

**STATEMENT OF  
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PRESIDENT  
AIR LINE PILOTS ASSOCIATION, INTERNATIONAL  
BEFORE THE  
SUBCOMMITTEE ON AVIATION  
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED  
STATES SENATE  
ON  
THE FAA REAUTHORIZATION ACT OF 2009  
May 13, 2009**

Good afternoon, Mr. Chairman and members of the Subcommittee. I am Captain John Prater, President of the Air Line Pilots Association, International (ALPA). ALPA represents more than 54,000 pilots who fly for 36 passenger and all-cargo airlines in the United States and Canada. On behalf of our members, I want to thank you for the opportunity to provide our perspectives on the FAA reauthorization bill. We provided input during the 110<sup>th</sup> Congress on S.1300, and supported its passage, as it included funding for many aviation programs and enhancements that are important to airline pilots.

Recognizing that there have been some changes to the Subcommittee since the last Congress, our comments are intended to not only identify those provisions from S. 1300 that are of special interest to us, but also explain why they are important.

Flight Crew Fatigue and Flight-time/Duty-Time Rules

One of the many hardships that the post-9/11 era brought to airline flying was pilots flying right up to the FAA regulatory limit. This has resulted in adverse safety impacts, fatigue, and more stress. The pay and productivity hits of the last few years mean that our members are routinely working at or near regulatory limits as a normal operating practice. Sixteen-hour domestic duty days -- even longer with some long-range international operations -- are facts of life for many airline pilots. Irregular shifts, crossing time zones, all-night operations, FAR Part 91 flying at the end of a duty day, and significant circadian rhythm challenges all contribute to pilot fatigue. Remember, too, that the current regulatory requirement of 8 hours of rest after a 16 hour day has to include travel to and from a hotel, meals, and sleep. So when we see a requirement for 8 hours of rest required for a pilot to operate a flight that translates into only a four or five hour window available for sleep.

Technological advances have exacerbated the problem of pilot fatigue. The current prescriptive regulations regarding maximum flight time and duty periods have not been significantly changed since well before jet transports came into commercial use in the late 1950's. Some airliners being operated now can fly for more than 20 hours without refueling. With flights of this duration, combating flight crew fatigue is a real and constant concern.

The National Transportation Safety Board (NTSB) lists as one of its “most wanted” aviation safety improvements reducing the potential for accidents and incidents caused by human fatigue. Although the FAA issued a notice of proposed rulemaking in December 1995 to update the flight and duty regulations for airline pilots, in the intervening 14 years, the regulations have not been revised. Last summer, the FAA held a conference on the subject of fatigue, at which hundreds of government and industry personnel convened to discuss the need for creating new flight and duty requirements, which will protect against fatigue-related accidents and incidents. The agency has stated that it is interested in developing fatigue risk management systems (FRMS) to provide an alternative to prescriptive limitations, and last year it issued Operations Specifications for ultra-long range (ULR) operations (i.e., those in excess of 16 hours of flight time). Several ULR carriers subsequently sued the FAA to block implementation of these operations specifications, however, and the agency withdrew the specifications which has further complicated efforts to address fatigue.

To address the problem of pilot fatigue, ALPA advocates for adequate rest periods, reasonable duty periods and special provisions for flying “backside of the clock” and for crossing multiple time zones. Any regulations developed to deal with fatigue should be based on modern scientific principles, and should apply to all sizes of aircraft engaged in domestic and international passenger and cargo operations. Fatigue risk management systems should complement, and not be used as a substitute for an overdue, comprehensive updating of the FAA’s flight and duty time regulations. Regulatory reform must also close loopholes currently in the rules applicable to air carriers operating under FAR Part 121. Some of our smaller carriers, for example, are currently allowed to use the less restrictive rules in FAR Part 135, even though they are carrying ticketed airline passengers in scheduled service – passengers who deserve the same high “One Level of Safety” that must be the hallmark of the airline industry.

