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Committee on Transportation and Infrastructure
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February 1, 2010

SUMMARY OF SUBJECT MATTER

TO: Members of the Subcommittee on Aviation

FROM: Subcommittee on Aviation Staff

SUBJECT: Hearing on “Update: The Federal Aviation Administration’s Call to Action on Airline Safety and Pilot Training”

PURPOSE OF HEARING

The Subcommittee on Aviation will meet on Thursday, February 4, 2010, at 10:00 a.m., in room 2167 of the Rayburn House Office Building to receive testimony regarding an Update on the Federal Aviation Administration’s (FAA) 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 three-day public hearing on Flight 3407 from May 12-14, 2009, that focused 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 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 carriers¹ since the last six fatal 14 C.F.R. part 121 (part 121)² accidents involved regional air

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.

carriers. The NTSB has cited pilot performance as a factor in three of five of those accidents (not including Flight 3407). On February 2, 2010, the NTSB held a public Board meeting to finalize its accident report.

On June 10 and 11, 2009, both the Senate Aviation Operations, Safety, and Security Subcommittee and the House Aviation Subcommittee held 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 duty time 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. Moreover, inspectors would conduct additional inspections to validate that airlines’ training and qualification programs meet regulatory standards in accordance with FAA guidance materials.
- The Department of Transportation (DOT) and FAA developing authority and processes to review agreements between major air carriers and their regional partners.
- The FAA developing and seeking industry comments regarding creating a range of pilot mentoring programs in which more experienced pilots will mentor junior pilots.
- 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 101 part 121 air carriers (Note: three air carriers are no longer in business, so there are currently only 98 part 121 air carriers) and seven labor organizations requesting a written commitment to certain action items by July 31, 2009. Specifically, the Administrator’s letter requested:

<u>From Air Carriers</u>	<u>From Labor Organizations</u>
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;
2) That air carriers who have not done so, establish Flight Operations Quality Assurance (FOQA) ³ and Aviation Safety Action Program (ASAP) ⁴ 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;

² Part 121 contains the rules that scheduled commercial air carriers fly under. Part 121 operators include major commercial air carriers flying under the strictest set of FAA operating regulations.

³ FAA, Flight Operational Quality Assurance, Advisory Circular 120-82 (Mar. 12, 2004).

⁴ FAA, Aviation Safety Action Program, Advisory Circular 120-66B (Nov. 15, 2002).

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.
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On January 26, 2010, the FAA released its final report on the Call to Action entitled *Answering the Call to Action on Airline Safety and Pilot Training* (“Call to Action” Final Report). The FAA received responses from 80 air carriers (out of 98 total) for a response rate of 82 percent.⁵ These carriers represent 99 percent of aircraft operating under part 121. In addition, all seven labor organizations responded positively to the Administrator’s letter.⁶ According to the FAA, the following air carriers did not respond to the Administrator’s June 24, 2009, letter:⁷

List of Carriers That Did Not Respond to the Administrator’s June 24, 2009 Letter^{8,9}

AERO MICRONESIA INC
AIR TRANSPORT INTERNATIONAL LIMITED LIABILITY CO
AVIATION SERVICES LTD
CAPITAL CARGO INTERNATIONAL AIRLINES INC
CENTURION AIR CARGO INC
GEMINI AIR CARGO INC
LYNDEN AIR CARGO LLC
LYNX AIR INTERNATIONAL INC
MERIDIAN ASSOCIATES
NATIONAL AIR CARGO GROUP INC
NETJETS LARGE AIRCRAFT COMPANY LLC
PACE AIRLINES INC
PRESCOTT SUPPORT CO
PRIMARIS AIRLINES INC
RHOADES AVIATION INC
SKY KING INC
SKY LEASE I INC
SWIFT AIR LLC
TATONDUK OUTFITTERS LTD
TEM ENTERPRISES INC

Source: FAA

Overall, the response letters received by the FAA reflect increased commitment by carriers to establish voluntary ASAP and FOQA safety programs. Yet the Department of Transportation

⁵ FAA, *Answering the Call to Action on Airline Safety and Pilot Training* (Jan. 2010) at 13.

⁶ *Id.*, at 2.

⁷ *Id.*, at Appendix 6, 3. While Ameristar Air Cargo In. and Caribbean Sun Airlines Inc. are listed as non respondents in the FAA’s Call to Action Final Report, FAA officials acknowledge that the agency has received letters from these carriers.

⁸ Operators noted in gray are those no longer holding a Part 121 operating certificate.

