THE FEDERAL AVIATION ADMINISTRATION'S CALL TO ACTION ON AIRLINE SAFETY AND PILOT TRAINING

(111–62)

HEARING

BEFORE THE

SUBCOMMITTEE ON AVIATION

OF THE

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

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September 21, 2009

SUMMARY OF SUBJECT MATTER

TO: Members of the Subcommittee on Aviation

FROM: Subcommittee on Aviation Staff

SUBJECT: Hearing on "The Federal Aviation Administration's Call to Action on Airline Safety and Pilot Training"

PURPOSE OF HEARING

The Subcommittee on Aviation will meet on Wednesday, September 23, 2009, at 10:00 a.m., in room 2167 of the Rayburn House Office Building to receive testimony regarding the Federal Aviation Administration's (FAA's) Call to Action on Airline Safety and Pilot Training.

BACKGROUND

On February 12, 2009, at about 10:17 p.m., a Colgan Air Inc., Bombardier Dash 8-Q400, N200WQ, d.b.a. Continental Connection Flight 3407, crashed during an instrument approach to runway 23 at the Buffalo-Niagara International Airport, Buffalo, New York (Flight 3407 was en route from Newark Liberty International Airport (EWR), New Jersey). The crash site was approximately five nautical miles northeast of the airport in Clarence Center, New York, and mostly confined to one residential house. The four crew members and 45 passengers were killed and the airplane was destroyed by impact forces and post-crash fire. There was one ground fatality.

The National Transportation Safety Board (NTSB) held a 3-day public hearing on Flight 3407 from May 12-14, 2009. The investigation is ongoing, and while the NTSB has not yet made any conclusions or determined the probable cause of the accident, the investigation is focusing on a number of areas including: 1) flight crew experience and training; 2) remedial training programs; 3) commuting policies and practices; 4) fatigue management; and 5) violations of sterile cockpit and the impact on situational awareness.

The NTSB hearing identified the need to closely examine the regulations governing pilot training and rest requirements and the oversight necessary to ensure their compliance. This is a particular concern at regional carriers[1] since the last six fatal 14 C.F.R part 121 (part 121)[2] accidents involved regional air carriers; part 121 operators include major commercial air carriers flying under the strictest set of FAA operating regulations. The NTSB has cited pilot performance as a potential contributory factor in three of five of those accidents (not including Flight 3407).

On June 10 and 11, both the Senate Aviation Operations, Safety, and Security Subcommittee and the House Aviation Subcommittee began holding hearings related to regional carrier safety. On June 15, 2009, FAA Administrator J. Randolph Babbitt announced an industry-wide Airline Safety and Pilot Training "Call to Action" to reduce risk at regional airlines while promoting best practices from major airlines and seeking industry voluntary compliance with a number of safety initiatives. On June 24, 2009, the FAA also published an Airline Safety Pilot Training Action Plan ("Call to Action" Action Plan) with several specific short-term and intermediate-term action items that include:

- The FAA establishing an Aviation Rulemaking Committee (ARC) charged with developing recommendations for a new FAA flight and rest limits rule.
- A "Focused Inspection Initiative," whereby FAA inspectors would review airline procedures for identifying and tracking pilots who demonstrate a repetitive need for additional training. In addition, inspectors would conduct additional inspections to validate that airlines' training and qualification programs meet regulatory standards in accordance with FAA guidance materials.
- The FAA developing and seeking industry comments regarding creating a range of pilot mentoring programs in which more experienced pilots will mentor junior pilots.
- The Department of Transportation (DOT) and FAA developing authority and processes to review agreements between major air carriers and their regional partners.
- Labor organizations establishing and supporting professional standards and ethics committees to develop peer audit and review procedures.

Also, on June 24, 2009, FAA Administrator Babbitt sent letters to all 105 part 121 air carriers and eight labor organizations requesting a written commitment to certain action items by July 31, 2009. Specifically, the Administrator's letter requested:

From Air Carriers	From Labor Organizations
1) That air carriers immediately implement a policy of asking pilot applicants for voluntary disclosure of FAA records, including notices of disapproval for evaluation events;	1) That labor organizations establish and support professional standards and ethics committees to develop peer audit and review procedures, and to elevate ethics and professional standards;

[1] Regional air carriers provide short- and medium-haul scheduled service generally connecting smaller communities with larger cities and hub airports. They typically operate turboprops and jets with between nine to 110 seats and partner with mainline air carriers for contract or pro-rate flying.
[2] Part 121contains the rules that scheduled commercial air carriers fly under.

2) That air carriers who have not done so, establish Flight Operations Quality Assurance (FOQA) and Aviation Safety Action Program (ASAP) programs;	2) That labor organizations establish and publish a code of ethics that includes expectations for professional behavior, standards of conduct for professional appearance, and overall fitness to fly;
3) That air carriers who have contract provisions with regional, "feeder" partner companies seek specific and concrete ways to ensure that the partner carriers adopt and implement the most effective practices for safety.	3) That labor organizations support periodic safety risk management meetings between FAA and mainline and regional carriers to promote the most effective practices, including periodic analysis of FOQA and ASAP data with an emphasis on identifying enhancements to the training program.

At this point, FAA officials are working to develop performance metrics for auditing and assessing the agency's progress in obtaining industry commitments. However, due to the "voluntary" nature of these action items, the FAA states that it did not impose or suggest firm deadlines for labor or industry implementation. FAA officials also note that the information that it has collected so far is preliminary – and, in some instances, raw and incomplete - requiring further analysis to accurately gauge the true breadth, depth, and substance of the commitments received from labor and industry. Moreover, despite the July 31, 2009, deadline, the FAA anticipates additional responses. Regardless, according to the FAA, as of September 3, 2009,[3] 50 air carriers[4] and three labor organizations[5] have responded to the Administrator's letter.

The FAA also held 12 "Regional Safety Forums" throughout the country to discuss "Call to Action" safety initiatives, listen to stakeholder comments, and seek ideas for and commitments to related industry actions. The FAA invited air carrier Chief Executive Officers, chief pilots, directors of operation, and directors of safety for part 121 air carriers and 14 C.F.R. part 135 carriers (part 135)[6] with approved training programs; training center instructors, air carrier association representatives, labor organization representatives, and FAA operations inspectors to attend. In order to encourage open discussion, these events were closed to press and public. FAA officials, air carrier, and labor representatives have all indicated that these forums were well-attended. The FAA completed the last of these forums in Boston on August 27.

[3] As of September 18, 2009, the FAA's most recent review of responses to the Administrator's June 24, 2009, letter to air carriers and labor organizations was September 3, 2009.

[4] The Regional Airline Association (RAA), which represents approximately 30 passenger airlines that fly approximately 90 percent of the U.S. passengers traveling on regional aircraft, states that all but one RAA member airline has provided a response to the Administrator's June 24 letter, and that airline is in the process of responding. The Air Transport Association (ATA), which represents 17 U.S.-based major passenger and all-cargo carriers, states that all of its members responded to the Administrator's June 24 letter.

[5] FAA estimates there are 80,575 pilots working for operators with 121 certificates and operators that hold both 121 and 135 certificates. According to the FAA, the Air Line Pilots Association (ALPA - representing approximately 54,000 part 121 pilots), US Airline Pilots Association (USAPA – representing approximately 5,300 part 121 pilots), and Teamsters Local 747 (representing approximately 62 part 121 pilots) responded to the Administrator's June 24 letter. In addition, the Coalition of Airline Pilots Associations (CAPA) states that its member organization, Teamsters Local 1224 (representing approximately 1,830 part 121 pilots) also responded.

[6] 14 C.F.R. § 135 refers to aircraft having a passenger-seat configuration of up to nine passenger seats (excluding crew) or having a payload capacity of up to 7,500 pounds. These rules generally apply to commercial on-demand charter air carriers.

FAA officials indicate that, despite numerous items mentioned in the "Call to Action" Action Plan, to date, the agency has focused its efforts and resources on the Focused Inspection Initiative, the flight and rest ARC, and the Regional Safety Forums. By December 31, FAA staff will finalize a report to the FAA Administrator and the DOT Secretary to summarize findings and recommend additional action items. According to the FAA, the report will include performance metrics for auditing and assessing progress.

I. Focused Inspection Initiative

As a result of a December 2003 Federal Express crash at Memphis involving a pilot that failed numerous proficiency checks, the NTSB recommended requiring all part 121 air carriers to establish programs for flight crewmembers who have demonstrated performance deficiencies or experienced failures in the training environment. In 2006, the FAA responded by issuing Safety Alert for Operators (SAFO) 06015, which recommended that all part 121 carriers identify pilots with training deficiencies, such as multiple failed checkrides, and implement remedial monitoring and training programs. Failure to implement a remedial training program surfaced during the NTSB's Flight 3407 investigation when Colgan's FAA principal operating inspector testified before NTSB in May that Colgan had not implemented SAFO 06015.[7]

The FAA's Focused Inspection Initiative has two parts. First, pursuant to a June 24, 2009, notice,[8] FAA inspectors were directed to, by July 15, 2009, meet with part 121 air carrier directors of operations, directors of safety, and company officials responsible for flight crewmember training and qualification programs to ascertain each carrier's ability to identify, track, and manage low-time flight crewmembers, and those who have failed evaluation events or demonstrated a repetitive need for additional training. Inspectors were also to determine at these meetings if the carrier adopted a SAFO 06015 remedial training program.

At the time FAA published this notice, there were 99 part 121 air carriers. Of those, 14 had Advanced Qualification Programs (AQP)[9] and were exempt from the requirements of the notice. FAA inspectors held the meetings required by the notice with the remaining 85 air carriers. According to the FAA, about two thirds of the non-AQP carriers had systems to identify and manage low-time flight crewmembers and those with persistent performance problems. Carriers that do not commit to implementing these systems will receive closer FAA scrutiny to ensure that their training and qualification programs meet regulatory requirements. Based on information gathered through FAA's Focused Inspection Initiative, 76 of 99 operators have implemented SAFO 06015.

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[7] Douglas Lundgren, FAA, POI for Colgan Air, Inc., NTSB, Public Hearing in the Matter of the Colgan Air, Inc. Flight 3407, Bombardier DHC8-400, N200WQ, Clarence Center, New York, February 12, 2009, at 481 (May 13, 2009) (DCA-09-MA-027).

[8] Focused Program Review of Air Carrier Flight Crewmember Training, Qualification and Management, N 8900.78 (June 24, 2009).

[9] AQP is a voluntary alternative to the training requirements of parts 121 and 135. AQP training is scenario-based, often using actual accident or incident events. It attempts to judge cognitive skills in addition to flight skills and is specific to make, model and series of aircraft. AQP training must produce an equivalent or higher level of safety than traditional training. FAA, Advanced Qualification Program, Advisory Circular 120-54A (June 23, 2006).

For the second part of the FAA initiative, inspectors will, by September, 30, 2009, conduct additional inspections to validate that each carrier's training and qualification programs meet regulatory standards in accordance with FAA guidance materials, including, among other items:

- Reviewing the entire performance history of any pilot in question;
- Providing remedial training as necessary; and
- Providing additional oversight by the certificate holder to ensure that performance deficiencies are effectively addressed and corrected.

Using results from initial elements of the focused inspection initiative, the FAA planned to, by July 31, 2009, develop a Training Program Review Guidance SAFO to provide guidance material on conducting a comprehensive training program review. This guidance was to describe the training program review in the context of a safety management system and its role in a corporate safety culture.

However, FAA postponed development of the SAFO for two reasons. First, the "Call to Action" Action Plan indicates that FAA will use the results of FAA's Focused Inspection Initiative in developing the SAFO. Although FAA inspectors completed the first part by July 15, the second part (which calls for a more in-depth review of training) will not be complete until September 30. Second, FAA found that the initial July 15 timeframe would not allow incorporators of suggestions and ideas developed in FAA's Regional Safety Forums into the SAFO. Once FAA inspectors complete the second part of the Focused Inspection Initiative, FAA plans to analyze this information, along with ideas gathered from the Regional Safety Forums, and begin developing the SAFO. To provide time for industry comment, FAA believes it can complete the SAFO by December 31, 2009.

On July 29, 2009, bipartisan legislation H.R. 3371, the "Airline Safety and Pilot Training Improvement Act of 2009" was introduced and reported favorably out of the Transportation and Infrastructure Committee by voice vote on July 30, 2009. H.R. 3371 requires the FAA to conduct a rulemaking mandating that air carriers establish remedial training programs for flight crewmembers who have demonstrated performance deficiencies or experienced failures in the training environment.

II. Fatigue

Under current FAA rules, pilots and airlines are responsible for ensuring that pilot flight time limitations are not exceeded. FAA regulations impose an eight-hour limit for a pilot flight time during a 24-hour period, provided the pilot has had at least eight continuous hours of rest during that same 24-hour period. If a pilot's actual rest is less than nine hours in the 24-hour period, the next rest period must be lengthened to provide for the appropriate compensatory rest. Pilots must be relieved of duty for at least 24 consecutive hours during any seven consecutive days. The rules do not address the amount of time pilots can be on duty (standby time) or flight time that results from operational delays.[10]

[10] Airline rules may be stricter than FAA regulations, for example, if the issue is part of a collective bargaining agreement.

- Pilots flying domestic part 121 operations may fly up to 30 hours in any seven consecutive days (actual flight time), 100 hours per calendar month (actual flight time), and 1,000 hours per calendar year (actual flight time).

- Pilots flying domestic part 135 operations may fly up to 34 hours in any seven consecutive days (actual flight time), 120 hours per calendar month (actual flight time), and 1,200 hours per calendar year (actual flight time).

According to the NTSB, over the past 15 years, fatigue has been linked to more than 250 fatalities in air carrier accidents. There are currently two open aviation recommendations concerning pilot fatigue. The NTSB has recommended that FAA revise current flight and duty limitations to take into consideration the latest research findings in fatigue and sleep issues, as well as length of duty day, starting time, workload, and other factors; and develop and use a methodology that will continually assess the effectiveness of fatigue management systems implemented by operators.

In 1995, the FAA proposed to amend existing regulations to establish new duty period and flight time limitations, and rest requirements for flight crewmembers in parts 121 and 135. This rulemaking was based on recommendations from an ARC. It included a 14-hour duty period, 10 hours of rest, increased flight time to 10 hours, and addressed other related issues. According to the FAA, the pilots commented that 10 hours of flight time was too long, and the operators believed 14 hours of duty time was too short. To date, the regulations have not been revised. However, in 2000, FAA issued an interpretation of the flight and rest rules for domestic operations, which clarified that a flight cannot be started if the pilot has not had a minimum of eight hours of rest in the 24 hours preceding the scheduled end of that flight.[11]

In 2008, the FAA held a Symposium on Aviation Fatigue Management to discuss the latest in fatigue science and management. Dr. John A. Caldwell, a fatigue management consultant for the U.S. Air Force and Army, reported that his research found that 80 percent of regional pilots surveyed said that they had nodded off during a flight, and that scheduling factors such as multiple take-offs and landings every day were top contributors to operational fatigue.[12]

On June 15, 2009, the FAA announced plans to establish an ARC charged with developing recommendations for an FAA rule on pilot flight and duty time to incorporate recent scientific research about the factors that lead to fatigue. By July 15, FAA chartered an ARC consisting of representatives from FAA, industry and labor organizations. The ARC's meetings were not open to the public. The ARC had until September 1, 2009, to draft recommendations to the FAA, which would inform a new, science-based notice of proposed rulemaking (NPRM) on pilot flight and duty time. According to the ARC charter, its goal was to provide a forum for the U.S. aviation community to discuss current approaches to mitigate fatigue such as those found in international

[11] The FAA notes that it is also working with the International Civil Aviation Organization (ICAO) to develop a Fatigue Risk Management System (FRMS) to regulate flight and duty time. FRMS would provide an alternative to existing flight and duty limitations, and would move towards a risk based approach to improve flight crew alertness. FRMS would require the company to manage fatigue with input from all company personnel, including management, flight crewmembers, maintenance personnel, schedulers, and dispatchers.

[12] Dr. Caldwell's research also found that 50 percent of military pilots admit to falling asleep in the cockpit and that 71 percent of corporate or executive pilots say they have nodded off during a flight. Dr. John A. Caldwell, *Effects of Fatigue on Operational Performance*, Archinoetics, LLC, presented at the FAA Fatigue Management Symposium: Partnerships for Solutions (June 17, 2008).

standards[13] and make specific recommendations on how the United States should modify its existing requirements. The charter also directed the ARC to "consider and address: a single approach to addressing fatigue that consolidates and replaces existing regulatory requirements for parts 121/135; current fatigue science and information on fatigue. . . and incorporation of fatigue risk management systems."

While the ARC's report is not public, according to the *Wall Street Journal*, the ARC presented the Administrator with a flight time proposal that "envisions a sliding scale of between seven and eleven scheduled flight hours for pilots per day." [14] A pilot's duty time would be adjusted, but how is not yet clear. The article implied that pilots who have multiple takeoffs and landings a day would fly fewer hours than they do today, but that a proposed rule might make it easier for pilots flying cross-country to fly the return trip the same day.[15] The ARC discussed the issue of pilot commuting, as well as the larger issue of fitness to fly, but did not make recommendations regarding pilot commuting. The FAA has not provided the Aviation Subcommittee an implementation timeline, but recent media accounts suggest that the FAA has set an aggressive timeline of submitting a new NPRM to the DOT for review in mid-November, and then to the Office of Management and Budget (OMB) by late November. OMB clearance is targeted by late December for publication this year.[16] The FAA plans to issue a final rule before the end of 2010.[17] Fatigue-related issues addressed in H.R. 3371 include:

- **Flight and Duty Time Rule**: Directs the FAA to update and implement a new pilot flight and duty time rule within one year to more adequately track scientific research in the field of fatigue.
- **Fatigue Risk Management Systems**: Requires air carriers to create fatigue risk management systems approved by FAA to proactively mitigate fatigue.
- **Commuting Study:** Studies the impact of pilot commuting on fatigue and provides preliminary results after four months to the FAA to be considered as part of the flight and duty time rulemaking.

III. Voluntary Safety Programs: ASAP and FOQA

In the 1990's, the airline industry and the FAA reached consensus that regulatory oversight and compliance should be conducted in partnership with the industry. Under this approach, voluntary safety programs were created whereby airlines, pilots, maintenance personnel, and all other certificate holders are incentivized to disclose cases of noncompliance with FAA regulations that were not previously known. In these programs, safety issues are to be resolved through corrective action rather than through punishment or discipline. Airlines, unions, and the FAA have emphasized the importance of these voluntary programs, through the "Call to Action."

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[13] For example, the International Civil Aviation Organization (ICAO) standard, the United Kingdom Civil Aviation Publication (CAP) 371 and European Aviation Safety Agency (EASA) Notice of Proposed Amendment.
[14] Andy Pasztor, *Pilots, Airlines Urge New Fatigue Rules*, the Wall Street Journal, September 10, 2009, at A3.
[15] According to the FAA, it is possible under existing regulations to fly cross-country and return the same day, depending on variables such as type of operation, crew augmentation, and amount of flight hours.
[16] *Aviation Daily, Intelligence*, September 21, 2009.
[17] Andy Pasztor, *FAA to Propose New Fatigue Rules*, the Wall Street Journal, September 16, 2009, at A4.

The Aviation Safety Action Program (ASAP)[18] is a voluntary program that allows airline (and repair station) employees to report safety information or an instance of noncompliance with FAA regulations. ASAP is designed to allow for the collection, analysis, and retention of safety data that may be critical to identifying potential precursors to accidents that would otherwise be unobtainable. ASAP is intended to develop corrective actions to prevent the recurrence of the same types of safety events. The program establishes guidelines as to whether an event is eligible for disclosure and inclusion in the program.

Flight Operational Quality Assurance (FOQA)[19] is a voluntary program that routinely collects and analyzes flight data gathered during aircraft operations. The data is then used by the air carrier to detect issues that occur outside of standard operating procedures.

ASAP and FOQA are established by signing a Memorandum of Understanding (MOU) between the air carrier, the labor organization, and the FAA, which outlines the program's procedures and terms. Information from these programs is protected from disclosure by 49 U.S.C. 40123 and 14 C.F.R. part 193.

In 2007, the NTSB recommended that FAA strongly encourage and assist all part 121 regional air carriers to implement ASAP and FOQA.[20] As part of the Call to Action, FAA Administrator Babbitt wrote 105 part 121 air carriers urging all air carriers who have not done so to establish FOQA and ASAP programs, and to develop data analysis processes to ensure effective use of this information:

Air Carrier Responses to the Administrator's June 24 Request Regarding FOQA and ASAP

Total Responses	As of September 3, 2009, 50 of 105 air carriers responded to the Administrator's letter.
ASAP	There are currently 73 air carriers with ASAP programs in place, not all of which responded to the Administrator's letter. Of the 50 carriers that responded, 36 carriers confirmed the existence of their ASAP program, and 11 have stated their intent to establish an ASAP program.[21]
FOQA	There are currently 25 air carriers with approved FOQA programs, not all of which responded to the Administrator's letter. Of the 50 carriers that responded, the 16 reaffirmed their participation in FOQA program, and 26 stated their intent to establish a FOQA program.[22]

Source: FAA

The FAA's preliminary data appears to indicate growth in the adoption (or planned adoption) of FOQA, possibly as a result of the FAA's "Call to Action" initiative. In fact, the RAA states that virtually all of its 30 member carriers either have established or have committed to a FOQA program. However, with regard to carriers that have expressed intentions to implement either an ASAP or FOQA program, at this point, it is unclear when these programs will be in place.

[18] FAA, Aviation Safety Action Program, Advisory Circular 120-66B (Nov. 15, 2002).
[19] FAA, Flight Operational Quality Assurance, Advisory Circular 120-82 (Mar. 12, 2004).
[20] Safety Recommendations A-07-1 through -11, Letter from Chairman Mark V. Rosenker, NTSB, to the Honorable Marion C. Blakey, Administrator, FAA (January 23, 2007).
[21] FAA did not specify the status of this program with three of the responding carriers.
[22] FAA did not specify the status of this program with eight of the responding carriers.

FAA officials state that while the FAA will continue to track responses to its FOQA and ASAP request, since these are voluntary measures, the FAA did not impose or suggest implementation deadlines.

The DOT Inspector General (DOT IG) reported in May 2009 that, "[w]hile ASAP has proven highly beneficial to the airlines, FAA currently obtains only limited aviation safety data through the program for use in identifying systemic safety issues." The FAA has contracted with MITRE Corporation (MITRE) to develop a data tool called the Aviation Safety Information Analysis Sharing (ASIAS) system. The ASIAS system allows aggregated ASAP and FOQA information from many air carriers to be queried to look at a specific safety concern. Air carriers must develop agreements with MITRE to protect and secure the data. However, according to the DOT IG, the system does not yet have the ability to trend safety data to proactively identify safety risks.[23] Without improvements to data analysis tools and programs, greater participation by air carriers and their unions in the program may not yield the safety results that were intended.

Section 12 of H.R. 3371 requires the FAA to issue a report within 180 days on ASAP and FOQA. The report shall include: which carriers are using the programs; the benefits and challenges of implementing such programs; how FAA is using the data derived from the programs as safety analysis and accident prevention tools; and FAA's plans to strengthen the programs. Section 13 requires the FAA to create a plan within 180 days to facilitate the establishment and implementation of ASAP and FOQA programs by all part 121 air carriers and their unions. Section 14 requires the FAA to undertake a rulemaking to require safety management systems (SMS) and to consider including requiring ASAP and FOQA as part an SMS.

IV. Labor Organizations, Pilot Professionalism and Mentoring

The issue of pilot professionalism surfaced during the NTSB's Flight 3407 investigation when the cockpit voice recorder (CVR) transcript of the last minutes of the Colgan flight revealed non-essential conversation between the accident flight crew when sterile cockpit procedures should have been in effect. Within the last two months, FAA Administrator Babbitt has delivered two major speeches citing a lack of professionalism as a factor negatively affecting safety standards within the aviation industry, and calling for greater professionalism in the workplace:

> Let's face it, the national and international trends for fatal accidents and accidents overall are no longer pointing downward. In fact, they may be up slightly. We're seeing the same culprits: standard causes like unstable approaches, overruns, checklists not read properly, unsterile cockpits. If we're being candid with ourselves, we'll admit *that list* is longer than it should be. . . The biggest factor I think for all of aviation is the need to step up the professionalism in the workplace.[24]

As part of the "Call to Action," FAA Administrator Babbitt wrote eight labor organizations urging them to establish professional standards and ethics committees to develop peer audit and review procedures, publish a code of ethics, and support safety risk management meetings. According to the FAA, three organizations have responded:

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[23] DOT IG, *FAA is Not Realizing the Full Benefits of the Aviation Safety Action Program* (May 14, 2009).
[24] FAA Administrator J. Randolph Babbitt, "Don't Wait for the Call to Action" - International Safety Forum Keynote, Washington D.C., September 10, 2009.

Highlights of Labor Organization Responses to the Administrator's June 24 Request Letter

FAA Administrator's Request	ALPA Response	USAPA Response	Teamsters 747 Response
Establish and support professional standards and ethics committees to develop peer audit and review procedures, and to elevate ethics and professional standards. Publish a Code of Ethics.	ALPA has a well-established Code of Ethics and a Professional Standards committee which includes peer to peer interaction.	USAPA will address the request via the appropriate USAPA committee.	Teamsters Local 747 has developed a Professional Standards and Ethics Committee Policy Manual to guide members. This organization is also pursuing agreements between labor and management to mutually support these and other critical committees.
Support periodic safety risk management meetings between FAA and mainline and regional carriers to promote the most effective practices, including periodic analysis of FOQA and ASAP data with an emphasis on identifying enhancements to the training program.	ALPA embraces the challenge of working with its employers in developing robust Safety Management Systems, which are key to the periodic analysis of FOQA and ASAP data.	USAPA will address the request via the appropriate USAPA committee.	Teamsters Local 747 will continue to encourage and support strong ASAP and FOQA Programs.

Source: FAA

While FAA is tracking responses to these requests, FAA officials note that the agency has no authority to oversee labor organization activities. Also, since these are voluntary measures, the FAA states that it did not impose or suggest deadlines for implementation.

In addition, the "Call to Action" Action Plan states that, by July 31, the FAA will develop and seek industry comments with respect to creating a range of mentoring programs that will address issues in the professional standards and flight discipline area. According to the FAA, specific ideas that have been discussed at Regional Safety Forums include:

- Establishing Joint Strategic Councils within a "family" of carriers (mainline and regional partner(s)). This approach could lead to individual as well as corporate mentoring relationships.
- Using Professional Standards Committee Safety Conferences to provide opportunities for two-way mentoring.
- Exploring mentoring possibilities between air carriers and university aviation programs.

FAA plans to look more closely at these and other ideas and analyze data gathered from the Regional Safety Forums and develop a mentoring guidance document for industry comment. H.R. 3371 requires airlines to: establish pilot mentoring programs whereby highly experienced pilots will mentor junior pilots; create Pilot Professional Development Committees; and provide leadership and command training to pilots in command, including complying with the sterile cockpit rule.

V. Regional and Mainline Carrier Contract Provisions

As the major airlines continue to cut their capacity in response to the current economic downturn, regional airline operations constitute an increasingly important proportion of operations. Today, regional flights represent one half of the total scheduled flights across the country, and regional airlines provide the only scheduled airline service to more than 450 communities. Additionally, regional airlines provide passenger air service to communities without sufficient demand to attract mainline service. In the wake of the Flight 3407 tragedy, some have questioned the role and responsibility of major airlines in ensuring that their regional partners are using the best safety practices used by the majors.

In Administrator Babbitt's June 24 letter to air carriers, the FAA requested that "those carriers who have contract provisions with regional, feeder partner companies seek specific and concrete ways to ensure that the partner carriers adopt and implement the most effective practices for safety. For those regional carriers that implement FOQA and ASAP programs, we ask that major airlines have periodic meetings with their feeder airlines to review the data and to constantly emphasize their shared safety philosophy." As of September 3, 2009, 50 of 105 air carriers responded to the Administrator's letter. Of these, 20 have indicated that they have held, or intend to hold, meetings with regional partners with respect to FOQA, ASAP, and best practices. FAA is tracking responses to this request, but since these are voluntary measures, FAA states that it did not impose or suggest deadlines for implementation.

In addition, the "Call to Action" Action Plan states that DOT and FAA will develop the authority and processes to review agreements between air carriers and their regional partners. FAA officials state that the DOT and FAA have not yet developed concepts for authority and processes to review agreements between major air carriers and regional partners, in part because the immediate focus has been on the flight and rest ARC, the Focused Inspection Initiative and the Regional Safety Forums around the country.

FAA officials note that 14 C.F.R. part 119 requires the FAA to evaluate an applicant for an air carrier certificate to determine it has adequate financial resources and is properly and adequately equipped to conduct a safe operation. Part 119 also permits the FAA to amend an existing operating certificate if safety in air commerce and the public interest require it. Additionally, part 119 requires an air carrier to hold operations specifications that identify kinds of operations

authorized, as well as any other item the Administrator determines necessary. Although the operating certificate and the operations specifications are currently not used to review or approve code-share agreements, the FAA may consider their use in the future. FAA will be discussing ideas and options with DOT as it reviews and analyzes information gained from steps taken so far.

H.R. 3371 establishes an FAA Task Force that will report to Congress every 180 days on the progress of air carriers in developing specific programs to share safety data and ensure implementation of the most effective safety practices. H.R. 3371 also mandates that at the first page of an Internet website that sells airline tickets to disclose to the purchaser of each ticket the air carrier that operates each segment of the flight.

VI. Pilot Records

Part of a pilot's training includes "check rides." A check ride is a portion of an aircraft pilot's certification examination, or an endorsement for additional flight privileges, where the candidate being examined flies an aircraft with a FAA Designated Pilot Examiner to demonstrate expertise in the skills that are required for the certification. At the end of the check ride, the pilot either passes or fails. Air carrier access to pilot records surfaced during the NTSB's Flight 3407 investigation when it was revealed that the Captain of the accident aircraft did not disclose all of his failed check rides on his employment application with Colgan.[25]

Under the Pilot Records Improvement Act of 1996 (PRIA) (P.L. 104-264), air carriers must obtain the last five years' performance and disciplinary records for a prospective pilot from their previous employer. These records include information regarding initial and recurrent training, qualifications, proficiency, or professional competence including comments and evaluations made by a check airman (i.e., a person qualified and permitted to conduct flight checks).

PRIA also requires carriers to obtain records for a pilot from the FAA. FAA records regarding pilot certification are protected by the Privacy Act of 1974. However, PRIA requires carriers to obtain a limited waiver from prospective pilots allowing for the release of information concerning their current airman certificate and associated type ratings and limitations, current airman medical certificates, including any limitations, and summaries of closed FAA legal enforcement actions resulting in a finding by the FAA Administrator of a violation that was not subsequently overturned.

Although PRIA does not require carriers to obtain a release from prospective pilots for the entirety of the pilot's airman certification file, including Notices of Disapproval for flight checks for certificates and ratings, FAA guidance suggests to potential employers that they may find this additional information helpful in evaluating the pilot. To obtain this additional information, a carrier must obtain a Privacy Act waiver from the pilot-applicant. Administrator Babbitt's June 24 letter to air carriers asked that "air carriers immediately implement a policy of asking pilot applicants for voluntary disclosure of FAA records, including notices of disapproval for evaluation events." As of September 3, 2009, 50 of 105 air carriers responded to the Administrator's letter. Of these, 31 air carriers have already implemented this policy, 10 air carriers have stated their intention to implement

[25] Hearing Officer Lorenda Ward, NTSB, Public Hearing in the Matter of the Colgan Air, Inc. Flight 3407, Bombardier DHC8-400, N200WQ Clarence Center, New York, February 12, 2009 at 19 (May 12, 2009) (DCA-09-MA-027).

this policy, and two air carriers stated that they are evaluating this request.[26] FAA is tracking responses to this request, but since these are voluntary measures, the FAA states that it did not impose or suggest deadlines for implementation. The "Call to Action" Action Plan states that the FAA will also amend Advisory Circular 120-68D, PRIA, to reflect FAA's expectations. However, the FAA has not yet amended the Advisory Circular.

H.R. 3371 creates a Pilot Records Database, within 90 days, to provide airlines with fast, electronic access to a pilot's comprehensive record. Information included in the database will include pilot's licenses, aircraft ratings, check rides, Notices of Disapproval, and other flight proficiency tests. FAA will maintain the database and airlines will be able to access the database for hiring purposes only.

WITNESSES

The Honorable J. Randolph Babbitt
Administrator
Federal Aviation Administration

Mr. John Michael Loftus
Families of Continental Flight 3407

Captain John Prater
President
Air Line Pilots Association, International

Mr. Roger Cohen
President
Regional Airline Association

Mr. James C. May
President and CEO
Air Transport Association

Dr. Tim Brady
Past President
Aviation Accreditation Board International
University Aviation Association
(Also, Dean, School of Technology
Embry-Riddle Aeronautical University)

Mr. Jeffrey Skiles
Vice President
Coalition of Airline Pilots Associations

[26] FAA did not specify the status of this policy with seven of the responding carriers.

HEARING ON THE FEDERAL AVIATION ADMINISTRATION'S CALL TO ACTION ON AIRLINE SAFETY AND PILOT TRAINING

Wednesday, September 23, 2009

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON AVIATION,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
Washington, DC.

The Subcommittee met, pursuant to call, at 10:00 a.m., in Room 2167, Rayburn House Office Building, Hon. Jerry F. Costello [Chairman of the Subcommittee] presiding.

Mr. COSTELLO. The Subcommittee will come to order. The Chair will ask all Members, staff, and everyone to turn electronic devices off or on vibrate.

The Subcommittee is meeting today to hear testimony regarding the FAA Call to Action on Airline Safety and Pilot Training. I will give a brief opening statement and then call on the Ranking Member, Mr. Petri, for his opening statement or any remarks that he may have, and then we will attempt to go directly to our witnesses.

I welcome everyone to the Aviation Subcommittee hearing on the Federal Aviation Administration Call to Action on Airline Safety and Pilot Training. I think it is important that as we discuss airline safety and improving pilot training standards that we remember one of the important reasons why we are here today.

On February 12, 2009, Colgan Air, doing business as Continetal Connection Flight 3407, crashed en route to Buffalo Niagara International airport. All 45 passengers and the four crew members died, as well as one person on the ground. Mr. Mike Loftus, his daughter Madeline was a passenger on Flight 3407. I am pleased he is here again with us, joining us today to offer his testimony, and the Subcommittee extends our sincere condolences to you, as well as other family members and friends who lost loved ones in this tragic accident.

While the NTSB continues to investigate the cause, the 3-day public hearing on the accident clearly identified the need to closely examine the regulations governing pilot training and rest requirements and the oversight necessary to ensure their compliance with a particular focus on regional airlines.

At the outset I would like to commend you, Administrator Babbitt, for your leadership and your quick response to these safety issues. You acknowledged early on that the practices in the regional airline industry are not acceptable, and you acted. Soon after our Subcommittee hearing on June 11, an airline safety and

pilot training call to action was announced to help us gather information from the airlines and labor organizations to determine industry best practices and seek volunteer compliance with a number of safety initiatives. I believe that the call to action has helped focus the regional air carrier safety discussion in the aviation community, in Congress, and with the public.

Today's hearing is the first of many oversight hearings on the status of the FAA's call to action. Over the past several months the FAA held 12 regional safety forums around the country. I understand that all were well attended.

While there are positive indicators that the FAA and the stakeholders have made progress, there is also a lot that we do not know about the results of these efforts. One of the reasons we have raw and incomplete data is because the FAA did not impose or suggest firm deadlines for labor or industry to complete the recommended action items.

On June 24, Administrator Babbitt wrote 105 airlines and eight unions asking for commitments to specific action items. Three months later less than half have responded to your request. As a result, we only have preliminary information regarding what specifically these organizations have committed to do. A response of less than 50 percent to the FAA is exactly why we cannot rely on voluntary compliance.

I don't believe at this point you, Mr. Babbitt, nor the airline industry or the labor groups can tell us with any degree of confidence what the substance of the voluntary commitments are. That is why Congress must enact comprehensive safety legislation that will increase safety across the board. I know that we are expecting a more comprehensive report from the FAA on what progress that you have made sometime in December, by the end of the year. And the Subcommittee will convene another hearing to review what the FAA has proposed in order to measure your progress.

Meanwhile, we intend to uphold our commitment to the families of Flight 3407 and the American public. This Subcommittee will continue aggressive oversight to strengthen airline safety and pilot training qualification standards. Congress has the ability to improve aviation safety standards, and that is exactly what we intend to do with H.R. 3371.

As you will recall after the June 11 hearing on regional air carriers and pilot work force issues, Chairman Oberstar, Ranking Member Mica, Mr. Petri, and I made a commitment that we would work together to address many of the safety issues that were raised in the hearing. Based upon the input we received, which included ideas from Members of Congress and additional meetings with the FAA, the pilots unions, the airlines, and others in the aviation community, we introduced bipartisan legislation, H.R. 3371, in July. We had a specific goal in mind, to raise the bar on the minimum level of safety to ensure there is one level of safety across the industry.

To address pilot qualifications the bill increases the minimum flight hours required to be hired as an airline pilot. There is a consensus among pilots and many in the aviation community that 250 flight hours is simply not enough, and that safety would be improved by raising these standards. Under H.R. 3371, all prospective

airline pilots would be required to obtain an airline transport pilot license, which is currently needed to be an airline captain. It requires a minimum of 1,500 flight hours. Our goal is to ensure that both the first officer and the captain have the same minimum level of experience, training, and skills to transport passengers and crew safely.

The ATP license also requires additional aeronautical knowledge, crew resource management training and greater flight proficiency testing. Some in the aviation community have expressed concerns with the provisions to require an ATP license. I think Administrator Babbitt had it right in his speech to the Airline Pilot Association, and I quote you, Mr. Babbitt, in that speech. If you think the safety bar is set too high, then your standards are set too low.

Our bill is a comprehensive effort to consolidate what we know industry wide about aviation safety to improve safety performance going forward. That is why the call to action is so important. From the airlines, we need to know if they are using FOQA and ASAP and if they are working in partnership with the regional partners on specific and concrete ways to ensure the regional airlines adopt and implement the most effective safety practices. From the pilots, we need to know if they established and published a code of ethics to set expectations for professional behavior or have professional standards and an ethics committee. This is all valuable information and data that we need in order to evaluate pilot training and qualification programs.

Before I recognize Mr. Petri for his opening statement, I would ask unanimous consent to allow 2 weeks for all Members to revise and extend their remarks and to permit submission of additional statements and materials by Members and witnesses. Without objection, so ordered.

At this time the Chair recognizes the Ranking Member of the Subcommittee, Mr. Petri.

Mr. PETRI. Mr. Chairman, thank you for scheduling this important follow-up hearing to our June 11 hearing on air carrier safety. Well, as we all know, statistically, U.S. commercial aviation is very safe. Accidents remind us that there are improvements that still may be made and that there are lessons to be learned in these tragic losses.

With today's hearing, we continue our focus on the common goal of improving that safety record even further. As the families of victims of Flight 3407 remind us, we can and must do everything in our power to ensure that what happened on the day that they lost their loved ones must never happen again. I believe we are all committed to that shared goal.

In the aftermath of the tragic loss of Continental Flight 3407 on February 12, 2009, this Subcommittee explored many issues relating to safety of the airline system with special emphasis on regional air carriers. In addition, Mr. Mica, Mr. Costello, Mr. Oberstar, and I introduced the bipartisan Airline Safety and Pilot Training Improvement Act of 2009 to address the critical safety issues considered at our hearing.

At roughly the same time the FAA launched a call to action on air carrier safety, and I would like to join in thanking the Administrator for that effort and for joining us this morning and look for-

ward to hearing his update on the progress of the wide-ranging initiatives concluded in the FAA's plan. I am interested in learning about the ongoing regulatory effort at the FAA to address pilot training, record availability, professionalism, and fatigue. Additionally, we will explore what improvements can be put in place to improve air carrier hiring practices and training oversight.

I would especially like to thank Mr. Loftus, who is with us here today testifying on behalf of the families of Continental Flight 3407. Welcome back. I appreciate you and the other family members' insights and contributions to the discussion of how to best improve aviation safety. Your efforts here on Capitol Hill have been very helpful.

In three of the five recent fatal regional air carrier accidents, the National Transportation Safety Board cited pilot performance as a potential contributory factor. In Flight 3407 pilot performance seems to have played a role. I look forward to hearing from the Administrator and the pilots union what specific actions they are talking to improve peer auditing and professional conduct.

Again, I want to thank the witnesses for their participation and yield back the balance of my time.

Mr. COSTELLO. The Chair thanks the Ranking Member and now will recognize and introduce the witnesses. The first witness that will be testifying is the Honorable Randy Babbitt, who is the Administrator for the Federal Aviation Administration; Mr. John Loftus, who is the father of Madeline Loftus, and he is here testifying on behalf of the families of Continental Flight 3407. And I know that a number of family members and loved ones are in the audience here today at this hearing. Captain John Prater, who is the President of the Airline Pilots Association International; Mr. Roger Cohen, who is the President of the Regional Airline Association; Mr. James May, who is the President and CEO of the Air Transport Association; Dr. Tim Brady, who is the past President, Aviation Accreditation Board International; and Mr. Jeffrey Skiles, Vice President, Coalition of Airline Pilots Association.

Gentlemen, I would ask you—we have a 5-minute rule. I would ask you to summarize your statements so that we have plenty of time for questions and a discussion about many of these issues. So the Chair now recognizes Administrator Babbitt.

STATEMENTS OF THE HON. RANDOLPH BABBITT, ADMINISTRATOR, FEDERAL AVIATION ADMINISTRATION; JOHN MICHAEL LOFTUS, FATHER OF MADELINE LOFTUS, ON BEHALF OF THE FAMILIES OF CONTINENTAL FLIGHT 3407; CAPTAIN JOHN PRATER, PRESIDENT, AIRLINE PILOTS ASSOCIATION INTERNATIONAL; ROGER COHEN, PRESIDENT, REGIONAL AIRLINE ASSOCIATION; JAMES C. MAY, PRESIDENT AND CEO, AIR TRANSPORT ASSOCIATION; DR. TIM BRADY, PAST PRESIDENT, AVIATION ACCREDITATION BOARD INTERNATIONAL; AND JEFFREY SKILES, VICE PRESIDENT, COALITION OF AIRLINE PILOTS ASSOCIATION

Mr. BABBITT. Chairman Costello, and Ranking Member Petri, Members of the Subcommittee, thank you for inviting me here today to discuss the FAA's Call to Action on Airline Safety and Pilot Training. As you are aware, on June 15, we made this call

to action to promote a renewed and robust safety discourse within the aviation community.

History has shown that we can implement safety improvements far more quickly and effectively when we work together to identify the problems and develop solutions. We have received a wealth of information from the call to action, and we are committed to using it to make the industry and the traveling public safer.

To summarize our efforts here, as part of the Call to Action, I did send a letter to all part 121 operators and their unions requesting written commitments to adhere to the highest professional standards while this discourse was beginning. My letter also sought specific comments on several key topics, including pilot records, establishment of programs to monitor safety of flight operations and safety, and the development of professional standards and ethics committees by labor organizations.

I can tell you that the responses that we received have had an overwhelming willingness shown to make these commitments. And while we haven't heard from everyone at this point, as I told them and Members of this Committee, I will use my bully pulpit going forward to gain their cooperation. And so I am prepared to make those who were unresponsive known to the public by the end of September.

We also have prioritized the creation of new flight and rest rules based on fatigue signs as part of our Call to Action. An aviation rulemaking committee charged with making recommendations began meeting in July and completed its work by our September 1 deadline. I am extremely pleased that this ARC acted quickly and reached consensus on a broad philosophical framework for addressing this critical subject. Our experts are now reviewing the ARC's recommendations, and we have an aggressive timeline for completing the NPRM and we are on track.

Recognizing the urgency of proposals in the call to action, we also directed our inspectors to do a focused review of air carrier crew member training, qualification, and management oversight. This two-part program met its first deadline on July 15 and is on track to meet the final deadline set for the end of September.

We are also moving forward aggressively with our proposed changes to the airline safety and pilot training NPRM. We have received over 3,000 pages of comments to this proposed rule, and we are reviewing those carefully and anticipate that we will continue to meet our deadlines on this project. And although the FAA's leadership and guidance is critical to safety, the most effective safety culture is not one that is merely imposed by orders and notices from Washington. No, it is one that encourages buy-in and participation from the entire aviation community.

And so we took our show on the road, if you would, holding 12 regional forums across the country during the months of July and August. And these forums allowed the FAA to discuss the Call to Action and all the initiatives associated with it. The opportunity was there for us to receive stakeholders' feedback, to engage with aviation professionals, and to seek new ideas to improve industry safety, all of these being equally important.

In addition to hard work, we have also applied a dose of common sense to this Call to Action. As we work through our plan we real-

ize that some of our deadlines might actually shortchange our results. Our original intent was to develop guidance materials for conducting comprehensive training reviews by July 31. But we realized that this deadline actually predated the completion of our focused inspection initiative and the conclusion of our regional safety forums. With that in mind, we realized that we ought to take those two sources of information into account before putting forth any recommendations, and also recognizing that our commitment to safety can only be served by prioritizing quality results over a rigid timeline.

So with that in mind, I extended the July 31 deadline to December 31. This will give our team time to analyze and incorporate the valuable input that we received and continue to receive from the aviation community.

While I am pleased to discuss the important steps that we have taken and will be taking, I believe we should also acknowledge the biggest factor affecting aviation safety, professionalism in the workplace. No amount of safety procedures, rules or task forces can replace the central role that individual professionalism plays in keeping the skies safe. And whether one has a wrench in his hand or her hand or sits at a yoke or carries a clipboard or wears a headset or works in the galley, doesn't make any difference. Safety is everyone's responsibility. And although professionalism prevails in the majority of the work force and throughout the industry, the standards are the same, the training is the same, but unfortunately, the mentality is not the same. And this is what we need to change.

We must develop a culture where the hand of experience guides and mentors the inexperienced members of our community. We must find a way to nurture a culture where individuals know they can speak up about weaknesses in system without punishment. We must create a culture where professionalism and individual accountability it demands is both a job requirement and a point of pride. Despite the work that remains to be done, we know that safety is a shared priority throughout the aviation community and because this is true, we are confident that our efforts will succeed.

Mr. Chairman, Congressman Petri, this concludes my remarks. I will be happy to answer any questions should we have the time.

