



Air & Transportation Law Reporter

International
Air & Transportation
Safety Bar
Association



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President's Message

by
Justin Green



JUSTIN GREEN joined Kreindler & Kreindler LLP in 1997 after clerking for the Honorable Alfred J. Lechner in the Federal District Court for the District of New Jersey. He became a partner in January of 2003.

Justin focuses his practice on helping families of aviation disaster victims, but also litigates other complex matters. Justin learned to fly while in the United States Marine Corps and served as his squadron's aviation safety officer after graduating from the Naval Postgraduate School's aviation safety program. He was responsible for his squadron's aviation safety, and also for investigating accidents. He holds an airplane and helicopter commercial license from the Federal Aviation Administration. As an aviation lawyer, Justin has successfully represented families in dozens of major aviation cases, including most recently the families of Continental Connection Flight 3407 and Turkish Airlines Flight 1951 victims. He edits Kreindler, Aviation Accident Law published by Lexis/Nexis.

Registration is open for the IATSBA Annual Conference, which will take place between April 28 and April 30 in Washington D.C. We already have commitments from a terrific group of speakers, including the NTSB Vice Chair Bella Dinh-Zarr who will be the opening dinner speaker. Speakers include NTSB Board Member Robert Sumwalt, David Tochen, NTSB General Counsel, Hon Alfonso Montano, Chief Administrative Law Judge, in addition to leading attorneys and professionals from the Federal Aviation Administration and from private practice.

The conference will be held at the Holiday Inn Capitol, which has just finished a major renovation. We have purposely kept the conference costs as low as possible and you can now register at the following rates: \$425 private practice and \$275 government. You can register on line at IATSBA.org or you can use the registration form that is included in this newsletter and mail it and a check to the address on the form. The block of rooms at the Holiday Inn for the event is at a low \$199 per night, plus tax. To book a room, you can call the Capitol Holiday Inn at (877) 572-6951 and mention the rate code T9S or you can link to the hotel's reservation page from our website when you register for the conference.

At our GALA dinner we will honor two people who have made truly remarkable contributions to aviation and you will not want to miss the opportunity to join us in making the awards.

The 2016 Joseph T. Nall Award

On April 29, the International Air and Transportation Safety Bar Association will award the 2016 Joseph T. Nall Award to Nick Sabatini for his incredible contributions to aviation safety during a storied career at the Federal Aviation Administration.

Nick served as the U.S. Federal Aviation Administration's Associate Administrator for Aviation Safety from 2001 to 2009, where he was responsible for the certification, production approval, and continued airworthiness of aircraft; certification of pilots, mechanics, and others in safety-related positions. In that role, he was also responsible for certification of all operational and maintenance enterprises in domestic civil aviation; development of regulations; civil flight operations; and the certification and safety oversight of some 7,300 U.S. commercial airlines and air operators. Nick was responsible for some 7,000 employees in FAA Washington Headquarters, nine regional offices, and more than 125 field offices throughout the world.

Prior to that, Nick was manager of the Flight Standards Division for FAA's Eastern Region, and served in a variety of aviation operations and management positions in the agency's Eastern Region, as a principal operations inspector, aviation safety inspector, manager of the Flight Standards Division Operations Branch, and assistant manager of the Flight Standards Division.

President's Message

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Prior to joining the FAA in 1979, Nick was a pilot for the U.S. Customs Service in New York. From 1958 to 1976, he was a police officer and helicopter pilot for the New York City Police Department. He served in the U.S. Army from 1956 to 1958.

Nick holds an airline transport pilot certificate and the following ratings: Airplane multi-engine land, rotorcraft-helicopter, DC-9, CE-500, BH206, EMB110, commercial privileges, airplane single-engine land, as well as flight and ground instructor certificates. He attended the John Jay College of Criminal Justice; the Kellogg School, Northwestern University; and the Fletcher School of Law and Diplomacy, Tufts University.