⁹ Operators noted in BOLD did not respond to the FAA’s Call to Action letter, but have an FAA-approved ASAP program in place.

Inspector General's (DOT IG) office, which conducted an independent review of the response letters received by the FAA, reports that in certain instances carrier commitments to establish these programs are open-ended, as the FAA did not impose, or even suggest, deadlines or milestones for carriers to establish these programs. In other specific instances, carrier commitments were vague or unclear.

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)¹⁰ with approved training programs; training center instructors, air carrier association representatives, labor organization representatives, and FAA operations inspectors to attend. To encourage open discussion, these events were closed to the press and the 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, 2009.

Nevertheless, other "Call to Action" and key related safety initiatives have experienced delays or have yet to be initiated. In fact, a statement from Administrator Babbitt that accompanied the "Call to Action" Final Report notes, "This report is a snapshot of our work, which is by no means finished. We will continue to aggressively push forward with these initiatives that we believe will raise the safety bar even higher."¹¹

Status of FAA Safety Initiatives Related to the FAA's Call to Action

Fatigue: In July 2009, the FAA charted an ARC to develop recommendations for an FAA rule on pilot flight and duty time. The ARC met its September 1, 2009, deadline and provided the FAA with a broad framework for drafting a Notice of Proposed Rulemaking (NPRM) that the agency planned to publish by December 31, 2009. **The FAA now plans to publish an NPRM in April 2010.**

Crew Training: On January 12, 2009, the FAA issued an NPRM to overhaul crew training requirements. The public comment period originally scheduled to be closed in May 2009, was extended and closed August 10, 2009. The FAA received over 3,000 pages of comment that it must review. **The FAA now expects to issue a Supplemental Notice of Proposed Rulemaking (SNPRM) in April 2010** to incorporate some of the views provided and offer the public another opportunity for input on the revised document.

Airline Pilot Qualifications: In September 2009, Administrator Babbitt testified before the House Aviation Subcommittee that the FAA was preparing an Advanced Notice of Proposed Rulemaking (ANPRM) to strengthen the qualitative training requirements and possibly increase the flight hours needed to be an airline First Officer. **The FAA expects the ANPRM to be published in February 2010.**

¹⁰ 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.

¹¹ Statement by FAA Administrator Randy Babbitt on the Call to Action Final Report, FAA Washington Headquarters Press Release, (Jan. 26, 2010) http://www.faa.gov/news/press_releases/news_story.cfm?newsId=11123.

<p>Training Program Review Guidance: Using results from initial elements of the its Focused Inspection Initiative, the FAA planned to, by July 31, 2009, develop a Training Program Review Guidance Safety Alert for Operators (SAFO)¹² to provide airlines guidance material on conducting comprehensive training program reviews. The FAA postponed the completion of the SAFO until December 31, 2009, to incorporate input from its Regional Safety Forums and allow for industry comment, however the SAFO still has not been completed. The FAA now expects the SAFO, and an accompanying notice to its inspectors, to be ready for consultation with the industry by February 2010.</p>
<p>Pilot Mentoring/Experience Transfer Programs: To address professional standards and flight discipline issues, the “Call to Action” Action Plan states that, by July 31, 2009, the FAA will develop and seek industry comments with respect to creating a range of mentoring programs (more recently dubbed “experience transfer” by the FAA) whereby highly experienced pilots will mentor junior pilots. While specific ideas were discussed during the Regional Safety Forums, the DOT IG reports that no substantive progress has been made in this area.</p>
<p>Review of Code Share Arrangements: 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. . .”, presumably to review whether major airlines are requiring their regional partners to adopt the major airline’s most effective safety practices. The DOT and FAA are still considering whether to modify existing processes for granting economic and operating authorities to review code share arrangements.</p>
<p>Pilot Records: The “Call to Action” Action Plan states that the FAA will amend Advisory Circular 120-68D, to recommend air carriers implement a policy of asking pilot applicants for voluntary disclosure of FAA records, including notices of disapproval for evaluation events. The FAA has completed a draft Advisory Circular and anticipates publication by May 2010.</p>

I. Pilot Training and Qualifications

On January 12, 2009, the FAA issued an NPRM to overhaul specific crew training requirements.¹³ According to the FAA, the January 2009 NPRM is the most comprehensive upgrade to FAA training requirements in 20 years and was drafted working with an ARC that included pilots, flight attendants, airlines, training centers, the FAA, and others.¹⁴

The proposal establishes new requirements for traditional air carrier training programs to ensure that safety-critical training is included. Some of the proposed training requirements include: training and evaluating flight crewmembers in a complete flight crew environment; the use of flight simulators for training, testing, and checking flight crewmembers; additional training and practice in the use of crew resource management (CRM)¹⁵ principles; and training in a flight simulator with a complete flight crew. In addition, the FAA’s January 2009 NPRM strengthens upset recovery

¹² SAFOs are information tools that the FAA uses to alert, educate and make recommendations to the aviation community.

