

SAFE SKIES ACT: MYTH VS. FACT

MYTH: All-cargo operations are safer than FAR 117.

FACT: The FAA and the NTSB have both noted that all-cargo operations are more likely to create fatigue. These operations are subject to more frequent night flying, long-haul overnight routes, flying during the window of circadian low (2 a.m.-6 a.m.), flying unscheduled (on-demand) with frequent route changes and scheduling instability that create increased concern for fatigue, landing at airports with fewer safety protections (like precision instrument approach technology and proper runway lights), flying older aircraft, and carrying more dangerous cargo. For these reasons, the NTSB formally dissented from the DOT's decision to carve out cargo operations from Federal Aviation Regulation FAR 117 and former NTSB officials have publicly described the carve out as a purely political decision handed down from the White House over the objections of FAA experts. The safety of all-cargo operations is substantially inferior to FAR 117, have an accident rate higher than commercial passenger operations, and pose systemic dangers to the nation's shared national airspace system. Any claim to the contrary should be summarily rejected.

MYTH: Some cargo carriers' pilots fly less total hours in a month than commercial passenger airline pilots subject to FAR 117. Therefore, these pilots are better rested and are less likely to suffer from fatigue.

FACT: This is misleading. Aggregate monthly hours are not the meaningful determinant of pilot fatigue; rather, the principal issues that create fatigue are the types of flights flown, the time at which pilots are operating, how many time zones pilots cross, and the type mitigations, including rest, a pilot receives to alleviate fatigue. A high percentage of all-cargo operations fly at night when fatigue is most prevalent. Pilots in all-cargo operations fly more frequently during the time at which a human's body is programmed to sleep (approximately 2 a.m.-6 a.m. and referred to as the "window of circadian low"), frequently cross multiple time zones, and are subject to frequent route changes that create additional workload. Put simply, total hours are only relevant when placed in a broader context of the *type* of flying a pilot incurs.

MYTH: All-cargo companies do a better job of mitigating fatigue relative to passenger air carriers.

FACT: There is no scientific study, empirical evidence, or data available that either reaches or supports such a conclusion. One basic principle that all-cargo pilots understand is that sleeping on demand is impossible. The scheduling of flight, duty and sleep periods should be based on the limitations of human physiology including circadian rhythms. FAR 117 is a safety regulation based on science and not upon perceived notions of business necessity. The rules that apply to all-cargo operations are not science-based, evaluated by the FAA to meet the FAR 117 standards, and have not been updated in decades. FAR 117 formally sets up 10 consecutive hours of rest in which 8 hours are uninterrupted for sleep, and a two-pilot crew can work only 9-13 hours, depending on a series of variables. Under current law, no requirements exist for all-cargo carriers related to guaranteed sleep time and pilots can work up to 16 hours. Put simply, cargo pilots are not guaranteed specified sleep time, are pushed to work substantially longer hours, and fly at more dangerous time periods (night flights and mornings). The real issue is that the absence of FAR 117 standards means the types of flights, and lack of guaranteed rest rules, results in greater capability for fatigue.

MYTH: The fatigue rules that all-cargo carriers operate under are sufficiently safe. In fact, these carriers have on their own volition improved fatigue protocols.

FACT: The FAA has called the rules governing all-cargo operators inadequate, which is why the agency sought to change them. At present, the all-cargo carriers operate under the old, inadequate CFR Part 121 standard. FedEx Express, which has achieved the highest all-cargo industry standard, is still operating well below the standards established under FAR 117. Other carriers in the all-cargo business are even more substandard. The gains made by FedEx Express have been negotiated in concert with its union. Contracts under the Railway Labor Act, the labor law governing pilots, are “amendable” and are often changed. This contract-by-contract approach to safety has very real limits. We reject the notion that the safety of our national airspace should be negotiated. Safety should be determined by uniform and national rules as mandated by Congress and per the mission of the FAA.

MYTH: Accident rates for all-cargo carriers are the same as passenger air carriers.

FACT: In the past 20-plus years, the accident rate in all-cargo operations has diverged from passenger operations. According to the Bureau of Transportation Statistics, all-cargo operations make up 6 to 7 percent of all Part 121 commercial operations and yet have an accident rate more than 7 times higher than the rate for passenger airlines over the last 10-20 years. If all-cargo operations experienced the same accident rate as passenger airline operations (0.14 accidents per million departures), all-cargo carriers would have had only *one* major accident in the decade from 2004–2013. In fact, there have been *twelve* during that period (2004-2013 and *seven* in the last 10 years (2009-2019). Vice versa, if passenger airlines had the same accident rate, we would have experienced 277 accidents.

