

FAA's Airspace Restrictions: AOPA Responds

We are printing here the entire text of the AOPA response to the FAA's Notice of Proposed Rule Making because so many members have inquired about the association's stand on the issue of airspace regulatory modifications.

The AOPA staff has collectively researched, debated, written and then repeated the process until the desired effect was achieved—a full statement of our objections to the NPRM as written, and our alternate proposal to achieve safety and capacity with fairness to all users.

This response has also been presented at a congressional hearing by AOPA President John L. Baker.

Federal Aviation Administration
Office of the Chief Counsel
Attn: Rules Docket (AGC-24)
800 Independence Ave., S.W.
Washington, D.C. 20591

Gentlemen:

These comments respond to Docket No. 18605, Notice No. 78-19, "Controlled Visual Flight" Rules. They are filed on behalf of more than 225,000 aircraft owners and pilots who have authorized the Aircraft Owners and Pilots Association (AOPA) to represent their interests in aviation matters.

Due to the extent and length of the FAA proposals, AOPA's comment also must be extensive. In view of the length of our comments, we have organized them as follows:

- I. Background
- II. History
- III. Overview
- IV. Specific Comments on the FAA Plan
- V. AOPA's Recommended Alternatives
- VI. Conclusion

The content of Notice 78-19 was revealed in a public briefing by the FAA on Dec. 27, 1978. That briefing

included a documented "Plan for Enhanced Safety of Flight Operations in the National Airspace System." Parts of the plan are included in the Notice of Proposed Rule Making (NPRM) in the context of implementation, while other parts are mentioned in the context of future actions. Thus, it becomes necessary to view the plan in its entirety in order to adequately comment on the actions proposed in the NPRM for implementation in the near term.

AOPA opposes the proposals contained in Notice No. 78-19 as well as the intent (stated in the notice) to expand the number of Terminal Control Areas (TCA) and Terminal Radar Service Areas (TRSA). Our reasons are stated herein. We offer alternatives that will provide essentially the same safety as the FAA proposals without the undue penalties on both the users and the government inherent in the FAA plan.

I. Background

On Sept. 25, 1978, a Pacific Southwest Airlines Boeing 727 and a Cessna 172 collided over San Diego. Both aircraft were in communications with and under the control of the FAA air traffic control system.

Although this midair collision is not mentioned in the NPRM, the proposals of the NPRM and the FAA plan were outlined at a congressional hearing

with regard to the collision in October 1978 in San Diego. This NPRM and the "safety" enhancement plan released by the FAA on Dec. 27, 1978, imply that the situation that led to the San Diego collision would be cured by these proposals. This is not true.

II. History

The idea of the FAA lowering the floor of positive control over much of the airspace of the United States dates back to about 1962. It was proposed at that time to lower positive control to 10,000 feet over the entire country and to 6,000 feet over the busier areas of the east and west coasts. This idea never reached the stage of proposed rulemaking, but has been dormant in the FAA ever since.

Some months prior to the San Diego collision, AOPA learned that the air traffic control staff in FAA headquarters had under active consideration a variation of the 1962 plan that called for lowering positive control to 10,000 feet over most of the 48 States. When this was publicly revealed by AOPA, the FAA first denied it and then brushed it aside as "brainstorming" for the future.

In view of the seriousness of the FAA planning, AOPA set about to develop alternative proposals that would achieve much the same safety goals

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as the FAA plan without the severe penalties on general aviation. AOPA's recommendations were included in testimony before a congressional hearing in June 1978 and subsequently transmitted to the FAA. Those recommendations included a provision for "controlled visual flight," although not in the context of the present FAA proposals.

On Sept. 21, 1978, the FAA stated in the Federal Register that a decision would be made on the issuance of an Advance Notice of Proposed Rule Making (ANPRM) by April 1979, with regard to "Controlled Visual Flight-Proposed revision to provide a means of improving ATC separation for VFR and IFR aircraft above 12,500 feet."

On Oct. 20, 1978, in a letter to the President of AOPA, FAA Administrator Langhorne Bond stated that "The ANPRM will contain proposals to lower Positive Control Area (PCA) to 12,500 feet, raise the existing speed restriction ceiling from 10,000 feet to 12,500 feet. . . . These and other minor changes, if approved, will establish a standard demarcation altitude of 12,500 feet for all requirements." The letter further states "As you know, the purpose of an ANPRM is to solicit comments from the public so that the Air Traffic Service can make a favorable determination on the proper course of action to follow."