¹³ Qualification, Service and Use of Crewmembers and Aircraft Dispatchers, 74 Fed. Reg. 1280 (proposed Jan. 12, 2009) (to be codified at 14 C.F.R. pts. 65, 119,121 et al.).

¹⁴ Hearing on Regional Air Carriers and Pilot Workforce Issues, Before the House of Representatives, Committee on Transportation & Infrastructure, Subcommittee on Aviation, (Statement of the Honorable J. Randolph Babbitt, Administrator, Federal Aviation Administration) (June 11, 2009) at 6.

¹⁵ CRM focuses on improving communications between the pilots and crew, while taking into account human factors, hardware, and information. CRM also focuses on situation awareness, communication skills, teamwork, task allocation, and decision making within a comprehensive framework of standard operating procedures with the goal of preventing accidents and dealing with stressful situations by improving performance through enhanced coordination.

training requirements by adding an “Upset Recognition and Recovery” section that sets out the awareness expected of each pilot and what actions each pilot will be expected to learn and be able to perform should an upset occur.

The public comment period originally scheduled to be closed in May 2009, was extended and closed on August 10, 2009. The FAA received over 3,000 pages of comments, including opposition from the airline industry groups. Some comments stated that the FAA failed to disclose performance data used to develop the NPRM, and that the FAA used statistically invalid data. The Air Transport Association (ATA) expressed concern that the proposed regulations could adversely impact voluntary alternative Advanced Qualification Programs (AQP)¹⁶ training programs that enable airlines to customize their crew training programs based on their actual operating environments. To address these comments, the FAA is conducting technical and accident analyses, and is revising its regulatory evaluation (i.e., cost-benefit analysis).

The FAA plans to review comments, and issue a SNPRM in April 2010 to incorporate some of the views provided and offer the public another opportunity for input on the revised document.

Moreover, in September 2009, Administrator Babbitt testified before the House Aviation Subcommittee that the FAA was preparing an ANPRM to strengthen qualitative training and experience (e.g., “experience in areas such as the multi-pilot environment, exposure to icing, high altitude operations and other areas common to commercial air carrier operations”¹⁷) and possibly increase the flight hours required to be an airline First Officer (currently a minimum of 250 flight hours are required). The FAA expects the ANPRM to be published in February 2010.

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.¹⁸

- 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).

¹⁶ 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 (Jun. 23, 2006).

¹⁷ Hearing on the Federal Aviation Administration’s Call to Action on Airline Safety and Pilot Training, Before the House of Representatives, Committee on Transportation & Infrastructure, Subcommittee on Aviation, (Statement of the Honorable J. Randolph Babbitt, Administrator, Federal Aviation Administration) (Sep. 23, 2009) at 7.

¹⁸ Airline rules may be stricter than FAA regulations, for example, if the issue is part of a collective bargaining agreement.

- 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. On November 23, 2009, the FAA withdrew the 1995 Flight Crewmember Duty Period Limitations, Flight Time Limitations and Rest Requirements NPRM, “because it is outdated and because it raised many significant issues that the agency needed to consider before proceeding with a final rule.”¹⁹

On June 15, 2009, the FAA announced plans to establish an ARC charged with developing recommendations for a new 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 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 standards²⁰ 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 [FMRS].”²¹

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.”²² 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 pilots flying cross-country would be able to fly the return trip

¹⁹ Flight Crewmember Duty Period Limitation, Flight time Limitations and Rest Requirements; Withdrawal, 74 Fed. Reg. 61068 (Nov. 23, 2009).

²⁰ For example, the ICAO standard, the United Kingdom Civil Aviation Publication (CAP) 371 and European Aviation Safety Agency (EASA) Notice of Proposed Amendment.

²¹ In addition to the flight and duty time NPRM, the FAA notes that it is also working with the International Civil Aviation Organization (ICAO) to develop a Fatigue Risk Management System (FRMS). FRMS represents a voluntary risk based approach to improve flight crew alertness whereby airlines would manage fatigue with input from all company personnel, including management, flight crewmembers, maintenance personnel, schedulers, and dispatchers.

