reserve obligates the pilot to be continuously awake during the WOCL, for days on end.

Just ask any of the thousands of mainline pilots, who have been consigned to “short-call” reserve for the past decade, what they think of reserve not being considered “duty.” Their answers will align with the priorities of the various pilot associations, and against those who write reserve availability schedules.

It is understandable that certificate holders wish to be able to assign “short-call” reserve with impunity and avoid the scheduling inflexibility associated with “long-call” reserve. It is unreasonable to pretend this flexibility isn’t coming at a cost to a flightcrew member. As such, all reserve, other than “long-call” reserve, has been added back into the definition of “duty” to reflect the realities associated with this kind of scheduling flexibility.

The phrase “on behalf of” is substituted for “as required by” in order to align it with the more appropriate use of the term in the definition of “flight duty period.”

**Fatigue.** The FAA’s definition of fatigue needs to be enhanced to capture a larger spectrum of fatigue inducing events and provide a solid foundation for a flightcrew member to stand upon in the event he or she sees fit to reject an assignment due to self-assessed fatigue. The definition is largely lifted from the Aeronautical Information Manual, Section 8.1-1. This definition is already in use by the FAA, and as such, should not cause any undue distress on any party, since this definition has been in place for years.

The absence of effective protection afforded a flightcrew member who self-assesses too fatigued to accept an assignment is problematic, and is a place where pilot pushing can be practiced by certificate holders looking more at their bottom line than at flight safety.

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<sup>4</sup> Final Rule, pg 48

There is more to fatigue than simply getting a legally proscribed sleep opportunity. Additionally, the entire fatigue abatement regulatory bulwark does not address the concept of chronic fatigue, whereby a FCM could still be fatigued, even after a rest period sufficient to clear acute fatigue has been completed.

By having a more comprehensive definition of fatigue, the entire air transportation infrastructure can benefit from having well-informed pilots and certificate holders on the subject of fatigue. If we continue with an incomplete definition, situations may arise where a certificate holder insists that a FCM is not fatigued because other fatiguing aspects of the FCM's recent activities are not captured by such a definition. This invites abuse, distrust, and needless use of grievance procedures, arbitrations, and courts.

The broader spectrum of the enhanced definition serves to underpin the “whistleblower” protections inserted throughout the regulatory text and elsewhere in the “Fair Treatment Of Experienced Pilots Act - Part 2.”<sup>5</sup>

**Fatigue risk management system (FRMS).** This definition was eliminated because it has no applicability to a concept that is removed from the regulatory text. FRMS is discussed further in this appendix.

**Flight duty period (FDP).** Deadhead transportation was added to the FDP because it cannot be counted as rest, nor a duty-free period. It goes directly to the operations of the certificate holder. There is no reason not to include deadhead transportation in a FDP, regardless of its proximity to flight segments. Transporting crewmembers for operations should be treated as an operational event, and covered by the concept of a flight duty period. It matters not if the deadhead transportation is stand-alone, prior, or subsequent to the flight segment.

We have considered that deadhead transportation for purposes of training, without an associated flight segment are administrative in nature, rather than operational, and have expanded the definition of FDP accordingly, so long as the certificate holder separates the two by a legal rest period per § 117.25.

To allow the certificate holders a free ride for stand-alone deadhead transportation, undertaken for operational concerns, invites abuse and is not keeping with the scheduling features of Section 4 of the “Fair Treatment of Experienced Pilots Act - Part 2.”

It was also necessary to emphasize that airport/standby/immediately assignable reserve is always part of a FDP, regardless of its outcome. Avoidance of confusion on this issue is essential, in order for pilots and certificate holders to work together under this concept.

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<sup>5</sup> [www.operationorange.org/FTFEPAfulltext.pdf](http://www.operationorange.org/FTFEPAfulltext.pdf)

The problem of returning a FCM to his home base/domicile or city of residence subsequent to a FDP needed to be clearly solved. It is unreasonable to think that a FCM cannot volunteer to extend his FDP, for the sole purpose of returning to a place of his or her choosing, without incurring unreasonable restraint upon the certificate holder. Forcing a pilot to stay in a hotel, for no other reason than to perform an unnecessary regulatory duty, when neither the certificate holder, FCM, nor the traveling public benefit from such an arrangement is unreasonable.

**Flight time.** This definition was needed for flight time limitations to have any meaning. The traditional definition was expanded to capture cognitively intensive responsibilities pilots have prior to aircraft movement, and to incorporate any means by which the aircraft is moved.

**Home base/domicile.** This definition is inaccurate because a FCM can begin a duty period at any airport in the world. Pilots normally begin “crew pairings” at the airport associated with their home base, or what is often called a “domicile.” Flight duty periods are components of a crew pairing.

**Lineholder.** This definition needs clarification to distinguish between assignments given within the context of reserve and those that are given through some other allocation process that normally affords the pilot the ability to properly plan for the schedule.

**Reserve duty.** This is the compliment to the definition of lineholder, as assignments to flight duty periods come with relatively short notice. The FAA constructed a framework for reserve availability to be categorized in one of three ways. The longer the lead time to report for a FDP, the more the FCM has ability to react and rest for the purposes of reporting fit for duty. This increased ability for the FCM to prepare allows the certificate holder to avoid having some of the fatiguing aspects of reserve duty count against the various regulatory limits designed to capture and limit fatigue in its flightcrew members.

Conversely, the more flexibility the certificate holder has in assigning reserve flying to a FCM, the less ability the FCM has to prepare and the more fatiguing that kind of reserve availability becomes, especially when taken in the aggregate of several days at a time. “Long-call” reserve presents the least fatiguing set of circumstances; “short-call” reserve presents an intermediate amount; and “airport standby” reserve is the most fatiguing. Long-call is likely used for assignments that are known a day in advance, but were not able to be assigned through the certificate holder’s methods for assigning flying to lineholders. Short-call likely represents flying that becomes known on relatively short notice, too short to be covered by “long-call,” and “airport standby” gives a certificate holder the ability to cover flying with little or no interruption to the schedule.

Since the FAA acknowledges that “airport standby” reserve requires a FCM to be at a place of the certificate holder’s choosing, there can be little doubt that this is the primary

driver for the definition of “airport standby” reserve. The FAA uses “the airport” as the place for reserve, but a certificate holder may choose to hold the pilot off-premises, and it would be unreasonable to assume that holding a FCM at a hotel, or “suitable accommodation” in close proximity to the airport would constitute “short-call” reserve. The industry was successful in pushing to have “short-call” reserve removed from the definition of “duty,” because the industry believes “short call” reserve allows the FCM to have wide latitude in ordering the affairs of his or her day.

The requirement for a pilot to report within a short period, even though the certificate holder does not dictate the location the FCM must wait for an assignment, may constitute “airport standby” reserve, rather than “short-call” reserve. If a certificate holder requires a 120 minute report time for LGA, JFK, and EWR, there is little doubt the pilot will not be able to remain within the bulk of the area for local pilot residences.

The better criterion for divining the difference between “airport standby” reserve and “short-call” reserve is the reasonable proscription on the location of the pilot during the reserve availability period.

“Reasonable proscription” would vary based upon location and circumstance. We used the criterion of the reasonable and customary local area for pilot residences, since this would be the natural location for pilots to remain, if they were allowed to choose. Time constraints (i.e. 2:00 hours from notification to report) may be insufficient to capture this concept, since two hours in New York City can be difficult with JFK, LGA, and EWR all eligible for reserve flying. A FCM may live in upper Westchester and be 2 hours from LGA, but 3 hours from EWR. At times, the traffic congestion leading to JFK can be 2 hours after entering Long Island.

Two hours may fully encompass local pilot residences for MSP, or DFW, but not for NYC, Los Angeles, Chicago, or San Francisco. What is reasonable for ONT may not be reasonable for LAX.

This is not to be construed to include distant residences, that can only reasonably be used via air transportation, as “local,” even if many pilots choose to live in a distant location. Pensacola and Jacksonville would not be considered “local” to ATL based pilots, but Naples may be local to MIA. This would have to depend on both the certificate holder and the pilot corps each attempting to be reasonable enough to fulfill their obligations to the other, in order to sustain the both intentions of “short-call” reserve (certificate holder’s schedule reliability and pilot’s ability to choose a reasonable location to await an assignment).

