

STATEMENT OF RICHARD P. SKULLY, DIRECTOR, FLIGHT STANDARDS SERVICE, BEFORE THE COMMITTEE ON SMALL BUSINESS, SUBCOMMITTEE ON ACTIVITIES OF REGULATORY AGENCIES, REGARDING FAA PRACTICES AS THEY AFFECT SMALL BUSINESSES, JULY 28, 1976

Mr. Chairman and Members of the Subcommittee:

I am Richard P. Skully, Director, Flight Standards Service. Appearing with me today is William V. Vitale, Director of FAA's Airports Service. We appreciate having the opportunity to discuss with you the areas of interest outlined in your letter of June 10, to Dr. McLucas.

As you are no doubt aware from the testimony last year of FAA's Associate Administrator for Administration, Charles E. Weithoner, the FAA cannot be directly compared with many agencies such as the Civil Aeronautics Board, Federal Trade Commission, and Securities Exchange Commission which are commonly thought of as "regulatory agencies." While the thrust of many of these agencies is of an economic nature, the FAA's primary and overriding mission, as mandated by the Federal Aviation Act of 1958, is aviation safety. Consequently, when economic considerations and the enhancement of aviation safety conflict, our decisions must be made in the interest of safety.

Although safety is our primary concern--as it must be--this does not mean that we are blind to the economic consequences of our regulatory actions as they may affect the aviation community. On the contrary, to the extent we

are able, we carefully evaluate and weigh in our decision-making processes, the economic impact of our prospective actions.

Regarding the impact of our safety regulations on small business, I would like to briefly discuss our consideration of economic factors in the rule-making process. The probable economic consequences as well as the overall impact of a proposed regulation are carefully evaluated at several levels within the FAA. When a regulatory project is initiated, the potential economic effects are considered by the staff that prepares the proposal. Top-level FAA officials then review the predicted economic impact, and other anticipated consequences, as does the Administrator, before the issuance of a Notice of Proposed Rule Making (NPRM). If the NPRM is believed to be costly or controversial, the FAA Administrator advises the Secretary of Transportation of the proposal at least 30 days before publication of the NPRM in accordance with the Department's Regulatory Reform Policy.

When an NPRM is published in the Federal Register, interested persons are invited to furnish their comments to the FAA. Before adopting a rule based on the NPRM, the FAA carefully considers all comments received. This provides an opportunity for those being regulated to express their concerns about any potential impact of the rule upon them, including economic

consequences. Additionally, under our Regulatory Reform Policy, at least 30 days before the issuance of a costly or controversial final rule, the Administrator advises the Secretary of Transportation of the impending action.

Regulated persons are also afforded the opportunity of seeking relief from FAA regulations under the exemption process outlined in Part 11 of the Federal Aviation Regulations (FAR). Under this procedure, the FAA Administrator or his delegate may exempt persons from the requirements of a rule upon a finding that the exemption would be in the public interest and that safety would not be adversely affected. Procedures are also available for interested persons to petition the FAA to adopt, modify, or revoke a rule.

In short, although we will not put a price-tag on human life, we believe that FAA rule-making procedures are fair and take into account, to the extent feasible, the potential burdens of our regulations upon affected parties.

I would like to turn now to a discussion of the nine areas of concern to the Subcommittee as described in your letter of June 10.

Question No. 1: FAA SAFETY REGULATIONS ARE NOT IN ACCORD WITH CAB ECONOMIC REGULATIONS. FAA's NPRM 76-7 proposed that aircraft weighing more than 12,500 pounds and having a maximum passenger capacity of ten seats or less be permitted to operate under FAR 135. Commuter airlines want the NPRM amended to include aircraft having a maximum passenger capacity of thirty seats or less.

They say this would bring your safety regulations in accord with CAB economic regulations governing the operations of commuter air carriers.

Response: FAA NPRM No. 76-7 was intended as an interim measure to permit the FAA to gain operational experience with coverage of certain large aircraft under the provisions of Part 135 of the Federal Aviation Regulations (FAR). The FAA considered that this interim measure would provide the desired experience without adversely affecting safety and that knowledge gained from these operations could be beneficially applied in subsequent rule-making actions.

