

TESTIMONY
Of
THOMAS E. ZOELLER

National Air Carrier Association
1000 Wilson Boulevard
Suite 1700
Arlington, Virginia 22209

703-358-8065

**STATEMENT OF
THOMAS E. ZOELLER
PRESIDENT AND CEO
NATIONAL AIR CARRIER ASSOCIATION
BEFORE THE
HOUSE AVIATION SUBCOMMITTEE
“THE ECONOMIC VIABILITY OF THE CIVIL RESERVE AIRFLEET
PROGRAM”
MAY 13, 2009**

Mr. Chairman, Mr. Petri and Members of the Committee:

On behalf of the National Air Carrier Association (NACA), I appreciate this opportunity to appear before you this morning to offer our member airlines’ views on the economic viability of the Civil Reserve Airfleet Program (CRAF).

NACA, founded in 1962, represents 10 air carriers, certificated by the Federal Aviation Administration under Part 121 of the Code of Federal Regulations, to operate as commercial airlines. Our carriers represent a diverse and unique part of the commercial aviation market, offering low-cost commercial passenger service, charter passenger, and charter and ACMI cargo operations. Together, our carriers generated several billions of dollars in revenues in 2008. Our carriers employ thousands of employees, and operate global operations, flying from the smallest cities in the United States to some of the remotest destinations around the globe.¹

All of our NACA carrier members are engaged, or soon will be qualified to be engaged, in CRAF operations, providing regular passenger and cargo air lift for U.S. Transportation Command (USTRANSCOM).

We applaud the Subcommittee for calling this hearing today, because the issue of the economic viability of the charter airline industry, indeed of the entire commercial aviation industry, is something that should be of universal concern. As you have heard in

¹ NACA carriers include: Allegiant Airlines, Atlas Air Worldwide Holdings, Miami Air International, North American Airlines, Omni Air International, Pace Airlines, Ryan Air International, Southern Air, USA3000 Airlines, and World Airways.

the testimony from USTRANSCOM, this has been an issue of concern for them in ensuring that the U.S. has viable commercial charter operators. NACA and our member carriers have supported the initiatives undertaken by General McNabb, as well as those of his immediate predecessor, General Norton Schwartz, in convening important studies to examine the overall health of the airline charter industry, as well as the policies and procedures of the military charter program.

At the outset, it is important to note that the CRAF program is a model partnership between the Federal government and private industry that has worked well since it was started over 50 years ago. The program has been nurtured and refined over the last half decade, and is today more robust than ever. The CRAF partnership is a business-based, voluntary contractual relationship which provides a productive peacetime incentive for the carriers. The Department of Defense (DoD) has complete flexibility in the program, and particularly in the activation of CRAF in times of national security emergencies. As you know, there are three stages of CRAF activation, in which passenger and cargo airline operators can be activated separately or together. Once CRAF has been activated, the DoD has the flexibility to be very specific in the types of aircraft that need to be activated. Throughout the years, the number of U.S. troops overseas has determined the transportation requirements for USTRANSCOM. As a result, that level of incentives has fluctuated. Logistics policies and program continue to change which, in the end, are intended to improve support to the combat commanders.

Although there has been an intense focus over the last several years on military operations in Iraq and Afghanistan, which will include the buildup of U.S. forces in Afghanistan, USTRANSCOM leadership has started to focus on the transition to a peacetime CRAF program and what that will mean for the charter carrier industry. To prepare for that transition, USTRANSCOM advocated for legislative changes to authorize a minimum annual purchase requirement for charter air carriers. The Congress concurred with the passage of the Defense Authorization Act for FY09, which, in part, provides the Secretary of Defense with the necessary authority to take steps necessary to improve the predictability of DoD charter requirements; to strengthen the CRAF fleet

participation to assure adequate capacity; and, to provide incentives for commercial passenger carriers to obtain more efficient and reliable aircraft. See, 10 U.S.C. §9515(a). NACA has been a strong proponent of this initiative and we are grateful to the Congress for providing this authority. We believe that this is the right approach in preparing the CRAF program for the post-Iraq environment. As USTRANSCOM begins to consider how best to implement this provision, our concern is that the minimum or assured buy must be set at the right level of value to ensure the appropriate subscription of carriers in the CRAF program. The total value of the assured buy must be sufficient to provide incentives for upgrading aircraft, improving efficiency and improved defense mobilization value.