Past honorees include:

- Safeflight Instrument Corporation, Randy Greene, Chief Executive Office, and his father Leonard Greene
- Cirrus Aircraft SR Safety Design Team
- Dr. John K. Lauber, NTSB Board Member, Senior Vice President and Chief Product Safety Officer, Airbus SAS
- William R. Voss, President and CEO, Flight Safety Foundation
- Herbert D. "Herb" Kelleher, Co-Founder and CEO, Southwest Airlines
- Captain Alfred C. Haynes, United Airlines Flight 232, Sioux City, Iowa

The 2016 International Air and Transportation Safety Bar Association Lifetime Achievement Award

John Yodice has dedicated his professional life to aviation since he graduated from George Washington University School of Law in 1959. Since then he has represented pilots, flight schools, corporate and commercial operators, aircraft owners, and others in a broad range of important aviation law matters. He served as General Counsel to the Aircraft Owners and Pilots Association, a Sponsor for the IATSBA Conference, and the International Council of Aircraft Owner and Pilot Association. He is a Director (and past president) of the Lawyer-Pilots Bar Association and serves as LPBA's Convention Manager. John is an active commercial pilot and flight instructor. He uses his twin-engine Cessna Turbo 310 primarily in his law practice. His Piper Cub is just for fun.

John is one of the IATSBA founding members and has been a Board member since day one. He continues to contribute as the Board's Secretary. He, perhaps more than anyone, is responsible for creating this bar association of lawyers who are dedicated to aviation law and the safety of pilots and passengers of fixed and rotary wing aircraft.

The IATSBA Lifetime Achievement Award is awarded to the attorney who has made a truly remarkable contribution over a significant time period to our bar association, to aviation law and to aviation safety. No person is more deserving than John Yodice of the honor of being the first recipient of the IATSBA Lifetime Achievement Award.

Editor's Column

by
Greg Reigel



GREG REIGEL is a partner with the law firm of Shackelford, Bowen, McKinley and Norton, LLP in Dallas Texas. He has more than two decades of experience working with airlines, charter companies, fixed base operators, airports, repair stations, pilots, mechanics, and other aviation businesses in aircraft purchase and sale transactions, regulatory compliance including hazmat and drug and alcohol testing, contract negotiation, airport grant assurances, airport leasing, aircraft related agreements, wet leasing, dry leasing, FAA certificate and civil penalty actions and general aviation and business law matters.

Greg also has extensive experience teaching the next generation of aviation and legal professionals including in such courses as aviation law, aviation transactions, aviation security, business law and trial advocacy. Greg holds a commercial pilot certificate (single-engine land, single-sea and multi-engine land) with an instrument rating.

Welcome to the Spring/Conference issue of the International Air & Transportation Safety Bar Association's Reporter. As I write this column, I am reminded of the value and benefit bar associations such as IATSBA and LPBA provide to me and to my aviation law practice. They sponsor conferences that focus on the specialized aviation and regulatory practices of our members. This publication, which strives to both educate and inform our members with articles on a variety of current and developing legal issues, provides me with useful information for my practice. The camaraderie and friendships I have enjoyed with other association members also sustain and encourage me during those times when a course at "Truckmasters" looks like the path to a better career alternative.

However, to truly enjoy the benefits of this and other similar bar associations you need to participate. Attend the conferences. Meet and network with other members. Read the newsletter. Or, better yet, contribute an article to the newsletter. Share your experience and expertise. I know this is "preaching to the choir" for some of our members. But for other members, I am hoping this will encourage you to get involved and to take advantage of the benefits that IATSBA offers to its members.

And now we take the runway in preparation for this issue's flight. First up, our President gives us a preview of our upcoming conference in Washington, D.C. from April 28-30, 2016. The registration materials

and agenda are also included in this issue of the Reporter. With an agenda focusing on aviation regulatory issues, you won't want to miss this event!

From the NTSB, Katie Inman discusses several recent cases in which the Board has decided various issues of first impression including a determination that it lacks jurisdiction to review the FAA's actions relating to a statement of aerobatic competency, as well as a case analyzing the application of 14 C.F.R. §91.13(a) to a situation where the airman caused a jet blast after a nearby aircraft would not trade places with the airman's aircraft on a taxiway. Katie also updates us on several NTSB rule changes that are now in effect.

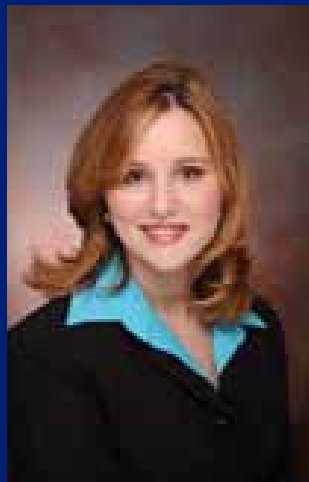
Next, Alan Frazier analyzes some of the privacy issues facing law enforcement agencies that are utilizing small unmanned aircraft systems. And finally, our President-Elect Jim Waldon provides us with a flight-level overview of the FAA and DOT requirements for starting a Part 121 air carrier.

