November 15, 2010

Federal Aviation Administration
Docket No. FAA-2009-1093
800 Independence Avenue SW
Washington, DC 20591

RE: Docket No. FAA-2009-1093, Flightcrew Member Duty and Rest Requirements

The Association of Flight Attendants – Communications Workers of America, AFL-CIO (AFA-CWA), which represents over 42,000 flight attendants at 21 different airlines throughout the United States, welcomes this opportunity to submit comments in response to the Federal Aviation Administration (FAA) Notice of Proposed Rulemaking (NPRM), Flightcrew Member Duty and Rest Requirements; Proposed Rule (75 FR 55852; September 14, 2010; Docket No. FAA-2009-1093.) The FAA is proposing to amend its existing regulations to combat flightcrew member fatigue that can threaten flight safety by proposing a duty and rest regulation based on available scientific literature, a review of U.S. and international regulatory approaches, and the professional experience of various government and aviation industry representatives.

AFA-CWA does not represent flightcrew members. However, we are concerned that the proposed regulation will have a direct impact on flight attendants in those situations where an operator chooses to apply the flightcrew member flight time and duty limitations and rest requirements to their flight attendant workforce. Currently, 14 CFR 121.467, Flight attendant duty period limitations and rest requirements: Domestic, flag, and supplemental operations, allows a certificate holder to apply the flight crewmember flight time and duty limitations and rest requirements of Part 121 to flight attendants. The proposal would eliminate the current distinctions between domestic, flag and supplemental operations into a new 14 CFR Part 117 and would ultimately remove the flightcrew flight time, duty and rest regulations from Part 121. AFA-CWA expects that this cross-reference will be corrected in the final rule and assumes the corrected language in §121.467(c)(1) should be replaced with the following text, except as noted in subsection (c)(1)(iii), which requires further evaluation:

“(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 rest requirements of part 117 to flight attendants for all operations conducted under this part provided that—
“(1) The certificate holder establishes written procedures that—
“(i) Apply to all flight attendants used in the certificate holder’s operation;
“(ii) Onboard rest facilities as defined in part 117 will be provided;”
“(iii)” this subsection to include new provisions for augmentation based on fatigue science
“(iv) Are approved by the Administrator and are described or referenced in the certificate holder’s operations specifications; and”

AFA-CWA is also concerned that the proposed flightcrew rule will indirectly contribute to or otherwise inform future development of flight attendant flight time, duty and rest regulatory requirements. Additional considerations, as noted below, should also be incorporated into a complete revision of Flight attendant duty period limitations and rest requirements: Domestic, flag and supplemental operations, 14 CFR§121.467. We note the following comment in the NPRM: “[F]uture rulemaking initiatives may address fatigue concerns related to flight attendants”1. AFA-CWA believes that this is a necessary and essential step to ensuring aviation safety, and urges the FAA to commence this rulemaking activity as soon as possible.

Flight attendants are required to assist when an aircraft emergency evacuation is necessary. In addition, flight attendants are inflight first responders trained to handle smoke and fire incidents as well as medical emergencies that may require (for example) performing cardiopulmonary resuscitation (CPR), administering various first aid measures, or assisting with childbirth. Furthermore, and especially since the terrorist attacks of September 11, 2001, flight attendants have assumed increasing responsibilities for ensuring the security of air travelers during flight. Thus, a flight attendant’s inability to function due to fatigue could seriously jeopardize the health, safety and security of the traveling public and other crewmembers.

Many of the occupational stressors that contribute to pilot fatigue contribute to flight attendant fatigue; these include the timing of work hours, time zone shifts, and any subsequent impact of off-duty sleep quality. Another similar area of concern is the length of a continuous wakeful period; in fact, flight attendants are even more susceptible to this factor than flightcrew members because, unlike pilots, flight attendant duty time is not limited by a regulation capping actual flying time in a 24 hour period.