It is understood that “short-call” may not necessarily keep a certificate holder’s schedule fully intact, as there exists many scenarios where notification and response times may exceed the time necessary to prevent incurring a delay. The FAA outlined the concept of “airport standby” reserve to give certificate holders the ability to minimize delays caused

by crew staffing irregularities. This flexibility comes at a price for both the certificate holder and the pilot.

The definition is intentionally vague for purposes of encouraging both parties to make reasonable efforts to distinguish between “short call” and “airport standby” reserve. Were it not, the definition of the two would fill volumes in order to cover every airport, set of driving conditions, modes of transportation, times of day, density of pilot residences, etc.

In order to prevent confusion and subsequent grievance proceedings, the type of reserve availability the pilot is assigned to perform shall be determined prospectively, otherwise it shall be assumed the pilot is in “long-call” reserve availability.

**Rest facility.** Onboard rest facilities need to be able to provide the rest for which they are intended and for which operational flexibility is granted. The FAA’s definition of Category 1 and 2 rest facilities do not ensure that they are reasonably comfortable and suitably padded for rest. Economy class seating needs to be affirmatively removed from the possibilities of onboard rest facilities, lest certificate holders retain “sleep experts” that will find rest in the middle seat of economy class is just as restful as business class or first class, and stacked-deck arbitration proceedings affirming those findings.

**Suitable accommodation.** Under the FAA’s definition of suitable accommodation, a temperature-controlled, darkened warehouse with reasonably thick walls to provide a measure of sound mitigation, filled with 200 reclining chairs, fold-out sofas, or plywood and 2x4 tri-bunk beds constitutes a suitable accommodation. This may be suitable as a temporary Red Cross facility to house victims of a hurricane or other natural disaster, but it is hardly restful for the purposes of extending a FDP for pilots flying over the WOCL.

The necessity of single-occupancy should be self-evident, but the industry prevailed, and a rest facility that resembles more of a chicken-coup, or primitive battle field hospital is now permissible, under the guise of ameliorating fatigue. Strangely enough, the FAA stated in its discussion of “SPLIT SLEEP” that it is assumed:

*...split duty sleep does not involve sleep fragmentation, but rather a restriction on the total amount of sleep provided during the night. A flightcrew member engaging in split duty sleep will presumably not have his or her sleep cycle intermittently disrupted.<sup>6</sup>*

This would be welcome news to anyone having to share a small room, such as a “crash pad” or “crew room,” with a middle-aged, overweight captain whose snoring and restlessness can push a light sleeper to the brink of incivility.

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<sup>6</sup> Final Rule, pg 182

The definition has been amended accordingly. If pilots are to be asked to extend duty periods that span the entirety of the WOCL, all parties are to take the limited rest they are afforded in a more serious manner.

The certificate holders who choose not to provide a genuine accommodation for extending a FDP over the WOCL are welcome to staff their operation accordingly.

### **§ 117.5 Fitness for duty.**

It is already unlawful for a flightcrew member to operate an aircraft in a reckless and dangerous fashion, intoxicated, while under medical disqualification, etc. Paragraphs (a) - (c) likewise prevent a FCM from assuming a FDP while unfit for duty.

Why have paragraph (d), where the FCM has to affirmatively state he or she is fit to fly? Why this redundancy?

Is it because the crew of Continental Connection 3407 failed to certify they were not fatigued when they reported for duty? Was that the reason 50 people lost their lives that February night?

Colgan Air Flight Operations Policies and Procedures Manual required the captain to certify that he or she is “physically qualified for this flight.”<sup>7</sup> Certification did nothing to change the outcome of Continental Connection 3407, and it is unreasonable to believe it would change the outcome of any future potential mishap. No pilot is going to go through all the effort to get to an airport, pass through the TSA checks, preflight the aircraft, obtain the dispatch release, only to realize he is not fit for duty. If he were not fit for duty, he would have called in sick prior to reporting for his or her FDP, unless pressured by company policy and actions to fly impaired.

The reason the FAA is now mandating that a pilot “affirmatively state” he or she is fit for duty is so the airlines can “affirmatively state” in open court that any mishap relating to pilot pushing is the fault of the flightcrew member, and not their own procedures and scheduling practices.

This is designed primarily to get the pilot to absorb any fallout from waivers granted under FRMS, as it is inconceivable that the airlines or the FAA will admit to failures descending from waivers of their own regulations.

We are left to wonder why the FAA did not require that the various certificate holders

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<sup>7</sup> National Transportation Safety Board, Loss of Control on Approach, Colgan Air, Inc. Operating as Continental Connection Flight 3407, Bombardier DHC-8-400, N200WQ, Clarence Center, New York, February 12, 2009, pg 105

“affirmatively state” that their pilots are not under any pressure to accept flight duty periods they believe they are too fatigued, or otherwise impaired, to complete. Would it not be good for the traveling public to see that a certificate holder “affirmatively state” they hire the most qualified pilots in the industry and are not outsourcing flight safety for the purposes of saving a few dollars?

Colgan Air 3407 was caused by pilot incompetence, lack of training on aircraft safety systems (stick pusher), and pilot inexperience. All three of these factors were known in advance by Colgan Air, and the general problem with the entire “regional airline” model was known in advance to Continental Airlines and the government.

Why no “affirmative statements” regarding these issues?

The reason is that the FAA and industry have put in place a mechanism, called FRMS, which is designed to grant waivers to the FARs without having to go through the normal public commentary process, have margins of safety reduced to that of the lowest bidder, and remove the ability for pilots to resist the effort.

The industry and government will never admit to a failure descending directly from a waiver of their own regulatory structure or company policy, so they need a convenient scapegoat for future disasters of their own making. That is where the pilot comes into the mix.

After all, if a new entrant, non-union certificate holder using EU subsidized aircraft obtains an FRMS waiver to allow it to accomplish unaugmented dual transcontinental flight duty periods (JFK-LGB, LGB-JFK), and those pilots crash the aircraft on approach in the 16<sup>th</sup> hour of their FDP, the legal teams for the certificate holder and FAA are going to point to the dispatch release and “affirmatively state” the pilots were not fatigued. They will comb through the mishap pilots’ recent activities and discover that they very well may have been fatigued, and had falsified the dispatch release. This could be inferred from a commute from RDU, or a drive from Nashua, NH. If fatigue and perjury are not applicable, they will find some other reason it was anything other than being assigned a FDP with an “equivalent level of safety” of FDPs with today’s proscriptions.

Paragraph (d) is nothing more than a legal and political fig leaf for industry and government. It is a naked attempt to deflect blame onto the pilots, knowing that the mindset of a typical pilot renders him incapable of admitting weakness from routine activities.

In lieu of the above, we have added meaningful language to paragraph (d) to address the issue of pilot pushing. Since the preceding text of Section 117.5 deals with preventing pilots from being assigned and accepting duty periods for which they are physically unqualified to accept, there should be language to provide a solid foundation for rejection. Adding legal protection for pilots who decline an assignment due to fatigue logically

belongs in this section. This would prevent any harassment or discipline being leveled against the FCM for exercising humility and prudence for the benefit of the traveling public and integrity of the air transportation system. To entice certificate holders away from getting a free shot at the FCM, triple damages, along with customary recovery costs and legal fees are specified for any damage incurred by the FCM for declining an assignment due to self-assessed fatigue.

The government sees fit to assess a fine of \$27,500 for each person unduly delayed on an airport ramp. This concept should also be applied for incidents of certificate holders engaged in the illegal practice of pressuring pilots into taking assignments they believe they are not fit to take.

### **§ 117.7 Fatigue risk management system.**

This is the heart of the new regulations being promulgated by the government. The concept is relatively simple: airlines can petition for deviation from the FARs if they can demonstrate their practices deliver an “equivalent level of safety” dictated by the applicable FAR.

On the surface, this seems reasonable enough. After all, what is wrong with an “equivalent level of safety?”

In reality, this is nothing more than handing safety over to the lowest bidder. Airlines will never propose a waiver that costs them additional money. All waivers will be profit driven, and any waiver that is granted will become the new industry standard, as competitive pressures will force all other carriers to follow suit. If a new entrant, non-union carrier using subsidized aircraft is granted a series of waivers allowing it to perform unaugmented, dual-transcontinental flight duty periods, then established carriers using market-priced aircraft will be forced to coerce their pilots into performing the same flying, lest the flying be lost via “code share” or market pressures to the pilots flying with the waiver.

