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Washington, D.C. 20590

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**Subject:** Federal Aviation Administration Notice of  
Proposed Rulemaking (NPRM)

**From:** Gerald J. Shlesinger, President  
Las Vegas Helicopters, Inc.  
3712 Las Vegas Boulevard So.  
Las Vegas, NV 89 109

**Date:** September 6, 1999

Comments on the above-referenced NPRM are being submitted on behalf of Las Vegas Helicopters, Inc. ("LVH"). This is a privately owned, small commercial helicopter service making certain flights to, from and over allowed areas of the Grand Canyon. LVH is a member of the Grand Canyon Air Tour Council (hereafter "GCATC"), and hereby concurs with and incorporates the comments submitted by said Council dated September 3, 1999, as well as that certain testimony and other information provided at the duly noticed public hearing held August 19, 1999 in Las Vegas.

### **UNLV STUDY**

I agree with the many points made in the research and analysis dated August 18, 1999, and titled "An Analysis of Proposed Flight Restrictions at the Grand Canyon National Park: Estimating the Costs, Benefits, and Industry Impact of the Proposed Regulation," prepared by Mary Riddel, Ph.D and by R. Keith Schwer, Ph.D from the Center for Business and Economic Research at the University of Las Vegas (hereafter the "UNLV Study"). Because multiple copies of the UNLV Study already have been provided and made part of this record, I hereby incorporate it by reference. I will reference certain pages of the UNLV Study hereafter.

### **ABEYANCE OF THIS NPRM**

Based on my years of actual operating experience, it seems outrageous that a rule such as this could be taken or seriously proposed without careful, methodical, accurate, scientific and

economic analysis. I am familiar with some of the history of this NPRM. In all due respect to the goal of “natural quiet,” the FAA’s proposal will ironically generate more noise, pollution and further intrusion into the Grand Canyon, if it is adopted. I RESPECTFULLY ASK THE FAA TO POSTPONE INDEFINITELY ANY FURTHER ACTION ON THIS PROPOSED RULE.

To me, the Proposed Rule is abruptly arbitrary and unnecessary. Economically, it is like asking the Federal Government to suddenly take its income from 1997 only, then continue to operate and never exceed that income level for any purpose in the future. It’s like telling McDonald’s they must count how many Big Macs were sold in 1997, and then bar them from selling any more than that amount for all years after 1997. It is like telling the airline industry they are limited to only the number of flights they had and only to the same cities they flew to during 1997. It’s like telling attorneys in the U.S. that they, as a total profession, cannot file any more lawsuits than were filed in 1997.

Both the FAA’s and the UNLV Study require further responsive analysis. The validity of the economic rationale used in the NPRM and the FAA’s Initial Regulatory Evaluation, Initial Regulatory Flexibility Analysis and International Trade Impact Assessment require much further expert review and study. Once this is done, then some reasonable and balanced might possibly be developed.

So far as I am aware, this is the first time since deregulation the FAA has attempted to limit use of national airways. This is so unprecedented, it is surprising the FAA has not incorporated more careful and thorough analysis of the general and specific impact of this precedent. The FAA’s work to date amounts to a crude assessment of numbers of flights over the Grand Canyon under limited time frames and circumstances. The FAA in fairness must take more caution in approaching the question of the proposed economic impact of rolling back flights.

### **DEVASTATING IMPACT ON SMALL BUSINESSES**

Speaking personally as the owner of LVH, I can assure the FAA this Proposed Rule will have a major, devastating impact on small businesses. I am a small business and not able to endure the threat of this Rule. Planning for my business will be stifled. Making a capital investment, which creates jobs in Nevada (not inside the Grand Canyon), will become very difficult with lenders, because of this artificial cap on operating capacity.

My general understanding of the Small Business Regulatory Enforcement Fairness Act of 1996 (hereafter “SBREFA”) is that this law and published guidelines exist to “ensure the agency has considered all reasonable regulatory alternatives that would minimize the full economic burdens or increase its benefits for the affected small entities.” (Emphasis added). The Proposed Rules defies this “congressional mandate” from the SBREFA that is specifically directed to governmental agencies in the very context of rulemaking. For FAA to go forward with the Proposed Rule makes legal action under the SBREFA necessary and appropriate. Congress has spoken at a national level to the effect that FAA cannot proceed knowingly or in the face of strong and credible evidence that the Proposed Rule will have a major adverse impact on small

businesses, just like LVH and others.