Mr. COSTELLO. The Chair thanks you, Administrator Babbitt. And let me say that I am pleased to hear that you are going to identify the airlines and anyone who did not respond to your letter, that you will publicly address that and make not only the Congress but the American people aware of who did not respond. Thank you.

The Chair now recognizes Mr. Loftus.

Mr. LOFTUS. Chairman Costello, Ranking Member Petri, and Subcommittee Members, I would like to thank you for inviting me to speak today before your Committee. I am here today representing not only my immediate family, but also my new family, the families of Continental Flight 3407. My 24-year-old daughter, Madeline, was on board 3407 that wintry night outside of Buffalo. She, along with 49 others, and an unborn baby, perished that night in February.

This past August 28, my family, gathered at my daughter's grave in the pouring rain to sing happy birthday. Not quite the celebration I would wish on anybody. Since that tragic night in February,

birthdays, anniversaries, graduations, family events, simple everyday life seems as though they have lost their luster. Nothing for us will ever be the same. The only thing we are left with is the past, the memories.

More than any other issue we can spotlight or debate at this hearing, I feel the most importance mission for me to accomplish today is to keep the oh so painful human side of this accident fresh in the minds of the important people, both in our government and the aviation industry. I have included at the end of my testimony 23 impact statements that have been submitted by family members of our group letting you know the pain and sadness that we still struggle with on a daily basis over 7 months later.

I would like to share one from Nirmal Sidhu, who lost her son, Dipinder, that fateful night. She writes, how can I ever forget those Sundays when Dipinder would ask me to stay in bed as he would whip up a scrumptious breakfast and serve it with aplomb, or the special way he would pick up our 10-year-old shiatsu and cuddle him every day upon entering the house after work, or the sound of the Wheel of Fortune playing religiously on the TV in the evening. I can still here the relentless teasing of my niece, Simmar, by my son, who treated her like a younger sister. He was instrumental in getting her admission into India into medical school after her graduation. How we missed sharing the joy just a week back when Simmar passed the first year of medical school in a new environment with a different educational system with flying colors. I can still feel the exuberance in his voice when he talked about the girl in whom he felt that he had found a true soul mate. I can still see him joking and laughing with his father on most evenings. I can visualize his smile when he talked with pride about his sister, Natasha. It is all gone forever. If I only knew that I would never see, hear or feel all of this, if I just knew that he was just given to me for only 28 years, I would never have let him out of my sight for a second. How I wish I could hear him just one more time so that I could say one more time to him, I love you. We are all here with one goal in mind and that is to prevent a tragedy like Continental 3407 from ever happening again. The simple question we and everyone else must ask is what measures will make this a reality.

And that brings me to the FAA's call to action plan unveiled in June. In response to the findings revealed by the NTSB hearings in May, I want to acknowledge Administrator Babbitt and his staff who have met with the group on multiple occasions keeping us informed of ongoing development and, most importantly, not waiting till the NTSB's final report to move forward on a quest to make critical improvements to our aviation system.

We have a simple message for the FAA. As a former pilot, when I look at the initiatives detailed in the call to action, they address three critical areas, training, fatigue, and an increased emphasis in investment in safety at the regional airline level. Clearly, our accident revealed deficiency in both stall recovery and cold weather training in the industry.

Since 2004 the FAA has been working on a rule making geared towards improving the airlines crew training program. The comment period on this proposed rule making closed last month. As we

reviewed the submissions to the FAA we came across quite a few negative comments from the industry. For me, they echoed the all too familiar complaints of the changes being too great of an economic burden and a complacent attitude of what we are currently doing is sufficient. That mindset is exactly what got us into this predicament that we find ourselves in today.

At the same time, the FAA is moving forward on rule making that would lead to a revised flight and duty regulations which former pilots like myself and Administrator Babbitt can testify are long overdue. This would be an enormous stride toward making airline travel safe.

One area that our group would like to see kept in the spotlight is the problematic area of commuting. With pilots flying cross country to report for duty, we cannot continue to look the other way and pretend that we do not have issues associated with commuting not to be addressed. So, in terms of eliminating deficiencies related to training and fatigue, our group challenges Administrator Babbitt and the FAA to stand up to the industry, to stick up for our loved ones and the flying public, and see these new regulations through enactment in the course of the next year.

Next, I want to touch on the FAA effort to identify industry wide best practices and secure voluntary commitments to all part 121 carriers to implement them. What it really speaks to is the inconsistencies of how regional carriers approach training, safety in all phases of their operation. When I flew, when it came to best practices in terms of safety and training, what was good enough for Continental was good enough for Continental Express. Sadly, our accident revealed that this is no longer the case. Instead we watched as Continental does everything to lay the blame for the shortcomings at Colgan and at the feet of the FAA for its lack of oversight. Instead of looking to shift the blame, we feel that everyone needs to come together to accept responsibility, from the regional carriers to the major carriers to the pilots union to the FAA and Congress, to figure out what went wrong and work together to fix it. If parent carriers take responsibility for the regional partners, will allow for safer operations, then that is what should happen.

So for the regional airlines it all comes down to investing in safety and in your pilots and doing everything you can to set them up for success. There should be no corner cutting when it comes to providing the very best training and the most state of the art safety management tools. Yet, as we look at the operations of Colgan this is exactly what was allowed to happen. The FAA has gotten the ball rolling in many of these areas with recent summit and regional safety forums, but I know too well from my time in the industry that voluntary commitments to best practices now can certainly go away quickly in the future if the economics change or if Administrator Babbitt is not at the helm of the FAA to keep the industry honest.

And so this is where we need you, our representatives in Congress, to come in and mandate some of these changes. There are numerous important initiatives that have been put forth by both the House and the Senate for consideration with the FAA reauthor-

ization. But I would like to spotlight three that we consider must haves.

First, we must move forward with the comprehensive pilot training record database for use in the hiring process. Let us never have another accident where the carrier has the excuse that they did not know everything there was to know about the pilot when they hired him or her.

Secondly, we need to lock in mandatory safety management programs, FOQA, ASAP, LOSA, with privacy protections that the pilots are asking for. We cannot leave the regional carriers with any temptations to save money at the expense of safety, which we glaringly saw in the case of Colgan. And lastly, we need to achieve one of the key provisions put forth in the Subcommittee's recent introduced legislation; namely, that all commercial pilots must have an ATP rating, with the requirement of 1,500 hours prior to being hired to fly commercially. The demographics of the pilot work force has changed, moving towards a younger, more inexperienced pilot while the technology has gotten more advanced. When I was hired by Continental Express I had an ATP and 5,000 hours flight time, and the captains with whom I flew with had twice as much time as me. As I said in my previous testimony before this Committee, there is no substitute for experience in the air. As a veteran of the industry, I know that this provision will require entry level pilots to build up additional hours by flight instructing, cargo hauling and crop dusting before they can be hired commercially. Many years ago that is exactly the route I took, and all those experiences made me a better pilot when I got to Continental Express and had human lives in my hand.

So we ask the regional and major carriers, the pilot unions, and flight training schools to support this initiative. It means a lot to our group.

In conclusion, I would like all the key players in this room to look at the families here with me today, the Mellets, the Eckerts, the Maurers, the Kausners, the Tolsmas and the Pettys, and all the other families who were not able to come to Washington but are here with us anyway. For us, what matters is not a well crafted public relation strategy while our accident is still fresh in the spotlight, what matters to us is implementation and follow-through. When it comes to the FAA reauthorization, the call to action, and the NTSB final report and safety recommendations, we ask that you do everything you can to make sure the tragic mistakes of Continetal Flight 3407 are never repeated again.

Thank you.

Mr. COSTELLO. The Chair thanks you, Mr. Loftus, and now recognizes Captain Prater.

Mr. PRATER. Thank you and good morning, Mr. Chairman, Ranking Member Petri, and Members of the Committee. Captain Loftus, Captain Babbitt, and you have our commitment to work to prevent another Continental 3407.

You may recall that ALPA testified before this Committee on June 11. At that time we described the economic reality that has set the stage for many of the safety issues we are discussing here today. Code share and fee for departure agreements mean that

main line carriers exert enormous pressure on regional airlines to provide their flight operations as cheaply as possible.

What do many airlines do to win this race to the bottom? They replace experienced pilots with low experienced pilots who fly for low paying operators marketed under the main line brand. They consider short staffing to be standard practice, and pilot pushing it is the result. Fewer pilots flying for days compromises safety. With the industry's intense focus on the lowest possible operating cost and the practice of airlines outsourcing their routes to the lowest bidder, I would like to review our observations following the FAA's 12 call to action meetings.

I led a dozen ALPA representatives to the FAA's industry summit on June 15, and served as the pilot moderator at the first call to action, and participated in the event in St. Louis. ALPA provided pilot moderators at six of the meetings, and nearly 70 of our pilots participated in those 12 events. I would like to offer examples of ALPA's actions that illustrate our union's commitment to assist the industry and the FAA in recognizing the serious safety issues raised during the call to action.

ALPA's code of ethics, adopted in 1956, provides standards of conduct for airline pilots. I have directed the leaders of our 36 pilot groups to work with their managements to do even more to incorporate our code of ethics into initial and recurrent pilot training.

Nearly all ALPA represented pilot groups have professional standards committees charged with maintaining the highest degree of professional conduct. Where management supports them, professional standards committees enhance safety. Unfortunately, we continue to see managements that refuse to allow their pilots to participate in ALPA professional standards and safety efforts.

Today, ALPA is releasing a new white paper on pilot candidate screening, hiring, training, and mentoring. We have asked our 50,000 members to participate in building those standards.

Our union has also created a professional development committee to enhance our work with the aviation community, the colleges, the universities to foster professionalism in new pilots.

On a related issue, nearly all of ALPA airlines have an ASAP program, and about half have a FOQA program. ALPA has worked to help airlines establish these critical initiatives to detect and resolve safety issues before accidents occur. Sadly, we continue to encounter managements and sometimes even FAA inspectors who remain convinced that the way to deal with safety issues is to punish employees for their mistakes. I have said it before, I will say it again. ASAP and FOQA programs will fail if they are used as discipline measures rather than as intended to advance safety.

Based on our extensive participation in the call to action meetings, we believe that they identified some of the best and certainly some of the worst practices in our industry. But what has yet changed? The action we believe to be absolutely essential from the regulated parties and the agency was noticeably absent. Clearly, the voluntary programs that are working need to be supported. Many of the best practices must be mandated and the worst practices must be eliminated through regulatory or legislative action.

For just one example, look to recent news headlines exposing onerous sick leave and fatigue policies at some of our regional air-

lines. Despite the hearings earlier this year substantiating this egregious behavior, our members continue to present evidence that some of these companies haven't changed. They continue to punish pilots who call in too sick or too fatigued to fly. In fact, approximately one-third of the pilots at one airline are reprimanded for sick leave or fatigue related absences annually.

This shocking number illustrates the flaws in the staffing and scheduling practices at too many airlines and demonstrates the urgent need to update the archaic flight and duty time regulations that continue to allow these unsafe practices to exist.

Main line management often refuses to intervene, despite the fact that these other airlines carry their passengers, the managements at the name brand airlines that sell the tickets to the traveling public and should be held responsible refuse to intervene, saying that these vendor airlines meet FAA standards.

As part of my commitment to the Administrator's call to action, I am reaching out to every CEO of main line and regional airlines where we represent the pilots to ask if each will work with ALPA to address the safety issues raised by the call to action. Safety requires the investment of both time and money. The race to the bottom fails to deliver the safest possible service across an entire airline network.

We urge Congress to act swiftly to pass this Committee's bill, H.R. 3371, into law. Thank you.

Mr. COSTELLO. The Chair thanks you, Captain Prater, and now recognizes Mr. Cohen.

Mr. COHEN. Chairman Costello, Ranking Member Petri, and Members of the Subcommittee, our thoughts and prayers continue for the families of Continental 3407 as we focus all of our efforts to doing everything possible to make sure that an accident like that never happens again.

Regional airlines have become vital to the Nation. We fly more than 50 percent of the scheduled passenger flights and 75 percent of the Nation's communities are served exclusively by regional airlines. But most importantly, regional airlines are committed to safety. I am proud to announce today that virtually all of RAA's members, airlines that transport 98 percent of the passengers carried by our member airlines, either have established or have committed to establishing in the near term a FOQA, Flight Operations Quality Assurance Program. For ASAP the results are similar. Virtually all of our members have implemented this valuable safety tool for their pilots, some of them having done so up to a decade ago.

In June, we responded immediately to the FAA call to action. And for the record, all the RAA member airlines responded in writing to the Administrator's June 24 letter. On short notice, seven RAA member airlines were invited to attend that first meeting. Every one sent its senior executives, including six CEOs, demonstrating what Chairman Oberstar has commented, that safety begins in the boardroom. That meeting featured a candid discussion of critical issues leading to a safety agenda that included a dozen similar town hall meetings across the U.S. Each of those meetings was cochaired by a regional airline executive.

RAA also played a key role in the 9-week flight duty and rest ARC. And let me state, the members of the Regional Airline Association are committed to this rulemaking, to adopting the new science-based regulations that arise from the process, and doing so in a prompt and timely manner.

In addition to being participants actively in the FAA efforts, RAA has embarked on our own strategic safety initiative that aligns with the FAA's efforts and the goals of this Committee. Our initiative includes, number one, forming a task force comprised of regional airline safety directors and operations officials to review all of the procedures and NTSB recommendations that could help prevent accidents.

Number two, we will be working with the Washington State University Sleep and Performance Research Center. We will study the fatigue risks associated with regional airline pilot operations.

Third, we will be working with the Flight Safety Foundation and will study the feasibility and practicality of developing an industry fatigue risk management system. And these elements, the following elements I am going to may require some legislative or regulatory action, and we look forward to working Congress and the FAA to identify these needed safety tools.

These include establishing a single database of pilot records, extending the background check time frame to 10 years; third, improving the tracking and analysis of check runs; fourth, exploring the use of random fatigue tests for pilots; and fifth, considering the use of cockpit voice recorders for accident prevention.

Please let me also address commuting. The ARC did not deal with commuting, so we do not expect the rulemaking to address it. But commuting must be conducted in a responsible manner. Each of our member carriers has a nonpunitive policy in place and reserve crews on call to allow a pilot to drop a trip if that pilot feels incapable of flying alertly.

Mr. Chairman, safety is a never ending effort and one that necessitates collaboration and cooperation among all stakeholders, the airlines, our employees, and the government. We in regional aviation are committed to ensuring that the U.S. air transportation system remains the safest mode of travel.

Chairman, I thank you for the opportunity, and we welcome any questions you might have.

Mr. COSTELLO. The Chair thanks you, Mr. Cohen, and now recognizes Mr. May.

Mr. MAY. Thank you, Mr. Chairman, Ranking Member Petri. While it is no consolation to the families devastated by the Colgan Air tragedy, our members are taking action to make our aviation system, which is already the safest in the world, even safer. Before I discuss some of those initiatives, I would like to emphasize three points in particular.

First, I think we all need to accept that until the NTSB concludes its investigation of the Buffalo accident we are not going to have a complete understanding of that accident.

Second, safety improvements today result from careful collaborative evaluation of operational data and practices. Safe aviation has an empirical disciplined approach to safety.

Third, the bedrock principle in civil aviation is that the entity to which the FAA has issued a certificate is ultimately responsible and solely responsible for its activities. Whether that entity is an air carrier, an airman or a dispatcher, that responsibility can't be delegated or assumed by others.

That principle avoids confusion about who is ultimately responsible, an absolutely essential consideration in promoting one level of safety. One level of safety, one level of enforcement. While this principle of individual accountability is critical, improving safety is a shared commitment.

We work closely with other aviation community members, including our regional partners in this never ending collective effort. For that reason, we welcome the FAA's June 15 call to action meeting. And at that meeting the FAA worked with our carriers and regional carriers and pilots to develop common strategies for reducing risks. We also welcome the opportunity to join with regional airlines, labor representatives, and the FAA in a series of 12 regional forums around the country to communicate the results of that call to action meeting.

With the indispensable leadership of Administrator Babbitt, several important initiatives have already been undertaken. They include creation of an aviation rulemaking committee to develop recommendations to revise flight and duty time regulations for flight crew members. Our industry representatives were very active main participants in that process. These recommendations, I think, are importantly science-based to accommodate various operating models, align with international guidelines, and reflect the vast and varied operating experience of U.S. carriers.

Number two, our commitment to adopting what labor and management have identified as most effective practices for improved safety. Those commitments were reflected in the air carrier letters to the administration. And like my partner from the regional airlines, I can assure you that every single ATA carrier has, in fact, replied in depth to administrator. And we covered the following topics: Asking pilots to voluntarily disclose their FAA records, including adverse actions. If not already using flight operations quality assurance, FOQA, and Aviation Safety Action Programs, ASAP programs, to establish them. I want to underscore that all of our ATA members already have those programs, have had them in place for many, many years, along with a number of other safety related and training programs like AQP; holding periodic meetings between main line carriers and their regional codes share airlines to review safety programs, share safety information and share most effective practices.

Number three, FAA's focused training inspection initiative in which the FAA is reviewing flight crew member training programs. As we all know, our union partners are crucial to any effort to improve safety. Labor organizations have committed to several initiatives focused on ensuring professional behavior and further strengthening voluntary safety programs such as ASAP and FOQA. I certainly agree with Captain Prater, they can't be used in a punitive way. Equally important, the industry recognizes the importance of mentoring, transferring experience from seasoned flight crew members to those with less experience.

We also believe that the Inspector General's review of FAA safety oversight of regional airlines is going to provide significant insights. The IG is focusing on three essential issues, pilot certification, training and qualifications, as well as commuting and compensation issues.

And finally, I want to reiterate the creation of a central pilot database would significantly improve airlines ability to vet pilot applicants.

In closing, we commit to continue to work diligently with other stakeholders and to follow through with the various commitments during the FAA call to action. We also look forward to evaluating and responding to the results of the NTSB investigation and to the IG's assessment of FAA regulatory oversight. Those actions are already taken. Those are underway, and those yet defined are and must continue to be driven by expert analysis of facts and data. It is in this informed context that further action to improve safety should be examined.

Thank you, Mr. Chairman.

Mr. COSTELLO. The Chair thanks you, Mr. May, and now recognizes Dr. Brady.

Mr. BRADY. Chairman Costello, Members of the House Aviation Subcommittee, thank you for allowing the aviation educators of the Aviation Accreditation Board International and the University Aviation Association the opportunity to be heard. If I were to place a caption on this testimony I would title it, quality, not quantity. This I hope will become clear as my testimony progresses.

The combined institutional membership of both AABI and the UAA is 115 colleges and universities who represent almost 11,000 students involved in academic preparation to become professional pilots and to create a significant percentage of the professional pilot work force. A single member institution alone provides one in four of the professional pilots flying air carrier aircraft today in the United States. One in four. These numbers are not insignificant.

We applaud the Committee, the Subcommittee for focusing on the safety of the airline industry. We, the aviation educators, have studied H.R. 3371 and find that most of its provisions are sound and will likely achieve the objective of improving air safety. There is one requirement, however, that causes us deep concerns. I am referring to the Airline Transport Pilot, ATP-only provision described in section 10 requiring a pilot to achieve an ATP before being allowed to enter the cockpit of a part 121 air carrier. For a pilot to acquire the ATP, he or she must be at least 23 years of age and have flown at least 1,500 hours. Graduates from colleges and university programs typically have earned the private commercial instrument multi-engine and perhaps a certified flight instructor qualifications, have about 250 to 350 hours of flying time, and may not yet be 23 years of age. This bill would require these graduates to spend an unnecessary number of years building their flight time so as to qualify for an entry level first officer position. The ATP requirement is a quantity driven requirement that requires little improvement in skills. Quantity, not quality.

So what do we know about quality? A 2008 pilot yield study examined the performance of all 452 new hire first officers for a large regional airline who started air carrier training during 2006 and

2007. The results were eye opening. The first officer new hires that performed best were those who had 500 hours of flight time or less and were graduates from AABI accredited institutions. Committee Members, that is quality. We have identified it and we know what it is.

Further, I submit that there is a direct relationship between quality and safety. The higher the quality of the entering pilot work force the higher the level of safety. But the ATP-only provision in this bill would close the cockpit doors to these high quality entry level first officers. So we are asking you today to remove this provision from the bill or to modify it so that graduates of high quality programs that meet AABI outcomes are able to enter the cockpit as entry level first officers at a much lower flight time requirement than the ATP requirement of 1,500 hours.

What are the results if you allow the ATP only provision to remain unchanged in the bill? The quantity driven ATP requirement would cause potential students who would normally enter a high quality university program to now seek the shortest route to the first officer's seat. Why would they spend 4 years at a college or a university paying tuition and flight fees, when at graduation they still need to fly for another 2 years to be qualified to enter the air carrier as a first officer trainee? They probably wouldn't. They would seek out local flight training providers, acquire the necessary ratings and spend the next year or two flying cheap, 30-year old single engine airplanes to build their flight time. They would repeat the same flying hour 1,000 times over and add little value to the scant knowledge they gained from the earlier training. At the end of it, the pilot would take the ATP written and flight exams and be eligible to enter the air carrier training program. These are the types of pilots who scored the worst on the pilot yield study. On the other hand, graduates from AABI university programs who enter the air carrier cockpit as first officers at say 500 hours, total time, and spend the next 1,000 hours being mentored by a seasoned captain flying the line are learning more each day. At the 1,500 hour point these first officers are superbly prepared air carrier professionals and are far superior to those who simply built flight time by flying nonproductive hours just to get to the magic number.

This ATP-only provision will fill the cockpits of air carriers with poor quality first officers and decimate the robust high quality flight education programs found at universities all across the country. For example, the aviation degree program at St. Cloud State University in Minnesota would cease to exist, just as the program at Southern Illinois University in Carbondale would. Half the students at Embry-Riddle at its campuses in Florida and Arizona would disappear. Auburn's program would close, as would the one at Kent State in Ohio, the program at Central Texas College also. The excellent program at Middle Tennessee State University would go away, and so would those at Western Michigan University and Eastern Kentucky University.

These are just a few examples. In total, the programs at colleges and universities across this great country which now enroll 11,000 students in flight education programs would close or would suffer. We aviation educators know this. We are the ones closest to the fu-

ture of aviation education in this country, and we are sounding the alarm. Please don't kill the source of the highest qualified entry level first officer pilots entering the air carrier work force. To do so by retaining the ATP-only provision in this bill will diminish the safety of the entire system, cripple aviation higher education, and achieve the exact opposite of the intended outcomes of this bill.

Thank you, Chairman Costello and Committee Members, and I am prepared to answer any questions you might have.

Mr. COSTELLO. The Chair thanks you, Dr. Brady, and now recognizes Mr. Skiles.

Mr. SKILES. Thank you. I would like to thank Chairman Costello, Ranking Member Petri, and the Members of the House Aviation Subcommittee for accepting my testimony here today.

First, let me acknowledge the tremendous loss suffered by the families of the Continental Connection Flight 3407. I cannot begin to imagine the pain and loss suffered by the victims' families, and I know that my fellow pilots will keep them in their thoughts.

It is good to reflect on the reasons why we are all here today. On February 12 of this year, Continental Connection Flight 3407 crashed into a Buffalo, New York neighborhood, causing the terrible loss of all onboard. In the aftermath the spotlight has been placed on pilot experience, pilot fatigue, and industry compensation levels. It is apparent from the available information at the NTSB hearing that the actions of the Continental connection pilots during the performance of their normal duty led to this tragedy.

But I would submit that they were as much victims of the state of the Nation's airline industry as the passengers who entrusted their lives to Continental Airlines. They were simply asked to fly a sophisticated aircraft in challenging conditions for which their limited experience had not prepared them for.

Over the past several years, there has been a dramatic drop in the experience levels of new hire pilots in our Nation's cockpits as our airlines sacrifice experience for the bottom line. The first officer of Continental Connection Flight 3407 drew an annual salary of $16,200 a year. In an effort to attract pilots at poverty level wages, minimum hiring qualifications have dropped to the lowest bar possible. Many of our Nation's experienced pilots are now unwilling to accept employment for such wages and regional airlines need to fill their cockpit seats with lesser qualified pilots.

The Airline Safety and Pilot Training Improvement Act of 2009 calls for all airline transport pilots to possess an airline transport pilot's license. The ATP would increase the experience base of U.S. commercial pilots as it would require flight experience commensurate with the responsibilities of the position. Today every major airline recognizes the value of experience by requiring, at a minimum, 1,500 to 3,000 hours of flight experience. Yet, in a few short years, regional airlines, who now fly over 50 percent of our domestic flights, have lowered their requirements to the absolute minimum in an effort to fill their cockpit seats at the lowest possible cost. The experience level of the Continental connection pilots is an example of this negative trend.

Experience matters. The flight hours that the FAA requires to qualify for an airline transport pilot's license allows the pilot the opportunity to develop judgment and critical decision making skills

that simply aren't possible in a tightly controlled training environment. Airmanship skills are only developed from exposure to challenging conditions and honed over time. Architect, engineers, CPAs and even real estate brokers are all examples of careers that have experienced level requirements before attaining full recognition or licensing. The responsibilities of an airplane pilot should demand no less.

My testimony would not be complete without addressing pilot fatigue. This is an issue that has long been a contributing factor in aviation accidents, and the NTSB has recommended changes in flight duty time rules for 2 decades.

This summer, Administrator Babbitt called for an aviation rulemaking committee to discuss changes in current regulations. While Administrator Babbitt has promised changes in regulation, the current discussion at the ARC is trending towards increasing the number of hours a pilot can fly in a duty period. We need prompt action to lower, not increase the amount of time a pilot can fly and a reduction to the 16-hour workday currently permitted by FAA regulations. We don't fix the pilot fatigue problem by allowing airlines to schedule more flight hours in a day, nor do we fix the pilot experience program by allowing any inexperienced pilots in our Nation's cockpits.

While Administrator Babbitt has shown a willingness to attack these problems, history shows that the FAA has never been an agent for change. We fully endorse H.R. 3371. It is a positive first step that puts in place a timeline for solutions and enhances the pilot experience level in our Nation's transport category aircraft.

Pilot leaders of ALPA, CAPA, and the IBT, representing 90,000 front line pilots, came before this Subcommittee in July as a united front in support of the airline transport pilot's license as the minimum standard in the cockpits of our Nation's airliners. Administrator Babbitt was instrumental in improving safety 20 years ago when he advocated that all scheduled transport be conducted under FAR part 121 regulations. He did this to create, in his words, one level of safety. We ask him to continue advocating for one level of safety by supporting the initiatives of H.R. 3371.

Thank you, sir.

Mr. COSTELLO. The Chair thanks you, Mr. Skiles.

Captain Prater, as you know from roundtable discussions with many of the people on the—witnesses on the panel, our goal in H.R. 3371 was to—one of the goals was to raise the minimum standards so that you would have the first officer and the captain at the same minimum level of experience and training, and that, of course, would require an ATP license. But in addition to the ATP license requiring 1500 hours in the cockpit, there is also aeronautical knowledge, crew research, management training, a lot of other training that goes along with it.

I would ask you, Dr. Brady has raised an interesting question and feels that both the 4-year institutions that are accredited—there are 26 I understand. I have two in my congressional district in southern Illinois, University in Carbondale, and St. Louis at Parks Airport, and of course, Dr. Brady, who offers his testimony today.

Do you believe that these institutions are at a disadvantage if in fact we require that the first officer receive an ATP license as opposed to just a commercial pilot's license.

Mr. PRATER. I do not believe that they will be disadvantaged. In fact, I agree with them that they are producing very good pilots who can go out and become airline pilots, but the problem is the airlines have become the introductory spot. It used to be the final spot for an aviator, you went out and you earned your time before you became an airline; now it is a transitionary job. You go to work for an airline and fly the public around so that you can get a good job with a corporation, or you can get a good job with one of the freight operators that pay.

Think about that. We are taking young aviators who have got a good education, some have gone through the university program, their first job as a commercial pilot is hauling 50, 70, 90 passengers; that is what is unacceptable. So we support the foundations of the airline transport pilot to be hired.

Now the bill that we have seen and looked at and support allows for some breathing room in here. We certainly have a time for the breathing room. We can work with the FAA's and the schools to find a way to ensure that that level is brought up.

But I agree with all the pilots at this table, that you cannot replace time in the air. That is what earns you experience. Experience is learning what you don't know, recognizing what you don't know. We can't take these young pilots with just 250 hours and turn them into airline pilots unless the airlines are willing to give the amount of training that say the military gives. Look at the vast difference. The military gives about a year of intense training. The airlines give currently 6 weeks of training to take that 250 or 300-hour pilot to become an airline pilot you had better be prepared to dedicate more resources to training. Thank you.

Mr. COSTELLO. Dr. Brady, would you like to respond.

Mr. BRADY. I would disagree that all of the pilots seated here agree with that statement he just made. I happen to be a pilot myself with the ATP, so I certainly don't agree with that.

I think in terms of who is entering the cockpit, as I mentioned, it is the quality issue that is important that we certainly think there are flight training providers throughout who are turning out pilots of lesser quality, but the quality of the pilots being turned out by the university is significantly higher than anything else in the country. And I would add that the statement made a moment ago was that the military provides excellent training for air carrier pilots, which is true. But in the pilot yield study, the military pilots who had come from the military and into the regional carrier were, although they scored very well in terms of being able to accommodate training for the air carrier, they didn't score as well as a 500-hour pilots coming out of college and universities.

So I think there needs to be some measure of quality of the product coming into the air carriers and not just say some magic number that is going to bless everyone and paint them with the same brush. The quality of training is not the same throughout the system.

Mr. COSTELLO. Mr. Skiles, would you like to comment?

Mr. SKILES. Yes, I would. I did see what was submitted from the AABI, and I would like to comment, first of all, that is not an independent appraisal; it was done by Embry-Riddle University. Secondly, it is not a complete transcript of the study; they were carefully culled conclusions to support their positions. The leap in logic they came to illustrate that the ATP pilots require extra training is particularly disturbing, but let me tell you.

I have 33 years of experience, 20,500 flying hours and ATP three type ratings and I have been through many, many initial and recent training events, and I have never failed a check ride and I have never required even one period of additional training.

When the airlines used to hire qualified pilots that was the norm. According to its own study, some 30 percent of AABI graduates require extra training events right out of the box, right out of school at their first initial—at their new airline, and they are bragging about that fact in the study.

The AOPA Nall report identifies some issues relevant to the continental connection crash. The Nall report stated that commercial pilots are three times more likely to be in an accident than a pilot that is possessing an ATP. That is three times the accident rate. I think the American people demand more. Thank you.

Mr. COSTELLO. Administrator Babbitt, would you want to comment?

Mr. BABBITT. Yes, sir. Thank you. I would only make the observation, I may well have begun to accelerate this debate if the Subcommittee and the members of the panel will recall, before there was ever a move to suggest we should have this rating. We were already proceeding with preparations for an Advanced Notice of Proposed Rulemaking that acknowledged the fact that we felt within the FAA that there was a need for additional training and an additional rating, if you would, and had suggested that that would be rating would be required to become a first officer.

So the distinction would be that if a commercial pilot wanted to go to work for an airline, you would have to have an additional skills and additional training that would be applicable to the mission. And one of the things that I point out to people, and I agree with Dr. Brady in one sense, the actual accumulation of more flight time, while it is experience, we don't know what kind of experience it is.

I was hired with a pilot that had 7000 hours, but he was a SAC (Strategic Air Command) pilot, and he flew 12-hour legs with four pilots, which meant every 40 hours he got one landing. That was not the kind of experience you want in a high traffic area with high exposure to approaches. I would point out that the two Air Florida pilots in a terrible tragedy that happened right here in Washington, were military-trained. Both of them had thousands of hours, but the first officer had never seen an airplane deiced before.

So I am suggesting to you that perhaps we should consolidate some of our thinking here and make certain that we don't just accept that quality is thrown out or quantity is the only answer. I think a meld of the two, which is what we expect to propose in our Advanced Notice of Proposed Rulemaking might be a better solution. So those are my observations.

Mr. COSTELLO. Mr. Loftus.

Mr. LOFTUS. Again, I'll state it one more time there is no substitute for experience in the air. However, I agree that I have flown with many entry-level pilots and university educated pilots and they turn out to be very good pilots eventually, but the airlines are not entry level position. I go back and say that again, they need to earn their way up to it. It is not an entry level. They shouldn't be flying people in the back as their first job.

Mr. COSTELLO. Administrator Babbitt, you heard Mr. Cohen's testimony that all of his member airlines have responded to your letter. Is that a correct statement?

Mr. BABBITT. I can't—I won't fault him. I want to be straightforward here and be candid. I think in the request that we made to the carriers, and I'll take some responsibility for this, we weren't crystal clear as to the vehicle as to how to respond, and I am of the belief that several people attempted to respond to us to different locations, some by U.S. mail and so forth. I am comfortable that we had a much larger percentage. I have some numbers here. They are a lot closer to what Mr. Cohen's suggested than what we originally gave you a few weeks ago.

We have gone back, we have checked with the airlines; we have reached out to the unions and asked that if they did send something please resend it to us. We should have updated numbers for you. But I think the responses have been very positive. I think we'll take some of the blame for not being clear as to where and how they should have responded to us.

Mr. COSTELLO. Again, by the end of September, though, you will release those who have not responded.

Mr. BABBITT. Yes, sir they will fall into one of three categories. They will have responded that they, in fact, have an ASAP or FOQA program, explain their willingness to adopt a program. If they don't, and those who didn't respond at all. I would make note for the record there are some cases, we have carriers that have operated under a 121 certificate because they operate a large aircraft. There is no point in asking someone to have a FOQA program of one airplane. The logbook is the data. So we do have to recognize that there will be some cases that it is perfectly okay not so are have FOQA program if you had just the minimum number of aircraft.

Mr. COSTELLO. Thank you. Mr. May, you heard Mr. Cohen's testimony, and as I am looking at his testimony now he says that our commitment to the value of this safety program is demonstrated by the fact that more than twice as many RAA members have ASAP programs for their flight attendants as do the main line carriers. Is that a correct statement that you would like to comment?

Mr. MAY. Thank you, Mr. Chairman. I don't, I don't have specifics of how many have, how many have his regional carriers have flight attendant ASAP programs. I do have some data on our carriers and their ASAP programs. They are 171 in place and the vast majority of our carriers and I say that because we have got some small cargo operators in our membership, but all of our passenger carriers have extensive ASAP programs with their pilots, their flight attendants, their dispatchers, some of them have them with

ground maintenance and others. So I can't give you a qualified answer comparing one to the other.

Mr. COSTELLO. Mr. Cohen, you believe that is an accurate statement? And how do you—what do you base that on?

Mr. COHEN. Mr. Chairman, the FAA keeps a database of ASAP programs, and I believe that the most recent figure was 7 and 3 for flight attendant ASAP programs.

Mr. COSTELLO. You also say, Mr. Cohen, in your testimony, and I quote, it is the professional responsibility of every professional pilot, if he or she does not feel sufficiently well rested, to say so and not fly. Each of our member carriers has a nonpunitive policy in place to allow a pilot to drop a trip if the pilot feels incapable of flying alertly. You heard Captain Prater's testimony that punitive actions have been taken with the regional carriers for those who have either refused to fly or did not want to fly. Do you want to comment, are you ware of any regional carrier that is taken punitive action against one of their pilots for not accepting a flight or refusing to fly.

Mr. COHEN. Mr. Chairman I am not aware of any specific instances.

Mr. COSTELLO. Captain Prater, you want to comment?

Mr. PRATER. Yes, sir. I would hate to go down the list right now and I tried to keep it generic, but the managements at Pinnacle and Colgan have not changed their ways; the management at Trans States Airlines have not changed their ways. Do I need to go further? I have got a big book. I have been asking our pilots to report the type of pressures that management has placed on them threatening their job, giving them discipline, giving them time off for not just fatigue or sick calls but for basic things that call in to a captain's decision to write up an airplane, a maintenance item. Those are the worst practices that we have identified, and yet some managements are still insisting that they are going to beat their pilots into submission.

Mr. COSTELLO. The Chair thanks you and now recognizes the Ranking Member, Mr. Petri.

Mr. PETRI. Thank you. I wonder if could provide Dr. Brady with the chance to respond or comment on the different comments on your testimony. There seems to be a difference between quantity and quality or quality hours as opposed to sterile hours. And clearly you want to have quality hours and maybe lots of them. So could you comment on all this.

Mr. BRADY. Thank you, sir. I appreciate the opportunity to comment.

I think that the—and all the aviation educators feel that the quality issue of a degree program and all that rests behind each of the flight hour is very important to providing someone with an appropriate level of experience. It is experience in the classroom but it prepares them for greater responsibilities, and if someone just went out to a local operator fixed base operator and achieved all of their certificates and ratings. That is the point that we are making is that the students that are graduates of these college programs are very structure they get a lot of background way beyond the FARs, Federal Aviation Regulations, in terms of what the re-

quirements are for, what say, even for an ATP. They get way beyond that in the classroom.

So the pilots who are coming out of collegiate programs are very capable of handling the responsibilities of the right seat, and they are mentored in the right seat. And after a time, they become much more capable than officers—first officers who not have gone through that type of training.

I think it is interesting, too, that many of us sitting here at the table were products of the military system that provided us the proper training, and our government felt comfortable in placing us in command of an aircraft at less than 1,000 hours. I know in my case, I was being mentored at 350 hours on the right seat of a cargo aircraft in combat, and when the time came for me to upgrade to aircraft commander, I did it at 1,000 hours.

So I don't think that the time is the issue. It is how the time is spent, and I still maintain that the type of level of education that is being provided through AABI is a peer review process where we bring and industry to help create what the criteria are that these programs have to meet and then we go out and visit these institutions and make sure they are maintaining the standards that they say they have. So the pilots coming out of these very highly regulated institutions are very high quality.

Mr. PETRI. We have been hearing a lot of talk about the restructuring of the airline industry and the pressure on wages and entry level wages, the feeder airlines and the wealth of the very low wages that they are paying. Has this affected the college programs? You think people are partly leaving training because of looking at job prospects, and if they are going to make $20,000 a year working for a feeder airline, why would they pay $120,000 to go to Purdue or something like that.

Mr. BRADY. The passion to fly is, is very compelling, sir, and the pilots who are coming into these programs have that passion, that is what they want their profession to be. I wish that it were different. I wish that entering first officers and the regional air carriers were paid $40,000 a year. Unfortunately that is not the way it is and our graduates have to react to that reality. They have debts they have that they have to pay off. At some point, they will begin to move and start to make some money, but I agree that the wages are way too low in the air carrier industry. I am just not sure what can be done to affect that in terms of what a congressional activity might be.

The pilots that are in our programs understand that they are going to start out in some fairly low wage situations. In fact, some of our instructor pilots, when they go into an air carrier, take a pay cut. So they understand that and are willing to—are willing to still take that job. They would be a lot more willing if it was 40,000 instead of 16,000, but still, they are willing to take those jobs because they know in the long run that the higher paying jobs are there once they get beyond first years with the air carrier.

Mr. PETRI. Mr. Skiles, could you comment on that? In your testimony, you say that airline flying is not a desirable career for experienced professional pilots. You certainly are such, and I wonder if you could just elaborate on that comment and explain what has been happening. I know in my own State, and you are familiar, too,

Midwest airline has been taken over and a lot of the experienced pilots are experiencing layoffs and having to go into second carriers as truck drivers and things of that sort. So could you comment on what is happening?

Mr. SKILES. Yes, I would like to comment on that. You know, in our industry, what we are finding is that as Captain Prater alluded to the airline pilot position is now an entry level position in the industry. What happens is people are gaining experience and then they are going to fly commuters—not commuters—they are going to fly for corporate, for fractionals, for any of the other possibilities out there in the aviation world, or they are simply leaving the industry all together. And that is a real problem that we are finding with retaining people in our industry, retaining experienced people in our industry. If you could fix that part, you would fix the experience problem.

For instance, I read a book of a man named Peter Buffington, who wrote a book about his experiences trying to survive on $12,000 a year as a regional first officer. He eventually left the industry. He now is an engineer with Garmin in Kansas. I called him up. And he said if he could make a living wage to support his family, he would be back flying airplanes because as Dr. Brady alluded to, that was his first love. Not only that, but he could give the eight names of people just like him who would be back in the industry, experienced professional pilots with ATP licenses.

Mr. COSTELLO. Chair thanks the Ranking Member and now recognizes the gentleman from Missouri, Mr. Carnahan.

Mr. CARNAHAN. Thank you, Mr. Chairman, and I want to thank the panel for their insights and testimony today. I want to add my condolences to the families and friends that were lost in flight 3407. It is indeed another tragic reminder that more must be done to strengthen the safety in our aviation system, that we must have one level of safety throughout the industry and I want to thank Chairman Costello for his leadership in promoting the bill to do just that.

It is also clear from listening to you that experience matters, that fatigue matters and that standards matter. And all of us need to be working in that direction.

I want to start with a couple of questions first to Administrator Babbitt. One of the things you mentioned with regard to experience that was the most important, but also challenge was setting up these mentoring programs and I would like you to really expand upon that in terms of how we can address some of those challenges to actually get those programs in place.

Mr. BABBITT. Based on our regional safety forums that we conducted around the country we have a tremendous amount of feedback and throughout that several uniform elements came clear, thoughts on better training, scenario based training for example. Experience is certainly good, but experiences that actually enhance your decision making are very important to put forward before a pilot.

And so the idea was we should be thinking about modifying our training scenarios where pilots are exposed more not to check items where you go through prescribed procedures, but instead put pilots in scenarios that they have not been exposed to before. Let them

gain the experience, let me see what happens in a nonvolatile environment where nobody is going to get hurt. But you are going to learn in these and we have the robust capabilities for simulation today to do that.

We also have incredibly experienced pilots that are available and we have new pilots coming into the industry. How do we arrange for that experience transfer? What forum do we create so that someone with Captain Prater's experience, or Jeffrey Skiles who is an incredible display of professionalism with the landing in the Hudson can impart that experience to a young pilot? I don't care if that pilot has 1500 hours, 2500 hours. They haven't seen the things that some of the pilots at this table have seen.

So where do we create these forums? One of the thoughts was that at major carriers we would have a forum bringing together the leadership from all of the code sharing partners: the pilots, the chief pilots, the safety folks from the unions. Bring them together, let them have quarterly reviews; let them design these scenarios for experienced transfer. There is nothing we can do to regulate it. There is just no way to get there. So those are the some of the things we are looking at, and I want to applaud everyone who contributed to these, the APA certainly participated, all of the unions participated. We have gotten a great deal of information out of these forums.

Mr. CARNAHAN. Let me ask Captain Prater to comment on that as well.

Mr. PRATER. Thank you, Congressman Carnahan, I agree with Administrator Babbitt, but there is one more basic problem. The pilot seniority list is a tool to allow experience to be gained before you advance into the captain's position. At every main line airline, there is one seniority list. If I were to get hired at Continental Airlines tomorrow or U.S. Airways tomorrow or United Airways tomorrow, I would fly the first officer for a good 8 to 10 to 12 years before I assumed command. I would fly with hundreds of experienced captains. I would probably have 8 or 10 years of experience to be hired, but each one of those main line carriers operate, if you will, or control what goes on in another 6, 8, or 10 regional carriers, and they move the flying from one to the other. As we negotiate a standard or a decent contract, they take the flying away and give it to somebody else who will run it cheaper. We have another eight or 10 seniority lists, so what happens is if they give to it the cheapest operator and they have got two hundred pilots and overnight they have got four hundred pilots the least experienced copilot who has been flying for maybe a year is now captain. We have got the address that situation of moving that flying back and forth because the experience is never gained and all of the sudden you are sitting there in the left seat making decisions thank you.

Mr. CARNAHAN. Thank you.

Mr. COSTELLO. Chair thanks the gentleman from Missouri now recognizes the gentleman from Tennessee Mr. Duncan.

Mr. DUNCAN. Thank you, Mr. Chairman. I have got several questions, but Mr. Babbitt, in all these many materials we were given, there was one mention that you gave a speech a couple weeks ago in which you said you are not seeing consistent professionalism

among aviation workers. What did you mean by that? I am a little curious.

Mr. BABBITT. What I meant by that, and thank you Congressman. Nice to see you.

Mr. DUNCAN. Nice to see you, too.

Mr. BABBITT. What I meant by that was I am quite proud and I think the industry should be quite proud of the high level of professionalism but what we have, anytime we have one person not living up to the standards, not producing the professionalism that is expected across the industry that is a potential point of risk. That is where the system breaks down and when we look across the industry—I have had several instances—they are not all pilots. I had reason recently to listen to an exchange of a controller who was very disappointing the lack of professionalism that I heard, contrast that against the controller in the Hudson accident that First Officer Skiles was aboard, that was one of the most professional handlings from everybody involved. That was professionalism. It was personified right there.

But we just can't tolerate any gap and so what we are looking to do is ferret out those areas, the weak areas. If you have, I mean the classic chain, 99 strong links and one weak one, that is where the chain breaks we have got to find those weak links.

Mr. DUNCAN. Okay, thank you very much. I would like to ask Mr. Cohen and/or Mr. May, first of all, are most of your airlines hiring pilots at this time, and do they hire, are they hiring many people that have just the minimum 250 hours or are you finding many of them, people who are leaving the military or other people with experience, are there a lot of experienced pilots out there that you are hiring? And secondly, another question on this, do you think the fatigue rules right now are sufficient or is that, do you see that as a problem? I know on the 121 operations, pilots are limited to 30 hours a week in any 7 consecutive days. Do most of your pilots fly that much in a 7-day period? I am just curious about those kinds of things. Mr. Cohen.

Mr. COHEN. Mr. Chairman, Mr. Duncan, so that most of our carriers right now are not hiring, and think that is industrywide, I think it is reflective. This industry once had overall 600,000, more than 600,000 employees. It is 300 and something now.

Mr. DUNCAN. Right.

Mr. COHEN. Very, very difficult time and——

Mr. DUNCAN. That is what I assumed.

Mr. COHEN. —most are not hiring now. And most of the carriers right now are member airlines. To my knowledge, I don't believe anybody is at a 250 level. Most are at 500,000, or 1500 maybe even.

Mr. DUNCAN. That is sort of what I assumed, that because there are so many employees or potential employees out there that generally you can find people with a lot of experience, is that correct?

Mr. COHEN. I think the other witnesses have, have characterized a very significant and long term problem, that the qualifications for all aviation professionals going forward in a very, very difficult industry. I know Mr. May can speak extensively to the kind of disruptions that the industry has always gone through, and maybe as

bad as ever now and again, just a number of employees right across all levels, this is all true.

Mr. DUNCAN. Mr. May.

