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Congress of the United States

U.S. House of Representatives

Committee on Small Business

2361 Rayburn House Office Building
Washington, DC 20515-6315

Memorandum

To: Members, House Committee on Small Business
From: Committee Staff
Date: February 3, 2014
Re: Hearing: "The FAA Impact on Small Businesses in the General Aviation Industry"

At 1:00 p.m. on February 5, 2014, the Committee on Small Business will meet for the purpose of receiving testimony from small businesses in the general aviation industry that will discuss the negative effects of a Federal Aviation Administration (FAA) regulatory framework that is considered to be slow-moving, rigid, and often out of touch with technological advancements in the industry. Specific FAA policies or internal structures that are increasing the costs associated with participation in the general aviation industry and its consequent economic effects on that industry and those businesses that rely on general aviation will be addressed.

I. Civil Aviation

It is useful and necessary to differentiate between the various segments of the aviation industry. Scheduled operations include all of the major airlines and cargo shippers such as FedEx and UPS. Commercial aviation is a substantial global economic driver. In 2009, air carriers operating in United States airspace transported 793 million passengers over 1,039.3 billion revenue passenger miles.[1] More than 53 billion revenue ton-miles of scheduled freight passed through American airports in 2009.[2]

While there is no statutory or regulatory definition of general aviation, it encompasses all civil aviation except scheduled passenger and cargo operations,[3] and accounts for three-quarters of United States air traffic, operating at more than 19,000 airports.[4] The FAA parses general aviation into various use categories: personal (aircraft not used for any business purpose); instructional (aircraft operated under the supervision of a flight instructor); corporate (aircraft

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[1] UNITED STATES DEPARTMENT OF TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION, THE ECONOMIC IMPACT OF CIVIL AVIATION ON THE U.S. ECONOMY 4 (2011) [hereinafter FAA Economic Impact]. While more recent statistics would be helpful, in what appears to be a systemic pattern, the FAA is years behind in collecting and reporting these data.

[2] *Id.*

[3] The third part of the aviation industry is that operated by the military. It is not subject to the same regulatory structure as scheduled or general aviation.

[4] UNITED STATES GENERAL ACCOUNTABILITY OFFICE (GAO), GENERAL AVIATION, SECURITY ASSESSMENTS AT SELECTED AIRPORTS 4 (2011) (GAO 11-298), *available at* http://www.gao.gov/new.items/d11298.pdf.

used by a business where the pilot owns the business); air taxi and tours (aircraft used to ferry passengers or cargo if the payload of the plane is below a certain weight or passenger configuration); and other miscellaneous uses (such as highway traffic reporting, search and rescue, or pest control) that do not include carrying of passengers or cargo.[5] In addition, general aviation includes ancillary services such as: flight schools; companies offering aircraft fuel, storage, maintenance and parts; aircraft sales brokerage; and rental firms.[6]

II. The Affect of General Aviation on the Economy

According to the industry, general aviation accounts for about 25 million flight hours and includes 223,000 aircraft in the United States carrying 166 million passengers to around 5,000 communities in the United States, many of which have no scheduled commercial air service.[7] Additionally, more than two-thirds of general aviation flights are for business purposes.[8]

No precise calculation exists of the total number of small businesses involved in general aviation. However, the Small Business Administration (SBA) estimates that approximately 94 percent of the firms (about 2,700) that provide air transportation services (cargo or passenger) have fewer than 500 employees and are considered small businesses under the SBA's size standard regulations. There are approximately 3,000 firms that provide aviation support services, and 92 percent of those are estimated to be small.

In addition to the businesses at the operational end of the general aviation industry, there are also those involved in the development and manufacturing of general aviation aircraft. The SBA data reveal that there are about 1,200 firms involved in the manufacturing of aircraft and parts, of which 90 percent are small businesses.[9]

In 2012, general aviation manufacturers generated $4.8 billion in exports of domestically manufactured airplanes.[10] Additionally, the United States civil aviation manufacturing industry continues to be a top net exporter. According to 2009 data from the United States International Trade Commission, the civilian aviation manufacturing industry supported a positive trade balance of over $75 billion.[11]

Air shows are another facet of general aviation that provide significant contributions to the economy. According to the International Council of Air Shows, in 2012, air shows had a total direct and indirect economic impact of between $1 and $2 billion per year in 300

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[5] GAO, GENERAL AVIATION: STATUS OF THE INDUSTRY, RELATED INFRASTRUCTURE, AND SAFETY ISSUES 10 (2001) (GAO 01-916), *available at* http://www.gao.gov/assets/160/157174.pdf.