The pilots of other carriers will be forced to make the decision: fly fatigued or not fly at all.

This is pilot pushing taken to a new level. No longer will pilot pushing be limited to unscrupulous flight managers issuing threats over telephones, but now it will be done at the corporate level with executives hiding behind the invisible hand of the market.

How do these waivers for “equivalent levels of safety” get brought to market?

We have no definition of “equivalent level of safety.” This is purely a subjective term, as long as we are not tallying crashes. Air transportation is very safe, and as long as a carrier does not have a smoldering crater to sweep aside, it is a pretty safe bet that the FAA will

accept almost any study showing that the airline's proposed practice is just as safe as the present practice. If the FAA can be persuaded that cargo operations (the most fatiguing operations under part 121) do not necessitate enhanced fatigue abatement regulations, it isn't much of a stretch to understand that they can be persuaded to see just about anything the heavy hitters in the industry wish them to see.

With cargo carriers being exempt from part 117 regulations, but being allowed a FRMS, the cargo carriers will be able to avoid any enhanced fatigue abatement regulations, while petitioning to lessen any of the regulations they face without part 117. They will simply be able to choose the "best of both worlds."

The part 121 passenger carriers will be required to operate under part 117, but will be able to point to the less restrictive operations of the cargo carriers, and attempt to mirror their operations. Once a body of data is obtained showing that the non-117 operations are just as safe as the part 117 operations, it doesn't take a terribly prescient individual to understand that waivers from part 117 will be in process. The passenger carriers will also be able to choose the "best of both worlds," but they will be required one additional step to get there.

Since the entire concept of an "equivalent level of safety" is vague, the best thing to do is look elsewhere for examples of this concept in use. An example of part 121 certificate holders, or their trade associations, asking lawmakers for waivers descending from "an equivalent level of safety" would likely be the most beneficial.

When the subject of pilot experience was being debated, the industry hotly contested any requirement to establish 1500 hours as the minimum amount of flight time required for a pilot to operate part 121 aircraft. Instead, the industry lobbied fiercely for an equivalent level of education that can be substituted for the objective level of experience. Such educational equivalents, endorsements, and credentials from approved FAA flight schools were brought in to help an industry avoid one of the primary pitfalls of its own making - people lacking interest in pursuing aviation as a career field, due to abysmal compensation and working conditions.

Even worse, the industry played down the value of experience when compared to education. Roger Cohen, president of the Regional Airline Association actually has been quoted saying academic work is "far more useful in training pilots for modern airline operations" than hours spent "towing banners above the beach."

While we do not wish to use this space to debate the merits of increased experience for part 121 pilots, the benefits of such are obvious. Unlike the fatigue mitigation bulwark adopted by the FAA, increased pilot experience does actually address the core of what killed 50 people in Continental Connection 3407.

This is what an “equivalent level of safety” gets us. We are asked to believe that sitting in a classroom, or attending a favored flight school can represent an equivalent level of safety brought about by experience.

Is it because industry wishes to bestow upon the public a fresh crop of “equivalently experienced” pilots, who have the benefit of sitting through hours of videos and Power Point presentations on what other pilots have done, even if this is at an added expense to their own operation?

Doubtful.

No, the real reason is the industry sees that experienced pilots are going to be more difficult to recruit, and as such will have to raise compensation packages in order to attract those pilots. They don’t care about safety; they care about containing costs and limiting pilot authority.

Why would it be any different under FRMS?

The proposals from industry will be cost driven and only loosely attached to safety.

Today, it will be FDPs that are constructed SEA-SFO, SFO-IAD or ORD-JFK, JFK-LAX. Tomorrow’s FRMS will add an additional leg, since there will be no evidence that it is unsafe. Certificate holders will then fly the dual-transcontinental FDPs, with augmentation, and finally the FDP waiver will allow JFK-SFO, SFO-JFK. To be sure, rest periods will be enhanced to sweeten the package, and then once the waiver is in place, further work will ensue to reduce the rest periods. The augmentation will be on paper only, as the third pilot may never see the inside of the cockpit, and the carrier will use that to justify that only a minimum crew is necessary. Younger pilots at the controls will wear portable heart monitors, after the airline pre-screens the pilot’s health, to ensure the desired results are achieved.

Is this nothing more than unjustifiable, and irrational cynicism on the part of small-minded pilots? Are we to believe the government would not allow such an onerous and manifestly irresponsible practice, at the behest of profit? Should cooler heads prevail on this subject?

The FAA included in its own discussion, the opening that FRMS could allow 30 hour duty periods.

*The FAA notes that this rule technically allows an unaugmented flightcrew member to work on a 16-hour FDP if a 14-hour FDP is extended through the use of a 2-hour FDP extension. However, a 14-hour unaugmented FDP is only permitted during periods of peak circadian alertness, and the 2-hour FDP extension is subject to additional safeguards. A 30-hour FDP is never permitted,*

**although a carrier could potentially develop an FRMS that allowed a 30-hour FDP in augmented operations.**<sup>8</sup>

Words fail.

It isn't that we uncovered some secret, back-room plot between the FAA and various airline lobbying groups, or that we were passed classified memos about the future of FRMS. This is right out of the public release on the new fatigue abatement rules. It is right there for the entire world to see, and the pilot associations are asleep at the switch, as they have been for the past 30 years.

If there was ever doubt that the airlines run the FAA, this should serve to remove that doubt. The danger of FRMS is obvious and the only possible justification for allowing such a program is to drive cost containment.

What next? Will the part 121 heavy cargo carriers present an FRMS that justifies removing one of the pilots, reducing cargo-only operations to single pilot? What will be the justification? Part 121 cargo carriers already pay 30% more for pilot labor than their passenger carrying counterparts, and with fewer and fewer quality pilots choosing to pursue part 121 flying as a career path, it will certainly be easy to take their profits and buy an FRMS exemption - just as they did from the rest of part 117.

Is the public served, having fully-loaded aircraft, operated by a bleary eyed, single pilot, whose last meaningful rest was sleeping on a cot among 100 other pilots for 3 hours? What happens if that aircraft crashed into a crowded school, or the morning rush hour traffic? Does anyone think that if cargo operators can reduce their pilot crews to one that the passenger airlines are going to keep two? After all, it might knock \$10 off the ticket price... Doubtful as this may seem, European discount airlines are already preparing for this scenario. FRMS is how it will be sold to Americans, and is how it will be rammed past resistance put up by the pilots.

Another situation that serves to highlight the shortcomings in the relationship the FAA has with the part 121 certificate holders, and the so-called "dual mandate" of the FAA, is the way the FAA turns a blind eye to the intentional fraud committed in order to flout existing regulations.

*...the FAA notes that air carriers **currently** utilize schedules that are **unrealistically optimistic** and do not include sufficient buffers for unforeseen circumstances. It **has been the FAA's experience** that an air carrier subject to an 8-hour scheduled flight-time limit will sometimes schedule a flight that, **on paper**, lasts 7 hours and 59 minutes when **the air carrier knows that the actual flight***

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<sup>8</sup> Final Rule, footnote 14, pg 33 (emphasis added)

***will likely take well over 8 hours to complete.** Because many current air carrier schedules are **unreasonably optimistic**, air carriers can prevent many of the pre-takeoff situations listed in their comments simply by incorporating reasonable buffers for unforeseen circumstances into their scheduling practices.<sup>9</sup>*

If the FAA knows the various air carriers are engaged in a profit-driven **intentional fraud** to skirt the regulatory restraints it imposes, why has it continued to countenance such a practice? Why has enforcement action not been taken in order to correct the practice? Is this supposed to change with the new regulations, or will it all be swept away under FRMS?

Since other nations allow pilots to sleep at the controls, as long as the other pilot is cognizant of the situation, that will certainly be one of the first milestones achieved with FRMS. What was constrained by 8 hours of hard time, is now 9, under part 117, and for those city pairs that are 9:15 or 9:30 apart, why not allow the pilots to each sleep 45 minutes to get their “flight time” under 9 hours? After all, isn’t a pilot sleeping 45 minutes and “flying” 8:30 an equivalent level of fatigue risk as a pilot flying 8:55 with no sleep?

The only thing separating us from that reality is the study by some well-paid “expert” showing that it is “equivalently safe” to 9 hours of flight time, or “micro-augmentation,” or that Air Canada hasn’t crashed as a result.