ALPA strongly supports Section 507 of S.1300 which would direct FAA to: (1) arrange for a study by the National Academy of Sciences on pilot fatigue to include an examination of recommendations made by the NTSB and the National Aeronautics and Space Administration (NASA) on this subject; and (2) provide recommendations with respect to the FAA’s flight and duty regulations based on the study’s findings. We suggest some minor clarifications to reiterate the urgency of the problem and build on the progress made in the last year.

We note, however, a significant omission in the draft legislative language. Currently, airline pilots may be required to operate transport aircraft for extended periods under FAR Part 91 after a long duty day of Part 121 or 135 flying. We strongly support inclusion of language which would require that FAR Part 91, or “tail-end ferry” flying by airline pilots be included in the regulatory calculation of flight and duty time.

### Air Carrier Citizenship

ALPA would also like to reaffirm our support for the addition of language providing for specific air carrier citizenship requirements.

We feel it is important for Congress, through this legislation, to affirm that U.S. citizens must be in firm control of all the key operational aspects of U.S. air carriers. Language to accomplish that should specifically identify marketing, branding, fleet composition, route selection, pricing and labor relations as some of the operational elements that DOT must ensure are controlled by U.S. citizens. This affirmation is consistent with the longstanding U.S. citizenship requirements of the aviation statutes.

Inclusion of such provisions would help ensure that as U.S. airlines seek to enter into ever closer alliance relationships with foreign carriers that there are clear limits on how far those relationships can go. The latest generation of joint ventures, under which U.S. and foreign carriers share revenues so that they are indifferent as to which airlines or pilots actually fly the aircraft, increases the importance of making sure that decisions that have a direct effect on the number of U.S. employees will be required for the joint services. It is essential that U.S. carriers not become subordinate components of foreign carrier networks but retain the incentive to develop and take advantage of growth opportunities that will benefit their own employees. This is particularly important at a time when the creation of high quality jobs for U.S. workers is a leading objective of the national economic and social policy.

#### Protection of Voluntarily Provided Safety Data

We urge the Senate to take advantage of the opportunity presented during the reauthorization of the FAA to make significant improvements in proven, valuable safety reporting programs. Last year's bill was silent with respect to providing protection against the misuse of safety data provided voluntarily by those employees in positions to see the entire breadth and scope of aviation operations. Such protections are a key element in improving upon the already enviable safety record of commercial aviation in the United States.

Voluntary, non-punitive safety reporting programs have proven to be an invaluable source of safety information. The most familiar examples of these programs are the Aviation Safety Action Program (ASAP) and the Flight Operations Quality Assurance program (FOQA). These programs, especially ASAP, rely on a sound foundation of trust between three parties – the airline, the regulator, and the employee group concerned. The trust on which these programs are based needs to be embodied in a strong guarantee that when issues arise, personalities change or interpretations are made; parties to the agreement have a fundamental guarantee that their efforts to improve safety will not be met with punishment.

Pilots, flight attendants, controllers, mechanics, and other aviation professionals are on the front lines of daily operations and need to be able to report safety hazards they observe without fear of certificate action by the regulator, discipline by the company, or action in civil litigation. Pilots have a professional interest in identifying and correcting safety deficiencies and they must not be hindered from doing so. Pilots are also willing to identify and discuss the underlying causes of their own errors so that they and their peers can learn from them, but need assurance that their forthrightness will not result in punishment. In a very large percentage of cases, information obtained by ASAP reports cannot be obtained any other way. That is, no one but the reporter is aware of the problem identified. Jeopardizing the full, free and open reporting of safety concerns

by these “sole source” reporters would represent an unrecoverable loss of a significant portion of available safety data.

ASAP fosters a voluntary, cooperative, non-punitive environment, and a positive safety culture for the open reporting of safety of flight concerns. Through such reporting, all parties have access to valuable safety information that may not otherwise be obtainable. This information is analyzed to develop corrective actions aimed at solving safety issues and possibly eliminating deviations from Federal Aviation Regulations.

