

JOINT STATEMENT OF CHRISTA FORNAROTTO, ACTING ASSISTANT SECRETARY FOR AVIATION AND INTERNATIONAL AFFAIRS, U.S. DEPARTMENT OF TRANSPORTATION, AND JOHN M. ALLEN, DIRECTOR, FLIGHT STANDARDS SERVICE, OFFICE OF AVIATION SAFETY, FEDERAL AVIATION ADMINISTRATION, ON OVERSIGHT OF HELICOPTER MEDICAL SERVICES, BEFORE THE HOUSE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE, SUBCOMMITTEE ON AVIATION, APRIL 22, 2009.

Chairman Costello, Ranking Member Petri, Members of the Subcommittee:

Thank you for inviting us here today to discuss the oversight of helicopter emergency medical services (HEMS). Both the Federal Aviation Administration (FAA) and the Office of the Secretary of the Department of Transportation (DOT) have distinct roles to play in the oversight of these important operations, and this joint testimony will describe those roles.

The testimony will first address the FAA's role and some of the agency's recent efforts in HEMS safety and the second portion of the testimony will focus on DOT's economic authority as it would be affected by Representative Altmire's bill, H.R. 978, the "Helicopter Medical Services Patient Safety, Protection and Coordination Act".

FAA Safety Oversight

HEMS operations are a critical aviation service provided to the medical community. A HEMS flight is often crucial to getting a critically ill or injured patient to the right medical facility as efficiently as possible, often during "the golden hour," the minutes or hours following a trauma when rapid intervention is most beneficial and effective for the patient. While the medical treatment aspect is obviously an essential part of a HEMS operation, the FAA's mission is to ensure the safety of the air transportation portion of

the operation. The best medical treatment in the world will not make a difference if the patient and crew cannot be transported safely.

Accordingly, we are taking steps to enhance the safety of this growing industry. To put this issue in context, FAA issues operating certificates to interstate carriers under parts 121 and 135 of title 14 of the Code of Federal Regulations. Carriers may choose to operate intrastate only, but FAA operating certificates are for interstate operations. There are currently 73 operators authorized to conduct interstate HEMS operations. There are approximately 850 air medical transportation helicopters in service. And, six of the 50 largest operating certificate holders in terms of number of aircraft operating under parts 121 and 135 are authorized to conduct HEMS operations. In fact, the tenth largest air carrier in the U.S. is a HEMS operator.

As with all the sectors of the industry that we regulate, we always want to make sure that the HEMS community is operating as safely as it can. Ideally, there would be a 0% accident rate. Unfortunately, there was a spike in the number of fatal HEMS accidents in 2008. From 2002 – 2007, there were 26 fatal HEMS accidents, an average of 4.3 accidents per year. Over this time period, there were also 59 non-fatal accidents, an average of 9.8 per year. In 2008 alone, there were 8 fatal HEMS accidents and 5 non-fatal accidents. These 34 accidents over those seven years have resulted in 89 fatalities, 71 of whom were crewmembers.

In reviewing the circumstances and causes of these accidents, our experts noticed four common factors:

- Controlled Flight Into Terrain (CFIT)
- Loss of control of the aircraft in flight
- Inadvertent flight into Instrument Meteorological Conditions (IMC) resulting in loss of control
- Night operations

Upon reviewing these accidents further, the FAA identified the need for certain measures to improve the safety of these operations, including:

- Strengthening operational control, by clearly identifying the entity accountable for the safety of the operation
- Increasing pilot skill in adverse weather operations
- Applying risk assessment protocols in flight decisions
- Fostering greater collaborative decision-making between ground and flight personnel; and
- Developing a stronger safety culture in HEMS operations.

Building a stronger safety culture in this industry is essential, as these operations take place in very demanding environments. As such, the pilot's judgment and risk assessment is critical in the evaluation of whether an air ambulance flight request should be accepted, especially when weather or other conditions put flight delay or cancellation on the table. This first rule never changes: the pilot in command makes the call to "go" or "no go." That's the linchpin of a safe system. The pilot must have the ability and support from his or her management to postpone a flight when the risk to the crew and the patient is too great. And at the same time, the pilots should take into account the assessments from ground personnel regarding conditions at the landing sites. The FAA

believes that the operator must create a safety culture and environment that promotes and supports the safety decisions and good judgment exercised by the pilots. This safety culture is the indispensable context for enabling the use of the newest technology and maximizing the benefits of technology in flight operations. This impact of a positive safety culture on operational safety must be recognized by the entire HEMS industry.

