May 18, 2013

Gentlemen & Gentle Ladies:

As Congressional leaders of the air safety oversight committees, we are writing to request that you hold hearings on the regulatory decision making by the FAA regarding the Boeing 787 Dreamliner battery and more broadly the FAAs delegation of nearly all its safety regulatory authority (DOAs) to the airline industry.

The safety and reputation of US made commercial airliners could be at stake. The Congress needs to address this problem urgently before another 787 battery crisis erupts. U.S. post WWII domination of commercial airliner manufacturing cannot be taken for granted. It could easily be lost if the 787 Dreamliner is viewed as unsafe or if its battery problems persist and result in an air disaster. The public has little tolerance for mass disaster. Just ask Germany what happened to its commercial aviation industry after the Hindenburg dirigible disaster. Or ask the British what happened to theirs after the Comet jetliner crashes in the early 1950s.

As you know, this long range 9,000 mile, 200+ passenger twin engine jetliner is the first commercial airliner to be built of composite materials rather than aluminum and also the first to have its engineering, design and production largely outsourced to a host of a foreign vendors. It was originally scheduled to go into service in 2005 but delayed to 2011 due a host of quality, safety and production problems. In January after two fires and 100 unplanned replacements of its large lithium ion batteries, the FAA, Japanese and other aviation authorities grounded the entire Boeing 787 fleet.

This lithium ion battery represents a known serious safety hazard. In hindsight, it never should have been approved. The last time an action was taken by the FAA to ground an entire fleet of commercial airliners was in 1979. The subject batteries have a long history of failure from overheating, fires and even explosions. They are banned from being carried as cargo on passenger jets, have required replacement 100 times in a year of operation and resulted in two fires in January. In 2010, a fatal crash of a UPS jet was believed caused by a cargo of lithium batteries causing a fire. Airbus and other aircraft manufacturers do not use these batteries because of their known dangers. Allowing the present extended range (ETOPS 180) certification to stay in effect is alarming. It says to the world that the United States government endorses the safety of this airliner to fly over water for 6 hours or more, up to 3 hours from the nearest airport, knowing its batteries are subject to failure, and quite possibly could cause uncontrollable fire and explosions.

Such a certification is contrary to regulatory precedent, and has been done without public disclosure of the technical details of the Boeing battery fix, without thorough testing by the FAA, and prior to completion of the NTSB investigation.
This recent FAA 787 un-grounding decision with no restrictions urgently needs Congressional oversight and review.

Boeing does not even contend that its battery fix will stop battery failures. Outside battery experts are highly skeptical of the Boeing fix and the NTSB has not even completed its fire investigation. And our independent battery safety consultant believes that it may actually increase the failure rate and not prevent fires.

On April 19th, the FAA fully approved a briefly tested Boeing battery fix (involving encasing the batteries in a steel box and adding insulation between battery cells meant to reduce overheating in one cell from causing thermal runaway in the whole battery and prevent fires and explosions that could bring down an airliner) and lifted its January grounding order. Our petition seeks intervener party status for groups representing airline passengers and flight restriction to no more than 2 hours from the nearest airport. We asked the FAA to follow normal regulatory precedent and procedures, pending full testing of the battery fix and proof of 24 months of trouble free 787 operation. It also requests appointment of an ad hoc advisory committee of outside battery experts and stakeholders together with a public vetting of Boeing’s controversial fix for the fire and failure prone 787 lithium ion battery.

The enclosed petition was received by the FAA and DOT on May 9th but the agencies have not acted or responded.

The FAA essentially delegated its entire safety certification authority on the 787 to Boeing, and this we believe has serious implications for all aircraft safety programs. See the enclosed 2012 Report summary of an all industry advisory committee (ARC) that advocates near total delegation of safety authority to the industry by the FAA.

ARCs have now supplanted the FAA Aviation Rulemaking Advisory Committees in advising the agency on safety regulation and policy, which by law must include public and non industry stakeholder representation. We have long believed this a flagrant violation of the Federal Advisory Committee Act (FACA). FACA was supposed to help prevent back door secret lobbying and guard against regulatory capture by industry of government regulators by requiring consumer and public representation on advisory committees and making their meeting subject to the Open Meetings laws.

The Boeing 787 battery regulatory fiasco is an early example of what can happen when strong government air safety regulation is transformed first to exclusive industry domination and then into industry self regulation.

Thank you for your timely consideration and response to this important and urgent air safety matter.

Sincerely,

/s/ Paul Hudson
President, FlyersRights.org
Enc.

Senator Jay Rockefeller, Chairman
Senator John Thune, Ranking Member
Senator Maria Cantwell, Chm. Aviation Subcommittee
Senator Kelly Ayotte, Ranking Member, Aviation Subcommittee
Senator Frank Lautenberg, Aviation Subcommittee
Senator Marco Rubio, Aviation Subcommittee
Senator Barbara Boxer, Aviation Subcommittee
Senate Commerce, Science & Transportation Committee

Hon. Bill Shuster, Chairman
Hon. Nick J. Rahall II, Ranking Member
Hon. Frank LoBiondo, Chm. Aviation Subcommittee
Hon. Rick Larsen, Ranking Member, Aviation Subcommittee
Hon. Peter DeFazio, Aviation Subcommittee
House Transportation and Infrastructure Committee

Contact Info.
Mailing Address:  4411 Bee Ridge Rd. #274, Sarasota, Florida 34233
Phone:  800-662-1859  410-940-8934
Fax: 240-391-1923
Email:  pshudson@yahoo.com  paul@flyersrights.org acapaviation@yahoo.com