

June 7, 2010

Bureau for Private Post Secondary Education  
P.O. Box 980818  
West Sacramento, CA 95798-0818

**RE: Proposed amendments to Division 7.5 of Title 5 of the California Code of Regulations**

The National Air Transportation Association (NATA) appreciates the opportunity to provide comments on the regulations being promulgated to implement the requirements of Assembly Bill 48 (AB 48). NATA, the voice of aviation business, is the public policy group representing the interests of aviation businesses before the Congress, federal agencies and state governments. NATA's over 2,000 member companies own, operate and service aircraft and provide for the needs of the traveling public by offering services and products to aircraft operators and others such as fuel sales, aircraft maintenance, parts sales, storage, rental, airline servicing, flight training, Part 135 on-demand air charter, fractional aircraft program management and scheduled commuter operations in smaller aircraft. NATA members are a vital link in the aviation industry providing services to the general public, airlines, general aviation and the military.

**Background**

NATA would like to begin its comments by providing the Bureau of Private Post Secondary Education (BPPSE) with background information regarding the forms of flight training that occur within the State of California. Under FAA regulations, flight training can occur under 2 separate regulatory environments established by Title 14 of the Code of Federal Regulations Part 61 and 141 (14 CFR Part 61 & 14 CFR Part 141). Known as Part 61 and Part 141 flight training, these separate environments address the varying needs of flight training students. The basic requirements for pilot certification, including training topics, hour requirements and licensing test requirements, are found in 14 CFR Part 61. The regulatory structure of Part 61 allows for training to occur in a variety of structures. The structures include instruction provided by an individual Certified Flight Instructor (CFI) to individual students as well as training provided by small and larger schools employing or contracting CFI's to provide instruction. These differing training structures usually involve payment for services on a per flight basis (usually due after the training flight occurs), where the student is charged an hourly rate for aircraft rental and instruction. Some flight schools operating under Part 61 allow students to purchase training time in advance at a discount, though most schools limit the amount that students can pre-purchase.

The second regulatory environment in which flight training can occur is under 14 CFR Part 141. Part 141 allows a flight school to be certificated by the FAA after operating for two years and conforming to stricter training and curriculum requirements. In return for being certified under Part 141, the flight school can offer training that allows a student to complete FAA administered licensing exams with fewer training hours than under Part 61.

It is imperative that the BPPSE recognize that neither training provided under Part 61 or 141 is “better” than the other. The differences between 141 and 61 training simply recognize the differences in student needs and time availability. Both regulatory training environments provide quality training and preparation for passing the FAA administered exams for licensure.

### **General Comments**

NATA is concerned that a lack of understanding of the flight training industry as well as misinterpretation of California Statute has created a situation where the regulations proposed by the BPPSE threaten to destroy flight training in the state and possibly also violate federal law. These comments are intended to be constructive and assist the BPPSE in modifying the proposed regulations in such a way as to maintain compliance with Federal and California law while enabling an environment that allows for the continued operation of flight schools within the state.

### **Regulatory Scope and Applicability**

NATA’s current understanding of the BPPSE’s interpretation of the applicable portion of California statute (those sections modified or created by AB 48), as determined by discussion with BPPSE staff, is that all provisions of flight training fall under the scope of the BPPSE’s regulatory authority. The following comments are based upon that assumption.

Due to the BPPSE’s lack of familiarity with the unique operating conditions of flight training providers, NATA believes the BPPSE has expanded the reach of its regulatory authority beyond that provided for in AB 48, as well as improperly rejected (in theory) appropriate exemption requests from flight training providers.

The text of AB 48 provides the BPPSE the authority to regulate the providers of “post secondary education”. A layman’s reading of the term “post-secondary education” would suggest that it applies to any provision of education to individuals beyond the age of secondary education. NATA believes, after discussions with BPPSE staff, that this is the operative definition used by the BPPSE in crafting the proposed regulations. However, AB 48 goes beyond the layman’s definition of “post-secondary education” and establishes a far more narrow definition of the term.