It was envisioned that this experience would be considered in conjunction with regulatory projects underway to upgrade Part 135. As conceived, this comprehensive upgrading will include provisions for the operation of aircraft with a seating capacity of up to 30 passengers, with up to a 7,500 pound payload, and a zero fuel weight of 35,000 pounds or less. If promulgated, these amendments would be in lieu of the present requirement that all large aircraft operations under Part 135 be conducted in accordance with certain Part 121 rules.

It was the view of the FAA that permitting aircraft with a seating capacity of up to 30 passengers to operate under Part 135 prior to the completion of efforts to upgrade this Part, might compromise aviation safety. For this reason, Notice 76-7 restricted seating capacity to 10 passengers rather than 30 passengers.

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Question No. 2: What does the FAA plan to do for small community airports served by commuter airlines to insure that these airports get their fair share of F & E funds?

Response: The FAA no longer classifies airports as "air commerce" or "general aviation" for facilities and equipment (F&E) purposes. F&E candidates are now identified by meeting specific levels of operations according to aircraft category regardless of community size. While it is true that commuter airlines were formerly included in the "general aviation" category for F&E purposes, our new approach recognizes that these airlines are different than general aviation. Current categories include certificated route air carrier, air taxi (which includes commuter airlines), general aviation, and military. Air taxi aircraft are considered as having benefits substantially higher than general aviation aircraft.

The new system results in operations of commuter airlines receiving greater weight for purposes of establishment criteria for F&E than equivalent levels of general aviation activity. Similarly, recognizing that certificated air carriers generally carry more passengers per plane than do commuter airlines, and normally have aircraft which would be costlier to replace, cost-benefit analysis techniques result in certificated air carrier operations being valued higher than equivalent levels of commuter airline operations.

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Question No. 3: What is the FAA doing to fund the development of aircraft and engines that can safely and economically serve small communities?

Response: The primary responsibility for the development of new aircraft and engine technology rests with NASA, whether for air carrier aircraft serving primarily large communities or general aviation aircraft serving primarily small communities. The FAA development effort is carried out in support of its regulatory function and is usually oriented toward test and evaluation of hardware developed by industry or NASA. In this regard, we are working jointly with NASA in a program to: (1) develop standards which will permit general aviation aircraft to safely meet EPA emission standards for piston and turbine powered aircraft; (2) develop a means of evaluation and improve the crashworthiness of general aviation aircraft which, through enhancing the safety of general aviation, has a positive effect on small community development; and (3) study means of safely improving the noise characteristics of both turbine and piston engined general aviation aircraft to make them better neighbors in the small community.

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Question No. 4: What is the FAA position on the failure of a commuter airline to have appropriate safety publications on hand at inspection time? Witnesses have told us that at times it takes over one year to obtain needed publications from the Government Printing Office.

Response: A commuter airline conducting operations under FAR Part 135 is required by section 135.39 to furnish, among other things, an Airman's Information Manual and FAR Parts 91 and 135 to its pilots. Failure to comply subjects the airline to possible enforcement action. Operators may obtain these documents from commercial and other sources if not readily available from the GPO. In recognition of the difficulty experienced by the aviation community in getting safety-critical material from the Superintendent of Documents, the FAA issued Order 1720.29, Superintendent of Documents Distribution of FAA Safety-Related Publications, on January 28, 1976. This order established a system of monitoring complaints and performing liaison with the Superintendent of Documents to the end that better service to the aviation community may be provided.

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Question No. 5: Witnesses complained that commuter airlines are often given the most undesirable locations at airport terminals. What is being done to correct this?

Response: We recognize that situations exist at some airports in which commuter airlines are assigned to terminal space less desirable than others. Allocation of airport terminal space is a matter of availability and negotiations between airport management and the individual operators.

While we do not intend to defend the situation as stated, we should point out that commuter operators frequently are newcomers to the airport and have to be accommodated in whatever space is then available. It

is no doubt also true that the CAB certificated carriers who have been serving that airport for some time have long-standing leases on the most desirable space.