### **ACCESS TO GRAND CANYON OF HANDICAPPED, IMPAIRED OR ELDERLY**

If the Proposed Rule is implemented, I predict it will stifle access to the Grand Canyon by people who are handicapped, impaired or elderly. Access by air is the only way many of these people will ever see the Grand Canyon. The FAA's Proposed Rule is arbitrary and discriminatory against the handicapped, impaired and elderly. These people will have limited access to the Grand Canyon based on the artificial cap on flights. This is discriminatory and against the policies established by Congress when it adopted the Americans with Disabilities Act.

### **ARTIFICIAL FLIGHT LIMITS ARE NON-RESPONSIVE**

The Las Vegas Convention and Visitors Authority has provided the FAA with ample evidence of the numbers of visitors to Las Vegas each year, and how many of them come to see the Grand Canyon. The FAA can and should take full administrative notice of these numbers. Those Convention Authority figures are based in fact and actual market experience than FAA projections. The artificial flight limit will arbitrarily and artificially alter this important market. These artificial limits must be adjusted for peak season flights, major conventions; they should not be imposed in the first place because these peak times vary depending on circumstances.

It seems to me, the Nevada gaming industry has a major stake in the FAA's Proposed Rule. If adopted, Nevada casinos will find tens of thousands/millions of patrons traveling by car, bus or coach to actually see the Grand Canyon from ground level. This will reduce available tourist time here in Las Vegas. This rule will have the completely foreseeable impact of stimulating massive demand of visitors to see the Grand Canyon on the ground; predicably, this will increase pressure for roads, available lodging, and massive intrusion into and throughout the Grand Canyon. Since the hikers complained about the noise from flyovers, when the hikers increase ten or twenty-fold, then the problem will be far more severe than minor noise over a limited portion of the Canyon.

### **LATCHES**

It seems to me that the legal doctrine of "latches" applies here. Where the Government has known for years that businesses have operated flights over the Grand Canyon; where the Government for years has collected various taxes and fees from these operating businesses; where the businesses for years have paid federal withholding taxes on employees, and a host of other corporate income taxes and others, then the Government should be barred from suddenly, without reasonable advance notice (such as a decade at least) imposing artificial and harmful flight limitations.

## CONCLUSION

No one has a crystal ball to predict the future. No one can predict future air traffic demand, traffic flows of business or changes in the expense side of businesses. Given the FAA's rather crude and totally arbitrary approach of picking certain yearly flight numbers and then capping flights based on that information, this will prove to be a harmful and reckless way to deal the Grand Canyon visitors, handicapped patrons and small businesses such as mine. Use of an artificial cap by the FAA will, predictably, only lead to more unpredictable results. The negative economic ripple effect of the Proposed Rule will harm businesses, visitors' chances to see the Grand Canyon, and pose harm to the Southern Nevada Economy. Maybe regulators in Washington, D.C. care very little about what this Proposed Rule will do. This Rule is something I and we in Southern Nevada care about very much. We are convinced it is bad policy. Adopting it will not help the National Park Service and it will not achieve its intended result. Adoption of the Proposed Rule can and will only result in foreseeable, real harm to Southern Nevada, and I believe excessively increase demand for access to the park on land and trails will only hurt the Grand Canyon. We need to do all we can, to stop its implementation. The Proposed Rule should be abandoned, or at the very least held indefinitely in abeyance.

SUBMITTED BY: GERALD J. SHLESINGER  
PRESIDENT

GJS/mjh  
Enc.



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

Subject: Federal Aviation Administration Notice of  
Proposed Rulemaking (NPRM)

Commercial Air Tour Limitation in the Grand  
Canyon National Park Special Flight Rules Area

From: Robert G. McCune  
Grand Canyon Air Tour Council (GCATC)  
P.O. Box 11008  
Las Vegas, Nevada 89111

Date: September 3, 1999

Comments on the above NPRM are being submitted on behalf of the Grand Canyon Air Tour Council. This Council is an industry coalition of twenty-two Nevada and Arizona air tour operators and associated companies involved with the Grand Canyon air tour industry.

