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## **DEPARTMENT OF TRANSPORTATION**

### **Federal Aviation Administration**

#### **14 CFR Parts 117, 119 and 121**

**Docket No. FAA-2009-1093**

**RIN 2120-AJ58**

#### **Flightcrew Member Duty and Rest Requirements**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Availability of Initial Supplemental Regulatory Impact Analysis.

**SUMMARY:** The FAA is issuing an Initial Supplemental Regulatory Impact Analysis of its final rule amending its existing flight, duty and rest regulations applicable to certain certificate holders and their flightcrew members. That document may be found in the docket listed above.

The Initial Supplemental Regulatory Impact Analysis serves to provide more detail on the potential impacts the final rule would have on cargo-only operations. In addition, the Initial Supplemental Regulatory Impact Analysis provides expanded discussion of the methodology and information sources used in the original Regulatory Impact Analysis, corrects some reporting of results and minor calculation errors present in that document, and presents sensitivity analysis on key assumptions used in the analysis.

**DATES:** Comments are due [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** For technical issues: Nan Shellabarger, Aviation Policy and Plans (APO-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3274; e-mail: [nan.shellabarger@faa.gov](mailto:nan.shellabarger@faa.gov). For legal issues: Rebecca MacPherson, Office of the Chief Counsel, International Law, Legislation, and

Regulations Division (AGC-200), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3073; e-mail: rebecca.macpherson@faa.gov.

## **SUPPLEMENTARY INFORMATION**

On December 21, 2011, the Federal Aviation Administration (FAA) issued a final rule that was published in the Federal Register as *Flight Crew Member Duty and Rest Requirements* on January 4, 2012. 77 FR 330. The regulations, which are limited to passenger operations conducted under 14 CFR 121 (part 121), become effective on January 4, 2014. On December 21, 2011, the FAA also issued a Regulatory Impact Analysis (original RIA) dated November 18, 2011 (FAA-2009-1093-2477). The original RIA provides the basis for the FAA's decision to (1) promulgate the final rule establishing new flight, duty and rest requirements for flight crews in passenger operations; and (2) exclude flight crews in cargo-only operations from the new mandatory requirements. While cargo-only operations are not required to meet the new regulations, the rule permits these operators to opt in to the rule if they so choose.

On December 22, 2011 the Independent Pilots Association (IPA) filed a timely petition for review. During the course of reviewing the administrative record for the purpose of preparing the government's brief, the FAA discovered errors in the original RIA that supports the final rule. The errors were associated with the scope of costs related to the implementation of the regulations for cargo-only operations. These errors appeared to be of a sufficient amount that the FAA concluded it was prudent to review the portion of the cost-benefit analysis related to cargo-only operations and allow interested parties an opportunity to comment on the corrected analysis.

On May 17, 2012, the FAA asked the United States Court of Appeals for the District of Columbia Circuit to suspend the litigation of the final rule while the agency corrected the

inadvertent errors it had discovered. The court granted the FAA's motion on June 8, 2012. While the passenger operations rule is not at issue in the court proceedings, the FAA, in an abundance of caution, decided to have that portion of the original RIA reevaluated as well. The FAA contracted with the John A. Volpe National Transportation Systems Center to review the original RIA for accuracy, correct any errors identified, and prepare a supplemental regulatory evaluation laying out the revised analysis. This Initial Supplemental RIA is the product of that review.

The FAA does not believe that it is statutorily foreclosed from issuing an RIA and considering the costs and benefits of the flight, duty, and rest rule. Section 212 of Public Law 111-216 contains a list of factors that Congress wanted the FAA to consider as part of this rulemaking. There is no indication in the statutory text of this section that this list was intended to be exhaustive. However, in its motion to the Court of Appeals, the FAA stated that it would provide petitioner with an opportunity to present its view that Public Law 111-216 prohibits the FAA from conducting a cost-benefit analysis. Accordingly, the FAA seeks comment on whether Public Law 111-216 permits the FAA to conduct a cost-benefit analysis.

Turning to the Initial Supplemental RIA, while this Initial Supplemental RIA largely mirrors the original RIA in both content and organizational structure, it does not re-evaluate the policy decisions behind the FAA's decision to issue a final rule implementing new flight, duty and rest requirements for part 121 carriers engaged in passenger operations. Rather, this Initial Supplemental RIA provides expanded discussion of the methodology and information sources used in the rulemaking analysis, corrects reporting and calculation errors identified in the original RIA, and presents sensitivity analysis on key assumptions used in the analysis.<sup>1</sup> A new

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<sup>1</sup> Wherever possible, this Initial Supplemental RIA relies on the same data used for the original RIA. In some cases, new estimates were developed and more recent data sources were used.