On Dec. 27, 1978, the FAA administrator announced at a press conference that a Notice of Proposed Rule Making (78-19) was being issued rather than the advance notice, which would have provided more time for comment and consultation with those affected.

III. Overview

Aviation is essential to the defense, economy and welfare of this nation. A safe and efficient air traffic management system that can accommodate the needs of all users is a necessary adjunct to a healthy national aviation system. Our present level of national development cannot be maintained without the many services provided by general aviation. Thus, the future air traffic management system must be geared to the future of general aviation as well as to that of the airlines, which provide mass transportation to some of our communities.

It is only general aviation that will have the large growth patterns in air transportation. In the next two decades, the scheduled airlines might increase their active fleet by 50% . . . and it would add only about 1,000 aircraft into the system. General aviation produces that many new aircraft each month.

The FAA plan would cause severe delays to all aircraft operations, including both the scheduled airlines and general aviation. It would destroy the utility of many of the aviation operations vital to this nation and would impose severe economic penalties on

the majority of aircraft owners and operators. Most important, it would decrease, rather than increase, safety.

It has been acknowledged that none of the actions proposed in the NPRM would have prevented the San Diego collision. Regrettably, it appears that the FAA is using these proposals as a cover-up of the inability of the ATC system to accommodate a growth in air traffic.

The FAA proposals are deficient in that they do not include the ATC and pilot procedures necessary to implement the proposals. This raises many questions on the specific procedures that will be employed and the operational impact on all concerned. These questions have not been answered by the FAA and are not discussed in the NPRM. We believe that the FAA does not have the answers, which clearly indicates that the concepts have not matured to an NPRM stage, contrary to the statements in the NPRM.

AOPA is of the opinion that the FAA has taken great liberties with provisions of Executive Order 12044 and the interim Department of Transportation guidelines (43 FR 9582; March 8, 1978). Discussion of our concern is contained later in these comments.

Further, AOPA takes issue with the words and actions of many FAA personnel as related to proposals in this notice. FAA regions and individual facilities are proceeding with actions to configure new Terminal Control Areas and reconfigure existing ones. This is premature from a legal standpoint since action is taking place at specific locations, prior to a resolution of Notice 78-19, which certainly will determine the direction of those local proposals. In their statements, numerous FAA officials are guilty of prejudging the outcome of this NPRM and the FAA enhancement plan.

Section 601 (a) of the Federal Aviation Act of 1958 places on the airlines the duty of performing their services with the highest possible degree of air safety. The FAA distorts this as a mandate on the FAA. Meanwhile, the congressional mandate for the FAA to "foster and promote" aviation has been conveniently ignored.

Section 306 of the act requires the Secretary of Transportation to give "full consideration to the requirements of national defense, and of commercial and general aviation, and to the public right of freedom of transit through the navigable airspace." The emphasis on access to airspace by all users was a major point in the passage of the Act of 1958 and has not been repealed or modified by the Congress. It cannot be ignored by the FAA!

Section 307 (c) of the act directs the Administrator to prescribe rules and regulations "governing the flight of aircraft, for the navigation, protection, and identification of aircraft, for the protection of persons and property on

the ground, and for the efficient utilization of the navigable airspace including rules as to safe altitudes of flight and rules for the prevention of collision between aircraft, between aircraft and land or water vehicles, and between aircraft and airborne objects." Nowhere does the act provide for priority for IFR traffic over VFR traffic. In fact, it makes no distinction. Further, it provides no authority for priority for commercial or airline traffic. Neither does it give priority of attention to "fare-paying passengers" other than to charge the airlines with performing their services with the highest degree of safety.

The existing ATC system and the proposed changes (in this notice and the "enhancement" plan) seek to impose rules that place increasing burdens on both the users and the government in terms of airspace restrictions, costly equipment requirements in the air, and by requiring very expensive air traffic control system equipment and a dramatically increased work force. The present FAA concept for the control of air traffic cannot be greatly expanded because of economic and operational reasons. The present efforts certainly do not increase capacity. The attempt to reduce the risk of collision in some airspace simply adds more risk in other airspace.

AOPA believes control should be applied only to those areas where justified by traffic volume and a genuine need for the service. Aircraft that, by virtue of their operating characteristics and the service in which they are engaged, require special measures to protect them and to protect other aircraft from them, must be limited to narrowly defined areas and airports where that extra protection can be provided without placing unfair restrictions on all other users. However, the extension of overburdening restrictions and the placing of unjustified burdens on users of other airspace to address very low risk levels must be avoided. The word "equitable" is used three times in the notice. However, there is nothing equitable in the burden that the proposals would impose on the various users.