Enclosed with my comments are copies of a pertinent study

**“An Analysis of Proposed Flight Restrictions at the Grand  
Canyon National Park: Estimating the Costs, Benefits,  
And Industry Xmpact’ of the Proposed Regulation”**

which was prepared by Center for Business and Economic Research at the University of Nevada Las Vegas at the request of the GCATC. The study was requested by GCATC because of the total air tour industry belief that the economic rationale utilized by the FM to support this proposed rulemaking was suspect, at least for the major, underpinning of the NPRM, and therefore arbitrary and capricious. The study proved this to be the case and a formal request is now made that this NPRM be withdrawn and held in abeyance for such time as needed to create a federal sanctioned commission to review

**both the FAA proposal and the UNLV responsive analysis as to the validity of the economic rationale used in the NPRM and the FAA's Initial Regulatory Evaluation, Initial Regulatory Flexibility Analysis, and International Trade Impact Assessment. Such a federal commission composed of representative park users, local, state, objective federal authorities and acoustics experts could conduct a fair and balanced study to determine if, or to what extent, air tours impact the Grand Canyon and the enjoyment of the park by the majority of park visitors. Then make rational and reasonable recommendations on how to fairly address the problem.**

Even though the UNLV analysis **was** submitted for the record **during** the FAA's public hearing on the **subject NPRM held in** Las Vegas on August 19, 1999 it was not submitted **in the** context of **evidencing the** need to withdraw and hold in abeyance this **NPRM**, for **the** reasons previously stated.

Obviously, **until** this withdrawal request **is reviewed**, it behooves **those most** affected to **proceed with other remedial comments** to the **NPRM** that **will hopefully** be considered prior to any **final rulemaking**.

**1. Limiting commercial air tours in the Grand Canyon National Park Special Flight Rules Area.**

- \* According to **GCATC's** Counsel the authority to **limit** flights is not **established**. This **rulemaking** represents the first **time** the **FAA** has **ever attempted** to discourage **commercial** aviation and to limit the **use** of the Nation's **airways**. As **all of us** understand the mission of the **FAA**, the **FAA** is charged **with the responsibility of promoting and protecting aviation and the safe** USC of the Nation's airspace. **The** Proposed Rule is new ground for **the** **FAA**. If **enacted**, the **proposed Rule seems vulnerable to challenge in court** as **beyond the scope** of the **FAA's** statutory authority.
- **The** **GCATC** is on **record** as **endorsing the UNLV's Center for Business and Economic** Research's economic analysis **disagreeing** with **the** **FAA's** economic **rationale** used in the **NPRM** and supporting documents. In **fact as stated** above and previously, **GCATC** in endorsing **the university economic** analysis response to the **FAA** allocation **NPRM**, **GCATC** is **unequivocally** implying that the credibility of **the** economic rationale utilized by **the** **FAA** in **FR** Part V, DOT/FAA, **Notice** of proposed **rulemaking**, and in **FAA's** supporting **document – Initial Regulatory Evaluation, Initial Regulatory Flexibility Analysis, et al** **is suspect**, in **utilizing** such questionable supporting data. it argues for the **view**, that the proposed **rulemaking** is arbitrary and capricious.
- **It** is important to carefully underscore **that** the **FAA's** proposed economic impact of limiting or a rollback of flights **utilizes** seriously **impaired** statements, or lack thereof, in both the Part V, **NPRM**, and in the Initial Regulatory Evaluation – **Initial Regulatory Flexibility** Analysis document, **dealing with the** statutory **requirement** to evaluate alternative regulatory approaches. In **both documents**

FAA purports to have met the intent of **certain requirements** of the Regulatory Flexibility Act as set forth in the **Small Business Administration** published guide to the RFA. Quote:

'An initial regulatory flexibility analysis is prepared in order to ensure that the agency has considered all reasonable regulatory alternatives that would minimize the rule's economic burdens or increase its benefits for the affected small entities, while achieving the objectives of the rule of statute. The analysis describes the objectives of the proposed rule, addresses its direct and indirect effects and explains why the agency chose the regulatory approach described in the proposal over the alternatives. (Underline added.)