MYTH: There should be separate rules governing pilot fatigue because of the different operating environments between all-cargo and passenger operations.

FACT: The decision to exempt all-cargo operations from FAR 117 is a historic departure for the FAA. For seven decades, pilot duty and rest rules did not distinguish between cargo and passenger operations and were instead based on the type of operation (domestic, flag, or supplemental). These fatigue rules were based on the outdated assumption that the length of flight was the determinant of fatigue. In 2009, the FAA acknowledged that these rules – for both all-cargo and passenger operations – fail to recognize the “growing similarities between the types of operations and the universality of factors that lead to fatigue,” are “overly complicated” and “do not adequately address the risk of fatigue.” For this reason the FAA, at Congress’ request, sought to overturn these outmoded rules.¹ In fact, our international peers do not distinguish between passenger and cargo operations. For example, both Europe and Canada do not dangerously separate out cargo and passenger operations.

MYTH: The FAA designed the FAR 117 rule for passenger operations and believes the nature of all-cargo flights are a poor fit for these modernized safety rules.

FACT: The FAA holds no such opinion. The rule was designed specifically around the universality of fatigue, with the deliberate inclusion of all-cargo operations. Specifically, during the rulemaking proceeding the agency wrote: “the FAA has decided against proposing special rules for all-cargo

¹ Notice of Proposed Rulemaking. Flightcrew Member Duty and Rest Requirements. FAA-2009-1093. See pages 55852 and 55855

operations because there are no physiological differences between pilots who fly cargo planes and pilots who fly passenger planes.”² In so doing, the FAA made the obvious determination that fatigue is universal encumbrance to pilot operation based on the extensive body of research on sleep science. In the agency’s own words: “fatigue factors, however, are universal. The sleep science... is clear in a few important respects: most people need eight hours of sleep to function effectively, most people find it more difficult to sleep during the day than during the night, resulting in greater fatigue if working at night; the longer one has been awake and the longer one spends on task, the greater the likelihood of fatigue; and fatigue leads to an increased risk of making a mistake.”³

MYTH: The final rule, which carved out all-cargo operations from FAR 117, provides an endorsement of the safety of allowing cargo operations to operate under different rules.

FACT: This is false. The “cargo carve out” was a political decision. In the FAA’s final rule, the agency never mentions or suggests that the decision to remove cargo operations contradicts the agency’s position that fatigue is universal, that the night-time operations cargo operations rely on increase fatigue, that the Part 121 rules cargo carriers neither “adequately address fatigue” nor account for “the impact of circadian rhythms on alertness.” Instead, in the 314-page final rule the decision to remove all-cargo operations is relegated to a single sentence in which the White House decided that the compliance costs exceed “quantifiable societal benefits.” This deeply flawed cost-benefit analysis has no other purpose than to create the false pretense of statistics to cover up the political decision remove all-cargo operations from science-based, modern fatigue rules.

MYTH: Pilot organizations are lying when they say the decision to remove cargo companies from flight time and duty rules was a political decision. The FAA removed all-cargo businesses based on sound review by the highest levels of government.

FACT: In an 2014 op-ed in the [USA Today](#) former NTSB chairman Jim Hall and former NTSB managing director Peter Goelz state emphatically that “truth behind the ‘cargo carve-out’ rule... was done for political reasons.” These career safety practitioners further say that “the trail is obvious: UPS and FedEx, the nation’s largest cargo airlines, have spent more than \$140 million in lobbying and political contributions since President Obama took office. Small wonder that this administration carved cargo pilots out of the rule,” that “the White House ordered the agency to remove them,” and “if the FAA is unwilling or unable to resist political pressure, Congress needs to step in to restore one level of safety to our skies.” James Fraser, the FAA’s top aviation medical official at the time also said publicly “it was not those of us that are in the trenches at FAA headquarters that are against (including cargo pilots under the rule). It’s a political issue.”⁴

FedEx, which has the most robust fatigue mitigations of the cargo carriers, has reached the previous passenger minimum rules (which were deemed unsafe and replaced by FAR 117) through the collective bargaining process. Other cargo carriers are substantially below FedEx and use “supplementary” standards, which provide even less sleep, rest time, and longer flight duty periods.