The NPRM appears to hold out a false hope to the public that its proposals will all but eliminate midair collisions. This is a fallacy. As long as human beings are controlling the traffic and flying the airplanes, there will be human errors and there will be an occasional collision anyway.

AOPA does not accept the limitations on the scope of the comments to the NPRM. FAA repeatedly emphasizes that this notice is only on Controlled Visual Flight. However, supporting information discusses terminal areas and FAA intentions to establish more TCA's and Terminal Radar Service Areas. This, along with the FAA's total plan to enhance "safety of flight operations" of which this notice is only a small part necessitates our discussion of the entire package. *continued on page 100*

IV. Specific Comments on the FAA Plan

The preamble to this notice of proposed rulemaking is extensive. Of course, this is required to justify the most comprehensive proposals ever issued by the FAA or its predecessor agencies. The significance and importance of the proposal is borne out by the interest shown by the entire aviation community. This is reflected in the tens of thousands of comments to the docket and hundreds of inquiries received by AOPA daily. Notwithstanding this, the FAA in its wisdom stated that, "The Federal Aviation Administration has determined that this document involves a proposed regulation which *is not considered to be significant* [emphasis added] under the procedures and criteria prescribed by Executive Order 12044 and implemented by interim Department of Transportation guidelines."

The preamble contains what purports to be justification for proposed rules and non-rulemaking programs of the FAA. It contains figures that presume that safety will be increased if the plans are implemented.

The summary statement implies that the FAA has already made a decision to implement the program but is simply complying with the letter of the law in issuing an NPRM.

The change from an ANPRM to an NPRM is dismissed lightly by the statement in the preamble, "Since the concepts in this notice have matured to the point that detailed regulatory language can be offered for public comment, this document is issued as a Notice of Proposed Rule Making, rather than an Advance Notice of Proposed Rule Making (ANPRM) as has been previously discussed with the public. This procedure will accelerate the development of necessary rules in the high-speed, en route environment."

This action by the FAA leads us to the conclusion that the FAA is not interested in comments but is simply going through the motions.

The summary states that pilots would have to "file flight plans" and "comply with ATC instructions." At the present time, severe delays are being encountered in filing flight plans. The additional requirements to file flight plans for CVF flight will certainly cause a complete collapse of the Flight Service Station network. It will reduce opportunity for pilots to get weather briefings and will result in more serious safety problems.

As ATC separation protection is to be made available to 97% of scheduled air carrier passengers, we presume that any tragic midair collision will be the result of a systems error. The summary of the notice indicates that the same protection will benefit general aviation passengers. This will not be true if, as is presently the case in TCA's, VFR pilots are denied entry to CVR airspace.

The preamble of the NPRM states

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that "statistics cannot measure the social costs of an accident." This is true. However, the statistics discussed are not accident statistics but rather near-midair-collision statistics. Near-midair-collision reports are very subjective.

The FAA states that the extensive expansion of positive controlled airspace would assure separation protection for air carrier passengers. If this is true, it is strange that near-midair collisions are still being reported at a rate of 10 per year in positive control airspace above 18,000 feet. Obviously each and every one is a systems error. It does not appear that the present positive controlled airspace is assuring separation protection for air carrier passengers.

AOPA now has possession of a draft report of a study of the NASA Aviation Safety Reporting System planned for publication in the Ninth Quarterly Report. The report, which is a study of near-midair-collision reports filed between July 1, 1976, and Nov. 30, 1978, completely refutes the FAA near-midair-collision statistics used in the NPRM. Further, a significant case is made in the report that an increased hazard is created by the expansion of air traffic control and proliferation of TCA's and TRSA's.

The FAA uses near-midair-collision (NMAC) statistics within airspace in the 48 contiguous states in an attempt to justify the FAA's airspace proposals. These statistics are from the FAA's own records. No NMAC reports were used from the National Aeronautics and Space Administration Aviation Safety Reporting System. Many of the FAA statistics are percents of percentages. While many numbers are juggled in the justification, the only ones relevant to the FAA's stated intent of increased fare-paying passenger protection are the near midairs between air carriers and VFR aircraft.

Near midairs between air carriers and VFR aircraft below 18,000 feet, according to the FAA, number 212. This averages out to 6.4 NMAC's per month throughout the entire contiguous 48 states below 18,000 feet.

Only 15 NMAC's involved air carrier and VFR aircraft between 17,900 and 13,000 feet. Even though this is a small amount, it must be assumed that they also were all system errors. We make this assumption on the basis that the air carriers were on air traffic control frequencies and that the VFR aircraft were altitude-encoder-equipped and that the altitude was displayed to air traffic control. After all, this was the reason for the mandatory carriage of an altitude encoder as required by FAR 91.

