Summary Points of IPA Opening Brief to DC Court of Appeals
In Challenge to FAA Duty and Rest Final Rule

- FAA ignored its Congressional mandate to issue flight/duty regulations based on the best available science to address problems relating to pilot fatigue. *(IPA Brief at 21-22)*

    - FAA has left IPA pilots subject to existing rules that *FAA admits are inadequate to guard against fatigue and present an unacceptable risk to the public*. *(IPA Brief at 21)*

- FAA engaged in a classic bait-and-switch, declaring in its proposed rule that factors affecting fatigue are universal and warrant one set of rules for all air carrier operations, but then carving-out cargo operations in the Final Rule without the opportunity for public comment. Court precedent bars FAA from doing this. *(IPA Brief at 42-49)*

- FAA cites scientific evidence that extra precautions are needed to guard against pilot fatigue during night-time operations crossing multiple time zones, but ignores this evidence in excluding cargo operations, where such factors are common. For instance:

    - FAA, found that "there is ample science indicating that performance degrades during windows of circadian low [2 A.M.–6 A.M. or "WOCL"] and that the "reduction in maximum FDP during nighttime hours is broadly supported by existing sleep science." *(IPA Brief at 9)*

    - The air cargo lobby's continual refrain is that it opposes a "one size fits all" approach to safety regulations. Having said that, the cargo lobby apparently favors the "size" of the current rule, one that has been found to be antiquated, non-science based, and inadequate to protect the public.

- IPA uncovered evidence in the regulatory record that OMB told FAA to remove cargo operations from the scope of the Final Rule. *(IPA Brief at 13-14, 25-26)*

    - OMB then suggested changes and deletions, in part to make it appear that the scientific findings apply only to passenger operations

- OMB's revisions are called "suggestions." When non-safety expert, OMB higher-ups in the chain of command "suggested" changes, the FAA did so.

- For example, OMB "suggested" the following changes:

  - "Accordingly, this rule uniformly regulates the universal fatigue factors *in passenger operations* regardless of the *specific* part 121 *passenger* operation that is involved." (OMB changes in italics). *(IPA Brief at 25).*

- OMB deleted the following references to the particular dangers of night flying:

  - "[T]he risk from these types of long FDPs is even higher for nighttime unaugmented operations because studies have shown that working during the [Window of Circadian Low] WOCL [2:00-6:00 AM] causes a substantial degradation in human performance." *(IPA Brief at 26)*

  - "Because of the substantial safety risks caused by long [Flight Duty Periods] FDPs and working during the WOCL, the FAA has concluded certificate holders conducting all-cargo operations can no longer be permitted to schedule 16-hour unaugmented nighttime FDPs and 30-hour augmented FDPs." *(IPA Brief at 26)*

  - "[B]ecause nighttime operations raise additional safety concerns, the FAA has decided to subject certificate holders who conduct all-cargo operations to the flight, duty, and rest limits imposed by this rule." *(IPA Brief at 26)*

- OMB has no expertise in aviation safety and was not authorized by Congress to overturn FAA's expert findings based on cost considerations for one segment of the air carrier industry. *(IPA Brief at 27)*

- As a result, cargo operations will be permitted to continue under conditions FAA has found to pose unacceptable safety risks. *(IPA Brief at 22-23)*

- FAA ignored Congress' express directive to enhance safety, and instead relied on cost considerations that Congress did not authorize. Courts do not allow agencies to ignore congressional directives and base decisions on factors Congress did not allow. *(IPA Brief at 27-29)*

- FAA played hide-and-seek with its cost-benefit analysis (CBA) that drove its decision to exclude cargo operations. It disclosed a summary of the analysis only *after* the Final Rule was issued. Courts do not allow agencies to hide such critical factors during the rulemaking. *(IPA Brief at 52-53)*

- The CBA that drove FAA's decision found that the *only* benefit over a ten year period of including cargo operations in the Final Rule would be avoiding one fatal accident, counting only the loss of the plane and the crew. *(IPA Brief at 34)*

    - FAA ignored other benefits, amounting to hundreds of millions of dollars, that it acknowledged elsewhere in the rulemaking, and used to overcome the negative cost-benefit ratios for the proposed rule and the final rule, such as:

        - avoiding non-fatal accidents and incidents; and

        - gaining the value of well-rested pilots as "accident preventors and mitigators." *(IPA Brief at 35-39)*

    - It was arbitrary and capricious for FAA to count these benefits in assessing benefits to passenger operations but not cargo operations.

    - FAA also did not account for the benefits of improved health (and lower health-related costs) of pilots who work less demanding schedules, although FAA has recognized these were, in fact, benefits of the Final Rule. *(IPA Brief at 35, 41 n.13)*

- FAA was inconsistent in how it determined costs, declaring that the average market value of an aircraft was $69 million in one instance, but valuing the loss of a cargo aircraft at only $8 million. *(IPA Brief at 37-38)*

- FAA also ignored obvious benefits such as avoiding the loss of cargo (which it had acknowledged, but then deleted at OMB's request), avoiding crash-fire-rescue expenses, and release of hazardous materials from a crash. *(IPA Brief at 40-41)*

- FAA still has not released the details of its cost calculations.

- Of course, one reason it may cost a significant amount for cargo carriers to comply with the rule is because *there are so many non-compliant cargo operations.* This is hardly a reason to exclude such operations from the Final Rule.

  - FAA's action is akin to EPA saying that its Superfund will not clean up the most dangerous toxic sites, because it is too expensive, so it will focus on the less deadly sites that are less expensive to clean up.

- IPA does not seek to overturn the Final Rule as it relates to passenger operations, but only to have the Court order FAA to reconsider inclusion of cargo operations, consistent with its mandate from Congress and the laws regarding adequate notice and opportunity for public comment. *(IPA Brief at 56-57)*