



UNITED
STATES
PARACHUTE
ASSOCIATION®

5401 SOUTHPOINT CENTRE BLVD. • FREDERICKSBURG, VA 22407 • TEL: (540) 604-9740 • FAX: (540) 604-9741 • E-MAIL: USPA@USPA.ORG

June 18, 2004

Docket Management System
U.S. Department of Transportation
Room Plaza 401
400 Seventh Street, SW
Washington, DC 20590-0001

Re: Docket No. FAA-1998-4521

Sir/Madam:

The U.S. Parachute Association submits these comments on behalf of its 33,000 individuals who enjoy skydiving, along with some 230 U.S.-based skydiving schools, club, and centers where skydiving occurs. Civilian skydiving—known to the FAA as "parachute operations"—is defined and regulated by 14 CFR Part 105. Those that conduct parachute operations are exempt from the need for an FAA air operator certificate by 14 CFR 119.1(e)(6). As a result, civilian parachute operations, including the flights, are conducted under 14 CFR Part 91.

Having reviewed the NPRM and the NTSB special investigation report, USPA is opposed. Our opposition is based on the following reasons:

- 1) The proposal is not justified by the accident data presented. Accidents suffered by a small segment of operators flying over difficult terrain and in fast-changing weather conditions can not be used to justify tight restrictions on an entire industry.
- 2) If implemented, the proposal will decimate the air tour industry by potentially forcing over six hundred air tour businesses (by the FAA's own estimation) to cease, taking many hundreds of aviation jobs out of the economy.
- 3) While skydiving flights should never be confused with sightseeing flights, we are concerned that the proposal opens the door for the FAA to begin applying air tour regulations to skydiving flights.
- 4) Section 136.1 is too all-encompassing, and could allow the FAA apply air tour requirements to flights that have another principal purpose.

The Notice of Proposed Rulemaking (NPRM) is aimed at local sightseeing operations that are currently exempt from the need for a commercial certificate by 14 CFR 119.1(e)(2). Section 119.1(e)(2) exempts, "Nonstop sightseeing flights...that begin and end at the same airport, and are conducted within a 25 statute mile radius of that airport..."

There is a wide range of operations that are broadly captured by the terms "sightseeing" or "air tour." At one extreme are high-volume operations using complex aircraft, in long-range, scheduled operations with uni-formed pilots and passenger ticketing—all creating the impression of an airline. At the other extreme are low-volume operations using single-engine aircraft in short range, on-call operations with casually-dressed pilots accommodating walk-up customers. These "low-end" operators try to create no impression whatsoever of air-line-type service.

It is clear that implementation of the rulemaking as proposed would be devastating to the majority of air tour and sightseeing businesses, particularly those in the low-volume, single-engine aircraft range. By the FAA's own admission, a large majority of these businesses would fold.

Most disturbing is that there seems to be little justification for such a devastating proposal. The results of air tour-related accident investigations clearly indicate that most fatal accidents involve rapidly-rising terrain, over water flight, and/or rapidly changing weather and cloud conditions. All of these conditions are found in Hawaii and two of these conditions are found in the vicinity of the Grand Canyon, both locations having suffered a large percentage of fatal air tour accidents. However, there are a large number of air tour operators flying in areas where these conditions are not found, or are at least not so prevalent. It seems unfair and heavy-handed for the FAA to propose such broad measures when the agency's safety efforts could be more effectively targeted with much less impact on aviation businesses.

Skydiving is not Sightseeing

14 CFR Part 119 exempts parachute operations from any FAA requirement for an air operating certificate. Specifically, Section 119.1(e)(6) exempts "Nonstop flight conducted with a 25 statute mile radius of the airport of takeoff carrying persons for the purpose of intentional parachute jumps" from 14 CFR Part 119 and therefore from the need for an operating certificate.

The NPRM makes clear that this proposal does not apply to, and is not intended to alter, Section 119.1(e)(6). The NPRM addresses all of the operations currently exempt under Part 119 in Section II ("The Proposal"), B ("The Exceptions"). The NPRM states that the only proposed changes to the exempt activities would affect Section 119.1(e)(1), Section 119.1(e)(2), Section 119.1 (e)(3), and a new Section 119.1 (e)(11).

Thus, the exemption for parachute operations (Section 119.1(e)(6) is beyond the scope of the rulemaking and parachute operations will not be affected.

USPA wants to ensure that the FAA has a clear understanding that no aspect of parachute operations involves sightseeing activity. Clearly, when all occupants aboard an aircraft intend to parachute from that aircraft, then the flight is for the purposes of parachute operations.

However, there are instances when persons are on board a jump flight with no intent to parachute from that aircraft during that flight. Often, these persons are on board for the purposes of taking an "observer flight." Such a flight is usually offered to a person considering making their first parachute jump, but who wishes to observe an actual jump from an aircraft as part of their orientation and training. The intent is that the person observes the preparation and exit procedures, taking note of the commands of the skydive instructor and the body positions for a proper skydiving exit. In some cases, the first-jump candidate has never flown in an aircraft, and so the orientation flight is a necessary part of the introduction to parachuting. (In fact, the FAA recognizes this same scenario for flight instruction, by having the NPRM propose to alter Section 119.1(e)(1) to include introductory flights.)

Another scenario for having a non-skydiving occupant aboard a jump flight involves pilot orientation. Aspiring jump pilots are often placed on board to observe the actions of the jump pilot and skydivers alike, and to gain an orientation about jump flight procedures and profiles.

Additionally, there are occasions when experienced skydivers are onboard a flight to observe a novice skydiver's pre-jump preparation, jump run activities (lining up the aircraft) or freefall maneuvers.

There may be other occasions as well where an individual is on board a jump aircraft without the intent to jump from the aircraft. However, in no case is anyone aboard during a parachute operation for the purpose of sightseeing or for an aerial tour.

Proposed Section 136.1

We find some language in proposed Section 136.1 to be troubling. Proposed Section 136.1(a) states, "Furthermore, when a flight for compensation or hire has another purpose in addition to sightseeing, that flight is subject to this subpart as well as any other applicable rules." Proposed Section 136.1 (c)(1) defines "Commercial air tour" as "Means any flight conducted for compensation or hire in a powered aircraft where a purpose of the flight is sightseeing."

We believe the FAA's intent with this language is to ensure that Part 136 applies to operators who may attempt to mask sightseeing flights behind other supposed purposes for the flight. However, we are concerned that the language may allow the converse, that is, it may allow the FAA to "see" a sightseeing flight when in fact, the flight is truly made for another purpose. Might the FAA ever declare that skydiving flights are also sightseeing flights, simply because the jump aircraft has windows and the skydivers look outside while the aircraft is climbing? The language should be revised to make it clear that Part 136 applies to flights where the primary purpose is sightseeing.

Conclusion

Having fully reviewed the docket of comments received to date, USPA notes that the overwhelming majority of comments are adamantly opposed to the proposal. USPA joins the dissenters. The proposal is overreaching. It targets an entire industry based on accidents suffered by a small segment flying in areas of high terrain and changing weather. If imposed, the new rules will devastate many businesses, cost jobs, and severely reduce the ways the public can enjoy the benefits of aviation.

Sincerely,



Edward M. Scott
Director of Government Relations