² NPRM at 55863

³ NPRM at 55857

⁴ Hall, Jim and Goelz, Peter. “Cargo Pilot Hours Should be Regulated Too.” USA Today. September 11, 2014.

MYTH: Litigation from 2014 both affirms carving out all-cargo operations from FAR Part 117 and serves as an endorsement of the safety of all-cargo carriers' current operations.

FACT: In 2014, the Court of Appeals for the District of Columbia rejected a legal challenge to the rulemaking. The suit, and its rejection, are explicitly related to the Federal Aviation Administration's authority to conduct a cost-benefit analysis and nothing more. The Court decision is not a supportive statement of the safety of their operations; it is simply a legal decision on the agency's authority to use a cost-benefit calculation in its rulemaking proceeding. Courts have long given deference to agencies to make decisions on how to conduct rulemakings, and this decision is explicitly limited to that matter.

MYTH: The Safe Skies Act is a one-size fits all regulation that precludes flexibility for the nuances of different air carrier operations.

FACT: This is false. FAR 117 created the Fatigue Risk Management Systems (FRMS), a system for monitoring and mitigating fatigue, in order to create an adaptable regulatory scheme to air carriers' varied operations. Specifically, the FRMS provides an opportunity for companies to develop their own strategies to deal with fatigue that best complement their individual businesses. **Under FRMS, carriers can submit routes, or even the entirety of their operation, to meet an *equivalent* standard to FAR 117 in order to comply.** For example, there are a few United Airlines routes for which the carrier has sought a diversion to FAR 117 by submitting science-based evidence that they are providing an equivalent protocol to the FAR 117 standard. If cargo carriers purport that they are either currently meeting or exceeding FAR 117, certainly they can comply with the regulation. Further, like passenger carriers, all-cargo operations will be able to utilize FRMS to augment FAR 117.

MYTH: **Cargo pilots do not want FAR 117** and cargo pilots "filed" to the docket in opposition to enhanced flight time/duty time rules.

FACT: **First, the Air Line Pilots Association (ALPA) is the employee representative of FedEx Express (the largest all-cargo employer), Kalitta Air, and Air Transport International cargo pilots.** The Independent Pilots Association (IPA) is the legal employee representative of the UPS pilots. The International Brotherhood of Teamsters (IBT) represents the pilots at Atlas Air Inc. Collectively, these organization have formally endorsed an aggressive commitment to the Safe Skies Act and one level of safety. **In fact, ALPA's FedEx pilot group (Master Executive Council) has passed a resolution on behalf of its more than 5,000 pilots specifically endorsing the Safe Skies Act.** Second, certain all-cargo air carriers contend that over 700 cargo pilots filed to the flight time/duty time docket (FAA-2009-1093) in opposition to the FAR 117 rule. This is false, and an analysis of the docket shows that those "filings" appear to be repeat submissions from an unknown party.

MYTH: All-cargo airlines effectively mitigate fatigue. They are also subject to legally substantial mitigation strategies that complement FAR 117.

FACT: The all-cargo airlines are **not** subject legally to FAR 117 fatigue risk management tools known as Fatigue Risk Management Systems (FRMS) that can be used that by an air carrier to mitigate the effects of

fatigue in its particular operations. It is a data-driven process and a systematic method used to continuously monitor and manage safety risks associated with fatigue-related error and can be used as means of complying in an equivalent manner with FAR 117. Instead, these carriers apply distinct and legally different *Fatigue Risk Management Plans (FRMP)*. The FRMP analyzes after the fact results of operations, requires carriers to create fatigue educational materials, reporting procedures for pilots, and requires carriers to mitigate fatigue within the existing, substandard Part 121 regulatory structure under which they are subject. According to the NTSB, fatigue management plans are “to be a complement, not a substitute to address fatigue, are not subject to FAA approval, and are not a means of legal compliance with Part 117.”

MYTH: The costs of complying with FAR 117 are so substantial that all-cargo airlines would be put out of business or their business operations would be otherwise harmed.

FACT: For decades, the passenger airlines – which historically have lower profit margins – argued that meaningful fatigue rules would hobble their business. Instead, the implementation of FAR 117 and its attendant safety benefits has coincided with passenger airlines’ greatest period of financial stability. There is no reason that all-cargo operations would be any different. When the FAA finally chose to exempt cargo operations from the rule, the agency overstated the costs of compliance in relation to its cost-benefit analysis, including overstating the following: the cost of additional line pilots, the cost of rest facilities, the cost of increased pilot duty hours, and the cost of schedule revisions to comply with Part 117.