As always, if you would like to submit an article but you have questions regarding topic, availability etc., please feel free to contact me. I will be happy to answer questions and help you through the process. Also, if you are aware of an upcoming event that may be of interest to our members, please send me the details so we can include the information in the newsletter.

I hope you enjoy this edition of the Reporter and I look forward to seeing you at the conference in April.

NTSB General Counsel

by:
Katie Inman



KATIE PLEMONS INMAN

joined the Office of General Counsel in 2005. Ms. Inman handles cases on the Board's enforcement docket, and serves as the attorney overseeing rulemaking under the Administrative Procedure Act. Ms. Inman has also served as the attorney overseeing compliance with and litigation regarding various statutes involving the availability of information, such as the Freedom of Information and Privacy Acts. Prior to joining the Board, Ms. Inman served as a law clerk to a Federal judge in the Eastern District of Texas, where she assisted in research and drafted opinions on a variety of issues. Ms. Inman has also authored and published articles in scholarly journals concerning the legislative process and Federal programs.

In addition to several noteworthy investigations and safety recommendations in the past year, the NTSB has also been active in issuing decisions on appeals of various issues of first impression.

The Board issued an opinion on November 5, 2015 in a consolidated case involving the Statements of Acrobatic Competency (SACs) of nine airmen. Administrator v. Hornbeck et al., NTSB Order No. EA-5760. The case arose from appellants' performance of maneuvers at the Tuscaloosa Air Show on March 29, 2015 in Tuscaloosa, Alabama, in a manner that ostensibly caused the Federal Aviation Administration (FAA) to rescind appellants' SACs. The April 10, 2015 letter the Alabama and Northwest Florida Flight Standards District Office (FSDO) of the FAA sent to each of the nine appellants rescinding the SACs informed appellants they would need to participate in an aerobatic competency evaluation in order to obtain their SACs again. The letter also informed appellants they could appeal the rescission of their SACs by writing to the Division Manager, General Aviation and Commercial Division (AFS 800), at FAA headquarters.

Appellants submitted an appeal to AFS 800 on April 17, 2015. Shortly thereafter, on April 29, 2015, appellants submitted a notice of appeal to the NTSB Office of Administrative Law Judges.

The Chief Administrative Law Judge issued a decisional order on July 1, 2015, in which he dismissed the appeals for lack of jurisdiction. In the order, the law judge concluded SACs are not comparable to certificates or ratings over which the Board unequivocally possesses jurisdiction. The order quoted from 49 U.S.C. §§ 1133, 44703, and 44709 to reach this conclusion. The law judge compared SACs to airman certificates or ratings, as described in 49 U.S.C. § 44709(b) (1), and determined that SACs do not meet the requirements of § 44709(b) (1).

In addition, the law judge stated a SAC is not always required for acrobatic operations, and described the procedure for obtaining an SAC, which is easily distinguishable from the procedure by which an airman receives a certificate or rating. The law judge concluded, even assuming the Board considers an SAC as a type of airman certificate, appellants did not exhaust their administrative remedies after receiving the FSDO's letters of rescission, because appellants did not wait for review of the rescissions by the FAA General Aviation and Commercial Division.

Appellants filed an appeal, principally on the basis the law judge's dismissal deprived them of due process. Appellants asserted the manner by which the FSDO rescinded their SACs was unfair, because the International Council of Airshows (ICAS), which

NTSB General Counsel

continued

competes with appellants' air show organization, recommended the rescission. Appellants also argued the Administrator sought to require them to enter into an indemnification agreement with ICAS and that the agreement was unjust.

The Board denied the appeal and affirmed the law judge's decision. The Board held its jurisdiction only extends to appeals of airman certificates or ratings. 49 U.S.C. §§ 1133, 44703, and 44709. The Board held an SAC is easily distinguishable from a certificate or a rating.

