

# United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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**No. 08-1260**

**September Term, 2008**

FILED ON: APRIL 30, 2009

DONALD C. ROUNDS,  
PETITIONER

v.

FEDERAL AVIATION ADMINISTRATION AND NATIONAL TRANSPORTATION SAFETY BOARD,  
RESPONDENTS

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On Petition for Review of an Order  
of the National Transportation Safety Board

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Before: SENTELLE, *Chief Judge*, HENDERSON and BROWN, *Circuit Judges*

## J U D G M E N T

This petition for review was considered on the record from the National Transportation Safety Board and the Federal Aviation Administration and the briefs filed by the parties pursuant to D.C. Circuit Rule 34(j). It is

**ORDERED** and **ADJUDGED** that the petition for review is denied.

Petitioner failed to raise his primary argument, that there must be a minimum proximity standard read into the definition of a collision hazard under 14 C.F.R. § 91.111(a), before the agency. We therefore lack jurisdiction over it. 49 U.S.C. § 1153(b)(4).

With respect to petitioner's procedural due process allegations, "this court has been careful to distinguish between procedural rules benefitting the agency . . . and procedural rules benefitting the party otherwise left unprotected by agency rules . . ." *Lopez v. FAA*, 318 F.3d 242, 247 (D.C. Cir. 2003). The FAA Order at issue in this case does not exist to confer rights on petitioners such as Mr. Rounds. Indeed, the Order states in its Foreword that it "provides direction and guidance to aviation safety inspectors when they are called upon to perform accident investigations" and "delineates the responsibilities of the FAA and the National Transportation Safety Board when conducting investigations." FAA Order 8020.11B (August 16, 2000). When, as here, "a case involv[es] regulations designed to provide the agency with information it need[s] to reach an informed decision, . . . [the] regulations [a]re unreviewable absent a showing of substantial prejudice by the complaining party," *Lopez*, 318 F.3d at 247, a standard that cannot be met in this case.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after disposition of any timely petition for rehearing or petition for hearing en banc. *See* FED. R. APP. P. 41(b); D.C. CIR. RULE 41.

**FOR THE COURT:**  
Mark J. Langer, Clerk

BY: /s/  
Michael C. McGrail  
Deputy Clerk