Internationally, AFA-CWA believes that a change to flight attendant duty and rest limits is required. The International Civil Aviation Organization (ICAO) adopted Amendment 33 to the International Standards and Recommended Practices, Operation of Aircraft — International Commercial Air Transport — Aeroplanes (Annex 6, Part I to the Convention on International Civil Aviation) on March 2, 2009. This amendment introduced new definitions and amended provisions with respect to the limits for flight time, duty and rest periods for fatigue management relevant to pilots and flight attendants. Specifically the revised language in Annex 6, Part 1, Chapter 9 that refers to flightcrew members has a new amendment requiring that flightcrew member regulations for flight time and rest periods also be based on scientific principles and knowledge. Similarly, the revised language in Annex 6, Part 1, Chapter 12 pertaining to cabin crew members states:

1 75 FR 55857.
12.5 Flight time, duty periods, flight duty periods and rest periods for fatigue management

For the purpose of managing fatigue the State of the Operator shall establish regulations specifying the limitations applicable to flight time, flight duty periods, duty periods and rest periods for cabin crew members. These regulations shall be based upon scientific principles and knowledge, where available, with the aim of ensuring that the cabin crew are performing at an adequate level of alertness.

In the United States, reports from the FAA Office of Aerospace Medicine also support the need to review the current flight attendant duty and rest regulations. A 2007 report by the FAA Civil Aerospace Medical Institute (CAMI) that reviewed existing literature on fatigue, evaluated flight attendant duty schedules and compared those schedules to the current regulations regarding rest concluded that flight attendants are “experiencing fatigue and tiredness and as such, [it] is a salient issue warranting further evaluation.”

As recommended in the 2007 CAMI report, the FAA has been conducting follow-on studies. A December 2009 flight attendant fatigue survey report included data for 9,180 flight attendant participants. Eighty four percent (84%) of the participants indicated that they had experienced fatigue recently. In addition, more than 9 of 10 participants indicated that fatigue, in their view, represented a safety risk, and that fatigue is a common occurrence. In another published report, the FAA argued in support of the ICAO requirement to establish regulations to manage flight attendant fatigue that are based on scientific principles: “When comparing the United States (U.S.) maximum hours of work and minimum hours of rest with other countries, we concluded that U.S. prescriptive rules are among the least restrictive, representing a greater than typical risk for fatigue related incidents.”

Despite the high frequency of flight attendant fatigue reported in the two FAA studies cited above, “only 35% of flight attendants received any type of training or information regarding fatigue from their airline.” The NPRM recommends fatigue training as a critical part of managing fatigue. The NPRM states, “The agency is proposing to require fatigue training for each person involved in scheduling aircraft and crews, all crewmembers (emphasis added) and management personnel.” AFA-CWA assumes that the term “all crewmembers” includes flight attendants.

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5 Avers et al. page vii.
Finally, AFA-CWA recognizes that this NPRM specifically addresses flightcrew members. However, now that the FAA has begun to address pilot fatigue, it is essential that the agency begins to address flight attendant fatigue. Responses to questions posed in the NPRM follow in the attachment.

Sincerely,

Candace K. Kolander
Coordinator, Air Safety, Health and Security
Association of Flight Attendants-CWA

Attachment:  AFA-CWA Responses to Questions Posed in the FAA Notice of Proposed Rulemaking on Flightcrew Member Duty and Rest Requirements (75 FR 55852, September 14, 2010; FAA-2009-1093)
Attachment

AFA-CWA Responses to Questions Posed in the FAA Notice of Proposed Rulemaking on Flightcrew Member Duty and Rest Requirements (75 FR 55852, September 14, 2010; FAA-2009-1093)
The FAA seeks comment on the following:

1) Please comment on adopting maximum FDPs [flight duty periods]. Should the maximum FDP vary based on time of day? Should it vary based on the number of scheduled flight segments? Should the proposed limits be modified up or down, and to what degree? Please provide supporting data.