Mr. MAY. Congressman, we are very proud of the qualifications of our pilots and our crews. We think we have some of the finest people in the world flying our aircraft. The vast majority of our pilots are ATP qualified. We have advanced qualification programs that are in place at the majority of our carriers. We continue to work to upgrade the professionalism of our pilots. We have mentoring programs that are currently aggressively in place for pilots and so we think the world of the professionalism and.

Mr. DUNCAN. What about the fatigue question, is there, do you see that as much of a problem?

Mr. MAY. We participated actively in the ARC that the administrator called. There were a series of recommendations made to the ARC. I think I am safe to say that the vast majority of those recommendations were those that Captain Prater's outfit and our team agreed upon. In some instances, they were longer duty days where they made sense, some much shorter where it made sense, but the key is they were all science-based and that is what is important. So I know that the administrator intends to come out with a rulemaking following the ARC, and we will all look forward to participating in that rulemaking process.

Mr. DUNCAN. All right. Thank you very much.

Mr. COSTELLO. Chair thanks the gentleman and I might add on the issue of fatigue if my notes are correct, and Mr. Cohen, I will get to this later, but you make a statement in your written statement that commuting is a lifestyle choice, not a necessity dictated by economics. Regional airlines have crew bases in dozen attractive communities throughout the country, and it is kind of an incredible statement to me that it is lifestyle choice.

And when I look at First Officer Shaw on the Colgan crash, she left Seattle on February the 11th at 10 o'clock eastern time, arrived in Memphis after getting on a FedEx flight, a jump flight, and arrived at 2:30 eastern time in the morning, a.m., left Memphis for Newark at 4:18 eastern time in the morning, a.m. Arrived in Newark at 6:23 a.m. Eastern time, and then the flight left Newark at 9:19 p.m. Eastern time, 24 hours later. She was commuting most of that time.

It is hard for me to believe that that is a lifestyle choice and it's not driven by economics. The Chair now recognizes the gentlelady from Texas, Ms. Johnson.

Ms. JOHNSON. Thank you very much, Mr. Chairman. I apologize for being a little late. I had a markup in another Committee.

I met Monday with about 50 or 60 pilots and I was personally a little concerned about what they consider to be their highest priorities. I was talking about outdated technology and they were talking about the human kind, what the pilots have concerns about as relates to safety and I want to make some of these statements that I wrote here, and I would like all of you to comment on them.

For overseas travel especially, they desire to have marshals, but there has not been any change in the funding, so therefore, many times if they want them, the pilot has to pay for them himself from personal funds and they feel that they are having to use vacation

time for their training because they are not given time off for that, time to train.

And the 8 hours that they are limited to flying continually ends up being sometimes 12 to 14 hours actually because they have to leave one place, go to another one, wait 3 or 4 hours, and then fly that 8 hours and over water flying can be very tiring for international travel.

But they usually have to leave late in the evening and they are headed for Heathrow, which is the busiest airport, I think, in the world. After trying to sleep all day they are very, very tired by the time they get that flight to Heathrow. There is concern about extending this time and they feel that if they are going to move it at all it needs to be reduced.

This one I didn't really understand, so clearly, it is my writing. There is a loophole called the deadhead that is causing many hours and then deregulation of airlines on—gave them no deregulation. They have been much more regulated. That concerns me. Let me tell you why. I have flown from Washington to Dallas and Dallas to Washington for 17 years just about every weekend. I have been very, very proud of the record of the pilots that are on those airlines. So I am very concerned about not only their training, but also their rest. Could you comment on any attention that might be given to these concerns? Yes.

Mr. BABBITT. Absolutely, let me—your questions essentially fall into two categories as I heard them, and please correct me if I misunderstood. The first I think has to do with Federal Flight Deck Officers and their ability to carry weapons on board aircraft. That is a little different area for us-- that is a voluntary program. I think Captain Prater could probably speak to that better than I, so I will let him.

The second category of issues you raised has to do with the on-duty times, and flight times, and we do need to make a distinction. There are two limits. One is the amount of time that a flight pilot can be on duty, that means go to work, maybe fly, maybe not fly; just be on duty, prepared to fly. Sometimes maintenance delays occur, so we track that time. There is maximum amount of time that you can be on duty. The second limit is the amount of time you can actually fly the aircraft. Today's current rules limit that to 8 hours of flying. Can that be extended? The actual 8 hours cannot under a normal circumstances unless obviously you are in the air and en route and delays occur then you would have to go over.

But let me tell you where we are going, at least what the ARC as reported to us. The aviation rulemaking committee has addressed some of these things. Number one, duty time in the future, in fact, counts—I am sorry, deadheading time would count as duty time so that it is recognized. That is important.

Secondly, science comes into this. Flying 8 hours with one landing is one scenario. Flying 6 hours with eight landings all of them approaches to 200 feet is an entirely different scenario. We now recognize that. Currently, there is only one duty period of time. It has a maximum. It doesn't matter whether you show up at midnight or at noon, it is the same.

The new recommendations recognize that people have circadian rhythms, and it takes into account when you go to work. When nor-

mal people go to work, 8 or 9 o'clock in the morning you are well rested, that is fine. Go to work at midnight. Would you be prepared to stay on duty for 15 hours? Of course not. So the new recommendation takes into account all of these things, hopefully, to address them.

I would note for the record there were 18 people, 18 inputs to this Committee from a variety of cross sections in the industry, including scientists and doctors who have made fatigue studies, that I know essentially came to consensus with few exceptions.

Ms. JOHNSON. Any other comments?

Mr. COSTELLO. The Chair thanks the gentlelady, and now recognizes the gentleman from Michigan, Dr. Ehlers.

Mr. EHLERS. Thank you, Mr. Chairman and this has been very interesting and useful hearing.

I would like to get back to Dr. Brady and some of the comments he made. And also relate that to some of my experiences. First of all, how many of the students that go through your university wash out or try to go through your university actually wash out because there is a judgment made that they simply will not be able to make the grade to commercial pilot?

Mr. BRADY. Yes, sir, our attrition is about 40 percent on this particular professional pilot degree for the entire 4 years.

Mr. EHLERS. 40 percent.

Mr. BRADY. 40 percent of the entering class yes, sir.

Mr. EHLERS. Is that typical for all the other universities?

Mr. BRADY. That is pretty typical because it is a self-select coming into the program so the process that they go through to determine whether or not and we determine whether or not they are a good professional pilot material is a process that takes time. It takes them to interact with the curriculum and then determine, and we determine whether or not they can successfully do that. So it is about 40 percent, and that is pretty standard for a 4-year degree.

Mr. EHLERS. And for what reason do they typically wash out? Is it lack of intellectual ability to make the types of calculations that pilots have to make? Conceptual difficulties, or is it a matter of physical inability to manage controls and so forth?

Mr. BRADY. If you ask them, they usually relate some personal issue, but many cases it is because of funds because they have don't have the funds to continue in a professional pilot program. The flying costs a good deal of money to get all of those ratings. So many of them wash, they wash themselves out because they move into another program simply because they run out of funds, but we have students that are simply incapable of mastering the curriculum and those of course we have to move out of the program.

Mr. EHLERS. And what about physical ability?

Mr. BRADY. Not too often no, sir, because coming into the program they have to have—be able to pass an FAA—what is called an FAA class 2 medical. So if they can't do that, they can't enter the program even though that is not required at that point later on, they are going to have be able to pass that. So we use that as an entry requirement, and many of our—and I am speaking now from my own university—that many of the universities have that

same issue. They come in with an appropriate medical qualification before they enter the program or they don't enter the program.

Mr. EHLERS. Well, I would, frankly, I would have been delighted had I been able to attend your university or one of the others as instead over a period of quite a few years of taking flying lessons from a number of different instructors and different locations across the country, and I have been really struck by the variability in the ability of the instructors to communicate to a student and also to train a student properly. So frankly, I would feel rather uncomfortable hiring pilots who don't experience a good curriculum, but just take pot luck with whatever instructors they might get. That is just a side comment, and Mr. Babbitt, you can take it for what it is worth.

Turning to you, Mr. Babbitt, are you satisfied that the FAA can set standards that can assure that the pilots that are flying are capable pilots and how does this system work? If you have a number of pilots who take lessons from different instructors and just gradually work their way in, do you have any good measures of their ability to fly? Do you have standards that are easily quantified beyond argument so that you can make good judgments as to whether or not this person is safe to fly?

Mr. BABBITT. Yes, sir, I think we do. We are focusing here on a tragedy, but I would note that today we are going to have 70,000 operations in the air and you will have the same thing again tomorrow. Every day we are going to carry 800 million people. For 29 months we were without an accident and then we had a tragedy. If we never had another one that would be fine with me. One is too many. But the standards I think have shown themselves to be awfully good and while we can argue about some criteria, what I think is wholesome in this debate that you are hearing right here at this panel is we are trying to find the best way. Is it more curriculum? Is it more academia? Is it more actual experience? Is it checking? Is it better simulation and training?

But at the end of the day we have standards and those standards are reinforced over and over again. Then you think about what an airline pilot does once they have risen to the level where they are flying passengers for a living. They take several check rides a year, they take line checks, they fly with other pilots, they have professional standards programs, FAA inspectors make spot checks all the time. Air carrier inspectors can arrive and ride the jump seat and do so. So these are unannounced random tests. No other profession—I literally would defy you to find another profession that has professionals that are as well checked as the airline pilots that fly the passengers of this country, and I think the product of that is an incredible safety record.

Mr. EHLERS. I was impressed in reading all the materials and listening to some of the transcripts of the flight and of the accident in Buffalo and I was just appalled. I wondered how these individuals ever got into a cockpit. That is why I asked the question, are the standards tight enough to detect this at some point?

Mr. BABBITT. Well, your observation is a good one and I made a challenge at a recent safety forum where I told every pilot in the room and there were 600 of them, that if any of them listened to

that transcript and didn't just hang their head, they didn't deserve to be professional pilots.

Mr. EHLERS. Yeah, I agree with that. Well just one last comment. In the good old days before 9/11, members of this Committee were allowed to fly in the jump seat. I found that extremely useful for my work here on this Committee because having never flown anything with more than one engine and not a very powerful engine at that. I was also struck in doing that at how some pilots were absolute—absolutely magnificent in their control of the airplane. They seemed to be at one with the airplane and they knew what was happening before the airplane even knew what was happening. It was just astounding and I saw what a high standard they had. Not all of them were in that category but the others that were there were certainly competent. Some people just seemed to have the magic touch. As I say they really become one with the airplane and that is really what you are looking for I think, someone with that capability, not just intellectual knowledge, but the coordination that is necessary to handle an airplane. And it is just very impressive. It was very impressive for me to fly there and see the quality of the pilots that operate the airplanes in this country. Thank you very much. I yield back.

Mr. COSTELLO. The Chair thanks the gentleman from Michigan, and now recognizes the gentleman from Ohio, Mr. Boccieri.

Mr. BOCCIERI. Thank you, Mr. Chairman. Thank you for convening this meeting today and for the panel assembled. Let me just first start by saying that I agree with the belief that experience does matter and Mr. Brady suggested in his testimony and his further subsequent remarks that time doesn't constitute quality, that time in the airplane doesn't constitute quality, but my argument is how to you obtain that quality? How do you obtain that quality I know from my military training, as well as those who have gone through military training that the most intensive part of your training happens before you even put hands on the airplane, through simulator, through the instruction that you received on the ground, and we find that that has been a robust part of our training.

However, what is missing from this discussion right now, we are talking about fatigue and we are talking about number of hours, but we are not talking about the training that these individuals received because the combination of suspect training and low hours leads to tragic consequences like we are realizing right now.

If you will indulge me, Mr. Chairman, just to read a couple of quips from the NTSB report, the FDR indicates that the crew moved the flaps to 10 degrees. Two seconds later, the stall warning stick shaker activated. The autopilot disconnected the same time the stick shaker activated. The crew added power to 75 percent torque. The airplane began a sharp pitch motion up accompanied by a left flow, followed by the stick pusher being activated.

In that NTSB report, they suggest that Colgan pilots who are trained on the Q 400s, those that were interviewed, had received a pusher demonstration or instruction in the Q 400. Some asked for that, but Q-4 check pilots interviewed that demonstrational instruction of the aircraft pusher system is not part of the training syllabus or recurrent training on the Q 400.

So you are telling me that these pilots that climbed in that airplane on that fatal day were not trained how to recover from a full stall, from a full stall and we are talking about hours. You could take the most, you could take the most qualified pilot with thousands of hours and put him in an airplane, not adequately trained, and I would argue that they would not be able to recover from that sort of scenario. So we need to include in this discussion the type of training that these individuals are receiving prior to climbing into a cockpit and flying so many folks around.

Now I want to be clear about this, the NTSB, since 1978, has been pushing the FAA to include in their training not only stall recognition, but stall recovery procedures and forcing airlines and their respective companies to incorporate this kind of training syllabus in their training and they have not done that. The NTSB says because of these examples, the NTSB advises that training in stall recovery should go beyond the approach to a stall and include training in the recovery from a full stall condition. These folks on that day did not know how to recover from a full stall condition, and that is unacceptable, in my opinion. And this panel today, I want Mr. Babbitt to commit to me and to the members of the panel, I know you just got here, sir, but I want you to commit to me that you are going to listen to the NTSB's recommendations and force these air carriers that are taking low houred pilots, low houred aviators and putting them in training conditions that are suspect and we are going to incorporate that into this discussion.

Mr. BABBITT. Thank you for your observations and I certainly have that commitment. We certainly move forward on that commitment. I think you may have missed some of the dialogue here earlier, but we have a proposed revision to training today. There are a couple of things if I could, you don't get a private pilot's license without having demonstrated the ability to recover from a stall and you don't get a private pilot's license without recognizing an approach to a stall. A commercial license requires the same thing. It actually requires complicated recovery from a complicated stall. Every airline teaches approach to stall and recovery. What went wrong in 3407, is that they failed to recover from the warning of a stall. So a lot was missed here.

The shortcoming here was a lack of actual simulation in training and that was a shortcoming, one that needs to be overcome. We need to revise the training so that anything that can possibly happen in an airplane, the pilot has seen before, has been demonstrated to him over and they understand the techniques to recovery and the path way back to safe flight.

So yes, we are addressing those issues. They are complicated and as I indicate in my testimony earlier, our training revisions received some 3,000 pages of comments which we have to digest in by our Federal procedures rules, but we will.

Mr. BOCCIERI. Thank you, Mr. Babbitt. There was a series of complications that led to this. They were flying at air speeds that were not indicative of flying into icy conditions, almost 34 knots below what the book recommended they fly. That could have been a part of experience or quality perhaps and arguably, but this—just the aircraft pusher system is not part of the training syllabus for Colgan, and I just want to be clear about that, that this is not even

part of their training syllabus, how to recover from a full stall. Of course they should have never gotten into a stick shaker condition which is a stall first indication of a stall recognition that you are going to approach a stall, but after they misapplied the procedures or they didn't do this correctly, there was no training beyond that. So once they crossed their line, that line of the stick shaker in my opinion they were in uncharted area.

Mr. BABBITT. I don't disagree. Starting with situational awareness there was an incredible lack of situational awareness in that accident. The professionalism lapsed--that we discussed. There isn't a pilot on this panel that if the stick shaker went off, I can tell you the only thing that would have stopped those paddles for me was the firewall, and I think that is true all the way across the board. Why full power wasn't applied is a question that looms with every professional pilot, but the fact remains we learn from this now and we make sure that this never happens again.

Mr. BOCCIERI. Just to close, Mr. Chairman, there were 5,623 flying hours on that airplane that day. That seems to me like that is a very experienced crew, but without the proper training. Without the proper training it doesn't matter how many hours you have and that has got to be a part of this discussion. Thank you, Mr. Chairman.

Mr. COSTELLO. The Chair thanks the gentleman from Ohio. And he knows and we want you to know that in H.R. 3371, the safety bill that we had discussed earlier and introduced many of these issues have been addressed and even since the legislation was introduced they have been strengthened and worked out at the staff level. When we go to the floor, they will be contained in the safety bill, and we thank you not only for your comments and questions, but for your contribution to putting the bill together as well.

Chair now then recognizes the gentleman from Arkansas, Mr. Boozman.

Mr. BOOZMAN. Thank you, Mr. Chairman. Mr. Babbitt, the sterile cockpit rule violations have been notable factors in both the Lexington and the Buffalo plane crashes. I guess the question for us is very difficult. How is the FAA going to step up enforcement of the rule? How do you actually enforce that rule?

Mr. BABBITT. The sterile cockpit rule and for clarification, that is from the, you know, the time of taxi out until 10,000 feet, and then returning, all conversation in that zone is limited to operational conversations only. That is a very difficult for us to enforce. Currently we do not monitor, however we do have several vehicles today, as I indicated, airlines have check pilots that ride. They make spot checks. Every pilot gets several line checks a year. The FAA itself again, air carrier inspectors ride. If a bad habit is noticed, they are going to bring it to their attention. But again, there are so many things that you simply can't legislate. It does go back to the call I have made to the industry and to the pilot unions to revisit professionalism. The way we are going the monitor that is when one pilot begins talking at 8000 feet, the other pilot says we are in a sterile environment, I am sorry, we are going to talk about this on the ground. That is the way we are going to enforce it.

Mr. BOOZMAN. Let me ask you, Captain Prater, would you guys support the development of an audit system for pilot professionalism on the flight deck?

Mr. PRATER. I missed the first part of the question, sir.

Mr. BOOZMAN. Would you all support the development of an audit system for pilot professionalism on the flight deck? In other words, would you support something in that nature to help with this problem?

Mr. PRATER. Well, I am not exactly sure what the proposal would be, but we believe that——

Mr. BOOZMAN. I guess that is up for grabs in a sense that, as Mr. Babbitt said, you know, how do you do that? We do have the—we have the regulation now, so it is easy to regulate these things, but the enforcement. How do, how do you develop a system so that that the co-pilot or the pilot does say that?

Mr. PRATER. Well, that is basically the system that we do have today. Now does that system break down? Do the human failings of two aviators come out at the wrong time? It is possible. We saw it in 3407. But I am going to back up just a second if I may, sir. Those airmen, those aviators were certified by the FAA. They had passed every check ride given by their company check airman. The result of that flight was, yes, on their shoulders and they bore the brunt of it, but they did pass the systems check rides. They had been certified.

Their time in the cockpit, unfortunately, did not come together as the highest in professionalism. We can monitor each other and that is what you normally see. If somebody gets out of line on the cockpit, the other guy, and it may not be the captain, it may be the first officer say, let's get back to business here. You break the chain that leads to an accident. We refer to it all the time. I am saying it happens 99 percent of the time, unfortunately, the consequences of that 1 percent is brutal.

Mr. BOOZMAN. How about you, Mr. Skiles?

Mr. SKILES. I would echo Captain Prater's comments on that, but I would also like to add that once again, it is matter of professionalism in the cockpit. If you get professional, trained qualified aviators who understand the value of their training, of rules such as this, the sterile cockpit below 10,000 feet, you solve all of these problems that we are finding in the industry today. It is a matter of getting professionals back in the cockpit. Thank you.

Mr. BOOZMAN. Thanks. I agree, you know you have professionals playing football and you have professionals playing, you know, basketball and whatever but you do, even though they are very professional, they have gotten to a very high degree of skill, they break the rules and you have a referee to call them down and you move on. So I guess, you know, the question is, you know, how do we, working together, not, we have already got the mandate there, but working together we do see a situation where in two cases it broke down, you know, that that was going on when it shouldn't have gone on. So again, hopefully we can work together and do a little bit better job of enforcing that. So thank you very much.

Mr. DEFAZIO. [Presiding.] The Chair recognizes the gentlewoman from California, Ms. Richardson.

Ms. RICHARDSON. Thank you, Mr. Chairman my first question is for Mr. Babbitt. Mr. Babbitt, in Mr. May's testimony on page 4, he lays out several recommendations. In Mr. Cohen's testimony in section four he lays out five recommendations and then again also on Mr. Cohen's testimony on page two. Have you read their testimony, are you familiar with the recommendations that they have provided?

Mr. BABBITT. Thank you. I did, in fact. However, I don't have them in front of me and I don't recall the specific recommendations. Were they operational?

Ms. RICHARDSON. Yes. And first of all, sir, I have got 4-1/2 minutes, and I need to ask several questions so we have got to go quick. You are acknowledging, yes, you have them. Have you read them and what are you going to do to implement them?

Mr. BABBITT. Well, I have read their testimony. I don't have them in front of me, I am sorry. If you could be specific with just a general quick recap of the recommendations.

Ms. RICHARDSON. We have limited time. On page 4 of Mr. May's testimony, at the very top, it talks about implementing a policy of asking pilot applicants to voluntarily disclose FAA records and so on. In Mr. Cohen's testimony, recommendations to Congress, he lays out four or five key points. Let me just suffice to say we would ask of this Committee that you would take into account the testimony that is been provided and address the recommendations.

Mr. BABBITT. Yes, and we have.

Ms. RICHARDSON. And if you could get a response back to this Committee.

Mr. BABBITT. Okay. We will certainly do that. Currently we have already suggested to every carrier that they ask that question of any future hire; and secondly, that they would essentially give a raised eyebrow to anyone who refused to offer that access because of the Privacy Act you can't demand that however if the pilot won't give you the authority to check his pilot records that should raise a question in and of itself.

Ms. RICHARDSON. Okay, but Mr. Babbitt, what I am asking is in the testimony today you have several members here who have supplied you with very good recommendations of things that should be considered. Do we have your commitment to read them, to follow up with them with this Committee of the responses of what is going to be done?

Mr. BABBITT. You absolutely do.

Ms. RICHARDSON. Okay, thank you, sir. Also it says that there was a meeting, and Mr. Cohen's testimony said they worked closely with the major airplanes, the FAA, the labor organizations, to discuss openly and candidly the safety issues most affecting our industry and to set a near term safety agenda. Are you familiar with that agenda?

Mr. BABBITT. I am.

Ms. RICHARDSON. Okay. Can you give it to this Committee?

Mr. BABBITT. Yes. We set forth in the Call to Action a series of steps which included FAA inspections of training, which we laid out in a two-step scenario. We had other safety initiatives and the Call to Action brought together a number of groups across the Nation. We have started an aviation rulemaking committee to study

the flight time and duty time issues and fatigue. I would suggest to you that in the Olympics of regulatory procedures we just set a 3-minute mile. That Aviation Rulemaking Committee has come back to us with a draft. We will get our rule out for its executive review probably as quickly as any rule that has come out of the FAA in recent history. So we have a number of initiatives underway we will continue to work with the industry, and of course, welcome your input and the committee's input.

[Information follows:]

FAA insert for the record at p. 88, line 2028:

Congresswoman Richardson asked the Administrator to address recommendations made by the Regional Airline Association (RAA) and the Air Transport Association (ATA) in their respective written statements.

RAA made five recommendations to Congress in its testimony. Those recommendations are summarized as follows: (1) establish a pilot records database to be maintained by the FAA; (2) conduct random fatigue tests on pilots; (3) extend background check time frame from five to ten years; (4) use cockpit voice recordings for accident prevention; and, (5) improve check ride tracking and analysis. Similar to the RAA recommendation, ATA expressed its support for a centralized pilot records database, noting that the database must be complete and accessible to airlines during the hiring process. With the exception of the RAA recommendation regarding cockpit voice recordings, these recommendations are already being addressed by Congress or the FAA or both.

Pilot Records Database and Background Checks
The House of Representatives has already taken steps towards the creation of a comprehensive pilot records database by passing H.R. 3371. This bill would require the FAA to create a comprehensive database of pilot records spanning the duration of a pilot's career and ultimately, his licensure. Further, H.R. 3371 would require air carriers to access this database and evaluate, during the hiring process, a pilot applicant's records contained therein. The Department has not yet taken a position on this bill.

In addition, as part of the Call to Action, the Administrator sent a letter to air carriers asking that they implement a policy of asking pilot applicants for voluntary disclosure of FAA records, including notices of disapproval for evaluation events. FAA also expects to amend the Advisory Circular on the Pilot Records Improvement Act of 1996 to reflect FAA's expectations in this regard.

Random Fatigue Tests
We share industry's concern regarding pilot fatigue. For this reason, in June 2009, the FAA tasked an Aviation Rulemaking Committee (ARC) to examine flight and duty time limitation and rest requirements and make recommendations on modifications to existing requirements. The ARC completed its work on September 1, 2009, and presented its recommendations to the FAA. We are actively developing a Notice of Proposed Rule Making (NPRM) based on the ARC recommendations, and we are committed to expediting its publication.

Checkride Analysis
FAA encourages airlines to conduct trend analysis on common failure elements and, as part of the recent Call to Action, required its principal operations inspectors for part 121 carriers to conduct a focused program review of air carrier flight crewmember training, qualification, and management practices. The repetitive failure of a single crewmember, or the failure of several crewmembers during proficiency or competency checks, may indicate a training program deficiency.

This focused program review required FAA inspectors to meet with the carrier's director of operations, director of safety, and company officials responsible for flight crewmember training and qualification programs. The purpose of these meetings was to determine the carrier's ability to identify, track, and manage low-time flight crewmembers and those who have failed evaluation events or demonstrated a repetitive need for additional training. Inspectors also looked at whether the carrier adopted the suggestions in Safety Alert for Operators (SAFO) 06015 to voluntarily implement remedial training for pilots with persistent performance deficiencies.

As a result of these meetings, our inspectors found that about two-thirds of the carriers operating under the traditional regulatory requirements for pilot training and checking (i.e. carriers that do not participate in an Advanced Qualification Program (AQP)) had systems in place to identify and manage low-time flight crewmembers and those with persistent performance problems. We strongly encouraged carriers without such systems to establish them. For those who will not commit to implementing these systems, we will increase oversight to ensure their training and qualification programs meet regulatory requirements.

Use of CVR Data

As RAA's testimony acknowledges, recordings made by cockpit voice recorders (CVR) are highly sensitive in that they include verbal communications inside the cockpit. For this reason, the recordings receive a high level of protection. Specifically, Congress has prohibited the release of CVR recordings related to a National Transportation Safety Board (NTSB) accident or incident investigation. The content and timing of release of the written transcript are strictly governed as well: transcripts of pertinent portions of cockpit voice recordings are released at a NTSB public hearing on the accident or, if no hearing is held, when a majority of the factual reports are made public. Further, by regulation, the FAA cannot use the CVR for either civil penalty or certificate action.

Ms. RICHARDSON. Okay. My input would be, Mr. Babbitt, that we need things to be done now. And when you say, you know, record of FAA, that doesn't seem very positive to me. We have people like myself and many people here in this room that are traveling every single day. So as far as I am concerned, it is things that need to be done now, not, you know, as we are working through it. So that would be my feedback.

Mr. BABBITT. I wouldn't disagree. However, I am bound by the Administrative Procedures Act, and as much as I wish I could make rules instantaneously, there are rules and procedures that require us to go through a number of steps in the regulatory process, and we are working as quickly as we can within that framework.

Ms. RICHARDSON. Are you saying, sir, that the procedures do not allow, if you know that we have lost lives and things have occurred, you don't have a process in place of where you can move forward to expedite to get this stuff done?

Mr. BABBITT. We took the steps that we could as quickly as we could in terms of advisories, and we have the capability of putting out safety action items for operators. We have taken advantage of those where we could. That is why the call to action was made. However, to change a rule there are constraints on that that I do not have the ability to override.

Ms. RICHARDSON. Okay. Could you supply to this Congress what those constraints are?

Mr. BABBITT. Surely.

[Information follows:}

FAA Insert for the record at p. 91, line 2083:

The Administrative Procedure Act (APA) sets forth the basic requirements for "informal rulemaking," the process generally used by agencies to issue legislative or substantive rules. These rules are issued under statutory authority and have the force and effect of law (i.e., they are binding on the agency, the public, and the courts).

In broad terms, the APA requires that a Notice of Proposed Rulemaking (NPRM) be issued and an opportunity for public comment on the NPRM be provided before any final action can be taken. After analysis of the public comment, the agency may decide whether to proceed with the proposed rulemaking, issue a new or modified proposal, withdraw the proposal, or issue a final rule.

In addition to the APA requirements, there are numerous other statues and executive orders that may impose additional requirements. For your convenience, additional documentation outlining the details of the rulemaking process, including statutory requirements and executive orders has been provided.

U. S. Department of Transportation

RULEMAKING REQUIREMENTS

Prepared by Neil Eisner
April 2009

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STATUTES

I. Administrative Procedure Act (APA); Informal Rulemaking (5 U.S.C. §553).

A. Coverage. The APA's informal rulemaking requirements apply to all rules unless excepted or a specific statute provides otherwise. "Rule" includes such terms as "regulation" and "amendment."

B. Definition of "Rule". There are basically three types. The legal distinctions are not always clear, and an agency statement can contain more than one kind of rule. The categories are:

1. Legislative/substantive rules. These are issued under statutory authority. They implement the statute. They have the force and effect of law (i.e., they are binding on the agency, the public, and the courts).

2. Non-legislative rules.

a. Interpretative (or interpretive) rules. These tell the public what the agency thinks the statutes and the rules it administers mean.

b. General statements of policy. These tell the public prospectively how the agency plans to exercise a discretionary power.

3. Management and procedural rules.

a. Management or personnel. These involve the running or supervising of the agency's business. They concern the agency and do not affect the public.

b. Organization, procedure, or practice. These describe the agency's structure and functions and the way in which its determinations are made.

C. Rule of Particular Applicability. The law is not clear on this subject, and deletion of the term from the APA would probably not have a significant effect. The term was intended to cover rulemakings on such things as the setting of future rates.

D. Exceptions. Rulemakings involving military or foreign affairs functions, or matters relating to agency management or personnel or to public property, loans, grants, benefits, or contracts, are not covered.

E. Requirements.

1. Notice of proposed rulemaking (NPRM). An NPRM must be issued before any final action can be taken.

   a. Publication. The NPRM must be published in the *Federal Register*, unless there is special service on all persons subject to the regulation or such persons have actual notice.

   b. Contents. It must provide the legal authority for the proposed rule and either its terms or substance or a description of the subjects and issues involved.

      (1) Preamble. Any material other than actual rule language is referred to as the "preamble."

      (2) Scope of the Notice. An agency cannot issue a final rule unless it is within the "scope of the notice"; i.e., a final rule cannot adopt a provision if the NPRM did not clearly provide notice to the public that the agency was considering adopting it.

   c. Exceptions. Unless notice or hearing is required by statute, it is not required under the APA for interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice; or when the agency states in the final rule that it has good cause, and provides reasons therefore, that notice and public procedure are "impracticable, unnecessary, or contrary to the public interest."

   d. Public Comment. The agency must invite interested persons to comment on the proposed rule and may provide an opportunity for oral presentations. Among other things, public hearings or meetings make it easier for some people to comment on the rulemaking, offer an opportunity for the agency to ask questions of a commenter, and can make it easier for commenters to hear opposing viewpoints.

   e. "Informal" vs. "Formal" Rulemaking. The process of "notice and comment" rulemaking is referred to as "informal rulemaking" (subject to section 553 of the APA). When rules are statutorily required "to be made on the record after opportunity for an agency hearing," the trial-type or adversary process is referred to as "formal rulemaking" (subject to sections 556 and 557 of the APA); with the exception of limited proceedings such as ratemaking, formal rulemaking is rarely used.

2. Final Rule.

   a. Basis and Purpose. After consideration of the public comment, the agency may issue a final rule, which must include a concise general

statement of its basis and purpose.

b. Publication/Availability (5 U.S.C. §552).

(1) Procedural rules and substantive rules, policy statements and interpretations of general applicability. Agencies must publish these rules in the *Federal Register*. A person may not "be required to resort to or be adversely affected by," a rule that an agency is required to publish if it is not published, unless the "person has actual and timely notice" (e.g., personal service) of the rule.

(2) Interpretations and policy statements of general applicability not published in the *Register*. Agencies must make these documents available for public inspection and copying.

(3) Interpretations, policy statements, and staff manuals or instructions. If these documents are not published or actual and timely notice is not provided and they affect a member of the public, they must be electronically available before the agency can rely on them, use them, or cite them as precedent.

(4) Rules of Particular Applicability. There are no publication requirements for rules of particular applicability.

c. Effective Date. Final rules shall not be made effective in less than thirty days after publication or service except for:

(1) Substantive rules, which grant or recognize an exemption or relieve a restriction.

(2) Interpretative rules and statements or policy.

(3) Good cause. As otherwise provided by the agency for good cause found and published with the rule.

3. Petitions. The public has the right to petition for the issuance, amendment, or repeal of a rule.

4. Exemptions and Waivers. Courts have made it clear that the public has a right to petition for exemption from a rule. Such exemptions are generally granted only for unique circumstances not considered during the rulemaking. In addition, a statute may specifically provide an agency with authority to exempt individuals from particular rules and may even provide the conditions for such an exemption. Some use the term "waiver" inter-changeably with "exemption." DOT tries to maintain a distinction by generally using "waiver" to refer to a specific provision in a rule that permits an individual to be excepted from complying with the general rule if specified conditions are met.

F. Additional Steps. Agencies can supplement but not waive the requirements of the APA. Examples of extra steps DOT uses are:

1. ANPRM. Agencies issue advance notices of proposed rulemaking when, e.g., they know there is a problem but do not have sufficient information to know the appropriate solution to propose.

2. SNPRM. Agencies issue supplemental notices of proposed rulemaking after they have issued an NPRM when, e.g., they wish to obtain public comment on new factual information or alternative proposals before issuing a final rule.

3. IFR. Agencies issue interim final rules when they have met the requirements for issuing a final rule but, e.g., wish to obtain public comment on the provisions of that final rule and indicate that, after reviewing the comments, they may modify the interim final rule and issue a "final" final rule. (It is not a substitute for an otherwise required NPRM.)

G. Direct Final Rulemaking.

1. Purpose. This is a process used to expedite the issuance of rules for which the agency expects no adverse comment.

2. Process. Generally, the agency publishes the rule in the *Federal Register* with a statement that, unless adverse comment is received within a certain time period, the rule will become effective on a specified date. If the agency receives no public comment, it publishes a notice to that effect in the *Register*. If adverse comment is received, the rule is withdrawn and the agency may republish it as an NPRM.

3. Authority. The agency authority for this process is that notice and comment rulemaking would be "unnecessary" under the APA "good cause" exception, but it still provides an expedited process for public comment.

4. Procedural Rules. DOT agencies that use this process first issue procedural rules describing the process and the matters for which it will be used.

H. Dockets.

1. Documents. DOT agencies place each rulemaking and support document (e.g., proposed and final rule and economic or environmental analyses) and all public comments received in a public docket. They may also place other documents (e.g., technical studies) in the docket. Generally, they do not place internal correspondence with other executive branch agencies in the docket.

2. Related Requirements. **E-Government Act (Pub. L. No. 107-347 (2002)) and Privacy Act (5 U.S.C. §552a).**

I. Judicial Review (5 U.S.C. §§701-706). If challenged in court under the APA, an agency rulemaking action is subject to standards whereby it can be held unlawful and set aside if it is found to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;" unconstitutional; or in violation of statute or a procedural law. The court can also "compel agency action unlawfully withheld or unreasonably delayed."

J. Negotiated Rulemaking Act **(5 U.S.C. §§561-570a).** Agencies can convene advisory committees made up of representatives of interests affected by the issues involved to negotiate an NPRM and a final rule. This act amended the APA to provide agencies the clear authority to employ this process.

K. Transparency and Open Government. See Presidential memorandum of January 21, 2009, on "Transparency and Open Government," requiring agencies to "harness new technologies to put information" online, "offer Americans increased opportunities to participate in policymaking," and "use innovative tools, methods, and systems to cooperate" with other government agencies and the public. It also requires the agencies to solicit public feedback on how it can improve in these areas. It also requires the Chief Technology Officer to develop recommendations within 120 days for an "Open Government Directive."

II. Regulatory Flexibility Act (5 U.S.C. §§601-612).

A. Impacts. Agencies must consider the impact of their rulemakings on "small entities" (small businesses, small organizations and local governments).

B. Regulatory Flexibility Analyses (RFA). When an agency is required by 5 U.S.C.§553 to publish an NPRM, an RFA is required for both the notice and the final rule if the rulemaking could "have a significant economic impact on a substantial number of small entities."

C. Contents of RFA. Among other things, the agency must estimate the number of small entities to which the rule will apply or explain why an estimate is not available; describe the skills necessary to prepare required reports; explain what it has done to minimize the significant burdens for small entities; and explain why it chose the alternative it did, as well as explaining why it rejected other alternatives that would have minimized burdens for small entities.

D. Certification in Lieu of RFA. If an RFA is not required, the agency must certify in the rulemaking document that the rulemaking will not "have a significant economic impact on a substantial number of small entities." They agency must provide a factual basis for any certification, not just the reasons.

E. Agenda. An agenda of rulemakings having significant economic impacts on a substantial number of small entities must be published semi-annually.

F. Reviews. Existing regulations must be reviewed periodically to determine whether changes can be made to lessen or eliminate their impact on small entities.

G. Judicial Review. Judicial review of agency compliance with most of the Act is permitted.

H. **Executive Order 13272, Proper Consideration of Small Entities in Agency Rulemaking (2002).** This executive order requires the following:

1. SBA's Office of Advocacy Review. Agencies must "notify" the Small Business Administration's Office of the Chief Counsel for Advocacy (Advocacy) of draft rules that may have a significant economic impact on a substantial number of small entities when the draft rule is submitted to the Office of Management and Budget's (OMB's) Office of Information and Regulatory Affairs (OIRA) under E.O. 12866 or, if submission to OIRA is not required, "at a reasonable time prior to publication of the rule." Advocacy is authorized to submit comments on the draft rule.

2. Consideration of Advocacy Comments. Agencies must give "every appropriate consideration" to any Advocacy comments on a draft rule. If consistent with legal requirements, agencies must include in final rule preambles their response to any written Advocacy comments on the proposed rule, unless the agency head certifies that the public interest is not served by such action.

3. Agency Procedures. Agencies must issue procedures ensuring that the potential impact of their draft rules are "properly considered."

I. Advocacy Guidance. See "A Guide for Government Agencies – How to Comply with the Regulatory Flexibility Act" (2003).

J. DOT Guidance. See "Department of Transportation Policies and Procedures for Implementing Executive Order 13272, 'Proper Consideration of Small Entities in Agency Rulemaking'" (February 2003). See, also, DOT "Guidance Manual on the Small Business Regulatory Enforcement Fairness Act of 1996" (1996).

III. Small Business Regulatory Enforcement Fairness Act (Pub. L. No. 104-121 (1996), Subtitles A-D)

A. Compliance Guides (5 U.S.C. §601 note)

1. Guides. Agencies must prepare and publish one or more guides explaining the actions a small entity is required to take to comply with "each rule or

group of related rules for which an agency is required to prepare a final regulatory flexibility analysis" (FRFA) under the Regulatory Flexibility Act (5 U.S.C. §604).

2. Evidence. Although the substance of the guide is not subject to judicial review, its contents "may be considered as evidence of the reasonableness or appropriateness of any proposed fines, penalties or damages" in any civil or administrative action against a small entity.

B. Informal Guidance (5 U.S.C. §601 note)

1. Program. Agencies are required to have a program for answering small entity inquiries "concerning information on, and advice about, compliance with" statutes and regulations within the agency's jurisdiction, "interpreting and applying the law to specific sets of facts supplied by the small entity."

2. Evidence. This guidance "may be considered as evidence of the reasonableness or appropriateness of any proposed fines, penalties or damages sought against" a small entity in any civil or administrative action.

C. SBA Enforcement Ombudsman (15 U.S.C. §657)

1. Ombudsman. The Administrator of the Small Business Administration (SBA) is required to designate a Small Business and Agriculture Regulatory Enforcement Ombudsman (Ombudsman).

2. Annual Report. The Ombudsman is required to report annually to Congress and the affected agencies on the enforcement activities of agency personnel, including a rating of the agency's responsiveness to small businesses, "based on substantiated comments received from small business concerns and the" Regional Small Business Regulatory Fairness Boards (Boards). The Ombudsman must provide agencies an opportunity to comment on draft reports and must include in the report a section with agency comments that are not addressed in revisions to the draft.

D. Regional Small Business Regulatory Fairness Boards (15 U.S.C. §657).

1. Boards. The SBA Administrator is required to establish Boards in each SBA regional office; they consist of five members from small business concerns.

2. Reports to Ombudsman. The Boards provide the Ombudsman with advice on small business concerns about agency enforcement activity; reports "on substantiated instances" of excessive agency enforcement actions against small business concerns, including their findings or recommendations on agency enforcement policy or practice; and comments on the Ombudsman's annual report.

E. Rights of Small Entities in Enforcement Actions (5 U.S.C. §601 note)

1. Reduction or Waiver of Penalties. Each agency that regulates small entities must have a policy or program "to provide for the reduction, and under appropriate circumstances for the waiver, of civil penalties for violations of a statutory or regulatory requirement by a small entity."

2. Considerations, Conditions, or Exclusions. "Under appropriate circumstances, an agency may consider ability to pay in determining penalty assessments on small entities." Subject to other statutes, the agency policy or program must have conditions or exclusions.

3. Presidential Directive. See Presidential memorandum of March 4, 1995, concerning fines on small businesses.

F. Other Requirements. Other provisions of the Act applicable to rulemaking are covered in this document under the Regulatory Flexibility Act or the Congressional Review of Agency Rulemaking statute.

G. DOT Guidance. See DOT "Guidance Manual on the Small Business Regulatory Enforcement Fairness Act of 1996" (1996).

IV. Congressional Review of Agency Rulemaking (5 U.S.C. §§801-808)

A. Submission of Rules. The statute requires the submission of all final rules (and supporting documents) to Congress and the Comptroller General before the rules can take effect.

B. Rule. A "rule" is as defined in 5 U.S.C. §551, with very few, limited exceptions.

C. Effective Date.

1. Non-Major Rule. Non-major rules can take effect "as otherwise provided by law" after submission to Congress."

2. Major Rule.

a. General. A major rule (one that the Office of Management and Budget (OMB) finds is a costly rule, generally over $100 million per year) cannot take effect for at least 60 days after it is submitted to Congress; there are complex provisions involved that could prevent major rules from becoming effective through the end of a Congress, if a joint resolution is introduced.

b. Good Cause. A major rule can take effect earlier if the agency, for good cause, finds "that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest."

c. Presidential Determination. The President may determine that a rule should take effect regardless of the statute if it is necessary for:

(1) Imminent threat to health or safety or other emergency.

(2) Enforcement of criminal laws.

(3) National security.

d. Submission Date. A major rule submitted within 60 session/legislative days before Congress adjourns a session is treated as having been submitted on the 15th session/legislative day of the next session; under these circumstances, the rule can "take effect as otherwise provided by law including" 5U.S.C.§801.

D. Congressional Disapproval Procedures. Congress can always overturn a rule by enactment of legislation, but this statute contains procedures for expedited review and disapproval. Under this statute, Congress can only disapprove the rule; it cannot change it. If a rule is overturned under these procedures, it is "treated as though … [it] had never taken effect."

E. Substantially the Same. If the rule is disapproved, the agency can not adopt a "substantially the same" rule, unless authorized by a new statute

F. Judicial Review. "No determination, finding, action or omission" under the statute is subject to judicial review. No court (or agency) may infer any intent from Congressional action or inaction.

G. OMB Guidance. See OMB memorandum of March 30, 1999, on "Guidance for Implementing the Congressional Review Act. "

V. The Unfunded Mandates Reform Act; Title II – Regulatory Accountability and Reform (2 U.S.C. §§1532-1538)

A. Effects Assessments. Agencies are required to assess the effects of Federal regulatory actions on state, local and tribal governments and on private industry, except to the extent the regulations incorporate requirements specifically set forth in law.

B. Written Statements.

1. Requirement. Unless otherwise prohibited by law, agencies must prepare a written statement prior to issuing NPRMs and final rules (for which a "general notice of proposed rulemaking was published") that include a "Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year." (see DOT Guidance on "Threshold of Significant Regulatory Actions Under the Unfunded Mandates Reform Act of 1995" (2008)). The statement may be included as part of another analysis.

2. Contents. Each written statement must include, among other things, an analysis of the costs and benefits and a description of prior consultations with and input from State, local, or tribal governments.

3. Federal Mandates. These are rules that impose an enforceable duty, except a:

   a. Condition of Federal assistance.

   b. Duty arising from participation in a voluntary Federal program (with certain exceptions).

C. Regulatory Alternatives. Where a written statement is required, the agency must "identify and consider a reasonable number of regulatory alternatives, and from those alternatives select the least costly, most cost-effective or least burdensome alternative that achieves the objective of the rule" or explain why it could not.

D. Preamble Summary. Each agency must include a summary of any required statement in the NPRM's or the final rule's preamble.

E. Report to Congress. OMB must annually report to Congress on agency compliance with the Act, including a certification, with a written explanation, of agency compliance with the least burdensome option requirement.

F. Small Government Agency Plans. Before imposing regulatory requirements that may "significantly or uniquely" affect small governments, agencies must develop a plan to

1. Notify affected small governments of the requirements;

2. Allow meaningful and timely input by them into the development of the rule; and

3. Inform, educate, and advise the affected entities of the requirements.

G. State, Local, and Tribal Government Input.

1. Process. Agencies are required to develop an effective process for meaningful and timely input from State, local and tribal governments in the development of rules with significant intergovernmental mandates.

2. FACA Exemption. Agency meetings with State, local or tribal elected officers (or their authorized designees) solely to exchange views, information, or advice relating to the management or implementation of Federal programs that share intergovernmental responsibilities or administration are exempt from the Federal Advisory Committee Act.

H. Judicial Review. An agency action can be challenged for failure to prepare a written statement or a small government agency plan. Preparation can be compelled, but inadequacy or failure to prepare cannot be used to stay, enjoin, invalidate or otherwise affect the rule.

I. **Executive Order 12875, "Enhancing the Intergovernmental Partnership" (1993)**. This executive order also contains requirements concerning unfunded mandates.

J. OMB Guidance. See OMB memorandum of September 25, 1995, on "Guidelines and Instructions for Implementing Section 204, 'State, Local, and Tribal Government Input,' of Title II of Public Law 104-4."

VI. Paperwork Reduction Act (44 U.S.C. §§3501-3520).

A. Burdens. The Act requires that agencies consider the impact of paperwork and other information collection burdens imposed on the public.

B. Coverage. It applies to all agency actions, not just rulemakings. It was amended (in 1995) to include "disclosure to third parties or the public."

C. Reduction. It mandates specific reductions in the amount of paperwork requirements imposed by agencies.

D. OMB Approval. It requires specific approval by OMB of any new requirements for collection of information imposed on ten or more persons by an agency; without such approval, the agency lacks the authority to enforce any such requirement.