Prior to the passage of the assured buy language, the Congress was equally concerned about the future of the CRAF program when it directed a study of the program by the Institute for Defense Analyses in the FY08 Defense Department Authorization Act, Public Law 110-181, (IDA Study). General Schwartz also contracted for an independent study of the CRAF program, with the Council for Logistics Research providing an analysis in July of 2008 (CLR Study). Neither study concluded that the CRAF program was seriously flawed. In fact, the IDA Study concluded that the strategy of dependency on the commercial aviation industry “has served the nation well, and can continue to do so in the coming years.” IDA Study at p. ES-2. While both studies made a number of recommendations, some of which are in direct conflict, the recommendations do not require legislative action. We believe that these are administrative matters which can and should be left to USTRANSCOM to determine, with appropriate input from the carriers. As an association, we have met with both General Schwartz and General McNabb and have pledged our full support to work collaboratively to ensure that this partnership remains successful for both the Federal government and the carriers.

As the Subcommittee is aware, we have been faced with one of the most challenging times for the entire U.S. aviation industry. Last year’s fuel crisis resulted in an unprecedented number of airlines filing for bankruptcy protection, resulting in the liquidation of several carriers. That crisis dramatically affected our association, which as

early as September 2007 had 16 part 121 operators. Today, we have 10 members. Regrettably, a number of those carriers will not return to commercial air service. Together with the global recession, this is a very timely hearing to consider the economic viability of the commercial airline charter segment. And we believe that there are a number of areas which the Congress should focus on to ensure that our industry remains healthy and vibrant.

There are a number of reasons why we have seen a decline in the number of commercial charter operators in the United States. Increased competition resulting from airline deregulation and the liberalization of air service between the United States and foreign countries has contributed to the decline in wholesale airline charter operations. Increased domestic competition together with excess domestic airline seat capacity have resulted in making regularly scheduled airlines as cost-effective to tour operators as a wholesale aircraft charter. With the liberalization of airline services between the United States and other foreign countries, consumers are no longer faced with limited options and high airfares, which made international charters attractive to the leisure traveler. It should be noted that this is a similar pattern we are beginning to see develop in Europe. Under a heavily regulated regime, charter airlines flourished and prospered because they were used essentially to further a government's desire to develop tourism at various resorts in markets that were restricted, so as not to undermine the national flag carrier. As Europe moves into a more deregulated airline industry and reduces the restriction on flights into countries, the role once played by charter airlines is becoming more and more dominated by low cost carriers.

Today, our NACA member airlines remain some of the most profitable air carriers in the U.S. airline industry. Our carrier members are able to effectively compete for air transportation business by maintaining low cost structures and effective aircraft utilization rates. And while they have been successful in creating new charter business opportunities, through CRAF and other government charters, as well as private sector charter, we do believe that their profitability, indeed their future survival, is being threatened on a number of fronts.

First, there is a growing demand from other countries for a greater liberalization of U.S. laws and policies that are designed to protect and nurture a vibrant U.S. airline industry. Secondly, we believe that some Department of Transportation (DOT) policies are effectively undermining competition; and third, that some legislative proposals will further weaken the ability of U.S. charter airlines to maintain a low cost structure.

INTERNATIONAL ISSUES

Last March, the U.S. and the European Union (EU) heralded the implementation of an Open Skies agreement. This much sought after liberalization of European rules and restrictions that prevented U.S. carriers from competing directly in EU countries has provided a number of new opportunities for air service between the U.S. and the EU. As you know, when the U.S. and EU agreed to the open skies agreement, the agreement contemplated a second round of negotiations to address several unresolved issues. A second round of negotiations has already commenced, and U.S. and EU officials will be meeting again this June in Brussels. It has been made clear within the context of initial negotiations and the exchange of correspondence that the EU is extremely interested in a further liberalization of U.S. laws and regulations, some of which, if enacted, would be devastating to the U.S. airline industry and to the charter industry in particular.

