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September 25, 2018

New Mexico Department of Game and Fish
Attn: Field Operations Rule Development
P.O. Box 25112
Santa Fe, NM 87504

Re: Comments on Proposed Changes to Manner & Method Rule, 19.31.10 NMAC

Dear Field Operations Rule Development:

The Aircraft Owners and Pilots Association (AOPA) is the world's largest aviation organization representing the General Aviation interests of pilots and aircraft owners, including over 2,600 members in New Mexico. We are writing to provide comments on the proposed changes to the Manner and Method Rule 19.31.10 NMAC. Specifically, proposed rule 91.31.10.11(E), *Using Aircraft to Locate Wildlife*. We are concerned that if this rule is adopted as proposed, its unintended consequences could harm anyone using a General Aviation aircraft in New Mexico for business, recreation, or personal transportation.

Since the proposed rule is largely premised upon the "purpose" of an individual's flight in an aircraft, it could unreasonably call into question the flight activities of almost any aircraft owner or pilot who operates an aircraft in the navigable airspace in New Mexico. The proposed rule states, in part, that "It is unlawful for any individual, *for the purpose of hunting*, to locate or assist in locating a protected species from . . . an aircraft."

As the purpose of an aircraft flight cannot be readily determined by a casual observer or even law enforcement, almost any flight - but particularly those in areas where hunting is permitted - could easily become the subject of a complaint or an investigation concerning this rule, even when the flight is conducted in compliance with the Federal Aviation Regulations (FARs). The FARs are the result of Congress vesting the Federal Aviation Administration with authority to regulate the areas of airspace use, management and efficiency, air traffic control, safety, navigational facilities, and aircraft noise at its source. 49 U.S.C. §§ 40103, 44502, and 44701-44735.

Pilots are accustomed to operating in accordance with the FARs, which permit many operations that could otherwise appear to be the type of conduct that is targeted by this proposed rule. As a result, law-abiding aircraft owners and pilots who are conducting flights in compliance with the FARs may be erroneously accused of violating this proposed rule, unreasonably questioned by law enforcement, or wrongfully cited with criminal complaints.

For example, the FARs specifically permit aircraft to be operated at altitudes of less than 500 feet above the surface in sparsely populated areas (14 C.F.R. § 91.119), and place limited constraint on an aircraft's ability to maneuver freely in uncontrolled airspace or land at suitable off-airport locations. These legal flight activities regularly occur in New Mexico for business purposes like commercial air tours or aerial surveying, recreational purposes such as pleasure or training flights, or for personal transportation purposes. Under this proposed rule, however, these aircraft owners and pilots may be called upon to explain the "purpose" of these flights.

The potential overreach of this proposed rule is readily demonstrated by its need to contain an exception explicitly stating that the rule does not apply to certain types of flights. However, this very narrow exclusion only recognizes "commercial airline," "direct," and state or federal government flights. This limited exception states as follows:

This section shall not apply to regularly scheduled commercial airline flights, direct flights or to any individual acting within the scope of their official duties as an employee or authorized agent of the state of New Mexico or the United States federal government.

This exception does not readily account for General Aviation, which includes all civilian flying except scheduled passenger airline service. More than 90% of the roughly 220,000 civil aircraft registered in the United States are general aviation aircraft. And of the nation's approximately 600,000 pilots, an estimated 500,000+ fly General Aviation aircraft, including 5500 pilots operating over 3400 General Aviation aircraft based in New Mexico.

Given these concerns regarding the significant adverse impact that this proposed rule may have on General Aviation in New Mexico, AOPA submits that existing rules 91.31.10.11 (F) *Use of aircraft for spotting game*, and (G) *Using information gained from air flight* already provide the requisite legal mechanism to regulate the type of conduct targeted by this proposed rule.

If there is substantial evidence that the existing rules concerning use of aircraft must be changed, AOPA recommends that the New Mexico Department of Game and Fish work with local aviation groups, such as the New Mexico Pilots Association, to craft a rule with a suitable exception for General Aviation.

I would be happy to discuss this issue with you at any time. Please do not hesitate to contact me at (620) 755-3883 or tom.chandler@aopa.org.

Very truly yours,



Tom Chandler
Regional Manager – Central Southwest