Skeptical? Here is a passage on the issue from the discussion on pilot flight duty limitations:

*Boeing also endorsed the concept of controlled napping. AMA stated that **controlled in-cockpit naps should be “vigorously encouraged,”** but should not be allowed to increase the maximum FDP. In response, the FAA notes that **there is currently insufficient data about whether a controlled nap could safely be taken by a flightcrew member during an actual unaugmented flight.** As such, the FAA is not prepared to regulate for controlled napping as a mitigation measure **at this time.** Once **more data** becomes available, the **FAA may conduct a rulemaking to add controlled napping to the flight, duty, and rest regulations.**<sup>10</sup>*

This is what FRMS will allow. FRMS is “data driven” and will be used to justify cutting margins of safety. Ask yourself, if a FCM is required to certify they are not fatigued for purposes of accepting a FDP, how are they supposed to nap in flight? Is this out of necessity, or will the nap be proscribed? Either way, the pilot is expected to bridge the gap. Any fallout from regulatory shortcomings, or dangerous incidents resulting from

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<sup>9</sup> Final Rule, pp 142-143 (emphasis added)

<sup>10</sup> Final Rule, pg 132 (emphasis added)

such double standards will be borne exclusively by the pilot who “affirmatively stated” he was fit for duty.

If American Airlines can extend its unaugmented reach to 9:30 using FRMS, won't Delta Air Lines and United Airlines immediately petition to do the same?

We all know that political reality has not changed in millennia. Politicians can be purchased and bureaucrats can be pressured. It doesn't matter the era nor setting - Athens, Rome, London, Paris, Moscow, and Washington. How much can FRMS bring on the open market? Can waivers be purchased, just as route authority can? Can the ATA stand-up a carrier for the sole purpose of driving FRMS, and sell that authority to member airlines? If a concept is just not aligning with physiological reality, can it be brought into favor via purchased legislative horsepower?

In the event those efforts fail and a stubborn FAA Administrator is in place, the certificate holders will just resort to the playbook they use when pilot associations elect strident leadership - wait them out and deal with the more “reasonable” successor.

The stated purpose of the FRMS concept is to grant waivers from the regulations, if the carrier finds them to be “not optimal.”

*...the option of an FRMS provides flexibility for certificate holders to conduct operations using a process that has been approved by the FAA based upon an equivalent level of safety for monitoring and mitigating fatigue for certain identified operations. A certificate holder may decide to use FRMS as a supplement to the requirements adopted in the rule, or **it may use the FRMS to meet certain elements of this rule for which the adopted regulatory standard is not optimal.***

*The FAA has decided to adopt subsections (a) and (b) of the regulatory text as proposed. Subsection (a) provides for a certificate holder to use an approved FRMS **as an alternative means of compliance with the flight duty regulations** provided that the FRMS provides at least an equivalent level of protection against fatigue-related accidents or incidents.<sup>11</sup>*

The level of irresponsibility in this concept is difficult to grasp, even for those of us with a lifetime of dealing with unscrupulous airline executives. This concept is trying to drive down the cost of safety to enhance airline operations and bottom-line concerns - both of which are at odds with a healthy “safety culture.” The fact this is codified is truly chilling.

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<sup>11</sup> Final Rule, pp 103-104 (emphasis added)

Keep in mind that this is what came out of the process. The opening position of industry must have been unfathomably pathological.

This could be tamed by allowing all parties veto power over the FRMS waiver. While not ideal, this arrangement could serve as a sanity check on FRMS, but industry would not have it that way.

*The FAA does not agree with the Flight Time ARC on imposing a requirement that the FRMS must be terminated or suspended if pilot representatives disagree with the program's purpose. This issue is beyond the scope of the NPRM and pilot representatives independently may raise their issues with the certificate holder.<sup>12</sup>*

This does not reflect the reality of modern airline labor relations.

Not all pilots are represented by collective bargaining agents, and as such, those who lack such protections are told what they must do or they are terminated without recourse. Those pilots who refuse an FRMS under the protection of their respective pilot associations will simply be given the ultimatum to either fly under the FRMS or the flying will be outsourced to those pilots who will. Fly fatigued or not at all will be the option.

Even if this were not the case, modern interpretation of the Railway Labor Act, and abuses of the various bankruptcy laws, prevent airline management from having to deal with pilots seeking improvement in their working conditions. Arbitrations are pre-stacked, and bad-faith bargaining by management is supported in the modern practice of labor law under the RLA.

The collective bargaining process is broken, and that process is about much more than pay rates. This is why OPERATION ORANGE was developed.

The entire FRMS concept is the single greatest threat to the pilot profession since the development of the outsourcing operations used by mainline carriers. We were all sold on the idea that those outsourcing operations were designed to develop markets for the mainline and to bring customers to the hubs where the “real flying” takes place. Decades later, we see that the “feeder” operation has supplanted, not enhanced, the mainline. This was done in a reckless fashion by using inexperienced pilots, and under-regulated, shoddy airlines. The serial gullibility of the various pilot associations enabled this.

Fool us once...

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<sup>12</sup> Final Rule, pg 107

FRMS is a concept that needs to be strangled in its cradle. It is not a benign, flexible system designed to ensure safety. It is a vicious system designed to drive profits at the expense of safety, and pilots of all stripes should act accordingly. We are the last line of defense before a disaster, and the defense starts here.

### **§ 117.11 Flight time limitation.**

The FAA introduces several changes to the existing regulations governing the amount of flight time a FCM can accumulate in a given period. These changes include increasing the amount of flight time a FCM can accumulate during a FDP by one hour, in both augmented and unaugmented operations. This is supposedly ameliorated by limiting the length of the FDP, which is another concept introduced in part 117. The FAA also eliminated weekly flight time limitations and requires certificate holders to self-report if their operations exceeded any of the new limits.

Like much of the final rule, there are some good ideas sprinkled in with some bad ideas. Such is how sausage is made in Washington. The emphasis should not be on how to “craft a deal,” but to enhance safety in a reasonable fashion.

The first issue is the entire concept of increasing “time on task” in the interests of reducing fatigue. If the concept seems to be nonsensical, it is because the concept is nonsensical. The FAA has issued “Table A,” which defines the amount of “flight time” (thus the definition in section 117.3) a FCM may accumulate during any given FDP. This is driven by the time of day the FDP starts, where daytime FDPs are allotted an additional hour over FDPs that have a likelihood of flying into or over the WOCL.

Unfortunately, one of the larger pilot associations used 9 hours as its “opener” when discussing increasing flight times. The industry had the presence of mind to open with “unlimited.” The NPRM proposed 10 hours for daytime FDPs and 9 hours for nighttime FDPs. The existing regulations limit all FDPs to 8 hours of flight time.

Since 10 hours was obviously unreasonable, the FAA did go with 9 hours for daytime FDPs and 8 for nighttime.

In the FAA’s defense, it did seek to capture the fatiguing aspects of such an expansion by limiting the length of unaugmented FDPs, although as we shall see, this needs modification to achieve the stated goals.

The comments in the discussion text of the final rule follow a predictable pattern, and rather than exhaustively refute or support every comment, let it suffice to say that industry commentators believed the idea of shortened duty periods for flying over the WOCL were “not based in science,” while pilot advocates asserted that the concept was well founded. The ATA managed to find two doctors willing to contradict almost every long-held, established precept of human performance and circadian rhythms. Their comments, when

divorced from the seriousness of the subject matter, are quite entertaining and help to answer lingering questions on where the tobacco industry goes to find doctors that will state cigarette smoking isn't linked to adverse health concerns. Thankfully, the FAA dismissed many of the findings of the ATA's sleep specialists.