The Board concluded the SAC itself, FAA Order 8900.1, Volume 5, Chapter 9, governing SACs, and the process by which to obtain an SAC are all readily distinct from an airman

certificate or rating. The Board stated an SAC only serves as an indication of the holder's skill and ability to perform certain maneuvers that otherwise may require a waiver or some type of special permission from the Administrator. As a result, the Board concluded it lacks jurisdiction to review FAA actions related to SACs. Based on this assessment, the Board stated it was not authorized to consider the alleged violation of due process and the invalidity of the indemnification agreement.

The Board also revisited a case in which the FAA charged the respondent with a violation of 14 C.F.R. § 91.13(a) for causing a jet blast. Administrator v. Langford, NTSB Order No. EA-5763 (Dec. 1, 2015). On remand from the Federal District Court for the Western District of Texas, the

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NTSB General Counsel

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Board analyzed the applicability and appropriate sanction for a violation of 14 C.F.R. § 91.13(a), which prohibits careless or reckless operation, so as to endanger the life or property of another. In Langford, the respondent caused a jet blast in 2009 in Midland, Texas, after a nearby Cessna 172 would not trade places with the respondent on a taxiway parallel to the runway.

The case arose from the Administrator's order imposing a 90-day suspension of the respondent's ATP certificate, based on the respondent's conduct. The Board's Opinion and Order in 2013 discussed how the Cessna blocked respondent's taxi route back to his parking position. On the radio, respondent requested the Cessna switch places with him so he could turn right onto taxiway Bravo and taxi to his parking position. The Cessna's pilot declined the request. Apparently incensed, respondent created a jet blast by increasing the throttle of the Learjet to an excessive power while simultaneously applying the brakes. The Cessna pilot called the FAA to report the incident. The FAA charged respondent with violating 14 C.F.R. § 91.13(a) and ordered a 90-day suspension of respondent's ATP certificate.

Respondent appealed to the United States District Court for the Western District of Texas. The Administrator filed a motion for summary judgment in the District Court, and in an order dated September 17, 2014, the

court denied the motion and remanded the case to the law judge. The court instructed the law judge to determine: (1) whether the Learjet was 40-50 feet away from the Cessna when it began to increase throttle while simultaneously applying the brakes, and (2) how that finding affects whether respondent violated § 91.13(a). The court also instructed the law judge to reevaluate the sanction of 90 days' suspension by refraining from considering whether respondent's conduct was intentional. The law judge issued a decisional order on remand from the court on April 16, 2015, reaffirming his earlier finding that respondent violated § 91.13(a) and concluding that the evidence established that the Learjet was between 40 and 50 feet away from the Cessna when it began to increase throttle while simultaneously applying the brakes.

In another appeal to the Board, the respondent asserted the evidence did not support the law judge's conclusion that the Learjet was 40 to 50 feet from the Cessna at the time of the events. Respondent also argued the law judge should not have mentioned whether he believed respondent's conduct was intentional, and that the law judge erred in failing to analyze whether the 90-day suspension period was appropriate in light of the facts.

The Board emphasized the record contained ample evidence establishing respondent's conduct was careless or reckless. The pilots of the

NTSB General Counsel

continued

Cessna testified they were frightened and had to apply the brakes and take action to control surface movement of the Cessna. In addition, the record contained testimony and photographs showing the Learjet left significant black skid marks on the area in which the jet blast occurred. The Board stated regardless of the exact distance between the two aircraft, the facts established respondent acted in a reckless manner.

The Board's opinion included a summary of the evidence followed by a finding that a 45-day suspension period, in lieu of the Administrator's choice of a 90-day suspension period, was appropriate. The Board stated the sufficiency of evidence establishing respondent's actions and the dangers they posed rendered unnecessary an analysis of the respondent's state of mind when he caused the jet blast. The Board stated, however, that to avoid any conflict with the opinion of the District Court, it would refrain from considering whether respondent

acted with intent or deliberation in reevaluating the appropriate sanction. The Board concluded a 45-day suspension period for the respondent's conduct was appropriate.

Lastly, the Board has also been active in its ongoing project of updating its regulations. On December 24, 2015, the Board published a Final Rule to update its proposed changes to 49 C.F.R. part 845, which includes rules of procedure applicable to Board hearings and other proceedings, as well as Board products and petitions for reconsideration of probable cause(s) findings. The changes become effective January 25, 2016. On December 15, 2015, the Board published a Direct Final Rule to remove from 49 C.F.R. § 830.5(a)(10) a requirement that operators notify the Board of an Airborne Collision and Avoidance System resolution advisory that occurs in Class A airspace. The change will become effective February 16, 2016, unless the Board receives comments not supportive of the amendment.