FOQA collects and analyzes large amounts of flight data generated during normal line operations. These data provide great insight into the total flight operations environment and have proven valuable in identifying trends that may indicate potential hazards. The information and insights provided by FOQA data, particularly when large quantities of such data are combined, can improve safety by significantly enhancing training effectiveness, operational procedures, maintenance and engineering procedures, and air traffic control procedures. While not “provided” directly by flight crews as a report, these data must nevertheless be protected from misuse for disciplinary or other punitive purposes.

Legislation is necessary to provide guaranteed protection from misuse of voluntarily supplied safety information. Programs have been suspended over misuse of reports for purposes of discipline or litigation. When the FAA, an air carrier and its employees agree on effective corrective action for voluntarily reported problems, the completion of the agreed upon corrective action should be conclusive and employees should not be subject to additional disciplinary action. Legislative protections must extend to actions by the regulator, the employer, and use in litigation. Failure to provide such protection will undoubtedly result in a significant reduction in the amount and quality of safety data that can be obtained.

Quality safety data from pilots and other aviation workers is an essential factor in meeting the requirements for implementation of Safety Management Systems (SMS). An SMS is a systematic approach to managing safety and includes the necessary organizational structures, accountabilities, policies, and procedures. The International Civil Aviation Organization (ICAO) established a deadline of January 1, 2009, for States’ airlines, airports and service providers to implement SMS -- a deadline that the FAA declared last year that it would not meet. However, the FAA is working to establish SMS standards and regulatory guidance through an Aviation Rulemaking Committee (ARC) with the goal of meeting it in the future. A properly structured and implemented SMS will provide not only a safer operation for employees and customers, but should also eventually save money through improved efficiencies. The FAA must continue its efforts to develop SMS guidance and training materials to meet the ICAO standard. They must also provide training to their own workforce and safety inspectors to ensure correct implementation and oversight of this new way to manage safety.

## National Airspace System Modernization

Long-term, stable funding of the Nation's airspace and air traffic control (ATC) infrastructure is essential for safety, capacity and efficiency gains that are needed to modernize the aviation system. The project will take a long time; it is complicated, expensive, and absolutely must be done right the first time. ALPA believes that funding must be comprised of both Federal funds and an equitable funding stream from all airspace users since all users will benefit from modernization. All users should pay their fair share. Right now, airlines pay the majority of costs for operating the National Airspace System (NAS). Reducing the tax burden on our employers would help our industry recover. All users will reap the benefits and all should bear a share of the cost.

There is little debate over the need to modernize the nation's airspace system. The current U.S. ATC infrastructure is outdated, the equipment's capabilities are limited, facilities must be modernized, and efficiency is decreasing. The delays and similar problems in the system that currently plague the ATC system clearly underscore the critical need for ongoing NAS modernization. The key to improving efficiency, reducing delays and most importantly, avoiding potential hazards of using outdated equipment, is the ability to finish that which we start. That requires sustained, committed resources supported by funding that is not diverted, curtailed, or denied. The entire country will benefit from the airlines' return to economic solvency if capacity and efficiency can be improved. New technologies and procedures can also increase safety, particularly in areas not well served by the current infrastructure. However, in many cases we are developing ways to put more airplanes in the same amount of space, so any new procedures must be studied, modeled, and thoroughly evaluated to guarantee that the current high level of safety is maintained or improved.

The FAA will realize the first benefits from NAS modernization; airspace users may not reap the benefits of installing new aircraft avionics for many years despite the fact that the equipage is necessary to build the foundation for the future. We urge Congress to work with the industry on the development of an appropriate NextGen airspace management system funding mechanism.

## Unmanned Aircraft Systems

The much-publicized success of Unmanned Aircraft Systems (UAS) in combat operations has created a large potential market for the use of these aircraft by commercial enterprises. Many are also in domestic use by government agencies (e.g., Law Enforcement, Customs, Agriculture, etc). As the number of these aircraft increases, and the potential for business use also increases, so does pressure to allow their unrestricted operation in the NAS.