E. Enforcement. Agencies must inform respondents that a response is not required unless the collection of information displays a valid OMB control number.

F. Information Collection Budget (ICB). Annually, each agency must submit an ICB for OMB approval. The ICB covers existing requirements, new proposals, and planned reductions.

G. OMB Regulations. See 5 C.F.R. Part 1320, "Controlling Paperwork Burdens on the Public," for supplemental requirements.

H. Electronic Information. The **Government Paperwork Elimination Act (44 U.S.C. §3504 note)** requires that, by October 21, 2003, agencies allow "electronic maintenance, submission, or disclosure of information, when practicable as a substitute for paper" and "for the use and acceptance of electronic signatures, when practicable."

I. Electronic Signature. The **Electronic Signature in Global and National Commerce Act (15 U.S.C. §§7001-7031)** establishes the legal equivalence, in private commerce, between legally-required written and electronic documents and "pen-and-ink" and electronic signatures. To the extent Federal law or regulation requires the retention of a document or information, this Act allows electronic retention; agencies are permitted to require paper records in certain circumstances.

J. OMB Guidance. See OMB/OIRA memorandum of May 22, 1995, on "Preparing to Implement S.244, the 'Paperwork Reduction Act of 1995'"; OMB memorandum of April 25, 2000, on "OMB Procedures and Guidance on Implementing the Government Paperwork Elimination Act"; OMB/OIRA memorandum of July 25, 2000, on "Achieving Electronic Government: Instruction for Plans to Implement the Government Paperwork Elimination Act"; and OMB memorandum of September 19, 2000, on "OMB Guidance on Implementing the Electronic Signatures in Global and National Commerce Act."

VII. Privacy Act (5 U.S.C. §552a) and Related Requirements.

A. Nondisclosure. Agencies must not disclose any record that is contained in "a group of records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual" to any person or another agency, except as authorized in writing by the individual, unless disclosure would meet specified conditions, including a routine use described in the system of records.

B. Privacy Impact Assessments.

1. **FY 2005 Omnibus Appropriations Act, Pub. L. No. 108-447, division H, § 522.** Specified agencies, including DOT, must evaluate "regulatory proposals involving collection, use, and disclosure of personal information by the Federal Government" and conduct a privacy assessment of their proposed rules "on the privacy of information in an identifiable form, including the type of personally identifiable information collected and the number of people affected."

2. Other requirements. See, also, **E-Government Act.**

3. DOT Guidance. See the DOT website "Privacy Impact Assessments" and the DOT document "Privacy Impact Assessment Information Gathering."

VIII. Quality, Objectivity, Utility, and Integrity of Information (Treasury and General Government Appropriations Act for FY 2000, Pub. L. No.106-554; § 515).

A. Agency-Disseminated Information. OMB must provide "guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies in fulfillment of the purposes and provisions of" the Paperwork Reduction Act.

B. Agency Guidelines. Agencies must issue guidelines implementing OMB's guidelines and establishing administrative mechanisms that allow affected persons to seek and obtain correction of the agency information.

C. OMB Guidelines. See OMB **"Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies,"** 67 Fed. Reg. 8452 (February 22, 2002). Agencies must have processes for substantiating the quality of the information they have disseminated through documentation or other means appropriate to the information.

D. DOT Guidelines. See "The Department of Transportation's Information Dissemination Quality Guidelines," (2002).

E. Peer Review. See OMB's **"Final Information Quality Bulletin for Peer Review,"** (2004).

F. Risk Analysis. See OMB's and the Office of Science and Technology Policy's Memorandum of September 19, 2007, on "Updated Principles for Risk Analysis" (M-07-24).

IX. Small Business Paperwork Relief Act of 2002 (44 U.S.C. § 101 note)

A. One Point of Contact. Each agency (pursuant to 44 U.S. C. § 3502, this means the Department of Transportation) must establish one "point of contact … to act as a liaison between the agency and small business concerns" with respect to information collections and the control of paperwork.

B. Burden Reduction. Each agency must "make efforts to further reduce the information collection burden for small business concerns with fewer than 25 employees."

X. Federal Advisory Committee Act (FACA) (5 U.S.C. App. II).

A. Requirements. Generally, if any agency meets with more than one person (not officers or employees of the federal government) for the purpose of receiving group/consensus advice, rather than individual views, that group must be chartered as a federal advisory committee and must meet certain requirements -- such as keeping its meetings open to the public, taking minutes, and having a membership "fairly balanced" among the various views.

B. Rulemaking Implications. FACA becomes a factor in rulemaking when a decisionmaker seeks advice from specific members of the public on how to handle a particular rulemaking. Often, to get such advice, the decision maker must charter an advisory committee under FACA.

C. **Executive Order 12838, "Termination and Elimination of Federal Advisory Committees" (1993)**. This executive order directs agencies, among other things, to limit new advisory committees to those required by statute or needed because of "compelling considerations." By OMB memorandum (April 8, 1996; M-9621), negotiated rulemaking advisory committees are exempted from the OMB ceiling on the number of committees allowed in DOT.

D. GSA Regulations. See 41 C.F.R. Part 101-6, Subpart 101-6.10, "Federal Advisory Committee Management" for supplemental requirements.

E. DOT Order. See DOT Order 1120.3B (1993), "Committee Management Policy and Procedures," for supplemental requirements.

XI. National Environmental Policy Act (NEPA) (42 U.S.C. §§4321-4347) and other Environmental Requirements.

A. General. NEPA, numerous other statutes, regulations (see, e.g., Council of Environmental Quality Regulations at 40 C.F.R. 1500-1508 and FHWA/FTA regulations at 23 C.F.R. Part 771), executive orders, and a DOT Order (5610.1c) impose requirements for considering the environmental impacts of agency decisions.

B. Environmental Impact Statement (EIS). NEPA requires that an EIS be prepared for "major federal actions significantly affecting the quality of the human environment." The agency is required to obtain public comment on a draft EIS before issuing a final EIS.

C. Environmental Assessment (EA). If an action may or may not have a significant impact, an environmental assessment must be prepared. If, as a result of this study, a Finding Of No Significant Impact (FONSI) is made, no further action is necessary. If it will have a significant effect, then the assessment is used to develop an EIS. There is no statutory requirement to obtain public comment on an EA, but it is DOT policy or, in some cases, required by agency regulations. (See 23 C.F.R. 771.119(f))

D. Categorical Exclusions. Agencies can categorically identify actions (e.g., establishment or modification of terminal control areas) that do not normally have a significant impact on the environment. In the rare instances when an action normally classified as categorically excluded could have a significant impact, the agency would have to do EA or even an EIS. Unless a major federal action is categorically excluded, an agency must prepare an EA or EIS.

E. Rules. Rulemaking is a "major" federal action. Agencies must complete the NEPA documentation before issuing the final rule. Under agency regulations, rulemaking may be categorically excluded (see, e.g., 23 C.F.R. 771.117(c)(20)), so little NEPA documentation is required.

F. Effects. Beneficial as well as detrimental effects are covered.

G. Consultation/Coordination/Public Participation. The various requirements imposed on agencies include obligations to consult or coordinate with various other federal agencies and to provide special opportunities for public comment. Issuance of rulemaking documents may have to be delayed pending completion of the review/comment period.

H. Other Requirements. There are many additional environmental requirements, including some that have substantive effects (e.g., those applying to wetlands).

XII. Trade Agreements Act (19 U.S.C. §§2531-2533).

A. Obstacles to Foreign Commerce. This statute prohibits agencies from setting standards that create "unnecessary obstacles to the foreign commerce" of the U.S. The statute is primarily concerned with "products." Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles.

B. Performance Criteria. The statute requires the use of performance rather than design standards, where appropriate.

C. International Standards. In developing U.S. standards, it also requires the consideration of international standards and, where appropriate, that they be the basis for the U.S. standards.

D. **Agreement on Technical Barriers to Trade**. Article 2 of this international agreement imposes similar requirements, including requiring members to use international standards "as the basis for technical regulations," unless they would be "ineffective or inappropriate."

XIII. National Technology Transfer and Advancement Act, Section 12(d) (15 U.S.C. §272 Note).

A. Utilization of Consensus Technical Standards by Federal Agencies. Agencies are required to "use technical standards that are developed or adopted by voluntary consensus standards bodies" to carry out policy objectives determined by the agencies, unless they are "inconsistent with applicable law or otherwise impractical."

B. Consultation and Participation. Agencies are required to consult with and -- if compatible with agency missions, authority, priorities and resources -- participate with voluntary, private sector, consensus standards bodies.

C. OMB Circular. See OMB Circular A-119 Revised, "Federal Participation in the Development of and Use of Voluntary Consensus Standards and in Conformity Assessment Activities" (1998), for supplemental information.

XIV. Assessment of Federal Regulations and Policies on Families (Omnibus Appropriations Act FY 99, Pub. L. No. 105-277 (1998); §654).

A. Family Policymaking Assessment. Agencies are required to assess policies and regulations that may affect family well-being before "implementing" them. Several factors are listed for consideration in the assessment .

B. Written Certification. Agency heads are required to submit a written certification to OMB and Congress that the assessment has been done.

C. Rationale. Agency heads are also required to provide an "adequate rationale" for implementing actions that may negatively affect family well-being.

D. OMB Responsibilities. OMB is required to ensure that policies and regulations are implemented consistent with these requirements. It also must compile, index, and submit annually to Congress the written certifications it receives.

E. Assessments Requested by Member of Congress. Agencies are required to conduct assessments in accordance with this section's criteria when requested by a Member of Congress.

F. Judicial Review. This section is not intended to create any right or benefit enforceable against the U.S.

XV. E-Government Act (Pub. L. No. 107-347 (2002)).

A. Public Information. To the extent practicable, agencies must provide a website that includes all "information about that agency" required to be

published in the *Federal Register* under 5 U.S. C. §552(a) (1) and (2). (N.B.: §552(a)(2) does not require publication of any documents.

B. Electronic Submission. To the extent practicable, agencies must accept electronically those submissions made under 5 U.S.C. §553(c).

C. Electronic Dockets. To the extent practicable, agencies must have an internet-accessible rulemaking docket that includes all public comments and other materials that by agency rule or practice are included in the agency docket.

D. Privacy Impact Assessments. Agencies must assess privacy impacts before collecting information that will be collected, maintained, or disseminated using information technology and that "includes any information in an identifiable form permitting the physical or online contacting of a specific individual, if identical questions have been posed to, or identical reporting requirements imposed on, 10 or more persons, other than" Federal agencies or employees.

XVI. Agency Authorizing Statutes.

A. Authorizing Language. An agency cannot issue a regulation unless it has statutory authority to do so. The language in DOT statutes varies:

1. Specific. The authority may be specific (e.g., it may require the installation of emergency locator transmitters in aircraft).

2. General. The authority may be very general (e.g., simply requiring an agency to set "minimum," "reasonable," "minimum and reasonable," or "minimum or reasonable"standards).

3. Factors to Consider. Some statutes also require that the agency specifically consider certain factors, such as the efficient utilization of navigable airspace, in imposing a requirement.

B. Conflicts. Some of DOT's statutory requirements may result in rules that affect another statutory requirement implemented by the same DOT agency (e.g., a NHTSA safety equipment requirement may add weight that will affect the ability to comply with a NHTSA fuel economy requirement). Some may affect rules of other agencies within DOT (e.g., a NHTSA child seat standard may conflict with an FAA standard barring use of the seat in an aircraft.) Such conflicts are handled through agency or OST oversight. Some requirements may affect those of another, non-DOT agency (e.g., an FAA requirement for a windshear detection device may emit noise and conflict with an EPA "pollution" standard). These are generally handled through memoranda of understanding between agencies, agency coordination efforts, or OMB oversight.

C. Procedural Requirements. The statutes may also impose other procedural (e.g., public hearings) or review (e.g., the Department is required to allow Department of Energy review of automobile fuel economy standards and to provide any response in the preamble if changes are not made) requirements upon the Department.

EXECUTIVE ORDERS

I. Executive Order 12866: Regulatory Planning and Review (E.O. 12866) (1993) (as amended by E.O.'s 13258 (2002), 13422 (2007), and 13497 (2009)).

A. Regulatory Philosophy and Principles. The executive order sets forth regulatory philosophy and principles to which each agency should adhere. They include requirements to regulate in the "most cost-effective manner," to make "a reasoned determination that the benefits of the intended regulation justify its costs," and to develop regulations that "impose the least burden on society."

B. Unified Regulatory Agenda and Regulatory Plan. Each agency is required to prepare a (semiannual) Agenda of all regulations under development or review; as part of the October Agenda, the agency prepares a Plan of its most important significant regulatory actions..

C. Review of Existing Regulations. Agencies are required to submit to the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA) a program for periodic review of existing significant regulations to determine whether to modify or eliminate them. Rules to be reviewed must be included in the agency's Plan. Agencies must also identify legislatively mandated regulations that are unnecessary or outdated.

D. Public Participation. Before issuing an NPRM, agencies should seek involvement of those intended to benefit or be burdened. Agencies should provide a meaningful opportunity to comment, including a 60-day comment period in most cases. Where appropriate, agencies must use consensual mechanisms.

E. OIRA Review.

1. Coverage. Agencies must submit all significant rulemakings to OIRA for review before issuance. There are rigid time frames for completion of such review.

2. Definitions. As used in the executive order, a rule is limited to legislative rules, rules that "the agency intends to have the force and effect of law.

3. Changes During OIRA Review. Agencies must identify for the public substantive changes made to the rulemaking documents after submission to OIRA, specifically identifying those "made at the suggestion or recommendation of OIRA."

F. Regulatory Analysis.

1. Assessment. Agencies are required to prepare an assessment, including

analyses, of benefits and costs, quantified to the extent feasible, of the anticipated action and "potentially effective and reasonably feasible alternatives," including an explanation of why the planned action is preferable.

2. OMB Guidance. See **OMB Circular No. A-4, "Regulatory Analysis"** (2003).

G. Risk Analysis.

1. Assessment. Agencies are required to "consider, to the extent reasonable, the degree and nature of the risks posed" and "how the agency action will reduce risks to public health, safety, or the environment."

2. OMB/OSTP Guidance. See OMB's and the Office of Science and Technology Policy's Memorandum of September 19, 2007, on "Updated Principles for Risk Analysis" (M-07-24).

H. Disclosure of OIRA Contacts. Procedures are established for disclosure of OIRA communications with people outside of the executive branch.

I. Resolution of Conflicts. Disagreements among agencies or with OMB that cannot be resolved by OIRA shall be resolved by the President.

J. OMB Guidance. See OMB/OIRA memoranda of October 12, 1993, containing supplemental information, and August 3, 1994, containing additional DOT exemptions. See, also, a memorandum of September 20, 2001, from the OIRA Administrator describing how OIRA carries out its regulatory review and summarizing the principles and the procedures it uses.

K. White House and OMB Directives. See Presidential Chief of Staff memoranda of January 20, 2009, on "Regulatory Review" (rules must be approved by an appointee of President Obama), and February 5, 2001, on "Administration Coordination and Clearance Processes" and OMB memorandum of January 26, 2001, on "Effective Regulatory Review."

L. Guidance Documents. See OMB's **"Final Bulletin for Agency's Good Guidance Practices"** (M-07-07; 2007) and OMB's "Implementation of Executive Order 13422 (amending Executive Order 12866) and the OMB Bulletin on Good Guidance Practices" (M-07-13; 2007). See, also, OMB Director's memorandum of March 4, 2009 (M-09-13) on the effect of E.O. 13497's rescission of E.O. 13422 on OIRA review of guidance.

M. N. B. A Presidential memorandum of January 30, 2009, on "Regulatory Review," directed the OMB Director "to produce within 100 days a set of recommendations for a new Executive Order on Federal regulatory review."

II. Executive Order 13132: Federalism (1999).

A. Principles and Criteria. This E.O. sets forth principles and criteria that agencies must adhere to in policymaking that has federalism implications. These include taking action only when a problem is of "national significance" and providing "the maximum administrative discretion possible" where States administer Federal statutes and regulations.

B. Federalism Implications. The E.O. covers policies with federalism implications. This means "regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

C. Preemption.

1. Statutory Construction. Agencies shall construe statutes to preempt State law only where there is express preemption or "clear evidence" Congress intended preemption, or State action "conflicts with" Federal action. If the statute does not preempt, agencies shall construe it to authorize preemption only when State action "directly conflicts" with Federal action or there is "clear evidence" Congress intended to give authority.

2. Minimum Necessary. Agencies must restrict regulatory preemption to the minimum necessary to achieve the statutory objectives.

3. Consultation and Participation. Agencies must consult, to the extent practicable, with State and local officials when possible conflicts are identified and provide them opportunities for "appropriate participation" in rulemakings.

D. Consultation.

1. Process. Agencies must have an "accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications."

2. Federalism Official. Agencies must designate an official principally responsible for implementing the E.O.

3. Compliance Costs and Preemption. To the extent practicable and permitted by law, agencies shall not issue rules with federalism implications that (1) impose "substantial direct compliance costs on State and local governments,"

if not required by statute, unless they comply with a or b, below, or (2) preempt State law, unless they comply with b, below:

a. Funds Provided. The Federal government must provide money for the direct compliance costs of State and local governments.

b. Federalism Summary Impact Statement.

(1) Consultation. Agencies must consult with State and local officials "early in the process of developing the proposed regulation."

(2) Preamble. In a separately identified portion of the rule's preamble, agencies must provide a federalism summary impact statement describing (a) the prior consultations with State and local officials, (b) the nature of the officials' concerns and the agencies' justification for the rule, and (c) the extent to which the concerns have been met.

(3) Written Communications. Agencies must make available to OMB State and local officials' written communications.

E. Waivers. As appropriate, practicable, and permitted by law, agencies must streamline the processes for waivers of statutes and rules for State and local governments, consider increasing opportunities for using "flexible policy approaches," and make decisions on waivers within 120 days.

F. OMB Review. Agencies submitting to OMB under E.O. 12866 final rules with federalism implications must include a certification from their Federalism Official that this E.O.'s requirements were "met in a meaningful and timely manner."

G. OMB Guidance. See OMB memorandum of October 28, 1999, on "Guidance for Implementing E. O. 13132."

H. DOT Guidance. See DOT Guidance on "Federalism" (1988).

III. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments (2000).

A. Principles and Criteria. This E.O. sets forth principles and criteria that agencies must adhere to in policymaking that has tribal implications. These include respecting Indian tribal self-government and sovereignty, consulting with tribal officials on the need for Federal standards, and providing "the maximum administrative discretion possible" where Indian tribal governments administer Federal statutes and regulations.

B. Tribal Implications. The E.O. covers policies with tribal implications. This means "regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes."

C. Consultation.

1. Process. Agencies must have an "accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications."

2. Tribal Consultation and Coordination Official. Agencies must designate an official principally responsible for implementing the E.O.

3. Compliance Costs and Preemption. To the extent practicable and permitted by law, agencies shall not issue rules with tribal implications that (1) impose "substantial direct compliance costs on Indian tribal governments," if not required by statute, unless they comply with a or b, below, or (2) preempt tribal law, unless they comply with b, below:

a. Funds Provided. The Federal government must provide money for the direct compliance costs of the Indian tribal governments.

b. Tribal Summary Impact Statement.

(1) Consultation. Agencies must consult with tribal officials "early in the process of developing the proposed regulation."

(2) Preamble. In a separately identified portion of the rule's preamble, agencies must provide a tribal summary impact statement describing (a) the prior consultations with tribal officials, (b) the nature of the officials' concerns and the agencies' justification for the rule, and (c) the extent to which the concerns have been met.

(3) Written Communications. Agencies must make available to OMB tribal officials' written communications.

4. Consensual Mechanisms. Agencies must use consensual mechanisms, including negotiated rulemaking, where appropriate, for developing regulations on issues relating to tribal self-government, tribal trust resources, or Indian tribal treaty and other rights.

D. Waivers. As appropriate, practicable, and permitted by law, agencies must

streamline the processes for waivers of statutes and rules for Indian tribes, consider increasing opportunities for using "flexible policy approaches," and make decisions on waivers within 120 days.

E. OMB Review. Agencies submitting to OMB under E.O. 12866 final rules with tribal implications must include a certification from their Tribal Consultation and Coordination Official that this E.O.'s requirements were "met in a meaningful and timely manner."

F. OMB Guidance. See OMB memorandum of January 11, 2001, on "Guidance for Implementing E. O. 13175, 'Consultation and Coordination with Indian Tribal Governments.'"

G. **Presidential Memorandum: Government-to-Government Relations with Native American Tribal Governments (April 29, 1994).** This memorandum requires each agency to apply the requirements of E.O. 12875, "Enhancing the Intergovernmental Partnership" (1993) to design solutions and tailor its programs, "in appropriate circumstances, to address specific or unique needs of tribal communities." E.O. 13132 revoked E.O. 12875.

IV. Executive Order 12988: Civil Justice Reform (1996).

A. Regulatory Requirements. Within budgetary constraints and executive branch coordination requirements, agencies must review existing and new regulations to ensure they comply with specific requirements (e.g., "eliminate drafting errors and ambiguity" and "provide a clear legal standard for affected conduct rather than a general standard") to improve regulatory drafting in order to reduce needless litigation.

B. Specific Issues for Review. In conducting the reviews, agencies must "make every reasonable effort to ensure that the rule meets specific objectives (e.g., specifies in clear language the preemptive or retroactive effect, if any).

C. Determination of Compliance. Agencies must determine that the rule meets the applicable standards or that it is unreasonable to meet one or more of those standards. (Agencies are not required to submit a certification of compliance to OMB as was required under the 1991 executive order.)

D. DOT Guidance. See DOT Guidance (1992) on prior E.O. (12778).

V. Executive Order 12630: Governmental Actions and Interference with Constitutionally Protected Property Rights (1988).

A. General Principles. Each agency "shall be guided by" the principles set forth in the E.O. when "formulating or implementing policies that have takings implications."

B. Safety. These principles include the point that "the mere assertion of a ... safety purpose is insufficient to avoid a taking." They should be undertaken only for "real and substantial threats," be designed to significantly advance safety, "and be no greater than is necessary."

C. Criteria. To the extent permitted by law, agencies are required to comply with a set of criteria before undertaking covered actions that include an assessment identifying the risk, establishing that safety is substantially advanced and that restrictions are not disproportionate to the overall risk, and estimating the cost to the government if the action is found to be a taking. In the event of an emergency, the analysis can be done later.

D. Policies That Have Taking Implications. These include proposed and final rules that if implemented "could effect a taking" (e.g., licenses, permits, or other conditions or limitations on private property use).

E. Ensuring Compliance. OMB and the Department of Justice are responsible for ensuring compliance with the E.O.

VI. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (1994).

A. Strategies. Each agency is required to develop a strategy that "identifies and addresses disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations" and identify, among other things, rules that should be revised to meet the objectives of the Order.

B. Conduct. Each agency must ensure that its programs, policies, and activities that substantially affect human health or the environment" do not exclude persons (including populations) from participating in or getting the benefits of, or subject them to discrimination under, such programs, policies, and activities.

C. Documents and Hearings. An agency's public documents, notices, and hearings relating to human health and the environment must be "concise, understandable, and readily accessible."

D. **Presidential Memorandum: Environmental Justice (February 11, 1994)**. This memorandum underscores certain provisions of existing law that can help ensure that communities have a safe and healthful environment.

E. DOT Environmental Justice Strategy (1995; 60 Fed. Reg. 33896). This document contains the Department's commitment to certain principles of environmental justice and identifies the actions the Department will take to implement the E.O.

F. DOT Order to Address Environmental Justice in Minority Populations and Low-Income Populations (1997; 62 Fed. Reg. 18377). This order sets forth the process that DOT and its operating administrations will use to integrate the goals of the E.O. into their operations.

VII. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks (1997).

A. Policy. With respect to its rules, "to the extent permitted by law and appropriate, and consistent with the agency's mission," each agency must "address disproportionate risks to children that result from environmental health risks or safety risks."

B. Analysis. For any substantive rulemaking action that "is likely to result in" an economically significant rule that concerns "an environmental health risk or safety risk that an agency has reason to believe may disproportionately affect children," the agency must provide OMB/OIRA:

1. Evaluation: "an evaluation of the environmental health or safety effects [attributable to products or substances that the child is likely to come in contact with or ingest] of the planned regulation on children."

2. Alternatives: "an explanation of why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the agency."

VIII. Executive Order 12889: Implementation of the North American Free Trade Agreement (1993).

A. Notice. Agencies subject to the APA must provide at least a 75-day comment period for "any proposed Federal technical regulation or any Federal sanitary or phytosanitary measure of general application."

B. Exceptions.

1. NAFTA Implementation. Regulations ensuring that the NAFTA Implementation Act is appropriately implemented on the date NAFTA enters into force (pursuant to 19 U.S.C. §3314(a)).

2. Perishable Goods. Technical regulations relating to perishable goods.

3. Urgent Safety or Protection Rules. Technical regulations addressing an "urgent problem" relating to safety or to protection of human, animal, or plant life or health; the environment; or consumers.

4. Urgent Sanitary or Phytosanitary Protection. Regulations addressing an "urgent problem" relating to sanitary or phytosanitary protection.

C. Definitions.

1. Technical Regulations. These are defined in the Trade Agreements Act at 19 U.S.C. §2576 b(7) [Essentially, a legislative rule].

2. Sanitary or Phytosanitary Measures. These are defined at 19 U.S.C. §2575 b(7).

IX. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (2001).

A. Statement of Energy Effects. Agencies are required to prepare and submit to OMB a Statement of Energy Effects for significant energy actions, to the extent permitted by law.

B. Contents of Statement. Agencies must provide a detailed statement of "any adverse effects on energy supply, distribution, or use (including a shortfall in supply, price increases, and increased use of foreign supplies)" for the action and reasonable alternatives and their effects.

C. Publication. Agencies must publish the Statement or a summary in the related NPRM and final rule.

D. Significant Energy Action. A "significant energy action" is one that is "significant" under E.O. 12866 and is likely to have a significant adverse energy effect, or is designated by the OMB.

E. OMB Guidance. See OMB memorandum of July 13, 2001, on "Guidance for Implementing E.O. 13211."

X. Other Executive Orders.

There are other executive orders that impose a variety of procedural and substantive requirements (e.g., the department's implementation of certain statutes concerning transportation of the handicapped must be cleared with the Department of Justice) on some of DOT's rulemakings.

PRESIDENTIAL DIRECTIVES AND RELATED ACTIONS

I. Presidential Memoranda or Directives.

Presidents periodically require particular action in the rulemaking area through memoranda or other steps. For example, by a memorandum dated March 4, 1995, the President directed agencies, among other things, as follows:

A. Results Not Process. Agencies must take steps to focus regulatory programs on results not process.

B. Negotiated Rulemaking. Agencies must "expand substantially" their use of negotiated rulemaking.

C. Small Business Fines. Agencies are given the authority to waive fines imposed on small businesses that have acted in good faith (so that they can use the money to fix the problem) or to waive fines for first-time violations by small businesses when the firms move quickly and sincerely to correct the problem.

II. Plain Language (1998).

A. Presidential Directive (June 1, 1998). Agencies must use plain language in proposed and final rulemaking (and other) documents. To the extent agencies have the opportunity and resources, they should consider rewriting existing rules in plain language.

B. Vice-Presidential Memorandum/Guidance (July 28, 1998). Agencies must designate a senior official responsible for implementing plain language and prepare a plain language action plan. The Vice President also provided guidance on writing in plain language.

C. DOT Guidance. See DOT "Plain Language Resource Page" circulated with Secretarial memorandum on "Plain Language" dated April 5, 1999.

OMB BULLETINS AND OTHER DIRECTIVES

I. **OMB Circular No. A-4, "Regulatory Analysis"** (2003)

A. General. This circular provides guidance on the development of regulatory analyses and on the regulatory accounting statements for each major final rule required under the Regulatory Right-to-Know Act.

B. Benefit-Cost Analysis (BCA) and Cost-Effectiveness Analysis (CEA).

1. Major Health and Safety Rulemakings. A BCA and CEA are necessary.

2. Other Major Rulemakings. A BCA is necessary; a CEA should also be provided, if some primary benefits cannot be monetized.

3. Qualitative Discussion. If quantification cannot be produced, qualitative discussion should be presented.

C. Discount rate. Agencies should us a discount rate of 7 percent as a base case under OMB Circular A-94 but should provide estimates of net benefits using both 3 percent and 7 percent.

D. Uncertainties. Agencies should provide a formal quantitative analysis of the relevant uncertainties about benefits and costs for rules involving annual effects of $1 billion or more, using appropriate statistical techniques to determine a probability distribution of relevant outcomes.

E. Sensitivity Analysis. Agencies should examine how results vary with plausible changes in assumptions, data, and alternative analytical approaches.

F. DOT Guidance.

1. Value of Statistical Life and Injuries. See DOT guidance on "Treatment of the Value of Statistical Life and Injuries in Preparing Economic Evaluations" (2008 and 2009 revision). This document sets the value for a statistical life (adjusted annually) and injuries in the economic analyses used for determining benefits for DOT rulemaking actions. It also requires an analysis of the costs and benefits of each major subcomponent of a rule.

2. Value of Travel Time. See "Departmental Guidance for the Valuation of Travel Time in Economic Analysis" (1997) and "Revised Departmental Guidance-Valuation of Travel Time in Economic Analysis (2003)." This document contains procedures and empirical

estimates for calculating the value of time saved or lost by users of the transportation system.

3. Unfunded Mandates Reform Act. See DOT guidance on "Threshold of Significant Regulatory Actions Under the Unfunded Mandates Reform Act of 1995" (2009).

II. Final Information Quality Bulletin for Peer Review (2004):

A. Review.

1. Influential Scientific Information. To the extent permitted by law, each agency must conduct a peer review of all influential scientific information that the agency intends to disseminate. This is information that could have "a clear and substantial impact on important public policies or private sector decisions."

2. Highly Influential Scientific Information. Additional requirements apply to highly influential scientific information, that which could have an impact exceeding $500 million in any year or is "novel, controversial, or precedent-setting or has significant interagency interest."

B. Dissemination. Dissemination is an "agency initiated or sponsored distribution of information to the public." Among other things, it does not include distributions for peer review under the Bulletin when the distribution has a disclaimer.

C. Peer Review Mechanism.

1. Influential Scientific Information. The choice of the peer review mechanism for influential scientific information is based on the novelty and complexity of the information, the importance of the information to the decision, the extent of prior peer review, and the expected benefits and costs of the review and transparency factors. The options range from the use of agency personnel who have not participated in the development of the product being reviewed to independent third parties.

2. Highly Influential Scientific Information. Additional requirements are imposed on the mechanism used for peer review of highly influential scientific information. Employees of DOT can only be used under exceptional circumstances, when approved by the Secretary or Deputy Secretary and when employed by a DOT agency different from the one disseminating the information. Whenever feasible and appropriate, the agency must provide an opportunity for public comment during the peer review, including a public meeting with the peer reviewers.

D. Timing.

1. General. Although the Bulletin does not require a peer review to be conducted at a specific time during the rulemaking process, it does state that "it is most useful to consult with peers early in the process of producing information."

2. Critical Information. It also notes that, when the information "is a critical component of rule-making, it is important to obtain peer review before the agency announces it regulatory options."

3. Public Participation. Agencies may decide that peer review should precede an opportunity for public comment, but there are situations where "public participation in peer review is an important aspect of obtaining a high-quality product."

E. Reports and Agency Responses.

1. Influential Scientific Information. The peer reviewers must prepare a report, which must be posted on the agency's website along with related materials, discussed in the preamble to any related rulemaking, and included in the administrative record.

2. Highly Influential Scientific Information. Additional requirements are imposed on the reports for this information and the agency must prepare a written response to the report explaining any agreements or disagreements, the actions the agency is undertaking in response, and the reason the agency believes those actions satisfy the "key" concerns in the report. The agency response must be posted on its website along with related material.

F. Planning. Each agency must post on its website, and update at least every six months, an agenda of its peer review plans, setting out what will be reviewed and how, including opportunities for public participation.

G. Exemptions. The exemptions include the following:

1. Negotiations involving treaties where there is a need for "secrecy or promptness."

2. Individual agency adjudication or permit proceedings "unless the peer review is practical and appropriate and … the influential dissemination is scientifically or technically novel or likely to have precedent-setting influence on future adjudications and/or permit proceedings."

3. Regulatory impact analyses or regulatory flexibility analyses subject to E.O. 12866, "except for underlying data and analytical models used."

4. Information disseminated in connection with routine rules "that materially alter entitlements, user fees, or loan programs, or the rights and obligations of recipients thereof."

H. DOT Guidance. See DOT "Guidelines for Implementing the Office of Management and Budget's 'Final Information Quality Bulletin for Peer Review.'" (2005).

III. Final Bulletin for Agency's Good Guidance Practices (M-07-07;2007)

A. General. This bulletin establishes requirements for the development, issuance, and use of significant guidance documents by agencies.

B. Coverage. The bulletin applies to significant guidance documents (which includes the subset of economically significant guidance documents). It is important to review the specific definitions, but briefly, as used in the bulletin:

1. *Agency* means the Department level at DOT.

2. *Guidance document* --

a. Means a generally applicable interpretation of, or a policy statement on, a statutory or regulatory issue or a policy statement on a technical issue.

b. To be covered, it must be "prepared by the agency and distributed to the public or regulated entities"

c. If it responds to an individual person or entity, it is not covered unless it is intended to have a precedential effect (e.g., if it is posted on the internet).

d. The definition is not limited to written materials.

3. *Significant* and *economically significant guidance document* have essentially the same meaning as legislative rules under E.O. 12866, except that a legislative rule is one that "is likely to result in a rule that may" have the effect described, whereas guidance "may reasonably be anticipated to" have that effect.

C. Approval Procedures. Each agency must have written procedures for the approval by "appropriate senior agency officials" of significant guidance documents.

D. Standard Elements. Agencies must provide specified, standard elements in each significant guidance document.

E. Public Access for Significant Guidance Documents.

1. Access. Each agency must have a website providing the public with specified information about significant guidance documents.

2. Feedback.

a. Comments and Requests. Each agency must provide a process for the public to submit electronic comments on – and electronic requests for issuance, reconsideration, modification, or rescission of – significant guidance documents. Agencies are not required to respond to the comments.

b. Complaints. Each agency must designate an office(s) to receive and address public complaints that it is not complying with the OMB bulletin or is improperly treating a significant guidance bulletin as a binding requirement.

F. Notice and Public Comment for Economically Significant Guidance Documents

1. Public Comment on Draft: For economically significant guidance documents, each agency must invite public comment on a draft before issuing the guidance. The agency must respond to the public comments.

2. Exemptions: In consultation with OIRA, the agency head may identify particular documents or categories for which these requirements are not "feasible or appropriate."

G. Emergencies: For emergencies or legal deadlines that would not allow normal review procedures, each agency must notify OIRA as soon as possible and comply with the bulletin to the extent practicable.

H. DOT Guidance. See DOT "Guidance on Guidance" (2007).

I. DOT Website. See DOT's website implementing the requirements of the OMB Bulletin and providing other information at regs.dot.gov.

J. Rescission of Executive Order 13422. The effect of the rescission of E.O. 13422 on the Bulletin on Good Guidance Practices is not clear, since, except for the OMB review provisions, it relied on other authority. See OMB Director's memorandum of March 4, 2009 (M-09-13) on the effect of E.O. 13497's rescission of E.O. 13422 on OIRA review of guidance. This should be clarified with the response to the Presidential memorandum of January 30, 2009, on "Regulatory Review," which directed the OMB Director "to produce within 100 days a set of recommendations for a new Executive Order on Federal regulatory review."

IV. Updated Principles for Risk Analysis (M-07-24; 2007)

A. General. This memorandum is intended to "reinforce generally-accepted principles for risk analysis upon which a wide consensus now exists," to "assist and guide agencies."

B. General Principles. Risk analysis is a tool that must adapt to scientific advances and be consistent with statutes and administration priorities. Agencies must consider risks to the extent reasonable and should distinguish between the risk assessment and risk management (which may change behavior in ways that alter risks). The depth of the analysis should be "commensurate with the nature and significance of the decision."

C. Principles for Risk Assessment. Agencies should use the "best reasonably attainable scientific information; characterizations of risks should be qualitative and quantitative and "broad enough to inform the range of policies to reduce risks"; judgments should be explicit and their influence articulated; "all appropriate hazards" should be included, with attention given to "subpopulations that may be particularly susceptible to such risks and/or may be more highly exposed"; the use of peer review should be maximized; and agencies should use consistent approaches in evaluating risks.

D. Principles for Risk Management. Agencies should analyze the distribution of risks and the costs and benefits of risk management strategies; and the alternative selected should provide the "greatest net improvement in total societal welfare" when accounting for a "broad range of relevant social and economic considerations."

E. Principles for Risk Communication. Agencies should have an "open, two-way exchange between professionals (including policy makers and "experts") and the public; goals should be clear, and risk assessments and risk management decisions "communicated accurately and objectively in a meaningful manner"; the basis for significant assumptions, data, models, and inferences should be explained; the sources, extent and magnitude of significant uncertainties should be described; "appropriate risk comparisons" should be made, considering such factors as public attitudes toward voluntary and involuntary risk; and the public should be provide timely public access to relevant supporting documents and a reasonable opportunity to comment.

F. Principles for Priority Setting Using Risk Analysis. Agencies should compare risks and group them in categories of concern (e.g., high, moderate, and low); set priorities for risk management to achieve the "greatest net improvement in societal welfare" first; inform priority-setting by consideration of views from a broad range of individuals, with consensus views being reflected where possible; and coordinate risk reduction efforts with other agencies, where feasible and appropriate.

DOT ORDERS

I. DOT Order 2100.5: Regulatory Policies and Procedures (1979).

A. Coverage. This order applies to all DOT rulemakings, including those that establish conditions for financial assistance, but excludes formal rulemakings and those related to military or foreign affairs functions, agency management or personnel, and Federal procurement. Special provisions are also made for "emergency" rulemakings.

B. Objectives. It sets forth objectives for DOT rulemaking (e.g., necessity, clarity).

C. Regulations Council. It establishes a Department Regulations Council, chaired by the Deputy Secretary, vice-chaired by the General Counsel, and made up of the heads of OST offices and the operating administrations. The Council can review and make recommendations concerning regulatory review programs (see paragraph G), significant rulemakings (see paragraph E), and the Regulatory Policies and Procedures. It can also set up task forces or require studies if necessary.

D. Initiating Office Responsibilities. It establishes responsibilities for the offices initiating regulations to do such things as coordinate their proposals with other operating administrations within the Department.

E. Significant Rulemaking Review. It requires the submission of all significant rulemakings to the Office of the Secretary for approval by the Secretary. (A significant rulemaking is essentially one that is costly or controversial.)

F. Economic Analyses. It requires an economic analysis for all proposed (including ANPRMs) and final rulemaking actions, not just for major/economically significant (very costly) rulemakings. Where the impact is so minimal that a full analysis is not warranted, a statement to that affect and the basis for it is included in the rulemaking document.

G. Reviews. It requires the periodic review of existing regulations to determine whether they should be revised or revoked.

H. Public Participation. It sets forth some specific procedures to ensure a full opportunity for public participation; for example, it provides for a comment period of at least 45 days on nonsignificant regulations and 60 days on significant regulations, unless the rulemaking document states the reasons for a shorter time period. It also requires that, to the maximum extent possible, even when not mandated, opportunity for the public to comment on proposed rules should be provided, if it could be expected to result in useful information.

I. Agenda. It requires the development and issuance of a semi-annual regulations Agenda. (This is incorporated into the E.O. 12866 Agenda.)

J. DOT Guidance.

1. Economic Analysis. See DOT "Guidance for Regulatory Evaluations: A Handbook for DOT Benefit-Cost Analysis" (April 1982, revised April 1984). Note that, although this document has not been updated to reflect more recent OMB documents and DOT changes to values, it does contain helpful information.

2. Values Used in Economic Analysis. See DOT guidance described under OMB Circular No. A-4:

   a. Value of Statistical Life and Injuries

   b. Value of Time

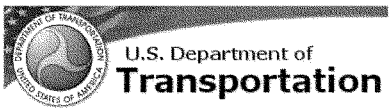
   c. Unfunded Mandates Reform Act.

II. DOT Order 2100.2: Public Contacts in Rulemaking (1970) and Other Guidance.

The order and other guidance discourage oral communications from the time a notice of proposed rulemaking is issued until the end of the comment period and strongly discourage them between that time and the time the final decision is issued. If such contacts occur, they must be summarized in writing and placed in the public rulemaking docket. If contacts occur after the close of the comment period, they must be carefully reviewed to determine whether reopening of the comment period will be required. (If a contact occurs before the issuance of the NPRM, it may be summarized in the preamble to the NPRM.)

AGENCY RULEMAKING PROCEDURES

Some of the DOT operating administrations and OST have published regulations setting forth their specific procedures for implementing the APA. For example, they may provide an address for filing petitions for rulemaking and indicate how long the agency generally takes to review such petitions, or they may indicate that late-filed comments may be considered if they do not delay the issuance of a final rule.



Regulatory Information

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The Informal Rulemaking Process

The summary that follows was prepared to help the public better understand how the rulemaking process works so that you may more effectively participate in it. We prepared it particularly for individuals, small businesses, and others who do not participate in the process on a regular basis. We want to stress that this web page provides only a brief summary – and one that we attempted to keep simple – of what we believe are the important elements in the process. It should not be relied on as a legal document. In our "Rulemaking Requirements" document provided elsewhere on regs.dot.gov, we provide hyperlinks to give you easy access to the statutes, executive orders, guidance documents, memoranda, etc. that contain the actual legal requirements or provide guidance on the process.

What is rulemaking?

Rulemaking is a process for developing and issuing rules (rules are also referred to as "regulations"). The process can lead to the issuance of a new rule, an amendment to an existing rule, or the repeal of an existing rule.

What is a rule?

There are basically three types. The legal distinctions are not always clear, and an agency document or statement can contain more than one kind of rule. The three basic types are:

1. **Legislative (sometimes called "substantive") Rules.** These are rules that implement a statute. They have the force and effect of law; that is, they are legally binding on the agency, the public, and the courts. For example, such a rule might say: "you must not operate your aircraft within 20 miles of a thunderstorm."
2. **Non-legislative Rules.** These rules are often referred to as "guidance." (More information on guidance documents at DOT can be found elsewhere on this website.)
   a. **Interpretive Rules.** These tell the public what the agency thinks the statute and the rules the agency administers mean. For example, the agency might tell you how it defines "thunderstorm."
   b. **Policy Statements.** These tell the public how the agency plans to exercise a discretionary power. For example, the agency might tell you that, because of a series of accidents, it plans to place enforcement emphasis on its "thunderstorm" rule.
3. **Management and Procedural Rules.**
   a. **Management or Personnel.** These involve the running or supervising of the agency's business. They concern the agency and do not affect the public.
   b. **Organization, Procedure, or Practice.** These describe the agency's structure and functions and the way in which its determinations are made.

What is the agency's authority to issue legislative rules?

An agency cannot issue a legislative rule unless it is provided the authority to do so by statute. The statutory delegation can range from broad discretionary authority to a very specific mandate. For example, Congress could delegate to DOT the authority to set minimum safety standards for the manufacture of automobiles that will be sold in the U.S. Alternatively, the statute could mandate that DOT require airbags in all motor

process?

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vehicles, that those airbags meet standards specified in the statute, and that the airbags be installed in all motor vehicles manufactured after a specified date. Between these two extremes, DOT may be delegated different levels of discretion. For example, a statute could mandate that DOT issue a final rule to decrease the number of fatalities and injuries occurring in frontal collisions involving motor vehicles. Or the statute could mandate that DOT require airbags in all motor vehicles but give DOT the discretion to determine the specific standards the airbags must meet and the deadline by which they must be installed.

How does an agency identify the need for a rulemaking?

There are many reasons why an agency may decide to initiate the rulemaking process. The major reasons for DOT agencies fit mostly in the following categories:

- **Statutory mandate.** Congress may specifically require a rule or at least the initiation of the rulemaking process – sometimes with a deadline.
- **Agency identification of a problem.** To the extent an agency has discretion to decide whether to issue a rule, it may identify the need to initiate the rulemaking process in a variety of ways, including the following: We may identify a problem as a result of inspectors' reports or general agency oversight. For example, we review accident reports or data that may show an increasing safety problem with motor vehicle side collisions or leaks of hazardous materials during transportation. Investigations of accidents may indicate a manufacturing problem that needs to be addressed. We may have difficulties enforcing existing rules, and this may provide evidence of a need to modify the rules. Requests for interpretations or exemptions may demonstrate that a rule needs to be clarified or modified. Finally, changes in technology may justify a change to a rule. For example, new technology may warrant modifying existing rules to permit the use of new materials. The accessibility of the internet may justify changing reporting requirements to permit electronic filing.
- **Petition for rulemaking.** The public has the right to petition an agency to issue, modify, or rescind a rule, and we may agree on the need for action.
- **NTSB, GAO, IG, or similar recommendations.** Recommendations for rules may come from the National Transportation Safety Board, the Government Accountability Office, the DOT Inspector General, or special commissions or other bodies asked by Congress or the President to develop recommendations on particular issues.

Agencies may use risk assessments – an analytical tool for determining the probability of a problem occurring (e.g., an accident) and the probability of the problem causing harm (e.g., personal injuries) – to help it determine whether to initiate rulemaking and perhaps which rulemakings need priority attention.

How does an agency initially determine the best solution to a problem?

Before deciding to start the rulemaking process, an agency evaluates possible alternatives. For example, we evaluate whether the problem might be fixed without the issuance of a rule, through what is often referred to as "marketplace incentives." For example, we look at whether consumer reactions to a problem will result in a manufacturer making changes to fix the problem. We may also consider whether there are less burdensome alternatives than requiring such things as changing a manufacturing process or an operating procedure; for example, we may decide that requiring the disclosure of information on or labeling a product would achieve the agency's objective. We may also evaluate a range of possible substantive alternatives to fixing the problem. For example, we might assess whether we should require replacement of a part or more frequent inspections of it. Whenever possible, agencies try to use performance standards rather than design standards. The latter would prescribe a specific fix, such as half-inch thick steel plating. The former sets a standard or objective that must be met. For example, if a crash test with dummies is required, the test instruments in the dummies must show that injuries did not exceed a specified level. The manufacturer can meet the performance standard through whatever means it deems best.

