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U.S. Department of Transportation (DOT) Dockets  
Docket No. FAA-99-5483 -45  
400 Seventh Street SW., Room Plaza 401  
Washington, DC 20590

Gentlemen,

The Aircraft Owners and Pilots Association (AOPA), representing the aviation interests of more than 350,000 pilots and aircraft owners, submits the following comments to the Notice of Proposed Rulemaking (NPRM) covering 14 CFR Parts 65, 91, 105, and 119. Specifically, AOPA is concerned with three major issues affected by the NPRM that have been misaddressed or overlooked by the Federal Aviation Administration (FAA). These issues include notification of Flight Service (FSS) to facilitate the gathering and dissemination of NOTAM information, accident reporting requirements, and most importantly, the pilot in command's responsibility for the actions of a skydiver *after* that individual leaves the aircraft.

Throughout this rulemaking process, AOPA has been in contact with the U.S. Parachute Association (USPA). We have reviewed USPA's comments to this proposed rule, and generally speaking, AOPA agrees with and supports their comments. However, there are some key aspects of the proposed regulation to which AOPA would like to issue comments. To clarify AOPA's position on these issues, a section-by section listing of AOPA's comments and concerns follows:

*\$105.5 General*

In section 105.5, the FAA proposes, *"No person may conduct a parachute operation, and no pilot in command of an aircraft may allow a parachute operation to be conducted from an aircraft, if that operation creates a hazard to air traffic or to persons on the surface."*

This section continues the current regulatory philosophy that holds the pilot in command responsible for any hazard created by anyone at anytime during a parachute operation. This is patently unfair to the pilot, who should not face enforcement proceedings for hazardous actions performed by skydivers after they leave the aircraft. AOPA strongly suggests language changes throughout the rule to clarify that skydivers, and skydivers alone, have the responsibility to ensure they do not create a hazard to air traffic or persons or property on the ground.

To address this concern, AOPA proposes the following language change:

*“No person or parachutist may conduct a parachute operation, if that operation creates a hazard to air **traffic** or to persons or property on the surface. No pilot in command of an aircraft may allow a parachute operation to be **conducted from that aircraft**, unless all reasonable measures within the pilot’s control are taken to ensure that a hazard is not created. ”*

*§ 105.13 Radio Equipment and Use Requirements*

In paragraph (a)(2)(i) of this section, the FAA proposes to have the pilot, *“Continuously monitor the appropriate **frequency** of the aircraft’s radio communications system **from** the time radio communications are first established between the **aircraft** and air **traffic** control, until the pilot advises air **traffic** control that the parachute operation has ended for that flight; . . . ”*

This is a continuation of the language from the current rule, and seems to require that a pilot notify ATC when the last skydiver is on the ground (assuming this is when the skydiving operation has ended). From a practical standpoint, this is difficult, and in some cases impossible, for a pilot to accomplish. In many cases, a pilot may have descended below radio reception altitude, or even landed, before the last skydiver lands. Consequently, many aircraft have descended well below radio reception altitude before they can legally make the appropriate ATC notifications.

To remedy the situation, AOPA recommends that the language of 105.13(a)(2)(i) be changed to, *“Continuously monitor the appropriate **frequency**... until the pilot has landed or is no longer able to communicate with air **traffic** control ”.*

*§ 105.17 Flight Visibility and Cloud Clearance Requirements*

In this section the FAA proposes, *“No person may conduct a parachute operation, and no pilot in command of an **aircraft** may allow a parachute operation to be conducted from that **aircraft**—(a) into or through a cloud, or (b) when the flight visibility or the distance **from** any cloud is less than that prescribed by the following table: ”*

Again, this regulatory language makes the assumption that the pilot in command has control over the actions of skydivers **after** they have left the aircraft. Consequently, a pilot may face enforcement actions anytime a skydiver enters a cloud or violates cloud clearance and visibility requirements. AOPA strongly recommends that this regulation be changed to relieve the pilot of responsibility for the actions of individuals not within his/her control, and to emphasize the skydiver’s responsibility for his/her own actions

after they leave the aircraft. The FAA can and should take enforcement action, in the form of civil penalties, against any skydiver who willfully or wantonly violates the rules. Enforcement activities in these instances should target the guilty party.

AOPA proposes that the language of § 105.17 be changed to “ (a) No person or parachutist may conduct a parachute operation-(1) into or through a cloud, or (2) when the flight visibility or the distance **from** any cloud is less than that prescribed in the following table. (b) No pilot in command of an **aircraft** may allow a parachute operation to be **conducted from** that **aircraft**, unless the pilot has a reasonable expectation that prevailing weather conditions will allow a parachutist to descend to the ground while maintaining required visibility and distance **from** clouds. ”

#### § 105.23 Parachute Operations Over or Onto Airports

According to the FAA and the aviation community, parachuting is considered a legitimate aeronautical activity. Consequently, federally obligated airports should allow access to parachute operations. As with any aeronautical activity, a federally obligated airport may only refuse airport access on the grounds of safety and such a refusal must be based on an appropriate FSDO safety justification. AOPA recommends that § 105.23 (a) and (b) be rewritten to provide guidance for airport and control tower management clarifying the legitimacy of parachuting as an aeronautical activity and the grounds upon which airport access may be denied.

