



U.S. House of Representatives
Committee on Transportation and Infrastructure
Washington, DC 20515

Don Young
Chairman

James L. Oberstar
Ranking Democratic Member

Lloyd A. Jones, Chief of Staff
Elizabeth Megginson, Chief Counsel

May 11, 2004

David Heymsfeld, Democratic Chief of Staff

The Honorable Marion C. Blakey
Administrator
Federal Aviation Administration
c/o Docket Management System
U.S. Department of Transportation
Room Plaza 401
400 Seventh St., SW.
Washington, DC 20590-0001.

Re: Docket number FAA-1998-4521, Notice of proposed rulemaking (NPRM) that proposes regulations to govern commercial air tours throughout the United States, Notice No. 03-10, published on October 22, 2003 at 68 FR 60572

Dear Administrator Blakey:

I am writing at this time to comment on the NPRM that proposes regulations to govern commercial air tours throughout the United States. I have been monitoring the NPRM comment and review process and my staff has met with Federal Aviation Administration (FAA) experts who are involved in the rulemaking process. I am pleased that the FAA has determined to extend the comment period and to provide two public meetings in addition to the virtual public meeting conducted in the last few months. I believe it is very important for interested parties to take advantage of the public review and comment period. Therefore, I am submitting the following comments for your review and attention.

I have received comments from several Aviation Associations as well as residents and small business owners in Alaska that have raised concerns with the NPRM. It is my understanding that financial impacts to smaller operators, such as those that operate in Alaska, were not fully understood when the FAA issued the NPRM. I also have been informed that the FAA is reevaluating the NPRM and the financial impact analysis to specifically take into consideration impacts on smaller operators. In order to assist you in

this effort, I am providing the following comments that have been shared with my committee staff and with me personally:

- **James Wilson, President, Coastal Helicopters, Juneau, Alaska**

"I have estimated the cost to our small company at 15 to 18 million dollars over the ten-year period. Based on this estimate, I have significant questions about [FAA's] estimated cost for the entire industry if the cost to our small company is that high. How many small companies will fail due to this added burden?"

"The FAA lacks reliable revenue and cost data for many of the entities affected by this rule and therefore, is unable to compare the potential costs as related to revenue or profits. Larger more profitable entities may be able to absorb the costs associated with the new requirements whereas the smaller entities (small business) would not be and would be forced out of the tour market or forced to close their doors. The consuming taxpayers will be the losers as well as the small tour operations."

- **Dave Rocke, Owner/Pilot, Family Air Tours, Ketchikan, AK**

"As to the increase in minimum altitudes this would be impractical in the environment that we fly here in Alaska. There are many times that we fly to the Misty Fjords National Monument with ceilings 500' to 1000' under safe conditions over calm landable waters and are able to give our clients a safe and enjoyable flight. Would you take away my earnings from these flights for no increase in safety?"

- **Robert Jacobsen, Wings of Alaska & Wings Airways, Juneau, AK**

"Adoption of this rule will cause both Wings of Alaska and Wings Airways significant financial impact; much more so than the agency projects in its analysis."

"In our primary area of operations we would project that there are approximately 120,000 sightseeing passengers annually who would be affected by this rule."

"There will be a direct and significant effect on our ability to provide scheduled essential air service to rural Alaska with a loss of revenue and net income from our sightseeing operations. Our sightseeing operations are high-yield business,

more so than scheduled operations, and they are seasonal. Our seasonal sightseeing revenue ensures that we can retain highly trained and qualified people on a year-round basis. Quite simply, seasonal sightseeing operations subsidize our year-round essential air service to the rural communities and native villages that we have served for over 20 years.”

- **Bill Lamb, Anchorage, AK**

“This proposed regulation will effectively terminate the [ability] for local, private or individual operators to offer flights in vintage aircraft...”

- **John Lucas, Chief Financial Officer, Wings Airways, Juneau, AK**

“While we might be one of the businesses that survive, our cancellation rate on our flightseeing operations will surge to over thirty percent. The loss of jobs and economic impact on our business and other similar entities throughout Alaska will be tremendous. The additional impact on our essential service to the outlying rural communities without road access will also be substantial. Cash flow from flightseeing revenue is necessary to support those operations throughout the losing months of October through April.”

