

Grandfather part 91 operators: The FAA considered allowing existing part 91 sightseeing operators to continue operating under part 91, while requiring that operators entering the sightseeing/air tour market operate under part 135. While this alternative could reduce the cost of the rule by more than \$150 million over ten years, it could also reduce total benefits by more than \$148 million over the same period. While the costs marginally outweigh the benefits, the FAA believes that the rule's objective—improving the safety of air tours and providing one level of air tour safety for the flying public—would not be met under this alternative. Accordingly, the FAA has chosen not to grandfather existing operators.

Lengthen the compliance period: As written, the rule would require certification within six months of the date the final rule is issued. Safety requirements included in subparts O of part 121 and subpart E of part 135 would be met within 120 days from the date the final rule is issued. Helicopter float requirements in part 136.15 have a separate compliance schedule. To reduce the burden on small entities, the FAA considered a longer compliance period. Lengthening the compliance period to ten years, for example, would have saved some compliance costs on aircraft due to be removed from service within the ten-year period. The FAA believes, however, that the sightseeing/air tour accident history justifies government action in the near term. Between 1993 and 2000, there were some 75 accidents involving part 91 sightseeing flights and 53 accidents involving part 135 air tours. Combined, some 110 people died in these accidents. The FAA believes, therefore, that the higher standards should be implemented expeditiously and has chosen not to adopt this alternative.

Require helicopter floats or life preservers instead of both: The proposed rule would require both floats and life preservers for overwater air tour flights in helicopters. In lieu of this requirement, the FAA considered requiring either floats or life preservers—rather than both—similar to existing requirements under SFAR 71 for operations in Hawaii. Under this alternative, operators could avoid the costs of flotation systems (\$15.4 million over ten years) by purchasing personal flotation devices (\$403,000 over ten years). Although this alternative would result in substantial cost savings, the FAA believes that the safety objectives would not be met through this alternative. Based on survivors' descriptions, the FAA believes that life preservers alone are insufficient in

preventing loss of life in helicopter accidents over water. Helicopters typically take on water and sink very quickly upon impact, giving passengers little time to exit the aircraft. Helicopter floats, in conjunction with life preservers, would significantly improve the chances of survival. For this reason, the FAA has chosen not to adopt this alternative.

#### **Affordability Analysis**

The FAA lacks reliable revenue and profit data for many of the entities affected by this rule and, therefore, is unable to explicitly compare the potential costs imposed to revenues or profits. This is because part 91 operators represent the small end of the industry, entering and exiting the market easily and continuously with no reporting or notification requirements. The FAA believes, however, that the higher-cost provisions of the rule (*e.g.*, helicopter floats) would be borne by the larger, more profitable part 135 entities. The FAA invites comment on the potential impact of the rule on revenues and profits.

#### **Business Closure Analysis**

The FAA estimates that about 700 part 91 operators currently providing sightseeing flights would elect to stop providing the service. These operators, however, provide relatively few sightseeing flights (fewer than ten hours annually). The FAA concludes, therefore, that sightseeing revenue represents a small percentage of total revenue, and that these operators would remain in business and obtain revenues elsewhere.

#### **Disproportionality Analysis**

Almost all entities in the air tour/sightseeing market are small. Accordingly, the costs imposed by this proposed rule would be borne almost entirely by small businesses. It is likely that the larger of the small entities would be better able to absorb the costs of the rule and could experience a competitive advantage over the smaller entities operating in the same market. Air tour safety needs to be and can be significantly improved, and the FAA believes that the only way to accomplish this is to impose higher standards on these entities.

#### **Key Assumptions Analysis**

The FAA has made several conservative assumptions in this analysis, which may have resulted in an overestimate of the costs of the proposed rule. For example, the FAA assumes that one-quarter of all helicopters in air tour service will incur

the costs of floats. It is highly possible that the actual percentage will be lower than one-quarter because some operators already have floats to comply with § 135.183, and others who currently operate marginally over water may change their flight plans to remain over land. Also, the helicopter life preserver costs may be overestimated since there is a voluntary industry standard to which 13 helicopter tour operators subscribe that requires occupants to wear a personal flotation device.

The FAA has also endeavored to avoid underestimating revenue losses to part 91 operators. To estimate lost revenue associated with scaling down operations to obtain a certificate using only a single pilot, the FAA assumes that part 91 operators have as many pilots as they do aircraft. In fact, some operators have one pilot and more than one aircraft. Such operators would experience little or no loss in revenue by becoming single-pilot part 135 operators, even though this analysis assumes some lost revenue for all but the first aircraft.

In addition, the FAA assumes that no requests for exemptions will be granted, that performance penalties apply to all flights (not just air tours), and that additional paperwork will take additional time (*i.e.*, it will not be absorbed into existing recordkeeping duties). Each of these assumptions leads to a conservative estimate of costs.

#### **International 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. The FAA has assessed the potential effect of this proposed rule and has determined that it would only have a domestic impact and therefore no effect on any trade-sensitive activity. The FAA is unaware of any evidence that suggests that safety regulations (as opposed to noise limitations) adopted in Hawaii and the Grand Canyon National Park, for example, affected the demand for air tour flights by foreign visitors. Conversely, widely publicized air tour accidents may adversely affect all air tour operators. The proposed regulations strengthen the entire air tour industry by standardizing requirements for all operators.