

Benefit/Cost Comparison

The FAA estimates the total costs of the proposed rule to be approximately \$238 million over ten years (\$148 million, discounted) and the total benefits to be approximately \$490 million (\$301 million, discounted) over the same period. Accordingly, the FAA concludes that the total benefits of the rule would justify the total costs.

To state the comparison differently, the FAA has also computed the cost of the rule per estimated life saved. Based on an adjusted cost of \$220 million (to reflect the cost savings attributable to avoided aircraft damage expenses resulting from fewer accidents) and an estimated 130 lives saved if the rule is 100 percent effective over 10 years and no other factors were involved, the rule is estimated to cost \$1.7 million per life saved. If, for example, the rule were 75 percent effective, the FAA estimates that the cost per life saved would be \$2.2 million. The rule would have to be less than 56 percent effective for the cost per fatality avoided to appreciably exceed \$3.0 million.

Initial Regulatory Flexibility Analysis

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 Act 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 Act.

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 1980 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 determining the factual basis for this determination, and the reasoning should be clear.

The FAA conducted the required review of this proposal and determined

that it would have a significant economic impact on a substantial number of small entities. Accordingly, pursuant to Section 603 of the RFA, the Federal Aviation Administration has prepared the following initial regulatory flexibility analysis.

Reasons Why Agency Action Is Being Considered

The FAA is proposing national safety standards to govern commercial air tours as a result of accidents and incidents involving air tour operators and NTSB recommendations made in response to those accidents and incidents. The rationale for each of the major provisions of the NPRM—discussed in detail in the regulatory evaluation—are summarized below:

Restriction of the exception for sightseeing flights under 14 CFR 119.1(e)(2). Based on available accident data, the FAA concludes that (1) there are significant differences in risks between sightseeing flights conducted under part 91 and air tour flights conducted under air carrier/commercial operator regulations, and (2) these risk differentials justify the proposal that the exception (from parts 119, 121, and 135 certification and operating requirements) for part 91 sightseeing operators be restricted. Regulatory action is also justified in view of the public expectation that all operators offering commercial air tours are regulated and surveilled to a level of safety higher than that applied to the general aviation operator.

Safety provisions addressing the risks of overwater operations. Based on an analysis of the risks of overwater operations and NTSB recommendations, the FAA concludes that the benefits of these provisions justify the costs and potential inconvenience to passengers. Based on survivors' testimony, life preservers alone are insufficient in preventing loss of life in helicopter accidents over water. Without floats, helicopters sink very quickly upon impact, giving passengers little time to exit the aircraft. The FAA believes that helicopter floats, in conjunction with life preservers, would significantly improve the chances of survival. Airplane passengers will also benefit from the requirement to wear life preservers when air tour flights are conducted over water.

Statement of Objectives and Legal Basis

The objective of this proposal is to provide a higher and uniform level of safety for all commercial air tours. A primary objective of this proposal is to significantly reduce the accident rate for those currently operating under part 91.

Under the United States Code, the FAA Administrator is required to consider the following matter, among others, as being in the public interest: assigning, maintaining, and enhancing safety and security as the highest priorities in air commerce. [See 49 U.S.C. 40101(d)(1).] Additionally, it is the Administrator's statutory duty to

carry out his or her responsibilities “in a way that best tends to reduce or eliminate the possibility or recurrence of accidents in air transportation.” [See 49 U.S.C. 44701(c).] Accordingly, this notice proposes to amend Title 14 of the Code of Federal Regulations to provide definitions for commercial air tours and establish new safety requirements for such operations.

Description of Small Entities Affected

The FAA concludes that virtually all of the entities affected by the proposed amendments are small according to thresholds established by the Small Business Administration (*i.e.*, employ fewer than 1,500 employees). An estimated 1,672 part 91 operators and 453 part 121/135 operators would be affected by the rule. The part 91 operators own about 3,100 aircraft, while the part 121/135 operators have about 1,300 aircraft. This rule would impose annualized costs per operator of: (1) \$600 to part 91 operators who exit the sightseeing industry; (2) \$11,200 to part 91 operators who obtain part 135 certificates as single-pilot operators; (3) \$75,000 to part 91 operators who obtain part 135 certificates and operate with more than one pilot; (4) \$14,400 to current part 135 operators; (5) \$19,200 to \$39,500 to any operator owning one helicopter that is operated over water; and (6) \$220 additional to any operator owning an airplane that is operated over water.

Projected Reporting, Recordkeeping and Other Compliance Requirements

Entities converting to part 135 operations would be subject to the reporting requirements applicable to all part 135 air carriers. The FAA estimates the annualized cost for a single pilot operator would be \$510 and for an operator with more than one pilot \$2,540. The reporting requirements of part 136 would impose an additional cost of \$30 for an airplane that is operated over water, and \$340 for any operator owning one helicopter operated over water.

Overlapping, Duplicative, or Conflicting Federal Rules

The proposed rule would not overlap, duplicate, or conflict with existing Federal Rules.

Analysis of Alternatives

The FAA invites comment from potentially affected operators regarding possible alternatives to the provisions discussed above. Some options that were considered during the formulation of this proposal are discussed below.