

The FAA issues a long-awaited fatigue-fighting rule, and cargo pilots challenge their exclusion.

# REGULATING *Rest*

BY LINDA WERFELMAN

Flight and rest requirements for U.S. commercial passenger airline pilots — issued by the U.S. Federal Aviation Administration (FAA) in January, after a development process that lasted several years — are facing a court challenge by cargo pilots who want to be included among those covered by the new rule.

Those pilots should not be denied the protections of the new requirements, which call for, among other things, longer rest periods before reporting for work (see “Specifics,” p. 18), the Independent Pilots Association (IPA), which represents more than 2,600 UPS pilots, said in papers filed with a federal appeals court.

The new scheduling requirements — published as a final rule in January in the U.S. *Federal Register* — will take effect in January 2014. The IPA court action does not seek to delay their implementation for pilots of passenger airliners.

Publication of the final rule capped a rule-making process that had begun in

2009 — about 15 years after a previous rule-making effort had collapsed, largely because of airline opposition to the projected costs, as well as what the industry said was insufficient supporting data.

Transportation Secretary Ray LaHood said the new rule represents “a major safety achievement,” adding, “We made a promise to the traveling public that we would do everything possible to make sure pilots are rested when they get in the cockpit. This new rule raises the safety bar to prevent fatigue.”

Acting FAA Administrator Michael Huerta added, “Every pilot has a personal responsibility to arrive at work fit for duty. This new rule gives pilots enough time to get the rest they really need to safely get passengers to their destinations.”

The rule specifies that commercial passenger airline pilots must have a 10-hour minimum rest period before they report for duty — two hours longer than currently required — to provide

them with an opportunity for eight hours of uninterrupted sleep. Flight time will be limited to either eight or nine hours, and duty time will be limited to between nine and 14 hours, depending on the pilot’s starting time and other factors.

The rule says, “The FAA believes that its current regulations do not adequately address the risk of fatigue. The impact of this risk is greater in passenger operations due to the number of persons placed at risk. Presently, flight crewmembers are effectively allowed to work up to 16 hours a day (regardless of the time of day), with all of that time spent on tasks directly related to aircraft operations. The regulatory requirement for nine hours of rest is regularly reduced, with flight crewmembers spending rest time traveling to or from hotels and being provided with little to no time to decompress.”

Deborah Hersman, chairman of the U.S. National Transportation Safety Board (NTSB), characterized the final

rule as a “huge improvement” over current regulations — many of which have been in place since the 1960s and which have been targeted by the NTSB for revision since 1990.

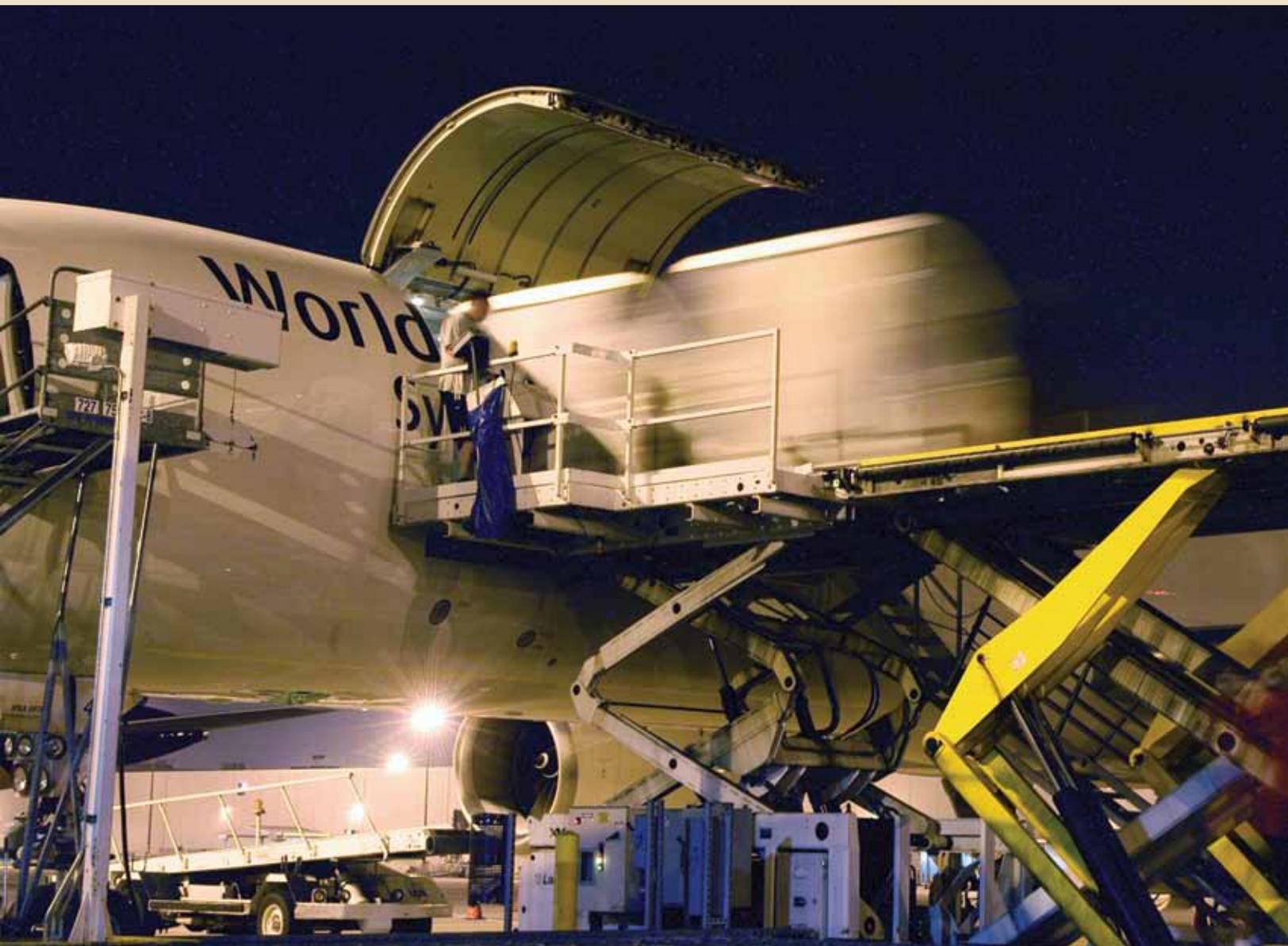
Nevertheless, she expressed disappointment that the rule would apply only to commercial passenger airline pilots — those operating under U.S. Federal Aviation Regulations Part 121 — and not to pilots of smaller commercial airplanes or cargo airplanes. Although the final rule did not cover those operations, generally regulated under Part 135, the FAA has said that those pilots and operators should expect the FAA to propose a similar rule to cover the Part 135 community.