[6] NATIONAL AIR TRANSPORTATION ASSOCIATION, GENERAL AVIATION IN THE UNITED STATES 9 (2011), *available at* http://www.nata.aero/data/files/nata%20publications/2011natafactbook.pdf.

[7] GENERAL AVIATION MANUFACTURERS ASSOCIATION (GAMA), GENERAL AVIATION STATISTICAL DATABOOK & INDUSTRY OUTLOOK ii (2012) [hereinafter GAMA Statistics], *available at* http://www.gama.aero/files/GAMA7233_AR_FINAL_LOWRES.pdf.

[8] *Id.*

[9] Letter from Sam Graves, House Committee on Small Business, to Erik Jensen, Chief, Policy, Plans & Stakeholder Affairs, Office of General Aviation, Transportation Security Administration, Department of Homeland Security 5 (Feb. 27, 2009) (on file with the Committee).

[10] GAMA Statistics, *supra* note 7, at 7.

[11] FAA Economic Impact, *supra* note 1, at 4.

communities around the country.[12] Additionally, last year, more than 13 million Americans attended air shows.[13]

To summarize, general aviation, both operations and manufacturing, employs about 1.2 million people and contributes approximately $150 billion to the overall gross domestic product.[14] And this statistic could underestimate the total impact because it does not count many other businesses that rely on general aviation in some way, such as tourism associated with the use of private planes. This multiplier effect of non-military aviation is quite significant. In 2009, civil aviation supported over 10 million jobs, contributed $1.3 trillion in total economic activity and accounted for 5.2 percent of total United States Gross Domestic Product.[15] Data from 2008 shows that air transportation contributed to economic activity in other sectors of the economy, as air travelers spent $249.2 billion on goods and services and $562.1 billion in freight being transported domestically or to other countries.[16]

III. Economic Challenges

Despite the robust contribution of aviation to the economy, the last twelve years was a difficult one for both the commercial airline and general aviation industries. The impacts of the September 11, 2001 terrorist attacks, various spikes in both fuel and manufacturing materials and the global recession have all played a part.

The number of business jets shipped by manufacturers has dropped significantly since the recession, from 1,315 in 2008 to 672 in 2012, an almost 50 percent decrease.[17] Other factors leading to economic consequences for general aviation include a systemic decline in the number of pilots in the United States, which has in part led to a drop-off in airplane production and delivery.[18] The global general aviation industry has experienced a substantial decline in airplane sales, from 4,276 deliveries in 2007 to 1,977 in 2011, with small, piston engine aircraft experiencing the sharpest drop in sales, at 68 percent.[19] Air taxi and charter businesses have flown less hours since the recession, with the latest data showing a 2,000 hour-per-year drop since 2008.[20] And like the commercial aviation industry, general aviation has had to deal with spikes in fuel and material costs.[21]

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[12] http://www.airshows.aero/docs/Air%20Shows%20Fact%20Sheet%20April%2018.pdf.
[13] *Id.*
[14] GAMA Statistics, *supra* note 7, at ii.
[15] FAA Economic Impact, *supra* note 1, at 3.
[16] *Id.*
[17] GAMA Statistics, *supra* note 7, at 17.
[18] The number of private and commercial pilots in the United States fell from 371,150 in 2002 to 304,401 in 2012. *Id.* at 42.
[19] *The State of American Aviation: Hearing Before the Subcomm. on Aviation of the Comm. on Transportation and Infrastructure*, 113th Cong., 1st Sess. (2013) (statement of Mr. Peter Bunce, CEO, GAMA at 3) [hereinafter Bunce Testimony], *available at* http://transportation.house.gov/uploadedfiles/2013-12-12-bunce.pdf.
[20] GAMA Statistics, *supra* note 7, at 33.
[21] While airlines spent only 10 percent of their operating costs on fuel in 2001, by 2011 this had risen to 35 percent. UNITED STATES DEPARTMENT OF TRANSPORTATION, OFFICE OF INSPECTOR GENERAL, AVIATION INDUSTRY PERFORMANCE 2 (2012), *available at* http://www.oig.dot.gov/sites/dot/files/Aviation%20Industry%20Performance%5E9-24-12.pdf.