Some of the findings in the discussion text of the final rule that are important to this discussion are:

*In creating a maximum FDP limit, the FAA attempted to address three concerns: (1) flightcrew members' circadian rhythms, (2) the amount of time spent at work, and (3) the number of flight segments that a flightcrew member is scheduled to fly during his or her FDP.<sup>13</sup>*

*First, flightcrew members' circadian rhythms needed to be addressed because **studies have shown that flightcrew members who fly during their window of circadian low experience severe performance degradation.** Second, the amount of time spent at work needed to be taken into consideration because **longer shifts increase fatigue.** Third, the number of flight segments in a duty period needed to be taken into account because flying more segments requires more takeoffs and landings, which are both the most task-intensive and the most safety-critical stages of flight. These takeoffs and landings require more time on task, and as pilots generally appear to agree, "flying several legs during a single duty period could be more fatiguing."<sup>14</sup>*

*...the FAA finds that, as NIOSH correctly pointed out, studies have shown **that human performance varies significantly depending on the time of day.** Thus, for example, a NASA report on fatigue in flight operations found that "75% of night workers experience sleepiness on every shift, and 20% report falling asleep." To account for these time-of-day-based variations of human performance, Table B sets FDP limits that are higher for FDPs taking place during peak circadian times and lower for FDPs taking place during the WOCL.*

*Studies have also shown that **after a person works for approximately eight or nine hours, the risk of an accident increases exponentially for each additional hour worked.** According to a series of studies that examined the national rate of accidents as a function of the amount of hours worked, **the risk of an accident in the 12th hour of a work shift is "more than double" the risk of an accident in the 8th hour of a work shift.** To account for this data, the flight time limits in Table A restrict a flightcrew member's time on task to either 8 or 9 hours. Because Table A does not allow a flightcrew member's time on task to exceed 9 hours, the maximum FDP limits in Table B permit an FDP that is up to 14 hours,*

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<sup>13</sup> Final Rule, pg 110

<sup>14</sup> Final Rule, pg 111 (emphasis added)

*depending on the time of day.*<sup>15</sup>

While many areas of the final rule come under harsh critique, one should not infer that the entirety is without merit. The FAA's concept has many sound facets and the idea of limiting duty, based upon workload and time of day, is certainly among them. This is a regulatory imperative that is long overdue. That being said, the limits on FDPs need further analysis and amendment.

For example, Table B, is constructed to have almost any FDP that originates in the early afternoon operate into the WOCL. This is a function of both the FDP limits in Table B, and the flight time limits in Table A.

If the higher flight time limitations in Table A are restricted to fewer hours, and various FDP limits are reduced in the higher flight segment blocks that are designed to operate within the WOCL, the new Table B looks different. Under our amendments to Tables A and B, WOCL flying is reduced significantly, and is largely restricted to FDPs that originate exclusively for WOCL flying. Please refer to the expanded Table B depictions at the end of Appendix B.

To prevent long periods of "time on task" from combining with the cognitively depressed region of the WOCL, the higher flight time limits associated with daytime FDPs need to be reduced for any FDP operating within the limits of the WOCL. There simply is not a valid reason to extend "time on task" for a daytime FDP when that FDP operates within the WOCL. This is true for any FDP that is governed by the unaugmented limits found in Table B, regardless of the amount of pilots on board the aircraft.

The ability to find consensus for the endorsement of the FAA's new "9 hour rule" was not easy. Our committee was split between an 8 and 7 hour limitation and the 9 and 8 hour limitation. Indeed, arguing for higher limits in a proposal that is not squeamish about amending the regulatory text, while at the same time advocating higher levels of safety was difficult to square with the obvious. We found common ground in the fact that current regulations are "scheduled," whereas the proposed regulations are "actual."

The practice of carriers scheduling 7:59 for flights they absolutely know will be in excess of 8:00 is quite common. Under the current regulations, 7:59 of scheduled time can be 8:24 of actual time, and the FAA is correct in saying that "actual" time is what is fatiguing, not scheduled time. The realities of current regulations and the intentional scheduling fraud countenanced by the FAA do not have a realistic "hard" limit on daily flight time. We already operate in a world where all FDPs are capable of flight times in excess of 8 hours, provided the airlines are not called to account for their unrealistic scheduling practices.

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<sup>15</sup> Final Rule, pp 115-116 (emphasis added)

Moreover, it can be truthfully said that the nighttime FDPs will actually need to be reduced under the new regulations, since “8 hours” is now a hard limit, rather than a scheduling target. This still leaves the concern about how 9 hours will result in FDPs with more flight time than the current practice - fraudulent or not.

Rather than push forward without consensus, it was shown that in other areas of the “Fair Treatment Of Experienced Pilots Act - Part 2” the concept of structuring the fatigue regulations in such a manner that financial restraints will be hit long before hard operational restraints will be hit is a primary theme. Marrying compensation and fatigue abatement serves to write fatigue abatement in a language where airline managers have great fluency - money. In the “Pay and Scheduling” section of the proposed legislative draft, airlines will be required to pay “premium” pay to pilots that fly combinations of high numbers of duty periods and flight hours. This premium pay serves as a financial restraint against pushing pilots into fatiguing situations, since fresh pilots are cheaper to fly than pilots with high levels of FDPs and flight time.

If we continue with this concept with respect to, not only monthly flight time and duty time, but also weekly, and daily flight time, the ability to effectively entice certificate holders to shy away from scheduling up to the regulatory limitations is met. This also serves to solve the problem the FAA has openly admitted it has purposefully failed to address, since operating in vicinity of hard limitations will now carry an immediate financial penalty.

The solution is simple: any time a FCM operates an unaugmented FDP in excess of 8.000 hours, the certificate holder will pay the pilot an additional hour of premium pay, regardless of how long over 8.000 hours the FCM accrued flight time. 7:58 hours of block time will cost the certificate holder 7:58 minutes of pilot compensation. 8:01 will cost the certificate holder 9:01. 8:59 will cost the certificate holder 9:59.

Since the various airlines are willing to commit intentional fraud, for the purposes of reducing payroll, we believe this is an effective way to create soft limits they will respect.

### **§ 117.15 Flight duty period: Split duty.**

The objections we have with the FAA regulations on split duty descend from the intentional safety reducing aspects of the entire concept of split duty, when compared to installing a fresh crew. We understand and acknowledge that increasing manpower to accommodate an overnight split duty period is undesirable for the industry.

The inconvenient fact remains that these split duty periods are used almost exclusively by cargo carriers, and that its sorting activities occur at places co-located with pilot domiciles. It is unrealistic to believe cargo sorting takes place in random places, and that pilots cannot be scheduled to originate duty periods to carry out the “second half” of the

schedule. If the second part of the split period is short enough, the crew that performed the first part is capable of continuing. If the second half is too lengthy for the original crew, prudence dictates that a fresh crew is, by far, the safer option.

Safety costs money. It always has, and always will.

The pattern of the discussion in this section is consistent with the patterns in other discussion areas: industry objects to safety regulations and questions the science behind them, whereas operators request a greater margin of safety.

In this section, ALPA-FEDEX stated that a minimum of 4 hours is necessary until the science behind “split sleep” (naps) is more settled<sup>16</sup>. This should carry much weight, since these are the human beings that will be asked to extend their over-WOCL duty periods in accordance with industry wishes. FAA bureaucrats, airline accountants, gun-for-hire “sleep experts,” and industry lobbyists will not be operating hundreds of millions of dollars of high performance capital equipment in and out of foggy destinations on 2 hours of sleep. These people will be sitting in judgment and running damage control when an MD-11 lands long and leads the news cycle for the next 36 hours.

The so-called “experts” are people who have read various studies and conducted experiments with human lab rats. The genuine experts are the professional pilots that do this every week, for years on end, and who know their limitations. These are the people that will die if the science behind reduced split sleep is faulty or outcome-based.

There is no reasonable scenario where passenger operations necessitate WOCL napping to continue a FDP. Passengers do not shuttle to and from airports during their WOCL, so the loading and sorting parallels do not exist with the cargo carriers. At least there is a rational excuse to consider cargo-based split duty, whereas no excuse exists for passenger operations.

The FAA wisely constrained split duty to over-WOCL operations, since it would be a naked productivity grab if such an arrangement were to exist during daytime operations. While we do advocate “one level of safety” among cargo, mainline passenger, and outsourced passenger operations, we understand this provision has special applicability with cargo operations, and can countenance a separate standard. That being said, such split duty provisions should err on the side of prudence, and specifically eliminate its applicability to scheduled passenger operations.

The text has been amended accordingly to reflect the non-applicability to passenger operations.

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<sup>16</sup> Final Rule, pg 179

**§ 117.17 Flight duty period: Augmented flightcrew.**

Much was made of the distinction between the pilots occupying control seats during the landing. Through reasoning which is not quite clear, especially in light of the realities of a fully integrated crew concept, we are left to wonder why the “non-flying” pilot is not required to have the same rest as the “flying” pilot.

