



**Mark R. Baker**  
President and CEO

December 12, 2013

The Honorable Michael Huerta  
Administrator, Federal Aviation Administration  
800 Independence Ave., SW  
Washington, DC 20591

Dear Administrator Huerta,

I am once again writing to you on behalf of AOPA members to protest the FAA Office of Aerospace Medicine's insistence on implementing a new obstructive sleep apnea policy without going through the rulemaking process and addressing the legitimate concerns of pilots, aviation medical examiners, or the larger aviation community.

On November 20, I wrote to you highlighting the importance of this issue. Much to my surprise and disappointment, I received a reply not from you, but from the Federal Air Surgeon, Dr. Fred Tilton. His letter can best be described as unresponsive to our concerns. In that letter, the Federal Air Surgeon said he intends to move forward with the implementation of this policy. He offered no discussion or response to the concerns raised in my letter. Most important, he did not address my contention that this is a significant policy change that actually alters the medical standards and therefore must follow the rulemaking process.

This policy not only requires intrusive and expensive tests without offering clear evidence of safety benefits, it also moves the FAA into the realm of predictive medicine. Today, AMEs are tasked with assessing a pilot's basic health. The new policy has the FAA using indicators such as body mass index to trigger a requirement for additional testing to make long-term predictions about a pilot's health—a task the FAA is neither equipped for nor suited to undertake.

FAA is obligated to provide a transparent and deliberative process for the consideration and implementation of such a significant new policy. This process must include the opportunity for public comment from all interested parties, exploration of less-intrusive and more cost-effective methods for addressing the agency's concerns, and a cost-benefit analysis of the economic and regulatory burdens. These points, along with others, have been universally voiced by organizations representing pilots as well as the Civil Aviation Medical Association (CAMA), the organization representing the FAA's own aviation medical examiners.

This week, with just over one day's notice, we received an email invitation to join a webinar to be held by the Federal Air Surgeon. The intent of the webinar is to "learn more about the modifications to the FAA's policy on OSA that he recently announced in the Federal Air Surgeon's Bulletin." The way this was handled appears to reflect a desire to avoid public discussion rather than invite it. Not only did the Federal Air Surgeon provide very little notice, he also scheduled the webinar at a time that is inconvenient for many and limits participation

to only 250 individuals. Furthermore, as best we can tell, the invitation has not been sent to affected airmen, but exclusively to aviation medical examiners and industry staff. Surprisingly, it describes the "modifications" as having been "announced", when they were in fact merely described in a column by Dr. Tilton in the Federal Air Surgeon's Bulletin to "alert" AME's that a policy would be forthcoming.

Furthermore, a hastily coordinated and announced webinar is absolutely no substitute for rulemaking and does *not* rise to the level of an open, transparent and deliberative process. Such an event, open to a limited number of participants, does not allow for the appropriate level of public comment, and provides no requirement for the FAA to respond to legitimate concerns in an appropriate manner.

As you are surely aware, Congress has introduced legislation (H.R. 3578) that, when passed, will require the FAA to undertake rulemaking to address sleep disorders. The bill parallels the path of Public Law 113-45 requiring the Federal Motor Carrier Safety Administration to undertake formal rulemaking if it wishes to require sleep apnea testing for commercial truck drivers. I would have expected that the experience of your sister agency within the Department of Transportation would have tempered FAA's push to impose this new policy in the manner in which it has. This hardly rises to the level of public notice one would expect for such a significant change.

Just yesterday, Congress also introduced the General Aviation Pilot Protection Act, legislation that would vastly revise the third-class medical requirements and expand the number of pilots who could fly without going through the expensive and time-consuming third-class medical certification process. Congress introduced this legislation after waiting 21 months for FAA to respond to a petition from AOPA and EAA seeking more limited changes to the medical requirements. No FAA response to the petition has been forthcoming despite our face-to-face meeting and my recent follow-up letter on the subject. It seems evident that both members of Congress and the aviation community view the medical certification process as flawed and over-reaching, making it especially surprising that FAA has chosen this moment to pursue an intrusive new medical policy without clear evidence that it will deliver any safety benefits.

I am deeply troubled by the manner in which the Federal Air Surgeon is proceeding, and call upon you to put a stop to it so that all concerned parties can have input in determining how to most effectively address concerns regarding sleep disorders.

Sincerely,



Mark R. Baker