## **NATA Comments on the proposed amendments to Division 7.5 of Title 5 of the California Code of Regulations – June 7, 2010**

---

*94857. “Postsecondary education” means a formal institutional educational program whose curriculum is designed primarily for students who have completed or terminated their secondary education or are beyond the compulsory age of secondary education, including programs whose purpose is academic, vocational, or continuing professional education.*

The California Legislature specifically narrowed the definition of “Postsecondary Education” to only include those institutions that utilize a formal educational program. The BPPSE has failed to address the requirement that an institutions’ educational program be formalized before it falls under the regulatory authority of the Bureau. NATA suggests that one method of determining whether an educational program is formal is through the payment of tuition or fees.

NATA believes, and asks the Bureau to adopt the standard, that only institutions that require the pre-payment of, or that require the signing of a contractual obligation to pay significant tuition, charges or fees for their educational program, be considered formal. Institutions that collect tuition, charges or significant fees after the completion of the educational program, or collect those charges, in parts, after completion of portions of that program, such as a training flight, would thus be defined as having non-formal programs and would be beyond the scope of the BPPSE’s regulatory authority. Because students at these programs would have no ongoing financial burden, except to pay for the education they have already received, the financial protections intended in AB 48 would not be lessened by the BPPSE making this determination. In the event that the institution provided substandard educational services, the student would have the right, as they would in any other fee-for-service industry, to withhold payment.

### **Exemptions**

NATA foresees two areas when flight training providers would fall into exemptions provided in AB 48; recreational or avocational flight training and flight schools operating under 14 CFR Part 141. NATA is not requesting any changes in the proposed regulations relating to these exemptions, only clarification on their application to the aforementioned provisions of flight training.

Applying the exemption for avocational or recreational to flight training is a simple matter of determining if the institution offers preparation for commercial pilot certification. A commercial pilot certificate is the sole certificate issued by the FAA that allows the holder to fly an aircraft for compensation. Therefore, any flight training institution that does not offer preparation for commercial pilot certification, is only offering recreational or avocational education and should be exempt.

Section 94874(d)(2) of AB 48 allows for the exemption from regulation for:

## **NATA Comments on the proposed amendments to Division 7.5 of Title 5 of the California Code of Regulations – June 7, 2010**

---

*“(2) Continuing education or license examination preparation, if the institution or the program is approved, certified, or sponsored by any of the following:*

*(A) A government agency, other than the bureau, that licenses persons in a particular profession, occupation, trade, or career field.”*

The term “license examination preparation” is defined in section 94847 of AB48 as:

*94847. “License and examination preparation” means instruction designed to assist students to prepare for an examination for licensure.*

Under this exemption and definition of examination preparation, it is clear that all Part 141 flight schools are exempt from regulation by the BPPSE. The sole purpose and function of any flight school is to provide instruction that assists students in passing the three required FAA examinations for pilot licensure (flight, written and oral examinations). The definition provided by the legislature is clear that any instruction designed to assist students in preparing for licensure examination is examination preparation. Part 141 flight schools, since they are certified by the FAA, meet the requirements of 94874(d)(2). NATA requests that the BPPSE provide as soon as practical, written guidance clarifying the applicability of the exemption provided in 94874(d)(2) to Part 141 FAA certified flight schools.

### **Regulatory Flexibility**

The FAA is the agency provided by the U.S. Congress to regulate aeronautical activities. The FAA has recognized in many cases the right of states and municipalities to impose reasonable additional regulation upon those activities (though never extending into the areas of flight safety, flight operations, or training requirements). NATA believes that regulation of flight training providers by a state for the purposes of ensuring adequate consumer protection is justifiable so long as those regulations are reasonable and do not impose an undue burden that affects flight safety, operations or training availability. It is NATA’s belief that the regulations posed by the BPPSE are an unreasonable regulation of aeronautical activities based upon the severe impact they will have on the ability of flight training providers to continue to operate. The combination of an extreme fee structure with the requirement for institutions, many of which are small businesses, to submit audited financial statements, has created a situation that will force the closing of many of the flight training facilities within the state and lead to the drastic reduction in availability of flight training.