Cargo pilots will be covered by the new flight and rest requirements only if cargo operators voluntarily comply.

“A tired pilot is a tired pilot, whether there are 10 paying customers on board or 100, whether the payload is passengers or pallets,” Hersman said.

IPA President Robert Travis agreed, adding, “To potentially allow fatigued cargo pilots to share the same skies with properly rested passenger pilots creates an unnecessary threat to public safety. We can do better.”

The FAA, however, said that the cost of including cargo operators under the new rule would have been too great, compared with the benefits they likely would have received. In addition, some cargo airlines have improved rest facilities for pilots while cargo is being loaded and unloaded,



Specifics

Many requirements of the U.S. Federal Aviation Administration’s final rule on pilot fatigue vary, depending on such factors as when a pilot’s work-day begins and the number of flight segments he or she is scheduled to fly.

Maximum flight time limits are eight hours if the pilot reports for duty between 2000 and 0459 local time or nine hours if he or she begins work between 0500 and 1959.

Flight duty period limits for single-crew operations range from nine hours to 14 hours. The nine-hour limit, for example, applies to pilots who report for duty between 0000 and 0359, regardless of how many flight segments they fly, and to those who report later in the day and fly four segments or more. The 14-hour limit applies to those who report between 0700 and 1159 for no more than two flight segments (Table 1).

For augmented operations involving more than two pilots, the maximum flight duty period increases, depending on the exact number of pilots in the flight crew, the type of in-flight rest facilities available to them and their scheduled starting time (Table 2). The maximum allowable flight duty period is 19 hours — for pilots in four-pilot crews who have

Maximum Flight Duty Period for Unaugmented Operations<sup>1</sup>

Scheduled Time of Start (Acclimated <sup>2</sup> Time)	Maximum Flight Duty Period (hours) For Pilots Based on Number of Flight Segments						
	1	2	3	4	5	6	7+
0000–0359	9	9	9	9	9	9	9
0400–0459	10	10	10	10	9	9	9
0500–0559	12	12	12	12	11.5	11	10.5
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
1300–1659	12	12	12	12	11.5	11	10.5
1700–2159	12	12	11	11	10	9	9
2200–2259	11	11	10	10	9	9	9
2300–2359	10	10	10	9	9	9	9

Notes

1. Unaugmented operations are flights in which no reserve flight crew is required.
2. “Acclimated” is defined in the rule as “a condition in which a flight crewmember has been in a [specific area] for 72 hours or has been given at least 36 consecutive hours free from duty.”

Source: U.S. Federal Aviation Administration

Table 1

Maximum Flight Duty Periods for Augmented Flight Crews<sup>1</sup>

Scheduled Time of Start (Acclimated Time)	Maximum Flight Duty Period (hours) Based on Rest Facility and Number of Pilots					
	Class 1 <sup>2</sup> Rest Facility		Class 2 <sup>2</sup> Rest Facility		Class 3 <sup>2</sup> 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	15	14.5
1700–2359	15	17	14	15.5	13	13.5

Notes

1. An augmented flight crew is a crew with more than the minimum number of flight crewmembers required to operate the aircraft.
2. A Class 1 rest facility is defined in the rule as a “bunk or other surface that allows for a flat sleeping position and is located separate from both the flight deck and passenger cabin in an area that is temperature-controlled, allows the flight crewmember to control light and provides isolation from noise and disturbance.” A Class 2 facility is an aircraft cabin seat “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 and is reasonably free from disturbance by passengers or flight crewmembers.” A Class 3 facility is a seat in the cabin or flight deck that “reclines at least 40 degrees and provides leg and foot support.”

