

Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Agreements Act also requires agencies to consider international standards and, where appropriate, use them as the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation).

In conducting these analyses, the Federal Aviation Administration (FAA) has determined that the proposed rule (1) has benefits that do justify its costs, is not “a significant regulatory action” as defined in the Executive Order, and is “significant” as defined in the Department of Transportation’s Regulatory Policies and Procedures; (2) will not have a significant impact on a substantial number of small entities; (3) will not constitute a barrier to international trade; and (4) does not impose an unfunded mandate on State, local, or tribal governments, or on the private sector. These analyses are available in the docket and are summarized below.

Background

In October 1999, the FAA convened the Fractional Ownership Aviation Rulemaking Committee (FOARC) to address the issues surrounding the regulation of fractional aircraft ownership program operations. On February 23, 2000, after extensive discussions, and a review of all comments received from the public and operators, the FOARC presented rulemaking recommendations to the FAA. These recommendations formed the basis of the Notice of Proposed Rulemaking (NPRM) entitled “Regulation of Fractional Aircraft Ownership Programs” (66 FR 37520, July 18, 2001). Comments were to be received by October 16, 2001 but in response to several requests, the comment period was extended to November 16, 2001.

Since the inception of the fractional aircraft ownership program concept in 1986 the number of fractional aircraft ownership program aircraft has increased substantially. As of early 2000, the leading fractional aircraft ownership programs managed approximately 465 aircraft on behalf of 3,446 shareholders and at the end of

2001 there were more than 3,500 shareholders with almost 5,000 shares of more than 650 aircraft. Growth in fractional aircraft ownership programs is expected to continue.

The final rule is expected to impose a total estimated cost of approximately \$133.2 million (\$85.8 million, discounted) on fractional operations, eligible on-demand air charter operators, and the FAA over the 15-year period from 2003 to 2017. Fractional aircraft ownership operations are expected to incur approximately \$47.4 million (\$35.2 million, discounted), of these total costs complying with the regulatory requirements. Eligible on-demand part 135 air charter operators would incur compliance costs of approximately \$83 million (\$48.3 million, discounted) of these total costs. The FAA is expected to incur estimated costs of approximately \$3.1 million (\$2.3 million, discounted), administering the rule.

Comments

Some 231 entries (including some duplicates) were received in response to the NPRM. Three organizations endorsed the FAA’s initial regulatory evaluation and one individual expressed concern about the possible economic impact of adopting subpart K. No commenters directly addressed specific proposed costs or revenue opportunities contained in the preliminary regulatory evaluation. The National Air Transportation Association (NATA) stated “that the FAA’s regulatory and economic evaluations are accurate and valid”. It continued: “NATA, as the representative of many of the entities that will be directly regulated by the proposed regulation, agrees with the FAA’s conclusion that the benefits of the proposed regulation justify its costs, that the regulation will not have a significant impact on a substantial number of small entities, and that the regulation will not create a barrier to international trade”. Bombardier Business Jet Solution (Flexjet) stated; “Flexjet supports the FAA regulatory and economic validity in the NPRM” and also included NATA’s additional comments supporting the FAA’s regulatory flexibility determination and trade impact assessment. Executive Jet Aviation (EJA) stated, that as a member of NATA’s Fractional Aircraft Business Council, it “strongly supports all of the general and specific comments on this NPRM “provided by NATA. An anonymous commenter stated his or her belief “that the proposed subpart K could have an unintended, detrimental economic effect on the business aviation

industry without an appreciable increase in safety.” The commenter continued “that the existing part 91 rules, along with the arms-length contracts between informed fractional owners and program managers, allow market forces to create the most efficient and appropriate safety-to-cost ratio.” While the commenter addressed various sections of the proposed rule, he/she did not challenge specific proposed cost estimates. In view of the lack of any specific cost data submitted by the commenter, the FAA cannot address these comments.

NATA noted in a second filing that “the issuance of the rule likely will have virtually no effect on the level of operations by aircraft in fractional ownership programs, since the rule was drafted to reflect the practices of the current fractional ownership program operations. Rather, the growth of fractional ownership programs over the past two decades has been, and will continue to be, attributable to American-style business innovation, changes in the economy, and increases in the perceived benefits of traveling by private aircraft.”

Fractional Aircraft Ownership Operations Compliance Costs

Certain sections of the proposed rule are expected to impose compliance costs on fractional aircraft ownership operations. The FAA has analyzed these costs for a 15-year period, from 2003 through 2017. As required by the Office of Management and Budget (OMB), the present value of this cost stream was calculated using a discount factor of 7 percent. All costs are expressed in 2001 dollars. These compliance costs are summarized below.

Sections 91.519 Passenger Briefing, and 91.1035 Passenger Awareness

A fractional aircraft ownership program entity operating under part 91, subpart K will incur a one-time cost of \$105 for every aircraft for briefing cards plus an annual cost of \$85 for every aircraft to comply with the briefing requirement. Over the 15-year period from 2003 to 2017, fractional aircraft ownership operations collectively will incur compliance costs of approximately \$880,000.

Section 91.1003 Management Contract Between Owner and Program Manager

A fractional aircraft ownership program entity operating under part 91, subpart K will incur compliance costs represented by attorney fees of \$525 and sundry expenses of \$20 for each shareholder to comply with the requirement of the rule. Over the 15-