ALPA believes that the language in Section 607 of S.1300 accurately describes the depth and breadth of the study needed to evaluate this paradigm shift in the character of the NAS. The timeline set out in the bill to develop a plan may be sound, but we do not believe the actual process of UAS integration can be undertaken on a fixed timeline. A plan for integration must include a study of hazards and mitigation methods that must be taken to conclusion -- however

long that takes. In addition, we believe that the goal of this section should not be limited to the safety of the UAS vehicles themselves, but rather it must explicitly include the safety of all users of the National Airspace System and persons and property on the ground. Before UAS can be authorized to occupy the same airspace as airlines, or operate in areas where UAS might inadvertently stray into airspace used by commercial flights, there needs to be in place a standard or combination of standards that will ensure the same high level of safety as is currently present in the NAS. In order to guarantee that high level of safety, extensive study of all potential hazards and ways to mitigate those hazards must be undertaken.

The extreme variation of UAS types -- which range in size from as small as a bird to as large as a Boeing 737 -- makes this a complex issue. So, too, does the fact that they are flown remotely from operational centers or control stations which may be located at the launch-and-recovery site or thousands of miles away. Some are capable of "autonomous operation," meaning that they follow pre-programmed instructions without direct operator control. The pilots of autonomous operation UAS are not presently required to hold any FAA license. Most of the current designs were developed for the Department of Defense (DoD) for use in combat areas and so are not necessarily designed, built, maintained or operated in the same manner as other aircraft in the NAS. As a result, they are typically flown today in segregated airspace, i.e., military restricted airspace or its equivalent.

ALPA believes that a well-trained and well-qualified pilot is the most important safety component of the commercial aviation system. The role of the pilot is a major area of concern within the UAS and piloted aircraft communities. These pilots should be trained, qualified, and monitored to the same standards as pilots that operate aircraft from within the aircraft. The equipment they fly must be designed, built, and maintained to the same high standards as those operated by other commercial users of the airspace. ALPA will continue to work to protect the safety and integrity of the NAS and ensure that the introduction of UAS operations will not compromise the safety of our members, passengers, cargo or the public at large.

#### National Energy Policy and Alternative Fuel Research

There is currently no greater threat to the long-term health of the airline industry than the ongoing potential for large price escalations and scarcity of jet fuel. Jet fuel is the "lifeline" of the airline industry and it must be in abundant supply and reasonably priced in order for commercial aviation to survive.

Despite the airline industry's best efforts to take advantage of every opportunity to improve efficiencies through technology and operational improvements to conserve fuel, jet fuel expenses have become the airlines' largest operating expense and consume as much as 40% of every revenue dollar, up from 15% in 2000. As the result of the exorbitant jet fuel price increases this past summer, many thousands of airline workers including pilots were furloughed and the economic fallout from those increases, combined with other economic woes, is worsening still.

U.S. airlines consumed about 430 million barrels of jet fuel in 2008.<sup>1</sup> Although that is a huge amount of fuel, it represents only about 8% of total fuel used by all transportation modes in the country (96% of which is petroleum-based) and only 2% of all fuel of all types used in the U.S.<sup>2</sup> Other sources of the nation's fuel include natural gas, coal, renewals, and nuclear power. Some industries that currently use petroleum, such as electric power utilities, could convert to coal, nuclear power or renewable sources, thereby making more petroleum available to the transportation industry which relies so heavily on oil-based fuel.

Because jet fuel consumption represents a small portion of the country's total energy needs, it is impossible to significantly increase its supply, and thereby decrease its price, in the foreseeable future without (1) increasing oil production (whether domestically, abroad, or both), (2) decreasing the amounts of oil used by non-aviation entities by their switching to alternative energy source(s) in order to make more of it available to aviation, or (3) both.

