UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BE

INDEPENDENT PILOTS)
ASSOCIATION,) PETITIONER'S PRELIMINARY
Petitioner,) STATEMENT OF ISSUES TO BE
) RAISED
v.)
) Case No. 11-1483
FEDERAL AVIATION)
ADMINISTRATION,)
Respondent)
)

Pursuant to the Court's Order of December 22, 2011, Petitioner INDEPENDENT PILOTS ASSOCIATION ("IPA") submits this preliminary statement of issues to be raised in this matter and reserves the right to raise different and/or additional issues in its Brief:

1. Whether FAA's decision to discard its well-explained proposal contained in the NPRM to apply new flight crewmember duty and rest requirements to cargo operations, and instead to exclude cargo operations from any such requirements, based only on FAA's unsupported assertion that compliance costs for cargo operations significantly exceed the related societal benefits, is arbitrary and capricious, lacks substantial evidence in the record or is otherwise not in accordance with law.

- 2. Whether FAA's (1) assumption that the only societal benefits of applying the Final Rule to cargo operations relate to avoiding one fatal cargo accident instead of including non-fatal accidents and taxiing incidents and accidents, (2) estimate of the lost value of an aircraft hull as *one-eighth* the amount it uses as the estimated market value of an aircraft elsewhere in the rulemaking; and (3) understatement of benefits relating to one fatal accident by failing to include the avoidance of costs, such as, without limitation, (a) the loss to shippers and recipients of the value of the packages and cargo aboard the aircraft, (b) the business loss resulting from delays in obtaining time-sensitive materials, such as critical components for infrastructure systems and manufacturing facilities, (c) potential lives lost from failure to deliver critically needed medical supplies or equipment, as asserted by cargo carriers in the record, render FAA's cost-benefit analysis, and thus, the Final Rule's exclusion of cargo operations, arbitrary and capricious, lacking in substantial evidence in the record or otherwise not in accordance with law.
- 3. Whether FAA acted arbitrarily and capriciously or otherwise not in accordance with law by failing to provide an opportunity for interested parties to review and comment on FAA's cost-benefit calculations that were FAA's sole basis for reversing its determination to include cargo operations

2

within the scope of the proposed rule (NPRM) and exclude cargo operations from the scope of the Final Rule.

4. Whether FAA's decision to exclude cargo operations from the Final Rule is arbitrary and capricious, lacks substantial evidence in the record or is otherwise not in accordance with law when FAA had determined that (1) the prior regulations did not adequately address the risks of flightcrew fatigue; (2) the factors that lead to fatigue should be regulated to ensure that flightcrew members do not accumulate dangerous amounts of fatigue; and (3) factors such as night-time operations and flying across multiple time zones that exacerbate flight crew fatigue, and thus degrade flight crew performance, are more prevalent in cargo operations than in passenger operations that are covered by the Final Rule.

DATED: January 23, 2012

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23d day of January, 2012, I caused to be served by ECF a true copy of the Petitioner's Preliminary Statement Of Issues To Be Raised on all parties in this matter.

_/S/_____

W. Eric Pilsk