

RESPONSE TO FAA FATIGUE MITIGATION PROPOSAL

In the year following the Fair Treatment For Experienced Pilots Act of 2007, colloquially known as the “Age 65 Rule,” pilots began to understand just how tone deaf their pilot associations were to their desires and how easily the government could add insult to injury. This law, coupled with management’s outsourcing of flying to dangerously under experienced and debt burdened pilots, caused a two-front stagnation in the normal career progression of the more experienced mainline pilots.

Early 2009 was witness to two events that summarized the problem with the experience gap between the two piloting groups. January was host to one of the greatest showcases of piloting aptitude with the pilots of USAir 1549 successfully ditching a dual engine flameout into the Hudson river, sparing the lives of everyone on board and countless more that were bustling around the most densely populated place on earth, 1000 feet below the aircraft. The pilots of that crew had both the experience and aptitude to do the impossible with the icy cold professionalism demanded of such a scenario.

One month later, we saw the exact opposite in action. Colgan Air, an airline staffed with much younger and inexperienced pilots and disguised to look like a Continental Airlines operation, crashed in Buffalo, New York, killing all on board plus one on the ground. Colgan Air hadn’t lost both engines, as US Airways 1549 had; they just had grossly inexperienced pilots operating the aircraft.

Pilot error was the cause of the Colgan disaster while pilot experience saved over 100 lives in a situation that was not of the pilot’s making.

Many of the rank-and-file pilots in the mainline airlines knew exactly what was going to happen: management would take the opportunity, while the blood that flowed from their outsourcing of safety was still fresh, to lobby the government to “fix” the pilot fatigue rules to “prevent” such an occurrence from happening again.

The Committee For The Fair Treatment of Experienced Pilots (“The Committee”) was formed with this in mind in the Spring of 2009 and has as its mission statement to stop the endless cycle of government forcing pilots to subsidize management incompetence. We anticipated the government would craft a new fatigue policy that was nothing more than complex and high sounding eyewash for what amounts to more work being done by fewer pilots.

We were right.

This latest proposal from the FAA and ARC is another significant step to pushing the public safety rearward in the interest of both profit and controlling one of the few remaining viable unionized workforces in the United States - both of which are in the top three managerial priorities, the other being egregious executive bonus programs that bear no relation to the underlying health of the company.

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We have said that this decade will decide the future of the piloting profession and that management is coming in for the kill. The proposed fatigue management regulations are exactly what The Air Transport Association needs to that end.

The Solution To Fatigue Is More Flying?

At first blush, the proposal seems to have reasonable elements underpinning the general philosophy. Pilots are capable of longer periods of full cognition if their duty periods coincide with the normal diurnal cycle and that scheduled rest isn't the same as actual rest. It's a shame that it took so long

Fatigue Mitigation Response

to come to those two conclusions, as it does not require a doctorate in sleep physiology to understand that flying all over the globe in the middle of the night is inherently fatiguing and cognitively taxing or that a “scheduled” rest period of eight hours is meaningless if the crew only has 5 or 6 hours at a hotel.

The “General Discussion” section of the FAA Notice of Proposed Rule Makings regarding pilot fatigue, published September 3, 2010 (hereafter referred to simply as the “FAA Proposal”) spends quite a bit of time sounding like labor crafted the agreement, but the actual regulatory language at the end of the document, shows that management held sway over the negotiations between the industry, government, and labor. We question if labor was even present at the crucial meetings or if their input was taken seriously.

Once again, the pilot associations went to a gunfight armed only with feather dusters.

While the details of the FAA Proposal are worthy of their own discussion, the overall picture is the most telling: certificate holders conducting long haul operations, or complex hub-spoke operations (the bulk of the U.S. passenger airline industry) will be able to perform their current *scheduled* operations with fewer pilots.

Put in simple terms: **the FAA has proposed that the same flying being done by fewer pilots will result in greater fatigue abatement.**

This was the concern of The Committee when it formed in the Spring of 2009. With the exception of the tardiness of the release, the findings of the FAA Proposal were very predictable. Fewer pilots doing more flying has been a priority of management since the inception of scheduled passenger air service. We do find it both brazen and shocking the General Discussion section listed some of management’s ideas on what constitutes “safe” air travel, regarding pilot duty days.

