



**U.S. Department
of Transportation**

Office of the Secretary
of Transportation

GENERAL COUNSEL

SEP 14 2011

1200 New Jersey Avenue, SE
Washington, DC 20590

Michael Spisak
Air Juneau, Inc. d/b/a Ram Aviation
P.O. Box 1846
Kenai, Alaska 99661

Re: Question on Regulation of Big Game Transporters in State of Alaska

Dear Mr. Spisak:

Thank you for your March 9, 2011 email requesting an opinion from the U.S. Department of Transportation (Department) on whether the State of Alaska may regulate air charters for big game hunting trips. Specifically, you believe that the federal preemption provision of the Airline Deregulation Act of 1978, Pub. L. No. 95-504, renders certain State of Alaska statutes and regulations¹ unlawful as applied to your company, Air Juneau d/b/a Ram Aviation. The Department has not issued an air carrier certificate to Ram Aviation under the Department's aviation economic authority, 49 U.S.C. § 41102. We understand that Ram Aviation operates on-demand air charter service under the Federal Aviation Administration's regulations, 14 CFR Part 135, and is licensed as a big game transporter in the State of Alaska.

We agree that the Airline Deregulation Act (ADA), in large part, substituted market forces for the former federal and State regulation of airlines. Congress, in the ADA, expressly preempted State requirements related to prices, routes, or service. 49 U.S.C. § 41713.² The preemption provision of the ADA, however, does not prohibit the State of Alaska from regulating Ram Aviation's air transportation. A specific provision in the ADA exempts from the scope of preemption air transportation provided entirely within Alaska by airlines other than those holding a certificate issued by the Department under 49 U.S.C. § 41102, or charter air transportation by any carrier provided entirely within Alaska. 49 U.S.C. § 41713(b)(2). Accordingly, because Ram Aviation does not hold an air carrier certificate issued by the Department and operates charter transportation entirely within Alaska, the Alaskan State statutes and regulations, as applied to Ram Aviation, are not subject to federal preemption.

The legislative history to the ADA sheds some light on the reasons for permitting the State of Alaska to regulate certain air carriers. Congress recognized that the geographic and climatic

¹ ALASKA STAT. §§ 08.54.591 - 08.54.790 (2010); ALASKA STAT. §§ 16.05.407--05.408 (2010); ALASKA ADMIN. CODE tit. 12, §§ 75.100 - 990 (2010).

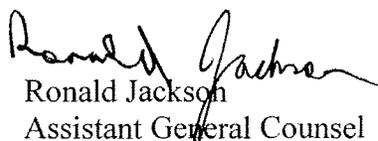
² 49 U.S.C. § 41713 states, in relevant part: "(b) Preemption—(1) Except as provided in this subsection, a State, political subdivision of a State, or political authority of at least 2 States may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of an air carrier that may provide air transportation under this subpart. (2) Paragraph[] (1) . . . of this subsection [does] not apply to air transportation provided entirely in Alaska unless the transportation is air transportation (except charter air transportation) provided under a certificate issued under section 41102."

conditions of Alaska warranted continued State oversight over Alaskan air charter trips and similar intrastate aviation. *See* H.R. REP. NO. 95-1779 (1978) (Conf. Rep.). During hearings on the deregulation of airlines, Senator Ted Stevens stated that retaining “economic regulatory authority over other than scheduled passenger service . . . is very important to the proper conduct of transportation wholly within the State of Alaska.” 95 CONG. REC. S18799 (1978) (statement of Sen. Stevens).

Accordingly, Ram Aviation, like other intra-Alaskan big game transporters that are not certificated by the Department, is not covered by the federal preemption provision.

Thank you for your patience as we prepared our response to your e-mail. If you have any questions, please feel free to contact me at (202) 366-4710, or Cindy Baraban at (202) 366-9159.

Sincerely,

 (by gm)
Ronald Jackson
Assistant General Counsel
for Operations