We note that 39 NMAC's occurred between 12,900 feet and 10,000 feet and involved air carriers and VFR aircraft. This averaged only 1.2 incidents per month in the 48 states. These are significantly small numbers.

Further, the NASA draft report indicates that in the altitude strata be-

tween 10,000 to 12,999 feet, and 13,000 to 17,999 feet, the rate of near-midair-collision reports per million of IFR en route operations is lower than in the positive control stratum. AOPA is convinced that the reports in the two lower strata would be even lower per million operations if VFR operations were computed into the figures.

Below 10,000 feet, 196 NMAC's involved air carrier aircraft, while 168 of these involved VFR aircraft. This averages only 5.1 NMAC's per month. However, what is not said, and what must be assumed, is that the other 28 of the NMAC's involving air carrier aircraft were with IFR aircraft and must have been system errors.

The FAA statistics for near-midair collisions in existing TCA's and TRSA's were presented for a single year—1978. These indicate 2 near-midairs per million operations in TCA's and 4 near-midairs per million operations in TRSA's.

The NASA study, for a period of over two years, indicates the *exact opposite* trend. NASA analysis shows 24.3 near-midair reports per million operations in TCA's, 17.4 per million operations in TRSA's and only 8.0 per million in non-Stage III terminal airspace. The study concludes: "These data do not support the premise that airspace segregation and Stage III procedures significantly modify the risk of a near-midair collision in terminal airspace."

The FAA's sole justification for increasing the number of TCA's by 44 and TRSA's by 80 is to reduce the near-midair collisions that currently occur at those locations between air carrier aircraft and VFR aircraft. These are significantly small numbers—2.8 near midairs per month at all these locations or .0226 near midairs per month per location. It appears that the FAA is attempting to legislate out of existence any NMAC's, even though FAA currently stated policy recognizes the fact that aviation cannot be totally free of accidents unless all aircraft are grounded. This suggests the FAA is attempting to ground all general aviation aircraft.

The FAA has concluded that a small but clear potential for midair collision exists and that a recurring factor is the presence of VFR aircraft not under full ATC control. Obviously, as the FAA has stated, that factor can be almost completely eliminated by regulation—the implication being that the elimination of the VFR aircraft would eliminate the midair collision potential. This is misleading in that NMAC's are occurring in airspace where ATC has complete control, such as in positive control airspace and TCA's. In fact, three most recent midair collisions occurred under complete ATC control. Overall, in recent years there have been a surprising number of "controlled collisions" and a disturbing number of cases where controlled aircraft averted collision only through the vigilance of one of the crews in seeing

and avoiding the other aircraft.

The FAA now proposes to extend the ceiling of all TCA's, existing or proposed, to the floor of the proposed Continental positive control area. Nothing in the preamble justifies this upward extension. The airspace between 7,000 feet and 12,500 feet within a 20-mile radius of a terminal is not used at all by fare-paying passengers. Departing air carriers and arriving turbojet aircraft would hardly be at 7,000 feet over the terminal unless the aircraft were climbing or descending in a holding pattern over the airport which is highly unlikely.

The FAA proposes CVF airspace in an eastern and western step to 10,000 feet. No justification is presented other than the statement that these are the two heaviest air traffic areas. The FAA does not even present dubious NMAC's to justify the proposal. Designation of CVF airspace from 10,000 feet or 12,500 feet will not provide for many VFR flight altitudes. Besides flight within 3,000 feet of the surface, only 4,500, 6,500 and 8,500 feet msl will be available for westbound VFR flight underneath the western and eastern step. No VFR flight (without being CVF) would be possible over the high mountains in the western part of the country above 2,500 feet above the surface.

In FAA's discussion of terminal airspace, it is interesting to note that terminal radar separation programs were originally established in 1962 at Atlanta to "solve communications workload problems," not to ensure aircraft separation. Now, however, FAA procedures allow controllers to restrict passage of general aviation traffic (both VFR and IFR) in TCA airspace.

No establishment criteria is contained in this docket to indicate why a TCA is justified for each of the 44 locations mentioned. Further, because of the omission of an establishment criteria, one cannot determine when one of the listed locations is a candidate for discontinuance of the TCA. Any one of those locations could be a candidate for discontinuance if traffic declines under the new airline deregulation environment—or the presence of a TCA reduces operations.