Source: U.S. Federal Aviation Administration

Table 2

access to Class 1 rest facilities<sup>1</sup> and who report for duty between 0700 and 1259 acclimated time.<sup>2</sup>

The rule also establishes flight time limits of no more than 100 hours in “any 672 consecutive hours” — 28 days — and no more than 1,000 hours in any 365 consecutive days.

Flight duty periods may be no longer than 60 hours of any 168 consecutive hours — seven days — or 190 hours of any 672 consecutive hours.

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the FAA said. Nevertheless, the agency said that it “encourages cargo operators to opt in to the new rule voluntarily, which would require them to comply with all of its provisions.”

Travis questioned whether cargo operators would voluntarily comply with the rule.

“Giving air cargo carriers the choice to opt in to new pilot rest rules makes as much sense as allowing truckers to opt out of drunk driving laws,” he said.

The IPA’s court challenge argued that cargo operations should be subject to the same fatigue-fighting requirements as commercial passenger airlines.

“The internal inconsistency of the final rule is remarkable,” said IPA General Counsel William Trent. “For example, the FAA states that current regulations do not adequately address the risk of fatigue and that the maintenance of the status quo presents an ‘unacceptably high aviation accident risk.’ Yet two of the very factors that the FAA cites as exacerbating the risk of pilot fatigue — operating at night and crossing multiple time zones — are more present in cargo operations than in passenger operations.”

The FedEx Master Executive Council, the FedEx branch of the Air Line Pilots Association, International (ALPA), called issuance of the rule a “political failure” and complained that it “completely ignores the safety of cargo pilots.”

ALPA, which represents more than 53,000 pilots at 37 airlines in the United States and Canada, expressed disappointment that the rule would not apply to cargo operations but nevertheless praised its requirements. ALPA President Lee Moak said publication of the final rule “marks historic progress in what must be an unrelenting commitment to ensuring the highest safety standards throughout the airline industry.”

Moak noted that ALPA has campaigned for decades in favor of regulations that are “based on modern science; apply equally to all types of airline operations, including domestic, international and supplemental; and enable air carriers to establish fatigue risk management systems.”

He added that ALPA will continue to press for “one level of safety for all types of flight operations and across the airline industry.”

Steve Chase, president of the Southwest Airlines Pilots’ Association, agreed, calling the rule “a step in the right direction,” although it “misses the mark on one level of safety.”

“Cargo pilots are no less susceptible to fatigue than passenger pilots,” Chase said. “It is our hope that lawmakers will reconsider the cargo carrier exemption.”

The FAA says officials considered recent developments in fatigue science in establishing new requirements for pilot flight time, duty time and rest. Among the considerations were “the time of day pilots begin their first flight, the number of scheduled flight segments and the number of time zones they cross,” the FAA said.

The previous requirements, the FAA said, “were not necessarily consistent across different types of passenger flights and did not take into account factors such as start time and time zone crossings.”

Those factors and others must be considered in determining the allowable length of a flight duty period, which varies from nine to 14 hours for single-crew operations, and the allowable flight time of eight or nine hours.

In addition to the requirement for at least 10 hours of rest before beginning a flight duty period, other requirements provide for at least 30 consecutive hours off duty every week,

an increase of 25 percent over the previous requirement.

The required rest time must be increased to at least 56 hours — including at least three nights’ rest — if a pilot “travels more than 60 degrees 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 rule says.

The FAA said that it “expects pilots and airlines to take joint responsibility when considering if a pilot is fit for duty, including fatigue resulting from pre-duty activities such as commuting” If a pilot reports being fatigued or “unfit for duty” at the beginning of a flight segment, “the airline must remove that pilot from duty immediately,” the FAA said.

Another provision of the rule says an airline may develop a different program for managing pilot fatigue by implementing a fatigue risk management system — a scientific, data-based method of evaluating fatigue that must be “validated by the FAA and continuously monitored,” the agency said.

Fatigue risk management includes educating pilots and airline management on the effects of fatigue, which can be caused not only by overwork but also by commuting long distances to report for duty.

Training will be provided every two years on the impact of sleep — or lack of sleep — on pilot performance and on methods of mitigating fatigue. Training topics will include the effects of lifestyle — including nutrition, exercise, family issues, sleep disorders and commuting — on fatigue.

The FAA estimated that the U.S. aviation industry would spend \$297 million to implement the rule and that it would result in benefits to the industry of between \$247 million and \$470 million. ➤