ALPA was at the center of industry activity that began in early 2008 to urge Congress to reform oil commodities trading practices to reduce the effects of rampant speculation. Regardless of what may happen to the price of oil in the near future as a result of speculation reform or other short-term legislative remedies, the reality is that the U.S. does not have a comprehensive national energy policy. Without the creation and implementation of a national energy policy which will increase the supply and decrease the price of jet fuel, the future of U.S. airlines will continue to be precarious. At present, pilots can merely hope that the price of jet fuel will be so priced that their carriers can remain in business.

ALPA urges Congress to adopt a national energy policy which will include the goals of making jet fuel available and affordable into the future. Such a policy should include the following principles:

1. Regulate oil commodities trading to eliminate loopholes, increase transparency, and reduce the potential for rampant investor speculation that may lead to artificially higher prices;
2. Prohibit any new taxes, charges, or fees on fuel used by airline operations;
3. Encourage the development of new technologies and operational concepts that reduce transportation energy consumption and minimize environmental impacts;
4. Increase domestic production of energy sources focusing on clean energy and environmentally responsible oil production;
5. Promote greater use of non-oil-based energy sources within the aviation industry and transportation modes that can use alternative types of energy; and
6. Provide government-funded research and development of a low-cost, renewable, low- or non-emitting alternative fuel(s) for use by commercial aviation and other transportation modes.

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<sup>1</sup> Source: Air Transport Association

<sup>2</sup> Source: U.S. Department of Energy

We are pleased that Section 602 of S.1300 included provisions for alternative fuel research and we strongly encourage that those provisions be retained in the final FAA reauthorization bill.

### Flight Deck Doors for All-Cargo Aircraft

Following the events of September 11, 2001, Congress mandated that fortified flight deck doors replace existing barriers on certain commercial aircraft types. Subsequently, the Department of Transportation (DOT) Rapid Response Team (RRT) identified a need to "...conduct a retrofit of the entire U.S. fleet of aircraft." The reinforced door has since proven to be a valuable enhancement to flight deck security, and the DOT has determined that all-cargo aircraft are "*equally vulnerable*." The Transportation Security Administration (TSA) has publicly stated that hijacking poses the greatest threat to the all-cargo domain.

In the unique all-cargo environment, many aircraft, including wide-body designs, operate with no flight deck doors at all. Flight deck doors are not required equipment on newly manufactured cargo aircraft. Flight crewmembers of all-cargo aircraft are not supported by cabin attendants or air marshals, and are not afforded the possibility of passenger intervention. It is a little known fact that all-cargo airliners frequently carry additional, non-crew personnel, such as couriers and animal handlers. It is potentially easier for an intruder to gain access to a cargo aircraft due to limited ground security procedures. These vulnerabilities can be readily exploited by terrorists or other persons with malicious intent.

In November 2005, ALPA responded to a DOT/FAA Notice of Proposed Rulemaking (NPRM) regarding crewmember monitoring of the area outside the flight deck door. Language proposed for inclusion in FAR Parts 121.313(k) and 121.582 specifically *excluded* all-cargo operations. As stated at that time, given that the same threat existing for passenger-only operations also exists for aircraft involved in all-cargo operations, ALPA continues to believe that *all* aircraft operating under FAR Part 121 must be afforded the same standard of safety and security protection. As such, all-cargo aircraft should be equipped with reinforced flight deck doors or provided an equivalent level of protection. Use of equipment that is a secondary barrier on a passenger aircraft might well provide needed additional security if used as the only barrier on an all-cargo aircraft.

### Wildlife Hazards

The recent airline accident in New York City which necessitated a ditching in the Hudson River has been attributed to the aircraft striking geese while in flight which resulted in a loss of power in both engines. The potential for bird strikes is a risk that is far from new; the Wright brothers recorded the first bird strike in 1905. The first bird strike-related fatality occurred in 1912 when aviation pioneer Cal Rodgers collided with a gull which became jammed in his aircraft's controls and caused it to crash. Striking large birds at high speeds may result in catastrophic damage to an engine, airframe, or pilot's windshield. Even a "small" bird of four pounds struck by an aircraft



traveling 250 knots (288 mph) delivers the force of approximately 38,000 pounds at the point of impact.<sup>3</sup>