The same FAA deficiency exists with the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) wherein (according to the **Small Business Administration's regulatory guide**) the FAA is required to deal with these provisions, and again I quote:

"The following issues are subject to judicial review under the SBREFA:

- The final regulatory flexibility analysis including the agency's efforts to evaluate alternative regulatory approaches and reasons for rejecting or accepting them;
- The agency's effort to collect comments from small entities through a variety of mechanisms; ( a d d e d . )

(Under the SBREFA last issue above; FAA also minimizes their responsibility with this requirement by simply asking small air tour operators in the NPRM to forward the needed data. Hardly much of an effort.)

This same lack of FAA enthusiasm for "alternatives" regulatory requirement was also apparent in their June 3, 1999, briefing to SBA and OMB. Quote:

#### **"ALTERNATIVES CONSIDERED**

- Throughout its analysis, the FAA considered several alternatives to the proposed rulemaking.
- Annual operating alternatives considered include a uniform year (no peak/off-peak season) and a shorter three-month peak season (July 1 - September 30). Both were rejected because they could lead to a worsening of the noise problem during the summer season, defined in the 1996 final rule as May 1 through September 30. In neither alternative was the FAA able to estimate the impact on operator net revenue other than it would probably be smaller than this proposed rule. (Underline added.)"

(Please note the last sentence wherein FAA states that they were unable to estimate the impact on operator net revenue in neither alternative. Yet, throughout the Pan V NPRM, and in the Initial Regulatory Evaluation – Initial Regulatory Flexibility Analysis document, there are countless examples of other FAA estimating, without the benefit of any solid database. Also in the last part of the last sentence “other than it (operator net revenue) would probably be smaller than this proposed rule,” (underline added) is not true. in each “alternative” used – a uniform year (no peak/off-peak season) or a shorter three-month peak season (July 1 – September 30) operator net revenue would be larger, not smaller under the proposed rule with its five month peak season.)

It is the contention of the GCATC that FAA has not complied with the statutory requirements to consider all reasonable regulatory alternatives that would minimize the rule's allocation economic burden. Further, the “alternatives” suggested are not adequately explained as to why the agency chose the current regulatory approach over the alternatives. The reason the FAA probably took this desperate strategy is that there are, in truth, no real or viable alternatives that FM could list and describe. The FAA simply inserted a brief mention of some procedure options as to how an operator might shift their company's flight allocations over different seasonal scenarios.

No alternatives to the allocation proposed rule – period. Just hypothetical options and then a brief statement that the alleged alternatives were rejected because of the possible movement of increased aircraft noise of Grand Canyon relative to a time option. The rest of the so-called “alternatives” dealt with minor administration issues:

- quarterly reporting
- monitoring allocations

(Note: There was a terse reference to “alternatives” considered by the FAA in dealing with the two year term for the allocations and I quote “In devising the proposed two-year term for the allocations, the FAA considered two other alternatives including revising the allocations annually or on an ad hoc time basis thereafter. The FAA rejected both of these alternatives because it was concerned that neither alternative would achieve the proper balance between providing the certificate holder with the latitude necessary to conduct business, and controlling noise in the GCNP.” Apparently, it was never the intent of the FAA to offer these two other alternatives in the context of the Regulatory Flexibility Act requirement to evaluate alternative regulatory approaches. This is the only time they were mentioned before or in the NPRM. Be assured that the NPRM deficiency, and the same for the Initial Regulatory Flexibility Analysis in dealing with the issue of regulatory alternatives is of notable concern to the Grand Canyon air tour industry.

## 2. Comprehensive Noise Management Plan

It would appear to most people that when undertaking an important plan defined as a “development of a flexible and adaptive approach to noise mitigation and

management” it would have been completed **prior** to raking any regulatory **proposed** action as **harsh and punitive** as **the** FAA’s intent to limit or roll back air **tour flights over the Grand Canyon** because of **alleged noise** problem. **Especially when the FAA NPRM contends that this plan** “will, at a minimum **do the following** 1.) address development of a reliable **aircraft operations** and noise database.” Again, most **people, especially** those about to **be severely restricted in** their **small business** operation, **would realistically** want to ask **these** questions “Without this information. (noise database) how do you know there is a **problem?**” and “Why **are** you trying to fix a problem **that may not exist with such Draconian measures?**” **Therefore, it is** again suggested that **until** there are factual reasons for this **NPRM**, it should **be** withdrawn, or at **least held in** abeyance, until such time as **the** FAA has in hand the **information and database on which to evidence a problem, and then the solution.**