The FAA indicates that the deletion of Group III TCA's would be a benefit to the users. However, this is a sham in that all candidates for Group III TCA's are now included in the NPRM for establishment as Group II TCA's. With Group II TCA's being more restrictive in terms of freedom of transit and equipment requirements, this action would be more restrictive to the users rather than being beneficial.

Discussion of air carrier benefits includes a description of a Terminal Radar Service Area (TRSA). Once again, we see the FAA as misrepresenting the voluntary nature of the service. The words "designated area" imply that the

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area is regulatory. This is not the case at the moment. TRSA's currently are established administratively outside the rulemaking process. To state that VFR aircraft participate "if they request" is a misrepresentation of the procedures. The current "assumed participation" procedures result in artificially high participation counts when many of the pilots do not even know that they are "participating." Even more disturbing and objectionable is the outline of future actions in the FAA plan that transponder/encoder carriage will be mandatory in both terminal and en route radar service areas in the future. If carriage of this equipment becomes mandatory, the next obvious step is to require mandatory control as well, leading to another round of controllers being able to exclude general aviation traffic by the mere statement that they "are too busy."

AOPA members have continued to be harassed by irate controllers and unjustly delayed when attempting to decline participation in Stage III service. Even when one succeeds in not participating by declaring "negative Stage III" he is still delayed, and consequently bewildered, because the controller then provides Stage II service. The NPRM has not made this point. AOPA has in the past taken exception to the assumed participation procedures and will continue to do so.

The FAA claims that the percentage of air carrier passengers receiving either "mandatory or voluntary separation protection" will increase 8%. This minor increase will result in significant delays, restrictions and possible negative safety ramifications on other users of the system.

It is stated that the proposals of the NPRM and the FAA plan regarding additional TCA's, TRSA's and lowered positive control would increase the ability of the ATC system to provide full separation to an expanding general aviation community. This is a clear indication that the FAA does not recognize the impact of its proposals. At best, the present system can handle no more than 20% of today's flights. The NPRM would require a substantial increase in VFR flight plans (for CVF operations) and will encourage more IFR flight plan filing. The current facilities for flight plan filing cannot cope with the proposed increase.

Further, there are many negative aspects of the CVF portion of the plan. Aircraft apparently will be channeled on airways, and random direct routes using RNAV would be eliminated. This will result in unnecessary delays for the airlines, general aviation and the military, as well as consuming more fuel. The inability of VFR pilots to gain access to the positive control area at the levels proposed in the notice will further derogate safety in cases where safe passage over mountain turbulence requires climb to more than 2,500 feet above ground level.

A study entitled "Analysis of the Im-

fact of TCA Implementation on General Aviation Activity" is referenced in the NPRM. This study indicates that TCA expansion "would have little effect on general aviation if reasonable VFR alternatives are retained." Unfortunately, present TCA's do not include these alternatives and there is no indication that any future TCA will do so. Further, a TCA impacts general aviation overflight operations far more significantly than it does operations into and out of the primary TCA airports.

It is stated that the public impact of TCA establishment will be given responsive consideration at each location. Yet, other words in the NPRM indicate that public comment will not be requested as to the necessity of TCA's at additional locations. The FAA field offices are proceeding on this basis even while the comment period on the NPRM is still open. AOPA takes issue with this procedure from a legal point of view.

The FAA has stated in the past that close participation of the aviation community took place in the development of the existing TCA's. Our clarification of that statement would be that this close participation resulted in a wholesale ignoring of objections by the entire general aviation community.

Although the notice asks public comments only on the economic impact of equipment requirements, we also must

comment on the economic impact of loss of flexibility and utility in all aviation operations including air transportation.

While not stated in the NPRM, the FAA's published Plan for Enhanced Safety of Flight Operations in the National Airspace System states the intention to require transponders and encoders in all TCA's and TRSA's. If the present transponder-equipped aircraft without encoders (approximately 70,000) are forced by this proposal to buy encoders, it will be at a cost of \$77,000,000 to \$164,780,000 (mean low/mean high average). This amount excludes encoder installation, maintenance and mandatory inspection expenses. This does not take into account the incalculable cost of buying additional communications equipment with 25-kHz-spaced channels. The FAA's high-altitude control sectors are in the process of conversion to these more closely spaced communications channels. The NPRM does not recognize other increased direct operating costs caused by an aircraft being denied clearances into CVF airspace, thus losing the benefit of optimum altitudes for weather avoidance, icing levels avoidance and favorable winds. Other direct operating cost increases will occur because of the loss of route flexibility, changed routings and the inability to receive RNAV clearances.

