



AIRCRAFT OWNERS AND PILOTS ASSOCIATION

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Docket Management System
U.S. Department of Transportation
Room Plaza 401
400 Seventh Street, SW
Washington, DC 20590-0001

Re: Docket No. FAA-1998-4521; Notice of Proposed Rulemaking (NPRM); National Air Tour Safety Standards-Supplemental Comments

The Aircraft Owners and Pilots Association (AOPA), representing over 400,000 members or two-thirds of the nation's general aviation pilots, submits the following supplemental comments to our original comments regarding the Federal Aviation Administration's (FAA) notice on National Air Tour Safety Standards Notice of Proposed Rulemaking (NPRM) published in the Federal Register on October 22, 2003. The proposed rule would require all air tour operators, with a limited exception for certain charitable and community events, to be certificated under Part 119 and to bring their operations into compliance with Part 135 regulations.

AOPA contends that the FAA has issued a proposal that is not justified or supported by safety data or clearly defined safety concerns and uses safety statistics that are irrelevant and incorrectly applied. In addition, the FAA has dramatically underestimated the economic effects of the proposal on the general aviation community.

AOPA submitted comments on April 19, 2004, to this NPRM and participated as a presenter or attendee in both public hearings held by the FAA. These supplemental comments provide additional information augmenting AOPA's original comments submitted on April 19, 2004, and our presentation at the Washington, D.C. public hearing. Specifically, we are providing data resulting from four surveys conducted by the Association. These are referenced in our previous comments and presentation at the public meeting. The data was also referenced by the Small Business Administration (SBA) in their comments dated April 2, 2004. A copy of our original comments is attached for reference. Additionally, AOPA is providing added information not included in our original comments about the National Transportation Safety Board's (NTSB) Primary Safety Concerns.

AOPA Surveys Reveal Significant Adverse Impacts

AOPA conducted four surveys over a three-month period. The 990 participants that responded to the surveys included flight schools, non-profit organizations, private pilots providing charity sightseeing rides, and Part 91 operators conducting sightseeing flights under the 25-mile exemption.

The Association's surveys show that the FAA has underestimated sightseeing business closures by up to 100 percent and has failed to consider the substantial adverse economic impact on charities.

Each of the four surveys asked a series of questions to ascertain the type of operation being conducted and the economic impact if this NPRM if it were to become a rule as proposed. Following is a synopsis of the results of each of the four surveys:

Part 91-Sightseeing Operators

- 100% of those surveyed provide Part 91 sightseeing flights
- Only 4% hold a Part 135 certificate
- 84% provide more than 20 flights per year
- 63% fly sightseeing flights more than 50 hours per year
- 65% reported that sightseeing flights provided more than 40% of their total business.
- 55% reported that sightseeing flights account for more than 50% of their total annual revenue
- 92% of those surveyed operate less than 5 aircraft
- 85% of those surveyed employ less than 5 pilots
- 82% of those without a Part 135 certificate would not apply for a Part 135 certificate if this rule were to be implemented
- 94% anticipate losing all of their aircraft if this rule were to be implemented

Flight School/FBO Questions

- 92% of flight schools and FBOs surveyed offer sightseeing rides to the public
- 84% do not possess a Part 135 certificate
- 91% of those without a Part 135 certificate would not apply for a Part 135 certificate if this rule were to be implemented
- 55% conduct less than 40 sightseeing flights per year
- 96% report that this represents less than half of their total business and less than half their total revenue

Organizations Who Utilize Charitable Flights

- 57% of charities surveyed provide more than ten charitable flights per year
- 50% specify a minimum number of hours for participating pilots
- 50% specify minimum weather requirements for charitable flights
- 38% specify safety training for participating pilots
- 25% specify recurrent training for participating pilots

Pilots of Charity Flights Questions

- 92% of members surveyed would not support this rule
- 22% of members surveyed have participated in charitable sightseeing flights
- 21% of the pilot population would be excluded from charitable sightseeing flights if the hour requirement changes from 200 to 500 hours

Existing Air Tour Regulations Address Primary NTSB's Safety Concerns

The FAA has promulgated this NPRM in response to NTSB recommendations concerning the safety of commercial air tours. However, AOPA argues that the NTSB's recommendations are aimed primarily at commercial air tour operations where the FAA has already promulgated rules to address these concerns through SFAR 50-2 – Special Flight Rules in the Vicinity of the Grand Canyon National Park, AZ; SFAR 71 – Special Operating Rules for Air Tour Operators in the State of Hawaii; and the National Park Air Tour Management Act of 2000. Furthermore, AOPA asserts that the FAA's accident data does not support inclusion of sightseeing and charity flights. It appears that the FAA's sole justification for "holding on" to the NPRM is largely the result of NTSB's recommendation # A-95-058.