   AFA-CWA Response: The current flight attendant rule 14 CFR 121.467 is based on scheduled duty times and not actual duty times and has therefore created fatigue for our members. Limits are an important tool in combating fatigue and therefore AFA-CWA supports the concept of maximum FDPs.

2) Please comment on permitting flightcrew members and carriers to operate beyond a scheduled FDP. Is the proposed 2-hour extension appropriate? Is the restriction on a single occurrence beyond 30 minutes in a 168-hour period appropriate? Should a flightcrew member be restricted to a single occurrence regardless of the length of the extension? Please provide supporting data.

   AFA-CWA Response: It is unclear from the text of the regulation whether the proposed 2-hour extension applies to the scheduled FDPs or to the maximum FDPs listed in Table A(1). This needs clarification.

3) Please comment on the proposed schedule reliability reporting requirements. Should carriers be required to report on crew pairings that exceed the scheduled FDP, but not the maximum FDP listed in the FDP table?

   AFA-CWA Response: AFA-CWA supports the proposed schedule reliability reporting requirements. The notion of building accountability into a work schedule is well supported. We have seen air carrier’s bid schedules/pairings built right up to a duty maximum even though they know the schedule/pairing cannot be completed realistically in the timeframe. Carriers should be required to track pairings that exceed both scheduled FDPs and maximum allowed FDPs.
4) Should carriers be required to report on more parameters, such as cumulative duty hours or daily flight time? If so, why?
   AFA-CWA Response: Carriers should be able to track these parameters but reporting to the FAA seems unrealistic given the enormous amounts of data the FAA would need to review.

5) What should be the interval between reporting requirements?
   AFA-CWA Response: AFA-CWA believes that the proposed two month requirement seems adequate.

6) How long after discovering a problematic crew pairing should the carrier be afforded to correct the scheduling problem?
   AFA-CWA Response: The carrier should be required to correct the scheduling problem before the next bidding period for the crewmembers.

7) Is a 3-day adjustment to a new theater of operations sufficient for an individual to acclimate to the new theater?
   AFA-CWA Response: AFA-CWA has no response to this question at this time.

8) Is a 36-hour break from duty sufficient for an individual to acclimate to a new theater?
   AFA-CWA Response: AFA-CWA has no response to this question at this time.

9) Should flightcrew members be given a longer rest period when returning to home base than would otherwise be provided based on moving to a new theater?
   AFA-CWA Response: A longer rest period at the home base would only be necessary when the crew member has acclimated to a theater time different from the home base.
10) Should the FAA have different requirements for flightcrew members who have been away from their home base for more than 168 hours? If so, why?

AFA-CWA Response: AFA-CWA is unclear what this question is asking. If the FAA is asking if there should be different “rest” requirements for crew members who have been away from their home base for more than 168 hours, and the question is specific to rest, than as mentioned above in response to Question 9, AFA-CWA believes a longer rest period at the home base would be necessary if the crew member has acclimated to another theater time.

11) Should the FAA require additional rest opportunities for multiple pairings between two time zones that have approximately 24-hour layovers at each destination? What if the scheduled FDPs are well within the maxima in the applicable FDP table or augmentation table?

AFA-CWA Response: AFA-CWA has no response to these questions at this time.

12) If the FAA adopts variable FDP limits, is there a continued need for daily flight time limits?

AFA-CWA Response: AFA-CWA has no response to this question at this time.

13) If the FAA retains daily flight time limits, should they be higher or lower than proposed? Please provide data supporting the answer.

AFA-CWA Response: AFA-CWA has no response to this question at this time.

14) Should modifications be made to the proposed flight time limits to recognize the relationship between realistic flight time limits and the number of flight segments in an FDP?

AFA-CWA Response: AFA-CWA has no response to this question at this time.
15) Should augmentation be allowed for FDPs that consist of more than three flight segments? Does it matter if each segment provides an opportunity for some rest?