However, the most galling aspect of these proposals will be the more widespread occurrence of a situation we face today with TCA's. Even after an aircraft owner equips his aircraft to comply with the required equipment regulations, the transient pilot will, in most cases, be denied access to TCA airspace. This is because service to VFR aircraft is provided at the discretion of the controller on a "workload permitting" basis. Even en route IFR operations are rerouted around TCA airspace as a matter of habit regardless of traffic or workload. We can expect the same situation with regard to CVF airspace unless the procedures specifically require service to all properly equipped users.

The FAA seeks to minimize the impact of TCA's by stating that "minimum-distance bypass airways and VFR routes, and ATC accommodation of aircraft" will be established. The record shows that, with two exceptions, the FAA has not established any VFR routes, minimum-distance bypass airways and, except on rare occasions, does not accommodate VFR pilot requests for transit of the TCA airspace. AOPA sees no reason to expect the FAA to change its "modus operandi." Additionally, contrary to what is stated in the NPRM, the rules proposed for CVF in 91.111 *will* affect the basic

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operational characteristics and flight paths of aircraft: This will occur when pilots are not allowed to operate at optimum altitudes and suffer reroutings at the direction of individual controllers for reasons other than conflicting traffic.

In answer to the question concerning operations above 10,000 feet, all normally aspirated general aviation aircraft have service ceilings above this level. The reasons for operating above those altitudes include weather avoidance, taking advantage of generally higher favorable winds, cruising above known icing and smog levels, cruising above turbulence in mountainous areas and to take advantage of better fuel economy. Numerous AOPA members have indicated that they routinely cruise above 10,000 feet.

As a conclusion of this portion of AOPA's comments, we offer the following:

1. The FAA has failed to explain the air traffic control procedures to be employed in CVF airspace. For example: (a) What vertical separation will be used between VFR and IFR aircraft? (b) Must a flight plan be filed with a Flight Service Station before departure or will an air file directly with the Air Route Traffic Control Center be accepted? (c) Can an abbreviated flight plan be accepted or must a full flight plan be filed? (d) Will

VFR aircraft be allowed to fly through active military operations areas or would they be routed around this airspace as IFR aircraft are now routed? (e) If a CVF aircraft is required to descend below the floor of the CVF airspace because of traffic or weather conditions, will the center continue to follow the aircraft and reissue a clearance back into the CVF airspace? (f) Will the air carrier prefiled flight plan program provide priority to the carriers or would CVF aircraft be handled with the same priority as IFR aircraft? (g) Would CVF aircraft be cleared on airways or would the CVF pilot be allowed to fly any specified route with controller intervention only when a potential conflict arises? (h) What types of procedures and separation standards are to be employed in CVF airspace where radar and/or direct radio communications are nonexistent? (i) The notice addresses the high level of safety of sailplanes and exempts pilots of sailplanes from altitude encoders and the proposed paragraphs 91.111 and 91.24(b) requirements. Only prior notification by radio or telephone to ATC would be required. However, the notice also states that this notification would provide ATC with an adequate basis for routing other aircraft around glider operations. This assumes separation from sailplane airspace. Therefore, would clearances to

sailplanes sometimes be denied because of conflicting traffic? (j) What procedures have been established to accommodate manned balloon operations in the proposed CVF airspace?

2. No economic, environmental or energy impact statements have been issued except the self-serving statements contained in the preamble under "Environmental Considerations." The increased fuel consumption is dismissed through the use of "fuel-efficient bypass airways, VFR routes permitting the shortest possible distance around the TCA's and ATC accommodation of aircraft, *where workload permits.*" [Emphasis added.] This statement cannot be true when direct flight is the most fuel efficient and any bypass or detour has to be otherwise.

With the exception of the Los Angeles and New Orleans TCA's, we know of no TCA location that has VFR routes through the TCA. Further, if the FAA has intentions to establish VFR routes through TCA's, they should have been described in the NPRM rather than being left to subsequent airspace dockets. This would enable the public to better assess and comment on the airspace proposals from an overall view, considering large areas that will be covered by TCA's, such as the Northeast Corridor. Experience of the general aviation pilot is that, with few exceptions, so-called

"workload" always permits controllers to deny VFR aircraft clearance through TCA's. In fact, it is virtually impossible even for IFR aircraft to receive clearance over or through TCA's.