²² Andy Pasztor, *Pilots, Airlines Urge New Fatigue Rules*, the Wall Street Journal, Sep. 10, 2009, at A3.

the same day.²³ 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 ARC met its September 1, 2009, deadline and provided the FAA with a broad framework for drafting a NPRM that the agency planned to publish by December 31, 2009. The FAA now plans to publish an NPRM in April 2010. The “Call to Action” Final Report states that the FAA is developing two Advisory Circulars to provide guidance on the use of FRMS and issues related to commuting.²⁴

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.”

The ASAP 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. FOQA 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.²⁵

As part of the Call to Action, FAA Administrator Babbitt wrote to part 121 air carriers urging all air carriers who have not yet done so to establish FOQA and ASAP programs, and to develop data analysis processes to ensure effective use of this information. The table below summarizes the responses received related to FOQA and ASAP:²⁶

²³ 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.

²⁴ FAA, *supra*. note 5 at 9.

²⁵ Safety Recommendations A-07-1 through -11, Letter from Chairman Mark V. Rosenker, NTSB, to the Honorable Marion C. Blakey, Administrator, FAA (Jan. 23, 2007).

²⁶ FAA, *supra*. note 5 at 14.

Air carriers that have both FOQA and ASAP	22
Air carriers that have ASAP and intend to have FOQA	28
Air carriers that have ASAP and do not intend to have FOQA	10 ²⁷
Air carriers that do not have FOQA and ASAP but intend to establish one or both	19
Air carriers that do not have FOQA and ASAP and do not intend to establish programs	3

Source: FAA

In total, 78 carriers (out of 98 total – 80 percent) have or intend to implement ASAP (60 have ASAP; 18 intend to implement ASAP). These carriers represent 98 percent of the aircraft flying in part 121 operations. In addition, 61 carriers (out of 98 total – 62 percent) have or intend to implement FOQA (22 have FOQA; 39 intend to implement FOQA). These carriers represent 94 percent of the aircraft flying in part 121.

Yet the DOT IG’s office, which conducted an independent review of the response letters received by the FAA, reports that in certain instances, carrier commitments to establish these programs are open-ended, as the FAA did not impose, or even suggest, deadlines or milestones for carriers to establish these programs. In four instances, carrier commitments were vague or unclear, referencing “in house” or “internal” FOQA programs – possibly indicating reliance on programs that have not been approved by the FAA. Regardless, in cases where carriers have committed to establishing an ASAP or FOQA program, either by a date certain or not, the DOT IG notes that the FAA has not yet developed a process to verify that carriers have followed through on their commitments, and therefore recommends that the FAA develop such a process. FAA officials respond by stating that the agency already has the ability to track the establishment of ASAP and FOQA programs through the approval process at FAA headquarters.

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 procedures²⁸ should have been in effect.

Ever since the issuance of the Call to Action, FAA Administrator Babbitt, himself a former airline pilot, has, in speeches, cited a lack of professionalism as a factor negatively affecting safety standards within the aviation industry and has called for greater professionalism in the workplace across the industry and FAA. As part of the “Call to Action,” FAA Administrator Babbitt wrote to seven 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, all seven labor organizations responded to the Administrator’s letter favorably. In addition, the “Call to Action” Final Report states that the FAA will host a gathering of pilot labor organizations in February, and then again in March 2010 to develop actionable guidelines on cockpit discipline and pilot professionalism.

²⁷ This number includes data from two air carriers who did not respond, but who have an approved ASAP with the FAA. *Id.*

²⁸ 14 C.F.R. § 121.542.

To address professional standards and flight discipline issues, the “Call to Action” Action Plan stated that, by July 31, 2009, the FAA will develop and seek industry comments with respect to creating a range of mentoring programs (more recently dubbed “experience transfer” by the FAA) whereby highly experienced pilots will mentor junior pilots. 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.

Nevertheless, the DOT IG reports that the FAA has made no substantive progress with regard to developing mentoring/experience transfer programs. FAA officials acknowledge more can be done in this area, and the agency plans to engage pilot labor organizations on the subject in early March 2010.

V. 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.²⁹

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 (Advisory Circular 120-68D). To obtain this additional information, a carrier must obtain a Privacy Act waiver from the pilot-applicant.

²⁹ Public Hearing in the Matter of the Colgan Air, Inc. Flight 3407, Bombardier DHC8-400, N200WQ Clarence Center, New York, February 12, 2009 (May 12, 2009) (Statement of Hearing Officer Lorenda Ward, NTSB) at 19.