Time At The Controls - “Hard Time”

Apparently, the discussions concerning the lifting of the amount of “hard time” pilots can perform in any given duty period actually had management propose that unaugmented flying could increase almost 50% over what is currently allowed, offset only by a very small window where actual “hard time” would be reduced by one hour, or less. 75% of the day would allow higher, even much higher, flight time limitations, whereas only 2.5 hours would require a reduction over current limits. The time frame for the greatly expanded limits on pilot flight time encompasses almost the entirety of passenger air service hours of operation. The time of the reduction takes place between 2330 and 0159 - a time where passengers tend not to travel.

That’s what management thinks of safety. Their answer to fatigue is MORE FLYING!!!

Fewer pilots doing more flying has been a priority of management since the inception of scheduled passenger air service.

The pilot associations proposed the current limits apply, but reduce the problematic hours when the normal circadian rhythms depress cognitive abilities. We believe that to be an imperative. How the negotiations brought about a higher “9 hour” limit during the day is very puzzling, but the FAA added on an additional hour across the board from the moderated pilot proposal, effectively gutting the entirety of the fatigue abatement aspects of limiting “hard time.”

If the new hard time limitations are implemented, the result will be fewer pilots flying the present schedule. Large, high capacity passenger aircraft will be staffed with pilots in such a fashion that Europe, Hawaii, and the bulk of Latin America will only have two pilots conducting the most cognitively intensive portion of their day after having completed nine or ten hours of time at the controls. Under the current regulations, those crews now have a third pilot monitoring the terminal phase operations and assisting two

Fatigue Mitigation Response

pilots who were given a multi-hour break to rest and refresh enroute.

Domestic hub-spoke operations and transcontinental operations would also be similarly expanded with the same pilots. Unlike most international flying, domestic crews are almost never augmented, thus are limited to eight hours of “hard time.” This typically limits crews to 3 legs, perhaps 4, as they fly into and out of places like Atlanta, Chicago, Dallas/Ft Worth, Denver, and Minneapolis. By adding more hard time, the only thing that will be accomplished is more flying into the busiest airports in the world.

Transcontinental flights will change by adding extra legs to the crew duty day. Rather than originating a LAX crew to fly a B-767 from LAX-JFK, that crew will now originate at Salt Lake City, Denver, or even Dallas/Ft Worth. Keep this in mind as you read all the consternation the FAA has with “irresponsible commuting” and how pilots are putting the public safety at risk by not resting prior to their duty period. The FAA must see actual flight time as more restful than commuting, even though they simultaneously propose granting airline management credit for extending duty time for periods spent deadheading.

The same schedule will be possible with fewer pilots and this is somehow supposed to be less fatiguing. The reality is this proposal will be a way for airline management to slash operational costs at the expense of the safety of the flying public. There should be little doubt as to the priorities of the FAA - they are there to do the bidding of industry. They imply such in the General Discussion where they had concern the new regulations would add costs to the air transport industry.

Hiring more pilots to accomplish the same schedule does bring significant costs, but also brings a wider margin of safety - an often mentioned priority of the FAA. Having split loyalties or dual mandates often results in such compromise. In the debate between enhanced safety (labor’s position) and containing costs (industry’s position), the FAA came down on the side of industry while saying they are improving safety.

We find this Orwellian reality to merit this response.

“Flying Cheap” Is The Problem

The precipitating event for the FAA proposal was the February 2009 crash of an outsourced passenger airplane disguised to look like a Continental Airlines airplane and how the crash was supposed to be related to pilot fatigue. The General Discussion of the FAA Proposal states that the NTSB did not find fatigue to be a causal factor, but did use the opportunity to address one of the NTSB’s longstanding “most wanted” issues: pilot fatigue

This is important because the problem with the Colgan Air crash in particular, and industry wide pilot fatigue in general, is abuse by airline management with the tacit approval of the government. Continental Airlines outsourced the flying to Colgan Air because Colgan Air was cheaper than its own operation and Colgan Air hired the Captain and First Officer because they were cheaper than more experienced pilots. Continental has little supervision over their outsourced operations and no decision makers within Continental or Colgan Air thought it best to put some of the thousands of more experienced mainline pilots, who are presently out of work due to industry outsourcing, in the aircraft to assist a weak captain. This would have cost them money or the public would have had to pay a few dollars more to fly to Buffalo.

