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Docket Operations, M-30
U.S. Department of Transportation
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Subject: Request for Comments: Revisions to the Regulatory Definitions of "On-Demand Operation", "Supplemental Operation" and "Scheduled Operation" [Docket No. FAA-2023-1857]

To Whom It May Concern:

The City of Newport Beach, California (City) has reviewed the Federal Aviation Administration's (FAA) Request for Comment (RFC) on *Revisions to the Regulatory Definitions of "On-Demand Operation", "Supplemental Operation" and "Scheduled Operation"* published in the Federal Register on August 29, 2023. Thank you for seeking public input on this important subject.

The City understands that under 14 Code of Federal Regulations (CFR) 110.2 of FAA's safety regulations, public charters operated under the terms of 14 CFR Part 380 may be conducted as "on-demand operations" if the aircraft operator is using airplanes, including turbo-jet powered airplanes, with 30 or fewer passenger seats. Public charter operations are excepted from the Section 110.2 definition of "scheduled operation" and are included in the definition of "supplemental operation" regardless of whether such operator offers, in advance to the public, the departure location, departure time, and arrival location of the flight. If not for the Part 380 exceptions in Section 110.2, public charter operators would be compelled to comply with the operating rules for their operations based on the same criteria as all other air carriers and commercial operators.

The Newport Beach community is already experiencing flights allowed under current regulations that operate almost identically to those conducted by air carriers. For example, John Wayne Airport has a “charter operator” that utilizes two different companies that share ownership but are functionally separate. The “charter operator” sells its flights as public air charters under 14 CFR Part 380, and flights are operated by its subsidiary under 14 CFR Part 135. By keeping its planes at 30 or fewer passenger seats, the “charter operator” is essentially able to operate regularly scheduled flights with limited security under the current operating rules. This is because the Transportation Security Administration (TSA) does not require chartered aircraft of fewer than 31 seats to be screened traditionally, which leaves each carrier to implement its own TSA-approved vetting protocol. As the majority of all commercial and general aviation jets depart John Wayne Airport directly over Newport Beach, our community has security concerns when passengers are screened by the “charter operator’s” determined screening protocols out of a fixed base operator.

In the example cited above, the current regulations allow for operators to use regulatory loopholes that essentially allow chartered aircraft operators to provide a scheduled flight service without the same security standards as scheduled flights. A pivotal enhancement to the current regulations would be to require the same security standards that are typical of scheduled flights, which would mitigate or prevent potential safety and security issues associated with these operations.

Therefore, the City supports the following:

- A comprehensive, FAA-led review of the regulatory definitions concerning “On-Demand Operation,” “Supplemental Operation” and “Scheduled Operation.” It is important that these definitions align with the evolving needs and dynamics of the transportation landscape. Any modifications to these definitions should protect the well-being of communities rather than create opportunities or advantages for certain aircraft operators.
- The FAA’s intent “to initiate a rulemaking to amend Title 14, Code of Federal Regulations (14 CFR), Part 110 to address these public charter operations that, in light of recent high-volume operations, appear to be offered to the public as essentially indistinguishable from flights conducted by air carriers as supplemental or domestic operations under 14 CFR Part 121.”
- The FAA’s consideration of “removing the exceptions for Part 380 public charter operators from the definitions in 14 CFR 110.2” and separating the FAA’s safety regulations from the DOT’s economic regulations. This will require operators to “conduct public charter flights under the operating part applicable to their operation based on the same criteria that apply to all other non-part 380 operators, including the size and complexity of aircraft they operate and the frequency of flights.”
- The proposed rulemaking as described in the RFC.

The City strongly emphasizes the need for the FAA to prioritize the safety and security of all U.S. citizens by amending its regulatory framework for those operators conducting public charters that essentially operate in the same manner as flights operated by air carriers, and encourages the FAA to initiate the rulemaking process and make the regulatory changes necessary to address safety concerns resulting from the exemption in 14 CFR Part 110.2.

Sincerely,



Noah Blom
Mayor

cc: Newport Beach City Council