### **3. Specific Matters For Comment**

FAA has **requested specific comments** to six questions on page 373 11 **Federal Register**, part **N**, **under the** ~~abthat~~ **after a r e v i e w o f** such comments, **It is indicated that the final rule may incorporate** changes based on these comments.” This will **be** a “first” in all **the four years** of NPRM comments the air tour industry has filed, if even, one **change** is made in this final **rule** as **a result of comments received. Regardless, we** submit for **your** **hopeful** consideration **the** following responses **to** the six questions:

- 1.) No **FAA predicted peak season** for the purposes of **assigning** allocations. **The only** accurate predictor of peak or **non-peak** periods will **continue to be** the **marketplace.**
- 2.) **The air tour operators are** evenly divided **between Universal Coordinated Time or Mountain Standard Time.**
- 3.) No **reporting** should be imposed **as a** condition of a Form **7711.**
- 4.) It is **felt that 180** days is **too arbitrary** and should be a longer time **period** in such a **serious** use or lose provision, as proposed in **section 93421.**
- 5.) **All air tour operators** unanimously **feel** that **each initial** allocation is **35% to 45% on the low side** in **reflecting** business operations as of **July 9, 1999.**
- 6.) There are unanimous **views** that the allocation is the wrong process in **dealing with the FAA/NPS overflight concerns. Once you start with 8 serious flawed procedure to** resolve an **alleged** problem, **the chances** for success are slim or **none** that it **will** work. **Therefore, the FAA** should build in **flexibility** in their overall **proposal** and planned **use** of a specific **period of time.** Especially **when the** specific period of time

is predicated on completion of a comprehensive noise management plan.

#### 4. International Trade Impact Assessment

This subject in the FAA's NPRM is probably the most lacking in terms of required regulatory review. The dismissal of this assessment with the quote "The FAA has determined that the rulemaking would not affect . . . . . nor affect U.S. trade," (underline added,) is perhaps one of the most offensive examples of FAA's unwillingness to provide due diligence to this most important matter to the United States and the Grand Canyon air tour operators.

The FAA simply acknowledges that due to the high percentage of foreign patronage of Grand Canyon air tour services, foreign trade may be affected by disruption of marketing of the tours. A survey of Southern Nevada based air tour passengers done by the Center for Business and Economic Research at UNLV indicates that in recent years, over 90% of clients are international visitors.

Though this is a possible source of declining demand, the more likely foreign trade impact is the loss of service exports of flights that would be demanded but cannot be sold due to the regulation. This is not considered at all in the report. It is most important that FAA reflect favorably on the economic contributions of air tours in terms of international trade benefits.

- AN ESTIMATED 90% OF GRAND CANYON AIR TOURS FROM SOUTHERN NEVADA ARE SOLD TO INTERNATIONAL VISITORS
- AIR TOURS ARE "SERVICE EXPORTS"
- THE PROPOSED FAA RULEMAKING WILL HAVE A NEGATIVE EFFECT ON THE U.S. BALANCE OF TRADE

#### 5. Quiet Technology for Aircraft

This subject is "another orphan" that suffers from FAA's lack of due diligence. An option that has "a potential problem solving strategy" written all over its realistic possibilities. Yet because this matter is only slightly addressed in the NPRM, there is no basis to respond. Going back to 1997 the FM published a Notice of Availability of Proposed Routes and a companion NPRM (Notice No. 97-6) that proposed two noise efficient/quiet technology incentive corridors. This proposal was withdrawn in July, 1998, along with a proposal for a route through the central portion of Grand Canyon National Park. This was a sad development, more so, when FAA advised that "Due to resource constraints, the FAA has not been able to prepare a disposition of comments received in response to Notice 97-6." Another example of where the air tour's many offers for negotiated rulemaking would have been useful to all parties, as well as educate FM on how quiet technology is already being utilized. Apparently this "resource constraints" is still the case, as this current notice (99-12) is also still lacking specifics other than references to future planning for hopeful and eventual

**outcomes. There** must be solid plans to put on the books, provisions or **incentives for air tour carriers to continue to operate quiet aircraft and increase the technology.**

Perhaps **a few** succinct **thoughts** might encourage the **FAA** to **find resources that** will help **them** to listen to **the** message concerning quiet technology.