From the FAA standpoint, Federally obligated airports are bound by their sponsors assurances as incorporated in the grant agreements ". . . to establish such fair, equal , and not unjustly discriminatory conditions to be met by all users of the Airport" As such, it is our responsibility to see that the commuter airlines, as a class, are treated fairly. Any complaints of unjust discrimination that fall within the purview of this agency are investigated in an attempt to achieve resolution satisfactory to all parties.

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Question No. 6: DUPLICATE AND UNNECESSARY REPORTS. Rotor Aids, Inc. of California complained that the Bureau of Census was contracted to conduct a survey when the FAA already collected the required information. They also keep receiving a report they say they are not required to fill out.

Response: We are pleased that the complainant recognizes the need for the information requested on AC Form 8050-73, Aircraft Registration Eligibility, Identification, and Activity Report, and provides this information freely. We understand his concern with what would appear to be unnecessary duplication when he receives the telephone calls he describes. By way of explanation, however, the special survey conducted

by the Bureau of the Census for the FAA was an effort to get information not generally available to the FAA, since certain of the data requested were from the "optional" portion of the AC Form 8050-73 which many aircraft owners do not complete. Further, some of the information requested in the survey was supplemental to the AC Form 8050-73 and is simply not available to the FAA from other sources. These data are essential to enable the FAA to provide reasonably accurate forecasts of general aviation fleet size and activity levels in order to develop the FAA's work program and budget. This requires complete information on all specified characteristics for a scientifically selected sample.

In response to the complaint about continued receipt of FAA Form 1800-31, Airport Activity Survey (By Selected Air Carriers), the form is mailed to all air taxi operators and the information requested is a vital part of FAA's efforts concerning the Federal aid to airports program. The FAA's Information and Statistics Division continues to send out the form since it is entirely possible that the nature of the subject air taxi operation may change from time to time.

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Question No. 7: TAX LEGISLATION INEQUITIES. Current legislation creates a tax record-keeping nightmare for Rotor Aids. It is almost impossible to figure out what should or should not be taxed.

Response: While we do not wish to hold ourselves out as possessing special expertise in tax law since the Internal Revenue Service is responsible for interpreting the provisions of the Internal Revenue Code, we will attempt to address some of the issues raised by Rotor Aids.

Rotor Aids states that they have questions regarding the basis (i. e. standby charges, flight hourly charges, or both) upon which to compute the passenger and cargo taxes. The tax law appears to be relatively clear on this point, wherein at sections 4262(d) and 4272(d) of the Internal Revenue Code, it is stated that the term, "transportation," includes ". . . layover or waiting time and movement of the aircraft in deadhead service."

Rotor Aids further states that bookkeeping is aggravated by transportation of both cargo and passengers. We recognize that bookkeeping requirements may become complicated when both cargo and passengers are transported. However, if Rotor Aids elects to transport both concurrently, they would have to exercise careful bookkeeping practices to determine the taxes to be paid since different rates exist for passengers (8%) and cargo (5%).

We are unable to respond to Rotor Aids' question regarding taxability for that portion of their flights occurring over international waters. We suggest that they contact the Internal Revenue Service for a Revenue Ruling on this point.

Finally, with respect to the bookkeeping problems associated with fuel taxes, we note that the Congress clearly considered recordkeeping and expected the aviation fuel tax provisions to simplify such functions. (See House Report No. 91-601, page 47, where it states: "The special treatment for affiliated groups and small aircraft not on established lines is provided to more efficiently carry out this title's overall approach, i. e., to have the use of aircraft be subject either to the passenger and cargo taxes or else to the fuel taxes, but not to both as to any one trip. Those two categories of aircraft are exempted from the passenger and cargo taxes but are put under the fuel taxes for all their flights. It is expected that this will substantially simplify recordkeeping for those taxpayers and also facilitate administration of the taxes." Emphasis supplied.) Generally speaking, recordkeeping would be simplified for those operators having aircraft weighing less than 6,000 pounds since they would avoid the more complicated and detailed recordkeeping requirements of the cargo and passenger taxes. However, when an operator has aircraft that weigh less than 6,000 pounds as well as aircraft weighing more than 6,000 pounds, it would appear that bookkeeping procedures would be unavoidably cumbersome.