- **Helicopters Association International**

“The proposed rule has failed to consider airspace restrictions, geographic, and weather issues, or to consider that helicopters have different flight characteristics and capabilities than fixed-wing aircraft. The development of altitude restrictions in certain locations might be a more prudent approach instead of the “one size fits all” restriction contained in the proposed rule.

The specification of minimum altitudes when combined with cloud clearance and visibility requirements results in the practical effect of imposing weather requirements far more strict than for any other VFR operation under Part 135. A distinction should be drawn and recognized by the FAA between commercial air tours and sightseeing operations.”

- **Alan R. Stephen, Member, National Park Overflight Advisory Group**

“Notice 4521 is flawed because it would define national standards for “minimum altitudes” (136.3), “standoff distance” (136.5), “visibility” (136.7), and “cloud clearance” (136.9) while FAA proposes “deviation authority” in 136.21 to

permit individual operators to petition for different requirements. That is not a national standard! It will be subject to differing interpretations by local FAA field offices resulting in uneven application. Deviations can be withdrawn at any time for cause or not. It is a very bad idea even though the purpose of proposed 136.21 is worthy. Rather, it is my view that these operational requirements are in fact advisory in nature and would be better contained in an advisory circular than in regulations that FAA already acknowledges will need deviations granted."

- **Aircraft Owners and Pilots Association**

"The FAA estimates that 685 of 1,670 sightseeing operators will cease operations with a resulting \$4.7 million net revenue loss (\$6,861 per operator).

While the FAA estimates 41 percent of sightseeing operators would go out of business, AOPA found that 82 percent of sightseeing operators surveyed would go out of business.

AOPA projects that the proposal would result in 1370 active sightseeing providers stopping operations and being forced out of business with an average projected annual loss greater than \$33,000 per operator.

The impact of the proposal is an astonishing \$45 million in the first year."

- **Rick Pellicciotti, Chief Pilot, Belle Aire Aviation, Inc.**

"The proposed rule entails meeting onerous and expensive air carrier criteria. These include manuals, meeting more stringent training and equipment requirements, complying with crewmember flight and duty time rules, reporting, record keeping, flight locating, etc. Virtually no historic, vintage aircraft or small ride givers with other light aircraft can realistically meet Part 135 regulations. It will simply eliminate local airplane rides for hire."

- **National Air Transportation Association**

"Commercial air tour companies conservatively estimate that this NPRM will cost them anywhere from one to four million dollars to implement in terms of new and unnecessary equipment purchases, labor costs, lost revenue due to decreased passenger-carrying capability, and the imposition of restrictive artificial weather criteria. Further, the compression and mix of traffic in narrow flight corridors

Hon. Marion C. Blakey
Docket number FAA-1998-4521
May 11, 2004
Page 5

will be contrary to procedures already worked out by air tour operators in many locations and *significantly* decrease the margin of air safety in those areas.”

I believe that the above comments set forth the major concerns expressed to my staff and me about the NPRM, but they are certainly not all inclusive. I ask that you pay particular attention to and specifically address the following matters:

- The secondary impact the NPRM will have on the provision of essential air service in Alaska as well as elsewhere in the United States.
- The significant adverse impacts the NPRM will have on small aviation businesses throughout the United States.
- The onerous nature of many of the mandates that the NPRM would place on small business owners. It does seem that the FAA should give small aviation operators special consideration and that the FAA should consider exceptions to the requirements.
- The concerns raised that a “one-size-fits-all” approach is unadvisable given the significant differences in flying conditions found across the nation.

Aviation safety is an important goal. I ask that you carefully review the NPRM to ensure that the benefits to aviation safety are appropriately balanced with the level of impact to the unique group of small businesses that are affected by the NPRM.

At the very least, I believe that the NPRM should be significantly revised to ensure that it would have the desired improvement in aviation safety while not causing dire impacts on the ability of small aviation operators to stay in business.

Thank you for the opportunity to provide comments on the Air Tour Safety NPRM. Your close consideration of these comments is appreciated.

Sincerely,

DON YOUNG
Chairman