IV. Regulatory Challenges

The Air Commerce Act of 1926 established federal government regulation and oversight over aviation safety by requiring the Secretary of Commerce to establish navigational aids, rules for air traffic, license pilots, and certificate aircraft.[22] After several collisions in the 1950s, Congress created the FAA with the passage of the Federal Aviation Act (49 U.S.C. § 40101).[23] Today, the aviation industry is the most heavily regulated mode of transportation, as the design, manufacture, operation, and maintenance of aircraft, including additional requirements for use in business, are all under the purview of the FAA.[24]

A. Medical Certification

There is significant concern in the general aviation community surrounding the medical certification process, particularly the requirements to receive a third-class medical certificate.[25] Any pilot who flies solo in an airplane, helicopter, gyroplane, or airship must pass a physical administered by an FAA-authorized aviation medical examiner. The FAA divides pilot medical certificates into three main classes: first class certificates are designed for the airline transport pilot; second class for the commercial pilot; and third class for the student, recreational and private pilot.[26]

In March 2012, the Aircraft Owners and Pilots Association and the Experimental Aircraft Association (EAA) filed a petition with the FAA seeking an exemption for private and recreational pilots[27] from a requirement mandating they must have a third-class medical certificate.[28] Petitioners requested that the FAA provide an option for pilots not requiring a first- or second-class certificate to obtain a third-class certificate or, in the alternative, use their driver's license as the baseline of health. In its petition, the industry groups claim the FAA's current medical policy is burdensome for private and recreational flying. They argue data from the FAA's Sport Pilot Rule, which went into effect nine years ago and allows pilots to fly light aircraft with a valid driver's license, shows the driver's license medical standard has not contributed to an increase in the accident rate because of aero medical factors.[29] The General Aviation Pilot Protection Act of 2013, introduced December 11, 2013 by Rep. Todd Rokita, is supported by a bipartisan group of twenty-seven cosponsors and would provide for the exemption from third-class medical requirements for private and recreational pilots.[30]

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[22] PAUL B. LARSEN, JOSEPH C. SWEENEY & JOHN E. GILLICK, AVIATION LAW, CASES, LAWS, AND RELATED RESOURCES 971 (2012).
[23] *Id.*
[24] HARRY A. KINNISON & TARIQ SIDDIQUI, AVIATION MAINTENANCE MANAGEMENT 45 (2013).
[25] http://www.faa.gov/pilots/become/medical/
[26] *Id.*
[27] This exemption would apply to private and recreational pilots flying one passenger or less in single-engine, fixed-gear aircraft with no more than four seats and less than 180 horsepower.
[28] http://www.aopa.org/-/media/Files/AOPA/Home/News/All%20News/2012/March/AOPA%20EAA%20file%20medical%20exemption%20petition/120319aopa-eaa-petition-for-exemption.pdf.
[29] *Id.* at 12.
[30] H.R. 3708, General Aviation Pilot Protection Act of 2013, 113th Cong. (2013).

B. Sleep Apnea Policy

Sleep apnea is a disorder that occurs when a person's breathing is interrupted during sleep. People with untreated sleep apnea stop breathing repeatedly during their sleep, sometimes hundreds of times. This means the brain, and the rest of the body, may not get enough oxygen. If left untreated, sleep apnea can result in a growing number of health problems, including high blood pressure, stroke and heart failure. In addition, untreated sleep apnea may be responsible for poor performance in everyday activities, such as at work and school.[31]

Without following the rulemaking process, the FAA announced in its November Federal Air Surgeon's Medical Bulletin that the agency would soon be implementing a policy on obstructive sleep apnea.[32] In the announcement, the agency says aviation medical examiners will soon be required to calculate the body mass index (BMI) for every examinee. Pilots with a BMI of 40 or more would have to be evaluated by a physician who is a board certified sleep specialist, and if diagnosed, will have to be treated before they can be medically certificated.[33] If instituted, such a policy change, which appears to have been suggested by the FAA without the input of industry, could cause thousands of current pilots to lose their medical certification, and prevent many more from becoming pilots.[34]

C. Registry and Certificate Backlogs

Another concern of the general aviation industry is the current backlog of approvals and authorizations to all areas of general aviation operations. As of October 30, 2013, the FAA had a backlog of 1,029 air agency certificate applications,[35] which are required for, among other things, FAA repair stations, flight schools, and charter operations. Of that backlog, 138 applications had been waiting approval for more than three years and one had been waiting since 2006.[36]

The FAA Airman Registry, which, as of January 15, 2014, had an almost three-month backlog.[37] The Airman Registry is charged with producing and registering individuals in a myriad of aviation disciplines, such as flight instructors, flight engineers, and repairmen. Additionally, the FAA Aircraft Registry, which inspects, certifies and registers all aircraft in the

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[31] http://www.webmd.com/sleep-disorders/sleep-apnea/.

