

requirement that operators have to comply with to operate at lower minimum en route altitudes (MEAs) that are outside the service volume of ground-based navigation aids. It is anticipated that most of the participants who volunteer to participate in Capstone Phase II will not incur any costs to equip their aircraft or conduct required training. Operators are not required to operate at these lower MEAs. Those who voluntarily decide to incur the costs to equip their aircraft and conduct the required training under this SFAR will have made their own business decisions that the costs associated with this SFAR's equipment and other requirements are worth the benefits of lower MEAs. For example, some operators will have concluded that flying at lower altitudes opens up markets that they could not previously have served because currently they do not have aircraft that can fly at certain altitudes on some routes and maintain reception with ground-based navigation aids. Other operators will conclude that having the ability to operate at lower MEAs will result in fewer flight cancellations or delays due to adverse weather (e.g., icing at higher altitudes).

Regarding benefits, this rule implements the National Transportation Board's recommendation "to demonstrate a low altitude instrument flight rules (IFR) system that better fulfills the needs of Alaska's air transportation system."<sup>1</sup> An interim assessment of the safety impact of Capstone Phase 1 test program found that "while the rates of accidents for specific causes have not changed in a way that is statistically significant yet, the over-all accident counts for the equipped and non-equipped groups were different: 12 accidents for non-equipped versus 7 for equipped even though each had nearly identical operations counts."<sup>2</sup> Operators having RNAV-equipped aircraft and flightcrews trained under this SFAR will realize safety benefits when such flights encounter adverse weather conditions en route at higher altitudes and they have the ability to seek clearance to the lower MEAs en route. In addition to the anticipated safety benefits, the rule might result in cost savings. The use of IFR RNAV equipment permits the use of more direct and therefore shorter routes and aircraft using RNAV equipment may require less fuel and time to reach their destinations. The FAA has established a number of test routes

throughout the United States and some airlines have estimated annual cost savings in excess of \$30 million dollars due to flying these advanced RNAV routes.<sup>3</sup> The FAA finds that the potential safety benefits and cost savings justify the adoption of this rule.

#### Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This rule establishes the minimum equipment and operational approval requirements that operators comply with to participate in the Alaska Capstone Phase II test and evaluation program. Most of the participants who volunteer to participate in this test program will not incur any costs to equip their aircraft or conduct required training since the Capstone Program was congressionally funded. No comments were received that differed with the assessment given in this section of the proposed rulemaking. The FAA therefore certifies that the rule will not have a significant economic impact on a substantial number of small operators.

#### Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

This rule imposes requirements on foreign air carriers operating in the SFAR area if they elect to participate in the test program. These requirements mirror the communication and navigation equipment requirements placed on domestic carriers that participate in the test program. No comments were received objecting to these provisions. The FAA has assessed the potential effect of this final rule and has determined that it will have a neutral impact on foreign trade and, therefore, create no obstacles to the foreign commerce of the United States.

#### Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action."

This final rule does not contain such a mandate. The requirements of Title II do not apply.

#### Executive Order 13132, Federalism

The FAA has analyzed SFAR 97 under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore would not have federalism implications.

#### Regulations Affecting Interstate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator, when modifying regulations under title 14 of

<sup>1</sup> Aviation Safety In Alaska (NTSB/SS-95/03) November 1995, page 77.

<sup>2</sup> The Safety Impact of Capstone Phase 1 (W. Worth Kirkman, Mitre) August 2002, page 15.

<sup>3</sup> 2001 ACE Plan, Building Capacity Today for the Skies of Tomorrow, FAA Office of System Capacity, prepared jointly by FAA and ARP Consulting, L.L.C., December 2001, pages 50-51.