STATEMENT OF MARGARET GILLIGAN, ASSOCIATE ADMINISTRATOR FOR AVIATION SAFETY, FEDERAL AVIATION ADMINISTRATION, BEFORE THE HOUSE OF REPRESENTATIVES, COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE, SUBCOMMITTEE ON AVIATION, ON PILOT FATIGUE, SEPTEMBER 16, 2010.

Chairman Costello, Congressman Petri, Members of the Subcommittee:

Thank you for inviting me to appear before you this morning to discuss the Federal Aviation Administration's (FAA) efforts to mitigate the impacts of pilot fatigue to enhance aviation safety. Updating FAA's regulatory requirements on pilot fatigue has been a high priority for Secretary LaHood and Administrator Babbitt. As you know, Administrator Babbitt was formerly a commercial pilot, so his interest in and insights about pilot fatigue have been longstanding, and were helpful in making rulemaking on this matter an Administration priority. Their assistance and guidance on this matter have been invaluable. I am pleased that their focus has enabled the FAA to publish a Notice of Proposed Rulemaking (NPRM) on September 14, 2010, that proposes changes to the current flight duty and rest regulations. The NPRM represents a comprehensive proposal that is the result of extensive outreach to the aviation industry, labor and the scientific community. Unlike the existing requirements, the proposal would establish a single, scientifically-based regulatory approach for all Part 121 operators, including domestic and international passenger and cargo operations, as well as supplemental carriers.

While the publication of this NPRM is a huge step forward, I want to stress that it is the latest step in a long history of FAA efforts to mitigate fatigue. We held symposia on fatigue and worked with aviation industry and the scientific community to gather data to

meet the scheduling demands of the industry (including ultra long-range flights), without compromising safety. As the science of fatigue matured, we worked to educate the industry to mitigate risks as they were identified. The new proposal reflects our drive to reach consensus across different facets of the aviation industry.

In the past, I have said something that is worth repeating now: regardless of what regulatory framework is in place, mitigating the effects of fatigue is a shared responsibility. The FAA has the responsibility to put the framework in place. The air carrier has the responsibility to schedule its flight crews responsibly and in accordance with that framework. The pilot has the ultimate responsibility to use the hours set aside for rest to actually rest, to report for duty in a fit condition, and to notify the airline when he or she is too fatigued or otherwise not fit for duty. Nothing about the latest proposal changes those basic responsibilities.

In the aftermath of the Colgan Air Flight 3407 accident in February 2009, the FAA placed great emphasis on all safety factors that either were, or could have been, a contributing cause to the accident. Secretary LaHood and Administrator Babbitt issued an Airline Safety Call to Action for the foremost aviation safety experts to discuss the best ways to make an already safe industry even safer. Fatigue was clearly a factor of some concern, given that one member of the Colgan flight crew commuted from the West Coast prior to reporting for duty and the evidence suggested that she may not have had sufficient rest.

In addition to the Call to Action, Administrator Babbitt convened an Aviation Rulemaking Committee (ARC) comprised of representatives from airline management and pilot labor unions to review fatigue-related issues and to make specific scientifically-based recommendations that could be the basis of rulemaking. The ARC delivered its report and recommendations in September 2009. The report and recommendations reflected consensus on many issues, but there were a handful of issues where the ARC did not reach consensus. In addition, the ARC was not charged with performing any type of economic analysis, which the FAA must provide in any rulemaking initiative.

The NPRM utilizes accepted assumptions as to what causes fatigue and creates a framework that addresses those risks. For example, it is generally accepted that higher levels of activity cause more fatigue and that most people need eight hours of sleep in a 24 hour period in order to perform effectively and remain alert. It is also acknowledged that an average person needs in excess of nine hours of sleep in order to recover from accumulated sleep deprivation and the quality of the sleep an individual gets is usually affected by the time of day in which it occurs, with nighttime sleeping being more restorative.

Using these assumptions as a basis, the NPRM focuses on the nature of the operation. During a duty period, how many take-offs and landings does the pilot fly? Do the operations involved cross time zones and, if so, how many? Are the operations during the day or at night? The proposal recognizes that basing hourly restrictions solely on the total number of hours of duty time or flight time does not have as much meaning as

factoring in what kind of operations were being flown during that period. Different operations result in different fatigue levels and that reality must be recognized in any new regulatory framework.