The modern part 121 crew concept does not distinguish between individual effort and that of the team. Both pilots are responsible to each other for the safe handling of the aircraft.

The non-flying pilot is just as valuable and the duties assigned to him are just as prone to cognitive erosion, if not more so, as those assigned to the flying pilot. This is especially true if the non-flying pilot is the captain. It is important for the non-flying pilot to provide a full backup to the flying pilot and stand ready to take control of the aircraft, in the event the flying pilot becomes disoriented or fixated. The only way the non-flying pilot can see the potential hazards coming in a timely fashion is to be as refreshed as the other pilot.

The provision to reduce the amount of rest required for the non-flying pilot, especially in the context of a FRMS, is borne of bean counters, not safety experts.

Those who crafted this provision failed to ask themselves what would happen if the crew planned for Pilot A to be the “flying pilot” and Pilot B to be the “non-flying” pilot, and for reasons that did not present themselves until the approach phase of the flight, Pilot B needed to assume the “flying” duties. If the rest provisions were inadequate to make the switch, the PIC is now in a position of being forced to declare an emergency, in order to deviate from the applicable FARs.

Is this the intent?

Both pilots occupying a control seat during landing need the same rest, just as they need the same qualifications. The text has been amended accordingly.

**Adding Augmentation For Problematic Rest Periods.**

Lengthy longitudinal transits over the WOCL, combined with the scheduling conveniences of part 121 operations often yield an undesirable rest period, where the FCM is asked to rest twice in a period unsuitable for dual rest. If the rest period was shortened, the FCM could both recover and prepare simultaneously; lengthier rest periods afford a period for recovery and a period for preparation. This was pointed out by OPERATION ORANGE in our “Fatigue Mitigation Response,” published on OPERATIONORANGE.org in October of 2010. The relevant discussion follows.

*The General Discussion [NPRM] tangentially mentions the problem with long duty periods broken by a layover that is not long enough to fully recover and prepare for the next duty period. At issue is when pilots are required to fly into their WOCL and sufficient restorative or preparatory sleep is not available. This is seen during flights commonly known as “redeyes,” or flights that typically move Eastbound late at night to arrive at their destination in the early to mid morning. This problem is compounded by operational requirements necessitating a layover of approximately 24-28 hours.*

*A typical example would be a flight leaving a mid-continental hub with Hawaii as a destination. These operations are sensitive to passenger travel preferences with the Westbound leg originating mid-morning and arriving in Hawaii in early afternoon. This allows passengers opportunities to arrive at their resort destination during reasonable hours. The return leg is dictated by the same features, as passengers need time to depart their destinations during normal hours to arrive for their mainland flight. These flights typically leave in the late afternoon/early evening and arrive at the mid-continental hub in the early morning.*

*The aircraft arriving in Hawaii in the early afternoon will be serviced for the next few hours and prepared for the return leg. The pilots who arrived in mid afternoon will typically retire in the early evening, sleep a full night, and then rise in the early morning, which is mid/late morning on their normal circadian clock. Those crews now have approximately ten hours before they report for a full night’s duty back to the Central Time Zone, which depending on the time of year is either a 4 or 5 hour differential. The leg requires a duty period anywhere from 9 to 11 hours and will fly over the entirety of the WOCL.*

*The crew is conducting the terminal phase of flight after being awake for 21 hours and having worked through the entire WOCL, which is the exact scenario we are told is highly fatiguing.*

*The crew could ameliorate the fatigue by taking a mid-afternoon nap and then recovering from the trip while at home, but that nap falls short of the standard for pre-duty rest for crew pairings assigned by the certificate holder. In fact, any similar operation, especially one that has a large longitudinal transit, will encounter similar problems. Pilots can easily recover and prepare for long duty periods if the scheduled rest period is between 11 and 18 hours, as recovery and preparation are done simultaneously. Additionally, pilots can recover and prepare if the rest period is generally over 33 hours, as they can have two full nights of sleep.*

*Operational realities of passenger air transportation normally assign 24 to 28 hours of rest, due to aforementioned scheduling priorities, which allow pilots to*

*either fully recover, or fully prepare, but not both. As mentioned earlier, augmentation is used to bridge the resting requirements of human physiology with the operational realities of passenger air transportation, and this is a place where more pilot augmentation is necessary.*

*We petition that any two consecutive flight duty periods in the same crew pairing, which are greater than 6 hours each, with an intervening rest period less than 33 hours but greater than 18 hours, and which either flight duty period penetrates the WOCL (0100-0559) by more than 90 minutes, or any penetration for duty periods in excess of 8 hours, have augmentation in the manner currently practiced for duty periods with 8 to 12 hours of “hard time” for the flight duty period which operates within the WOCL.*

*This allows for pilots to recover and prepare for longer duty periods, reduce the incidents of chronic fatigue, and have an extra pilot in the cockpit for the critical phases of flight. It would exempt the vast majority of domestic duty periods because the WOCL is rarely penetrated and most domestic operations are sufficiently flexible to avoid 18-33 hour layovers.<sup>17</sup>*

We have added text covering this scenario, as it has been missed by pilot associations, regulators, legislators, and management.

The subject of augmentation is well discussed in the final rule, but industry continues on its reckless campaign to codify productivity grabs and completely disregard safety. As we have said before, augmentation should be for the sole purpose of bridging the incongruencies between human sleep physiology and global airline operations. It should never be allowed for purposes of cramming two flight duty periods into one, or lengthening flight duty periods when other crewmembers are available for relief.

The industry has proposed, and the FAA has allowed, certificate holders to schedule augmented flight duty periods for domestic operations. The reasoning is that flying across a political border does not induce fatigue, so why not allow augmented FDPs whenever scheduling considerations warrant?

Pilot associations rightly oppose such a preposterous arrangement, as does Captain Sullenberger. For domestic operations, the availability of replacement crews, along with the flexibility of the operation, do not justify an arrangement whose purpose is to bridge the fatiguing nature of long-haul flying with the physiological limitations of human operators. Domestic augmentation is nothing more than poor operational risk management, and the precipice of the slippery-slope of FRMS to eventually gain

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<sup>17</sup> OPERATION ORANGE, *Fatigue Mitigation Response*, [www.operationorange.org/fatigueresponse.pdf](http://www.operationorange.org/fatigueresponse.pdf), pp 14-15

presently unthinkable limitations on flight/duty time.

We see this for what it is.

If management is so concerned about augmenting domestic flying, they are welcome to do so, as it would be unreasonable to tell them they are not allowed to augment a flight of their choosing. However, they should not be allowed to avail themselves to the FDP and flight time extensions allowed by such an arrangement, since the purpose is to extend flight duty periods when fresh crews are reasonably available.

The FAA is correct that ATL-MEX is a shorter length than PDX-MIA. MIA-GCM, LGA-YYZ, and JFK-STT are all relatively short flights, for which augmentation is not necessary. Augmentation for LAX-BOS is only needed if the airline wishes to operate a return segment, collect FRMS data, and eventually operate BOS-LAX, LAX-BOS as a single, unaugmented FDP.

Accordingly, the text has been appended to reflect this reality. To use Table C, and flight times in excess of unaugmented limits in Table A, the FDP shall not both originate and terminate within Canada, the continental/contiguous United States, Mexico, Bermuda, Bahamas, or the various Caribbean islands.

#### **§ 117.19 Flight duty period extensions.**

Unforeseen circumstances are quite common when operating scheduled flight operations, and reasonable allowances should be made for a certificate holder to recover the schedule. Pilots also wish to stay on schedule, as predictability is a rare luxury in their line of work.

Once again, we need to distinguish between augmented and non-augmented operations, and whether or not the FDP extensions will increase time spent operating within the WOCL.

The decision to change the frequency of FDP extensions from once per rolling 168 hour period to once between 30 hour rest periods is a system that will invite abuse from an industry with a rich history of such abuses. By governing such extensions by 168 hours, both the 30 hour rest period is met, along with a defined time to entice certificate holders away from scheduling practices reasonably shown to invite extensions. If a 30 hour break is all that is needed prior to another aggressive scheduling event, the certificate holder will be able to schedule up to three per week, just as SkyWest (a high frequency, regional airline) requested.

