

An Aviation Law Update

09/10/10

FAA Proposes Sweeping New Rule to Address Pilot Fatigue

On September 10, 2010, the Federal Aviation Administration ("FAA") introduced a Notice of Proposed Rulemaking ("NPRM") to address fatigue among commercial pilots by setting new flight time, duty and rest requirements.

According to FAA Administrator Randy Babbitt, this NPRM is, in part, a result of the findings of the investigation into the crash of Colgan Air 3407 in February 2009. In that crash, investigators determined that pilot fatigue was one of the primary causes of the accident. According to the FAA, after this crash, Administrator Babbitt "launched an aggressive effort to take advantage of the latest research on fatigue to create a new pilot flight, duty and rest proposal."

The Administrator, previously an airline pilot, stated in a press release dated September 10, 2010, "I know firsthand that fighting fatigue is a serious issue, and it is the joint responsibility of both the airline and the pilot."

Current rest requirements for domestic, international and unscheduled flights vary. The NPRM would eliminate these distinctions. Current rules also do not address other factors such as time of day of flights or number of flight segments. The NPRM provides for different crew rest periods in such instances. The NPRM also addresses crew rest in other circumstances such as time zone changes and types of flight.

The NPRM changes the definition of "flight duty" to "the period of time when a pilot reports for duty with the intention of flying an aircraft, operating a simulator or operating a flight training device." Under the new rule, other pilot tasks such as recordkeeping and ground training would be included when determining the required crew rest period before return to duty.

The NPRM would set a nine-hour minimum opportunity for rest prior to the duty period, a one-hour increase over the current rules. The proposed rule would establish a new method for measuring a pilot's rest period, so that the pilot can have the chance to receive at least eight hours of sleep during that rest period. In addition, "cumulative fatigue would be addressed by placing weekly and 28-day limits on the amount of time a pilot may be assigned any type of duty. Additionally, 28-day and annual limits would be placed on flight time. Pilots would have to be given at least 30 consecutive hours free from duty on a weekly basis, a 25 percent increase over the current rules."

The 60-day public comment period for this NPRM closes on November 13, 2010.

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