UAS and Privacy: A Primer

by:
Alan Frazier



ALAN FRAZIER has 35 years of experience in local, state, and federal law enforcement agencies. The majority of his career was spent with the Glendale (CA) Police Department where he served in a wide variety of assignments including officer-in-charge of the Air Support Unit. Alan is currently employed as an associate professor of aviation at the University of North Dakota where he teaches helicopter and public safety related courses and conducts UAS related research. He is also employed as a Grand Forks County Deputy Sheriff supervising the department's Unmanned Aircraft Systems Unit. Alan is a graduate of Middle Tennessee State University (BS, 1982) and the University of Southern California (MA, 1990). Alan possesses an FAA Airline Transport Certificate with airplane, helicopter, glider, and flight instructor ratings.

Unless you have been on a deserted island the last few years, you are undoubtedly aware of the controversy surrounding privacy and small unmanned aircraft systems (sUAS). Many involved in airborne law enforcement feel that the controversy has been generated by the media and does not accurately reflect the opinion of the general public. The media maintains that the public is genuinely concerned about UAS and privacy.

A study conducted in 2014 by social scientists at the University of North Dakota attempted to gauge the public's acceptance of UAS tasked to a variety of missions. Over 600 respondents living in Northeastern North Dakota indicated very strong support for law enforcement use of sUAS to search for missing persons and crime suspects, photograph crime and traffic accident scenes, and conduct disaster assessments. Interestingly, commercial package delivery by UAS received the lowest level of public support!

Well over 200 U.S. law enforcement agencies currently utilize manned aircraft. In almost all cases, those manned aircraft are equipped with much more capable sensor systems that those installed on small UAS. It is noteworthy that there has not been a public outcry regarding invasion of privacy by manned law enforcement aircraft. This is likely due to the media and/or public's misperception on how and when law enforcement sUAS are utilized.

By Federal Aviation Administration (FAA) mandate, sUAS can only be operated within "line-of-sight" of the operator. This effectively limits the operating radius of sUAS to approximately ½ mile. sUAS are currently being operationally deployed by approximately 16 U.S. law enforcement agencies. They have been used to document crime and traffic accident scenes, search for missing persons and crime suspects, assess disaster scenes, and provide additional situational awareness over tactical scenes. The author is unaware of a single incident in which sUAS have been utilized to conduct a covert surveillance or routine patrol flight. The misconception of sUAS patrolling randomly or hovering to peer into a random home window is just that, a misconception.

Despite these facts, fifteen states have enacted legislation which restricts the use of sUAS. Ten more states are considering such legislation. In addition, law enforcement agencies (most notably Seattle, WA Police Department) have been forced to discontinue use of sUAS due to adverse public opinion. These occurrences, combined with the very important obligation of law enforcement agencies to respect and protect the constitutional rights of the public we serve, make it imperative that agencies operating sUAS address constitutional and privacy concerns in their policies, training, and operational deployments.

UAS and Privacy: A Primer

continued

Engage and Educate the Public

Trying to keep consideration or creation of a sUAS Unit from the public is simply a bad decision. On the contrary, engage the public as much as possible. Utilize existing police advisory panels, community groups, etc... to weigh in on the use of sUAS. Utilize input received from these groups to help formulate sUAS Unit policies and procedures. Reach out to organizations such as service clubs, chambers of commerce, and neighborhood watch. Provide these groups' members with factual information on when and how sUAS will be utilized. Be welcoming and transparent to the media. Invite local media representatives to observe sUAS Unit training sessions. Answer their questions directly and honestly. Only through this type of honest dialog can we dispel the incorrect perceptions of sUAS that, to a great extent, have been fostered by the mainstream media.

Search and Seizure

Agencies considering establishing sUAS Units should have a firm understanding of current law and case decisions related to search and seizure. Obviously the 4th Amendment provides overarching guidance. However, specific U.S. Supreme Court case decisions and individual states' laws play a major role in determining constitutionality. Two significant cases worthy of review are California v. Ciraolo, 476 U.S. 207 (1986) and Riley vs. Florida, 488 U.S. 445 (1989).