The requirement for justification of the FDP extension is not sufficient to incentivize a certificate holder away from such practices. It will just generate more paperwork for low-level schedulers and FAA inspectors. Unless a viable and reliable sanction comes with being a “frequent flyer” of FDP extensions, this is nothing more than an administrative

burden that will be borne over the cost savings of aggressive scheduling. If the FAA did not police the intentional fraud of carriers scheduling 7:59, knowing they would be well in excess of such limits, it is not a persuasive argument that the FAA will reliably enforce an unspecified corrective action called for within this section.

Prohibition of unaugmented FDP extensions into the WOCL, or on high-cycle FDPs serves to keep the duty time limitations in Table B within the original fatigue abatement mandate. By allowing two additional hours, FDPs originating in the early/mid afternoon, which presently are unable to reach within the WOCL, will find that their most cognitively intensive segment occurs during the period of maximum performance degradation. Rather than making Table B overly complex to reflect a two hour variable, it is administratively less complex to simply prohibit extensions into the WOCL.

Flight duty period limitations and extensions may result in unintended consequences of requiring FCMs to remain at hotels when there is no further work to be done. This would cost the FCM time and the certificate holder the expense of lodging and transporting the FCM.

It is possible that a crew pairing is constructed in a manner where the last flight segment is either scheduled deadhead transportation taken as “stand-alone” deadhead transportation in its own FDP, or the last flight segment that was cancelled for operational or marketing concerns. It would be pointless to keep a FCM in a hotel room for no other reason than to satisfy fatigue regulations that offer no further benefit to the public, FCM, or the air transportation system.

To provide for an extension of a FDP, for the sole purpose of returning a FCM to his or her home base/domicile, or airport associated with his or her residence, specific text in the regulations is warranted.

It is important to note that the text is constructed to prevent returning the FCM for purposes of starting a new crew pairing, FDP, or ground-based training/administrative activities earlier than would be permissible without the extension. The extension is also done at FCM request, and cannot be forced upon the FCM. This also prevents a certificate holder from attempting to schedule the extension as part of their regular operations.

Additionally, no FCM should be subject to coercion of any form for not accepting a FDP extension. The SIC is just as prone to fatigue and just as responsible to report well rested and fit to complete the FDP. An extension may not be acceptable for reasons that have not weighed upon the PIC.

As before, language has been inserted to protect the FCM, in the event he or she refuses an extension of the FDP.

**§ 117.21 Reserve status.**

Reserve categorized as “airport standby/immediately assignable” reserve is the most restrictive form of reserve for the FCM, and the most fatiguing, since the FCM has the least amount of control over his surroundings and events. Once a certificate holder assigns such duty, it can only be stopped in the same manner any other FDP is stopped - by releasing the FCM into a legal rest period.

The existing text is unclear on this point, as a certificate holder could release the FCM into another form of reserve, and then reduce its exposure to “flight duty” into some other form of “duty” or even the specific lack of “duty” of “long-call/assignable” reserve. This is a wrinkle in the text that needs to be ironed out.

The proposed text also clearly defines “short call” reserve as duty, because that is the most descriptive term for how the FCM is responsible to the certificate holder. If the certificate holder were to contact the FCM in “short call” reserve, and the FCM responded to the call by reporting he is unable, due to being preoccupied with a child’s sporting event, desire to attend a Christmas party, intoxicated, etc., the certificate holder would rightly bring about disciplinary action to remedy the condition. The condition was failing in his duty to being prepared to accept an assignment in accordance with the applicable collective bargaining agreement.

The various types of duty specific to the differing categories of reserve needed to be clearly delineated, lest a flurry of arbitrations attempt to clarify the definitions.

The FAA dismissed the concern over the shifting of reserve availability periods, since it provides for rest per section 117.25(e). This is unpersuasive argument for not limiting shifting of reserve.

“Short-call” is done within the context of a defined availability period, and as any pilot familiar with this form of reserve knows, the most likely scenario for utilization occurs in the early hours of the availability period. Once the initial few hours pass, the FCM becomes increasingly less useful to the certificate holder, since any assignment will need to be shorter and shorter to confine itself to the restraints of the availability period. This is why certificate holders schedule many layers of availability periods and assign them to different FCMs, ensuring that there is always someone available for lengthier duty periods.

By allowing a certificate holder to “reset” a reserve FCM every 10 hours, they could reduce staffing by having a FCM start an availability period, and when the initial hours have past without an assignment, release the FCM into a rest period, and reassign him an availability period later in the same day. This can go on indefinitely, and would greatly reduce the amount of “duty” the FCM accrues.

Example: FCM is assigned a RAP with a beginning of 0400 and a termination at 1759. FCM retires at 2030 and falls asleep around 2115. At 0600, the FCM wakes when the certificate holder contacts the FCM and releases him to a rest period per 117.25(e), and a new RAP at 1600. This is done for the purpose of keeping the FCM asset viable for another duty period, since the early morning bank of departures were adequately staffed, but uncertainty still remains for the later evening departures.

The FCM now is required to rest for 10 hours, of which the entire period is *available* for a sleep *opportunity*. Due to physiological constraints, the FCM is unable to sleep, as he just finished sleeping for almost 9 hours.

The certificate holder notifies the FCM at 1915 that he is required to report for an unaugmented, 2 segment FDP beginning at 2150 and scheduled to terminate at 0825. The FCM must now, according to § 117.5(b), decline the FDP, and explain to the certificate holder why, after 20 hours of rest in the past 22, he is fatigued.

The airline notes this incident marks the third time in the calendar year this particular FCM has reported fatigued, and initiates disciplinary proceedings. The certificate holder maintains that other FCMs are similarly scheduled, have not reported fatigued, and that company wide fatigue calls are down significantly since a new fatigue abuse tracking system was installed.

Had the certificate holder been restricted from scheduling another RAP until 2400, and had notified the FCM by 1400, the FCM would have had a reasonable, but less than ideal chance to achieve some meaningful rest prior to the start of the next RAP.

Certificate holders have a powerful incentive to shift RAPs in a manner not conducive to rest, and must be prevented by regulation from doing so. By limiting the start of subsequent RAPs to 20 hours after the beginning of the previous RAP, there can be some semblance of an alignment between the operational tempo of the certificate holder and human physiology.

For the same reasons listed in the above scenario, a FCM on “long call” reserve needs to be afforded protections against report times which are not aligned with his or her sleep period. “Long call” reserve does not count against the FCM’s “duty” limitations, since it affords the FCM the greatest flexibility in ordering his activities.

If a call comes in immediately after the FCM’s sleep period, and requires a report time 12 hours later, the FCM will be likely be fatigued during the FDP. If the FCM is allotted an 18 hour lead on an impending FDP, he has the ability to rest prior to reporting for the FDP. Should this call come hours after the sleep period, it may be beneficial for all if the 18 hour lead time was reduced to 12 hours. The FCM will be cognizant of what time he or she can report for the assignment, and should be able to waive part of the rest period, if

the situation calls for it. Since the FCM is not in any given sleep/awake schedule, it is entirely at the discretion of the FCM when sleep occurs. As such, since the certificate holder has no reasonable way of tracking such decisions, the notification is largely a random occurrence.

Since this is an area outside the control of the certificate holder, and the certificate holder may benefit from reduced notification time, the potential exists for coercion. The FCM must be protected from such coercion in a manner similar to other areas where a certificate holder has an incentive to trump self-assessment authority.

In instances where a FCM in “long call” reserve is assigned a RAP, the same 18-12 hour rest requirements apply, since a FDP may begin at the onset of the RAP. To allow shorter lead times for RAPs, a loophole would exist allowing the certificate holder to accelerate the report time of a FCM by assigning a shorter rest period for the RAP, and then immediately assigning a FDP from the RAP.

### **§ 117.23 Cumulative limitations.**

The FAA removed the weekly flight time limitations, while keeping the daily, monthly, and annual flight time limitations. We are told this was due to the new cumulative “duty” limitations serving as an effective governor on fatigue of this sort.

This regulation serves to limit the amount of weekly flying a pilot can perform, with a second crew pairing often being dropped due to the illegality of scheduling a pilot to exceed the weekly 30 hour limit. With this removed, the certificate holders will not need to staff additional pilots to perform the flying. Very few conflicts presently exist due to daily, monthly, and annual flight time limitations, and with “preferential bidding systems” being imposed in bankruptcy proceedings, the only remaining “conflicts” the airlines have to manage are those due to “30 in 7.” We would like to think this has nothing to do with the certificate holders not wishing to lose availability of pilots due to “30 in 7” limitations of the present regulations.