It is important in establishing this safety culture to differentiate between the services that HEMS operators offer from other types of emergency services that may be provided by air. The former is an air ambulance; that is, it is an ambulance service that is provided by air transportation rather than by a ground vehicle, but from a flight safety standpoint is first and foremost, transportation. Other air emergency services may involve search and rescue operations or emergency evacuations by air, which are operations of a different and more specific nature, and thus may require a different assessment of risk than a HEMS operation. For example, a HEMS operator may assess that severe weather precludes picking up a particular patient at a certain time, and that the patient would be better served to be safely transported by ground. In an emergency evacuation operation, where flood waters are rising because of inclement weather, a helicopter operation may be the *only* way to save people's lives. This entails a different assessment of the situational risks for the pilots and those being transported.

The National Transportation Safety Board (NTSB) has made several recommendations to address the safety concerns specific to HEMS operations. In response to the NTSB's recommendations and other issues that we have seen in the HEMS industry, the FAA has taken a number of steps. Since a formal rulemaking requires more deliberate speed, the

FAA moved forward with several voluntary compliance measures in order to effect immediate safety benefits. In particular, the FAA wanted to address raising the weather minima to higher standards. Weather minima dictate the required horizontal visibility (in miles) and distance an aircraft must keep from clouds to engage in Visual Flight Rules (VFR) flight to help ensure adequate visibility for safe flight. The required weather minima generally vary depending on (1) the class of airspace a pilot is flying through, (2) whether the flight is during the day or at night, (3) whether the pilot is flying a helicopter or an airplane, and (4) what part of the regulations govern the flight. The FAA also wanted to address establishing operational control/dispatch systems centers for all operators to helping flight planning and risk assessment, establishing formal risk assessment programs, and implementing new technologies.

In 2004, the FAA and industry created a joint task force, which formulated and implemented several voluntary air medical transport safety initiatives. We brought together the Association of Air Medical Services, Helicopter Association International, the National Emergency Medical Services Pilots Association, and industry operators to set the stage for the implementation of voluntary safety programs. From 2005 – 2006, FAA issued multiple notices, bulletins, advisory circulars, and the like, to provide guidance to the industry that would improve operational safety and promote a proactive safety culture among HEMS operators. This guidance included creating operational risk assessment programs for HEMS, including training to all flight crews, including medical staff; amending Visual Flight Rule (VFR) weather requirements; and establishing operational control/dispatch centers.

FAA also established a special committee to develop Helicopter Terrain Awareness and Warning System (HTAWS) standards. This technology helps prevent CFIT by providing aural and visual alerts to pilots of terrain or other obstructions that may exist along a flight path. As a result of this committee's work, the FAA issued a technical standards order for HTAWS based on minimum operational standards in December 2008.

Because of these safety initiatives, the period from 2004 through 2007 showed a drastic reduction in helicopter air medical transport fatal accidents. However, the upward trend in 2008 was troubling and prompted a more aggressive response. The FAA, working again with representatives from the industry, revised the operation specification (OPSPEC) for HEMS operators to require:

- Increased weather minima for Part 135 Visual Flight Rules (VFR) flight by raising ceilings and increasing visibility requirements;
- That if one segment of a HEMS operation is conducted under Part 135 VFR, all segments of the operations be conducted in accordance with the increased Part 135 weather minima as specified in the OPSPEC;
- Specific flight planning for VFR operations (e.g., a pilot must physically identify and document the highest obstacle in the planned route and plan to avoid it);

The OPSPEC also allowed for more instrument flight rule (IFR) operations by permitting pilots to use weather reporting sources that are within 15 miles of the landing location. These requirements have been in effect since January 2009. All of the HEMS operators are now operating in accordance with the OPSPEC.

Through the years, this evolving industry has been very responsive to improving safety. In January 2009, the FAA conducted a survey of all HEMS operators to find out how

many have implemented FAA-recommended best practices. We found the response to be overwhelming. Well over 80% of the operators have voluntarily adopted training programs and operational control center practices that the FAA has recommended to improve safety. Almost 90% are using radar altimeters, while just over 40% have voluntarily equipped some or all of their fleet with HTAWS. We expect this percentage will increase now that the HTAWS technical standards order has been published.