Seventh Freedom Rights

For many years, the DOT has permitted foreign air carriers charter authority to fly U.S. passengers from the U.S to third country destinations. While some restrictions and transparencies have been put into place recently, the practice is still extremely harmful to the viability of U.S. charter carriers. U.S. scheduled carriers are protected from such seventh freedom flights as these operations are not permissible on a scheduled basis. This is not the case for charter operations. A majority of foreign carriers operating these flights pair with U.S. tour operators or indirect air carriers in the winter months to run vacation programs from northern U.S. cities to various destinations in the Caribbean for

an extended period of time, in some cases up to four months without ever returning to their homeland during that time period. The primary reason tour operators use foreign carriers is price. At the height of the U.S. vacation market in the winter, many countries around the world experience a lull in passenger vacation flights. These circumstances do not hold true in the U.S. Therefore, many foreign carriers have an excess capacity of aircraft and are willing to offer them to U.S. tour operators “at cost” to simply meet the lease payments on the aircraft. U.S. carriers simply cannot meet this competitive advantage. This translates into lost business for U.S. carriers and a threat to the long term viability of charter carrier participation in the U.S. CRAF.

The Federal government has long had a policy of prohibiting foreign carriers from operating scheduled “seventh freedom” passenger flights, and of refusing to include such permission in any bilateral agreements – even “open skies” agreements. The DOT’s practice under Part 212 of routinely allowing Seventh freedom passenger flights to be operated into and out of the United States as long as they are designated as “charter” flights seems to be directly at odds with this long-standing policy.

In February 2006, the DOT issued a final rule, which was based on a petition for rulemaking initiated by NACA. That rule requires: (1) clarification of the definition of "fifth freedom charter" by adding definitions of "sixth- and seventh-freedom charters" in §212.2; (2) modification of the DOT Form 4540 (Foreign Air Carrier Application for Statement of Authorization) by requiring updated reciprocity statements by foreign air carriers seeking a statement of authorization under Part 212; and (3) a requirement that foreign air carriers apply for a statement of authorization under Part 212 to include historical data relative to the applicant's U.S-home country operations.

The definitional amendments to Part 212 clarifies that sixth-freedom charter means a charter flight carrying traffic that originates and terminates in a country other than the country of the foreign air carrier's home country, provided the flight operates via the home country of the foreign air carrier; and that seventh-freedom charter means a charter flight carrying traffic that originates and terminates in a country other than the foreign air

carrier's home country, where the flight does not have a prior, intermediate, or subsequent stop in the foreign air carrier's home country.

The revision of OST Form 4540 requires that, at the time of application for fifth-freedom charter authorization, the applicant foreign air carrier must present certification from its homeland government (or cite certification previously submitted to the Department that is dated within the previous 90-day period), that indicates that the carrier's homeland grants to U.S. carriers a privilege similar to that requested by the applicant. The revision also requires applicant carriers to indicate on the application the number of third- and fourth-freedom flights the carrier has operated in the previous 12 month period.

While these changes were important, and long overdue, regulatory reforms needed in the charter industry, NACA still believes this action did not go far enough. The U.S. charter industry is of the opinion that it is not sound policy to allow such relatively unrestrained charter “seventh freedom” operations to continue to take place. Even with these changes, seventh freedom charter operations are still routinely permitted by DOT. The Department has total discretion in deciding what criteria it will utilize for granting such permission as they are considered to be extra-bilateral.

This issue is taking on renewed importance with U.S. /EU second stage negotiations which are underway. The EU has proposed to formally adopt seventh freedom passenger rights in any new agreement reached between the two sides. Acceptance of this proposal would formally enshrine the right for EU carriers to fly as much seventh freedom traffic as they want.

