

perform the conversion during normal scheduled maintenance. A compliance date of 2005 will allow operators adequate time to schedule the upgrades within regular maintenance intervals.

Cumulatively, the proposed rule is expected to cost the industry up to \$88.1 million (\$78.9 million discounted) between 2002 and 2005. However, the cost to the industry could be as low as \$49.8 million (\$44.6 million discounted), if no downtime costs were incurred. Accordingly, the FAA believes that the proposed rule is cost-beneficial and is necessary to ensure the level of aviation security expected by the American public.

The FAA solicits comments from affected entities with respect to these findings and determinations, and requests that all comments be accompanied by clear documentation.

### Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, establishes “as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the proposed 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 determination is 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 proposed rule will not have a significant impact on a substantial number of small entities, therefore a full Regulatory Flexibility Analysis is not necessary.

To determine the potential economic impact on small entities conducting business as part 121 operators, the FAA first estimated the number of small

entities affected by this proposed rule. The FAA then estimated the compliance cost and, subsequently, the economic impact. Using the criterion from the North American Industry Classification System of the Small Business Administration (SBA), the FAA identified approximately 100 operators that qualify as small businesses, and developed a random list of 50 air carriers to further analyze.

Estimating the compliance cost and economic impact for each small entity involved several analytical steps. First, we obtained from the BACK Associates Fleet Database the fleet of aircraft operated by the small entities. Second, we estimated the purchase and installation cost of the transponder solution and method of rapid activation for the fleet of each small entity. The purchase cost of the transponder solution was estimated to be approximately \$3,000 per airplane, with an additional \$1,000 in parts and supplies, and \$2,600 in labor. Additionally, downtime costs were estimated at approximately \$5,178 per aircraft, resulting in a total per airplane cost of \$11,778. This per airplane cost was then multiplied by the number of affected aircraft in the air carrier's fleet to obtain a total cost per operator.

The degree to which small entities can “afford” the cost of compliance is determined by the availability of financial resources. The implementation costs of this proposed rule could be financed, paid for using existing company assets, or borrowed. As a proxy for the firm's ability to afford the cost of compliance, the FAA calculated the ratio of the total cost of the rule as a percentage of annual revenue. The FAA expects that the cost of the proposed rule would exceed 2 percent of total revenue for no more than two entities. The FAA does not believe that two is a substantial number of small entities.

In the interest of fully assessing the impact of this proposed rule on small entities, the FAA explored the potential competitive impact. The FAA examined the route structures and specific markets of the three firms who would be most affected (as a percentage of revenues) by the proposed rule, Chautauqua Airlines, Pan Am, and Grand Canyon Airlines. Chautauqua Airlines operates under a codeshare agreement at major hubs as an America West, American Airlines (since the purchase of TWA), and U.S. Airways affiliate, whereas Pan Am is an independent airline operating mostly at second-tier airports. These two air carriers sometimes compete with large airlines (which would incur the same fixed and marginal cost per airplane),

but many routes served could be considered local monopolies in which the affected airline is the only provider of service. As a result of operating in these “niche” markets, an air carrier would be able to pass some of the cost to its customers. In the more competitive air tour business, keeping costs down is critical, because affected air carriers likely would not be able to pass costs down to customers. However, Grand Canyon Airlines is a dominant player in that market and its main competitors are not other airplane tour operators, but rather helicopter tour operators, with significantly higher operating costs. Thus, as a result of this proposed rule, there is expected to be little change in competition, and little change in market share within the industry.

Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration certifies that this proposed rule would not have a significant impact on a substantial number of small entities.

### Trade Impact Assessment

The Trade Agreement Act of 1979, 19 U.S.C. 2531–2533, prohibits Federal agencies from engaging in any standards or 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.

In accordance with the above statute, the FAA has assessed the potential effect of this proposed rule and has determined that the objective of this proposed rule is the safety and security of the United States, and therefore not considered an unnecessary obstacle to international trade.

### Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), 2 U.S.C. 1531–1571, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency proposed rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a