It is impossible to completely prevent birds from being struck by aircraft, so efforts have focused for many years on reducing the possibility of a strike and the severity of the consequences. Airframe and engine manufacturers have made great strides in designing aircraft structures, including windshields and engines that are able to withstand the force that results from striking and ingesting most birds. Engine design standards were updated in 2004 to require that engines be capable of ingesting up to an 8-pound bird depending on the engine's inlet size. Engines must also demonstrate the ability to withstand some level of damage and continue to operate. Windshields and windows must be tested to withstand a 4-pound bird strike. In 2007, new requirements addressed flocking birds and bird weight variability. ALPA was part of the team developing these standards. Obviously, however, aircraft cannot be made impervious to the effects of bird strikes, especially when all engines are impacted. Control of the wildlife population is also a critical part of the solution. The Federal Aviation Administration (FAA) requires commercial service airports to conduct wildlife hazard assessments and implement a wildlife hazard management plan, if warranted. Airport operators scare birds and wildlife away from aircraft operating areas using such measures as air guns, lasers, and wildlife patrols, and they use fencing and extermination to reduce the threat posed by large mammals such as deer. We urge Congress to ensure that sufficient funds are available for wildlife hazard mitigation research.

### Runway Safety

We have previously testified on the vitally important subject of runway safety. We urge Congress to continue to promote FAA leadership and industry efforts to mitigate the risks of runway incursions, excursions, and confusion. Congress can greatly facilitate this undertaking by ensuring that appropriate funding is available for a long-term modernization effort targeting those communications, navigation, and surveillance systems which directly impact runway safety.

Many aviation industry partners collaborated with the FAA on ways to improve runway safety following its "Call to Action on Runway Safety" in August 2007. ALPA is doing its part by engaging in activities focused on a heightened awareness of runway and airport safety. For example, we have published a series of runway safety newsletters for our membership since January 2008. Additionally, working in conjunction with AOPA, we provided our membership with an interactive runway safety website designed to inform pilots of best practices to increase their vigilance and operational safety during airport surface movements. In fact, we have made runway safety information available to non-ALPA members and the international community. In spite of the efforts of all industry stakeholders, however, runway safety concerns remain. To its credit, the FAA established a new Runway Safety Council (RSC) and its subgroup, the Root Cause Analysis Team (RCAT) in late 2008. ALPA co-chairs the RSC, whose mission is to provide government and industry leadership to develop and focus implementation on an

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<sup>3</sup> Source: Transport Canada

integrated, data-driven strategy to reduce the number and severity of runway incursions. ALPA applauds the increased focus and attention being paid to runway incursions and we are optimistic that safety will benefit as a result.

We support language in S.1300 which would require the FAA to develop a strategic runway safety plan and implement a runway safety alerting system. In addition to runway incursions, we are also focused on reducing the risk from runway excursions.

ALPA's white paper on *Runway Incursions*, published in March 2007, proposed that the U.S. government and aviation industry fulfill the commitments that were made to implement the recommendations of the Commercial Aviation Safety Team (CAST) Runway Incursion Joint Safety Implementation Team. CAST determined that 95 percent of all runway incursions could be prevented with the appropriate mix of technologies. ALPA encourages government and industry action to implement the CAST recommendations. ALPA's position on the issue of runway safety is articulated in greater detail in previous Congressional testimony.

#### Airport Rescue and Fire Fighting

ALPA supports the inclusion of language that would prompt a review of existing requirements to provide fire fighting services at airports. This represents an excellent opportunity to correct a critical safety deficiency that exists at a number of airports served by airline aircraft. Current law and FAA regulations allow airports serving airlines involved in all-cargo operations to reduce, and in some cases even eliminate, firefighting capability on the airport while those all-cargo flights are operating. This means that the crews, other occupants and contents of these all-cargo aircraft are at considerably increased risk in the event of an on-board fire. We urge the Congress to ensure that the review of airport fire fighting standards include a requirement to correct this discrepancy and provide the same level of safety for cargo operations as is available to passenger airlines.