We strongly believe that adoption of any seventh freedom traffic within the context of a second Open Skies agreement with the EU will result in the destruction of the U.S. charter industry. First, there is no significant market in the EU for U.S. carriers to fly. Many EU residents use the extensive rail system in Europe to take their holidays in the summer months. Also, with the advent of low-cost carriers like the Ireland-based Ryanair for example, the charter market is even less viable than in past years. However, in the U.S., many residents take their vacations in winter months to southern cities or a

Caribbean destination which usually requires flights. EU carriers are attractive to tour operators because their costs generally run less than U.S. charter carriers as our winter season is their static period and they are able to offer aircraft for a reduced price since they would likely get little if any use in Europe during these slow months. Secondly, there is also a significant difference in the cost of the U.S. regulatory burden in comparison to most foreign carriers. In general, Federal Aviation Administration (FAA) oversight of a foreign air carrier is limited to an assessment of the foreign country's ability to regulate its air carrier under the laws of the country of registration and the Standards of the various annexes of the International Civil Aviation Organization (ICAO). Even the ICAO Recommended Practices may be waived by the nation of aircraft and air carrier registry. The only authority the FAA has over a foreign aircraft is to ensure that the crewmembers have valid pilot certificates and the aircraft has an apparent valid airworthiness certificate. FAA may perform ramp inspections, but may not perform in-flight cockpit checks.

Unless the foreign air carrier elects to register its aircraft in the United States, the FAA has no control over the airworthiness of that aircraft. Thus, many of the safety and airworthiness directives required of U.S. air carriers are not required of foreign operators. For example, 14 CFR 129 specifically excludes a foreign aircraft from the maintenance programs and minimum equipment list requirements for U.S.-registered aircraft (14 CFR 129, § 129.14) and the requirements for digital flight data recorders (14 CFR 129, § 129.20). Some cockpit voice recorder requirements are covered under ICAO's recommended practices, but these may not be up to FAA regulatory standards for U.S. registered aircraft. Additionally, many nations of the world do not require cargo compartment smoke detection and protection, a safety feature thought to be of utmost concern in the U.S. All of these are costly programs for U.S. carriers, and where competitors do not have to comply, there is an uneven field of competition.

Moreover, there is seldom a day when the FAA does not issue an airworthiness directive (AD) that is mandatory for U.S. registered aircraft, but optional, at best, for foreign registered aircraft. Furthermore, the FAA is currently deep into a program of

surveillance and regulation of U.S. air carriers that goes far beyond regulatory compliance; embraces the concepts of ISO 9000; and requires U.S. carriers – but not foreign carriers - to conform to the FAA’s views of best industry practices.

In our view, Congress must express its strong opposition to the Obama Administration concerning any acceptance of passenger Seventh Freedom rights in the U.S. /EU aviation negotiations – or any bilateral or multilateral talks.

Fly America

The Fly America Act, 49 U.S.C. § 40118, passed in 1958, requires that any contract for air transportation of passengers or property by any U.S. government agency for which payment is made by the United States or for which payment is made from any funds appropriated for any U.S. agency shall be provided by U.S. air carriers.

Fly America is a key element in national defense, as the United States is dependent upon airlift provided by U.S. commercial air carriers for more than 90 percent of the passenger airlift; and more than 40 percent of the cargo airlift for any deployment, sustainment or redeployment of U.S. forces in a national defense contingency.

In the Fly America Act, the nation acknowledges the strategic importance of regular, long-term support for the U.S. air carrier industry without any additional appropriation. Fly America does not require any agency to expend funds with U.S. air carriers unless that agency, directly or indirectly, has an air transportation requirement. However, if a Federal agency needs to transport its people or property, it must first give a U.S. air carrier the opportunity. The law provides alternatives to agencies where a U.S. air carrier cannot reasonably meet the agency’s mission.

Our current national security strategy depends upon U.S. air carriers support to the CRAF for more than 90 percent of the nations wartime troop air transportation and approximately 40 percent of its long-range military cargo capability. If the DoD had to

own and operate the equivalent airlift within its organic forces, it would cost the Federal government hundreds of billions of dollars in life-cycle costs for aircraft, aircrews and command and control infrastructure. Fly America assures national security airlift from commercial air carriers as a simple byproduct of peacetime government agency transportation requirements.