[32] https://www.faa.gov/other_visit/aviation_industry/designees_delegations/designee_types/ame/fasmb/media/201304.pdf.

[33] *Id.*

[34] The FAA has since backed off this specific proposal, but has said it is pursuing a new approach on this issue. *See* Andy Pasztor, *FAA Holds Off on New Policy for Identifying Pilot Sleep Apnea*, WALL STREET JOURNAL, Dec. 19, 2013, *available at* http://online.wsj.com/news/articles/SB10001424052702304773104579269111869242846.

[35] *Review of FAA's Certification Process: Ensuring and Efficient, Effective, and Safe Process. Hearing Before the Subcomm. on Aviation of the Comm. On Transportation and Infrastructure,* 113th Congress, 1st Sess. (2013) (Statement of Jeffrey Guzzetti, Assistant Inspector General for Aviation Audits, United Stated Dept. of Transportation at 4), *available at* http://archives113.transportation.house.gov/sites/republicans.transportation.house.gov/files/documents/2013-10-30-Guzzetti.pdf.

[36] *Id.* at 5.

[37] Data provided by the Aircraft Owners and Pilots Association (AOPA) to Committee staff.

United States is currently maintaining a one-and-a-half month backlog.[38] These registries were shut down for 17 days when the Federal government ran out of funding because they were deemed non-essential – a classification strongly disputed by industry.

D. Overall FAA Regulatory Culture

Critics also frequently cite a more generalized lack of a modern culture at FAA, which has led to the agency persistently being behind industry in areas of technological development. For instance, over two years ago, in September 2011, the General Aviation Joint Steering Committee (GAJSC)[39] released a report on loss-of-control (LOC) accidents that determined LOC is responsible for 42 percent of fatal accidents and recommends the general aviation community install and use Angle-of-Attack (AOA) indicators.[40] GAJSC determined AOA indicators could improve safety by increasing situational awareness and control by the pilot. Despite these findings, the industry is still awaiting policy decisions from the FAA that will allow for its installation.[41]

E. Non-Itemized Bills for Air Shows

Finally, a major concern for the general aviation industry is the FAA issuing non-itemized bills to groups that stage air shows. This past summer, the FAA made an unprecedented move when it charged EAA $447,924.00 for providing air traffic control and other safety services at the AirVenture show in Osh Kosh, Wisconsin, the nation's largest air show.[42] As the EAA described in a petition to the FAA protesting the charges, general taxes and aviation fuel taxes fund the FAA "in a manner that automatically distributes the cost of Air Traffic Control (ATC) in proportion to their use of the national airspace system."[43] The petition further notes this method of funding ATC services has worked for the past 60 years without the FAA imposing costs on EAA.[44] Such a decision by the FAA could set a dangerous precedent for the government charging for services already covered by tax revenue.

V. Conclusion

General aviation businesses are predominantly small businesses that have been proven to grow the economy. At a time when Washington should be enacting policies that help the private sector create jobs, we must ensure the FAA is operating in a way that allows for the general aviation industry to thrive. Thus, the FAA should only adopt those rules that are required to ensure safety. If rules are not required to ensure safety of aviation and the public, the FAA should not promulgate such rules because they act as a barrier to the growth of general aviation and the businesses that rely on them.

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[38] *Id.*
[39] The General Aviation Joint Steering Committee (GA-JSC) is a joint FAA and aviation industry group established with the goal of improving the safety in general aviation. http://aviation.osu.edu/research/programs/angle-of-attack/.
[40] GENERAL AVIATION JOINT STEERING COMMITTEE, LOSS OF CONTROL WORK GROUP, APPROACH AND LANDING 3, 16 (Sept. 2011), *available at* http://download.aopa.org/advocacy/130327safety-committee.pdf.
[41] Bunce Testimony, *supra* note 19, at 5.
[42] http://eaa.org/news/2013/2013-07-03_EAA-petitions-federal-court-on-FAA-ATC-charges.pdf.
[43] *Id.*
[44] *Id.*