AFA-CWA Response: AFA-CWA has no response to these questions at this time.

16) Should flight time be limited to 16 hours maximum within an FDP, regardless of the number of flightcrew members aboard the aircraft, unless a carrier has an approved FRMS [fatigue risk management system]?

AFA-CWA Response: AFA-CWA supports a flight time limit of 16 hours maximum within a FDP regardless of the number of crew members aboard the aircraft. If the carrier wishes to extend that limit they would need to have an FAA-approved FRMS for that particular flight sequence. The ability to extend the flight time limit beyond 16 hours flight time should not be a blanket approval just because an air carrier has a FRMS. Each sequence beyond 16 hours flight time being proposed by the carrier would need individual FRMS review and approval.

17) Should some level of credit be given for in-flight rest in a coach seat? If so, what level of credit should be allowed? Please provide supporting data.

AFA-CWA Response: The FAA should not give any credit for in-flight rest in a coach seat. AFA-CWA agrees with the discussion in the NPRM that in-flight rest has a restorative value when an individual is permitted the ability to lie in a horizontal position, control the amount of light and noise, and have some input into the temperature of the area. None of these qualities are available in a coach seat that does not recline to horizontal, is located next to a lavatory with a flushing toilet and opening/closing door, is equipped with an ill-fitting curtain fastened to the ceiling that does not block out all light, or is near an exit door, which tends to be colder due to air entering through the seals.

18) Is there any reason to prohibit augmentation on domestic flights assuming the flight meets the required in-flight rest periods proposed today?

AFA-CWA Response: AFA-CWA cannot see a reason at this time for prohibiting augmentation on domestic flights.
19) Are the proposed required rest periods appropriate?

AFA-CWA Response: There are multiple references cited by the NPRM that discuss the need for adequate sleep, generally specified as 8 hours of sleep in a 24 hours period. The 8 hours sleep period allows an individual to sustain adequate performance levels throughout a work shift. AFA-CWA contends that the proposed 9 consecutive hours as proposed in §117.25 are inadequate to allow 8 hours of sleep. We recognize that the FAA has proposed changing the way actual rest is calculated; i.e., the proposed 9 hours begin from the time the crew member arrives at the rest facility. Thus, to obtain the suggested 8 hours of sleep the crew member would have to get to bed and be asleep within 30 minutes of arriving at the hotel, then wake and dress within 30 minutes. Neither of these 30 minute segments at the front end and back end of the rest period is realistic. A more realistic scenario is that out of a 9 consecutive hour rest the individual will only obtain approximately 7 hours of sleep on average. Therefore, to allow crew members to obtain a full 8 hours of sleep, AFA-CWA proposes that §117.25 be changed to require 10 consecutive hours rest from the time the crew member reaches the rest facility. Additionally, AFA-CWA proposes that a new requirement for rest periods for international operations of 12 consecutive hours be included in §117.25.

20) Should credit be allowed if a flightcrew member is not type-rated and qualified as a PIC or SIC?

AFA-CWA Response: AFA-CWA has no response to this question at this time.

21) Please comment on whether a single occupancy rest facility provides a better opportunity for sleep or a better quality of rest than a multiple occupancy facility such as a multi-bed crew sleeping facility or multi-bed living quarters. Please provide supporting data.

AFA-CWA Response: AFA-CWA has no comment on this issue.
22) Should there be any restriction on consecutive nighttime operations? If not, why?
   AFA-CWA Response: AFA-CWA supports a restriction on consecutive nighttime operations.

23) If the nighttime sleep opportunity is less than that contemplated under the split duty provisions of this notice, should a carrier be allowed to assign crew pairing sets in excess of three consecutive nights? Why or why not?
   AFA-CWA Response: No credits or extensions should be allowed if all the provisions of the split duty period are not met. Adequate recovery rest cannot be achieved in less than 4 hours, which is the minimum rest period proposed under the split duty provisions of the regulation.