Agencies use economic analyses (sometimes referred to as benefit-cost analyses, regulatory impact analyses, or regulatory evaluations) to help them determine the best alternative and whether the benefits of the rule would justify its costs.

What are the legal requirements for the informal rulemaking process?

Unless otherwise indicated, this summary briefly describes the process for issuing legislative rules – those that are legally binding.

Administrative Procedure Act. The Administrative Procedure Act (APA) sets forth the basic requirements for "informal rulemaking," the process generally used by agencies to issue legislative rules. There are numerous other statutes, executive orders, or agency rules that may impose additional requirements. For example, agencies have the discretion to hold public hearings or meetings, but some statutes may require them for particular rulemakings. Other statutes may require special analyses under particular circumstances.

NPRM. The informal rulemaking process, which often is referred to as "notice-and-comment rulemaking," requires that an agency first issue a notice of proposed rulemaking (NPRM) and provide an opportunity for public comment on the proposal before it can issue a final rule. There are exceptions to the requirement for notice and comment. Some agency rulemakings are completely exempted. Other rulemakings may be exempted for "good cause" ("impracticable, unnecessary, or contrary to the public interest;" e.g., for such things as "emergencies").

The NPRM must have a preamble, but proposed rule text (the "you must not operate your aircraft within 20 miles of a thunderstorm" type language) is optional. DOT agencies rarely, if ever, omit the proposed rule text. The NPRM also includes such information as the deadline for comments, how and where to file comments, and people to contact for information about the proposal.

The preamble explains the need and the authority for the proposed rule, including a discussion of any statutory constraints. It also explains any rule text or subjects and issues involved. This would include how the agency chose its proposed solution to the problem or need for the rule. For example, it may explain the safety data that justifies the proposed rule and applying it to certain individuals but not to others. The preamble will also often contain summaries of or the actual analyses the agency has prepared for the proposal (e.g., the risk assessment and the economic analysis). Although the public may comment on anything in the proposal, including the agency's analyses, the agency may include specific questions on which it particularly wants public comment and data.

NPRM publication. When an agency issues an NPRM, it is normally published in the *Federal Register*, which is like a "legal newspaper" for the Federal government. If it is not published in the *Federal Register*, the agency must personally serve all affected persons with a copy. This may be done when, for example, a rule only applies to the owners of a particular aircraft, and the owners are registered with the issuing agency and easily served.

Public comment period. Generally, agencies will allow 60 days for public comment. Sometimes we provide much longer periods. We may also use shorter periods where we can provide justification for them. The public may also request more time; if you provide justification, that will help us make a decision on whether to extend or reopen the comment period. Agencies also may consider late-filed comments, to the extent their decisionmaking schedule permits that; commenters should, however, try to meet the published deadline, since there is no certainty their late-filed comments will be considered. Agencies usually provide information about whether they will consider late-filed comments in the proposed rule and/or their procedural rules.

Public docket. The NPRM is also placed in the public docket for that rulemaking. The rulemaking docket is the file in which DOT places all of the rulemaking documents it issues (e.g., the NPRM, hearing notices, extensions of comment periods, and final rules), supporting documents that it prepares (e.g., economic and environmental analyses), studies that it relies on that are not readily available to the public, all public comments related to the rulemaking (e.g., comments that may be received in anticipation of the rulemaking, comments received during the comment period, and late-filed comments), and other related documents. Although it is our policy to discourage them outside of any public meeting or hearing, we sometimes receive substantive oral communications (sometimes referred to as "*ex parte*" contacts) concerning a rulemaking; if we do, it is our policy to prepare summaries of

those public contacts and place them in the docket.

The public dockets for DOT and other executive branch agency rulemakings can be found at Regulations.gov. That site is searchable by docket number, among other things, and the docket number may be found at the beginning of the NPRM. DOT agencies use the electronic, internet-accessible dockets at Regulations.gov as their complete, official-record docket; all hard copies of materials that should be in the docket, including public comments, are electronically scanned and placed in the docket.

Public comments. Agencies may receive anywhere from no comments to tens or hundreds of thousands of comments or more. They can be brief one-line or one-paragraph comments, or they may contain thousands of pages with detailed analysis. We at DOT have found that public comments can be very helpful. We want public comment. We recognize that we do not have all the answers, that the public may identify a better way for us to achieve our objective, and that they may point out problems with our proposal that we did not see. Our rules are improved through public participation.

At the same time, we note that public commenters sometimes make assertions without including data to support them. They may contain arguments or data that conflict with those provided by other commenters. They may be vague or unclear. They may state a position without providing an explanation. While the number of commenters who support or oppose a particular proposal is important information, the agency's decision cannot be based on as simple tally of "votes." Pursuant to the APA, the agency's decision has to be reasonable; we have to provide a basis for our decision and show how our rule will achieve its purpose. Based on our experience, we have developed guidance on how the public can provide effective comments, which can be found elsewhere on this web page.

Logical outgrowth test. The APA notice-and-comment process recognizes that changes may be made to the proposed rule based on the public comments received, but the courts have required that any changes made in the final rule be of a type that could have been reasonably anticipated by the public – a logical outgrowth of the proposal. If the "logical outgrowth test" is not met, we would need to provide a second notice with an opportunity for public comment on the changes.

The final rule. After the comment period closes and the agency has reviewed the comments received and analyzed them, we decide whether to proceed with the rulemaking we proposed, issue a new or modified proposal, or withdraw the proposal. Before reaching our final decision, we will make any appropriate revisions to the various supporting analyses we prepared for the NPRM.

Any final rule must include a preamble and the rule text. The preamble includes a response to the significant, relevant issues raised in public comments and a statement providing the basis and the purpose of the rule. (We respond to all public comments at one time, in the preamble to the next rulemaking document after the proposal, such as the final rule or a withdrawal of the proposal. We do not respond to public comment by letter, email, or other individual means.) The response to public comment does not have to be to each commenter; similar comments may be grouped together with an opening statement such as "several commenters suggested that..." or the commenters may be referred to by name. The response also does not have to cover relatively minor comments, such as editorial suggestions, although agencies may make general statements, such as "several editorial changes where made at the suggestion of commenters."

Final rule publication. The final rule is published in the *Federal Register* or personally served on affected interests. In addition, a copy is placed in the rulemaking docket along with the final version of any supporting documents. The Office of the Federal Register, on a rolling, annual basis, updates the *Code of Federal Regulations* (CFR) to reflect the additions, changes, or rescissions, made by the rule text. The CFR contains all Federal agency rules currently in effect as of the date of its publication.

Effective date. A final legislative rule cannot be made effective in less than 30 days after publication, unless it is granting an exemption, relieving a restriction, or for "good

cause," which includes such things as emergencies. Sometimes agencies will set implementation or compliance dates that are later than the effective date of the rule. This may be because the rule is being implemented in stages following its effective date, because the agency may want to allow compliance with the new rule before it is required, or for other reasons.

Exemptions. Individuals or entities such as businesses can petition an agency for an exemption from a final rule. We may grant it, if we find unique circumstances not considered during rulemaking that we believe justifies the exemption. We may attach conditions to the exemption.

May an agency supplement the APA requirements?

Agencies may take steps in addition to the minimum requirements of the APA. We generally take these extra steps to increase or improve the opportunities for public participation and to obtain that participation very early in the development process. The principal, additional steps taken by DOT agencies are the following:

- **ANPRMs.** We may use an Advance Notice of Proposed Rulemaking (ANPRM) prior to the issuance of an NPRM. We use them to get early public participation for a variety of reasons, including when we –
  - Want comments on how to solve a problem before making a proposal.
  - Have identified a wide range of alternatives and want to narrow the choices before making a proposal.
  - Need additional information to help analyze the problem and its solutions.
- **Requests for public comment.** This document may be very similar to an ANPRM. We often use it to get comment or data on more limited issues.
- **SNPRMs.** We may use a supplemental NPRM (SNPRM) when we want public comment on a new or modified proposal. This step is especially valuable if we have concerns over whether the changes to the proposal could be issued as a final rule under the logical outgrowth test. Even if another round of comment on the proposals is not required, we may seek additional comment to make sure we understood the comments and responded appropriately. We also could use an SNPRM if we received new information or identified changing circumstances.
- **IFRs.** We may issue an interim final rule (IFR) in situations where we have the authority to issue a final rule, but we want an additional round of public comment on all or part of the rule. We will review the comments we receive, do any additional analysis that is necessary, and then decide whether to modify or revoke the IFR or issue it as a final rule. Sometimes we will use an IFR to get comment on the final rule after it goes into effect, so that the comments can reflect experience under the rule.
- **Public meetings or hearings.** We may use public meetings or hearings before or after a proposal is issued for a variety of reasons. Public meetings allow us to ask questions. They allow for interaction among participants with different views on the issues involved, and they provide a better opportunity for members of the public who believe they are more effective making oral presentations than submitting written comments. Agencies are limited in the number of hearings they can hold by their resources.
- **Reply comments.** We may allow the public to reply to comments submitted by others for a specified time period after the close of the regular comment period. We would announce any reply comment period in the proposed rule or by a subsequent notice.
- **Negotiated rulemaking.** Under the negotiated rulemaking process, we may decide to convene a committee with representatives of the interests that might be affected by a rule and an agency representative. We ask the committee to negotiate a proposed rule. If the agency head approves the proposal, it would be published under the APA informal rulemaking procedures. After the comment period closes, the committee would review any comments and make recommendations to the head of the agency on whether to modify, reject, or publish the proposal as a final rule.
- **Direct Final Rules.** Some DOT agencies have issued rules that describe how and for what rulemakings they may use direct final rules (DFRs). This is a streamlined rulemaking process in which the agency only issues a DFR when it determines that it is unlikely that the DFR would receive any comments in opposition during the time set aside before the rule goes into effect. If the

agency does receive a negative comment, it would withdraw the DFR; if it decides that a final rule is still necessary, the agency would have to first issue an NPRM under the APA notice-and-comment requirements.

- **Electronic rulemaking.** We are taking increased advantage of electronic technology to increase the opportunities for more effective public participation in rulemaking. For example, one DOT agency has used "chat rooms" during the comment periods on its rulemakings to allow more interchange among commenters.

What is the role of DOT, the President, and other executive branch agencies in the rulemaking process?

Agency staffs generally have very good, informal, working relationships with staff from other agencies that have related responsibilities. For example, DOT staff is in regular contact with the Environmental Protection Agency on environmental issues and the Department of Justice on issues involving access for disabled persons. We also have formal requirements for coordination. For example, pursuant to DOT procedures, we generally categorize rulemakings as significant or non-significant. Significant rules are essentially those that are likely to have high benefits or costs or are potentially controversial. If proposed or final rules are significant, other DOT agencies, the Secretary of Transportation, and, pursuant to executive order, the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA) must review them before they can be issued. Pursuant to another executive order, the Small Business Administration's (SBA) Chief Counsel for Advocacy must review proposed and final rules anticipated to have a significant economic impact on a substantial number of small entities before they can be issued; if we have questions about the impact of our proposals on small entities, we will often discuss these issues informally with this office earlier in the rulemaking process. There are other statutes and executive orders that may require coordination with other agencies in specific circumstances.

What is the role of Congress in the rulemaking process?

Under the Congressional review provisions in the Small Business Regulatory Enforcement Fairness Act, agencies must submit all final rules to Congress before they can take effect. After submission, Congress can begin a process to overturn the rule. Congress can also use a variety of processes as part of its oversight of agency action, including holding hearings or informal meetings, issuing reports, or adopting legislation.

What is the role of the courts in the rulemaking process?

Under the APA, a rule can be challenged in court because it is arbitrary, capricious, an abuse of discretion, illegal, unconstitutional, in excess of statutory authority, or the agency failed to follow legal procedures. The agency head can also be sued to "compel action unlawfully withheld or unreasonably delayed." If a court does set aside an agency's rule for one of these reasons, if often sends the matter back for further consideration by the agency. Other statutes may provide specific authority to sue particular agencies for other reasons.

What actions do agencies take after they issue legislative rules that could affect regulated entities?

An agency may take a variety of actions after it issues final rules to help regulated entities and others comply with the rules. We may issue guidance material providing interpretations and agency policy on our own initiative, in response to public requests, or in response to a statutory mandate. The guidance may include training material that might be provided in a variety of formats (e.g., hard-copy manuals and CDs). Much of this material is available through agency websites.

We may also conduct inspections, review records or reports, and take other steps to ensure regulated entities understand and are complying with our rules. We may follow this up with a meeting with the regulated entity to tell it what fixes are necessary, or we may identify a problem with the clarity of the rule and address that with changes to the rule. Our objective is to help our regulated entities achieve compliance with our rules. If necessary, however, the agency may take enforcement action against a

noncompliant, regulated entity.

How does an agency determine whether its rules are working effectively?

DOT has a regular plan for the review of its existing rules to determine whether they are working effectively. A description of this plan is available on this website.

How do I get information on, or notices about, rulemakings on which agencies are working?

DOT prepares a number of reports to help the public learn about the substance and status of our rulemaking activities:

- Report on DOT Significant Rulemakings. At the beginning of each month, we post a report on this website that provides a summary and the status for all significant rulemakings that DOT currently has pending or has issued recently. More information on this report can be found at the above link, including information on how to receive email notifications of the report.
- Report on Effects of DOT Rulemakings. The public can generate a separate report on this website for each of 21 possible, different effects of DOT's current rulemakings (e.g., effects on small entities or on state and local governments). More information on these reports can be found at the above link.
- DOT's Regulatory Agenda. Twice a year, as part of a government-wide effort, DOT publishes an Agenda of all of its rulemaking activity. The Agenda includes brief descriptions of each rulemaking, its current status, and a schedule for next actions. It is published in *Federal Register* and made available on the internet.

In addition to these regular reports, DOT agencies will sometimes issue press announcements, post information on their specific websites, and take other actions to provide notice and information to interested persons.

How do I submit comments to DOT on proposed rules?

We prefer that comments be submitted electronically. It is easier for us to enter them in the docket that way. It is also easier for us and the public to search the documents for information. In addition, it will make it easier to use computer software to help us and the public sort through comments, organize the comments by subject, and do other things that allow more effective use of the comments. We recognize that not everyone has easy internet access, so we do not require electronic submission. You may send comments identified by Docket Number using any of the following methods:

- **Federal eRulemaking Portal**: Go to http://www.regulations.gov/ and follow the online instructions for sending your comments electronically.
- **Mail**: Send comments to Docket Operations, M-30; U.S. Department of Transportation, 1200 New Jersey Avenue, SE, Room W12-140, West Building Ground Floor, Washington, DC 20590-0001.
- **Hand Delivery or Courier**: Bring comments to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- **Fax:** Fax comments to Docket Operations at 202-493-2251.

Please note that we will post all comments we receive, without change, to http://www.regulations.gov/, including any personal information you provide. Using the search function of the docket website, anyone can find and read the electronic form of all comments received in any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review the Department of Transportation's complete Privacy Act Statement in the Federal Register published on April 11, 2000 (65 FR 19477-78) or you may visit http://docketsinfo.dot.gov/.

To read rulemaking or background documents or comments received, you may go to http://www.regulations.gov/ at any time and follow the online instructions for accessing the docket. Alternatively, you may go to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE, Washington, DC,

between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

If you have submitted your comments electronically, it is not necessary to submit a hard copy. It is also not necessary for you to submit your comments more than once. Doing either of these things may result in cluttering up the docket with duplicate entries. Finally, you should follow the instructions for submission to the docket; while we make every effort to ensure that all comments are placed in the docket regardless of how or where they are received, if you submit your comments to a departmental official or office other than as noted above, the person receiving them may not know to send them to the docket.

How do I prepare effective comments?

We want your comments. We know we do not have all the answers or know about all of the possible solutions to a problem. To the extent you provide us with good comments, you will enhance our knowledge of the issues, and help us make better rulemaking decisions. We encourage you to challenge our interpretations; applications of data and research; factual assumptions; analytical methodologies; factual, technical, and policy conclusions; practicability assessments; and assessments of the benefits and other impacts of the proposal. We want you to suggest reasonable alternatives to our proposals.

We have asked professionals who review and respond to public comments from throughout DOT for their suggestions on how the public can provide more effective comments. The following list is intended to provide helpful suggestions on how to make your comments more effective; they are not mandatory requirements.

1. **Typewritten documents.** We prefer typewritten documents; otherwise the reviewer may not be able read your handwriting. We do not require this, however, because we recognize that everyone may not have access to a typewriter or computer.
2. **Electronic submissions.** We prefer that comments be submitted electronically. It is much more efficient for us to enter them in the docket that way. It is easier for us and the public to search the comments for information. It will also make it easier to use computer software to help us and the public sort through comments, organize the comments by subject, and do other things that allow more effective use of the comments. We recognize that everyone does not have easy internet access, so we do not require electronic submission.
3. **Docket ID.** You should identify the docket number for the rulemaking document on which you are commenting. The docket number is provided near the very top of the rulemaking proposal. You should also provide other identifying information, such as the RIN (Regulation Identification Number), the title of the rulemaking, or the *Federal Register* date and page number.
4. **Agency questions.** We want your comments on any part of the proposal on which you wish to comment. However, we often ask questions or raise issues in rulemaking proposals on subjects where we especially need more information. Please answer as many as you can.
5. **Organized comments.** We sometimes ask you to organize your comments under specific headings or by specific sections in the rulemaking proposal; please try to do so. It will help the public and the agency review the comments more easily and effectively.
6. **Clear explanation and support for views.** You should explain your views and reasoning as clearly as possible; provide the basis for your assumptions; and provide empirical evidence or test data, wherever possible, to support your views. By supporting your arguments, you are more likely to persuade us to accept them. If you do not, and we do not have separate data to support your submission, we cannot rely on it. We, the agencies, are required to provide the basis for our final decisions.
7. **Alternatives.** You should provide specific alternatives to the proposed rule, including rule text, to help us ensure that, if we agree with your concerns, we can effectively implement your suggestions. In addition, you should provide an analysis of how your alternative(s) would be more effective than the agency's proposal.
8. **Basis for calculations.** You should explain the basis for and the calculations you used in developing any estimates regarding the costs of compliance or the benefits of our proposals or your alternative(s). If you do not, and we cannot determine how you arrived at the estimates you provided, we cannot rely on

them. We must be able to reproduce your results.

9. **Examples of concerns**. You should provide specific examples to illustrate your concerns. Real world examples or possibilities can help us better understand those concerns.
10. **Statutory limitations.** In preparing your comments, you should consider the requirements and limitations of the statutory authority under which the agency is making its proposal. You may be objecting to a proposal over which the agency has no discretion; the agency may be required to issue a final rule with that provision. You may also be proposing an alternative that the agency has no authority to implement.
11. **Your questions.** If you have questions – if you do not understand a part of the proposal – you may ask for help. At the beginning of the rulemaking proposal, the agency provides a person for you to contact if you need more information. Although the agency can answer your questions about the proposal's meaning, it cannot take comments from you on the proposal through these means.
12. **Deadline.** You should comply with the deadline for submission of comments. The deadline for comments is provided at the beginning of the rulemaking proposal.

Last Updated: Apr-06-2009

Ms. RICHARDSON. Thank you. Captain Prater, we have programs, aviation safety action programs, flight operations quality assurance programs that provide invaluable opportunities to uncover mistakes and to avoid catastrophes that might happen. What could we do to encourage greater participation, and how can we better help you?

Mr. PRATER. Actually, I believe that the focus that this Committee, the Subcommittee, as well as the FAA is actually motivating the industry to get on board and see the value of this. We have seen some positive changes from some of our operators who want to make these programs work, and our commitment, the commitment I have made to the CEOs is we will make those programs work. We will get the information from pilots, from mechanics, and we will apply it to the system. That is our commitment.

Ms. RICHARDSON. Thank you, sir. My time is expired. I will submit one other question into the record for Mr. May and a final one for Mr. Babbitt. Thank you, Mr. Chairman.

Mr. DEFAZIO. Thank the gentlelady. Mr. Schauer.

Mr. SCHAUER. Thank you, Mr. Chairman. I would also like to thank Chairman Costello for his leadership. First, Mr. Loftus, I would ask you to accept from my constituents in the Michigan seventh district on behalf of all of the families of Flight 3407 our sympathies and best wishes. My district, my hometown is Battle Creek, Michigan. It is the home of Western Michigan University's College of Aviation. Mr. Brady mentioned that in his testimony. I want to focus on quality. And Dr. Brady, I would like to ask you some follow-up questions to your testimony. I couldn't be more pleased and agree more that a focus in all of our training programs should be on quality.

You cite that a very high percentage of commercial airline pilots come from collegiate programs. That is what I know in my hometown. I see the Bronco aircraft flying around our skies regularly. I have sat in their flight simulator, and they really do a fabulous job. And I think we are here to talk about preparation for industry. And so I have read your testimony and studied it and I guess I want to ask you about whether there is a difference between meeting the educational goals for accreditation versus meeting the rigors of commercial airline operations. Specifically, the transfer of knowledge in high tech aircraft is something that Western Michigan University's program is focused on. I know they feel that they can meet that technologically advanced aircraft or TAA standard which is required by the airline industry. I understand it isn't necessarily required for accreditation or for completion of collegiate programs. Can you talk about that difference and whether you agree that collegiate programs should meet that industry standard?

Mr. BRADY. Yes, sir, I do. I do agree with that, that those programs should have those kind of systems and processes. I would like to also compliment Western Michigan on its performance in the National Intercollegiate Flying Association Meet. They did very well. Most of our programs that are accredited have some form of high tech environments that the pilots are able to interact with. Many of them have aircraft that are equipped with glass cockpits, for example. Many of them have simulators that, if the actual aircraft doesn't have it, many of them have simulators that are

equipped with glass cockpit procedures. And all of them will go way beyond what the FAA requires in terms of a minimum set of performance criteria in meeting their curriculum outcomes.

The whole process of AABI accreditation goes way beyond what the FAA would require as minimums. And all of the programs that are accredited have access, and most of them have high tech glass cockpit opportunities. So the pilots that are coming out of these programs are very highly skilled. And that is part of my issue here is that the ATP-only requirement is a one size fits all, and it doesn't work.

One size doesn't fit all because there are different levels of quality coming out of flight education programs from an FBO all the way up to, and I say up because that is the way it is, up to institutions of higher learning that produce professional pilots.

Mr. SCHAUER. Thank you. Would anyone else on the panel like to comment?

Mr. PRATER. I will take just a brief shot at it. I believe that the universities are producing very good, basic commercial airline pilots. But they are not making them into an airline pilot. We are missing a step for that lack of experience. And I think that is where Administrator Babbitt has focused on. That is where we are focusing on. What is that next step to turn somebody who has had that basic 200 hours worth of training into somebody who can face the rigors of real life scheduled flying service?

Mr. SCHAUER. Captain, in follow-up, would training in technologically advanced aircraft, TAA, help address that shortcoming?

Mr. PRATER. I don't believe so. It is not all about technology. It is about basic airmanship. Until you have seen what a mammatus cloud looks like or a lenticular cloud from the air, because you are not going to see that in the simulator, you are not going to know what it is until you see it. Hopefully you will see it with a more experienced aviator who will mentor you and say we are not going that way, we are going that way. That is the value of experience.

Mr. SCHAUER. Great. Captain, thank you. Thanks to the panel. I will take those comments back to Dean David Powell at Western Michigan University. Thank you.

Mr. COSTELLO. [Presiding.] The Chair thanks the gentleman, and now recognizes the gentleman from Oregon, Mr. DeFazio.

Mr. DEFAZIO. Thank you, Mr. Chairman. I want to refer particularly to Captain Prater's testimony. And it causes tremendous concern. Mainline airlines are frequently faced with pressures on their marketing plan resulting in the use of regional feed codesharing partners further down. Codesharing that will result in the mainline carrier exerting a great deal of pressure on the regional airlines to provide their service at the lowest possible price. The regional carriers have to reduce their costs to prevent being replaced by another air line at the end of their contract. Now we have larger regional carriers subcontracting with smaller regional airlines, and then you go on say, in some extreme cases airlines have outsourced the majority of their routes to regional airlines with pilots having as little as 250 hours of experience because a main line carrier furloughed its own pilots with more than a decade of experience. Another cost cutting tactic used by regional vendor airlines is endemic short staffing which leads to pilot pushing, fewer pilots flying more

and more hours per month and a resultant reduction in safety. And then finally, it is not uncommon for training at such carriers to be conducted only to FAA required minimums. This raises a number of extraordinary issues, issues that I have been raising on this Committee for well more than a decade, and that would be the low minimums required by the FAA, which I believe leads to a lowest common denominator mentality, which leads to subcontracting or contracting with regional airlines who subcontract with other regional airlines, and at every step along the way, the people get paid less, they have less experience, and there is less integrity to the training programs of those extremely small, low budget carriers.

Additionally, there is the issue of pay, or the "lifestyle choice" as we heard one of the witnesses refer to it. A woman living with her mother as an adult because she can't afford an apartment on her own. It is a "lifestyle choice". Yeah, the lifestyle choice is she wanted to fly an airplane and she isn't being paid anywhere near a living wage. I don't call that a lifestyle choice. I call it exploitation by a profit making entity. And then finally, the whole issue of the minimums. Here is a question. What if we raise the minimums? Now, wouldn't that resolve at least some of these issues of you know, chasing the least experienced person who will work for the lowest wage? Captain Prater?

Mr. PRATER. We believe that it would be a start on the system. We have identified what we consider the marketplace or systemic problems of outsourcing and its effect on having experience in the cockpit. In this specific accident, the fact that Continental Airlines had laid off their main line pilots, people who had 10 or 12 years of experience who could have been flying that airplane, the fact if there weren't so many vendors working off so many different seniority systems, this specific crew, with their level of experience and training, would have never flown together. The captain would have had 6 or 8 years of experience. That experience is out there. But here is the economic fix.

We have asked the main line carriers. They are charging $25 for your bag, they are charging $50 for your second bag or $100, to take 5 minutes to change your reservation. For $1 an hour, per passenger, we can fix these economic problems. So if you are going from here to St. Louis, if you would pay $2 for the captain and $2 for the copilot, we could pay a decent wage. We can't get that out of the main line carriers. And the regional partners, their managements have no control over revenue. All the decisions are made by the main line managers. And that is what it would take to fix those problems, so you wouldn't have to live with your parents when you are 30 years old.

Mr. DEFAZIO. So $1 per hour. That means I fly weekly to the West coast, 4-1/2, 5-hour flight, depending on weather conditions, let's say it was 4-1/5 yesterday. So it would have cost me an extra $9 to have the most experienced best trained pilots. Do you think there is anybody up there who wouldn't pay an extra 9 bucks flying across the country or 2 bucks or 4 bucks for a short flight to get there alive? I don't. Now, the question is, how do we break this vicious cycle, the lowest common denominator? What happens is we have some very responsible regional carriers who are doing a great job. But their problem is they are competing so-called with these

low budget folks. I think the way to solve that is to raise the minimums and raise them dramatically. Administrator Babbitt, what do you say to that?

Mr. BABBITT. When we talk about raising the minimum, I am presuming you are talking about the requirements to be hired as a first officer. And that is the subject of an advanced notice of proposed rule making that we are considering and we may suggest just that. Before this debate started and so forth, we came out and recognized that there needed to be some additional or at least in the FAA's belief, there needed to be some additional qualifications, training and experience and what our proposal would do would be to add all three of those components. The panel, in some discussion here, has taken some exception. Some of them believe experience should carry a higher value. Others, quality. That is why we have proposed rule makings. That is why we put out those notices and that is why we will take their input and craft a rule.

Mr. DEFAZIO. But Administrator Babbitt, didn't you testify to the same issue back in the mid nineties, when you were in a position with the airline pilots association? And it has been more than a decade and now we have an advanced notice of a proposed rule making. How long is that going to take?

Mr. BABBITT. Well, hopefully not long. During that interim time I wasn't the administrator. Now that I am involved, we are proposing a change in the flight time and duty time rules. That one has languished for 35 years. We are going to have a rule by the end of the year. So we are really aggressively trying to move some of these issues forward. We haven't touched the commercial pilot rating and ATP rating rules. The only difference was to add 300 hours. I got mine when I had 1,200 hours. That was the requirement in 1968. It changed from 1,200 to 1,500. That is the only change that has been made in 40 years.

So while people might take a little exception that it is taking a little too long, the fact is we are moving it and I will accelerate it as quickly as I can.

Mr. DEFAZIO. Okay. I turn then now to Mr. May who was preceded some time ago by a guy named Bolger, and I had the same conversation with Mr. Bolger back in the early 1990s. And at that point he represented that, you know, he didn't think that we wanted to incur these costs in the system. And I said, well, sir, I think that you have a large and diverse group of airlines you represent. But aren't you putting the better ones who have higher standards at a disadvantage if you are representing the views of the ones who are the most cost competitive, or we might say cost cutting, or we might say some of the things we talked about earlier in the terms of the problems they are causing.

What if we had a level playing field where we raised the bar a little bit? And yeah, we have heard how expensive it would be. Are you telling me there is that much price sensitivity, that someone won't fly, pay an extra buck to have, you know, an experienced pilot and another buck for an experienced copilot? I just, I don't buy it. If you are going to say, gee, any upward price pressure, as opposed to this relentless downward price pressure, is going to be detrimental to the industry when everybody has to play by the same rules, so no one is going to be at a competitive disadvantage.

You are bringing up the bottom. The people who are already above them are now in actually a stronger position, and the ones at the bottom, yeah, they are going to have to suck it up a little bit and do better.

Mr. MAY. Mr. DeFazio, I would put the qualifications of our main line carrier pilots and crews, copilots, up against any in the world.

Mr. DEFAZIO. Sure. I got that. But they are driving the system and they are using more and more regionals, and some of the regionals are now using more and more sub regionals. They are driving that system with their code sharing arrangements. So yes, certainly they have very qualified pilots, and that is not what I am talking about here. I am talking about the system we have set up which they are facilitating, which is becoming more and more the public is flying on one regional carriers than they are on the mainline carriers.

Mr. MAY. And I think Administrator Babbitt has talked about a number of rulemaking procedures that are underway to significantly elevate the qualifications.

Mr. DEFAZIO. Great. Will the Association support those?

Mr. MAY. Yes, we will, and we have. We participated in the ARC and made a series of recommendations, some of which have been referred to here today. And look, we are all in favor of having the opportunity to maintain what is still the safest system in the world.

Mr. DEFAZIO. Right. But the one time when it doesn't work right is unfortunate, it is catastrophic and we want to prevent that if possible.

Mr. MAY. I don't think any of us——

Mr. DEFAZIO. And I see a bad trend here. It reminds me of the trend we had when Value Jet had outsourced and outsourced the outsourcing of their maintenance, and you got to a level where some people didn't know that mixing oxygen canisters and tires in the hull of the aircraft was a bad idea. And I worry that the system is driving that way now with the way these regional and subregional contracts are going out. I am pleased to hear the Association supports the higher standards, and I look forward to Administrator Babbitt expediting it so I am not back here in 16 more years talking to yet a future administrator about the same issue. I hope not to be here and I hope we have resolved the issue by then. Thank you. Thank you, Mr. Chairman.

Mr. COSTELLO. The Chair would say to my friend from Oregon that we are not going to wait on rulemaking. That is the reason that we have introduced H.R. 3371 and we are going to proceed. There are things that we can do that we can put into law that, we can pass through the House and hopefully through the Senate, and we will work with the FAA along the way. But we know what has happened in the past as far as rulemaking is concerned. It takes a long period of time.

I would join others in commending Administrator Babbitt in expediting some things already since he has been in his position, and I trust that he will continue to move forward with this issue.

I have a final question for some of the members of the panel. We have talked about, as Dr. Brady indicated, his concern about the disadvantage of the 26 accredited schools versus the flight training

schools. Let me talk a little bit or ask a little bit about the value of classroom time versus time in the cockpit, time in the cockpit versus time in the simulator, time in the classroom versus time in the cockpit versus being in the cockpit over in the southern California airspace or the New York airspace. And I want to start with Mr. Skiles, and then I will work my way through the panel. If you would comment, the value of time in the classroom versus time in the cockpit versus time in the simulator.

Mr. SKILES. Well, I would like to first of all say that we are very happy, we think that the AABI accredited schools do a great job of training our future airline pilots. But we argue that education is only part of what makes a complete airline pilot. While gaining the experience to qualify for an ATP, a pilot is exposed to challenging and unpredictable circumstances which are just not possible in a classroom. This gives them the opportunity to develop airmanship skills we call them. And I would like to define that for you a little bit.

You know, flying is as much a skill as it is just knowledge. You don't become a virtuoso on a cello after a few lessons. Even adept training can't prepare a pilot for everyday line flying. You take away the auto pilot, the glide slope, the auto throttles and you are left with basic flying skills that you have developed, the ability to plan a descent to a certain point and be there at a certain altitude, the ability to fly a perfect glide profile by eye alone, the ability to judge wind drift on a base leg and adjust your bank angle to roll out perfectly aligned with the runway. These are airmanship skills. And this is what we find is, I think, sorely lacking in our industry today. They can only be achieved by experience in the cockpit.

So once again, we think that education is part of the equation. But once again, you need the experience that you are going to attain as you are getting the requirements for the ATP license to develop those critical airmanship skills that are going to come to play in circumstances that you encounter in your everyday airline flying career.

Thank you.

Mr. COSTELLO. So the bottom line is you strongly support the ATP?

Mr. SKILES. Absolutely. The ATP requirement is the absolute minimum requirement that we should be seeing for admittance to our airline cockpits.

Mr. COSTELLO. Captain Prater.

Mr. PRATER. I would concur, but go just a little bit further. I think there are different ways of gaining valuable experience. I do think that there should be a more intense focus on the educational aspects, the ground school, if you will, provisions of becoming a pilot. We do support the requirement for the ATP. However, we also feel that there are some interim steps that can bridge the gap of just flight time experience. There is very little bad flight time experience. It all adds to one's total amount of experience. And it is not just in a training environment. You have to go out there and sometimes do it to get better.

So we would like to see an increase in ground school, whether it is in the basic airmanship, private, commercial instrument ratings, and we would like to see it go beyond that. There is no real

ground school for ATP. You can take—you can buy a $5 Acme exam and learn the answers. I would like to get around that. I would like to increase those requirements to get an ATP.

Thank you.

Mr. COSTELLO. Thank you, Captain Prater. Mr. Loftus.

Mr. LOFTUS. Again, I will agree with both of the pilots, professional pilots here at the table. I agree that there is no experience, other than the experience in the air there is no substitute for what you learn in the classroom, or the other way around. The classroom is a needed environment. The pilots that come out of the colleges and the universities are extremely good pilots. They turn out to be very good first officers and captains.

But, again, the airlines are not an entry level position, I don't believe. I think that it has got to be earned. There is knowledge there that can't be taught in a classroom. It can only be learned in a plane and a simulator. I think the simulators are an important part of the training process. But, again, there is no replacement for that, all the classroom learning you can have, but until you fly the airplane you don't know how to land it. You can talk about it all day.

Mr. COSTELLO. Thank you, Mr. Loftus. Finally, Dr. Brady, if you would like to comment.

Mr. BRADY. Thank you, Mr. Costello. All of these things are important, blended together, to produce the ideal professional pilot. There is a level of classroom that is needed, and we believe that the academic experience in a college or university is the best means to attain those levels. The simulator, integrated with the aircraft, if it is the right kind of simulator, if it simulates the aircraft and there is a transfer of training between the two, we fully support.

At my institution, for example, we train under what is called part 142, which allows simulation, the maximum amount of simulation, and we actually have very high level simulators for the Cessna 172 and the Seminole and the Canadair regional jets, so our pilots get trained on all of those boxes and all those opportunities. And you can do things in a simulator you can't do in an aircraft. So we very much support that.

As far as the ATP is concerned, we don't believe that one size fits all. We believe there needs to be some modification of that so that the high quality programs are not disadvantaged by the low quality programs. We believe there needs to be some measure taken so that the ATP is not the determinant, is not the determining item to put the pilot into the cockpit of a part 121 carrier. We believe it is an inappropriate measure.

Mr. COSTELLO. The Chair thanks you. And I thank all of our witnesses for participating and testifying in our hearing today. As I said from the outset, this Subcommittee intends to uphold our commitment not only to the families of Flight 3407, but to the American people, that we will continue aggressive oversight. We will pursue bringing our safety bill to the floor of the House of Representatives to move it through so that we can—and we will be working with Administrator Babbitt and our stakeholders in the process.

We think we have a good bill. We think it does many things that we learned from our hearing in June and again from meeting with

many of the stakeholders represented here today. So we look forward to continuing to work with you. And as I said, we are committed to aggressive oversight to make certain that we improve the safety standards for the future.

With that, the Subcommittee stands adjourned.

[Whereupon, at 12:30 p.m., the Subcommittee was adjourned.]

OPENING STATEMENT OF
THE HONORABLE RUSS CARNAHAN (MO-03)
HOUSE TRANSPORTATION AND INFRASTRUCTURE COMMITTEE
AVIATION SUBCOMMITTEE

Hearing on
The Federal Aviation Administration's Call to Action on Aviation Safety and Pilot Training
Wednesday, September 23, 2009
2167 Rayburn House Office Building

Thank you, Chairman Costello and Ranking Member Petri for holding this hearing regarding the Federal Aviation Administration's (FAA) Call to Action on Airline Safety and Pilot Training.

First, I would like to extend my condolences to the families and friends who lost loved ones in the tragic crash of Flight 3407.

The tragic crash of Flight 3407 is a clear reminder that more must be done to strengthen the safety of our aviation system. We cannot be complacent. We must ensure one level of safety throughout the industry, rather than differences in safety between major airlines and regional airlines.

The National Transportation Safety Board's (NTSB) hearing on the Flight 3407 crash identified the need to closely examine the regulations governing pilot training and rest requirements and the oversight necessary to ensure their compliance.

I commend the Federal Aviation Administration's Call to Action on airline safety and pilot training to encourage the aviation industry to come together to share their best practices and implement actions to improve safety. This a critical first step to working toward one level of safety throughout the industry as well as addressing the concerns brought forward by the NTSB's hearing. I believe the actions taken as a result of the Call to Action will make the traveling public safer but do have some reservations about airlines voluntarily complying with industry best practices.

For this reason, I was very happy to see Chairman Costello introduce legislation that to enhance airline safety by improving pilot training requirements, addressing pilot fatigue, and strengthening the FAA's safety programs.

In closing, I would like to thank all our witnesses for joining us today and I look forward to their testimony.

Russ Carnahan

OPENING STATEMENT OF REP. STEVE COHEN

The Subcommittee on Aviation

"The Federal Aviation Administration's Call to Action on Airline Safety and Pilot Training"

September 23, 2009

I am pleased to be here today to receive testimony from representatives of the Federal Aviation Administration, pilot and airline associations, the Aviation Accreditation Board Association, and the Families of Continental Flight 3407.

Every day millions of Americans put their trust and faith in us, the federal government, to protect them as they travel throughout this great nation. We must strive to fulfill this sacred trust by continuously examining and strengthening aviation safety. It is our duty to be on the cutting edge of aviation safety when it comes to researching new technologies and investing in infrastructure that will guarantee the safety of airline passengers. But we must not forget that aviation safety infrastructure is only half the battle. For no matter how advanced our safety infrastructure may be, without sound airline safety policies and procedures that address issues such as fatigue and professionalism, airline passengers will be at intolerable risk.

I look forward to hearing from our witnesses today about what they have been doing and what they plan to do to better ensure the safety of airline passengers. I thank the witnesses for being here today and offer my condolences to the families who have lost loved ones.

STATEMENT OF
THE HONORABLE JERRY F. COSTELLO
SUBCOMMITTEE ON AVIATION
THE FEDERAL AVIATION ADMINISTRATION'S CALL TO ACTION ON AIRLINE SAFETY AND PILOT TRAINING
SEPTEMBER 23, 2009

- I welcome everyone to the Aviation Subcommittee hearing on the Federal Aviation Administration's Call to Action on Airline Safety and Pilot Training.

- I think it's important that as we discuss airline safety and improving pilot training standards, we remember one of the many important reasons we are here today. On February 12, 2009, Colgan Air, doing business as Continental Connection Flight 3407, crashed en route to Buffalo-Niagara International Airport. All forty-five passengers and the four crew members died, as well as one person on the ground.

- Mr. Mike Loftus' daughter, Madeline, was a passenger on Flight 3407. I am pleased he is joining us again today to offer testimony. The Subcommittee extends our sincere condolences to you, as well as other family members and friends who lost loved ones in this tragic accident.

- While the National Transportation Safety Board (NTSB) continues to investigate the cause, the three day public hearing on the accident clearly identified the need to closely examine the regulations governing pilot training and rest requirements and the oversight necessary to ensure their compliance, with a particular focus on regional airlines.

- At the outset, I would like to commend you, Administrator Babbitt for your leadership and your quick response to these safety issues. You acknowledged early on that, "practices in the regional airline industry are not acceptable", and you acted.

- Soon after our Subcommittee hearing on June 11th, a Airline Safety and Pilot Training "Call to Action" was announced to help us gather information from the airlines and labor organizations to determine industry best practices and seek voluntary compliance with a number of safety initiatives. I believe that the Call to Action has helped focus the regional carrier safety discussion in the aviation community, in Congress, and in the public.

- Today's hearing is the first of many oversight hearings on the status of the FAA's Call to Action. Over the past several months, the FAA held twelve Regional Safety Forums around the country all well attended. While there are positive indicators that FAA and stakeholders have made progress, there is also a lot that we do not know about the results of these efforts.

- One of the reasons we have raw and incomplete data is because the FAA did not impose or suggest firm deadlines for labor or industry to complete the recommended action items. On June 24th, Administrator Babbitt wrote 105 airlines and 8 unions and asked for commitments to specific action items. Three months later, less than half have responded to the letter. As a result, we only have preliminary information

regarding what specifically these organizations have committed to do.

- A response of less than 50% to the FAA is exactly why I continue to stand firm in my belief that we cannot rely on voluntary compliance.

- I do not believe that at this point, you, Administrator Babbitt, nor the airline industry or labor groups can tell me with any real confidence what the substance of the voluntary commitments are. That is why Congress must enact comprehensive safety legislation that will increase safety across-the-board. I know that we are expecting a more comprehensive report on the FAA's progress in December and the Subcommittee will convene another hearing to review

what the FAA has proposed in order to measure your progress.

- Meanwhile, we intend to uphold our commitment to the families of Flight 3407 and the American public that this Subcommittee will continue aggressive oversight to strengthen airline safety and pilot training qualification standards. Congress has the ability to improve aviation safety standards which is what we intend to do with H.R. 3371.

- As you will recall, after the June 11th hearing on regional air carriers and pilot workforce issues, Chairman Oberstar, Ranking Members Mica and Petri and I made a commitment to work together to address many of the safety issues raised. Based upon the input we received, which included ideas from

other Members of Congress; and additional meetings with the FAA, pilots, the airlines, and others in the aviation community, we introduced bipartisan legislation, H.R. 3371, in July.

- We had a specific goal in mind: to raise the bar on the minimum level of safety to ensure there is one level of safety across the industry. To address pilot qualifications, the bill increases the minimum flight hours required to be hired as an airline pilot. There is a consensus among pilots and many in the aviation community that 250 flight hours simply is not enough and that safety would be improved by raising the standard.

- Under H.R. 3371, all prospective airline pilots must obtain an Airline Transport Pilot (ATP) license, which is currently

needed to be an airline captain. It requires a minimum of 1,500 flight hours. Our goal is to ensure that both the first officer and the captain have the same minimum level of experience, training, and skills to transport passengers and crew safely. The ATP license also requires additional aeronautical knowledge, crew resource management training and greater flight proficiency testing.

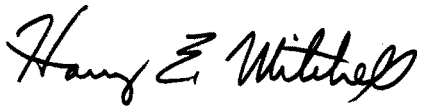
- Some in the aviation community have expressed concerns with the provision to require an ATP license. I think Administrator Babbitt had it right in his speech to the Air Line Pilots Association (ALPA)

  "If you think the safety bar is set too high, then your standards are set too low".

- Our bill is a comprehensive effort to consolidate what we know industry-wide about aviation safety to improve safety performance going forward. That is why the Call to Action is so important. From the airlines, we need to know if they are using FOQA, ASAP and if they are working in partnership with their regional partners on specific and concrete ways to ensure the regional airlines adopt and implement the most effective safety practices. From the labor organizations, we need to know if they established and published a code of ethics to set expectations for professional behavior or have professional standards and an ethics committee. This is all valuable information and data we need to have in order to evaluate pilot training and qualification programs.

- Before I recognize Mr. Petri for his opening statement, I ask unanimous consent to allow 2 weeks for all Members to

revise and extend their remarks and to permit the submission of additional statements and materials by Members and witnesses. Without objection, so ordered.



Statement of Rep. Harry Mitchell
House Transportation and Infrastructure Committee
Subcommittee on Aviation
9/23/09

--Thank you Mr. Chairman.

--All of us were surprised and deeply saddened by the sudden crash of Colgan Air Flight 3407 near Buffalo, New York.

--We need to understand what happened, so we can take steps to ensure the safety of the flying public.

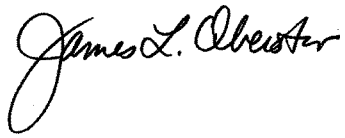
--While, the National Transportation Safety Board (NTSB) is still investigating this incident, and I do not want to prejudge the outcome, the investigation has already raised some deeply disturbing questions, especially in the area of crew fatigue.

--This follows a presentation of research last year at a Federal Aviation Administration (FAA) Symposium on Aviation Fatigue Management, that found 80 percent of regional pilots surveyed had said that they had nodded off during a flight.

--In June, the FAA announced and Airline Safety and Pilot Training "Call to Action" to help reduce risk at regional airlines through voluntary compliance with a number of safety initiatives.

--The FAA has a responsibility to ensure that the flying public remains safe, and I look forward to hearing from today's witnesses about this latest step.

--At this time I yield back.



OPENING STATEMENT OF THE
HONORABLE JAMES L. OBERSTAR
BEFORE THE HOUSE AVIATION SUBCOMMITTEE
THE FEDERAL AVIATION ADMINISTRATION'S CALL TO ACTION
ON AIRLINE SAFETY AND PILOT TRAINING
SEPTEMBER 23, 2009

Thank you, Chairman Costello and Ranking Member Petri for calling this important hearing on the Federal Aviation Administration's (FAA) Call to Action on Airline Safety and Pilot Training. In the early 1990s, labor and industry voiced their concerns to me regarding the disparity in the Federal Aviation Regulations between part 121 passenger carrier and part 135 commuter carrier operations. These concerns followed a spate of accidents involving commuter aircraft operating under part 135. On February 9, 1994, as Chairman of the Aviation Subcommittee, I held a hearing to determine whether FAA safety regulations should be modified to establish a single standard for all scheduled operations, regardless of size. Later that year and again in early 1995, I introduced legislation to require the FAA to establish "one level of safety"—that is, to apply its safety standards uniformly to all air carrier operations, without regard to the seating or payload capacity of the aircraft involved.

