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Federal eRulemaking Portal:
http://www.regulations.gov

RE: Comments to Docket No. FAA-2011-0367
Interpretation of 14 CFR § 121.377 – Maintenance and preventive maintenance personnel duty time limitations, dated May 18, 2010

Dear Ms. Bechdolt:

The Aeronautical Repair Station Association (ARSA) respectfully submits the following comments to the "proposed interpretation" published in the Federal Register on April 15, 2011.[1] In that posting, the Federal Aviation Administration (FAA) notes that ARSA previously asked for withdrawal of the interpretation at issue,[2] and properly characterized the basis for that request as follows:

> ARSA asserts that the May 18, 2010 interpretation changes the plain language of the regulation and requests that it be withdrawn.

Our position is unchanged; the proposed interpretation contradicts an existing regulation that is clear on its face. As a result, ARSA again respectfully asks the FAA to retract its May 18, 2010 interpretation.

The existing rule

The issue does not revolve around separate regulations, one containing a specific standard and the other a general equivalent standard. Rather, it involves plain language within the same rule. Specifically, § 121.377 states that:

> Within the United States, each certificate holder (or person performing maintenance or preventive maintenance functions for it) shall relieve each person performing maintenance or preventive maintenance from duty for a period of at least 24 consecutive hours during any seven consecutive days, or the equivalent thereof within any one calendar month. *(Emphasis added)*

[1] 76 FR 21270
[2] ARSA Letter to Rebecca B. MacPherson, FAA Assistant Chief Counsel for Regulations, dated December 13, 2010.

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Clearly, the "equivalent thereof" provision is not an exception to the rule; likewise, no qualifying conditions exist. As a result, there is no basis for the FAA's May 18 interpretation requiring a 24-hour rest period during seven consecutive days unless a national emergency or unusual occurrence exists. Although the FAA may wish to add such limitations, it cannot reach that goal through an interpretation. Instead, it must change the duty time rule.

Indeed, the validity of the May 18 interpretation is highly questionable due to the plain language of the current rule. As the United States Supreme Court recently stated in declining to recognize an agency's regulatory interpretation:

> …adopting the agency's contrary interpretation would 'permit the agency, under the guise of interpreting a regulation, to create de facto a new regulation.'[3]

The interpretation in this instance is just that – a de facto new duty time regulation under the cover of interpreting an existing rule. Even then, if the FAA's rationale for changing the existing rule (by interpretation) truly is based on fatigue studies, the de facto rule is utterly deficient as it fails to account for the fact that maintenance workers can be on duty for several days at a time without any minimum daily rest period.

The FAA should resist the urge to circumvent the rulemaking process. The existing rule must be revised to effect changes to the current maintenance personnel duty time limitations.

Conclusion

The FAA's May 18, 2010 interpretation should be withdrawn immediately.

Respectfully submitted,

Craig L. Fabian
Vice President Regulatory Affairs and
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[3] Chase Bank v. McCoy, 562 U.S. __ (2011), citing Christensen v. Harris County, 529 U.S. 576 (2000).