



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

ADMINISTRATOR  
OFFICE OF  
INFORMATION AND  
REGULATORY AFFAIRS

NOV 25 2003

Ms. Rosalind A. Knapp  
Deputy General Counsel  
Department of Transportation  
400 Seventh Street, S.W.  
Washington, D.C. 20590

Dear Ms. Knapp:

On October 7, 2003, the Office of Management and Budget (OMB) completed Executive Order No. 12866 review of a Federal Aviation Administration (FAA) draft proposed rule, titled "National Air Tour Safety Standards." The rule would impose new nationwide operating requirements for commercial air tours (sightseeing flights on small airplanes/helicopters), including minimum altitudes, standoff distances, and visibility and cloud clearance limits.

The rule is intended to implement the National Transportation Safety Board's recommendations in response to accidents and incidents involving air tours. We recognize the importance of this rulemaking and applaud FAA's efforts to reduce air tour fatalities and serious injuries. While we share FAA's desire to improve air tour safety, we are concerned about the significant impact this rule will have on the air tour industry.<sup>1</sup>

It is critical that the FAA analyze this effect as accurately as possible. During the course of our review, we suggested a number of steps to strengthen FAA's economic and regulatory flexibility analysis and shed light on other regulatory alternatives. Specifically, the FAA should consider the following suggestions before finalizing this rule:

- **Use the Hawaii experience to assess effectiveness.** FAA used a rough proxy to estimate the rule's effect on safety.<sup>2</sup> The Hawaii requirements, which have been in effect since 1996, are very similar to the proposed nationwide standards. As FAA describes in the rule, "the proposed rule is modeled on Special Federal Aviation Regulation (SFAR) 71, which currently governs the commercial air tour

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<sup>1</sup> According to the FAA's proposed rule, over 2,000 operators provide flights to nearly two million passengers annually. The proposed rule would impose estimated costs of \$238 million on the industry, possibly causing an estimated 700 operators to stop providing air tours.

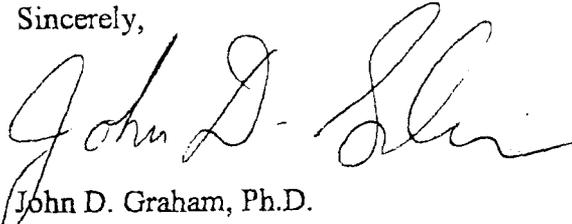
<sup>2</sup> The FAA assumed that the rule would reduce the air tour accident rate to the accident rate experienced by aircraft subject to more stringent personnel, equipment, and maintenance requirements (part 135). While part 135 does include some air tour operators, it also includes many larger planes that operate in very different environments. Given the vast difference between air tour aircraft and part 135 aircraft, this assumption may be inaccurate.

industry operating in Hawaii.” FAA could use its Hawaii data on accidents to assess the effectiveness of a nationwide air tour rule. The FAA should compare the accident and fatality rates before and after implementation of the air tour standards in Hawaii. Then, the difference in rates could be applied to estimate the nationwide (excluding Hawaii) air tour rate.

- **Use Hawaii data to examine possible consumer surplus loss and reduced demand.** Air tour customers enjoy flying very close to sights on a sightseeing flight. Since this rule will restrict how close aircraft can fly to sights, the benefits for consumers are negatively impacted. FAA should address this impact in the final rule by examining the effect of the Hawaii standards on the price of air tours and the number of individuals that took air tours.
- **Estimate costs and benefits for Alaska and the rest of the states separately.** FAA data indicate that during 1993-2000, 74 people died on air tours. About half of these fatalities (34) occurred in Alaska. Given the high fatality rate in Alaska, FAA should analyze Alaska separately.
- **Estimate costs and benefits for airplanes and helicopters separately.** Since the accident rates for airplanes and helicopters are very different,<sup>3</sup> the FAA should estimate costs and benefits for these groups separately.

We feel these suggestions can help improve the regulatory evaluation and possibly help identify other potential regulatory alternatives. We anticipate working with your staff to further refine the regulatory analysis at the final stage and to work affirmatively and effectively with you to improve air tour safety.

Sincerely,



John D. Graham, Ph.D.  
Administrator

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<sup>3</sup> According to FAA data, part 91 operators (not subject to as stringent personnel, equipment, and maintenance requirements as part 135) experience 101.87 accidents per million flight hours for helicopters and 52.94 accidents for airplanes. For part 135 operators, the helicopter accident rate is 30.26 per million flight hours while the airplane accident rate is 66.14.