The reality is this proposal will be a way for airline management to slash operational costs at the expense of the safety of the flying public.

We would like to refer to the PBS FRONTLINE special on “Flying Cheap” (linked on our website) for a very accurate portrayal of the problem with airline outsourcing and the true cost of those cheap tickets.

Another incident listed on page 17 of the General Discussion of the FAA Proposal was the events surrounding Air Transport International where fatigue was cited as a causal factor. The actual problem was the callous disregard for pilot rest by the certificate holder. That crew was subjected to

shortened rest subsequent to a grueling round trip to Europe, significant circadian disruption, and the certificate holder repeatedly interrupting the captain's last rest period before the fatal crash.

We are left to speculate on what kind of pressure was brought to bear on the captain which would incentivize him to repeatedly acquiesce to having his rest interrupted.

Whose Fault is Fatigue?

The FAA states that fatigue is a joint responsibility between the certificate holder and the crewmember; to which we agree. The reality of the FAA Proposal and the realities of scheduled passenger air transportation is that the certificate holder makes the schedule and, as long as it can do so within the existing FAA regulations, the burden largely falls to the crewmember to take often extraordinary measures to comply. The reality is that regulations are a convenient way to wash the hands of the carriers and pin the bulk of operational safety responsibility upon the crewmember.

Pilots who pick up extra hours, moonlight, report to work when sick, commute irresponsibly, or simply choose not to take advantage of the required rest periods are as culpable as carriers who push the envelope by scheduling right up to the maximum duty limits, assigning flight crew members who have reached their flight time limits additional flight duties under part 91,

We note this passage from the General Discussion as part of the problem. Industry has shown to have a hair trigger to take pilot associations to court if pilots refuse to work “voluntary overtime,” under the “status quo” and “job action” interpretations of the Railway Labor Act. The courts and National Mediation Board have steadfastly held that pilots refusing **voluntary** overtime can and will be construed as conducting an illegal job action under the RLA. The NMB's mandate is to prevent disruptions in the air transport industry, not to adjudicate contracts impartially nor monitor aviation safety.

Fatigue Mitigation Response

Moonlighting is done by some pilots as a way to make up the shortfall in the 40% reduction in pilot wages, benefits, and wholesale looting of the various pension programs pilots had worked for decades to maintain. The First Officer of USAirways 1549 testified to Congress that he works as a general contractor as well as an airline pilot to address this problem. Pilots who fly passengers around the globe have been forced to work for dramatically reduced compensation while at the same time forced to fly more hours and days for their airlines. This is called “productivity” on Wall Street and airline executives have rewarded themselves handsomely for it.

Part of the productivity enhancements have come from pressuring pilots to not use sick leave. While we believe that a legitimate managerial function exists to prevent abuse by employees, we also believe this abuse prevention is a two way street. Pilots are flying sick because they are much older than in years past due to restructuring and “Age 65” legislation, and the flying schedules are so onerous that sick leave is the only way to find relief. The human body finds limits in how far it can be pushed prior to shutting down, and this past decade has provided the environment for such a phenomenon. Airline management still persists in routinely harassing pilots who avail themselves to contractually earned sick leave, or FAA mandated self-evaluation for fitness for flight. The Airman’s Information Manual clearly states that a pilot is not to fly and has authority to self-evaluation if suffering from: illness, medication, stress, alcohol, fatigue, or emotion.

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Why then does the FAA continue to tolerate abuse by airline management for requiring pilots to release medical records or being subject to non-contractual and arbitrary discipline for using sick leave? Surprisingly, the NMB has repeatedly ruled in the case of one major airline that they are unfounded in their imposition of arbitrary and non-negotiated discipline of pilots who use sick leave. The airline has repeatedly disregarded the findings of the NMB by changing small details in their policy, while keeping the overall program intact and continuing undaunted.