NATA recently conducted a survey of flight training providers located in the State of California regarding the effects of the regulations proposed by the BPPSE. 39 flight training facilities responded to the survey and 25 of those respondents provided usable financial data for analysis. Below is a simple analysis of that survey:

- 38% of respondent flight schools had no net revenues or operated at a loss last year

**NATA Comments on the proposed amendments to Division 7.5 of Title 5 of the California Code of Regulations – June 7, 2010**

---

- Of those flight schools that did have net revenue the average profit margin was 5%<sup>1</sup>
- The average length of time respondent flight schools have been in operation in the State of California is 18 years
- None of the respondents currently employs an audit firm to audit its financial statements
- If required to hire an auditing firm to audit financial statements the number of schools operating with no net revenue or at a loss would rise from 38% to 76%. Of those schools that remained having positive net revenue, the profit margin would drop from 5% to 2%<sup>2</sup>
- The 0.75% annual fee imposed upon gross revenue by the proposed regulations would represent a 37% fee on net revenue for a school operating at a 2% profit margin
- Only four of the 25 respondent companies would continue to have any net revenues after imposing the \$5000 annual fee, audit requirement and 0.75% annual fee
- **90% of the respondents indicated that their business would be forced to close under the fee structure of the proposed regulations**

The information gathered by this survey is a clear indication that the BPPSE does not fully understand the impact of its proposed regulations on California flight training facilities. NATA believes that if the BPPSE finalizes the rules as proposed, the Bureau risks Federal intervention to prevent adverse impacts on flight safety and the National Airspace System.

NATA requests that the BPPSE reevaluate and modify both the fee structure and the requirement for audited financial statements in regards to flight training facilities.

Since the BPPSE will have no authority to regulate the qualitative aspects of flight training, due to federal preemption, the Bureau's regulatory oversight will be limited to reviewing the financial aspects of those businesses. Sections 94930(b) and (e) of Part 59, Chapter 8, Article 17 of the California Education Code provide the BPPSE the authority to reduce fees for institutions requiring less costly oversight. Due to the fact the BPPSE's oversight role will be limited to reviewing the financial aspects of flight schools, NATA recommends that the Bureau consider a drastic reduction in fees for those institutions.

Additionally, NATA requests that the BPPSE evaluate alternative means, other than the submission of audited financial statements, by which an institution may demonstrate financial soundness, including the submission of federal and state tax returns. This

---

<sup>1</sup> Profit Margin = (Net Earnings/Gross Earning) X 100

<sup>2</sup> Auditing cost assumed at \$15,000 per \$500,000 of gross revenue

evaluation is necessary to prevent extreme hardship and financial burden on the many small and mid-size businesses that are captured under the proposed regulations.

### **Airport Minimum Standards**

The BPPSE should also be aware of a special class of business, called Fixed Base Operators, which will be particularly affected by the proposed regulations. Fixed Base Operators (FBO's) are aircraft service companies that usually provide fueling, parking and hangar service for aircraft. Many FBO's, as a result of airport minimum standards, are required to perform flight training. These airport minimum standards are a tool employed by airport operators, usually local municipalities or their designate, to maintain compliance with Federal Grant Assurance. These minimum standards spell out the minimum services a company must provide in order to do business on the airport. Many public-use airports currently require that on airport companies providing fuel service must also provide flight training. This requirement by a local municipality when coupled with the extreme fee structure posed by the BPPSE creates a situation where a local government requires a business to provide a service that is unprofitable due to state regulation.

### **Closing**

NATA fully understands the need for reasonable regulation to ensure that students are protected from predatory and extremely poorly managed educational institutions. NATA believes that many of the problems being faced in the BPPSE's effort to propose regulations are a result of the fact that the industry was excluded from the development phase of AB 48. The fact of the matter is that the issue is now in the hands of the BPPSE, and the survival of the flight training industry will depend upon the final regulations issued by the Bureau.

NATA politely requests a response on the issues addressed in the Regulatory Scope and Applicability and Exemptions sections of these comments as soon as possible so that we may provide accurate information to our membership on compliance.

NATA further requests that the BPPSE modify the fee structure and financial statement requirements to prevent the destruction of the flight training industry in the state. NATA and its members strongly desire to be partners in the efforts to prevent predatory flight schools from harming students and our industry. Please do not hesitate to contact me if I may be of any further assistance.



Michael France  
Director, Regulatory Affairs  
National Air Transportation Association