

United States Senate

May 20, 2019

The Honorable Daniel K. Elwell
Acting Administrator
Federal Aviation Administration
800 Independence Avenue, SW
Washington, D.C. 20591

Dear Acting Administrator Elwell:

I am writing to you regarding the implementation of Section 318 of the FAA Reauthorization Act of 2018 (Public Law No: 115-254, hereinafter “FAA Reauthorization Act”). I am deeply concerned with the Federal Aviation Administration’s (FAA) lack of action which unnecessarily puts passengers of commercial balloon flights across the country at risk. As you know, on July 30, 2016, a commercial hot air balloon crashed in Lockhart, Texas. Just 45 minutes into the flight, the balloon careened into high-tension power lines and plunged to the ground, tragically claiming the lives of all 16 people onboard. It remains the single deadliest commercial balloon crash in U.S. history, and the deadliest aviation accident in the U.S. since Colgan Air Flight 3407.

The crash, and the resulting National Transportation Safety Board (NTSB) investigation, raised serious questions and concerns about the FAA’s safety standards and what oversight, if any, the FAA was conducting of the commercial balloon industry. Specifically, the pilot, Alfred Nichols’, long history of substance abuse, diagnosed medical conditions, and litany of prescription medications, including the Valium, Prozac, and oxycodone he was found to have consumed on the day of the flight, brought attention to the fact that medical certificates for commercial hot air balloon pilots were not required.

To address the issues raised by the crash and subsequent NTSB investigation, on June 21, 2017, I introduced S.1394, the Commercial Balloon Pilot Safety Act of 2017, which was ultimately included in the FAA Reauthorization Act as Section 318 (herein after “Section 318”). The provision requires the FAA Administrator, or in this case Acting Administrator, to, within 180 days after the date of enactment, revise part 61.3(c) of title 14, Code of Federal Regulations, to apply to operators of air balloons to the same extent such regulations apply to operators of other aircraft. In other words, to require that commercial hot air balloon pilots obtain a second-class medical certificate.

While I understand that the 35-day lapse in appropriations may have impacted the ability of the FAA to implement the FAA Reauthorization Act, even when those days are considered the FAA has still failed to meet the 180-day statutory deadline. Unfortunately, instead of providing clarity on when the FAA will comply with the law and initiate the revision under Section 318, to

date the FAA has only communicated that a rulemaking will be required and that it is assessing the resources needed to do so, offering no details on when that might occur.

Given the serious concerns about the safety standards and oversight of the commercial hot air balloon industry, and the lack of FAA action to implement Section 318, I respectfully request that you provide the following no later than **5:00 pm on Monday, May 27, 2019**:

1. A list of all actions the FAA has taken to date to implement Section 318, including internal assessments of the content of Section 318 and determinations of required actions.
2. The intended timeline for the full implementation of Section 318, including:
 - a. The date by which the FAA will have completed assessing the resources necessary to initiate rulemaking for Section 318;
 - b. The date by which the FAA intends to publish the Notice of Proposed Rulemaking (NPRM) it has determined will be required to implement Section 318;
 - c. How long the notice-and-comment period will last for the NPRM;
 - d. The date by which the FAA intends to publish the final rule once the notice-and-comment period for the NPRM has ended; and
 - e. The effective date for the final rule.

If you have any questions about this request, please contact Duncan Rankin on my staff at 202-224-5922. Thank you for your prompt attention to this matter.

Sincerely,



Ted Cruz
Chairman
Subcommittee on Aviation and Space
Senate Committee on Commerce, Science, and Transportation