DOT POLICIES AND INTREPRETATIONS

While the DOT and the State Department have consistently refused to allow broad seventh freedom rights for foreign air carriers, recent legal interpretations by the DOT's counsel's office have caused considerable concern for our carrier members.

Federal law prohibits cabotage, except for very specific exemptions. See, 49 U.S.C. §§40109(g) and 41703(c). Yet, in an October 2008 legal opinion, the DOT concluded that a proposed series of charter flights by Air Canada to provide the National Hockey League's Boston Bruins through the 2008-2009 NHL season did not constitute illegal cabotage.

The proposed charter included 73 flights, 48 of which were over U.S. domestic segments. During an eight week period between November 1, 2008 and January 17, 2009, Air Canada proposed to conduct 18 consecutive domestic flights, and over a five-week period from February 12 to March 15, 2009, another 13 consecutive domestic flights. However, the DOT concluded that this did not constitute cabotage "provided that no local traffic of any kind is carried between U.S. points. . . ." Letter of Donald H. Horn, Assistant General Counsel for International Law, U.S. Department of Transportation, dated October 6, 2008.

By letter dated March 16, 2009, signed by NACA, along with the Air Line Pilots Association, the Association of Flight Attendants and the Air Transport Association, we asked DOT Secretary LaHood to reconsider this legal determination. We argue that this interpretation is completely at odds with both the prohibition of domestic traffic by

foreign carriers by Federal law and long-standing precedents by the DOT and its predecessor agency, the Civil Aeronautics Board. Foreign air carriers are only permitted to hold permits which authorize them to engage in foreign air transportation. In our collective view, the Air Canada operation cannot be reasonably deemed to be foreign air transportation. A copy of our letter to Secretary LaHood is included with our testimony.

LEGISLATIVE CONSIDERATIONS

Counter-MANPADS Pilot Program for CRAF Carriers

Today, a number of our carriers are already flying CRAF cargo missions into places like Afghanistan. While USTRANSCOM acknowledges that it would never use a civilian aircraft to fly a DoD mission into a dangerous situation, we are increasingly concerned about the instability of the environment in places like Afghanistan. The ease by which terrorists or other militant groups can obtain dangerous weapons systems, like shoulder-fired missiles or MANPADS, leads us to be concerned that even in areas that are deemed safe, there remains a dangerous propensity for the use of MANPADS against a U.S. flag carrier. To that end, a number of our carrier members have been interested in expanding a recently concluded Department of Homeland Security pilot program on counter-MANPAD technology. We believe that there is a need and an interest in developing a similar pilot program within USTRANSCOM, to examine the feasibility and practicality of providing U.S. civilian aircraft operating DoD missions to be equipped with a counter-manpad technology.

The key to this pilot program would be a portable system, consistent with similar systems already installed on DoD aircraft. With a portable system, the CRAF aircraft would not have to be equipped with the C-MANPAD pod for the entire flight. CRAF aircraft would make a scheduled stop at which point DoD personnel install the system and the aircraft continues its flight to the termination point. At the termination point, DoD could remove the pod, or the pod could be removed at a predetermined transit stop as part of the return leg to the U.S. Portable system allows both DoD and CRAF carriers to make

determinations about the potential risk for a flight and make that decision at the appropriate point in time. This allows for greater fleet utilization. As a DoD program, the U.S. government controls the technology, thus reducing the administrative burdens for licenses under Federal import/export technology laws. We believe that this program would be modest in size, for a cost of approximately \$20 million. At this level, USTRANSCOM would be equipped with a suitable number of portable systems to prove the concept.

FAA Reauthorization

As part 121 carriers operating within the National Airspace System, NACA carriers face the same challenges as our major airline counterparts in navigating through an increasingly outdated air navigation system. We share the concerns of this subcommittee that a long-term FAA reauthorization legislation is long overdue. We applaud the efforts of the subcommittee in passing a comprehensive reauthorization bill designed to promote the rapid development and implementation of the Next Generation Air Transportation System. However, there are several provisions included in H.R. 915, the FAA Reauthorization Act of 2009 that are of concern to our member carriers.

