

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

UAS AMERICA FUND, LLC, *et al.*,

*Petitioners,*

v.

FEDERAL AVIATION ADMINISTRATION,

*Respondent.*

Nos. 14-1156, *et al.*

**MOTION TO HOLD PETITIONS IN ABEYANCE**

The Council on Governmental Relations (“COGR”),<sup>1</sup> petitioner in No. 14-1157, respectfully requests that this Court hold in abeyance these consolidated petitions for review and direct the parties to provide periodic 90-day status reports on the Federal Aviation Administration’s (“FAA”) consideration of public comments on the order under review (“Order”). The FAA has indicated that it does not oppose this motion. Petitioners in Nos. 14-1156 and 14-1158 have indicated that they do not consent to the motion and intend to respond in writing.

In the Order, 79 Fed. Reg. 36,172 (June 25, 2014), the FAA stated that it was providing its “interpretation of [the] statute and regulations relevant to model

---

<sup>1</sup> As explained in its petition for review, COGR is an association of 188 U.S. research universities and their affiliated academic medical centers and research institutes that concerns itself with the impact of federal regulations, policies, and practices on the performance of research and other sponsored activities conducted at its member institutions.

aircraft,” effective as of June 23, 2014; it nevertheless solicited comments from the public and indicated that it “may modify this interpretation based on comments received.” *Id.* at 36,172. The FAA originally set July 25, 2014 as the due date for comments. *See id.* It later extended that due date to September 23, 2014. *See* 79 Fed. Reg. 43,240 (July 25, 2014). As of the date of this motion, regulations.gov showed a total of 33,480 comments received on the relevant docket, of which 7,011 comments were publicly available on the website.<sup>2</sup>

Many commenters have urged the FAA to modify or abandon positions set forth in the Order. Whether or not the agency is open to doing so, its response to those comments may lead at least to a more detailed expression of the agency’s position on important issues that will facilitate effective judicial review. Based on a brief review of the voluminous comments, COGR believes that they address a number of points that are likely to be important to these consolidated petitions, including the FAA’s statutory authority to regulate model aircraft; the consistency of the agency’s new interpretation of its statutory authority with its past pronouncements; and the heavy burden placed by the FAA’s new interpretation of

---

<sup>2</sup> *See* Docket Folder Summary, *Interpretation of the Special Rule for Model Aircraft*, <http://www.regulations.gov/#!docketDetail;D=FAA-2014-0396> (last visited Sept. 26, 2014) (showing 33,480 comments received and 7,011 comments available). A date-limited search indicates that 6,337 of the currently publicly available comments were received on or before the due date of September 23, 2014. COGR itself did not file comments.

its authority on the research and teaching activities of nonprofit educational institutions such as COGR's members.

As a practical matter, the present situation is similar to a situation in which some parties have sought immediate review of an agency order, while other parties seek reconsideration before the agency. Under those circumstances, it is this Court's longstanding practice to "hold [the] petition[s] for review in abeyance pending . . . further [agency] proceedings." *Teledesic LLC v. FCC*, 275 F.3d 75, 82-83 (D.C. Cir. 2001).<sup>3</sup> Here, although the FAA has not indicated an intent to revise the Order, its apparent willingness to accept and consider comments may play a functionally similar role.

If abeyance is granted, however, the Court should require regular status reports from the parties to ensure that the FAA's consideration of the comments is progressing at an appropriate pace. As COGR indicated in its petition for review, the Order was issued together with a new national enforcement policy that imposes immediate hardship on COGR's members, who have used and intend to use model aircraft technology to engage in teaching, research, and other scientific and educational activities that the Order now asserts are subject to or even prohibited

---

<sup>3</sup> See also, e.g., *Northpoint Tech., Ltd. v. FCC*, No. 02-1194, 2002 WL 31011256 (D.C. Cir. Aug. 29, 2002) (per curiam) (holding case in abeyance pending agency resolution of a petition for administrative reconsideration); *American Trucking Ass'ns, Inc. v. EPA*, No. 97-1440, 1998 WL 65651 (D.C. Cir. Jan. 21, 1998) (per curiam) (same); *B.J. Alan Co. v. ICC*, 897 F.2d 561, 562 (D.C. Cir. 1990) (describing an earlier grant of a motion to hold in abeyance on the same ground).

by federal aviation regulations. If the FAA delays in responding to the comments it receives, and especially if it does so while pursuing the enforcement agenda apparently contemplated by its new policy, the balance of “prudential considerations” may shift in favor of immediate judicial review. *Teledesic*, 275 F.3d at 83 (citing *MCI Telecomms. Corp. v. FCC*, 143 F.3d 606, 608 (D.C. Cir. 1998)). COGR respectfully suggests that a 90-day status reporting cycle would be appropriate under the circumstances.

Respectfully submitted,

/s/ Sean A. Lev

SEAN A. LEV

GREGORY G. RAPAWY

KELLOGG, HUBER, HANSEN, TODD,

EVANS & FIGEL, P.L.L.C.

1615 M Street, N.W., Suite 400

Washington, D.C. 20036

(202) 326-7900

*Counsel for Council on  
Governmental Relations*

September 26, 2014

**CERTIFICATE OF SERVICE**

I hereby certify that, on September 26, 2014, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit using the appellate CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

/s/ Sean A. Lev  
Sean A. Lev