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September 3, 1999

U.S. Department of Transportation Docket
Docket No. FAA-99-5927-4 ()
400 Seventh Street S. W.
Washington, D.C. 20590

Re; Docket No. FAA-99-5927

Gentlemen:

This letter is my response to the proposed rulemaking entitled: Commercial Air Tour Limitation in the Grand Canyon National Park Special Flight Rules Area (Docket No. FAA-99-5927; Notice No. 99-1 2). I am responding because I believe that you, the FAA have only partially calculated the primary costs and benefits of the proposed rule.

One parameter of costs/benefits that has been excluded from the analysis is the revenue gains to air tour operators that called economic rent or producers' surplus. Economic rent is the difference between what the productive services of a resource owner earns in his/her current occupation and the minimum he/she is willing to accept to stay there. It is a measure of the resource-owner's gain from having the opportunity of placing his factors in the chosen occupation at the existing factor price, given the prices his factors would earn in all other occupations. This concept is important in this rulemaking for two reasons. First, it is the appropriate counterpart of consumer' surplus that was discussed in the regulatory evaluation to the proposed rule. Second, excluding economic rent either decreases the costs of the proposed rule or increases the benefits in a significant way.

To argue that there will be no revenue gains to air tour operators (you are silent on this issue) is a major flaw of this analysis. It is a major flaw because the reduction in projected net operating revenue (in excess of \$170 Million) is significant and would be even greater if you used a more "normal" year in the analysis. Within the context of this rulemaking you have chosen a base year that because of the collapse of several Far East currencies, has had a large impact on Asian visitation to Las Vegas and the Grand Canyon. Consequently, demand is likely to increase and with supply being constrained or fixed (regardless of the elasticity of demand and of supply) there will be fewer seats available for sale in the future than there are now. Consequently, I believe that there will be revenue gains because air tour operators will be able to raise the prices that they charge for an air tour. In sum, the revenue loss to air tours operators is inaccurate because (1) you have used a low base year and (2) you have excluded economic rent.

**Clayton Kelb
Prescott, Arizona 86301**

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Re; Docket No. FAA-99-5927

Gentlemen:

SUMMARY

This letter is my response to the proposed rulemaking entitled: Commercial Air Tour Limitation in the Grand Canyon National Park Special Flight Rules Area (Docket No. FAA-99-5927; Notice No. 99-12). I am responding to this proposed rule because I believe that both the Office of Management and Budget (OMB) and the Federal Aviation Administration (FAA) are not enforcing and/or complying with the requirements of the Paperwork Reduction Act (PRA). OMB is allowing you, the FAA, to use outdated data when more current data **that has been collected** from air tour operators is available. If you, the FAA, continue to use old data and OMB does not require you to use the most currently available data, then the results shown in your regulatory evaluation may be inappropriate and may lead you to an incorrect decision (In short, if I were an air tour operator who has been submitting data to you on a timely basis, then I would expect you to use that data in your regulatory evaluation.).

ANALYSIS

In December of 1996, the FAA published the final rule entitled Special Flight Rules in the Vicinity of Grand Canyon National Park. The effective date of the final rule was May 1, 1997. The Federal Register notice (page 69324) which contains the regulatory evaluation **summary** states the following:

(5) Reporting Requirements

Section 93.9 17 will establish operator reporting requirements. All certificate holders operating within the GCNP SFRA will incur costs due to this section during the **5-year** time frame (1997 through 2001) that these reporting requirements will be in effect.

The reporting requirements for Sec. 93.9 17 include:

- (a) Each certificate holder will have to establish a system to codify the required information and then update this system (there are no existing reporting requirements).
- (b) Three times a year, within 30 days after April 30, August 31, and December 31, each certificate holder will have to submit in writing specific information to the Las Vegas FSDO.