#### Pacific Island Airfields

Funding for the continued operation of Wake Island and Midway Island airfields is important to both the financial health of our industry and the safe operation of trans-Pacific flights. Long, over-water commercial flights should always be conducted using routes that allow diversion to a suitable landing area in the event of an engine failure or similar emergency. Without these airports available as alternates in the event of an in-flight emergency, trans-Pacific flights will be required to use longer, less efficient routes. We are pleased to see support for sustaining the operation of these and other similar airfields and urge the Congress to maintain this position.

#### Aviation Research

As we move to modernize the Nation's air transportation system, many of the emerging procedures for capacity enhancement must be supported by sound research efforts to ensure that the U.S.'s enviable level of safety is maintained. As more and more precise navigation capability allows us to put aircraft closer together without increasing collision risk, we must nevertheless be

mindful of the fact that there is much to be learned about the nature of wake vortices and the effect of wake turbulence both in the terminal and en route realms of operations.

We are encouraged by the level of support shown by the Congress in identifying the need for research into wake turbulence effects as well as the impact on operations of weather such as icing. We urge the inclusion of research into the impact of volcanic ash on operations as well. In addition, phenomena under study in these efforts must not only be studied to determine their operational impact, but methods must be developed to describe the location and effects of such phenomena. This information must be relayed in terms that are operationally relevant and can be transmitted to flight crews and dispatchers in a timely manner to support improved safety decision making.

### Airman Certificate Denial

Section 503 of S. 1300 would give the FAA a right to challenge the NTSB's decision to grant an application for an airman, including medical, certificate in the U.S. Court of Appeals. Under existing law, §44703(d) of Title 49, the NTSB may review the FAA's denial of an application for the issuance or renewal of an airman, including medical, certificate. If the NTSB finds the airman qualified, the NTSB's decision is binding on the FAA and the law provides that the FAA shall issue the certificate.

Currently, only the airman has a right of further appeal from the NTSB. It should be noted that in 1992, the FAA was given a right to appeal NTSB orders issued under §44709 (i.e., suspensions or revocations of existing certificates) per P.L. 102-345. Section 503, would be an expansion of government power with no apparent safety benefit.

Because the FAA has the right under Section 609 of the Federal Aviation Act of 1958 (49 U.S.C. § 44709(a)) to reexamine any certificated airman "at any time," the expansion of power sought by proposed section 503 is simply not necessary for public safety. So long as the reexamination power is appropriately used, the FAA may in its discretion reexamine "at any time" the medical or other qualifications of an airman issued a certificate under 49 U.S.C. § 44703, even after the statutory NTSB review currently permitted by § 44703(d) is completed. This perpetual right of reexamination gives the agency a right not available to an airman and the safety check it needs for the public interest.

Consider, for example, the approval processes used for an FAA medical certificate. An airline pilot must have an FAA aviation physical examination and obtain a new FAA medical certificate each 6 months (in most cases). Currently an airman completes a paper FAA medical application form and undergoes a physical examination by an FAA-designated aviation medical examiner (usually a physician). The FAA-designated medical examiner reviews the application, the applicant's medical history and conducts a physical examination of the applicant. The medical examiner then makes a decision to grant, deny (or defer to the FAA) the decision to issue a current FAA medical certificate. The medical examiner then forwards to the FAA the record of his medical decision (with supporting documentation).

The FAA reviews the decision of the medical examiner and makes an agency decision to grant or deny the medical certificate. (This is the first level of governmental review. In case the agency reverses the decision of the medical examiner, the airman must surrender the certificate.) Historically, further review of this FAA first-level decision was internal to the FAA itself. Because of past concerns about bias within the FAA, airmen petitioned Congress for relief and a process was provided some years ago under § 44703(d) to provide that appeals of FAA decisions denying a certificate were to be made to an independent agency with industry expertise; Congress selected the NTSB.