#### § 105.25 Parachute Operations in Designated Airspace

##### NOTAM information:

AOPA is concerned with the deletion of any reference to FAA Flight Service Stations (FSS) from this paragraph, and the entire rule. The majority of general aviation flights are conducted under VFR and outside of contact with ATC. Consequently, most general aviation pilots rely on **NOTAMs** for advisory information, including notification of skydiving activities.

In the preamble to the present rule, the FAA indicates that air traffic controllers will be responsible for advising FSS of parachute activity, presumably resulting in the issuance of a **NOTAM**. However, the rule is rather ambiguous when describing how this process will take place. Consequently, AOPA recommends that the FAA issue clarification and guidance material to ATC facilities highlighting their obligation to provide adequate notification to all agencies necessary to ensure **NOTAM** dissemination and the safety of aircraft operating in the vicinity of skydiving operations. Additionally, AOPA recommends that the FAA publish the frequency most commonly used by each drop zone adjacent to each drop-zone symbol posted on sectional charts.

Class E and G Airspace:

Paragraph (c) of this section proposes “*Air traffic control may revoke the acceptance of the notification for any failure of the organization to comply with its terms.*”

AOPA agrees that it is in the interest of aviation safety to require ATC notification prior to the start of parachute operations. However, we believe that ATC should not be given the authority to “revoke” or refuse parachute operations for “failure. . . to comply with its terms”. The FAA and the aviation community recognize parachuting as a legitimate aeronautical activity. In class E and G airspace, the FAA has made no requirement for a skydiving operator to obtain any type of ATC clearance or authorization prior to commencing a parachuting operation. As a legitimate aeronautical activity, parachuting should be granted the same levity as all other aeronautical activities in Class E and G airspace. ATC cannot revoke or refuse any operation for which they have no authority to issue a clearance or authorize.

Consequently, AOPA recommends that the above listed sentence be removed from paragraph (c) of §105.25.

§ 105.27 *Accident Reporting Requirements*

In this section, the FAA proposes “*The FAA must be notified within 48 hours of any parachute operation resulting in a serious or fatal injury to a parachutist by-(a) Each parachutist involved in the accident, or (b) the pilot of the aircraft, or (c) the drop zone owner/operator.*”

Although AOPA recognizes the merit of collecting accident data and statistics, we have serious reservations regarding the implementation of any new accident reporting requirements for pilots. Particularly, AOPA is concerned with the fact that, under the proposed rule, accidents would have to be reported directly to the FAA. Current FAA policy dictates that the FAA must investigate all reports received. Consequently, this reporting requirement is, in essence, a requirement to have a pilot, skydiver, or drop-zone owner/operator initiate an investigation or enforcement actions against him/herself. AOPA is strongly opposed to such a requirement.

Currently, pilots must adhere to the accident reporting requirements of NTSB 830, and report substantial aircraft damage and any serious or fatal injuries directly to the NTSB. This is obviously a much more desirable reporting system as it allows a neutral party to collect the accident data and protects an airman from unnecessary or unwarranted FAA enforcement actions.

Department of Transportation

Page 5

July 12, 1999

Given the success of, and widespread industry participation in, USPA's long standing accident and fatality reporting system, AOPA seriously questions the need for a mandatory parachuting accident/incident reporting requirement. AOPA opposes the implementation of any new accident reporting system for parachutists, drop-zone owners/operators, and most importantly, pilots. Therefore, AOPA recommends that § 105.27 and all accident reporting requirements be removed from this rule. Should the FAA determine that there is a dire need for a parachuting accident reporting requirement, AOPA recommends that it be implemented by adding the required language to NTSB 830.

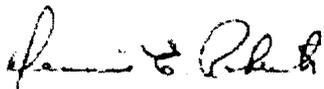
### Summary

In summary, AOPA generally supports the provisions of this proposed rule, as they align the language of the rule with the current equipment and practices of the skydiving community and ensure safety for the flying community. However, AOPA recommends that the FAA take care to ensure that proper guidance is given to airport and control tower managers to ensure that they exercise their authority to limit aeronautical activities only when aviation safety is compromised. Additionally, AOPA recommends that the FAA take steps to ensure the timely dissemination of NOTAM and traffic advisory information to all aircraft in the vicinity of a skydiving operation.

Most importantly, AOPA strongly opposes any rule that holds a pilot responsible for persons or circumstances outside of his/her control. Additionally, AOPA strongly opposes any accident reporting requirements that may lead to FAA investigations and enforcement actions.

Thank you for your time and consideration in this matter. AOPA stands ready to assist the DOT in reconsidering these regulations.

Respectfully,



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