In Ciraolo, Santa Clara (CA) police received a tip that Ciraolo was cultivating marijuana in his backyard. The backyard was surrounded by two tall fences preventing officers on the ground from viewing the area. The officers elicited the help of a private pilot flying a fixed wing aircraft to fly them over the property at 1000' AGL. Based on observations made from the aircraft, a search warrant was obtained and executed. Marijuana plants were seized and Ciraolo was arrested.

In Riley, Pasco County (FL) Sheriff's Department Deputies received a tip that Riley was cultivating marijuana on his property. Orbiting the property in a helicopter at 400' AGL, the deputies were able to see through a couple of missing panels in the roof of a greenhouse and observed marijuana growing. A search warrant was obtained and executed. Marijuana was seized and Riley was arrested.

Both of these cases involved manned aircraft, not sUAS. However, pending appellate or Supreme Court review of a case involving sUAS, it is logical to utilize Ciraolo and Riley as "guidance cases". With this in mind, it is likely constitutional to view curtilage (the land immediately surrounding and in close proximity to a dwelling) from a sUAS operating at or above 400' AGL. In addition to the 4th Amendment and U.S. Supreme Court case decisions, agencies must research applicable state statutes related to use of sUAS and ensure that they are compliant with those very varied laws. Areas that do not enjoy a "reasonable expectation of privacy" (open fields, public areas,

UAS and Privacy: A Primer

continued

etc...) would clearly fall under the “open fields” and “plain view” doctrines. If you can legally be there, any observations you make should be constitutional.

Policies and Procedures

Agencies should include unequivocal language in their sUAS policies and procedures document citing the importance of respecting the constitution and the privacy of the public. Specific guidance on when a search warrant is required should be included in the policy. Guidelines and procedures for minimization of camera usage, and storage of images is essential. Digital images obtained from sUAS should be safeguarded as evidence in compliance with the agency’s evidence policy.

Initial and Recurrent Training

All sUAS Unit Personnel should receive initial training on aerial search and seizure statutes and case law as well as Unit and Department policies and procedures related to search and seizure and evidence. Emphasis should be placed on minimizing gathering of images and safeguarding

those images. Document all training thoroughly and accurately. As we all know, if it is not documented, it did not occur. Supervisors and managers should provide adequate oversight to ensure that sUAS Unit policies and procedures are being properly implemented.

Internal Investigations

As in the case of any alleged serious violation of an agency policy, agencies should accept and vigorously investigate any allegations of inappropriate use of sUAS. If the allegation is sustained, appropriate action should be initiated up to and including transfer from the Unit or termination of employment.

Law enforcement has become a complex undertaking. Each time we add a new technology, complexity increases. In order to ensure that we are not only “doing things right” but more importantly “doing the right thing” we must carefully consider each new technology we implement. sUAS is just one of the recent technologies that we must carefully consider and responsibly implement.

How to Start a Commuter Airline

by:
Jim Waldon

The process to become an airline can take years. The process requires certification from both the Federal Aviation Administration (“FAA”) and the Department of Transportation (“DOT”). Assuming the goal is to start a small carrier, operating non-turbine jet, aircraft that are under 12,500 lbs, having a seat configuration of 10 passengers or less, the process will begin by reviewing FAA Advisory Circular 120-49. This advisory circular provides an overview of the certification process. The applicant then must submit a PASI (Pre-application Statement of Intent); a formal application letter to their local FAA Flight Standards District Office.

The FAA will also require the following:

- Operations Specifications
- a Letter of Compliance
- Corporation documentation
- Pilot qualifications
- Proof of access to aircraft
- a HazMat Procedure Manual and Training Program¹
- a Drug and Alcohol Program²
- a Ground Deicing Program & Training
- additional documents as requested by the FAA³

The applicant may request deviations where rules allow it, and may request exemptions in accordance with 14 C.F.R. §11.25.

The applicant may also submit a minimum equipment list if they wish to operate with inoperable equipment.⁴

1 [FAA Notice 8000.352](#), Revision of Operations Specification A055 for the Carriage of Hazardous Materials.

2 http://www.faa.gov/about/office_org/headquarters_offices/avs/offices/aam/drug_alcohol/

3 See FAA Advisory Circular 120-49

4 *Id.*

Next, the applicant must obtain DOT economic authority. To receive economic authority, the applicant must file an application in the DOT public docket. Separate applications are required to obtain interstate authority and foreign authority.