Section 303: Inspection of Foreign Repair Stations

Section 303 of the House bill would require the Administrator of the FAA to certify that each foreign repair station certified by the FAA under part 145 of title 14 of the Code of Federal Regulations has been inspected within the last two years, and that certification requirements for these foreign repair stations must include testing for alcohol and controlled substances. We are concerned that this language, without any modification, will effectively close access to foreign repair stations for our member airlines. Moreover, at a time when our economy is shedding a record number of jobs on a daily basis, the unintended consequence of this language will result in the loss of jobs in the United States.

We are convinced that if this language were adopted into law, it would lead to retaliatory actions by the European Community, raising costs for repair stations, putting customer

relations at risk, and placing these stations at a competitive disadvantage in a very difficult economy.

As you know, our industry is committed to safety and ensuring that all our aircraft are maintained and repaired in safe and secure facilities. Industry facilities are constantly inspected – by the FAA, foreign aviation authorities, and our air carriers. Requiring twice-annual inspections of stations we know to be safe does not increase safety and is at odds with the risk-based system FAA is moving to for repair station oversight. This provision also risks many other areas of significant aviation safety activity such as flight training, simulators and certification. Moreover, foreign repair station certificates do not last indefinitely. Rather, they are subject to, and these stations must pay for, FAA renewal every one to two years.

Recent conversations with European officials suggest that if this language were adopted, Europe would engage in retaliatory actions, requiring at a minimum, having twice-annual inspections of U.S.-based, EASA certificated repair stations. This would effectively increase the certification costs for these repair stations from \$960 to \$32,100 per station per year. As a result, we fear that U.S.-based repair stations will lose their EASA certifications. EASA will not have sufficient staffing levels to visit each of the 1,200 U.S.-based repair facilities (compared to only 425 FAA certificated repair stations in Europe) twice per year, so, if the Europeans abide by language identical to that in Section 303, many U.S. facilities would lose their EASA certificates. Stations unable to be reviewed by EASA personnel would no longer be able to work on European-registered aircraft and components hurting stations with customers who require both U.S. and EASA certification.

For our carriers, this would be a devastating blow. A number of our carriers operate as charter operators throughout the world, including a significant amount of passenger and cargo charters for the U.S. military through the CRAF. A significant number of these CRAF operations are international flights, bringing U.S. military personnel to and from the major theatres of combat operations and, on occasion, our members' aircraft require

maintenance and repair while overseas. The loss of the use of a foreign repair station would essentially eliminate the ability of our carriers to safely operate in a competitive, global environment.

Section 307: OSHA Standards for Flight Attendants on Board Aircraft

This section requires the FAA to promulgate new regulations that relate to issues in the cabin environment and the nature of the work performed by flight attendants. The Administrator would be required to consult with the Administrator of the Occupational Safety and Health Administration in the development of these new rules. While this section provides that the FAA must make safety paramount in the development of these regulations, we are concerned that this section creates an entire new bureaucracy of oversight, inspection and rulemaking that will directly conflict with the safe operation of an aircraft. Activities within the cabin of the aircraft are already heavily regulated by the FAA in a manner to promote the safe operation of the aircraft. This provision will only impose a further level of regulatory compliance that seems duplicative of current regulations. In our view, this provision is unnecessary and will likely impose additional costs on an airline industry, without a demonstrated meaningful benefit to the flight crew or the traveling passenger.

Section 310: Noncertificated maintenance providers

Section 310 of the bill mandates that within three years the FAA issue regulations requiring that all "covered maintenance work" on aircraft used to provide air transportation under 14 CFR part 121 be performed by: an individual employed by the air carrier, employed by another part 121 carrier, employed by a part 145 repair station, or a contract maintenance worker working under "direct supervision" of the part 145 repair station or part 121 carrier.