On December 20, 1995, the FAA issued a final rule to establish "one level of safety," requiring scheduled commuter air carriers to operate under the more stringent part 121 air carrier regulations. But the crash of Colgan Flight 3407 serves as a reminder that we must maintain constant vigilance over airline safety. Although the

National Transportation Safety Board (NTSB) has not yet completed its investigation of the Colgan accident, it has identified issues related to pilot training and fatigue as possible factors, and noted to this Subcommittee that it has made numerous recommendations to the FAA for rule changes in these areas. In fact, the last six fatal part 121 accidents involved regional air carriers, and the NTSB has cited pilot performance as a potential contributory factor in three of those accidents – not including Flight 3407.

The opening line of the Federal Aviation Act of 1958 states that "maintaining **safety** is the highest priority." Having a strong safety culture at the FAA must begin at the top. I am pleased to see that the new FAA Administrator Randy Babbitt is here today to discuss regional carrier safety. He has had a long career in aviation, including extensive service as an airline pilot. His piloting experience provides him with particularly keen insight into the issues of pilot training and fatigue that we will be discussing here today. Administrator Babbitt, you acknowledged early on that there were problems with regional carrier safety. I believe that you have shown real leadership on these issues, and that the actions that you have taken so far have helped focus all of us on many of the things that need to be done to improve regional carrier safety. I look forward to hearing your testimony.

In June, the FAA announced its Airline Safety and Pilot Training "Call to Action" for airlines to voluntarily implement training best practices. Since then, the FAA has held 12 Regional Safety Forums around the country where it sponsored discussions with air carrier and labor representatives about airline safety best practices.

In addition, the FAA formed an Aviation Rulemaking Committee (ARC) to develop a new flight and duty time rule. According to media accounts, the FAA is moving forward on an aggressive timeline to enable the agency to develop a proposed rule this year. I am glad that FAA is moving forward, although I would note that the FAA's last proposed flight and duty time rule languished for over 15 years due to industry opposition. To ensure that FAA gets the job done this time, in H.R. 3371, the "Airline Safety and Pilot Training Act of 2009" impose a firm statutory deadline of one year for finalizing this rule.

Fatigue is one of the most critical issues facing pilots today, especially in this economic downturn and with the air carriers' emphasis on increasing productivity and driving down labor costs. Working long hours on an irregular schedule can have a detrimental effect on a pilot's decision-making abilities. Well-rested pilots are critical to aviation safety. It is time to refocus our efforts and press the FAA to resolve these very significant and complex flight and duty issues. As I have repeatedly said: "Fatigue" does not show up in autopsies! Our nation's pilots must be provided

adequate rest to perform their critical safety functions. Anything less is simply not acceptable!

I also have concerns about whether pilots who work second jobs or live long distances from their work stations are adequately rested when they start their work schedule. Current FAA regulations only govern hours worked as a pilot, and leave off-duty activities to the good judgment of pilots. We will want to consider whether we need the airlines or the FAA to show more concern about off-duty activities. H.R. 3371 directs the National Academy of Sciences to study the impact of pilot commuting on fatigue and provide preliminary results to the FAA after four months to be considered as part of the flight and duty time rulemaking.

Administrator Babbitt, in two recent speeches, you have cited deteriorating professionalism as a factor negatively affecting safety, and you have called upon aviation industry workers to raise their level of professionalism. I am glad that you are speaking out on this issue. This it is an important point, and it appears to have been a factor in the Flight 3407 tragedy. However, I would add to this point that I have often observed that airline safety begins in the company boardroom. If regulations are paid lip service in the boardroom in an effort to increase the bottom

line, we all fail. Each airline must have a strong safety culture and must commit to ensuring that the highest levels of safety are maintained.

As part of the "Call to Action," the FAA wrote 105 part 121 air carriers and eight labor organizations to request that they undertake specific safety action items. July 31 was the deadline for a response. Based on information provided by the FAA to this Subcommittee, 50 air carriers and three labor organizations have responded to the letter. There are some indications, based on these responses, that the FAA has made some progress securing commitments from airlines to implement Flight Operational Quality Assurance (FOQA) programs. But otherwise, I do not think that the FAA has any real sense of the level of commitment it is getting from the industry for its proposed safety initiatives. Certainly, I would question the commitment of those carriers that did not bother respond to Administrator Babbitt's letter, and the American public deserves to know who they are.

Today's hearing is an important reminder that Congress must continue to be ever vigilant at holding FAA accountable on its true mission, to promote safety. A strong safety culture starts at the top, with the FAA Administrator and in airline boardrooms across America.

Thank you again, Mr. Chairman, for holding this hearing. I look forward to hearing from our witnesses.

Laura Richardson

Congresswoman Laura Richardson
Statement at Aviation Subcommittee Hearing
Hearing on "The Federal Aviation Administration's Call to Action on Airline Safety and Pilot Training"
2167 Rayburn House Office Building
Wednesday, September 23, 2009
10:00A.M.

Mr. Chairman, I want to thank you for convening this hearing to investigate safety measures being put into place to help avoid tragedies such as the one suffered in Buffalo in February. While generally aviation has a very solid safety record, and is one of the safest ways to travel, this is an industry where even one accident is too many and has a devastating effect on so many people.

I represent a district that is adjacent to several airports, mainline carriers, regional carriers, and general aviation, and I have an interest in making sure safety precautions are in place for all types of aircraft.

I know that there are many programs to promote training and safety being put into place or already implemented, but one of my concerns is that many of these programs are voluntary. I know the Airline Pilots Association has a code of ethics and provides training, but again these are guidelines and not mandatory.

My fear is that even though participation rates are high for many of these programs, this may be a case of preaching to the choir. I know these

programs work well for those participating, but I'd like to hear from the witnesses today as to how well these are working and how the safety records of those that participate compare to those that don't. I'd also like to hear about what the consequences are for the mistakes from those that don't participate, and hear what we can do to provide carrots, and if that doesn't work, what we can do to implement sticks.

I hope we can work towards complete participation in programs that promote professionalism, ensure proper training, and create an atmosphere where there is an opportunity to learn rather then hide from our mistakes. We must ensure we don't open the door to repeat relatively small mistakes which can quickly turn into tragedies.

I'm sure the committee will continue to track the conclusions of the NTSB and the successes of FAA in implementing the Call to Action on Airline Safety and Pilot Training. I also hope congress will move quickly to pass FAA reauthorization which will improve safety through implementation of NextGen programs and also includes less well publicized programs such as establishing mentoring programs for young pilots.

I'd like to thank our esteemed panelists and I look forward to hearing their statements.

Thank you, Mr. Chairman

STATEMENT OF THE HONORABLE RANDOLPH BABBITT, ADMINISTRATOR, FEDERAL AVIATION ADMINISTRATION, BEFORE THE HOUSE OF REPRESENTATIVES, COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE, SUBCOMMITTEE ON AVIATION, ON THE FEDERAL AVIATION ADMINISTRATION'S CALL TO ACTION ON AIRLINE SAFETY AND PILOT TRAINING. SEPTEMBER 23, 2009.

Chairman Costello, Ranking Member Petri, Members of the Subcommittee:

Thank you for inviting me here today to discuss the Federal Aviation Administration's (FAA's) Call to Action on airline safety and pilot training. As you know, on June 15, 2009, we made this call to action to encourage the aviation industry in this country to come together to share their best practices across the board and implement actions we know can improve safety. History has shown that we are able to implement better safety improvements far more quickly and effectively when we work together on problems and their solutions. We have received a wealth of information from the Call to Action, and we are taking several steps to use that information to make the industry and traveling public safer.

To start, we had several short-term actions that we wanted to achieve in June and July of this year. These included:

Flight and Duty Time Rulemaking: As a result of the Call to Action, FAA made the creation of a new flight and rest rule based on fatigue science a high priority, with an aggressive timeline. FAA chartered an aviation rulemaking committee (ARC), which began meeting in July 2009. The ARC, which consisted of representatives from FAA, industry, and labor organizations, was charged with producing recommendations for a science-based approach to fatigue management by September 1, 2009. I am pleased to report to you that the ARC met its charge and that we are currently reviewing its recommendations. Although our review is ongoing, I would also like to share with you how pleased I am with the work that we accomplished in the ARC. While some details remain unresolved, the ARC gave us a broad philosophical framework that will form the basis for our NPRM.

Focused Inspection Initiative: Recognizing the urgency of proposals in the Call to Action, FAA required its principal operations inspectors for part 121 carriers to conduct a focused program review of air carrier flight crewmember training, qualification, and management practices.

The focused inspection initiative has two parts. The first part of the initiative required FAA inspectors to meet with the carrier's director of operations, director of safety, and company officials responsible for flight crewmember training and qualification programs. The purpose of these meetings was to determine the carrier's ability to identify, track, and manage low-time flight crewmembers and those who have failed evaluation events or demonstrated a repetitive need for additional training. Inspectors also looked at whether the carrier adopted the suggestions in Safety Alert for Operators (SAFO) 06015 to voluntarily implement remedial training for pilots with persistent performance deficiencies. The meetings were to occur as soon as possible, but no later than July 15, 2009. I am pleased to report that all of these reviews have been completed.

As a result of these meetings, our inspectors found that about two-thirds of the carriers operating under the traditional regulatory requirements for pilot training and checking (i.e. carriers that do not participate in an Advanced Qualification Program) had systems in place to identify and manage low-time flight crewmembers and those with persistent performance problems. We strongly encouraged carriers without such systems to establish them. For those who will not commit to implementing these systems, we will increase oversight to ensure their training and qualification programs meet regulatory requirements.

The second part of the initiative is currently underway. Inspectors are conducting additional inspections to validate that the carrier's training and qualification programs meet regulatory standards in accordance with FAA guidance materials, including, among other items:

- Review the entire performance history of any pilot in question;
- Provide remedial training as necessary; and
- Provide additional oversight by the certificate holder to ensure that performance deficiencies are effectively addressed and corrected.

We expect to complete the second part of the focused inspection initiative by September 30.

Training Program Review Guidance: Using results from initial elements of the focused inspection initiative, FAA will provide guidance material on conducting a comprehensive training program review. This guidance will describe the training program review in the context of a safety management system and its role in a corporate safety culture.

Although our original goal (as indicated in the Action Plan) was to develop this document by July 31, we have postponed development of the Training Program Review Guidance for two reasons. First, the Action Plan indicates that we will use the results of FAA's focused inspection initiative in developing the material. Although FAA inspectors completed Part I by July 15, Part II (which calls for a more in-depth review of training) is not slated to be completed until September 30, as stated above. Second, we found that the initial July timeframe would not allow us to benefit from suggestions and ideas developed in the series of Call to Action safety forums held around the country in July and August.

Once FAA inspectors complete the second part of the focused inspection initiative, we will analyze this information, along with ideas gathered from the regional safety forums, and begin developing the SAFO. As we may want to provide time for industry comment, our goal is to complete it by December 31.

Obtain Air Carriers' Commitment to Most Effective Practices: To solidify oral commitments made at FAA's June 15 Call to Action, I sent a letter to all part

121 operators and their unions and requested written commitments to adhere to the highest professional standards, with specific commitments on the following key topics:

- **Pilot Records**: While Congress is working to amend the Pilot Records Improvement Act of 1996 and the FAA amends Advisory Circular 120-68D, I asked that air carriers immediately implement a policy of asking pilot applicants for voluntary disclosure of FAA records, including notices of disapproval for evaluation events.
- **FOQA and ASAP**: I asked that air carriers who have not done so, establish flight operations quality assurance (FOQA) and Aviation Safety Action Program (ASAP) programs and develop data analysis processes to ensure effective use of this information.

I can tell you that of the responses we have examined so far, carriers have overwhelmingly indicated a willingness to make the commitments I have requested - this includes responses from those who have already done so. But not everyone has responded yet. We have reiterated to these airlines the importance of responding to my request. Our final findings and recommendations resulting from this effort will be summarized in the final report on the Call to Action that will be published by the end of the calendar year.

Labor Organizations: I asked labor organizations for their commitment in the following areas:

- Establish and support professional standards and ethics committees to develop peer audit and review procedures, and to elevate ethics and professional standards.

- Establish and publish a code of ethics that includes expectations for professional behavior, standards of conduct for professional appearance, and overall fitness to fly.
- Support periodic safety risk management meetings between FAA and mainline and regional carriers to promote the most effective practices, including periodic analysis of FOQA and ASAP data with an emphasis on identifying enhancements to the training program.

The initial responses have been informative. As with the air carrier responses, we have not heard from everyone. We will continue to track responses to this request and will include the results, findings and recommendations we will be making as we wrap up this Call to Action with a report later this year.

Mentoring: To address issues in the professional standards and flight discipline area, FAA developed and sought industry comments on the prospect of creating a range of mentoring programs. I am still very much in favor of mentoring, but there is no question that it is also one of the most challenging concepts to address. We found this to be true during the discussions held at Call to Action safety forums around the country. Still, these discussions have produced some interesting and potentially promising ideas. For example:

- Establishing Joint Strategic Councils within a "family" of carriers (mainline and regional partner(s)). This approach could lead to individual as well as corporate mentoring relationships.
- Using Professional Standards Committee Safety Conferences to provide opportunities for two-way mentoring – a very good reminder that good ideas are not unique to larger mainline carriers.
- Exploring mentoring possibilities between air carriers and university aviation programs.

We will be looking more closely at these ideas as we analyze data gathered from the forums and develop a mentoring guidance document for industry comment.

Regional Safety Forums: Beginning in July, FAA conducted a series of regional safety forums to discuss the Call to Action initiatives, listen to stakeholder comments, and seek ideas for and commitments to additional actions in the areas in which FAA is already taking specific action. By the end of August, FAA held 12 well-attended forums in the following locations:

July 21	Washington DC
July 30	Dallas / Fort Worth
July 30	Chicago
August 4	Seattle
August 6	Minneapolis / St. Paul
August 6	Atlanta
August 6	Anchorage
August 20	Miami / Fort Lauderdale
August 20	Denver
August 21	St. Louis
August 27	Las Vegas
August 27	Boston

The Call to Action also included several intermediate term actions, intended for completion in the August-December 2009 timeframe. These include:

Crew Training Requirements: At the time we initiated the Call to Action, the FAA already had an NPRM open for comment, intended to enhance traditional training programs for crewmembers and dispatchers by requiring the use of flight simulation training devices for flight crewmembers, and including additional

training requirements in areas critical to safety. The public comment period closed on August 10 with over 3000 pages of comments. FAA is reviewing these comments and is committed to applying the resources necessary to complete a final rule on an aggressive timeline. The final rule will be consistent with the philosophy of enhancing the quality and effectiveness of training rather than focusing on traditional quantitative measures such as total flight time.

One of the things that the Call Action has also shown a light on is the issue of varying operational experience. We do not believe that simply raising quantity – the total number of hours of flying time or experience – without regard to the quality and nature of that time and experience – is an appropriate method by which to improve a pilot's proficiency in commercial operations. For example, a newly-certificated commercial pilot with the minimum number of hours might be limited to certain activities until he or she could accumulate the type of experience deemed potentially necessary to serve as a first officer for an air carrier. Such experience would need to include training and operational experience in the multi-pilot environment, as well as training and exposure to icing, high altitude operations and other areas common to commercial air carrier operations.

Guidance to Inspectors on Safety Oversight: Consistent with the report of the Independent Review Team on Managing Risks in Civil Aviation, on which I served, FAA's Aviation Safety organization included scenario-based training in safety oversight as part of the August All-Managers Conference. This training was intended to address issues raised in the report, including:

- Management of varying regulatory interpretation styles within the inspection workforce;
- Methods for harmonizing extremes in regulatory application; and,
- Methods for optimizing the regulatory effectiveness and coherence across a diverse team of inspectors.

Final Report: By December 31, FAA will finalize a report summarizing our findings and recommending additional action items based on the Call to Action meeting, regional safety forums, results of the focused inspection initiative, and other actions. The report will include performance metrics for auditing and assessing progress.

While these are the steps we have and will be taking, I want to point out the biggest factor affecting safety: professionalism in the workplace. Safety begins at the top, but whether one has a wrench in his or her hand, sits at a yoke or carries a clipboard, wears a headset or works in the galley, safety is everyone's responsibility. In spite of this, we have not seen the required level of professionalism consistently from the aviation industry across the board. Although professionalism prevails in the vast majority of the aviation workforce, it is not uniform throughout the industry. The standards are the same, the training is the same, but the mentality is not the same, and this is what we have to change.

One aspect of professionalism that needs further review is the professional responsibility of pilots to report for duty ready to fly. This can be a challenge for those who commute from one city to their work domicile in another. One of the things that requires further analysis is the effect commuting has on fatigue for crew members. As I have alluded to in the past in front of this Committee, one of the challenges with commuting is that it is virtually impossible to regulate fatigue as it relates to commuting. Who can say that someone who commutes for an hour on the shuttle from DC to NY (or a two-hour flight from Chicago, for that matter) arrives to work less rested than someone who lives in the greater NY metropolitan area, but drives three hours through a snowstorm from Connecticut to arrive at JFK? Who can mandate that no pilot's child ever gets sick and needs an emergency room visit in the middle of the night, just hours before that pilot is supposed to go on duty? This is where professionalism – taking responsibility for showing up fit for duty – has to govern.

Those who have captured the essence of the professionalism need to have opportunities in and out of the cockpit to pass it on. Experience is a wonderful teacher, and there is no

substitute for learning at the hands of someone who has already been there. The inexperienced people in the system need to meet the ones who have been around the block. They need to seek them out and mine whatever golden nuggets they have. That is one of the main reasons I think we need to see more mentoring throughout the industry.

I also think that we need to see greater use of the tools at hand like safety management systems across the board. It is often difficult to spot a trend with a slope that has only three data points on it. Safety management systems can help us plot more points and produce better information to help us make the right safety decisions.

When people know that they can raise their hand and say, "Hey, I think there's a problem here," it is then, and only then, that we are able to move forward in safety. If you have a situation where someone raises a hand and then is punished for doing so, all you have done is encourage silence. When you make silence the rule, when sweeping issues under the rug becomes the status quo, you have a recipe for disaster.

Unfortunately, we also need to recognize a basic truth here: we cannot regulate professionalism. No matter how many rules, regulations, advisories, mandatory training sessions, voluntary training sessions, it still comes down to the individual – the individual pilot, mechanic, technician, or controller.

Mr. Chairman, Congressman Petri, Members of the Subcommittee, this concludes my prepared remarks. I would be happy to answer any questions that you might have.

Testimony of Tim Brady, Ph.D., ATP, representing:
The Aviation Accreditation Board International and
The University Aviation Association
Before the Committee on Transportation and Infrastructure Subcommittee on Aviation
September 24, 2009

Contact information:

Aviation Accreditation Board International (AABI)
3410 Skyway Drive, Auburn, AL USA 36830
Phone (334) 844-2431
Fax (334) 844-2432

University Aviation Association (UAA)
3410 Skyway Drive
Auburn, AL 36830-6444
(334) 844-2434

Testimony before the House Aviation Subcommittee of Tim Brady representing the membership of AABI and UAA on 9/23/09.

QUALITY NOT QUANTITY

Chairman Costello, members of the House Aviation Subcommittee, thank you for allowing the aviation educators of the Aviation Accreditation Board International, AABI, and the University Aviation Association, UAA, the opportunity to be heard. These organizations asked me to represent their views before this body. I have the unique privilege of having served as the President of each of these fine organizations.

If I were to place a caption on this testimony, I would title it "Quality not Quantity." This, I hope, will become clear as my testimony progresses.

The combined institutional membership of both AABI and the UAA is 115 Colleges/Universities, some of whom are members of both organizations. These institutions represent almost 11,000 students involved in academic preparation to become professional pilots, and they create a significant percentage of the professional pilot workforce. A single member institution alone provides one in four of the professional pilots flying air carrier aircraft today in the United States. One in four. Committee members, these are not insignificant numbers.

We applaud the subcommittee for focusing on the safety of the airline industry. We, the aviation educators, have studied H.R. 3371 and find that most of its provisions are sound and will likely achieve the objective of improving air safety. There is one requirement, however, that causes us deep concerns not only for the healthy flow of highly-qualified entry-level first officers into the pilot supply pipeline but also for the safety of the entire system and the very survival of aviation higher education. I'm referring to the Airline Transport Pilot (ATP)-only provision described in Section 10, requiring a pilot to achieve an ATP before being allowed to enter the cockpit of a Part

121 air carrier. This includes both the regional and the major airlines. For a pilot to acquire the ATP, he or she must be at least 23 years of age and have flown at least 1500 hours. Graduates from college and university programs typically have earned the private, commercial, instrument, multi-engine and perhaps the certified flight instructor qualifications, have about 250 to 350 hours of flying time, and are not yet 23 years of age. This bill would require these graduates to spend an unnecessary number of years building their flight time so as to qualify for an entry-level first officer position. One staffer asked me the question, "why don't you just make 1500 hours part of your curriculum?" There are two reasons:

The first is cost. If we assume that it costs about $40,000 to complete all of the flight courses (over and above the "normal" costs of tuition, books, and room and board), to increase the flight time to 1500 hours would increase the cost to $200,000. Few, if any, students could afford that.

Second, the ATP requirement is a quantity-driven requirement that requires little improvement in skills.

The ATP represents quantity not quality.

So what do we know about quality?

To prepare for the theme of the 2008 National Training Aircraft Symposium which was the looming pilot shortage, a pilot yield study was undertaken to determine the quality of new hire first officers entering an air carrier's training program. At that time, before the economic meltdown, air carriers were hiring low time pilots, but had no empirical performance barometer to tell them which new hire category of first officers would perform best in their training. "Best" meant that the pilot completed the training

with no repeat lessons. "Worst" meant the pilots eventually completed the training but to do so had to repeat more than 9 lessons. The study examined the performance of all 452 new hire first officers for a large regional airline who started air carrier training during 2006 and 2007. The results were eye-opening.

The first officer new hires that performed best were those who had 500 hours of flight time or less and were graduates from AABI-accredited university programs. 72% of the pilots in this category required no extra air carrier training whatsoever. The pilot group who performed next best was prior military pilots.

Committee members, that is "quality". We have seen it; we have identified it; and we know what it is. Further, I submit that there is a direct relationship between safety and quality, the higher the quality of the entering pilot workforce, the higher the level of safety.

If we were to create a quality scale from one to ten of new hire first officers, with ten being the best, I'm not sure who should be at 9 or 5 or 1. But I do know who should be at 10: the graduates from AABI-accredited colleges and universities or those graduates who can demonstrate that they meet the outcomes required by AABI. AABI outcomes require our students to complete numerous professional flight development courses not required by the FAA; thus, our graduates are not just pilots, but professional pilots, armed with a greater depth and breadth of knowledge and skills.

But, members of the committee, the ATP-only provision of the bill would close the cockpit doors to these high-quality entry-level first officers.

So we are asking you today to remove this provision from the bill or to modify it so that graduates of high-quality programs that meet AABI outcomes are able to enter the

cockpit as entry-level first officers at much lower flight time than the ATP requirement of 1500 hours.

What are the results if you allow the ATP-only provision to remain unchanged in the bill?

The quantity-driven ATP requirement would cause potential students who would normally enter a high quality university program to now seek the shortest route to the first officer's seat. Why would they spend four years at a college or university paying tuition and flight fees when at graduation they still need to fly for another two years to be qualified to enter an air carrier as a first officer trainee?

They wouldn't.

They would seek out local flight training providers, acquire the necessary ratings, and spend the next year or so flying cheap, thirty year old single engine aircraft to build flight time. They would repeat the same flight hour 1000 times over and add no value to the scant knowledge they gained from earlier training. At the end of it, the pilot would take the ATP written and flight exams and be eligible to enter an air carrier training program. These are the types of pilots who scored the worst on the pilot yield study.

On the other hand, graduates from AABI university programs who enter the air carrier cockpit as first officers at, say, 500 hours total time and spend the next 1000 hours with a seasoned captain flying the line, are learning more each day. At the 1500 hour point these first officers are superbly prepared air carrier professionals and are far superior to those who simply built flight time by flying non productive hours just to get to the magic number.

This ATP-only provision bill will fill the cockpits of air carriers with quantity-driven first officers and decimate the robust, high quality flight education programs found at universities all across the country.

For example, the aviation degree program at St. Cloud State University in Minnesota would cease to exist. Just as the program at Southern Illinois University in Carbondale would. Half the students at Embry-Riddle at its campuses in Florida and Arizona would disappear. Auburn's program would close, as would the one at Kent State in Ohio and the program at Central Texas College. The excellent program at Middle Tennessee State University would go away, and so would those at Western Michigan University and Eastern Kentucky University. Future students who would enroll in Southeastern Oklahoma State University's flight education program would need to look elsewhere because the program would be unsustainable and close due to lack of enrollment.

These are just a few examples. In total, the programs at colleges and universities across this great country, which now enroll 11,000 students in flight education programs, would close or suffer. In addition to the impact on flight programs, related aviation programs in management, maintenance, avionics, safety/security, and air traffic control would be adversely affected or closed as institutions lost a critical mass of student enrollments. Committee members, we aviation educators know this; we are the ones closest to the future of aviation education in this country, and we are sounding the alarm.

We ask you to choose quality over quantity and either remove the ATP-only provision from the bill or modify it so that graduates from AABI-accredited institutions or those institutions whose students meet AABI outcomes be allowed to enter the

cockpits of Part 121 carriers at a total flight time significantly reduced from the 1500 hour ATP requirement.

Please don't kill the source of the highest qualified entry-level first officer pilots entering the air carrier workforce. To do so by retaining the ATP-only provision will harm the flow of high quality entry level first officers into the pilot supply pipeline, diminish the safety of the entire system, cripple aviation higher education, and achieve the exact opposite of the intended outcomes of this bill.

Thank you for your attention.

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Aviation Accreditation Board International & University Aviation Association Fact Sheet

Accreditation: Granting of approval to an institution of learning by an official review board after the school or program has met specific requirements. A system for recognizing educational programs that meet a defined set of standards – granted by private organizations and sanctioned by the US Department of Education.

Accreditation for colleges and universities:

- Institutional (Regional) Accreditation by one of the accreditation organizations recognized by the US Secretary of Education for post-secondary institutions; e.g. North Central Association of Colleges and Schools, etc
- Specialized Accreditation for collegiate programs, recognized by the US Secretary of Education through the Council on Higher Education Accreditation; e.g. AABI (Aviation Accreditation Board International), ABET (Accreditation Board for Engineering and Technology), etc.

AABI Scope: to accredit non-engineering aviation programs at the associate, baccalaureate, and graduate levels offered by colleges and universities in the U.S. and throughout the world.

AABI Goals:

- Stimulate collegiate aviation program excellence and self-improvement.
- Establish uniform minimum educational quality standards.
- Increase the credibility, integrity, and acceptance of collegiate aviation programs within institutions of higher education and aviation communities.

Collegiate Aviation Programs leading to a degree

- Two-year Associate degree (A.S., A.A.S.)
- Four-year Baccalaureate degree (B.S.)
- Graduate Master's degree (M.S., M.B.A.)

AABI Process:

- Accreditation process takes 24 months
- Reviewed every five years
- Criteria established by the Board of Trustees
- Criteria under continuous review (NPRM-like process)

AABI Program Accreditation Options:

- Baccalaureate: Aviation Studies, Electronics, Flight Education, Management, Maintenance, Safety Science
- Associate: Aviation Studies, Flight Education, Electronics, Maintenance, Safety Science

2 **Aviation Accreditation Board International & University Aviation Association**
Fact Sheet

AABI Governance: Non-Profit Corporation – 501c(3)

Board of Trustees 43 Members Three-Year Terms

- 14 Educators
- 14 Industry (Corporate and Practitioner)
- 5 Trade
- 5 Public-at-large
- 5 International

Officers of the Board Two-Year Terms, names reflect 2008-1010 terms)

President	Thomas Carney (Education affiliation), Ph.D., ATP, CAM
Vice President	Paula Derks (Trade affiliation)
Treasurer	Juan Merkt (Education affiliation), Ph.D.
Secretary	Steve Brown (Trade affiliation)
Immediate Past President	Peter Morton (Practitioner Affiliation)
Past President	Tim Brady, Ph.D., USAF Lt.Col.(ret), ATP

AABI Staff:

Executive Director	Gary Kiteley; ATP, CAM, MCFI, FACFEI, FAA Examiner
Accreditation & Services	Ceci Shirley
Administrative Assistant	Victoria Bayens

AABI Office Locations: Auburn AL and Montreal CA, co-located with UAA Office

Aviation Accreditation Board International Table of Accredited Programs:

AABInternational

AABI FORM 217
AABI MEMBER INSTITUTION ACCREDITATION STATUS

SUMMARY

	TOTAL	AVIATION MGMT	AVIATION MAINT	AVIATION ELECTRONICS	AVIATION STUDIES	FLIGHT EDUCATION	SAFETY SCIENCE
Institutions with Accredited Programs	31						
Number of Programs Accredited	89	31	5	4	21	28	0
Institutions with Programs in Candidate Status: Reaffirmation	8						
Institutions with Programs in Candidate Status: New	2						
Number of Programs in Candidate Status: Reaffirmation	19	7	1	0	2	8	1
Number of Programs in Candidate Status: New	8	4	1	1	1	1	0

Information current as of September 18, 2009

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Aviation Accreditation Board International Membership; Educators and Industry:

AABInternational

RAISING THE STANDARDS OF AVIATION™

Membership

Educator Members (all categories)

- Academy of Technical Training (UAE)
- Aims Community College
- Arizona State University
- Auburn University
- Community College of Beaver County
- Concordia University (Canada)
- Daniel Webster College
- Delta State University
- Dowling College
- Eastern Kentucky University
- Embry-Riddle Aeronautical University (FL)
- Embry-Riddle Aeronautical University (AZ)
- Everglades University
- Fairmont State University
- Florida Institute of Technology
- Hampton University
- Indiana State University
- Inter American University of Puerto Rico
- Jacksonville University
- Kansas State University - Salina
- Kent State University
- Korea Aerospace University
- LeTourneau University
- Lewis University
- Louisiana Tech University
- Mercer County Community College
- Middle Georgia College
- Middle Tennessee State University
- Minnesota State University, Mankato
- North Shore Community College
- Parks College of Engineering, Aviation and Technology St. Louis University
- Purdue University
- Rocky Mountain College
- Seneca College of Applied Arts & Technology (Canada)
- Southeastern Oklahoma State University
- Southern Illinois University at Carbondale
- St. Cloud State University
- Tennessee State University
- University of Alaska, Anchorage
- University of Central Missouri
- University of Dubuque
- University of Louisiana at Monroe
- University of Maryland - Eastern Shore
- University of Nebraska at Omaha
- University of North Dakota
- University of Oklahoma
- Utah State University
- Utah Valley University
- Western Michigan University
- Westminster College

Corporate Members

- Air Line Pilots Association
- Airbus North America Customer Services, Inc.
- CAPACG, LLC
- Cape Air
- Cessna Aircraft Company
- Cirrus Design Corporation
- Delta Connection Academy
- Diamond Aircraft Industries, Inc.
- FlightSafety International
- Frasca International, Inc.
- JetBlue Airways
- The Boeing Company

Trade Association Members

- Air Transport Association
- Aircraft Electronics Association
- AOPA Air Safety Foundation
- Flight Safety Foundation
- General Aviation Manufacturers Association
- National Business Aviation Association

Practitioner & Public-at-Large Members Representing:

- Aerosim Technologies
- Airspace Solutions
- American Airlines
- Aviation Career Enrichment
- Bright Path
- Professional Aviation Board of Certification
- Peter M. Morton Consulting, Inc.
- Sandel Avionics
- Smith College, Emeritus
- The Day Group
- Women In Aviation, International

Liaisons

- Federal Aviation Administration
- Transport Canada

Sustaining Members

Approximately 100 individuals representing all segments of the aviation industry

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Aviation Accreditation Board International & University Aviation Association Fact Sheet

University Aviation Association, The Voice of Collegiate Aviation. Purpose: Institutional and faculty professional development. Officers: President David M. Conway Ph.D.; President Elect David A. NewMyer Ph.D.; and Past Presidents John P. Young & Tim Brady, Ph.D. Executive Director Carolyn Williamson

Members:

Aims Community College	Miami Dade College
Arizona State University	Middle Georgia College
Auburn University	Middle Tennessee State University
Averett University	Midland College
Baylor University	Minneapolis College & Technical College Air Traffic Control
Bowling Green State University	Minnesota State University, Mankato
Bridgewater State College	Montana State University College of Tech-Bozeman
Broward College	Mountain View College Workforce Development
CUNY Aviation Institute At York College	Naugatuck Valley Community College
Central Texas College	North Shore Community College
Central Washington University	Northwestern Michigan College
Centro De Estudios Superiores De La Aviacion	Ohio University
Community College of Baltimore County	Oklahoma State University
Community College of Beaver County	Parks College of Engineering, Aviation & Technology St.
Daniel Webster College	Louis University
Delaware State University	Purdue University
Delta State University	Rocky Mountain College
Dowling College	Salt Lake Community College
Dutchess Community College	San Jose State University
Eastern Kentucky University	San Juan College
Eastern Michigan University	Seneca College of Applied Arts & Technology
Elizabeth City State University	Shawnee Community College
Embry-Riddle Aeronautical University - Prescott	Sinclair Community College
Embry-Riddle Aeronautical University -Daytona Beach	South Dakota State University
Embry-Riddle Aeronautical University-Worldwide	Southeastern Oklahoma State University
Everglades University	Southern Illinois University Carbondale
Fairmont State University	St. Cloud State University
Florida Community College Aviation Center of Excellence	Tarleton State University
Florida Institute of Technology	Tennessee State University
Fox Valley Technical College	Texas Southern University
Hampton University	Texas State Technical College - Waco
Henderson State University	The Ohio State University
Hinds Community College	The University of Oklahoma Department of Aviation
Honolulu Community College	Tulsa Community College
Indiana State University	Tuskegee University
Inter American University of Puerto Rico	University of Alaska - Anchorage
Iowa Central Community College	University of Central Missouri
Iowa Lakes Community College	University of Cincinnati-Clermont College
Jacksonville University	University of Dubuque
Kansas State University - Salina	University of Illinois-Institute of Aviation
Kent State University	University of Maryland Eastern Shore
LeTourneau University	University of Nebraska - Kearney
Lehigh Carbon Community College	University of Nebraska - Omaha
Lenoir Community College	University of North Dakota
Lewis University	University of Western Ontario
Liberty University	Utah State University
Louisiana Tech University Dept. of Professional Aviation	Utah Valley University
Lynn University	Vaughn College of Aeronautics and Technology
Marywood University	Vincennes University
Mercer County Community College	Walla Walla University
Metropolitan State College of Denver	Western Michigan University
	Westminster College

9/21/09

Background of Pilot Yield Study Completed on March 17, 2008

- Training yield was calculated for group of pilots, as a function of their primary training source.
- Measured "Maximum Training Yield" (*% of pilots in a given category who completed CPT, Sim, and IOE with no extra training events).*
- Measured "Minimum Training Yield" (*% of pilots in a given category who completed CPT, Sim, and IOE with at least 9 extra training events).*
- 38 data fields were mined to discover correlations between training efficiency and academic GPA, degree completion, source of training, possession of advanced jet training, etc.

Data Set Composition

- Newhire training records were analyzed for 452 pilots at a regional airline.
- Of the 452 pilots in the database who started training, 438 pilots actually completed training during 2006 & 2007 by the time that data were analyzed.
- 45% of pilots in the sample were graduates of institutions with AABI-accredited higher education programs.
- 21% of pilots in the sample were graduates from non-AABI-accredited institutions.
- 32% of pilots in the sample did not have college degrees.
- 21% of pilots in the sample started training with the airline with less than 500 hours of total time.

Maximum Yield ("best performers" / no additional training) Analysis Results (some pilots may be included in more than one group (i.e.) a military pilot who was also a college graduate)

- 72% of AABI graduates with CFIs and less than 500 hours of total flight time performed well in training.

- 63% of prior-military pilots performed well in training.

- 52% of AABI-accredited program graduates performed well in training.

- 49% of all pilots in data sample performed well in training.

- 49% of pilots without university degrees performed well in training.

Minimum Yield ("worst performers" / required more than 9 additional training events!) Analysis Results

- 15% of pilots who trained at commercial flight schools or FBOs required large amounts of extra training.

- 13% of students graduating from non-AABI accredited programs but university educated pilots required large amounts of extra training.

- 11% of pilots without any university degree required large amounts of extra training.

- Only 8% of pilots educated at universities with AABI accredited programs required large amounts of extra training.

- Only 4% of pilots graduated from a large research university with AABI accredited programs required large amounts of extra training.

ATP Possession

- Only 56 (12%) of the 452 pilots in the sample had sufficient total flight time to qualify for an ATP certificate. Since probably not everyone with the required total flight time had obtained an ATP certificate, it is reasonable to assume that only 5% to 10% of the new hire pilots in the sample had an ATP certificate.

- Training yield data for the 56 new hire pilots who may have had an ATP certificate shows that 29 of them (52%) required additional training events at some point during their new hire training program. This suggests that an possession of an ATP is not a sufficient element to guarantee excellent performance as a new hire pilot.

AABI Supplemental Testimony to H.R. 3371
Rebuttal to Mr. Jeffrey Skiles' Testimony
House Subcommittee on Aviation, U.S. Congress, Washington, DC.
Tim Brady, Ph.D., representing the University Aviation Association and the Aviation Accreditation Board International

Mr. Skiles directly challenged the integrity of the Pilot Yield Study in his testimony. This document is to correct potential misperceptions brought about by his statements.

The study was commissioned by the National Training Aircraft Symposium for its Spring 2008 meeting. At that time the airlines were hiring first officer pilots with total flight time as low as 350 hours. The study was done as a service to the air carrier industry to provide them a performance barometer as to what they could expect from new-hire first officers from all pilot training sources. This study was done more than a year in advance of the Colgan accident from actual data supplied by a large regional air carrier. Professor Antonio Cortes of Embry-Riddle Aeronautical University collected the data and conducted the study using scientific, unbiased analysis of the data. The results are what they are and were not influenced by any group, idea, or "manipulation," despite what Mr. Skiles may claim. The results of the study do not fit Mr. Skiles' view of air carrier pilot-hiring practices and policies, a view which is seriously in error. The following narrative addresses several of his comments.

<u>Section 10 of H.R. 3371 will bring "meaningless" experience to airline cockpits</u>.
Mr. Skiles claims that, "The flight hours that the FAA requires to qualify for an airline transport pilot's license [sic] allows the pilot the opportunity to develop judgment and critical decision making acts that simply aren't possible in a tightly controlled training environment." We cannot accept that the types of time-building experience ATP-hopeful pilots will obtain will build judgment and decision-making skills in any significant way. I agree with Mr. Loftus' statement that pilots will resort to time-building practices such as flight instructing, cargo hauling, and crop dusting, in order to obtain the necessary flight hours for an ATP certificate. If the ATP is mandated by H.R. 3371, it is probable that a preponderance of prospective airline pilots will select the most expeditious and affordable means for achieving the experience requirements for ATP certification, regardless of the actual effects of that effort toward increasing their knowledge and judgment in air carrier operations.

The most expeditious and affordable means for such achievement will likely be comprised of flights with extremely low, and even negative, learning value. Some pilots will build time by flying repeated scenarios such as towing banners over the beach. How many times will they drag banners over the same stretch of a beach? Hundreds of times? Thousands of times? What is the learning value of such experiences? Are there any crew resource management skills being developed? How about automation management skills? What about situational awareness management as a function of workload? Or how much

additional experience in dealing with aircraft icing, thunderstorm avoidance, or turbulence encounters will this flight time add to their knowledge base and aeronautical skill set? The results will be, simply stated, low-quality pilots. The requisite flying hours will be logged, but very little quality experience will be gained.

Experience, in the form of an ATP certificate, is not a panacea for safety. The number of total flight hours accumulated by a pilot has never been proven as a reliable prerequisite for safety. Safety is not automatically enhanced through experience. Only the type of experience that engenders enhanced pilot decision-making can be considered a positive factor for promoting safety. Only experience that is structured in such a fashion that positive learning occurs leads to better pilot performance. There is a vast difference between experience gained from captains and check airmen who know how to structure the experience of a novice pilot, as compared to the experience gained by a time-building pilot who often will learn and reinforce negative traits that ultimately lead to flawed pilot performance. Such a time-building pilot may develop his or her own rules of thumb and personal minimums that are far different from industry standards and practices. This is what Administrator Babbitt referred to as "bad experience," which can be defined as those events a pilot lives through that form part of the cognitive reference database for future decision-making. Time-building pilots who obtain "bad experience" are also receiving negative training. Similarly, we agree with Mr. Babbitt's statements that professionalism is the biggest factor affecting aviation safety. The unstructured and often unsupervised process of time-building can significantly reduce the level of professionalism of novice pilots.

The phenomenon of "bad experience" has been known for quite some time, despite the testimony of several individuals who said that "all experience is good." The 1992 Workshop on Aeronautical Decision Making sponsored by the FAA identified the concept of "negative conditioning" of pilots by stating that:

> Experience can also interfere with the perception of a situation and provide negative reinforcement for later use of bad decision making. This is the case for *some* of the classic aviation accident cause/factors such as: "ducking under" Decision Height or Minimum Descent Altitude; fuel starvation/mismanagement; inadvertent IMC; etc. In many of the accidents attributable to these causes, the pilot or crew had repeatedly "gotten-away-with" bad decisions and consequently formed them into a bad behavior pattern. Past experience can also interfere with the perception of a situation through job or personal stress, anxiety, fixation, emotional blocking, etc. so that the synthetic knowledge which is stored will not be representative of the situation.

Experience seems to be a central issue in the quest to further enhance flight safety and has been central to arguments made for preventing accidents like Flight 3407, although Mr. Skiles himself states that the pilots of Flight 3407, "...were simply asked to fly a

sophisticated aircraft in challenging conditions for which their limited experience had not prepared them." Yet the more than 5,000 hours of combined flight time in the cockpit of Flight 3407 proves that both pilots had a significant amount of experience and raises the question of whether we are focusing on the wrong issue. Should the focus not be on the quality of education and training received by the pilots of Flight 3407 versus on their previous experience?

The problems of using experience instead of training to learn judgment and decision-making skills have been documented for some time now. The problem was thoroughly researched and discussed during the above-mentioned 1992 Workshop on Aeronautical Decision Making sponsored by the FAA. In that workshop, experience was seen as a less desirable method for learning judgment since experience occurs randomly and in a non-standard format, resulting in knowledge gaps when a pilot learns the factors that produce a sense of aeronautical judgment, sometimes called "airmanship" or "air sense."

It is our position that the ATP-only provision H.R. 3371 will actually decrease flight safety by creating the erroneous industry-wide perception that experience can substitute for quality education and training and by resulting in lower-quality pilots. We contend that no amount of experience can substitute for quality training and, in fact, posit that unstructured experience can actually undo quality training that has previously been received. The result will be less capable pilots in the airline industry.

Training can indeed substitute for experience and is often preferable to experience.
Mr. Skiles claims that, "Airmanship skills are only developed from exposure to challenging conditions and honed over time." Mr. Loftus states time and time again that, "...there is no substitute for experience in the air." We believe quite strongly that, not only is high-quality training an acceptable substitute for experience in the air, but that the substitute can often be far superior to actual flight time.

There is a motorcycle police officer in South Florida who teaches a course titled "Ride Like A Pro" and has developed a video of the same name. At the very beginning of his teaching he makes an excellent and apropos statement. He says there are some riders with 20 years of experience, and there are some riders with 1 year of experience repeated 20 times. The point is, no matter how many years or hours of experience someone has, if they have not received the proper training and been exposed to many of the possible scenarios, they will not be true professionals.

The concept is not restricted to motorcycles and applies equally to aircraft operations. ALPA recognizes the possibility that training can be more desirable than experience by stating, "Training programs using a competency-based approach coupled with stringent academic curricula in lieu of the 'required hours' approach in traditional training methodologies should be explored as a means to better train and qualify those pilots coming into the airlines with minimal flight time."

Experience, particularly bad experience, is no substitute for quality training. On the other hand, if pursued from the start of a novice pilot's foray into aviation, quality training will set the tone for competence and professionalism throughout one's entire career. To say otherwise is to neglect the tremendous gains reaped from training initiatives that have reduced accidents, such as the development of Crew Resource Management, Threat and Error Management, Line-Oriented Flight Training, techniques for managing the impact of transcockpit authority gradients on communication, methods developed for accurately constructing and retaining shared situational awareness across crewmembers, aeronautical decision-making processes, and advanced training programs emerging for pilot cognitive performance, control of decision-making biases, and development of methods that promote heedful interrelating across all crewmembers (knowing how one's tasks fit into the big picture). There is simply no amount of experience that will consistently and completely cover all the required knowledge, skills, and ability that such quality training instills in pilots. Relying on idiosyncratic and happenstance occurrences of events to teach professionalism is no substitute for carefully-designed curricula that purposefully and systematically embody the human factors principles cited above.

It comes as no surprise, then, that ALPA acknowledges the need for such training. Just this month (September 2009) ALPA is on record as stating, "More rigorous academic and skills training, testing, and evaluation will improve pilot performance and help to cultivate pilot professionalism." Yet, Mr. Skiles seemingly contradicts the position of ALPA by asserting that, "...gaining the experience to qualify for an ATP, a pilot is exposed to challenging and unpredictable circumstances which are just not possible in a classroom." First, we contend that Mr. Skiles has created a false dichotomy to speciously buttress his argument in favor of the ATP provision. Pilot safety is not solely the product of either traditional classroom settings or operational experience; safety is also the product of high-quality crew-based virtual flight deck simulations in classrooms, of cockpit procedural trainers, flight training devices, flight simulators, and of intense flight training in glass cockpit aircraft. Collegiate flight training programs feature all those excellent learning tools, not just the classroom environment that Mr. Skiles refers to disparagingly. Moreover, AABI Criteria for accreditation have been developed and kept current with significant input from, and close collaboration with , experienced industry practitioners and leaders.