The DOT uses a three-part test to determine the fitness of a company:

First, it examines the managerial competence of the applicant’s key personnel to determine whether they have sufficient business and aviation experience to operate an airline, and whether the management team, as a whole, possesses the background and experience necessary for the specific kind of operations proposed.

Second, it reviews the applicant’s operating and financial plans to see whether the applicant has a reasonable understanding of the costs of starting its operations and either has on hand, or has a specific and verifiable plan for raising, the necessary capital to commence operations. Before being granted effective air carrier authority, the applicant must submit third-party verification that it has acquired the necessary capital to conduct its operations.

Third, the DOT looks at the applicant’s compliance record to see whether it and its owners and managers have a history of safety violations or consumer fraud activities that would pose a risk to the traveling public, or whether other factors indicate that the applicant or its key personnel are unlikely to comply with government laws, rules and directives.

In addition, the applicant must establish that it is owned and controlled



JIM WALDON has extensive legal and management experience within the aviation industry, including Lead Counsel at Alaska Airlines and Senior Attorney at Trans World Airlines. He holds a commercial pilot license with over 2,500 hours and was the Chief Operating Officer and General Counsel of a regional Hawaiian airline. He is currently the managing attorney of Paramount Law Group, an aviation law firm with a national focus. His practice focuses on aircraft transactions and finance. He represents domestic airlines and business aircraft owners, operators, pilots and mechanics.

How to Start a Commuter Airline

continued

by U.S. citizens. A U.S. Citizen, as defined in 49 U.S.C. 40102 (a)(15), is:

(A) An individual who is a citizen of the United States; (B) A partnership each of whose partners is an individual who is a citizen of the United States; or (C) A corporation or association organized under the laws of the United States or a State, the District of Columbia, or a territory or possession of the United States, of which the president and at least two-thirds of the board of directors and other managing officers are citizens of the United States, which is under the actual control of citizens of the United States, and in which at least 75 percent of the voting interest is owned or controlled by persons that are citizens of the United States.⁵

Once the applications for an FAA certificate and DOT economic authority have been submitted, the next step is to wait. And wait. The applicant may receive a response from the respective regulatory entities in a relatively short period (weeks), or longer (months), depending on many factors. The biggest of these factors is the current workload of the individuals to which the applications have been assigned.

Once the FAA and DOT applications have been reviewed, they will either be approved, denied, or additional information will be requested. In my experience, additional information will almost always be requested, and often, additional information will be required numerous times prior to approval. This ⁵ <https://www.transportation.gov/policy/aviation-policy/licensing/US-carriers>

process can be reduced dramatically by ensuring the initial application is accurate and complete prior to submission.

Once both the FAA and DOT submissions have been approved, the next step is to have the airline aircraft pass a conformity inspection by the FAA. Finally, all pilots must pass a check ride with the FAA.

Many of the problems with starting from scratch are obvious. The process can be time consuming and complex. Because this process can take years, and because many of the employees and the aircraft must be identified, and therefore paid, during the application process, while no revenue is likely being generated, this process can also prove quite costly. Some of the problems with this process, however, are less obvious. Economic change during the application process, for instance, can cause the principal owners and investors of a start up carrier to rethink their initial business model.

In recent years two startup 121 carriers come to mind – Virgin America and Air Hawaii. Both were initially well funded and had qualified key personnel. Virgin America, after a very costly and time consuming process eventually obtained certification. Air Hawaii, after many years in the application process, eventually abandoned their application.

Starting an airline is costly and time consuming. Many have tried and many have failed. The few who have succeeded did so with a solid business plan, significant experience and strong financial backing. My advice, to anyone who asks for my assistance in this process is simple. Don't. There are better ways to make a living.