Under the new regulations, there is nothing stopping a FCM from accumulating 54 hours in a 7 day period. This is an 80% increase over the present regulations. It is flatly unreasonable to believe this is anything other than a naked productivity grab and a serious departure from the stated goal of reducing fatigue.

Two fatigue metrics are required because fatigue can come two ways. Efficient scheduling would be capped by weekly flight time limitations (time on task), and inefficient scheduling/reserve would be capped by weekly “duty” time limitations (time not resting).

Four duty periods, each having 8 hours of flight time, brings the FCM to 32 hours. If two additional hours are allotted for contingencies, 34 hours becomes a reasonable limit. This

limit applies only if the flight time in question contains 10 or fewer flight segments. If not, the current “30 in 7” applies.

Weekly flight time limitations have been inserted to reflect this need and have been increased, primarily due to the weekly duty limitations imposed by the new regulations. To hit the higher flight time limitations, certificate holders will be required to schedule efficiently.

### **§ 117.25 Rest period.**

The discussion concerning the time the rest period starts followed the usual pattern, with industry groups stating they have little control over when a crew arrives at a hotel or suitable accommodation and wanting actual rest to be scheduled rest. Pilot associations favored an approach by measuring rest according to the actual time spent at the hotel or suitable accommodation .

This is only applicable to the regulatory standard when the rest period is at its minimum. When longer than required rest periods are scheduled, there is little fuss over fractions of an hour lost to traffic, unreliability of transportation, post-flight obligations, etc. Asking crew members to bear the burden of truncated rest periods is not consistent with the new approach to rest being measured by actual conditions.

Additionally, the FAA specifically excludes transportation to and from a suitable accommodation as being deadhead transportation, while at the same time not defining such transportation as duty. Since the mark of the beginning of the rest period is when the FCM is released from “duty,” we are left to conclude the industry advocates prevailed in the argument and such transportation is now included in the rest period. Under the FAA’s definition of flight duty period, the FDP begins when required to report for duty, which would not include transportation to the airport from a suitable accommodation. Whether intentional or not, this will be the interpretation of the various airlines, and the text needs to reflect this oversight to prevent “scheduled” rest, as is practiced in the current regulatory paradigm.

Putting the onus on the FCM to only require an 8 hour sleep opportunity will necessarily truncate the time allotted for other rest activities, such as nourishment, hygiene, “wind-down,” and exercise. This is how chronic fatigue builds.

Certificate holders track every aspect of a flight duty period. They keep massive data bases on average taxi-out, taxi-in times, as well as knowing, to the minute, how long a given flight segment will likely last. They can accurately predict the differences between ground times for weekends vs. weekdays, and flight segments during winter vs. summer. This is how they generate the data for federal judges when they believe pilots are engaging in illegal slow-downs. It is not unreasonable for them to likewise build a data base on average transit times to and from the hotels they choose. If they incurred frequent

next-day delays, due to underestimating transit times, they will adjust the times and reschedule. As long as the pilots absorb the difference, the airlines will not change their schedules. This provision is nothing more than taking undue advantage of the “mission hacker” proclivities of the average airline pilot.

The FAA has imposed a single standard for pre-FDP rest in § 117.25(b). It has declined to provide for additional rest for crews arriving in a new theater, or operating within the WOCL. Its primary justification for such descends from its belief that the 30 minute penalty imposed in the limits in Table B account for the lack of acclimation. However, this provision does nothing to provide rest. It only shortens the subsequent duty period by an amount the certificate holder can extend without generating any notification to the FAA, nor incurring any penalty going forward for extending a FDP.

The slight-of-hand reads thusly:

*The adopted regulations providing FDP limits for augmented and unaugmented operations address acclimation. For an unacclimated flightcrew member, the maximum flight duty period in Table B is reduced by 30 minutes and the flightcrew member enters the applicable FDP table based on the local time at the theater in which the flightcrew member was last acclimated.*<sup>18</sup>

*An extension in the flight duty period under paragraph (a)(1) of this section of more than 30 minutes may occur only once prior to receiving a rest period described in § 117.25(b).*<sup>19</sup>

In reality, there is no truncation of a FDP by 30 minutes. The certificate holder only loses its ability to extend by 30 minutes without self-disclosing to the FAA. Keep in mind that this only applies to the outer limits of the FDP, not the scheduled FDP.

Since the regulations do not provide other meaningful accommodations for an unacclimated FCM, the rest period should be extended to a minimum of 13 hours and remain so until the FCM is acclimated, at which point rest dictated by § 117.25(b) applies. This gives the FCM the ability overcome the greater disturbance of time zone desynchronization by effective wind down, nourishment, exercise, and sleep.

The same principle also applies for FCMs that have operated through their WOCL, as the body has absorbed a far more fatiguing set of circumstances, and by extending the rest period in the short-term, longer-term building of chronic fatigue can be avoided, or at least ameliorated. Under the new regulations, the FAA only presumes acute fatigue, when their own document to airmen on the subject addresses both acute and chronic fatigue.<sup>20</sup>

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<sup>18</sup> Final Rule, pg 226

<sup>19</sup> § 117.19(a)(2).

<sup>20</sup> Federal Aviation Administration, *Aeronautical Information Manual*, Section 8.1-1-1.e.3, 8/25/2011

**Table B to Part 117—Flight Duty Period: Un-augmented Operations**  
(expanded for every hour)

Time of Start (acclimated)	Maximum Flight Duty Period (hours) for Lineholders Based On Number of Flight Segments						
	1	2	3	4	5	6	7+
200	9	9	9	9	9	9	9
300	9	9	9	9	9	9	9
400	10	10	10	10	9	9	9
500	12	12	12	12	11.5	11	10.5
600	13	13	12	12	11.5	11	10.5
700	14	14	13	13	12.5	12	11.5
800	14	14	13	13	12.5	12	11.5
900	14	14	13	13	12.5	12	11.5
1000	14	14	13	13	12.5	12	11.5
1100	14	14	13	13	12.5	12	11.5
1200	13	13	13	13	12.5	12	11.5
1300	12	12	12	12	11.5	11	10.5
1400	12	12	12	12	11.5	11	10.5
1500	12	12	12	12	11.5	11	10.5
1600	12	12	12	12	11.5	11	10.5
1700	12	12	11	11	10	9	9
1800	12	12	11	11	10	9	9
1900	12	12	11	11	10	9	9
2000	12	12	11	11	10	9	9
2100	12	12	11	11	10	9	9
2200	11	11	10	10	9	9	9
2300	10	10	10	9	9	9	9
0	9	9	9	9	9	9	9
100	9	9	9	9	9	9	9

-  originates within the WOCL
-  does not operate within the WOCL
-  terminates within the WOCL - likely flight time limited
-  terminates within the WOCL - likely duty period limited
-  high likelihood of terminating in WOCL
-  operates over the entire WOCL

**Table B to Part 117—Flight Duty Period: Un-augmented Operations**  
(as amended by OPERATION ORANGE, expanded for every hour)

Time of Start (acclimated)	Maximum Flight Duty Period (hours) for Lineholders Based On Number of Flight Segments						
	1	2	3	4	5	6	7+
200	9	9	9	9	9	9	9
300	9	9	9	9	9	9	9
400	10	10	10	10	9	9	9
500	12	12	12	11	10	10	10
600	13	13	12	12	11.5	11	10.5
700	14	14	13	13	12.5	12	11.5
800	14	14	13	13	12.5	12	11.5
900	14	14	13	13	12.5	12	11.5
1000	14	14	13	13	12.5	12	11.5
1100	14	14	13	13	12.5	12	11.5
1200	13	13	13	13	12.5	12	11.5
1300	12	12	12	12	11.5	11	10.5
1400	12	12	12	11	11	11	10.5
1500	12	12	12	11	10	10	9
1600	12	12	12	11	9	9	9
1700	12	12	11	11	9	9	9
1800	12	12	11	11	9	9	9
1900	12	12	11	10	9	9	9
2000	12	12	11	10	9	9	9
2100	12	12	11	10	9	9	9
2200	11	11	10	10	9	9	9
2300	10	10	10	9	9	9	9
0000	9	9	9	9	9	9	9
0100	9	9	9	9	9	9	9