Fatigue Mitigation Response

Even with the obvious pressuring for pilots to fly sick, the FAA regards a policy for monitoring why pilots call in fatigued to be worthy of codification. We do appreciate that a carrier can use the data to help craft better schedules and corporate policies; we are likewise justifiably fearful this will be just another tool to discipline or harass pilots for exercising and discharging contractual and regulatory rights and duties. Any such fatigue monitoring policy must have strong elements ensuring that pilots are not harassed or disciplined for exercising prudence and regulatory obligations, as well as sterilizing much of the data to prevent individual retaliation. Any policy lacking such elements is nothing more than a cudgel for FAA sanctioned pilot pushing.

Again, we see the same pattern: the same flying done with fewer pilots with the assurances of the FAA and industry that it is less fatiguing.

Pilot pushing was the precipitating cause for pilots to organize in the early days of scheduled passenger transportation. This was obviously, and by definition, at odds with the wishes of industry and government, and it would seem that nothing has changed. As footnoted in the General Discussion, certain carriers lobbied that there be no daily flight time restrictions and only the restrictions on duty periods govern the operation. The end result of the discussions was to significantly raise the amount of daily flying a pilot can be assigned to perform over the bulk of the time passengers travel, while not reducing the amount during any part of the day, even during the Window Of Circadian Low (WOCL).

Remember, the entire premise of this proposal is to reduce fatigue, or so we are told.

The FAA Proposal codifies pilots flying two additional hours over the bulk of the passenger operation, without reducing it one minute at any time during the 24 hour day. The reason is obvious: the government is doing the bidding of industry which seeks relief on augmentation for intermediate

length operations and restrictions on daily hub-spoke operations due to pilots accruing too much time at the controls. The FAA Proposal accomplishes the same flying by fewer pilots and increases the amount of flying done by domestic pilots.

We are petitioning to structure the limits on flight time to allow the current eight hours of unaugmented flight time during the day, and reduce the amount of flying to seven hours for any operation scheduled or anticipated to penetrate the WOCL (0100-0559 HBT/acclimated). Without this foundation, all fatigue mitigating proposals are meaningless.

Long Haul Flying - Now With Fewer Pilots

The proposed flight duty period times for 3 pilot augmentation can only be viewed as codification of a naked productivity grab by the industry. Expanding the amount of duty time aloft to match the total allowed duty time is nothing more than an attempt to remove 4 pilot augmentation for all but ultra-long haul flying. Again, we see the same pattern: the same flying done with fewer pilots with the assurances of the FAA and industry that it is less fatiguing.

Augmentation is a practical way to bridge the incongruence between human physiology and scheduled passenger operations, and is not to be a stop-gap measure to cram two FDPs into one.

This is the same level of safety that was given when Congress raised the retirement age from 60 to 65 against the wishes of the overwhelming majority of pilots. 18 months later, the first officer of a Continental 777 from Brussels had to declare an emergency because the captain, aged 61, had died in flight midway over the Atlantic. Fortunately, there was a third pilot on board and that augmentation prevented an airplane with 275 people onboard from being single-piloted for the next 6 hours. If this occurs two years from now, the First Officer is on his own as augmentation will be

Fatigue Mitigation Response

largely obsolete. It is precisely these long-haul flights that have the most senior and eldest captains in command. The FAA proposes to continue to pile one bad decision upon another at the expense of your safety and at the behest of industry cost cutting objectives.

The proposed table for augmented flight duty periods is largely acceptable, provided the hard time limitations presently in force remain so. We believe the best interest of aviation safety is served by limiting augmented passenger operations for three pilot augmentation to less than 12 hours of “hard time.” Any operation scheduled for 12:00 or greater shall be accomplished with four pilot augmentation under the flight duty period limitations proposed in Table C of Section 117.