Furthermore, I contend that Mr. Skiles has his logic completely backwards. Not only can pilot performance be enhanced through collegiate instruction in addition to operational experience, but pilot performance is *best learned* through collegiate instruction versus through operational experience. The reason is quite simple; collegiate instructional devices allow pilots to systematically and comprehensively encounter "experience" that is often missed during operational flying, and it is the "experience" of an industry that is learned rather than the experience of an individual. For example, the Contaminated Airfoil Training Aid developed and used at some colleges/universities allows pilots to experience what it feels like to touch light frost and different types and quantity of ice accretion on airfoils. Many ATP-certified pilots have never actually touched contamination on an airfoil. Similarly, AABI collegiate programs put pilots through high altitude laboratories to

experience the effects of loss of cognitive functions due to pressure loss. Virtual flight decks are used in crew environments to simulate emergency diversions, fuel jettisoning, and ATC coordination while reprogramming flight management systems and operating at different levels of automation. Pilots are able to experience departure from controlled flight in simulators that represent high-inertia transport-category aircraft. It is highly, highly doubtful that many ATP-certified pilots have come across such experiences during operational flight.

Yet Mr. Skiles claims that, "The flight hours that the FAA requires to qualify for an airline transport pilot's license [sic] allows the pilot the opportunity to develop judgment and critical decision making acts that simply aren't possible in a tightly controlled training environment." How can this be the case, when there is no opportunity to learn how to recover from flight upsets, such as the one faced by Flight 3407, simply from experience accrued during operational flying? If an airline fails to include type-specific maneuvers or airplane characteristics in their curriculum, that certainly needs correcting, but acquisition of an ATP bears absolutely no relationship to type-specific airplane characteristics that will be encountered years or decades later in a pilot's career as transition training in new aircraft types occurs.

Additionally, a collegiate setting for instruction allows pilots not only to experience such effects, but allows the simulations and training devices to be used in structured training so as to meet carefully-orchestrated learning objectives instead of the haphazard, random events that may or may not be encountered during operational flying. Also, deep and comprehensive interactive discussions take place in collegiate settings, where simulations and exercises can be rerun time-and-time-again to obtain desired proficiency by pilots. It is simply not realistic to expect time-building pilots to experience real aircraft malfunctions, physiological problems, and encounters with inclement meteorological conditions to the degree of control and learning value that can be produced in collegiate flight programs. If pilots actually do experience such situations during time-building, they will often use incorrect methods for dealing with the situation because of the unstructured context of the situation. Such a process produces negative learning that will form part of the pilot's experience until faced anew, with possibly undesirable results, when flying for an air carrier.

<u>Using regional airlines as entry-level pilot positions may increase long-term airline safety.</u> Both Captain Prater and Mr. Skiles voiced concern that the airline industry has become an entry-level position for pilots. We recognize that, ideally speaking, no job in any high reliability industry would be entry-level. Yet we have combat pilots with less than 500 hours of total flight time performing splendidly in Afghanistan. F-18 and F-16 single-seat pilots having less than 500 hours fly extremely sophisticated aircraft and deliver precision-guided munitions at night, during inclement weather conditions, and do so with lethal results. They are consistently effective and safe not because of their experience in total flight hours, which they lack, but because of their excellent training.

In U.S. Naval Aviation, a student pilot is taught how to consistently and safely land a high-performance jet on the deck of an aircraft carrier by him or herself with less than 200 total flight hours. How can such an inexperienced pilot perform so well? The answer is found in the extremely high-quality training program that produces such pilots. If a 200-hour 22-year old pilot can land a jet fighter on an aircraft carrier while flying solo, we can certainly train a 300-hour copilot to operate safely with a more senior pilot by his or her side in the airline industry.

In the Air Mobility Command (AMC) of the U.S. Air Force, new first officers can be found upgrading to the left seat with far less flight time than is required for ATP certification. Such recently-upgraded pilots may even be paired with low-time first officers. In fact, it is not unheard of that the two pilots of an AMC air transport category aircraft have a combined total flight time of less than 1,500 hours. Those pilots conduct challenging missions, often entrusted with the lives of high-value VIPs. They perform superbly not due to their experience, but due to the quality of education and training they receive.

Clearly, it is a factually unfounded assertion that regional airlines should not be a place for entry-level positions for pilots. There are numerous precedents in other segments of the aviation industry that demonstrate how proper training can substitute for experience in highly-controlled environments. In fact, we posit that the regional airline industry *should be* an entry level position because, in the long run, gaining experience in a professional context will increase the career-performance-value of pilots.

Preparation of AABI Collegiate Flight Training Graduates for Airline Operations.
Mr. Skiles expresses shock that AABI is proud that only 30% of its graduates identified in the 2008 Pilot Yield Study required extra training events. At no point have we made an assertion that we produce perfect pilots. To our understanding, no flight training provider can make such a claim. His comments can be taken to imply that no pilots should be hired by the regional airlines industry. After all, if the best candidates are not good enough for employment, who exactly should be hired? What the Pilot Yield study showed is that the aggregate performance of AABI pilots is superior to that of pilots from non-AABI training sources. We emphatically take great pride in such a claim and invite anyone to compare the rigorous training, safety culture, and inculcation of professionalism that occurs in AABI institutions to what occurs at non-AABI flight training centers.

The airlines we have been working with for the original and subsequent studies have requested anonymity, but readily acknowledge that, in the past when they were hiring, they actively sought out AABI graduates to fill their new-hire pilot classes because of their solid performance during training. The desire by regional airlines to seek out AABI graduates should come as no surprise to Mr. Skiles, since ALPA itself claims that, "Colleges/universities flight training can produce well-qualified and experienced pilots."

Conclusion

Collegiate aviation has a long history of promulgating flight safety theory and initiatives through careful and ethical research. We therefore strongly oppose enacting the ATP provision of H.R. 3371. The problem is that there is no proven causal link between the ATP certificate and flight safety, either in the general case or in the tragic accident that precipitated the hearing; in which one of the pilots possessed an ATP and both had more than 1500 hours. The entire ATP-requirement of H.R. 3371 is based on an unproven premise. All of the testimony received in favor of the ATP-provision of the resolution is based on visceral and unscientific claims that the number of flight hours accrued by a pilot guarantees better performance. We aviation educators of AABI and UAA contend that such an assertion is completely unproven and, furthermore, posit that the unstructured and unsupervised time-building experience that will be required by H.R. 3371 will result in less professional and less safety-minded pilots entering the regional airline industry. Furthermore, we believe that improvements in safety can only come about through the normalization of excellence and are convinced that the ATP-provisions of H.R. 3371 will do just the opposite by promoting the normalization of pilot mediocrity due to the need for low-quality time-building. In other words, we are convinced that the ATP provision of H.R. 3371, in its current form, will actually diminish the currently excellent levels of safety in the airline industry.

Testimony of
Roger Cohen, President, Regional Airline Association
Before the Subcommittee on Aviation, Committee on Transportation and Infrastructure
House of Representatives
Hearing on
The Federal Aviation Administration's Call to Action on Airline Safety and Pilot Training
September 23, 2009

Good morning Chairman Costello and Members of the Subcommittee. My name is Roger Cohen. I am the President of the Regional Airline Association and I want to thank you for the opportunity to appear before you today. Regional airlines play a vital role in our nation's air transportation system. More than 50 percent of all commercial flights are flown by regional airlines, and 75 percent of our nation's communities are served exclusively by one of our RAA member carriers.

Mr. Chairman, for the purpose of aiding the Subcommittee's inquiry, our testimony will provide an update on three broad areas:

- our members' significant strides in adopting major safety programs, including our commitment to FOQA (Flight Operations Quality Assurance) and ASAP (Aviation Safety Action Program).
- our role in the flight and duty time ARC meetings held by the FAA this summer; and
- RAA's Strategic Safety Initiative, embarked on earlier this summer to address the issues of greatest concern to regional airlines including pilot fatigue, training and commuting.

We share the Subcommittee's commitment to safety and we want to reaffirm our belief that safety is a shared effort. It is through cooperation by all participants in the system – regional airlines, network airlines, our valued employees, industry suppliers, and the FAA – that we can continue to make our nation's air transportation system even safer than it already is. All of the hearings and meetings leading up to today's hearing – conducted by this Subcommittee, aviation safety agencies, and the Regional Airline Association – have served to focus our attention on the critical challenge we continually face: to identify safety risks and to prevent any future accidents.

As a result of these efforts and the searing focus we place upon safety, I am proud to announce at the outset of this hearing that virtually all of our RAA's members either have established or have committed to a Flight Operations Quality Assurance (FOQA) safety program. These airlines transport 98% of the passengers carried by RAA members, and these FOQA programs are expected to be in place within the year. The same goes for ASAP. Virtually all of our members have adopted the Aviation Safety Action Program (ASAP) for their pilots today, and virtually all of them have had ASAP in place for many years. This is indeed an encouraging finding, a demonstration of our commitment to excellence and a tribute to the open lines of communication this subcommittee has maintained with the industry all in the interest of furthering our mutual goal of accident prevention.

THE REGIONAL AIRLINE INDUSTRY

Regional airlines are a key component of the nation's commercial air transportation system. Our members operate regional jets and turboprop aircraft ranging in size from about 10 to 100 seats, providing scheduled passenger service connecting more than 600 smaller towns and mid-size cities to each other as well as to the nation's major hub airports. This network provided 160 million passengers with seamless service to almost every community in the country and many around the globe last year. Over the last 20 years, the industry has worked to match aircraft size to the market, leading to vast improvements in customer convenience, reliability and affordability to many communities that would otherwise not have air service.

For the most part, regional airlines operate in full partnership with major airlines. Major airlines either contract with regional airlines to provide service on selected routes or have an ownership stake in regional airlines. Regional airlines are responsible for providing the crew and maintaining the aircraft. The major airline, for which the regional carrier is providing service, sets flight schedules, fares and customer service standards.

Whether it is a regional or a major carrier, passenger and crew safety is and will always be paramount in this relationship.

THE SUBCOMMITTEE'S ASAP and FOQA INQUIRY

Earlier this summer, the subcommittee asked our member airlines to identify their level of participation in various safety programs such as ASAP and FOQA. The results of that inquiry are impressive; virtually all of our members either have or have committed to a FOQA program, with most programs in place or in the final stages of approval within the next year. These airlines transported 98% of the passengers carried by RAA members last year. With respect to ASAP the results are similar; virtually all of our members had implemented an ASAP program for their pilots up to a decade prior to the subcommittee's inquiry. Our commitment to the value of this safety program is demonstrated by the fact that more than twice as many RAA members have ASAP programs for their flight attendants as do mainline carriers.

CALL TO ACTION MEETINGS

After the Congressional hearings in June, the FAA hosted a Call to Action meeting to discuss the launch of its multi-organization initiative. Seven RAA member airlines were invited to attend this meeting and, on short notice, the COOs and senior executives – including the Chief Executive Officers of six companies -- participated in the meeting. I too was fortunate enough to participate in this meeting, which was similar to other meetings demonstrating the commitment to safety that has been the hallmark of the regional airline industry.

During this meeting we worked closely with the major airlines, the FAA and labor organizations to discuss openly and candidly the safety issues most affecting our industry and to set the near term safety agenda. One conclusion reached at the meeting was for FAA to host a dozen similar town hall meetings across the country to share and to expand these safety discussions with

stakeholders on a broader scale. The RAA member companies were pleased and honored to co-lead each and every one of those twelve meetings.

FLIGHT, DUTY & REST AVIATION RULEMAKING COMMITTEE

RAA appreciated the opportunity to participate recently on the FAA's Advisory Rulemaking Committee (ARC) on safety rules and guidance for pilot flight, duty and rest requirements. During the nine weeks of meetings, RAA was represented by the chief operating officers from two of our member airlines, and our vice president for operations and safety, who is an ATP with more than 10,000 flight hours. While the rulemaking process is just beginning, we are hopeful, but confident the new rule will be based both on the best available fatigue science and on the industry's extensive experience.

Let me state unequivocally, the members of the Regional Airline Association are committed to participating fully in the rulemaking process and to adopting the new science-based regulation that arises from this process and to do so in a prompt and timely manner.

STRATEGIC SAFETY INITIATIVE

In addition to being active participants in the FAA's efforts this summer, the Regional Airline Association has embarked on its own Strategic Safety Initiative that similarly aligns with the FAA's efforts. The RAA's Strategic Safety Initiative is a focused effort to identify industry best safety practices and trends, to accelerate the process of reviewing NTSB recommendations, and to provide the latest fatigue science and countermeasures.

1. **Review Safety Procedures**
   The Regional Airline Association has formed a task force comprised of safety directors and operations directors from the regional airlines to review safety procedures, paying particular attention to any issue or procedure cited by the NTSB as a contributing factor in any accident. This standing RAA committee will hold its initial meeting in November and we anticipate keeping this subcommittee and the FAA apprised of our activities.

2. **Study Fatigue Risk**

   In collaboration with Washington State University's Sleep and Performance Research Center, we will be assessing the level of fatigue risk associated with typical regional airline pilot schedules. The mechanics of the study are still being developed; however let me note that the assessment will include field testing, identification of unique fatigue factors affecting regional airline pilot performance and alertness, and identification of countermeasures to mitigate the adverse effects of these factors. Although there has been significant fatigue research, most of that work has focused on long haul routes. We anticipate building on the existing research that is applicable to the regional airline flight environment.

Additionally, although Fatigue Risk Management Programs (FRMS) are new to the industry, we have also launched a study to determine the feasibility and practicality of developing an industry FRMS for the regional airlines. Conceivably, this effort could make cutting edge fatigue risk assessments available to even the smallest airlines by pooling the resources across many airlines, small and large.

3. Fatigue Awareness Management Program

This component of our Strategic Safety Initiative will also be conducted in collaboration with the Flight Safety Foundation Our objective will be to study accident information and the best practices for fatigue management, both inside and outside of the US airline industry. From this we will develop an industry leading program that will be available not only to RAA's members, but also any other airline with similar operations.

As we have previously testified, airlines provide training to pilots to enable them to recognize the signs of fatigue. We aim to build on the best practices of those programs.

RAA's members have and will continue to take a leadership role in using what we have and will continue to learn about fatigue and alertness and to embody them in our training programs and in our culture. Let me note, once again, that this is a shared responsibility. It is the professional responsibility of every professional pilot, if he or she does not feel sufficiently well rested, to say so and not fly. Each of our member carriers has a non-punitive policy in place to allow a pilot to drop a trip if the pilot feels incapable of flying alertly. Backup flight crews are in place specifically for this purpose. Pilots must maintain this professional responsibility and ethical obligation to passengers and their fellow crewmembers to conduct themselves in a manner that ensures they are well rested.

Oftentimes the fatigue issue is tied to pilot commuting. Some pilots choose to commute and live away from their crew base, which typically is the airport from which they will begin and end every flight assignment. Commuting is a common and long-standing practice among crewmembers at all airlines. It is one of the attractions of the profession. While many pilots commute, many others do not. Commuting is a life style choice; not a necessity dictated by economics. Regional airlines have crew bases in dozens of attractive communities throughout the country; communities in which other airline employees making comparable salaries reside and thrive.

Commuting is a choice. A pilot may choose to reside on the East or West Coast, drive a few hours from his or her home to an airport and, at no or little cost, board a multi time zone flight to arrive at his or her crew base several hours later. That's a perk of being a pilot. However, with perks come responsibility, and those who choose long commutes have a professional responsibility – to their fellow crewmembers and to our customers – to arrive at work properly rested.

4. Recommendations to Congress

In addition to the three specific measures our Strategic Safety Initiative will undertake under the auspices of the RAA, as part of our Initiative we are committed to working with Congress to provide the aviation industry with additional safety tools, that require legislative or regulatory action including:

a. Establishing a single database of pilot records to be maintained by the FAA to enable airlines to access critical, real-time information about pilot checkrides, thereby improving the process of recruiting, hiring, and training new pilots. While our members try to utilize this information today, it takes weeks if not months to access.

b. Conducting random fatigue tests on pilots to help ensure that pilots are indeed rested before flying.

c. Extending the background check timeframe to the last 10 years of a pilot's flying record. Under current law, an airline conducting a background check on a pilot can only review the last five years of the pilot's safety records, qualifications, and training.

d. Using cockpit voice recordings for accident prevention as opposed to their only current utilization as an accident investigation tool. RAA clearly understands the sensitive privacy issues involved with access to the CVRs. Similar to ASAP and other diagnostic preventative safety programs, an initiative permitting random, non-punitive audits could provide valuable information. The alternative is to maintain the tombstone mentality that surrounds CVRs.

e. Improving check ride tracking and analysis to ensure all pilots are up to par. Every airline pilot is required to pass frequent check rides during his or her airline service, and pilots cannot fly until they have successfully completed their required check rides. We believe FAA and the airlines may be able to increase the level of safety through a more detailed analysis of check rides over the entirety of a pilot's career.

Our multi-part Strategic Safety Initiative will look at human factors that have led to accidents in order to avoid incidents in the future and push for new advances in aviation safety. It is an ongoing effort and we will continue to keep you updated on our progress and share our findings with both this Subcommittee.

CONCLUSION

Mr. Chairman and Subcommittee members, the Regional Airline Association appreciates the opportunity to testify before the Subcommittee this morning and I welcome any questions you might have.

U.S. House of Representatives
Committee on Transportation and Infrastructure
Washington, DC 20515

James L. Oberstar
Chairman

David Heymsfeld, Chief of Staff
Ward W. McCarragher, Chief Counsel

John L. Mica
Ranking Republican Member

James W. Coon II, Republican Chief of Staff

September 30, 2009

Mr. Roger Cohen
President
Regional Airline Association
2025 M Street, N.W., Suite 800
Washington, D.C. 20036-3309

Dear Mr. Cohen:

On September 23, 2009, the Subcommittee on Aviation held a hearing on "**The Federal Aviation Administration's Call to Action on Airline Safety and Pilot Training.**"

Attached are questions to answer for the record. I would appreciate receiving your written response to these questions within 14 days so that they may be made a part of the hearing record.

Sincerely,

Jerry Costello

Jerry F. Costello
Chairman
Subcommittee on Aviation

JFC:pk
Attachment

SEPTEMBER 23, 2009
SUBCOMMITTEE ON AVIATION
HEARING ON
THE FEDERAL AVIATION ADMINISTRATION'S CALL TO ACTION
ON AIRLINE SAFETY AND PILOT TRAINING

QUESTIONS FOR THE RECORD
TO:
MR. ROGER COHEN
PRESIDENT
REGIONAL AIRLINE ASSOCIATION

1) Mr. Cohen, Captain Prater has suggested that Pinnacle Airlines, Colgan Air and Trans States Airlines may have taken punitive action, or may have a practice of taking punitive action, against pilots for not accepting a flight or refusing to fly because they are either sick or too fatigued to fly. Would you care to respond?

2) Mr. Cohen, Captain Prater also suggested that some airlines may take issue with captains who write up aircraft maintenance problems. Would you care to respond?

3) Mr. Cohen, can you expand on your views on pilot commuting?

Regional Airline Association
2025 M Street, NW
Suite 800
Washington, DC 20036-3309

Phone: 202/367-1170
Fax: 202/367-2170
email: raa@dc.sba.com
Website: http://www.raa.org

Regional Airline Association (RAA)
Responses to Chairman Costello's Questions for the Record

Q) Captain Prater has suggested that Pinnacle Airlines, Colgan Air and Trans States Airlines may have taken punitive action, or may have a practice of taking punitive action, against pilots for not accepting a flight or refusing to fly because they are either sick or too fatigued to fly. Would you care to respond?

A) We appreciate the opportunity to reiterate and emphasize our previous testimony. Punitive attendance policies have no place in the workplace, particularly when employee and customer safety are involved. RAA's member airlines made this very clear in their responses to the FAA Administrator's "Call to Action" letter; they have non-punitive policies in place supported by back-up or reserve crews available when pilots determine they are either sick or too fatigued to fly.

We believe it was irresponsible of Mr. Prater to make these allegations without providing supporting evidence in testimony before the committee. If the Committee wishes to investigate these claims, RAA will assist the Committee in contacting the appropriate airlines.

We should also note that pilot labor agreements at Colgan, Pinnacle and Trans States, as at virtually all RAA member airlines, are collectively bargained under the Railway Labor Act (RLA). These agreements include arbitration procedures to address grievances stemming from fatigue and sick calls.

For the record, both Pinnacle/Colgan and Trans States provided the following response to the Committee following Mr. Prater's question:

> Statement of Pinnacle Airlines Corporation
>
> "Mr. Prater is obviously unfamiliar with Pinnacle and Colgan, since his statements are totally false. The policies for both Pinnacle Airlines and Colgan Air are non-punitive and no jeopardy. Our policies are in line with other carriers, both mainline and regional. In fact, they allow Pilots more freedom than policies at some mainline carriers."
>
> "As for not writing up maintenance problems, that's a ridiculous charge and is contrary to our first priority, which is the safety of our passengers and crew."

Statement of Trans States Airlines
"Trans States takes very seriously our responsibility and that of our crewmembers to safely operate all of our flights. We reject Mr. Prater's assertions to the contrary. Our number one priority is always safety. Our policies are non-punitive and non-jeopardy, and are similar to those of most other airlines operating in the United States."

"Mr. Prater's comments about maintenance practices are totally contrary to our policies and are completely untrue. Our commitment to the safety of our passengers and crews is unwavering and will always be our highest priority

Q) Captain Prater also suggested that some airlines may take issue with captains who write up aircraft maintenance problems. Would you care to respond?

A) Again, Captain Prater's comment is completely contrary to the procedures, practices and culture of the member airlines. His comment unjustly characterizes airlines that operate within several layers of Federal law and company policies offering employees significant protection from repercussions for reporting any item that could impact the safety of an airline, including the Whistleblower Protection Program provisions of (AIR21). As for Mr. Prater's suggestion that some airlines may take issue with write ups of maintenance problems, no specific instances were identified. As this would be a violation of FAA rules, our members would urge their pilots to report all safety concerns to their company. RAA will be happy to assist the Committee in any further investigation of any specific instances.

Q) Can you expand on your views on pilot commuting?

A) Responsible commuting by pilots has been a longstanding practice across all segments of commercial aviation – mainline, regional, cargo, supplemental and even corporate and business aviation. While some pilots choose to commute to their domicile, many do not. For the same range of personal, family or other reasons that pilots commute, non-commuting pilots choose to live in or near their domicile city.

Over time, pilots have demonstrated they can commute responsibly if they choose to do so, providing added benefit to them and their families. Nonetheless, all airline employees, especially those with safety responsibilities, must manage their personal time and their commutes so that they report rested, alert and ready for work regardless of whether they are a pilot. In this respect, there is no difference in individual responsibility irrespective of the employee's safety position, mode of commuting, or the duration of the commute.

This, of course, begs the question of what is a "commuting pilot?" Is it the Dulles International-based pilot who lives in Southern California and flies six hours each way three times per month --not including the drive to the airport on the world's busiest freeways? Or is it his co-worker who commutes by air to his base three times per month from his home in Harrisburg, Pennsylvania (a forty seven minute flight per the OAG)? Or is it his fellow pilot who makes that same Harrisburg-IAD drive (an estimated average of two hours, twenty nine minutes in traffic per Google maps)?

Commuting is a choice that is not tied to compensation and should not be tied to safety, since tens of thousands of airline employees -- many of whom earn less than pilots – live and work in the same domiciles as pilots.

All employees, particularly those in any industry with safety –sensitive positions, have a responsibility to report for duty adequately rested and prepared for their scheduled work assignment. Clearly there are questions about the potential safety impacts of commuting by airline pilots, and since the practice has never been studied, RAA strongly supports the provisions of your legislation (HR 3371) calling for a study of pilot commuting.

Testimony of John Michael 'Mike' Loftus
Father of Madeline Loftus
'Families of Continental Flight 3407'

1 Stonehill Dr.
Vernon, NJ 07936
(806) 473-8070 cell

"If I only knew that I will never ever see, hear or feel all this, if I just knew that he was just given to me for only 28 years, I would never have let him out of my sight for a second. How I wish I can hear him just one more time, so that I could say one more time to him, 'I love you'."

- Nirmal Sidhu, mother of Dipinder Sidhu

Committee on Transportation and Infrastructure
U.S. House of Representatives
Subcommittee on Aviation
'The Federal Aviation Administration's Call to Action on Airline Safety and Pilot Training"
Wednesday, September 23, 2009
2167 Rayburn House Office Building
(202) 225-4472

Making Air Travel Safer in the Wake of the Continental Flight 3407 Tragedy

Chairman Costello, Ranking Member Petri, and subcommittee members, I would like to thank you for inviting me to speak before your committee today. I am here today representing not only my immediate family, but also my new family – 'The Families of Continental Flight 3407'.

My 24 year-old daughter Madeline was on board Continental 3407 on that wintry night outside of Buffalo. She, along with 49 others and an unborn baby, perished on that night in February. This past August 28th, my family gathered at my daughter's grave in the pouring rain to sing Happy Birthday to our Maddy. That was not a birthday celebration I would wish on anybody.

Since that tragic night in February, birthdays, anniversaries, graduations, family events, and simple everyday life seems as though they have lost their luster. Nothing for us will ever be the same. The only thing we are left with is the past, the memories.

More than any issue we can spotlight or debate at this hearing, I feel the most important mission for me to accomplish today is to keep the oh-so-painful human side of this accident fresh in the minds of the important people in both our government and the aviation industry. I have included at the end of my testimony twenty three impact statements that have been submitted by members of our group, letting you know the pain and sadness that we all still struggle with on a daily basis, over seven months later. I would like to share just one, from Nirmal Sidhu, who lost her son, Dipinder, on that fateful night. She writes,

> "How can I ever forget those Sundays when Dipinder would ask me to stay in bed as he would whip up a scrumptious breakfast and serve it with aplomb… or the special way he would pick up our ten year old shiatsu and cuddle him everyday upon entering the house day from work… or the sound of "Wheel of Fortune" playing religiously on the TV in the evening… I can still hear the relentless teasing of my niece Simmar by my son, whom he treated like his youngest sister. He was instrumental in getting her admission in India in the medical school, right after

> her graduation. How we missed sharing the joy just a week back when Simmar passed the first year of medical school in a new environment and with a different educational system with flying colors… I can still feel the exuberance in his voice when he talked about the girl in whom he felt that he had found a true soul mate… I can still see him joking and laughing with his father most evenings… I can visualize his smile when he talked with pride about his sister, Natasha.
>
> It is all gone forever!!!!.
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> If I only knew that I will never ever see, hear or feel all this, if I just knew that he was just given to me for only 28 years, I would never have let him out of my sight for a second. How I wish I can hear him just one more time, so that I could say one more time to him, 'I love you'."

We are all here with one goal in mind. That is to prevent a tragedy like Continental Flight 3407 from ever happening again. The simple question we and everyone else must ask is what measures will make this a reality. And that brings me to the FAA's Call to Action plan unveiled in June, in response to the findings revealed at the NTSB hearings in May. I want to acknowledge Administrator Babbitt and his staff, who have met with our group on multiple occasions, kept us informed of on-going developments, and most importantly, not waited for the NTSB's final report to begin moving forward in the quest of making crucial improvements to our aviation system.

We have a simple message for the FAA. As a former pilot, when I look at the initiatives detailed in the Call to Action, they address three critical areas: training, fatigue, and an increased emphasis and investment in safety at the regional airline level.

Clearly our accident revealed deficiencies in both stall recovery and cold weather training in the industry. Since 2004 the FAA has been working on a rulemaking geared towards improving the airlines' Crew Training programs. The comment period on this proposed rulemaking closed last month. As we reviewed the submissions to the FAA, we came across quite a few negative comments from the industry. For me, they echo the all-too-familiar complaints of the changes being 'too great of an economic burden', and the complacent attitude of 'what we are currently doing is sufficient'. That

mindset is exactly what got us in the predicament that we find ourselves in today.

At the same time, the FAA is moving forward on a rulemaking that would lead to revised flight and duty time regulations, which former pilots like myself and Administrator Babbitt can testify are long overdue. This would be an enormous stride towards making air travel safer. One area that our group would like to see kept in the spotlight is the problematic area of commuting. With pilots flying cross-country to report for their duty, we cannot just continue to look the other way and pretend that we do not have some issues associated with it that need to be addressed.

So in terms of eliminating deficiencies related to training and fatigue, our group challenges Administrator Babbitt and the FAA to stand up to the industry, to stick up for our loved ones and the traveling public in general, and see these new regulations through to enactment in the course of the next year.

Next, I want to touch on the FAA's effort to identify industry-wide best practices and secure voluntary commitments from all Part 121 carriers to implement them. What this really speaks to is the inconsistencies in how regional carriers approach training, safety, and all phases of their operations When I flew, when it came to best practices in terms of safety and training, what was good enough for Continental was good enough for Continental Express. Sadly our accident revealed that this is no longer the case. Instead we watch as Continental does everything it can to lay the blame for the shortcomings at Colgan at the feet of the FAA and its lack of oversight.

Instead of looking to shift the blame, we feel that everyone needs to come together and accept responsibility, from the regional carriers to the major carriers to the pilots to the FAA to Congress, and

figure out what went wrong and work together to fix it. If parent carriers taking some responsibility for their regional partners will allow for safer operations, then that is what should happen.

So for the regional airlines, it all comes down to investing in safety and in your pilots, and doing everything you can to set them up for success. There should be no corner cutting when it comes to providing the very best training and the most state-of-the-art safety management tools. And yet as we look at the operations of Colgan, this was exactly what was allowed to happen.

The FAA has gotten the ball rolling in many of these areas with their recent summit and regional safety forums. But I know too well from my time in the industry that voluntary commitments to best practices now, can certainly go away quickly in the future, if the economics change or if Administrator Babbitt is not at the helm of the FAA to keep the industry honest.

And so this is where we need you, our representatives in Congress, to come in and mandate some of these changes. There are numerous important initiatives that have been put forth by both the House and the Senate for consideration with the FAA Reauthorization, but I want to spotlight three that we consider 'must-haves':

First, we must move forward with the comprehensive pilot training record database for use in the hiring process. Let us never have another accident where the carrier has the excuse that they did not know everything there was to know about the pilot when they hired him or her.

Secondly, we need to lock in MANDATORY safety management programs – FOQA, LOSA, ASAP – with the privacy protections that the pilots are asking for. We cannot leave the regional carriers with any temptations to save money at the expense of safety, which we glaringly saw in the case of Colgan.

And lastly, we need to achieve one of the key provisions put forth by this subcommittee's recently-introduced legislation, namely that all commercial pilots MUST have an ATP rating, with its requirement of 1,500 hours, prior to being hired to fly commercially. The demographics of the pilot workforce have changed, moving towards a younger, more inexperienced pilot, while the technology has gotten more advanced. When I was hired at Continental Express, I had an ATP and five thousand flight hours, and the captains whom I flew with had twice as much time. As I said in my previous testimony before this committee, there is no substitute for experience in the air. As a veteran of the industry, I know that this provision will require entry level pilots to build up additional hours by flight instructing, cargo hauling, and crop dusting before they can be hired to fly commercially. Many years ago, that is exactly the route I took, and all those experiences made me a better pilot when I got to Continental Express and had human lives in my hands in the back of my plane. So we ask the regional and major carriers, the pilot unions, and flight training schools to support this initiative -- it means a lot to our group.

In conclusion, I would like all the key players in this room to look at the families here with me today – the Mellett's, the Eckert's, the Maurer's, the Kausner's, the Perry's, the Tolsma's and the Pettys's – and the other families who were not able to come to Washington but who are with us all the way. For us, what matters is not a well-crafted public relations strategy while our accident is still in the spotlight. What matters to us is implementation and follow-through. When it comes to the FAA Reauthorization, the Call to Action, and the NTSB final report and safety recommendations, we ask that you do everything you can to make sure the tragic mistakes of Continental Flight 3407 are never repeated.

Thank you.

IMPACT STATEMENTS FROM THE 'FAMILIES OF CONTINENTAL FLIGHT 3407'

Please take a few moments to read and reflect on the incredible hole that this tragedy has left in the lives of so many families. Hopefully our pain and sorrow will drive those in our government and the aviation industry who can make a difference to do everything they can to keep this from happening to other families.

I have been reading emails by everyone and until now I just did not feel like writing. I think most of you by know that we have not received any remains for our son Dipinder. This has intensified our grief many times.

How can I ever forget, those Sundays when Dipinder would ask me to stay in bed as he would whip up a scrumptious breakfast and serve it with aplomb... or the special way he would pick up our ten year old shiatsu and cuddle him everyday upon entering the house day from work... or the sound of "Wheel of Fortune" playing religiously on the TV in the evening... I can still hear the relentless teasing of my niece Simmar by my son, whom he treated like his youngest sister. He was instrumental in getting her admission in India in the medical school, right after her graduation. How we missed sharing the joy just a week back when Simmar passed the first year of medical school in a new environment and with a different educational system with flying colors... I can still feel the exuberance in his voice when he talked about the girl in whom he felt that he had found a true soul mate... I can still see him joking and laughing with his father most evenings... I can visualize his smile when he talked with pride about his sister, Natasha.

It is all gone forever!!!!.

If I only knew that I will never ever see, hear or feel all this, if I just knew that he was just given to me for only 28 years, I would never have let him out of my sight for a second. How I wish I can hear him just one more time, so that I could say one more time to him, "I love you".

Nirmal Sidhu, mother of Dipinder Sidhu

Beverly,

You were supposed to be there cheering when Nate struggled mightily to cross the finish line in his Special Olympics race.
You were supposed to be there for Mike and Amy's party to celebrate their wedding.
You were supposed to be there for David's graduation from college.
You were supposed to be there for the summer trip with Margot.
You were supposed to be there for Ray's 50th birthday dinner.
You were supposed to be there on Susan's porch to share cake and ice cream for your traditional double birthday party with Karen
Instead, we buried your ashes that day.
It hurts like you died yesterday.

submitted by Margot Eckert, sister of Beverly Eckert

Yesterday was another of what has been many painful "firsts". We took a ride to Ellicottville...a trip I had been dreading since my husband was killed. Since the crash, it was my first return to the beautiful log cabin home Kevin built for our family...a home we designed together, furnished together, and where together, we were to spend many winter seasons ahead of us with family, creating happy and long-lasting memories. Sadly, these memories were short-lived when, only months after his dream house was completed, this tragedy ended Kevin's life. It is disheartening to us that Kevin was able to relish in it for only one short season. Our chalet home was a long-time dream of Kevin's and it breaks my heart to think of all the time and hard work and love he put into it for the enjoyment of all our family. When I walked into the house yesterday for the first time in 7 months, I cried for all those years we looked forward to of joyful family gatherings that are now lost forever to Kevin.

For myself and my 3 daughters, I feel cheated out of a life and future that should have been...but that has forever been changed due to this totally preventable tragedy.

Kathy Johnston and family

My husband, Zhaofang Guo, went to visit his family in China in January after being away from them for several years. He was coming back home on Feb 12th. He never made it. Our family here was only three of us, my husband, Zhaofang, my son, Kevin and me. We did everything together. All of our other relatives are half way around the world. Since that day when Zhaofang was suddenly yanked away from our life, it was like our sky collapsed. We are so lost without him. We miss him so much, I do not even know where to begin. Life used to be fun and happy, now it is so empty, depressing and sad. Everywhere I go and every corner I turn, there are things that remind me that Fang is forever gone.

Fang went to work real early in the morning everyday so he could be home when my son got back from school. He took care all Kevin's afterschool activities. Kevin turned 16 three weeks after the crash. He is a junior in high school now. Three of us started visiting colleges in the summer of 08. But this past summer we did not visit any. Fang was a great cook and he cooked dinner almost everyday for us. Ever since he passed, we never had a meal like we used to. I did what I can to hold myself up and give Kevin some kind of stability. But nothing will be the same ever again.

Ping Wong, wife of Zhaofang Guo

By now Jean Srnecz and I would be married and she would be In Buffalo redecorating our home madly. Instead I continue to ask why.

Paul Jonmaire, fiancé of Jean Srnecz

Our hearts ache every day for our sister, Jean Marie Srnecz, who lived with her 23-year old daughter, our niece, Kristen, in Clinton, NJ. Jean grew up in Strykersville, NY, and attended college in Buffalo before moving to NJ. She was a Senior Vice President of Marketing at Baker & Taylor, an

extraordinary professional, mourned not only by her family and friends, but across the publishing industry. Jean was engaged to be married this summer and was traveling to Buffalo on February 12th to spend Valentine's Day weekend with her fiance. She was planning to move back to the Buffalo area when she married. Jean was a recent breast cancer survivor and had finally found happiness after a difficult marriage and divorce. Her courage and bravery were an inspiration to us all. What a tragedy to have overcome so much only to lose that happiness. Kristen lost not only her mother, but her friend and mentor. She will not have her Mom to see her through graduate school, to watch her career blossom, to see her get married and have children. Michael and Marilyn spent every Thanksgiving and Christmas holiday with Jean and Kristen and it will be unbearably sad and empty without her this year. Jim & Marlene and Dan & Mary won't have their Sunday brunches with Jean on her frequent visits to the Buffalo area. The nieces and nephews will never enjoy their aunt's lively company again. Jean was the sister who brought all of our family members together and we have been shattered.

Marilyn Marzolf & Michael Greenstein, Sunnyside, Queens, NY

Jim & Marlene Marzolf, Strykersville, NY

Dan & Mary Marzolf, Orchard Park, NY

Our mom's birthday is also in December, every year the sister's would take mom on a birthday outing. We would go to lunch or dinner, shop, (even went to New York City) or like last year, the theater to see The Rockettes. This tradition will also stop since shopping and going on adventures no longer are meaningful or fun.

Tina & Ruthann, sisters of Mary J Abraham

There has been so many events that had not been the same since I lost my husband Jerry that horrible plane crash Feb. 12, 2009 that I don't know where to begin. We had planned to go back to Las Vegas in May for our 29th wedding anniversary and to start looking for our second home, which would be our retirement home. Our retirement is no longer in question. Our first grandchild Ava had her Baptism and first steps and will soon be celebrating her 1st birthday in October. I keep looking at the pink baseball mitt and story books he bought for her on his own because Grandpa was going to teach her how to play baseball and read her stories. He could hardly wait.

We are not looking forward to the upcoming holidays. We loved to decorate our home and celebrate. There will be not many, if any, decorations but many tears. I never thought, so soon in my life, that I would be waking up and eating every meal alone and with no one to kiss goodnight.

Justine Krasuski, wife of Jerry Krasuski

Our habit was to talk each day at lunch time or in the evening. Elly would detail all of her interests and activities including law professors, new friends, movies, books, political views, future plans and dreams. My favorite times were her frequent trips home for holidays and special occasions or a long weekend trip to Jacksonville to share in her wonderful life. All of that is gone. Our family is looking forward with dread to the holiday season. Elly's 25th birthday will be December 13th. Each year we

would schedule "The Great Christmas Tree Adventure" around her birthday. This was a particular favorite of Elly's. She would get the entire family, including babies, bundled up and we would travel to the Southern Tier to cut the perfect tree then back to our house for chili and a football game. We will not go this year. These were happy memories but are also sad reminders that our beautiful girl died in such a violent and tragic way. My once optimistic and irrepressible husband is quiet and withdrawn. We are depressed, but determined to see that her death was not in vain. We are continuing our quest to see changes in commercial airline safety to honor our daughter Ellyce Kausner.

Marilyn Kausner, mother of Ellyce Kausner

My husband, Brad Green, was my loving buddy, my soul mate, family leader, willing listener, and constant companion. His absence is felt every minute of every day. There is no normal anything for this family anymore. My husband's daily breakfast time with our son when I was at work was filled with mentorship from business advice to personal conversations. Now that is gone ... a large hole to be sure. Our daughter and son-in-law anguish over the fact that Brad will never be there to build his grandchildren a backyard playground or help them learn to ride a bike. They will never get to hear his laugh or taste his special dishes at Thanksgiving and Christmas, two holidays we have yet to face.

Our family fishing times no longer exist. Attempts to keep them going were futile this spring and summer. We just journey without him, watching each season pass meaninglessly. No one ever expects to be traveling down such a tragic road like this for the rest of their lives. And....our pain and grief is intensified because this tragedy was so very preventable.

We rely on God to give our family and all our 3407 families the continued strength to get through each difficult day.

Sharon Green, wife of Brad Green Sr.

Although we are facing the tragic loss of our wonderful son, Coley, it is difficult to embrace our lives without his glowing smile, his tenderness, and his love. Every day is a challenge to make it a good day. Our family is trying; we constantly remind ourselves of how fortunate we are to have had Coley for thirty-four years. We are praying and hoping for changes with airlines safety standards. Certainly the loss of his life can help push higher safety standards for all citizens. Coley was a gifted musician with a powerful intellect - surely he would expect the government to step up to safety issues- do it for Coley and all the passengers and families of Flight 3407. We feel Coley's strength and conviction every time we attend a meeting - we find our own strength and conviction through him - we are determined to work for change, we hope the government will help us make our country safer through the efforts of the families of Flight 3407.

Mary Ellen and Kenneth M. Mellett, parents of Coleman Mellett

I did not know where to start with all the sadness that has been going on. I felt I was dealing with my pain day by day and I almost felt strength as each day passed. Today was a really painful day for my daughter. When I picked her up from school she got in the van and started weeping. There was an assembly at the school today that talked about air cadets, pilots, training and flying. At first I was so angry as to why she would sit through this assembly and she indicated that if she would have walked

out, everyone would have looked at her. My heart is aching so bad for her now that she is faced with something like this. I am trying to be strong for her but seeing your child trying to deal with things out of your control hurts so badly. Throughout all of this, she has strongly indicated that she did not want kids to ask her questions or be treated differently.

I did explain to her that in our life we are going to be exposed to so much of this and she said, "Will it get better?" I told her it will get better and we will be a strong team dealing with this. She is an amazing girl and I know if Don was here he would be so proud of her. It is such a bitter sweet life that she is so much like him that it is scary and yet comforting that I have a large piece of him in her. She will always be my constant reminder of what an amazing man Don is and what he taught her.

Elaine McDonald Family

My mother asked that we NOT do ANYTHING for her birthday this month. Her mother's day was heartbreaking and she says food no longer tastes the same, and the fragrance of the flowers she loves so much doesn't even smell the same. She was very close to her youngest son, Ronald, and they did very special things on these special holidays. She talks about being ready to be called to heaven so she can be united with her Ronald. It is very sad to see and hear. Ronnie was an excellent, intelligent, feisty, funny, compassionate, and loved human being. The Gonzalez-Figueroa family is forever scarred and changed because of this incredible tragedy. God help us!

Rebecca Gonzalez, sister of Ronald Gonzalez

Sue and I shared private jokes and language that stem back to the days when we shared a room as kids. Even with the super heavy load she carried as an adult, she always made time to read drafts of my writing, often helping me articulate and develop my ideas, fine-tuning my language and earning the privilege of making fun of what I felt to be a deep thought. I am near frozen now as I need to complete a work in progress that we had discussed many times, no longer able to turn to Sue for her astute and poetic mind, her love and encouragement, her ability to challenge and support me at once. My tears break through the ice as I hear and see us laughing and sharing together ... knowing this will be no more.

Dana Wehle (sister of Susan Wehle)

Summer transferred from her crib to a big girl full-sized bed this August. I ordered the rails, mattress/box springs, all of the princess bedding, and put the bed together by myself, and cried the whole time. October 8th will be her 3rd birthday and I just booked a kids facility for her party today, because I cannot bear to have our usual party at our home because it will be too empty without her Daddy there. The most painful thing is listening to her ask where Daddy is, or make up stories how Daddy is gone and she wants to see him. Summer swam by herself (with her life preserver) this summer for the first time. So many moments we were excited to share are gone. I don't know how I will wake up Christmas morning without him.

My birthday is Nov. 14, and every year we would eat at Shoguns and get the goofy photo taken of me with the wig. I have a photo from every year we've been together. This year will be the first year I will not be going to Shoguns, as the tradition will end along with the photos. Ernie's birthday is

October 31st on Halloween, our favorite Holiday. Halloween will never feel the same for me and how am I going to take Summer to trick or treat without her protector? Also, another tradition was World's Largest Disco. Ernie and I got dressed in our 70's duds and attended every year the Saturday after Thanksgiving. Thanksgiving was a tradition every year at our home also. Ernie cooked the WHOLE dinner for my family. He was so proud of his meal. This year I cannot have it at our home and notice the empty chair and missing chef. Every holiday I have to make other arrangements as it is too painful to have it in our home without Ernie. I pray Summer understands.

Jennifer West, wife of Ernie West

Getting Nikki's senior portraits in the mail brought me to my knees, literally, and a crying spell that lasted for a very long time. I am already dreading the emptiness and pain in my heart when she walks across the stage at graduation without her dad next to me.

Robin Tolsma, wife of Darren Tolsma

Doug's love, energy and love of life is missed every day, but especially on the day we would have celebrated our 30th wedding anniversary, and on the bittersweet day I had to walk our daughter, Lori, down the aisle on her wedding day.

Karen Wielinski, wife of Douglas Wielinski

Singing a special song at my nephew's wedding in August was not quite the same for me or the family without my singing partner, Susan. She also would have been the one officiating at the wedding had she not been taken from us so unnecessarily.

Eva Friedner, sister of Susan Wehle

My youngest brother Brian is getting married. The first person he called to tell was our brother John. He also asked him to be the best man. John was thrilled, this was such a happy time for our family. John would be home on the 12th of February, and the following Monday we had a family dinner planned; this would be the first time John would meet his future sister-in-law. John never made it home, he never met his future sister-in-law, he never saw his family.
I can't even put into words how painful the loss of our brother has been. There will not be a best man at the wedding. A day that we should all be looking forward too has turned into a painful reminder of what we have lost.

Carole Gagliardo, sister of John Roberts

I called Kristin's husband, Russ, and asked what he has missed most these past months. I caught him at a time in which he was totally overwhelmed with all of the responsibilities that he now has to take care of by himself. His response was how can he even pick one thing; every single day without Kristin is a

day filled with thoughts of her, thoughts of how much she is missed by the girls and him, and then the horrible reality of knowing that they will never be together again on this earth.

Cindi Saltzgiver, mother of Kristin Safran

Life is different after you have lost someone you loved so deeply. The joy is gone, replaced by sadness so profound that you physically hurt. A child who you brought into this world with such love, whose wonderful, exceptional life was cut short by a tragedy that should never have happened changes a parent, a brother, a sister. Now we try to get through each day with some semblance of normalcy, it is a struggle. Our life is not normal. On what should have been a simple flight to Buffalo, NY, our 27 year old son and his fiancé were killed. Our families were anticipating planning a wedding, instead we planned memorial services. We waited to receive his remains from the Medical Examiner. Finally, on May 30, 2009 Johnathan R. Perry and Nicole K. Korczykowski were buried together, a week before Johnathan's 28th birthday. It was his mother's birthday. There are no more long phone calls, no more text messages, no more surprise visits, no more requests for his favorite cookies, or homemade meatloaf, no more advice for his siblings. We all even miss his relentless teasing. We have memories, our future dreams for them, their future dreams have come to an abrupt end. We don't understand why or how this could have happened. We try to accept what cannot be changed and we are trying to change things that will prevent other families from experiencing a similar tragedy. Life is different now. It is a struggle.