3. The FAA denied, until the last possible moment, an extension of the comment period, citing the strong public interest in proceeding with the rulemaking process, which requires expedited action. This is an interesting comment in light of the fact that, while expedited action is indicated, plans are under way to test and evaluate the CVF proposal in a simulated environment using ATC computers at several ATC facilities. In addition, we understand that the concept is going to be further tested in a live environment with voluntary pilot participation sometime this spring. This testing then tells us that the FAA is not sure of the concept, does not have procedures ready and was premature in issuing Notice 78-19.

4. We noticed that proposed FAR 91.111 Controlled Visual Flights contained what was apparently a typographical error in that subparagraph (d) contained subparagraphs (1), (2), (4) and (5). Apparently, (4) and (5) should be (3) and (4). However, if a proposed subparagraph is missing, then we submit that the missing subparagraph should be published in the Federal Register. The FAA may con-

clude that the missing subparagraph is nonsubstantial; however, users may conclude that it is very substantial.

5. While Honolulu and Anchorage are proposed as TCA locations with a presumed ceiling of 12,500 feet msl, the FAA has not specified what action it proposes to "protect the fare-paying passengers on scheduled air carriers" while the aircraft is operating at these locations above 12,500 feet since the CVF proposal does not include Alaska and Hawaii.

6. AOPA questions the obviously low funding requirement publicly stated by the FAA as being adequate to cover the cost of the proposed changes. However, even the low figure is being financed initially from funds reallocated from the much-needed flight service station modernization program. This assumption is based on testimony given by Transportation Secretary Brock Adams before a recent congressional appropriations hearing.

7. Although references are made to the establishment of additional TRSA's, no explanation is given as to the configuration of the vertical extent of the proposed TRSA's. This is another defect in the proposal in that the public cannot adequately and effectively comment when the extent of the proposed airspace configuration is not known.

8. The redesignation of the Continental Control Area, as proposed in

FAR 71.9, to Flight Level 600 deletes controlled airspace in those prohibited and restricted areas within the 48 contiguous states below Flight Level 600 that are currently prescribed in Subpart D of FAR 71. However, the addition of the Continental Positive Control Area to proposed FAR 71.193 redesignates the controlled airspace in all of the restricted areas and prohibited areas above 10,000 feet msl in the eastern and western steps and 12,500 feet msl in other areas. Therefore, additional controlled airspace is being redesignated within the restricted and prohibited areas below 14,500 feet. This was not identified in the preamble as an addition to the amount of controlled airspace. We also wish to point out that if the Continental Positive Control Area is designated, as proposed, Subpart D of FAR 71 is redundant with respect to the 48 contiguous states.

V. AOPA'S Recommended Alternatives

AOPA has proposed the development of an air traffic management system that will accommodate the needs of all the users without placing an inequitable burden on general aviation. We find that the proposals of the FAA are unacceptable in that they are incomplete, unnecessary, unwarranted and

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place too much of the burden on the largest segment of users—general aviation.

AOPA is concerned that several operating problems that now exist are not considered in the proposal, nor is the proposal designed or intended to remedy the following system limitations:

1. "System Errors" (i.e., conflicts between IFR and other IFR aircraft, both of which are under ATC control).
2. Excessive delays in processing flight plans and receiving clearances, particularly FSS saturation.
3. Arbitrary refusal of controllers to permit passage through or over existing TCA's by properly equipped aircraft.
4. Reluctance of controllers to authorize direct routing (RNAV or other) where possible and feasible.
5. Reported limited and critical computer capacity in some ATC facilities.
6. Overemphasis of "positive control," which dilutes manpower and dollar resources from higher priority safety programs.

We strongly disagree with the FAA conclusion that attempting to bring VFR aircraft under total ATC control will eliminate most of the potential for midair collisions. Instead, general aviation would be restricted from operating in large blocks of airspace (as is the case in existing TCA's) due to the ATC system's inability to handle the traffic demand.

AOPA submits the following alternative proposals to those contained in Notice 78-19.

1. En route Airspace

a. Lower the Continental Control Area from 14,500 to 12,500 feet, with the exception of areas 2,500 feet agl or less. Positive Control Area (all IFR) should remain at 18,000 feet msl and above.

b. Establish new rules and air traffic procedures for operating within the Continental Control Area below 18,000 feet, which would continue to allow noninstrument-rated pilots to operate properly equipped aircraft in that airspace and be provided with separation by the ATC system. It should be noted that a transponder and encoder are required above 12,500 feet. The only other requirements for operating in that airspace would be two-way radio contact with ATC prior to entry, giving aircraft identity, type of aircraft, heading or destination and intended cruising altitude.

c. Pilots should maintain two-way communication with ATC when within the Continental Control Area.