The question of extending the length of FDPs arises when circumstances which are both unforeseen and beyond the control of the certificate holder present themselves. As discussed below, extension of FDPs is a joint-decision by both the certificate holder and the pilot in command, with legal protection for both the pilot in command and pilots under that command exercising their authority to decline fatiguing assignments.

We view the FAA Proposal to make the FDPs sufficiently elastic to extend to within one hour of the current limitations to be unacceptable. It is the exact kind of off-script operations necessitating the extension the FDP that are highly fatiguing, due to weather, and pilots coordinating and evaluating the various maintenance issues. We also believe extensions to FDP limits for passenger operations must take into account the type of rest facility, the number of pilots, and the degree the WOCL has been penetrated. It is also obvious that augmentation of any type, regardless of length, is worthless if proper rest is not available on the aircraft.

Augmentation is a practical way to bridge the incongruence between human physiology and scheduled passenger operations, and is not to be a stop-gap measure to cram two FDPs into one. We find that augmentation must stay true to this premise and decline any discussion of having augmented operations exceed three flight segments. This allows intermediate range flights to have “tag legs” without becoming overly taxing to the crews.

Split Sleep - Less Rest & More Flying

Split sleep may be of value to cargo operations where sorting is done during the WOCL, but we find that it would be largely impractical to apply to most passenger operations, and those instances where it would be practical, would largely be abusive in nature. We believe that cargo operations may be well served by such a concept but that passenger operations should be prohibited from utilizing such a feature.

It is also curious that the ARC found scientists who believe split sleep (another term for nap) is just as valuable in the cumulative as uninterrupted sleep, provided it occurred during the WOCL. We are not sleep scientists, nor are we being paid by the industry to justify desires, but we are familiar with how our bodies work and uninterrupted sleep is far more valuable than a series of truncated sleep periods. Previous sleep science has shown different parts of sleep occur in the latter parts of the 8 hour sleep cycle, and have different restorative effects than the deeper sleep at the beginning.

Given that the entire premise of the FAA Proposal has been undermined by the naked acquiescence to the industry's "Most Wanted" list, we approach the all-too-convenient findings of the ARC's sleep specialists with the same skepticism normally afforded other industries that suddenly find their product isn't harmful to the general population based upon some new and obscure scientific findings.

Comparing split sleep to augmentation is disingenuous. Augmentation is provided to meet the operational realities of flying large aircraft long distances over areas where crew changes would be impractical or impossible. Even with augmentation, the crew rest is not ideal, but manageable. To push the envelope and try to "augment" unaugmented crews on the ground, where other crews are available (either by domicile or layover), is compromising safety where it is only justified by the profit motive. We do understand that cargo operations are more applicable to this practice and invite the FAA to address those operations separately from those of passenger air service.

Reserve

The FAA Proposal extends Reserve Duty Periods up to 3 hours for contact not made during the WOCL. It is laudable to be sensitive to WOCL and reserve rest, but the practical application of such a policy merits more scrutiny.

In order to accrue more time available to schedule duty, the certificate holder would have to know an assignment is pending and postpone contacting the crewmember. This shortens the amount of time a crewmember has to prepare for a known set of circumstances and can result in needless “quick calls,” (extremely short callouts for reserve assignments), which are widely despised among pilots in the industry. In practical terms, any known assignment having enough lead time to make deferring WOCL contact practical will likely be assigned to pilots in later RAPs, as their duty days will extend beyond those of pilots who started earlier. Moreover, pilots in early RAPs will likely be unsettled about possible assignments looming for a 0600 quick call, thus disturbing WOCL sleep. Pilots will have a tendency to check the company computers or scheduling desks during their WOCL to get an early jump on assignments coming their way.

When things go off-script, the analyst has to make an amendment to his spreadsheet; for the pilot, it is a matter of living or dying.

Some collective bargaining agreements have seniority based assignments where two or more pilots may be eligible, but the assignment can not be made until the more senior pilots have either passed or accepted the assignment. By deferring contact for reserve flying, seniority may have to be abrogated in the interest of time, which will be resisted by pilot associations having such a feature negotiated with the certificate holder.