24) If the nighttime sleep opportunity meets the split duty provisions of this notice, should the carrier be allowed to extend the flight duty period as well as the number of consecutive nighttime flight duty periods? Why or why not?
   AFA-CWA Response: If the split duty period rest provisions require that the 4 hours for sleep are actual rather than scheduled, and the rest facility is adequate to allow reasonable sleep, AFA-CWA agrees the FDP may be extended by 50 percent of the split duty rest period, up to a maximum of 12 hours. However, the proposed regulation does not state that this extension applies only to split duty rest during a window of circadian low (WOCL). The proposed regulation as written appears to treat a split duty rest in the middle of the day the same as a split duty rest during a WOCL and would in theory allow the carrier to extend the FDP in either situation. The discussion in the NPRM states that the ability of the individual to sleep during the daytime hours is very difficult. AFA-CWA does not believe that both situations warrant equal credit. Therefore we do not support extending the FDP. Based on the same reasoning, we do not support extending the number of consecutive nighttime FDPs simply because the carrier is giving a split duty rest.

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6 75 FR 55866.
25) Should a fourth night of consecutive nighttime duty be permitted if the flightcrew member is provided a 14-hour rest period between nights three and four?

AFA-CWA Response: AFA-CWA would support this proposal.

26) Please comment on whether a 16 maximum hour FDP for long call reserve is appropriate when the maximum FDP for a lineholding flightcrew member is 13 hours.

AFA-CWA Response: The same limits should apply to both reserves and lineholders. At some point both the reserve and the lineholder will be doing the same duties therefore there should be no differentiation between the two FDPs. AFA-CWA has a larger concern with the proposed reserve status section. Specifically, proposed §117.21(d) references long call reserves. The discussion in the NPRM mentions that long call reserve pilots may be given 9 to 24 hours notice of an assignment. The proposed rule states that a long call reserve would need to receive a required rest period prior to commencing duty or conversion to short call reserve. AFA-CWA is concerned however that long-call reserve as proposed actually would almost drive the industry to put crew members back on 24 hour reserve availability period (RAP) since there is no RAP limit like there is for short call reserves. This is problematic. And there appears to be no requirement that would prohibit that practice except for negotiated contractual union language with the carrier.

27) Please comment on whether the proposed maximum extended FDP of 22 hours for an augmented flightcrew member is appropriate. If not, please provide an alternative maximum FDP.

AFA-CWA Response: AFA-CWA is unclear how the FAA calculated the 22 hour reference in the above question. If we used the highest maximum FDP for augmented operations, which would be 18 hours, and then add the proposed allowable extension of up to 3 hours, our calculations only come to 21 hours. In certain unforeseen circumstances this long FDP may be acceptable. However, we question the fact that the pilot in command along with the company makes this decision. This same type of pilot in command decision is also mentioned when discussing the reduction of rest from 9 consecutive hours to 8 consecutive hours.
While we understand that the pilot in command has the overall authority for the safety of the aircraft and it’s occupants we would like to stress that the pilot in command should use good Crew Resource Management (CRM) skills and solicit the input from the fellow crewmembers since he will be making a decision for the entire team.

28) Please comment on whether a certificate holder should receive credit for not calling a flightcrew member during the WOCL while on reserve.

AFA-CWA Response: AFA-CWA supports the concept of reduced duty periods for crew members who are called during a WOCL while on reserve. AFA-CWA is particularly concerned with the provision that allows the reserve duty period to be extended if the carrier does not call the crew member during certain evening hours. We realize this is an attempt to limit an air carrier calling during the hours of 0000 and 0600. The FAA however has given the carriers “credit” for not calling the crew member by allowing the reserve duty to be increased by one-half of the length of the time during which the carrier did not contact the crew member, not to exceed three hours. AFA-CWA does not support the philosophy of giving the carrier credit. The carrier should be penalized for a call during the hours of 0000 to 0600. We suggest the credit provision for not calling between 0000 to 0600 be deleted from the proposed regulation. The maximum RDP should be 16 hours and the maximum RAP should be 14 hours. This is a much simpler approach.