Administrator Babbitt's June 24, 2009, 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." Fifty-three of the 80 air carriers that responded to the Administrator's letter reported that they already require full disclosure of a pilot applicant's record. Another 15 operators stated that they intend to implement this policy.³⁰

The "Call to Action" Action Plan also states that the FAA will also amend Advisory Circular 120-68D, to recommend that air carriers implement a policy of asking pilot applicants to voluntarily disclose their FAA records. FAA officials state that the FAA has completed a draft of the revised Advisory Circular, that it is being circulated for internal coordination and legal review, and that it should be published by May 2010.

On October 14, 2009, bipartisan legislation H.R. 3371, the "Airline Safety and Pilot Training Improvement Act of 2009" was approved by the House 409 – 11. 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.

VI. 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 SAFO 06015, which recommended that all part 121 carriers identify pilots with training deficiencies, such as multiple failed check rides, 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 06015.³¹

The FAA's Focused Inspection Initiative has two parts. First, pursuant to a June 24, 2009, notice,³² 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 AQP and were exempt from the requirements of the notice. FAA inspectors held the meetings required by the notice with the remaining 85 air carriers. Seventy-six carriers (including the 14 AQP carriers) have systems to comply with remedial training requirements. An additional 15 carriers have

³⁰ FAA, *supra*. note 5 at 13.

³¹ Public Hearing in the Matter of the Colgan Air, Inc. Flight 3407, Bombardier DHC8-400, N200WQ, Clarence Center, New York, February 12, 2009, (Statement of Douglas Lundgren, FAA, POI for Colgan Air, Inc. NTSB) (May 13, 2009) at 481.

³² Focused Program Review of Air Carrier Flight Crewmember Training, Qualification and Management, N 8900.78 (June 24, 2009).

some parts of a remedial training system. Eight carriers lacked any component of a remedial training system and have received additional scrutiny from the FAA.³³

The second part of the FAA initiative required that FAA 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 to airlines on conducting a comprehensive training program review. This guidance was to describe the training program review in the context of a safety management system (SMS)³⁴ and its role in a corporate safety culture.

However, the 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, 2009, the second part (which calls for a more in-depth review of training) was not completed until September 30, 2009. Second, the FAA found that the initial July 15 timeframe would not allow it to incorporate suggestions and ideas developed in FAA's Regional Safety Forums into the SAFO. Therefore the FAA postponed the completion of the SAFO until December 31, 2009, however the SAFO still has not been completed. The FAA now expects to complete the SAFO, and an accompanying notice to its inspectors, to be ready for consultation with the industry by February 2010.

VII. 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.

³³ FAA, *supra*. note 5 at 1.

³⁴ SMS is essentially a risk management approach to managing safety oversight. It provides the organizational framework to support a strong safety culture within an organization. SMS uses the tools of monitoring, assessment, corrective action, identification of problems/risks, and auditing. The ICAO has defined SMS as a "systematic approach to managing safety, including the necessary organizational structures, accountabilities, policies, and procedures." In 2007, the NTSB recommended that all carriers should integrate an SMS program into their safety oversight systems. ICAO established a January 2009 deadline for nations to adopt an SMS mandate. In July 2009, the FAA issued an ANPRM on SMS to solicit comments to help it establish an ARC and a potential rulemaking on SMS.

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." According to FAA, 33 carriers (out of 98) have indicated that they have held, or intend to hold, meetings with regional partners with respect to FOQA, ASAP, and best practices. Some specific examples outlined the letters include:

- Entering contract agreements that permit safety audits by the major airline of the regional partner, as well as review of the partner carrier's ASAP/FOQA data;
- Hosting regular meetings of the safety departments of the major air carrier and all regional partner air carriers;
- Major airlines requiring regional partners to implement ASAP, FOQA, International Airline Transport Association (IATA) Operational Safety Audit (IOSA) and Department of Defense (DOD) programs and standards.

Moreover, FAA officials also note that recently, the ATA's Safety Council invited directors of safety from both the National Air Carrier Association (NACA) and the Regional Airline Association (RAA) to attend the quarterly ATA Safety Council meetings and to share in all professional discussions.

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 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. According to the Call to Action Final Report, DOT and FAA are still considering whether to modify existing processes for granting economic and operating authorities to review code share arrangements.³⁵

WITNESSES

The Honorable J. Randolph Babbitt
Administrator
Federal Aviation Administration

The Honorable Calvin L. Scovel, III
Inspector General
U.S. Department of Transportation

³⁵ FAA, *supra* note 5 at 14.