Unlike most of the provisions of the FAA Proposal, we believe this feature to be a well intentioned, benign oversight on the part of the participants of the ARC. We strongly encourage this feature to be amended by the ARC.

When Rest Becomes Fatiguing

The General Discussion 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 “redehyes,” 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 general provision for the FAA to reduce the regulatory restraints concerning fatigue to accommodate operational requirements of the certificate holder has almost unlimited capacity for abuse.

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

Fatigue Mitigation Response

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.

We also find this to be consistent with the generally accepted sleep science as found in the General Discussion of the FAA Proposal:

As discussed earlier, the study of sleep science is somewhat settled on the following points: the most effective fatigue mitigation is sleep; an average individual needs to have an 8-hour sleep opportunity to be restored; 8 hours of sleep requires more than 8 hours of sleep opportunity; and daytime sleep is less restorative than nighttime sleep. For most people, 8 hours of sleep in each 24 hours sustains performance indefinitely. There is a continuous decrease in performance as sleep is lost. Examples of this reduction in performance include complacency, a loss of concentration, cognitive and communicative skills, and a decreased ability to perform calculations. All of these skills are critical for aviation safety

We seriously doubt any government agency, especially one who validated the relaxation of its own regulatory structure, will admit fault in the wake of a disaster descending from that waiver.

Reducing Rest - When “No” means “No”

One of the brighter portions of the FAA Proposal is the codification of the practice of having “9 hours behind the door,” when referring to mid-sequence rest. This is an improvement over the present practice of having certificate holders *schedule* pilots for 8 hours of “rest,” but having that rest shortened by operational concerns, post flight duties, and ground transportation. The FAA Proposal would allow the certificate holder and the pilot-in-command to jointly agree to reduce rest periods by one hour to “8 hours behind the door” ostensibly to help recover the next day’s schedule, and limit such reductions to once per rolling 168 hour period.

This practice must only be allowed if certain safeguards are in place to prevent pilot pushing and abuse. The joint decision must never be by policy or contract, but made on a case-by-case basis once the facts of the situation are known to both the certificate holder and the crew, and that the PIC's decision not to truncate the rest period must be respected as a final and binding decision without any fear of retribution by the certificate holder. Additionally, as any first officer can testify, there are captains who feel an undue burden to be "mission hackers" regarding keeping a schedule intact. Many times these are reasonable uses of captain's authority under the FARs, but too often a sense of "can do" overwhelms better judgment and captains refuse to simply "say no" when they should. While we do not suggest that SIC can negotiate in place of the captain, we do find that prudence dictates that first officers should not be compelled to accept reduced rest periods or extended duty days. If such an incidence arises where the PIC and SIC disagree on extended duty days or truncated rest periods, the PIC and certificate holder can always arrange for a replacement crew or reschedule.

FRMS - The "Blank Check" for Industry

Not only has the FAA proposed reducing the objective regulatory protections against fatigue at the behest of industry profit and loss concerns, it has also proposed a high sounding means of reducing them even further under the guise of a flexible system of operational evaluation and education. While portions of FRMS are welcome, such as education in the various factors causing fatigue and the consequences of operating under fatigued conditions, the general provision for the FAA to reduce the regulatory restraints concerning fatigue to accommodate operational requirements of the certificate holder has almost unlimited capacity for abuse. This cynicism is borne of 80 years of pilot pushing tendencies by the industry under the tacit approval of the FAA, along with the passage in the General Discussion concerning FRMS:

Realistically, it [FRMS] would likely only be used when the carrier cannot meet the more prescriptive rules because of the nature of the specific operations...A certificate holder may utilize this option when it has developed an FAA-approved equivalent level of safety for monitoring and mitigating fatigue

Fatigue Mitigation Response

specific to those operations. The proposed regulatory text provides broad performance requirements that a certificate holder would need to demonstrate it met prior to the FAA granting approval. These requirements include an additional FRMS-specific training element above and beyond the general requirement proposed today. The extent of the additional training would be determined as part of the overall approval process.