The FAA later states that “for the operators, total costs sum to approximately **\$366,000..**” On average, the cost is \$73,200 per year for the operators. **I am not questioning the cost estimation procedure in my response, instead I am questioning whether the agency has collected information for the purpose of meeting a specific agency need and maximized the utility of collecting the information (as required by the PRA) that has already been collected,** In other words, I do not believe that the collection of information from air tours operators has (1) served an agency purpose in meeting a specific agency need and (2) maximized practical utility.

The PRA has many purposes. Two purposes of an agency’s collection of information is to:

- Serve an agency purpose in meeting a specific agency need, and
- Maximize practical utility

I have carefully researched the terms “purpose” and “need” with regards to the PRA and offer the following comments. The term “purpose” means the collection of information will, or is expected to, achieve a result within the statutory, programmatic or policy requirements of the sponsoring agency, and will be used on a timely basis. The term “purpose” means that some programmatic or policy requirement exists. It is my understanding that a collection of information may meet the purpose criterion but fail the criterion for need because the results of the study will not help program operation or policy development. It seems to me that the FAA has been collecting the information as stated in the 1996 final rule, yet I don’t see the **most current** information being used for program information or policy development.

With regards to practical utility, I believe that the term refers to the usefulness of information to carry out the agency’s functions in a useful manner. A collection of information may meet the purpose and need criteria, but fail the criterion for practical utility because the agency using the information is not able to use the information in a timely and useful fashion in a reasonable, practical, workable, and reliable way.

I believe that collections by agencies (such as the FAA) lack practical utility if agencies cannot actually use the information obtained. For example, when the agency does not have a plan for the timely processing, use, or submission of that information, then the agency should not be collecting it for program information or policy development. This brings me to the latest proposed rulemaking.

In the notice of proposed rulemaking entitled: "Commercial Air Tour Limitation in the Grand Canyon National Park Special Flight Rules Area," 14 CFR Part 93 Docket No. FAA 99-5927; Notice 99-12, the FAA states on page 373 15 of the Federal Register that data collected for the base year May 1997 to April 1998 was used in the regulatory evaluation. The FAA later states on page 373 16 of the Federal Register notice that this information was provided by operator and by route in accordance with current section 93.3 17 of 14 CFR (In other words, the operators were sending you this information for you to use.). Given that the you, the FAA are only affecting 25 entities conducting fewer than 100,000 air tours, I am surprised that more current data was not used in the regulatory evaluation for this proposed rule. Again, if you, the FAA, continue to use old data and OMB does enforce the PRA, then the results shown in your regulatory evaluation may be inappropriate and may lead to incorrect decisions. In addition, the results from using outdated data and the decisions emanating from the usage of that data may unduly burden air tour operators conducting air tours in the Grand Canyon National Park.

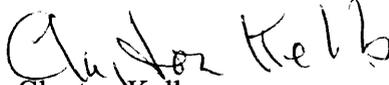
I expect you, the FAA, to argue in the regulatory evaluation to this final rule that you did not have enough time to tabulate the data for the year May 1998 to April 1999, when you conducted the regulatory evaluation for the proposed rule. However, over two months have passed since the proposed rule was published and this comment period closed. Given that the FAA is a huge Federal agency with substantial resources available, there should be adequate time to compile and review the data from only 25 entities conducting fewer than 100,000 air tours annually.

In summary if you, the FAA, continue to use old data and OMB does not enforce the PRA, then the results shown in your regulatory evaluation may be inappropriate and may lead to incorrect decisions.

CONCLUSION

Air tour operators have provided you, the FAA, information on the number of air tours that they have conducted in the Grand Canyon National Park. They have provided this information as required by section 93.9 17. However, you used old data in your regulatory evaluation to the proposed rule. More current data was available and at least three months have passed since that regulatory evaluation was completed. I would expect that you would use the most currently available data in the final regulatory evaluation for program information and policy development.

Yours truly,


Clayton Kelb

Cc: OMB Transportation Desk Officer
OMB Docket Office