**The** FAA should focus on concrete proposals and practical incentives for quiet technology **aircraft** rather than unnecessarily **eliminating** noise for its own **sake. Government** needs to **set** quiet technology standards, goals and time frames for **aircraft** manufacturers. **Quiet technology aircraft standards** have been “on **the** drawing board” of NPS and FAA since December 1996, but have yet to **be** proposed. Fear of being **driven** out of business will discourage **operators from investing** in quiet **aircraft.**

Inability to fully utilize new **aircraft (e.g., caps/curfews)** discourages investment in **quiet** technology **aircraft due** to inability to amortize the **investment** effectively. Government **needs** to set example by phasing in **quiet** technology aircraft for its own operations in **national parks.**

**The** proposed **rules** attempt to “divide and conquer” the air **tour** industry **rather than** achieve fair, **attainable standards** for maintaining **quiet** parts of GCNP.

The GCATC **will** submit **comments** on the FAA **prepared draft** environmental assessment in **their** response to the **Federal Register**, Part IV **NPRM**, dealing with “Modification of the Dimensions of the **GCNP-SFRA** and Flight **Free** Zones.

**In** closing the GCATC would **like** to emphasize **again**, their view, **that** this **NPRM** be **withdrawn** and **held** in abeyance, until such time that a federal sanctioned commission be **established** to **review** both the **FAA proposal** and UNLV responsive analysis. **as to** the **validity of the economic rationale** and **findings** used **in the FAA's allocation NPRM** and the **FAA's** Initial Regulatory Evaluation, **Initial Regulatory Flexibility** and **International Trade Impact Assessment.**

We believe WC **have made** a reasonable point that **the** allocation or rationing of air tour flights in the **SFAR SO-Z** is **rulemaking at its worse – arbitrary, capricious, as well as** punitive – to an industry that has done nothing wrong.

Should the **FAA deny our** request to **withdraw the allocation** proposed **rule**, then we feel **necessarily obligated** to offer possible and fair **minimal** impact changes for **FAA's** consideration in their questionable **NPRM** as they consider docket comments.

1. Increase **the base period** for **the** allocation average **from** May 1, 1997, to April 30, 1998 (12 months) to May 1, 1997 to April 30, 1999, (24 months.) **This** would mitigate somewhat the FAA's use of the worst historical **flight year ever, due to the economic recession in the Asian rim counuics and forty-five (45) days of weather no flight days as the allocation benchmark year**

2. Eliminate the curfews of **6:00 P.M.** to **8:00 A.M.** during **summer** and **5:00P.M.** to **9:00 A.M.** during winter as flight **free** time periods throughout **the** year as **set forth in the proposed regulation** for **Dragon** and **Zuni Point** Corridors.

The FAA has ~~or~~ will place such **severe** restrictions on the annual **percentage** of flights **that** can be flown during **the peak season** ~~that the curfew is~~ as **unnecessary**, as the cap on **aircraft** was discerned to bc, and is **now** king eliminated. **Sunrise** air touring during winter **months** is critical. At **least** move the morning time to **7:00 A.M.**

3. Delay the **effective** dare of a final regulation in order to provide a **March-April** available **time** period that would facilitate proper training (**airspace** conditions, flight **free** zone **modifications**, route change, **departure** and **arrival traffic congestion points and improved** upgrade “see-and-avoid” capability that **will be** necessary for **safety reasons** due to the proposed **NPRM.**)
4. **In the name of equity, we ask** that **the** following comment **contained in** the NPRM, entitled “**The Proposal**” and Part Ii, thereof, entitled “H. Transfer and Termination of **Allocation**” **be** deleted. Quote:

“The **FAA** also would retain **the right** to **redistribute**, reduce or **revoke** allocations based on **the need** to **carry** out its statutory **mandate** to **regulate** for efficiency of airspace or aviation safety.” This is probably **the best NPRM** indication of how FAA perceives **its arbitrary** and **punitive role** in the future.

END OF COMMENTS

Enclosure