Such a proposal would mean a certificate holder could gather fatigue data and lobby the FAA to adopt relaxation of existing operational regulatory structure. Certain certificate holders could lobby for such an exemption, then turn to pressure labor to adopt such proposals and create a competitive niche within the marketplace. Safety would be subordinated to competitive pressures.

Moreover, the FRMS could become sufficiently flexible to obviate the entire regulatory structure on fatigue. What was limited to eight hours of “hard time” is now expanded to ten hours, and under FRMS, a new entrant, non-union carrier could accomplish JFK-LGB-JFK in a single duty period, if the carrier provided physiological data supporting that pilots could perform such flying. Congressional delegations from Southern California and New York would welcome the reduced cost structure of such flying, and the market’s “invisible hand” would soon have all carriers flying double transcontinental duty periods.

The tendencies for certificate holders to engage in reckless and abusive practices and subsequently attempt to pin the results of such policies upon pilots is a regular feature of labor relations within the industry.

Education regarding fatigue is always welcome but education is no substitute for prudence and rest. Educating a fatigued pilot only creates an educated fatigued pilot. Education is often the salve that is applied to bad situations

by people who go to meetings and pass paper for a living. In an environment where every problem can be solved by a memo, meeting, or motivational speaker, education can be the key to higher productivity or success. People who blend the realities of physiology and physics to satisfy desires not of their own making see things differently. Reality often intrudes in a manner which people in glass towers who stare at spreadsheets for a living find bewildering. When things go off-script, the analyst has to make an amendment to his spreadsheet; for the pilot, it is a matter of living or dying.

FRMS = CYA

History also suggests FRMS will be used to absolve carriers of the consequences of pilot pushing. Certificate holders will conduct training and education while pushing for expansions to their OPSPECS and pressure the pilots to fly while fatigued to meet the new operational imperatives. If the operation goes well, the company will enjoy the competitive advantage over other carriers, whereas if it goes sideways, the pilot will be blamed because he accepted fatiguing flying after the company, thorough its benevolence, provided the legal minimum education on mitigating fatigue. If a pilot refuses, he will be singled out as a troublemaker, or if a wider pattern emerges of pilots refusing such flying, the pilot association will find itself in court on the wrong side of an injunction or multi-million dollar fine at the direction of industry friendly judges. Company lawyers will present the FRMS training program, along with the attendance history of the educational aspects of such, and show the company to be acting well within its regulatory obligations to mitigate fatigue.

We seriously doubt any government agency, especially one who validated the relaxation of its own regulatory structure, will admit fault in the wake of a disaster descending from that waiver. The problem will be the pilot, not the relaxation of safeguards at the behest of profit.

Both industry and government will comb through the deceased pilot's personal life in search of anything, anything at all, which could possibly explain how the callous disregard for passenger safety, caused by regulatory erosion or outsourcing, could be the fault of the pilot. It could be as simple as determining the under experienced pilot working at an outsourced

operation skipped breakfast and had a family history of blood sugar disorders. This would certainly lead to Congressional hearings on how proper nutrition needs to be the focus of pilot recurrent training accompanied by complex regulations requiring pilots to certify they have eaten within the proscribed period and that they have packed enough food to see them to their destinations.

Perhaps a pilot had to change a tire on the way to work and jammed his knuckles on the jack handle. A review of the CVR reveals the pilot complaining about how stiff his hand is and that he is going to take ibuprofen on the layover after the double transcontinental duty period. A crash occurs during the 15th hour and the FAA recommends that pilots not perform their own auto maintenance and certificate holders require the pilot to pass a fine motor skills test prior to pushing back from the gate.

These situations, while partially tongue-in-cheek, are borne of reality. In the real-life case of outsourced operations being performed by inexperienced pilots, the blame is on pilot induced commuting and fatigue, both conveniently outside the fault of the certificate holders. The tendencies for certificate holders to engage in reckless and abusive practices and subsequently attempt to pin the results of such policies upon pilots is a regular feature of labor relations within the industry.