The FAA has the latitude to address the NTSB recommendation by asserting that existing regulations are sufficient to ensure the safety of commercial air tours and that it disagrees with the Board's recommendation to eliminate the sightseeing exception currently found in FAR 119.1(e)(2) for lack of substantive safety data that would warrant such action.

AOPA contends that the FAA is NOT compelled to adopt all NTSB recommendations and has the authority and ability to close NTSB recommendations with alternative or no action. In fact, the FAA has declined on numerous occasions to adopt or implement NTSB recommendations when no good reason exists, which is clearly the case with recommendation # A-95-058.

AOPA found 549 NTSB safety recommendations that were closed with no action taken because the FAA either disagreed with the NTSB's recommendation or failed to take action in a timely manner.

Following are a few examples where the FAA disagreed with NTSB recommendations:

Recommendation

A-00-032

FAA LTR DTD: 7/26/01

The Federal Aviation Administration (FAA) believes that when correctly applied, the procedures contained in FAA Order 7110.65, Air Traffic Control, paragraph 3-10-4, Intersecting Runway Separation, are safe and reliable. Recurrent training will continue to be conducted at the LaGuardia Airport Traffic Control Tower to heighten and maintain awareness of the applicable requirements. **The FAA believes that implementing this proposed recommendation would limit controller flexibility and unnecessarily impact the National Airspace System.** Arrival restrictions would need to be imposed and departure slots would be lost. Additionally, the requirement would not guarantee separation since controller judgment must still be applied. I believe that the FAA has addressed the full intent of this safety recommendation, and I consider the FAA's action to be completed.

A-90-132

FAA LTR DTD: 4/23/93

The FAA does not agree with this safety recommendation to require that the exchange of weather messages between the air traffic controllers and the National Weather Service occur over recorded telephone lines. As stated in the FAA's letters to the Board dated December 18, 1990, and November 5, 1992, the current procedures for disseminating weather information are timely and adequate. I consider the FAA's action to be completed, and I plan no further action on this safety recommendation.

A-94-017

FAA LTR DTD: 11/2/00

This safety recommendation addresses a fundamental part of occupant protection--absorption of multidirectional crash energy. The FAA has worked closely with industry for several years to improve the ability of aircraft of all sizes to absorb crash energy for the safety of occupant. The addition of seating and flooring to increase vertical crush distance for a small airplane would be a significant change to the airplane design. To require this design change for existing airplanes would constitute a ban on sport parachuting, as it is known today. Consequently, **the FAA does not intend to continue efforts to address the attenuation of vertical energy.** I consider the FAA's action to be completed on this safety recommendation.

A-94-062

NTSB LTR DTD: 7/18/02

The FAA disagrees with our analysis of Part 23 aircraft and has not acted with respect to Part 25 aircraft. Consequently, Safety Recommendation A-94-62 is classified "Closed Unacceptable Action."

A-98-061

FAA LTR DTD: 7/22/99

The FAA has reviewed 163 FAA accident/incident data base occurrences involving banner towing operations that occurred over the past 14 years... **the FAA does not believe additional regulations need to be implemented** to require mandatory installation of protective devices. The FAA believes that the procedures currently in place are appropriate to ensure acceptable safety during the conduct of the special purpose operation of banner towing. The variations of aircraft equipment and operations preclude the practical development of specific requirements for the design and installation of devices to prevent towrope entanglement. I consider the FAA's action to be completed, and I plan no further action in response to this safety recommendation.

A-96-059

NTSB LTR DTD: 2/5/03

The Safety Board and the FAA have had extensive correspondence and discussion on this issue. The FAA states that it considers the spring tab aileron system installed on all newly manufactured ATR airplanes to be a product improvement, does not find sufficient justification for a fleetwide retrofit and lists the mandatory and voluntary actions already taken by the FAA and Aerospatiale that address this safety recommendation... **The FAA disagrees with the Safety Board's conclusion** that the reduction of aileron hinge moment forces from the aileron spring tab modification could likely have prevented the autopilot disconnect that initiated the roll excursion and subsequently led to the loss of control and crash of the ATR-72 in Roselawn.

A-98-113

FAA LTR DTD: 11/1/00

The FAA does not believe that there would be any safety benefit to issuing a bulletin to FAA principal maintenance inspectors to emphasize a requirement that is already implemented through three mandatory means. I consider the FAA's action to be completed in response to this safety recommendation.

A-98-120

FAA LTR DTD: 6/30/00

The FAA does not believe that there is adequate justification to mandate this modification for older Glaser Dirks model sailplanes.

Restatement of AOPA Position Calling For the Withdrawal of the Air Tour Safety Standards NPRM

AOPA strongly opposes this NPRM and urges the FAA to withdraw the proposal. Nothing in the original Federal Register notice or information that has been made available during the comments period, including the FAA virtual meeting, indicates that there is a significant safety issue on sightseeing and charity flights that the FAA must address by advancing this rulemaking initiative.

Sincerely,



Andrew V. Cebula

Senior Vice President

Government and Technical Affairs