Appendix B contains the results of those sensitivity analyses while Appendix C contains detailed data tables, which are summarized in the body of this Initial Supplemental RIA. The Initial Supplemental RIA results in data that provides greater justification for the exclusion of cargo operations from the final rule, and continues to provide justification for the final rule on passenger operations. As a result, the FAA has determined that no revisions to the final rule on either cargo or passenger operations is warranted.

In the original RIA, the portion of scheduling costs related to cargo-only operations of air carriers that conduct both passenger and cargo-only operations (mixed operations carriers) were inadvertently excluded from the reported costs of extending the final rule to cargo-only operations. This Initial Supplemental RIA fixes that omission and that revision has significantly increased the estimates of the stated costs of extending the final rule to cargo-only operations. Due to inclusion of impacts on cargo-only operations, a few air carriers were reclassified for ease of explication.

Table 1 and Table 2 summarize the differences between the original RIA and the Initial Supplemental RIA.

**Table 1: Passenger Operations Nominal costs and Benefits over 12-Year Analysis Period**

	<b>Original RIA (millions)</b>	<b>Supplemental RIA (millions)</b>	<b>Difference (millions)</b>
Total Benefits – Base Case	\$376	\$401	\$25
Total Benefits – High case	\$716	\$757	\$41
Total Costs	\$390	\$457	\$67

**Table 2: Cargo-only Nominal Costs and Benefits over 12-Year Analysis Period**

	<b>Original RIA (millions)</b>	<b>Supplemental RIA (millions)</b>	<b>Difference (millions)</b>
Total Benefits – Base Case	\$20.35**	\$5	
Total Benefits – High Case	\$32.55**	\$31	

Total Costs	\$306	\$550	\$244
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\*\* The FAA did not detail potential benefits to cargo-only operations in the original RIA. Rather, the FAA assumed that benefits associated with averting a single catastrophic accident involving a cargo plane would range between \$20.35 million and \$32.55 million.

Comments Invited:

The FAA invites interested persons to review the Initial Supplemental RIA and submit written comments, data, or views. The most helpful comments reference a specific portion of the Initial Supplemental RIA, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, please send only one copy of written comments, or if filing comments electronically, please submit your comments only one time.

The FAA will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning the Initial Supplemental RIA. Before issuing the Final Supplemental RIA, the agency will consider all comments we receive on or before the closing date for comments. It will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change the Final Supplemental RIA in light of the comments we receive.

Proprietary or Confidential Business Information

Do not file in the docket information that you consider to be proprietary or confidential business information. Send or deliver this information directly to the legal contact person identified in the FOR FURTHER INFORMATION CONTACT section of this document. You must mark the information that you consider proprietary or confidential. If you send the information on a disk or CD ROM, mark the outside of the disk or CD ROM and also identify

electronically within the disk or CD ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), when the FAA is aware of proprietary information filed with a comment, the agency does not place it in the docket. It is held in a separate file to which the public does not have access, and a note is placed in the docket that the agency has received it. If the agency receives a request to examine or copy this information, it treats it as any other request under the Freedom of Information Act (5 U.S.C. 552). The FAA processes such a request under the DOT procedures found in 49 CFR part 7.

#### Availability of Rulemaking Documents

An electronic copy of rulemaking documents may be obtained using the Internet by—

1. Searching the Federal eRulemaking Portal (<http://www.regulations.gov>);
2. Visiting the FAA's Regulations and Policies web page at [http://www.faa.gov/regulations\\_policies/](http://www.faa.gov/regulations_policies/); or
3. Accessing the Government Printing Office's web page at <http://www.gpoaccess.gov/fr/index.html>.

Alternatively, a copy may be requested directly from the FAA by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue S.W, Washington, DC 20591, or by calling (202) 267-9680. Make sure to identify the docket number or notice number of this rulemaking.

All documents the FAA considered in developing the underlying final rule, *Flight Crew Member Duty and Rest Requirements* and this Initial Supplemental RIA, including economic analyses and technical reports, are located in the docket for this rulemaking and may be viewed on the internet through the Federal eRulemaking Portal referenced in paragraph (1).

Issued on: December 6, 2012

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