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Docket Management System
US Department of Transportation, Room Plaza 401
400 7th Street SW
Washington DC 20590-0001

Re. Docket FAA-1998-4521

Gentlemen:

27 October, 2003

Thank you for the opportunity to comment on the subject NPRM, which proposes new regulations to subject Air Tour Operators to requirements resembling those presently imposed on Air Charter Operators.

The NPRM cites twelve fatal accidents involving Air Tour Operators ranging from 1989 to 2000 as impetus to enact additional regulations for this type of operation. In most of the cited cases, it is apparent or strongly implicit that the accident resulted from violation of existing regulations and/or from operation outside of normal safety standards in ways that the proposed regulations could not have effectively prevented (as distinguished from prohibited). In fact, it is not apparent in any of the cited accidents that the proposed regulations would have prevented the mishap, given that the enabling conditions existed despite present regulations and/or established safety norms.

The singular benefit of the imposition of more stringent manual, management structure and certification requirements on the accident operators might have been the pressure of knowledge that FAA was aware of their operations and therefore might subject them to a heightened level of interest appropriate to their degree of compliance with existing regulations that are, by and large, adequate. I will suggest below how this pressure can be exerted in a less costly way than proposed.

The more formal approach of the NPRM adds considerably to the initial cost and ongoing management costs of numerous small operators without, in itself, adding demonstrably to safety. The paperwork burden in the form of manuals, reports and correspondence would also add some unknown but not insignificant amount to workload and cost at every FSDO in the nation, and no doubt some of this cost would extend higher in the FAA structure. It is by no means clear, and certainly unproven, that a more formal 14 CFR 135-like approach would enhance safety compared with a simplified regulatory approach more tailored to the need, as I will elaborate on below.

From the accidents cited in the NPRM, the accident causes are often obvious or reasonably inferable. Using the same numbers as the NPRM for reference:

- (1) May 1989: Helicopter, Hawaii, low rotor RPM and possibly operation below speed/height curve.
- (2) June, 1989: Beech 18, Hawaii, pilot boxed himself in a blind canyon.
- (3) April 1992: Beech 18, Hawaii, route deviation and CFIT below VFR minimums.
- (4) September 1992: Helicopter, Niagara Falls, Canada, midair collision apparently in NOTAMed airspace in the Niagara Falls scenic tour area.
- (5) January, 1993: Helicopter, Hawaii, low hover and apparent mechanical failure over water without floats or personnel floatation.
- (6) July, 1994, two accidents:
 - Hawaii, Helicopter, power loss, no floats or personnel floatation worn.
 - Hawaii, Helicopter, power loss. Complicated by pilot inability to deploy floats without letting go of the collective control.
- (7) July 1997, Alaska, Airplane, power loss, ditching, personnel floatation not worn and generally not used.
- (8) August 1997, New Jersey, Waco, low maneuvers/acrobatics, possibly stall/spin.
- (9) June, 1998, Helicopter, Hawaii, poor weather, probably CFIT.
- (10) July 2000, Helicopter, Hawaii, apparent weather CFIT.
- (11) August 2000, Airplane, Hawaii, ditching, personnel floatation used and all but one passenger escaped.

Of the twelve accidents cited, 5 (**42%**) involved helicopters, 9 (**75%**) were in Hawaii, and 3 (**25%**) involved helicopters in Hawaii. The Air Tour accident rate appears not to be general in scope, but extremely disproportionately concentrated on helicopters and Hawaii. Furthermore, it appears very unlikely that the majority of these accidents could not have been prevented directly by the proposed regulatory action, although an indirect effect of the scrutiny might have had some effect.

Hawaii is unique, both in the hazards of its terrain and the temptation to afford passengers a spectacular view, and it is quite apparent that an SFAR dealing with these unique conditions would be more beneficial than one of broader geographical impact less tailored to the historic accident region's unique challenges. Such treatment of the matter would certainly impose less regulatory burden on the public, less administrative burden on FAA, and focus energy on the area and aspects of the safety issue most likely to produce lowered fatalities.

It is not apparent that the accident rate of the Air Tour industry generally is inordinately high. But it is apparent that one narrow geographic area and category of aircraft have very high comparative rates, and that both impose special safety considerations and, possibly, deserve special regulatory action.

It is also clear that regulatory action imposes cost and that cost would be high but not readily ascertainable if the regulatory action of the NPRM were imposed generally. It is far more to the benefit of safety that whatever cost were incurred be expended where the need is exceptional, as this may well be the one area where the need exists at all.

The writer recommends:

- (1) Consider what terrain or other features present unusual hazards to Air Tour operators, and promulgate whatever operating rules are found to be appropriate to such terrain.
- (2) Promulgate similar but less stringent rules on Air Tour operations in less hazardous terrain. (Include appropriate over-water constraints in both).
- (3) Require that any entity conducting such operations make itself known to the cognizant FAA FSDO and make itself available for liaison visits.
- (4) Require that operators desiring exceptions to the above regulations (and only those operators) use an FAA-approved Operations Manual as the vehicle to authorize those exceptions.

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