29) Should minimum required rest while on reserve status be greater than the amount of rest required for a lineholding flightcrew member? If so, please provide supporting data, if not, please provide rationale.

Lineholding crew members are able to have scheduling information well in advance and therefore can more realistically plan rest and sleep accordingly. Reserves are not able to do this, their schedules can be much more erratic and it could be difficult for their bodies to adjust to unpredictably scheduled sleep periods, lengths of sleep, and accordingly, quality of sleep. It is therefore suitable
for reserves to have a greater rest period than lineholders to offset these conditions.

30) Please comment on the level of complexity on the proposed reserve system.

While AFA-CWA appreciates and supports the concept of the NPRM to make reserve as predictable as possible in order to manage fatigue we believe the complexity of the proposed reserve system while in some aspects is appropriate for the complexity of the scheduling requirements of the aviation industry we do believe there are areas for simplification. One way to reduce the complexity is to eliminate the credit for not calling a crew member during the WOCL while on reserve. More details regarding this suggestion are detailed in question 28 above.

31) The FAA seeks input on the appropriate cumulative limits to place on duty, flight duty periods and flight time. Is there a need for all the proposed limits? Should there be more limits (e.g., biweekly, or quarterly limits)?

AFA-CWA Response: AFA-CWA is generally supportive of the proposed cumulative limits listed in the NPRM.

32) The FAA also asks for comments on measuring limits on an hourly rather than daily or monthly basis. Does this approach make sense for some time periods but not for others?

AFA-CWA Response: AFA-CWA has no response to this question at this time.

33) If transportation is not considered part of the mandatory rest period, is there a need for a longer rest period for international flights?

AFA-CWA Response: AFA-CWA is pleased that the FAA recognizes that transportation to or from a location is not considered rest. The FAA proposes a rest period for all operations of at least 9 consecutive hours measured from the time the crew member reaches the rest facility. As discussed in the response to Question 19, above, 9 consecutive hours of rest are inadequate to obtain 8 hours of sleep, and therefore AFA-CWA proposes that §117.25 be changed to require 10 consecutive hours rest from the time the crew member reaches the rest facility.
However, regardless of whether transportation is recognized as rest, an international operation requires a longer rest period; therefore, AFA-CWA proposes a minimum of 12 consecutive hours rest for international operations.

34) Whether some elements of an FRMS, such as an incident reporting system, would be better addressed through a voluntary disclosure program than through a regulatory mandate?

AFA-CWA Response: AFA-CWA has no comment at this time.

35) Are there other types of operations that should be excepted from the general requirements of the proposal? If so, what are they, and why do they need to be accommodated absent an FRMS?

AFA-CWA Response: While AFA-CWA supports the concept of a FRMS we are concerned that the FAA would allow a certificate holder to avoid the prescriptive limits of the proposed rule once an operator implements an approved FRMS. The FAA contemplates in the NPRM that the carrier would only use FRMS for those flights that cannot be accommodated under the new proposed rule. AFA-CWA is concerned that this statement may not always apply, and that a carrier could conceivably use the FRMS for validation and scheduling of all their operations. Additionally, by the FAA’s own admission in their “Response to Clarifying Questions” recently posted in the Federal Register docket on this NPRM, “Disclosure of the FRMS would be governed by the provisions of the Freedom of Information Act, which does not necessarily mean that they would be publicly available.” Although the FAA mentions that they will not implement any approvals of FRMS until a final rule is in place, it is unclear who will be “approving” the FRMS at the particular airline. Will there be a centralized clearinghouse or approval department in the FAA Washington office or will the approval be done by the carrier’s CMDO? If the latter, AFA-CWA questions whether the knowledge base will be sufficient to allow approvals at the local level.