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in 50 people losing their lives.*

The FAA and airline industry looked at the commuting pattern of the first officer and found a convenient repository for the cause of the crash: she was fatigued because she lived in Seattle and commuted via freighter to her work in Newark. The entire premise of the FAA Proposal is to mitigate fatigue which, we are led to believe, caused this incident. The general discourse on this matter never really delves into the genuine problem, which is the outsourcing of safety, pilot pushing, and the abysmal compensation given to the new entrant pilots performing this outsourced operation. Continental and Colgan Air rolled the dice on outsourcing and inexperience resulting in 50

people losing their lives. The plane crashed because of insufficient pilot competence and lack of experience - not fatigue. The General Discussion of the FAA Proposal states in the footnotes:

On February 2, 2010, the NTSB released a press release summarizing the results of its investigation into the Colgan Air crash of February 12, 2009, which resulted in the death of 50 people. The NTSB did not state that fatigue was causal factor to the crash; however, it did recommend that the FAA take steps to address pilot fatigue.

What Caused The Colgan Air Crash - Outsourcing or Commuting?

Did Continental Airlines use their aircraft and highly experienced pilots to operate that flight, or did they farm it out to the lowest bidder? Did Colgan Air hire some of the thousands of displaced and out of work United States Navy fighter pilots, USAF tanker-transport pilots, or highly experienced general aviation pilots to operate that flight, or did they find someone who was seeking to build experience and willing to work for a wage so low, she had to live with her parents in Seattle and commute to what amounted to an internship?

Blame is being placed where it does not belong to mask the greatest threat to passenger safety: outsourcing to inexperienced, underpaid, and overworked pilots at the behest of competitive advantage.

We do not wish to sully the memory of First Officer Shaw who was only trying to break into the industry in the only way available to her, but operational realities are harsh and aviation isn't a consequence free exercise. Eo ipso, we also reject using this incident to regulate the practice of pilot commuting, as decades have passed with the majority of pilots having

commuted the bulk of their careers without incident. Blame is being placed where it does not belong to mask the greatest threat to passenger safety: outsourcing to inexperienced, underpaid, and overworked pilots at the behest of competitive advantage.

Pilots are, by nature, responsible people. We support the past practice of pilots determining their own fitness for duty. A pilot presenting himself to operate an aircraft is certification by the pilot of his or her fitness for duty and that he or she has evaluated fitness with illness, medication, stress, alcohol, fatigue, and emotion in mind. We regard any additional certification as thinly disguised legal eyewash for industry and political cover for government. Pilots need not be subjected to additional certification along only one of these lines. Additionally, pilots need not be subject to harassment or pressure if they self-evaluate and find themselves not to meet both the generally accepted standard for fitness for duty, as well as their own personal threshold.

Legislative Approval of Outsourcing Will Stop...One Way Or Another

The problem comes from pilot pushing: either overt or structural. Finding competitive advantage in the areas of pilot productivity is another way of saying “pilot pushing” and should not be sanctioned, either tacitly or overtly, by the governing legal authorities. The entire industry is fundamentally broken and being held together by the professionalism of the piloting corps. The reservoir of pilot sufferance is not infinite nor is this safe harbor of pilot patience an area where management should think it can operate indefinitely. Three decades of a mal-regulated marketplace, along with acceptance of the gross malfeasance of corporate leadership has made the situation we have today. Doing more of what ails us will not cure us; however, we don’t believe that industry and government share our perspective. Their goals are to keep ticket prices low and for the annealing of pilot labor for the purposes of having highly skilled and malleable functionaries operate passenger air transport aircraft.

Cost cutting can not come at the regulatory level because it would codify the jeopardizing of passenger and air crew safety. Passenger air transportation is

Fatigue Mitigation Response

inherently dangerous, fatiguing, manpower intensive, and costly. Government, industry, and the traveling public need to not only accept this reality, but embrace it. The pilots have borne the brunt of the cost cutting measures over the past three decades, and pushing them until they fail will result in a catastrophic breakdown of passenger air service and will kill thousands as a result.

Outsourcing safety and codifying pilot pushing will stop, one way or another. It is a shame that industry and government have decided the remedies for such avarice and conceit will be written in blood.