We are concerned that this provision fails to recognize that use of "non-certificated" entities is a pivotal aspect of the maintenance industry. For example, under this section,

the use of an original equipment manufacturer (OEM) to perform work on a component would not be allowed, thus eliminating the possibility to use OEM key functions that are not available from other sources. As written, this section would prohibit our airline members from using anything other than individuals employed by a part 121 air carrier, part 145 repair stations or employed by a company that provides contract maintenance workers to a part 121 or part 145 entity. A number of our airline members use companies that do not have either one of these certificates but do have certificated individuals, usually an A&P certificate. For many of our members that operate as supplemental air carriers, they frequently need to use local personnel when aircraft are in need of repair, since these carriers routinely operate into locations where the carrier does not maintain a corporate infrastructure.

At these locations, our carriers use the services of local FAA or other government employees who work for an air carrier or a local repair station and moonlight. Except at foreign locations where drug and alcohol testing are prohibited by local law, these individuals are hired as “contract employees” and placed onto the carrier’s drug abatement program. If enacted, this provision has the potential to ground carriers’ aircraft for several days until the carrier can send its own maintenance personnel, or contract with an air carrier that uses the airport, or a local part 145 repair station. However, it must be noted that many of our member carriers are operating into regions of the world that are not routinely served by scheduled carriers and do not have a part 145 repair station that can perform the necessary maintenance on the particular aircraft type. As a result, such a prohibition could lead to a lengthy delay of an aircraft into commercial service, thus incurring a severe financial loss to the air carrier.

Section 311: Aircraft Rescue and Firefighting Standards

This section would mandate that the FAA initiate a rulemaking proceeding to harmonize FAA rules on aircraft rescue and firefighting (ARFF) rules with standards developed by the National Fire Protection Association (NFPA). We are deeply concerned that this section has the potential to increase operational costs for airports, which in turn, will

increase the costs for airlines to operate at these airports. As a result, higher operating costs at smaller airports will result in the reduction or elimination of low cost air service to these small communities.

It is important to note that NFPA standards are developed by a private association. While the NFPA attempts to bring together segments of the regulated industry, the panels which develop the ARFF standards are not comprised of a balanced representation of firefighters, airlines, airports, and other industry leaders. NFPA standards are not developed like Federal regulations. There is no requirement for notice and comment by the regulated community and the standards which are developed are not subject to any form of cost-benefit analysis.

While Section 311 provides that the FAA is not required to adopt the NFPA standards in total, it would require the FAA to submit a justification to the Office of Management and Budget (OMB) explaining its reasoning if it chose not to adopt any part of those standards. The result, intended or not, is that the legislation would strong-arm the FAA into adopting the NFPA standards in their entirety. It is unclear whether a cost-benefit analysis would be sufficient for the FAA to rely upon in its justification to the OMB. It should be noted that even recommendations from the National Transportation Safety Board are not afforded this type of express rulemaking.

The NFPA standards, if adopted by the FAA, would require changing the method of indexing aircraft using an airport to the number of ARFF staffing. Today, the indexing of airport ARFF standards is based on the average size of commercial passenger aircraft using the airport over the course of a year. The NFPA would require that index to be modified so that staffing would be required to meet the needs of the largest type of aircraft that uses that airport, regardless of frequency. For many of the medium-hub and smaller airports, they would have to have ARFF staffing and equipment to meet the largest type of aircraft to use that airport, even if that aircraft only used that airport once.

As you know, while the Airport Improvement Program provides almost the full cost for ARFF equipment, it does not provide any resources for ARFF staffing. That is an operational cost of the airport which, in turn, is calculated into the operating rate-base of the airport. As a result, the costs for ARFF staffing standards will be passed on directly to the air carriers. These have the potential for significantly increasing airport fees which, in turn, will jeopardize air service to our nation's smaller airports and communities.

We should note that the FAA had convened an aviation rulemaking advisory committee to examine ARFF standards and practices. The advisory group prepared a draft proposal for amending the current ARFF regulations. We would encourage the Committee to include language in the legislation which would direct the FAA to issue that proposal as a notice of proposed rulemaking, and allow that proposal to be subject to the same legal and regulatory review process as any other aviation safety rulemaking.

Mr. Chairman, we appreciate the opportunity that you have provided to NACA to share our views and concerns regarding the future of the CRAF program and the overall economic viability of our charter airline industry. We look forward to working with you on these issues. I would be happy to answer any questions that you and the members of the subcommittee may have.

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