We recognize that relying on voluntary compliance alone is not enough to ensure safe flight operations. In that regard, the FAA has initiated a formal rulemaking project that will address many of the HEMS initiatives and best practices put forth in the advisory circulars, orders and notices issued over the last several years, as well as the most recent revisions to the OPSPEC. The FAA Rulemaking Council has given approval to begin drafting a Notice of Proposed Rulemaking, which we are aiming to have published in late 2009 or early 2010.

We appreciate both Congressman Salazar's and Congressman Altmire's efforts in developing their respective bills to continue to raise the bar on HEMS safety. However, the FAA does not believe that new safety legislation is needed at this time. Given the current regulations that govern emergency medical services flights, the voluntary safety measures already being implemented by the industry, as well as the rulemaking efforts underway, the FAA believes that the safety measures encompassed in H.R. 1201 are already being addressed. The FAA and the Department as a whole also understand that the intent of H.R. 978 is not to infringe upon the FAA's plenary safety authority over

civil aviation. To that end we will continue to work to ensure that there are no unintended consequences of either bill that might adversely affect HEMS safety.

Economic Regulation

There is however, another area of concern with the proposed bill. H.R. 978 contains several provisions that seek to provide States with additional authority to regulate helicopter air ambulances. Under current law, air ambulances are air carriers subject to the Airline Deregulation Act of 1978 (ADA). The ADA phased out the government's control over air carrier prices, routes and services, relying instead on competitive market forces. In keeping with the statute and judicial interpretations, the Department of Transportation has found the ADA preemptive of State economic regulation of air ambulance services (as air carriers) related to prices, routes and services, but not preemptive of State regulations concerning patient medical care. For example, while the Department has explained that State rules related to the economics of air ambulances are preempted, such as requirements for certificates of need, rate regulations, and geographic service coverage limitations, it has also noted that State regulations covering emergency medical equipment, qualifications of medical personnel, and patient care are not preempted under the ADA.

The Department of Transportation supports the authority of States to issue FAA-compliant regulations on patient care that would affect air ambulance operations. We recognize the interest States have in ensuring that medical professionals on board air ambulances are properly qualified and that air ambulances arrive properly equipped with

the medical and communications equipment necessary to care for patients and communicate with emergency medical services (EMS) personnel on the ground. Although State medical regulations that would affect air ambulances must always be compliant with FAA safety requirements, we believe that there is a wide range of medically-related interests that States can and currently do regulate without encroaching on the Department of Transportation's economic authority under the ADA. We further believe that nothing in the ADA as it exists prohibits a State from requiring compliance with medically-needed measures. The Department takes this work seriously, and fully supports the critically important work of State EMS Authorities in providing medical oversight of air ambulances.

We have strong concerns, however, that carving out statutory exemptions to the ADA for purposes of allowing States to regulate economic issues involving one segment of the aviation industry will lead to many of the same problems that Congress sought to avoid when it passed the ADA's preemption provision over 30 years ago. For example, we are aware that many, if not most, air ambulance service providers operate in more than one State. For this reason, we are concerned that fifty separate State regimes addressing the economic regulation of air ambulances could unnecessarily complicate the industry and hinder interstate operations. We also believe that State regulation of the economic issues could serve to limit market entry and could ultimately have a negative effect on available services. Market access in aviation services, generally, has been instrumental in promoting a safe, efficient and responsive industry and we believe that these same economic principles may be applicable to air ambulance services.

Most importantly, however, we believe that before this Committee considers legislating in this area, that it consider carefully whether practical, as opposed to theoretical, problems exist with the current system governing air ambulance services. For example, among those testifying before you today are two groups representing participants in the air ambulance industry on both the provider and State government levels. At the Department, we have met with both of these organizations and what concerns us most is the lack of agreement, on not only the nature of the problems with the existing system, but whether any serious problems exist at all. We recognize that there have been some recent tragedies relating to air ambulance services, but it remains unclear whether these are relatively isolated incidents or indicative of more systemic national problems.

Should Congress decide that regulating entry and capacity is appropriate for one segment of the airline industry, other sectors of the industry may seek similar protection from competition. For this reason, we urge that the Committee move carefully with a thorough assessment of all facts relevant to this particular segment of the industry.

Thank you for the opportunity to testify on this important subject. We look forward to working with the Committee to address the HEMS safety issues as well as the economic concerns raised in H.R. 978. We will be happy to answer any questions you may have.