d. Pilots should comply with ATC clearances or instructions given for separation from another specific aircraft in this airspace. (Note: ATC could not refuse entry into this airspace nor change planned route, but could vector or change altitude as necessary to avoid other specific conflicting traffic. All other VFR require-

ments—i.e., hemispheric altitudes and inflight visibilities—would remain as is.)

e. For flight in this airspace, aircraft should be equipped with transponder/encoder, communications and navigation equipment.

f. Turbojet aircraft should operate en route only in Positive Control Area or in the Continental Control Area under IFR or CVF.

g. The 250-knot speed rule and the VFR weather requirements presently applicable at 10,000 feet should be changed to apply at 12,500 feet. This would be coincidental with the redesignated floor of the Continental Control Area.

h. Make radar traffic advisories available on request anywhere that radar coverage is available. CVF aircraft should be provided the same priority as IFR aircraft in the Continental Control Area (above 12,500).

i. Eliminate restricted areas no longer required by the military and rescind control areas where ATC communications coverage is not available, except for transition areas to protect instrument approaches.

2. Terminal Airspace

a. Revise the regulatory requirements for all TCA's into a single category to consist of the current requirements applicable to Group II TCA's. This will reduce the confusion concerning the procedures and requirements of the various TCA's, while still providing the appropriate level of safety in those terminal areas. The requirements of Group II TCA's are chosen on the basis that the NASA near-midair-collision study indicates that Group II TCA's are safer than Group I.

b. Revitalize and simplify the TCA establishment criteria. The new criteria should specify establishment of a TCA when the terminal exceeds 1% of the annual total U.S.-enplaned passengers and 250,000 annual instrument operations for two consecutive years. If a terminal's traffic decreases below these levels for two consecutive years, the TCA should be rescinded.

c. Do not expand the size and shape of existing TCA's. Terminate all at 7,000 feet agl. When new locations qualify for a TCA, establish with a radius of not more than 21 nautical miles and with a height of 7,000 feet. Additional TCA airspace, if appropriate, should be provided in the form of only that airspace required to protect "profile descent" and departure climbs of air carriers and other turbojet aircraft. This is referred to as "segmented TCA's." No more than four connecting segments should be established at any TCA location. These segments in the form of corridors out of the top of the TCA would allow VFR aircraft to transit over the top of the TCA while remaining clear of the connecting segments or corridors. Adding layers to the "wedding cake" of TCA's to reserve additional airspace

for air carrier and other turbojet aircraft to 12,500 feet msl is not acceptable because it further burdens and restricts general aviation. There are not significant numbers of air carrier and other turbojet aircraft in the airspace above the current TCA's and below 12,500 feet msl to justify restrictions placed on the transit of that airspace. The TCA airspace also must be configured so as to allow traffic to and from other airports in the vicinity of the TCA.

d. Establish a DME facility on the central airport so that pilots of DME-equipped aircraft can know when they are within or outside of the TCA and its extensions.

e. Establish TRSA's only at those locations that, in addition to other requirements, enplane at least .25% of the total enplaned passengers in the United States.

f. Operate all TRSA's on a voluntary basis without defining specific airspace or additional equipment requirements. If the service is effective, pilots will use it. If the service is poor, traffic will continue to flow, with the air carriers receiving full radar advisory service. At all other radar locations, provide radar advisory service as requested by the aircraft operator or pilot.

g. VFR aircraft must receive the same priority as IFR aircraft in TCA's and TRSA's.

h. Eliminate the 250-knot speed rule within TCA's (and TCA extensions, if implemented) if this does not necessitate an increase in the size of the TCA.

i. Control zones should terminate at the base of the Continental Control Area (12,500 feet msl).

V. Conclusion

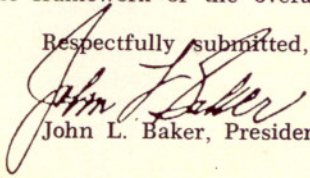
AOPA finds that the proposals of the FAA are unacceptable for the reasons stated above.

AOPA recommends alternatives to the FAA NPRM and the FAA "Plan for Enhanced Safety," which will provide essentially the same or possibly even more safety without undue and unacceptable burdens on general aviation. Additional safety benefits will be afforded under the AOPA recommendations through hemispheric separation rules of IFR and VFR traffic in CVF airspace.

AOPA's alternative plan will not require any equipment not normally carried for flight within the same airspace.

We recommend adoption of AOPA's alternative plan as outlined above, after suitable consultation with all users to work out the necessary details within the framework of the overall plan.

Respectfully submitted,


John L. Baker, President