Circuit Assignments



NTSB LAW JUDGE CIRCUIT ASSIGNMENTS

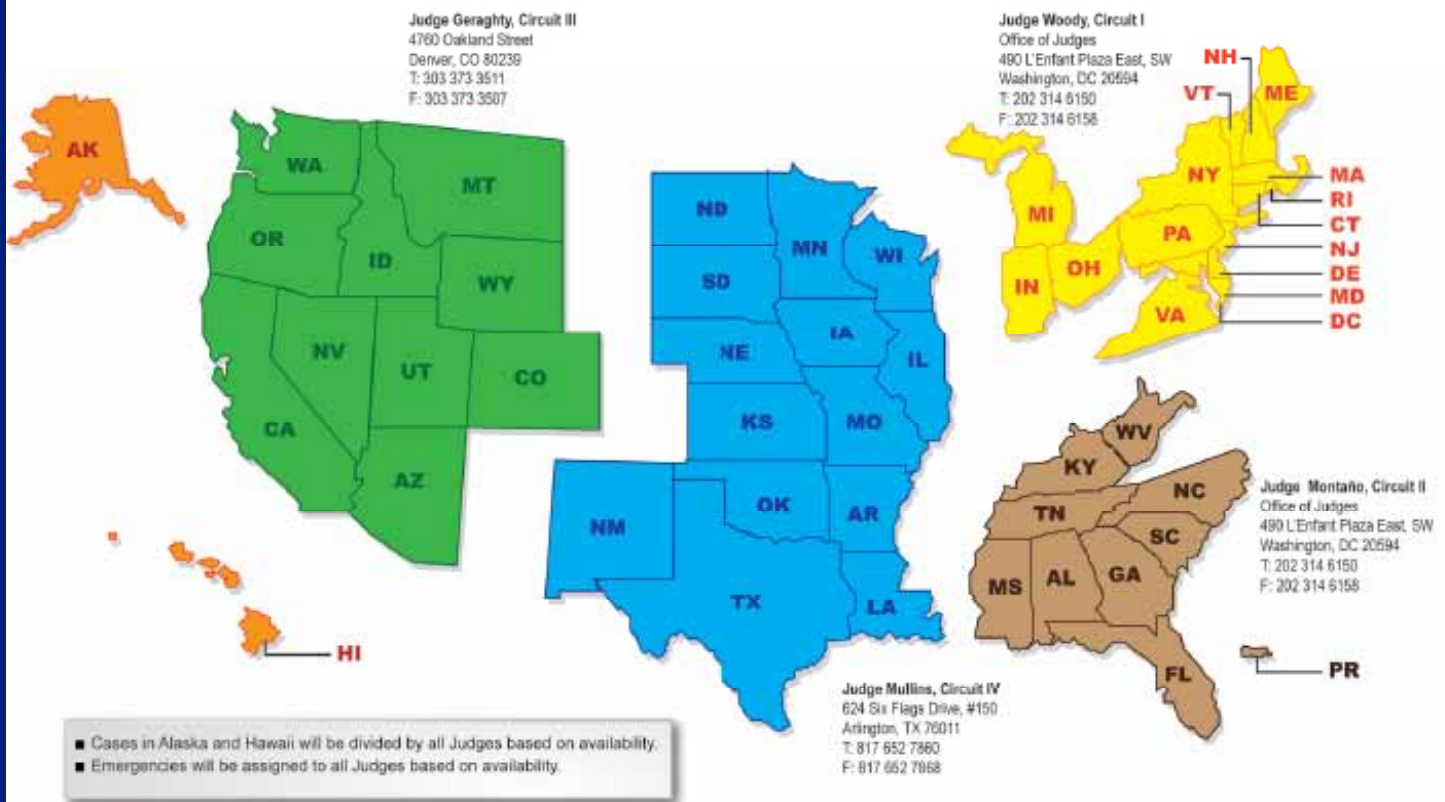


Image courtesy of National Transportation Safety Board, current as of April 1, 2013

IATSBA Membership

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Membership Directory Listing/Area of Practice:

PLEASE CIRCLE MEMBERSHIP TYPE

Checks are to be made payable to "IATSBA" and sent to the mailing address below.
Online application and payment by credit card at www.IATSBA.org.

Regular/Full Annual Membership: ----- \$119.00

Federal Government Annual Membership: ----- \$59.00

Recent Law School Graduate Annual Membership:

(Within two years of graduation from law school) ----- \$49.00

Law School Student Annual Membership: ----- NO CHARGE

Associate Annual Membership

(Associate Membership is for those not eligible for a Regular/Full Membership.)

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Associate with listing: ----- \$129.00

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Associate without listing: ----- \$119.00



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PO Box 5035 • Frederick, MD • 21705-3035 • Tel: 757-777-8769 • Fax: 800-886-4685