Now, if the FAA denies the certificate at the first level of review, the airman has a right of appeal of the certificate denial to the NTSB. After a petition for review of the FAA's decision to deny a certificate is filed with the NTSB, a hearing on the record is scheduled and held before an NTSB Administrative Law Judge (ALJ). The ALJ conducts a full hearing on the record (usually in a federal courthouse) with testimony and exhibits, and a full opportunity for argument and cross-examination. At the conclusion of the hearing, the ALJ issues an initial decision. (The second level of governmental review). If either the FAA or the airman disagrees with the ALJ's initial decision, a further appeal may be taken to the full five-member National Transportation Safety Board. (The third level of governmental review).

(We have used the example of the FAA medical certificate thus far, but a similar procedure is applicable to the FAA's denial of pilot certificates and ratings, many of which may have been initially issued by designated pilot examiners who are not FAA employees. Again, Congress selected the NTSB for this further review because of its industry expertise.)

The five members of the NTSB (or as many members as may be seated if there are vacancies) review the record of hearing and the ALJ initial decision and issue a decision that is binding upon the parties, with one basic exception. The airman as an affected citizen is permitted to appeal an adverse Board's decision as a final agency order subject to the typical grounds that the government's (here the NTSB's) final decision was not in issued compliance with the Administrative Procedure Act or was otherwise contrary to law. The FAA has no such statutory rights.

The FAA now seeks a right to appeal its sister agency's final orders under the proposed section 503. ALPA does not believe that giving the FAA the requested power would be good government or a correct policy position. ALPA believes the FAA does not need any further review here because it's perpetual right of reexamination of certificated airmen under § 44709(a) satisfies the public safety interest in the (apparently hypothetical) event that the NTSB's opinion may differ in a future case from that of the FAA. Were the authority sought by the FAA to seek judicial review its sister agency's (the NTSB's) decision granted, it will essentially make the hapless airman a party in a fourth (fifth if you count the original designee's decision) level of governmental review where the essential appellate dispute is really between the differing opinions of two governmental agencies -- the NTSB and the FAA.

This amount of government review is excessive to an ordinary citizen. It would risk effectively overwhelming any rational cost or timeliness considerations when the resources of ordinary

individuals are pitted against abilities of federal agencies to essentially litigate these simple individual certificate denial decisions indefinitely. In sum, the existing process is burdensome enough -- adding additional levels of review proposed by the FAA risks making the process so burdensome that any effective right of review may be denied altogether.

Accordingly, ALPA opposes Section 503 of S. 1300 for the following reasons:

- Current law already provides an acceptable and safe decision mechanism and appeal procedure, with a final decision made by a government board with expertise in the field;
- There has been no demonstration or other showing that the current procedures under §44703(d) are inadequate or that there is any real or substantive risk to public safety under these procedures. Imposing an additional level of Court review without showing a need to change the existing procedures will simply increase the burden and complexity of the medical and airman certificate application processes without any benefit to the public, air safety or the government. A system that would require an individual airman to defend an NTSB decision in his favor in Federal Court after he or she has already defended his or her application for a certificate through two appellate levels of government administrative review is unduly onerous and burdensome upon both the applicant and taxpayers who would be responsible for funding both the cost of the FAA's appeal and the judicial resources necessary for review.

#### Human Intervention and Motivation Study (HIMS) Program

The Human Intervention and Motivation Study is a vital program that helps flight crewmembers operate in as safe a manner as possible. It has been an extremely successful program since its inception in 1974, and we are pleased that Section 702 was included in S.1300. It is funded through fiscal year 2009 and needs to be reauthorized for fiscal years 2010 through 2013.

Finally, I want to express ALPA's appreciation for this Committee's commitment to moving a reauthorization bill as expeditiously as possible this year. As has been discussed at length today, passing a long-term, comprehensive bill to reauthorize the activities of the FAA, to upgrade airports and modernize the NAS, and to improve aviation safety is critical not only to pilots and the aviation industry but to the entire nation and our national economy. Thank you for the opportunity to testify today. I would be pleased to address any questions that you may have.

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