Denise and Bob Perry, parents of Johnathan R. Perry

We live through our children. Their joys are our joys; their successes our successes. Not only was Nicole beautiful, brilliant and successful, she had the rare gift of making you believe in yourself. Her love of life, her energy, her wit, her laughter lit up the room. When you were with her, she made you feel you were capable of achieving anything you set out to do because she did. She connected with everyone whose lives she touched. A waiter at her favorite New York restaurant told us with tears in his eyes, "I'm only a waiter, but she made me feel like a king." Johnathan and Nicole were coming to announce their engagement and her promotion. He was no less brilliant and successful. Both were in their twenties. Instead of planning a wedding, we selected a burial site for them to be together. Where there was joy and purpose in our lives, we now find anguish and despair. Every day has become meaningless.

Maureen and Larry Korczykowski, parents of Nicole Korczykowski

Needless to say, the last 7 months have completely changed our lives. This tragedy has put a hole in our hearts that can never be repaired. I keep searching for a reason why this would have happened to so many victims and so many families, only to be left with emptiness for an answer. My uncle was a true hero. Fighting for his country in the military for over 30 years, all the while providing for his family while maintaining his civilian status. The only good that has come from this horrible event is that it has brought our family closer together, and hopefully opened the eyes of the lawmakers that can make a change.

My grandmother became ill in late 2007, at which time we moved her into my mother's home to live out her last days with family. My uncle moved in with my mother to help her care for my grandmother. The two of them became very close, closer than they have ever been. They sat and talked first thing in the morning, before bed, and during the course of the day. It wasn't about what was said, it was knowing that they were there for each other and more importantly there for my grandmother. When she passed away a few months later (Christmas Eve 2007), my uncle remained living with my mother and their bond grew that much tighter. That's what my mother misses about my uncle, seeing him every day. Having her brother to talk to, to see, to make his lunch for him and more importantly to share their memories of their mother. She will never have the chance to share those things again.

The night of the crash, I had to call my cousin Dana and inform her that her father was gone. I remember that call like it was yesterday. It was by far the hardest thing I ever had to do in my life. My uncle was Dana's rock. He was there for her every need. There for support during the difficult times of being a single parent, there for a talk when one was needed, there to put his arm around his daughter when she needed it most. He was there for her two wonderful children that have lost the chance to continue bonding with their grandfather. Having lost my father 23 years ago, I know what Dana is going through and it kills me knowing there is nothing we can do to change this. My uncle was the rock of the family, always the voice of reason. Always the peacemaker, making sure family was together and loving each other. I now see all the traits that he passed down to Dana. I am amazed everyday at how she has held herself together through all of this. It goes back to the strength handed down to her by my aunt and uncle. I am so very proud of her.

As for me, I miss the visits from my uncle. Even while living with my mother, he enjoyed his occasional away time from her (sorry Mom, love you) and would come over my apartment to do his laundry or to take a shower after his shift at the plant ended. He would, however, do this sometimes at 6-7am on the weekends. He tried hard to not wake me, but most of the time it resulted in me waking up and having a conversation. I would give anything to have the opportunity for him to wake me up again.

Every day when I think of my uncle, I have to remind myself that there are so many other families going through this same process and it absolutely breaks my heart. It is comforting knowing we are not alone in this, but it doesn't change the fact that it is the reality that we all have to live with. To make it that worse, it is painfully obvious that this could have been avoided and we hope the people with the power to make the necessary changes, do just that. They cannot allow this to happen to another family. My heart goes out to all the families that have lost loved ones, my thoughts and prayers are with you always.

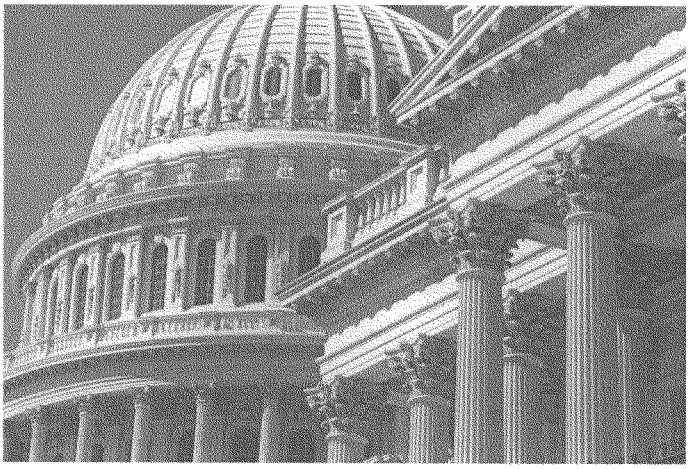
Ron Aughtmon, nephew of John J. Fiore

In Memory – Continental Flight 3407

Mary Julia Abraham
Clarence A. 'Larry' Beutel III
Ronald and Linda Davidson
Beverly Eckert
Ronald Gonzalez
Zhaofang Guo
Kevin W. Johnston
Ellyce Kausner
Jerome Krasuski
Beth Ann Kushner
Madeline Linn Loftus
Don McDonald
Dawn Monachino
Jennifer Neill (and Baby Neill)
Mary 'Belle' Pettys
Matilda Quintero
Capt. Marvin D. Renslow
John G. Roberts III
Rebecca Lynne Shaw
Jean Srnecz
Susan Wehle
Douglas C. Wielinski
ClayYarber
Georges Abu Karam
David Borner
Alison Des Forges
John J. Fiore
Brad S. Green
Steven L. Johnson
Ruth Harel Katz
Nicole Korczykowski and Johnathan Perry
Brian Kuklewicz
Sean Lang
Lorin Maurer
Coleman Mellett
Donald, Dawn, and Shawn Mossop
Gerard Niewood
Donna Prisco
Ferris Reid
Julie Ries
Kristin Safran
Dipinder Sidhu
Darren Tolsma
Ernest West
Shibin Yao
Joseph J. Zuffoletto

ATA TESTIMONY

The Federal Aviation Administration Call to Action on Airline Safety and Pilot Training



Statement of James C. May
President and CEO
Air Transport Association of America, Inc. (ATA)
before the
Subcommittee on Aviation
of the
House Transportation and Infrastructure Committee

September 23, 2009

AIR TRANSPORT ASSOCIATION

Introduction

The crash of the Colgan Air aircraft near Buffalo on Feb. 12, 2009 was a tragedy that has produced heartache for the relatives and friends of the victims of that accident. Words are faint consolation for their grief.

Two basic considerations must guide us in the aftermath of that tragedy.

The first consideration is that in the aviation community, no accident is acceptable. We need to understand through rigorous and searching inquiry the cause of the Buffalo accident. Completion of the ongoing National Transportation Safety Board investigation will ultimately determine what so tragically unfolded that evening. After its investigation is concluded, the Board will prepare and issue a detailed narrative report that analyzes the investigative record, identifies the probable cause of the accident and makes specific recommendations for fixing the causes of the accident. Even without the benefit of the final report, airlines have embraced a wide ranging set of initiatives designed to further enhance safety.

The second consideration is that it is the certificate holder – the air carrier that has received the authority from the FAA to serve the public – that is ultimately responsible and accountable for the safety of its operations and for complying with the requirements that the FAA imposes on air carriers.

As I have said in the past and will continue to say: We do not compromise safety for economic reasons. ATA members and their employees have achieved an extraordinary safety record because of their single-minded focus on safety. This has occurred, I would emphasize, during the most turbulent era in our industry's history. It is in the spirit of the pursuit of safety that I appear before you today.

Safety Above All Else

In the airline industry, safety is the highest priority. That is a shared commitment and we work closely with other members of the aviation community to achieve it. Together with the FAA, manufacturers, labor unions and other interested parties, we have achieved an extraordinary safety record. That impressive accomplishment, however, does not mean that we can rest on our laurels. We continuously pursue safety. Improving safety is work that is never done; we always seek to improve.

Commercial aviation has built this record through a disciplined and analytical approach to improving safety performance. That scrutiny includes benefiting from experience and from a forward-looking search to identify emerging issues. The Commercial Aviation Safety Team (CAST), for example, brings together stakeholders to improve safety performance by applying data-driven analyses to spot issues before accidents occur and to establish safety priorities. Increasing reliance on two industry-led safety programs, the Aviation Safety Action Program (ASAP), which encourages voluntary reporting of safety issues and events that come to the attention of employees of certain certificate holders, and the Flight Operational Quality Assurance (FOQA) program, which involves the collection and analysis of data recorded during flight to improve safety, have also added immeasurably to our knowledge. This empirical approach, coupled with the expertise and commitment of our frontline employees, provides the underpinning for industry-wide safety efforts.

Participation in these programs underscores that ATA members' efforts go well beyond compliance with governmental regulatory directives. This willingness to exceed minimum requirements is often overlooked. It is tightly woven into the safety culture of airlines, whether they are mainline or regional.

No accident or incident is acceptable. We seek to learn from each event. Consequently, ATA has formed a Senior Advisory Task Force to address the matters raised during the recent NTSB hearing about the Buffalo accident. The task force is comprised of airline presidents, chief operating officers and their peers. It will ensure that our support of the FAA, airlines, unions and others is responsive, targeted and thorough.

Safety is a Shared Responsibility

ATA member airlines highly value their relationships with regional airlines and the customer benefits those arrangements provide. Customers, communities, and the marketing and operating carriers benefit immensely.

The bedrock principle in civil aviation is that the entity to which the FAA has issued a certificate is solely responsible for its activities. Whether that entity is an air carrier, an airman or a dispatcher, that responsibility cannot be delegated or assumed by others. That principle avoids any confusion about ultimate responsibility, an absolutely essential consideration in promoting safety. It is a principle that dates back to 1938, when Congress created the Civil Aviation Authority, the predecessor of the FAA.

As separate regulated entities, regionals are independent of mainline airlines. As I noted previously, they hold operating authority that the FAA has granted them. The FAA certificates regionals under Federal Aviation Regulation (FAR) Part 121. This means that the certificate holder – the regional airline – maintains the responsibility for, and direct control of, its operations and safety programs. The FAA has the mandate to assure compliance with Part 121 and other FAR requirements.

We should also remember that in the mid-1990s, in evaluating the need for improvements in the regulatory structure under which commuter airlines – the former term for regional airlines – operated, the FAA responded, with the support of ATA and its members, by requiring them to adhere to FAR Part 121, the same regulation under which mainline airlines operate. As a result, the rule that became effective on Dec. 20, 1995 imposed a "one-level-of-safety" standard that continues to this day. It required aircraft with 10 or more passenger seats and all turbojets operated in scheduled passenger service to operate under and comply with FAR Part 121 operational requirements.

Moreover, the Department of Transportation, for more than a decade, has required in 14 CFR Part 257 that code-share arrangements be disclosed to customers before they purchase a ticket. This "operated by" language underscores the importance that the government has recognized in maintaining the distinction between the mainline airline and the regional airline.

Updates on Selected Safety Enhancements

Our relentless pursuit of safety hinges upon our ability to adapt and refine programs based on lessons learned. As noted previously, airlines are engaged in a number of safety initiatives – dubbed *FAA's Airline Safety and Pilot Training Action Plan* – stemming from the Colgan Air accident. Updates on selected initiatives are outlined below.

Fatigue Rulemaking: The FAA chartered an Aviation Rulemaking Committee (ARC) to develop recommendations on revising flight- and duty-time regulations for flight crew members. The ARC met weekly from its kickoff on July 15 until its conclusion on Sep. 1. While the extremely compressed schedule prevented resolution of all issues, the ARC submitted recommendations to the FAA that were science-based, accommodate various operating models, align with international guidelines and reflect the vast operating experience of U.S. air carriers.

An issue that arose from the Buffalo accident and was debated within the ARC is that of flight crew member commuting. The ARC concluded that commuting is within the exclusive control of the pilot or copilot. It is expected, and the law assumes, that they will report fit to work. The law provides for adequate rest opportunities and the air carrier responsibility is to schedule flight crew members within those limits. It is the responsibility of the crew member to inform the carrier if he/she is unable to fly because of fatigue, whether because of *commuting or for any other reason*. That is why Part 121 airlines staff reserve crew members.

Focused Inspection Initiative: Airlines supported the FAA review of flight crew member training programs. The review ensured that air carriers have the ability to identify, track and manage low-time

crew members and those who have failed evaluation events or demonstrate a repetitive need for additional training. The review also confirmed that air carrier training programs met regulatory standards.

Commitment to Most Effective Practices: The FAA June 15 call to action brought together key airline and labor leaders to identify the most effective practices for improving airline safety. The session surfaced many of the complexities that exist in the relationship between mainline air carriers and their regional partners. More importantly, the participants identified and committed to adopting the most effective practices from across the industry, many of which have been in place at ATA-member airlines for years. Those commitments were reflected in letters to the FAA Administrator and included:

- Implementing a policy of asking pilot applicants to voluntarily disclose FAA records, including notices of disapproval for evaluation events
- Continuing to leverage flight operations quality assurance (FOQA) and aviation safety action programs (ASAP), including the capability to analyze the data and effectively use the information obtained
- Establishing periodic meetings between mainline airlines and their regional partners to review safety programs, share safety information and share most effective practices

Regional Safety Forums: ATA members also partnered with regional airlines, labor associations and the FAA to lead a series of 12 regional safety forums around the country to share the results of the June 15 call to qction. In addition to enabling a valuable exchange of safety information, these gatherings of key representatives from all Part 121 airlines generated a number of additional ideas for further safety enhancements.

Labor Organizations: Industry acknowledged the critical role of labor organizations in ensuring professional behavior. ATA-member airlines continue to support the establishment of professional standards and a code of ethics. Labor organizations will continue to play a pivotal role in all aspects of airline safety and have committed to several initiatives focused on ensuring professional behavior and to support further strengthening of voluntary safety programs like ASAP and FOQA.

Mentoring: Industry clearly recognizes the value of transferring expertise from seasoned flight crew members to those with less experience. Mentoring programs are widely used across the industry and are tailored to reflect the various cultures and needs of those particular airlines. Certain aspects of those programs identified as most effective practices were captured during the June 15 call to action and subsequent regional safety forums and are being integrated as appropriate into flight crew member training programs.

Crew Training Requirements: Flight crew-member training programs in use at ATA-member airlines are among the best in the world. The effectiveness of these programs stems from their ability to adapt to the specific operational challenges that exist within a specific airline's operation. This approach, called Advanced Qualification Program (AQP) is grounded in existing regulations yet allows training curricula to evolve to meet current operational needs. The capability of AQP to be tailored to the specific needs of individual flight crew members is unique to AQP and is not envisioned in current regulations. ATA-member airlines are concerned that the FAA-proposed changes to the training regulations, while well-intended, may undermine the effectiveness of AQP. ATA filed extensive comments in response to the proposed rule and continues to work closely with FAA to ensure the ongoing viability of proven training programs enabled by AQP.

Other Safety Efforts Underway

Airlines are also engaged in safety-enhancing efforts that extend beyond the scope of *FAA's Airline Safety and Pilot Training Action Plan*. Among these efforts are:

Safety Management System Aviation Rulemaking Committee: FAA convened the SMS ARC in February to develop a comprehensive regulation that will ensure U.S. compliance with international standards. The SMS ARC is co-chaired by an ATA-member airline and includes other members and

ATA staff as participants. ATA members believe that an effective SMS will provide the foundation for the next leap forward in aviation safety and are committed to aggressive implementation as the guidelines are established.

Airworthiness Directive Aviation Rulemaking Committee: Following the cancellation of several thousand flights in the spring of 2008 due to questions regarding compliance with a particular Airworthiness Directive (AD), the FAA convened a group of industry experts to review the AD development and compliance process. The group analyzed the specific breakdowns that resulted in the mass cancellations but, more importantly, developed a set of recommendations designed to improve the AD process in a way that will ensure consistent compliance. Those recommendations will be implemented over the next several months by the AD ARC. ATA and its members, along with representatives from aircraft manufacturers and the FAA, look forward to assuming a lead role in that process.

ASAP/FOQA InfoShare: Airlines continue to meet every six months to review the latest safety issues identified by ASAP and FOQA programs. The meeting, hosted by FAA and referred to as InfoShare, includes all ATA-member airlines and a number of regional airlines. The results of InfoShare are fed into CAST for analysis and further industry-wide action as appropriate.

Aviation Safety Information Analysis and Sharing (ASIAS): As active participants in the ASIAS effort and its governance body, the ASIAS Executive Board, ATA members recognize the value of aggregating information to create a national view of airline safety. The ASIAS system enables users to perform integrated inquiries across multiple databases, search an extensive warehouse of safety data, and display pertinent elements in an array of useful formats. Additional data sources and capabilities will be available as the system evolves in response both to expanded access to shared data and to technological innovation. ASIAS is critical to establishing the next generation of safety enhancements for CAST, and ATA members continue to invest significant time and resources in its development.

DOT Inspector Review of Airline Safety: Prompted by requests from both the House and the Senate, the Inspector General (IG) of the Department of Transportation (DOT) initiated a review of FAA safety oversight of regional air carriers. The investigation is focused on pilot certification, training and qualification, as well as commuting and compensation issues. ATA has met with DOT IG staff to provide relevant information and looks forward to further interaction.

Centralized pilot record database: A centralized database of pilot records would make it easier to evaluate the backgrounds of applicants for flight crew member positions. ATA continues to support an FAA review to determine if such a database can be efficiently implemented. To be successful, however, it must be complete. Results of all pertinent actions relating to pilot competency must be recorded and accessible to an airline evaluating an applicant.

Looking Forward

We will continue to work diligently with other stakeholders to follow through on the various commitments made during the FAA call to action. We also look forward to evaluating and responding to the results of the NTSB investigation of the Colgan Air accident and to the Inspector General assessment of the FAA regulatory oversight program. The actions already taken, those underway and those yet defined are and *must continue to be* driven by expert analysis of facts and data. It is in this informed context that any further action to improve safety should be examined.

STATEMENT OF

CAPTAIN JOHN PRATER, PRESIDENT

AIR LINE PILOTS ASSOCIATION, INTERNATIONAL

BEFORE THE

SUBCOMMITTEE ON AVIATION

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

UNITED STATES HOUSE OF REPRESENTATIVES

WASHINGTON, DC

September 23, 2009

"THE FAA'S CALL TO ACTION ON AIRLINE SAFETY AND PILOT TRAINING"

Air Line Pilots Association, International
1625 Massachusetts Avenue, NW
Washington, DC 20036
(202) 797-4033

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Good morning Mr. Chairman, Ranking Member Petri and members of the Committee. I am John Prater, president of the Air Line Pilots Association, International (ALPA). ALPA is the world's largest pilot union, representing nearly 54,000 pilots who fly for 36 airlines in the U.S. and Canada. ALPA was founded in 1931 and our motto since its beginning is "Schedule with Safety." For almost 80 years, ALPA has had a tremendous impact on improving aviation safety. ALPA is a founding member of the International Federation of Air Line Pilots Associations (IFALPA) and the U.S. and Canada representative to the Federation which joins the pilots of over 100 nations together in safety and security harmonization efforts. Today, ALPA continues to be the world's leading aviation safety advocate, protecting the safety and security interests of our passengers, fellow crewmembers, and cargo around the world. ALPA has lived up to its mandate to the extent that many in the government and industry, including a former FAA administrator, have referred to us as the "conscience of the airline industry."

You will recall that we testified before this committee on June 11th and we are very pleased to testify once again with our observations and recommendations following the conclusion of FAA's 12 Call to Action (CTA) meetings held around the country this summer.

ALPA's Promotion of Airline Safety and Pilot Training Measures

It was my honor and pleasure to lead a dozen ALPA representatives to the FAA's industry summit on June 15th and to serve as the pilot union moderator at the inaugural CTA held in Washington, DC on July 21st and attended the St. Louis forum on August 21st. Almost 70 ALPA pilots took time from their busy lives to attend one or more of the 12 CTA events held around the country and we provided ALPA pilot moderators at six of the events.

To demonstrate our commitment to meeting the goals of enhancing airline safety and pilot training, I would like to share with the Committee some of the actions that ALPA has taken in recent months.

Professionalism

ALPA's Professional Standards Committee acts as the guardian of the ALPA *Code of Ethics and Canons,* which was formally adopted by our Board of Directors in 1956. It provides expected standards of behavior and conduct for professional pilots and ALPA members. The *Code*, a copy of which is provided as part of this written statement, is posted on the ALPA website, contained in the ALPA Policy Manual, and is periodically published in *Air Line Pilot* magazine, which last occurred in our August 2009 issue.

I directed our leadership at 36 airlines to work with their respective airlines to promote and use the document during pilot training. We made the *Code* available to the FAA at the first CTA and it generated a significant amount of interest.

Because of our strong history of promoting professionalism, FAA has asked ALPA to assist the agency with the development of training materials that can be used by airlines for that purpose. Our professional standards and pilot training experts have begun work to develop those materials and their first action was developing the letter to our leadership about the *Code* as mentioned above. An *Air Line Pilot* magazine article about professionalism is planned for later this year along with a full-length version of the *Code* as an insert. We anticipate providing completed training materials to the FAA next year.

Virtually every one of the ALPA-represented airlines has its own Professional Standards Committee at the Master Executive Council (MEC) level. The purpose of the MEC Professional Standards Committee is to promote and maintain the highest degree of professional conduct among ALPA pilots. A successful Professional Standards program enhances the margins of safety in daily flight operations, which is the primary concern. It also protects and enhances the standing of the profession. More specifically, Professional Standards Committees:

- Address problems of a professional or ethical nature involving pilots.
- Resolve cases of pilot misconduct that affect flight deck safety and/or professionalism.
- Resolve conflicts between pilots that may affect flight deck safety and/or professionalism.
- Resolve conflicts between a pilot and a member of another employee group, or another individual, that may affect flight deck safety and/or professionalism.
- Resolve conflicts arising out of conduct perceived as reflecting unfavorably upon the profession.
- Promote the highest standards of professional conduct through regular communication with the pilot group.

ALPA International's Professional Standards Committee provides training for the MEC committees annually at our Pilot Assistance Forum and other times as needed. The forum is so popular that numerous non-ALPA pilot and airline representatives frequently attend. Unfortunately, while many of our carriers' managements fully support and fund this program, others have refused to allow ALPA safety representatives to attend these critically important functions.

We are in the process of creating a new initiative, called the ALPA Professional Development Committee, which will focus on, among other things, education of future airline pilots. The committee leadership is actively working with the University Aviation Association and the Aviation Accreditation Board International on ways in which ALPA can play a more active and useful role in the promotion of the highest standards of professional development by all pilot candidates from university aviation programs.

Training

We have been very pleased to have had the opportunity to work with you and the Aviation Subcommittee's staff as you developed what became HR 3371. The bill contains numerous, strong provisions which we are certain will enhance airline safety through better pilot training. Indeed, even before the bill has been signed into law, the FAA has seized on one of the key provisions, pilot fatigue, and is preparing to issue a Notice of Proposed Rulemaking to change the agency's archaic flight and duty time rules.

I am pleased to announce today that ALPA has recently published a new white paper on pilot screening, hiring, training and mentoring. This document – now available online at www.alpa.org – provides an in-depth examination of the current state of airline pilot screening practices, problems with what we refer to as "low-experience pilots," inadequacies in training curricula, the need for greater education requirements for airline pilots than now exists, and the need for airline Safety Management Systems, among other things. The paper concludes that airline pilots should be held to a higher standard of competency, knowledge and training than pilots in non-commercial operations, which is not the case at present.

Risk Management

Nearly all of our member airlines have an Aviation Safety Action Program (ASAP) and about half have a Flight Operations Quality Assurance (FOQA) program. We are very strong proponents of such non-punitive safety reporting programs and have been instrumental in helping shape the FAA's ASAP and FOQA guidance documents. ALPA is also an active participant in the industry/government Aviation Safety Information Analysis and Sharing (ASIAS) program. ASIAS involves the sharing and analysis of safety information generated from ASAP and FOQA programs. ALPA has also expended considerable resources over the past several years in assisting the airlines with establishing ASAP and FOQA programs on their properties, and that work continues today. Sadly, we continue to encounter airline managements, and sometimes even FAA inspectors, who remain convinced that the way to deal with safety issues identified

through these programs is to punish pilots or other employees for mistakes made on the job. Let me reiterate – ASAP and FOQA programs will fail if used as a disciplinary tool instead of being used as intended to promote a safety culture.

The FAA has established a new Aviation Rulemaking Committee (ARC) which is charged with developing a rule for airline Safety Management Systems (SMS). One of our pilot members is a tri-chair of the ARC. ASAP and FOQA programs will be an integral part of a well-structured SMS. These reporting programs are vital to providing a factual basis for safety risk assessment and a gauge to how well safety mitigation strategies are working.

Analysis of Call to Action (CTA) Events

Before commenting on the 12 CTA events held this summer, we would like to recall how FAA conducted another CTA – concerning the subject of runway safety – in 2007. FAA convened a high-level industry meeting on August 15 of that year with participation of airline, airport, pilot and air traffic control representatives to discuss ways to address the serious problem of runway incursions. That meeting resulted in specific action items to be completed within 60 days by airport managers, airline management and the FAA's Air Traffic Organization. Airport operators committed to installing new pavement markings and enhancing vehicle driver training programs. Airlines committed to providing simulator training for all pilots with a focus on ground operations, revise cockpit procedures to reduce distractions and train ground employees on safe airport operations. The ATO committed to conducting a safety risk analysis of a new taxi clearance procedure and implementation of a voluntary safety reporting mechanism. The FAA followed up with all of those who committed to those action items to ensure that they were completed by the 60-day deadline.

Unfortunately, in the case of this most recent CTA on pilot selection and training, the "action" expected of regulated parties and the agency itself was noticeably absent. Indeed, the FAA's guidance to those facilitating the event addressed "commitments" but these were to be adopted on a strictly voluntary basis with no deadline and no follow up. The results of the 12 meetings, as described in meeting notes taken by the FAA, confirmed that this was the outcome.

The stated purpose of the CTA events was to bring the industry and pilot communities together to discuss the following four major topics:

1. Air carrier management responsibilities for crew education and support
2. Professional standards and flight discipline
3. Training standards and performance
4. Mentoring

The meetings were facilitated by three individuals: an FAA senior executive; an air carrier industry leader; and a pilot-union leader. Most of the events had very good

representation from a cross section of FAA personnel, airline, corporate and charter operators, in addition to airline pilots.

We have examined the notes that the FAA prepared from each of the 12 sessions and would offer the following high-level synopsis of the discussions held around the country on each of the four focal areas.

1. Air carrier management responsibilities for crew education and support
    - Safety must be "top down" and not "bottom up"
    - Safety program goals must be observable and measureable
    - Fatigue and sick-leave policies should be non-punitive in nature; implementation presents difficulties for management and labor
    - Safety information must be communicated well, which includes voluntary safety reporting programs
    - Screening and hiring practices at airlines varies widely; there is a need for better screening procedures than are commonly used today
    - Quality of flight experience is more important than quantity of experience
    - Need to improve training for new pilots and pilots in new positions; must train to proficiency
    - Mentoring of new pilots is essential, and inexperienced pilots need additional initial operating experience. Captain's leadership training is needed for their own performance and to help them mentor others. Performance of mentoring pilots should be standardized with programs established for that purpose.
    - Professional standards committees serve valuable function in maintaining quality operation

2. Training standards and performance
    - Tailored training should be provided for diverse groups of pilots entering the industry
    - Pilot performance should be monitored by the airline, with the participation of pilot unions, and additional training provided as required; FOQA and LOSA are good quality assurance tools
    - Problem with those pilots who repeatedly fail checks should be addressed; numerous difficulties are created by this situation for both the pilot and company
    - Make greater use of training review boards, with the participation of pilot unions, to assess pilot performance

3. Professional standards and flight discipline
    - Airlines and labor share some expectations, such as the need for a well-rested crew and a well-maintained aircraft
    - The industry has professional standards, but could use leadership standards

- Need to strengthen professional standards committees
- Economics and other factors have significantly eroded pilot morale and undermined the career
- Management and labor should communicate better and demonstrate appropriate behavior to include CRM and Threat and Error Management
- Pilots should adhere to strong code of ethics
- Use of FOQA data for disciplinary purposes harms safety

4. Mentoring
    - Industry, labor and FAA should work together to help individuals mature into professionals before flying for a commercial airline
    - Universities are creating professional development programs
    - Informal safety information sharing is desirable, between mainline and partner carriers and between competing carriers
    - The public should be informed that safe flying is not free or cheap
    - Mainline carriers need to provide greater oversight of regional carriers and ensure an equivalent level of safety
    - Disparity exists in training and experience of regional pilots due to extreme cost pressures placed on regional's by majors
    - Regional carriers are much less likely than the majors to permit pilots to participate in safety training programs

We asked our ALPA representatives at the CTA's to provide us with their thoughts and observations on those events, a sampling of which follow.

Minneapolis – I'm happy we had the opportunity to share our concerns, especially with national FAA people present. I don't think everyone was as forthcoming as they wanted to be. Some people were very honest, but many felt that if they spoke up they might be singled out later on. I did not like the format; we ended up with "open mic night" where people could comment at random and it was very disjointed that way. We didn't come up with very many solutions but I feel we could have if we had stuck to one issue at a time. My biggest complaint was the lack of participation by the FAA. At our meeting, the local and regional FAA inspectors filled up the back half of the room and not one of them made any comment at the meeting. I felt many of the industry (airline) managers there were putting too much of the fatigue onus on the pilots. More than once I heard the comment, "If you are too tired to fly it is up to you to call in and say that." While I agree accountability lies with the pilot, it is the responsibility of the company to make schedules that allow for rest. This is not just a problem for commuters -- you can live in domicile and still be plenty tired from poorly constructed trips and long days (a point made at the meeting by one of our pilots). I felt like the airline managers were making this more to be a problem of pilots allowing themselves to fly tired and not taking any of the responsibility themselves.

Atlanta – The majority of the discussion centered around the quality, efficiency, and continued monitoring of the pilot training process. The primary focus was on young

pilots at their first position at a regional airline, though some thought was given to tracking the "marginal" crewmembers who have been on the job for many years, never busting enough checks to lose their jobs, but possessing a track record of significantly poorer performance than their peers. The regional airlines are concerned, because they know the FAA is serious about additional regulation, possibly including a massive additional requirement for initial hire experience requirements. Sadly, though a myriad of concerns and complaints were aired, none received any further discussion, debate, or prioritization. In other words, several folks talked for a few hours, but the leaders of the discussion never chose any suggestions or user input to examine further by the group. There were no conclusions, or resolutions, or even ideas labeled as worth a second look.

Dallas – Who knows what will become of these conferences? If the future is anything like the past, I fear we may have participated in well-orchestrated window dressing. We spoke several times and made several points. They included:

- We are done with the tired refrain of "if it's legal, it's safe!"
- Responsibility for fatigue occurring in the industry must be laid at the feet of the FAA.
- The reason why a crew scheduler feels comfortable with demanding a pilot to fly a fatiguing schedule is because the FAA allows them to!
- The FAA has allowed a system to develop in which airline managements has too many opportunities and too much authority to interrupt rest and pressure pilots into accepting fatiguing schedules.
- We need to license and bring accountability to Crew Scheduling.
- Don't call us together and ask our opinion and then ignore us like the FAA has done in the past!
- If the FAA wants to interject more realistic scenarios into our simulator sessions, then they must do so as training events and not checking events.

Conclusions on CTA Events

Based on ALPA's extensive participation in the CTA events, we conclude the following:

- The topics that were selected are important to both management and labor and deserve to be addressed
- A number of solid safety recommendations were made and management and labor agreed that they are worthy undertakings
- Airline management did not publicly volunteer to undertake enhancements to safety as a result of hearing the discourse during the CTA meetings
- Airlines will not advance aviation safety per the recommendations absent new FAA requirements

To underscore the final conclusion, we would note with some irony that the media has recently reported on the onerous sick leave and fatigue policies at Colgan Airlines, Pinnacle Airlines and their parent company Pinnacle Corporation. Despite the NTSB hearings earlier this year which confirmed Colgan's adverse behavior in this regard, our

members confirm that those companies continue to take a hard line with pilots who call in too sick or too fatigued to fly. In fact, approximately one-third of Pinnacle pilots are reprimanded for sick leave and fatigue-related absences annually. This demonstrates the fallacies in Colgan and Pinnacle staffing and scheduling practices and shows how archaic flight/duty regulations are which allow these unsafe practices to exist. Mainline management often refuses to intervene with the onerous practices of these so-called private vendors, despite the fact that they book their passengers on them and have their liveries painted on the regional airline's aircraft.

The Impact of the Mainline Airlines' Business Model

We would like to comment on one of the fundamental causes of the low-experience pilot problem, which is the mainline airlines' business model. Mainline airlines are frequently faced with pressures on their marketing plans that result in the use of the regional feed code-share partners, whether they be economic, passenger demand or essential air service. These code-share or fee-for-departure (FFD) contracts with smaller or regional airlines provide this service and feed the mainline carriers through their hub cities. Before the practice of code-sharing or FFD with regional partners, all flying was done by the pilots of an airline on a single pilot-seniority list. The pilots of the airline were trained to and met the same higher-than-minimum regulatory standards. A safety benefit is derived from all flying being done from a single pilot-seniority list because it requires that first officers fly with many captains and learn from their experience and wisdom before becoming captains themselves. Several major airlines use multiple, regional "vendor" carriers to continually drive down their costs, but that practice harms safety because first officers can become captains within a year at the vendor airline and fail to gain the experience and judgment needed to safely act in that capacity.
Code-share and FFD agreements typically result in the mainline carriers exerting a great deal of pressure on the regional airlines to provide their service at the lowest possible price. The mainline airlines grant these outsourcing code-share and FFD contracts to the regional carriers for short periods (e.g. 2-7 years). As a result, the overriding concern by the regional carriers has become lowering costs to today's substandard levels to prevent being replaced by another airline at the end of their contract. Most recently, some larger regional carriers have subcontracted with smaller regional airlines to operate these routes for them. This results in the mainline carrier's brand name and paint scheme being used by a third party. In some extreme cases, airlines have outsourced a majority of their routes to regional airlines with pilots having as little as 250 hours of experience while the mainline carrier furloughed its own pilots who possessed more than a decade of experience in the industry. This resulted in replacing experienced pilots with low-experience pilots flying for the low-paying regional operator, all under the livery of an established brand. Another cost-cutting tactic used by regional vendor airlines is endemic short-staffing, which leads to pilot pushing, fewer pilots flying more and more hours per month, and a resultant reduction in safety margins.

Aircraft leasing and fuel costs are relatively fixed expenses, which leaves labor and training costs as areas in which the smaller carrier may have some ability to decrease its costs to service the route. Due to the economic pressures of conducting operations with such a small profit margin, some regional airlines actually want their more experienced pilots to quit, which enables them to hire lower-paid pilots as replacements.

When a regional airline operates a route for a mainline carrier and offers subpar wages and benefits, only low-experience pilots, who cannot qualify for a job with a better paying airline, are typically willing to accept such employment. It is not uncommon that training at such carriers is conducted only to FAA-required minimums. However, these low-experience pilots obviously need more training than more experienced airline pilots to gain equivalent knowledge of the operating environment, aircraft, and procedures before flying the line.

In these code-share and FFD agreements, the mainline carrier controls all aspects of ticket pricing and schedules, regularly moving flying between its regional partners. This creates a very unstable occupational environment for pilots which results in cycles of furloughs and terminations, stress, and fatigue. Regulators should require that airlines implement Safety Management Systems (SMS) to develop a safety culture which develops mitigations to the risks created by the mainline business model.

Recommendations

While we commend the FAA for swift action in launching the Call to Action, we believe that many of the industry best practices must be mandated. As an industry, we have a tendency to work hard to identify issues and solutions but we are slow to implement those solutions voluntarily. As a result, we urge Congress to expeditiously pass this Committee's bill, HR 3371, into law. The legislation was crafted in response to disturbing trends we have seen in the regional industry and with outsourced air carriers, and in light of concerns raised during the investigation of the tragic Colgan accident earlier this year.

The bill contains numerous provisions which, if enacted, will make a profound difference in the selection, training, education and safety of future airline pilot professionals including:

- The requirement for a final rule, not later than one year after enactment of HR 3371, to mitigate pilot fatigue using the best available science
- Implementation of Safety Management Systems at all Part 121 airlines
- Measures to facilitate the employment of FOQA and ASAP programs at all Part 121 carriers
- A rulemaking to require stall avoidance and recognition training in Part 121 operations
- A requirement that each Part 121 airline create a flight crewmember mentoring program

- A rulemaking to require that all prospective flight crewmembers undergo comprehensive pre-employment screening, to include skills, aptitudes, and airmanship
- A requirement that airlines access and evaluate pilot training records as part of the employment screening process
- A requirement that prospective airline pilots meet higher licensing and hourly requirements
- Requires studies to be performed on flight crew education and professionalism, flight schools, voluntary safety programs, flight crewmember pairing, and crew resource management (CRM) techniques

We offer Congress our assistance in helping to promote this legislation to become law.

Thank you, again, for the opportunity to testify today. I would be pleased to address any questions that you may have.

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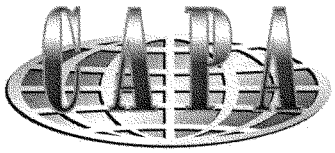

The Coalition of Airline Pilots Associations

TESTIMONY OF

JEFFREY SKILES, VICE PRESIDENT

COALITION OF AIRLINE PILOTS ASSOCIATIONS

BEFORE THE

SUBCOMMITTEE ON AVIATION

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

UNITED STATES HOUSE OF REPRESENTATIVES

WASHINGTON, DC

September 23, 2009

THE FEDERAL AVIATION ADMINISTRATION'S "CALL TO ACTION ON AIRLINE SAFETY AND PILOT TRAINING"

Coalition of Airline Pilots Associations
1101 Pennsylvania Avenue, NW
Suite 6646
Washington, DC 20004
(202) 756-2956

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HEARING ON

THE FEDERAL AVIATION ADMINISTRATION'S
"CALL TO ACTION ON AIRLINE SAFETY AND PILOT TRAINING"

September 23, 2009

I would like to thank Chairman Costello, ranking member Petri, and the members of the House Aviation Subcommittee for accepting my testimony here today. I am Jeffrey Skiles, Vice President of the Coalition of Airline Pilots Association (CAPA). CAPA is a trade association representing over 28,000 professional pilots at carriers including USAirways, American Airlines, UPS, Southwest Airlines, NetJets, ABXAir, Atlas Air Worldwide, Polar Air Cargo, and Kallitta Air.

First, let me acknowledge the tremendous loss suffered by the families of the Continental Connection Flight 3407 disaster. I cannot begin to imagine the pain and loss suffered by the victims' families and I know my fellow pilots will keep them in their thoughts.

It is good to reflect on the reasons why we are all here today. On February 12th of this year, Continental Connection Flight 3407 crashed into a Buffalo, New York neighborhood causing the terrible loss of all onboard and one unsuspecting resident on the ground. In the aftermath the spotlight has been on fatigue issues, pilot experience, and industry compensation levels.

The Continental Connection accident was the deadliest transportation accident in the United States in more than 7 years and was a needless tragedy. Although the NTSB has not issued an official probable cause, as of this date, the NTSB facts and aircraft animation of the Continental Connection flight reviewed by professional airline pilots seem to implicate that the two pilots placed themselves in an untenable flight regime from which they were unable to recover. Their actions demonstrated that they both possessed neither the experience nor the skill necessary to prevent the tragedy.

While the actions of these two pilots during the performance of their normal duty led to this tragedy, they were as much victims of the state of the nation's airline pilot industry demographics as the passengers who entrusted their lives to Continental Airlines. They were simply asked to fly a complex aircraft in challenging conditions that their limited experience level had not prepared them for.

FATIGUE

Fatigue issues have long been a contributing factor in aviation accidents. The NTSB has recommended modifying flight/duty time rules for many years. Numerous studies have been commissioned and recommendations have been made for change. And yet no action has come to combat this issue.

Administrator Babbitt called for an Aviation Rulemaking Committee to discuss changes in current regulations. While the FAA will be the final arbiter and Administrator Babbitt has promised changes in regulation, the current discussion is trending towards increasing the number of hours a pilot can fly in a duty period. There are no studies that conclude that increasing total flight time is safe. But, there is plenty of scientific evidence to show that "time on task" and "workload" contribute to fatigue.

Industry took the opportunity of a nation that is demanding that pilot fatigue issues be fixed, to attempt to rewrite the rules in favor of increasing productivity and thereby putting pilots at a higher risk of fatigue. Congress needs to provide direction and oversight on the regulations that will come out of the FAA ARC process to ensure the safety of our nation's passengers is not compromised.

AIRLINE TRANSPORT PILOT'S LICENSE (ATP)

Over the past several years, there has been a dramatic drop in the experience levels of new hire pilots in our nation's cockpits as airlines sacrifice experience for the bottom line. Under questioning from the NTSB, Colgan's Vice President for Administration, Mary Finnigan, reported that the First Officer on flight 3407 drew an annual salary of $16,200. In an effort to attract pilots at these poverty level wages, minimum hiring qualifications have dropped to the lowest bar possible. Many of our nation's experienced pilots are now unwilling to work in the industry for such wages, and regional airlines need to fill their pilot seats with lesser qualified pilots.

The Airline Safety and Pilot Training Improvement Act of 2009 (HR 3371) calls for all Airline Transport pilots to possess an Airline Transport Pilot's license (ATP). The ATP would increase the experience base of US commercial pilots as it would require flight experience commensurate with the position. The FAA ATP certificate requires:

- 1500 hours of flight time;
- 500 hours cross country;
- 400 hours of night time; and
- 75 hours Instrument time (50 hours in instrument conditions [in the clouds]).

In the cockpits of our major airlines, the de facto qualifications of all pilots on the flight deck are an Airline Transport Pilot's license and many, many thousands of hours of experience. Today every major airline has, at a minimum, a 1500 hour experience requirement before they will even accept an application. But these stellar qualifications are not guaranteed to all passengers in our

air transportation system. Over 50% of US domestic flights are now operated by regional air carriers, representing a major shift on how airline transportation companies operate. Yet these pilots operate in the same congested airspace as major airline pilots. And there regional aircraft are just as complex and sophisticated.

EXPERIENCE

Many careers have experience level requirements before attaining full recognition. Architects must complete demanding educational requirements consisting of art and engineering, yet even after completion of formal training, they are required to serve a 3 year apprenticeship before attaining full licensure. Engineers must have 4 years of work experience before being allowed to sit for the Professional Engineers exam. The vast responsibilities placed on the shoulders of airline pilots and the expectation of safe, professional travel by our nations public require no less from airline pilots.

JUDGEMENT

FAA Administrator Babbitt also expressed the desire for a better educated, better trained aviator who can exhibit better judgment. Judgment is largely developed from applied experience. While a prospective pilot is acquiring his Airline Transport Pilot experience, he is exposed to "other than normal" events which provide experience that guides judgment for a mature pilot. The opportunity to develop judgment thru real-world experience is part of the development of critical decision making skills. As Captain Chesley Sullenberger so wisely stated, "I made deposits to my 'Safety Bank' for 30 plus years, and on January 15, 2009, I made one big withdrawal." The passengers of US Airways Flight 1549 had a combination of 70 plus years of experience working for them in the cockpit.

AIRMANSHIP

Airmanship skills are not only taught through good training, they are developed and honed over time. Flying aircraft of any size develops airmanship skills. Learning the systems and procedures for transition into sophisticated aircraft is confidently made when there is a well established foundation of flying skills. This concept of progression is well-defined in the FAA approved Advanced Qualification Programs (AQP Training Programs) used throughout the major airlines.

SPECIAL INTEREST GROUPS

Aviation flight schools wish to maintain their current ability to place graduates directly into airline cockpits after graduation with no opportunity for experience or skill development. Aviation school accreditation boards share the same focus. One argument heard quite often is that we have a pilot shortage. There is not now a shortage of qualified pilots, they just aren't flying airliners. They are now flying for corporate flight departments or fractional ownership companies, they are flying cargo or charter, or they have left the industry altogether for other pursuits as they seek a living wage for themselves and their families. Airline flying is not a desirable career for experienced professional pilots.

Up until a few years ago, the new hire pilot requirement at the regional airline Air Wisconsin was 2,500 hours including 1,000 turbine engine experience; even with these requirements flight

schools managed quite well. Today, Air Wisconsin's minimum experience requirement is only 500 hours. When HR 3371 becomes law, new hire requirements will be as they were previously; at acceptable levels. If the industry no longer is willing to provide the safety net required, Congress needs to act to do so.

Many of today's aviators graduated from college aviation programs. They received their training in these college environments and then went out to gain experience in other aviation endeavors before having the necessary qualifications and skills to be considered for airline employment. Their careers were enhanced by this apprenticeship.

There is no excuse for another Buffalo accident. The authors of the Airline Safety and Pilot Training Improvement Act of 2009 (HR 3371) recognize that fact and have acted upon it.

Today we find ourselves 7 month distant from the events that triggered these discussions. While Administrator Babbitt has shown a willingness to attack these problems and come to inclusive solutions, we frankly are no closer to necessary change than we were at the start of this journey.

I am here today as a representative of our nations dedicated, professional pilots. We as a group can speak to the need for change. Representatives of all the pilot's associations, ALPA, CAPA and the IBT came before this subcommittee in July as a united front in support of the Airline Transport Pilot's license as the minimum standard in the cockpits of our nation's airliners. At CAPA, we unreservedly support HR 3371.

Administrator Babbitt was instrumental in improving safety 20 years ago when he advocated requiring all scheduled transport be conducted under Federal Air Regulations (FAR) Part 121. He did this to create in his words, "One Level of Safety." We ask him to continue advocating for safety by supporting the Airline Transport Pilot's license as the minimum standard for all pilots in Airline Transport aircraft. We further ask Administrator Babbitt to support all the initiatives of HR 3371.

Chairman Costello, ranking member Petri, and members of the House Aviation Subcommittee, thank you again for accepting my testimony here today. I am happy to respond to any questions which the subcommittee may have.

Respectfully submitted,

Jeffrey Skiles
Coalition of Airline Pilots Associations

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