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Question No. 8: Complaints from small air carriers and commuters have come to the Subcommittee concerning the possibility of monopolistic tendencies in the sale and serving of fuel at the nation's airports. A documented case from Pittsburgh was sent to us. Our questions are a) Is Greater Pittsburgh International Airport in violation

of FAA policy in regard to use of Federal Airway Development Funds (FAA policy states that competitive services must be available and must be encouraged by airports receiving funds from the Development Fund), and b) Are landing fees and flow fees both appropriate at these airports since the Development Fund, as we understand it, is largely financed by fuel taxation?

Response: Section 308(a) of the Federal Aviation Act of 1958, as amended (49 U. S. C. §1349(a)) provides in pertinent part, that "(t)here shall be no exclusive right for the use of any landing area or air navigation facility upon which Federal funds have been expended."

The grant of an exclusive right for the conduct of any aeronautical activity on Federally obligated airports is regarded as contrary to the requirements of applicable laws, whether such exclusive rights result from an express agreement, from the imposition of unreasonable standards or requirements, or by other such means.

The presence on an airport of only one person engaged in an aeronautical activity will not in and of itself be considered a violation of the exclusive rights policy if there is no intent by express agreement, imposition of unreasonable standards or requirements, or by other such means to exclude others.

We are aware of some airports at which the commuter airlines as well as the charter operators are required to purchase fuel from the Fixed-Base-Operators (FBO), often at retail prices. When these discriminatory practices are discovered, steps are taken to rectify the situation.

8(a): With regard to the Great Western Airlines, Inc. complaint against the Greater Pittsburgh International Airport, the Eastern Region of the FAA is presently investigating the allegations. The letter of May 24, from Great Western was apparently not sent to the FAA so we were not previously aware of the problem.

8(b): The fact that the airport charges both landing fees and flow fees bears no relationship to the consideration that Development Funds are financed by fuel taxation. The rates and charges established by the airport are the prerogative of management and should relate to the costs of doing business. Section 18 of the Airport and Airway Development Act of 1970, as amended, (49 U.S.C. §1718), requires the airport operator to maintain a fee and rental structure that will make the airport as self-sustaining as possible under the circumstances existing at the airport. The establishment of unusually high rates, not commensurate with operating costs, and designed to exclude a segment or segments of the aviation community, would not be considered to be within the intent of Section 18 of the Act.

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Question No. 9: LOS ANGELES HELICOPTER AIRLINES. They feel that they are at an unfair advantage when it comes to economic assistance and new equipment financing. Commuter airlines are denied government guaranteed loan programs for new equipment which Federally certificated airlines receive. Yet LAHA is a rotary wing carrier. Even if they were Federally certificated, they would not be eligible for Federal assistance. Why not? While LAHA is intrastate, does not their unique nature and ability to relieve great urban traffic congestion entitle them to a further look from Federal authorities such as the FAA?

Response: The problems cited by Los Angeles Helicopter Airlines (LAHA) in their testimony before your Subcommittee on November 13, 1975, portray the same problems faced by many commuter airlines.

While we recognize the problems they have expressed, we should point out that the FAA in administering the Aircraft Loan Guarantee Program is bound by the applicable statute (49 U.S.C. §1324). This statute requires that a company seeking a Government guarantee of a private loan for the purchase of aircraft and equipment, must hold a certificate of public convenience and necessity from the Civil Aeronautics Board (CAB). The statute does not, however, exclude helicopter airlines from eligibility under this program. Therefore, since LAHA does not hold a certificate from the CAB, it would be ineligible for the program but not on the grounds that its aircraft are helicopters.

Mr. Chairman, this concludes our prepared statement. We will be pleased to answer any questions that you or members of the Subcommittee may have.