The NPRM would impose requirements for rest, flight time, and duty time. There is a proposed nine hour rest requirement prior to flying related duty. In addition, flight time restrictions include limits for every 28-day period, as well as annual limits. The flight time restrictions also reflect all operations flown for the carrier by the pilot, even if some of those flights are ferrying operations or other flights not flown under Part 121. Finally, both the flight time and duty time restrictions proposed would reflect differences in the types of operations flown as well as when they are flown, and require shorter duty periods for certain times of day and quantities of takeoffs and landings.

The proposal would also gives carriers the option of integrating a Fatigue Risk Management System (FRMS) into their scheduling systems. FRMS is a carrier-specific method of evaluating how best to mitigate fatigue, based on active monitoring and evaluation by the carrier and flightcrew members. In this case, the carrier would model its schedules to determine where there may be risk from fatigue. The carrier would develop mitigation strategies to eliminate or mitigate that risk. The FAA will determine that the FRMS provides an equivalent level of protection as afforded by the rule and approve the carrier's system. FRMS were strongly supported by both labor and management in the ARC, because it ensures that each schedule is analyzed and proper mitigation is implemented.

This approach has the potential to provide a cooperative and flexible means of monitoring and mitigating fatigue during operations when the prescriptive approach is not optimal. We are seeking public comments about how best to realize that potential. An FRMS requires a carrier to develop numerous processes and structures within an operation. These measures lead to effective management and mitigation of fatigue on the part of both the carrier and its employees that might affect the operation.

One area that I know is of great interest to this Committee is pilot commuting, which our NPRM discusses in the preamble. The ARC made no recommendation on commuting. However, the ARC did point out that pilots are required to report to work fit for duty; and that means rested. Although our proposal does not include specific restrictions on commuting, it does make some modifications to ensure that all pilots, including those who commute, are meeting the existing requirements to report fit for duty.

As I noted at the beginning of this statement, pilot personal responsibility is critical to whatever fatigue rule is ultimately adopted, whether or not commuting restrictions are imposed. Pilots must commute responsibly, but this proposal broadens that responsibility to include the air carrier, who must be aware of how pilots are commuting to work and must make a determination that each pilot is fit for duty. It is unreasonable to assume that a pilot is resting while commuting, either locally or long distance, and our proposal requires air carriers to consider the commuting times pilots needs to reach their home base while still receiving the required opportunity for rest. It also calls on co-workers –

other crew members, dispatchers, etc. – to determine that pilots they're working with are fit for duty. We believe mandating this shared responsibility will address the risks posed by a pilot failing to identify that he or she is not sufficiently rested – and therefore not fit for duty.

Finally, one of the most challenging issues we have had to resolve in order to move forward with a new fatigue regulatory proposal is that of the costs associated with a new rule compared with the benefits that are expected to accrue from a new requirement. All of us in government and industry associated with aviation are dedicated to enhancing aviation safety. This is what we work for day in and day out. At the same time, we seek to ensure that rules do not impose excessive, unjustified, or unnecessary costs on airlines, airline employees, and consumers. We are required to provide the public with information about the projected costs and benefits associated with any regulatory proposal. Reducing fatigue, through whatever means, may result in the carriers having to add more pilots to comply with new standards, thus adding costs. We believe, however, that carriers will optimize their crew schedules within any new regulatory requirements to continue to be as efficient as possible.

While we prefer and seek out regulatory options that result in net benefits, there is no absolute requirement that monetary benefits of regulatory proposals outweigh monetary costs. But the benefits, both quantifiable and nonquantifiable, must justify the associated costs. While we have explicitly sought public comments about possible improvements in the proposed rule, we believe it meets that standard. It is important to understand that

increasing airline safety creates a number of important social benefits, some of which are hard to quantify.

Though producing this NPRM did take longer than we expected, we believe we have a solid starting point for a new and better way forward in this area. While this is not the last step in this process, I am extremely proud of the FAA team for this achievement. I would like to thank the many, many members of the Administration, the aviation and labor community, and the scientific community for their tireless efforts to assist Secretary LaHood and Administrator Babbitt in moving forward with the proposed fatigue NRPM. I would also like to acknowledge the support of Congress and the families of victims of the Colgan accident and other family groups in this area.

There is work to be done in order to make the NPRM ultimately into a final rule, but I am confident that this comprehensive proposal is a step forward and I look forward to receiving public comments and to working with all interested parties, including this Committee, to finalize improved flight duty and rest standards that will enhance safety because that is our shared ultimate goal.

Thank you for this opportunity to appear before you. I would be happy to answer any questions at this time.