

58512

DEPT. OF TRANSPORTATION
DOCKET SECTION

U.S. Department
of Transportation

99 JUL -1 PM 12:47

**FEDERAL AVIATION
ADMINISTRATION**
Office of Aviation Policy and Plans
Washington, D.C. 20591

FAA-98-4390-48

**DRAFT REGULATORY EVALUATION, INITIAL
REGULATORY FLEXIBILITY DETERMINATION,
UNFUNDED MANDATES REFORM ACT, AND TRADE
IMPACT ASSESSMENT**

**FLIGHT PLAN REQUIREMENTS FOR
HELICOPTER OPERATIONS UNDER
INSTRUMENT FLIGHT RULES**

**SUPPLEMENTAL NOTICE OF PROPOSED RULEMAKING
(14 CFR PARTS 21, 27, 29, and 91)**

OFFICE OF AVIATION POLICY AND PLANS
OPERATIONS REGULATORY ANALYSIS BRANCH, APO-310

Paul E. Jorgensen

March 5, 1999

TABLE OF CONTENTS

section	<u>Page</u>
EXECUTIVE SUMMARY	.. i
I. INTRODUCTION.....	1
II. BACKGROUND.....	3
III. BENEFITS	4
A. Qualitative Benefits5
B. Quantitative Benefits.....	.7
IV. COSTS.....	14
V. COMPARISON OF COSTS AND BENEFITS	14
VI. REGULATORY FLEXIBILITY DETERMINATION.....	IS
VII. INTERNATIONAL TRADE IMPACT ASSESSMENT.....	16
VIII UNFUNDED MANDATES	17

EXECUTIVE SUMMARY

This regulatory evaluation examines the benefits and costs associated with this Supplemental Notice of Proposed Rulemaking (SNPRM) to amend 14 CFR 91.167 and 91.169 (a), (b) and (c). This rulemaking pertains to the flight plan requirements for helicopter operations under instrument flight rules and would facilitate helicopter pilots access to the IFR system. The proposal would revise the destination airport criteria for specifying an alternate airport, fuel requirements for helicopter flight into IFR conditions, and the weather minimums necessary to designate an alternate airport on a flight plan. Not addressed in the NPRM that preceded this SNPRM was the issue of non-standard approach minima that is based on an airplane's ability to conduct circling approaches. Therefore, this supplemental proposal would revise the standard and non-standard approach minima for helicopter operators required to designate an alternate on an IFR flight plan. As such, helicopter operators can use the prescribed weather minima for airports with both standard and nonstandard **approach** minima. These changes clearly differentiate the flight plan requirements for helicopters from the flight plan requirements for other aircraft.

This **SNPRM** would not impose any additional equipment, training, or other cost to the aviation industry. Therefore, there would be no compliance costs associated with the proposed rule. The FAA estimated that the NPRM would provide \$48 million in safety benefits. The agency now estimates that the NPRM and this supplemental proposal together would provide safety benefits of approximately \$57 million (\$40 million, present value) over

the next 10 years. In addition, there would be the non-quantified benefits which include a reduction in the level of aircraft noise experienced by individuals on the ground when helicopters fly at higher altitudes and possible savings in corporate executives' time associated with enhanced corporate flight operations.

The SNPRM would not present a significant impediment to either U.S. firms doing business abroad, or foreign firms doing business in the United States. Furthermore, the FAA certifies that the proposal would not have a significant economic impact on a substantial number of small entities. This SNPRM does not contain any Federal intergovernmental or private sector mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

I. INTRODUCTION

In an effort to promulgate regulations that improve aviation safety and promote efficiency, this Supplemental Notice of Proposed Rulemaking (SNPRM) puts forth the recommendations of the Federal Aviation Administration (FAA) and the Aviation Rulemaking Advisory Committee (ARAC). The Notice of Proposed Rulemaking (NPRM) preceding this SNPRM was published in the Federal Register on September 2, 1998 (63 FR 46834). The regulatory evaluation for the original NPRM found that the proposal would not place any additional requirements on the aviation industry, and there were potential safety benefits of \$48 million (\$34 million, present value). In addition, there were non-quantified benefits of reduced aircraft noise at ground level, and the lessening of helicopter idle time due to adverse or marginal weather conditions.

This regulatory evaluation uses the same methodology as the regulatory evaluation for the original NPRM. However, this regulatory evaluation also considers the revisions between the original proposal and the SNPRM and presents more current information in addition to updating the costs and benefits of the original NPRM. Because the FAA is modifying the original proposal in response to commenters' suggestions and making technical changes that were not addressed in the original **NPRM**, this regulatory evaluation updates and examines the costs and benefits of the NPRM and the SNPRM together as one proposal. These amendments proposed in the NPRM and **SNPRM** together pertain to flight plan requirements for helicopter flights under instrument flight rules (IFR) by revising: (1) the destination airport criteria for specifying an alternate airport, (2) the fuel requirements for helicopter flight into IFR conditions, (3) the

weather minimums necessary to designate an alternate airport in an IFR flight plan, and (4) the standard/nonstandard approach minima for helicopter operators required to designate an alternate on an IFR flight plan.

Marginal weather conditions that result in inadvertent flights under visual flight rules (VFR) into Instrument Meteorological Conditions (IMC) are one of the more serious hazards that helicopter pilots encounter. This proposal should motivate more helicopter pilots to operate under IFR in marginal weather conditions. By allowing more IFR helicopter flights during marginal weather conditions in place of VFR flights, the occurrence of inadvertent VFR flights into IMC would be reduced.

II. BACKGROUND

A person operating a civil aircraft under IFR conditions must comply with the IFR fuel requirements of § 91.167 and the IFR flight plan requirements of § 91.169. If a person cannot meet the flight plan requirements and criteria for specifying an alternate airport in § 91.169, then he or she may not file an IFR flight plan, and must fly under VFR.

Sections 91.167 and 91.169 were originally established to cover airplanes, but currently these sections are applicable to all aircraft, operating under IFR. Other than the distinction in § 91.167 concerning the amount of fuel a helicopter must carry versus the amount of fuel an airplane must carry, flight planning requirements, including alternate airport weather minimums, are the same for both airplanes and helicopters, even though their operating characteristics are quite different.

The FAA recognizes that helicopter operations are more range limited and flight-time limited than airplane operations. Helicopters fly shorter distances than airplanes, and generally remain in the air for shorter periods between refueling stops. Since a helicopter is usually in the air for a shorter time than an airplane, the helicopter pilot is more likely to encounter weather conditions consistent with earlier forecasts at the destination helipad than an airplane pilot will at his or her destination airport. Consequently, the weather forecast for the flight destination at the estimated time of arrival (ETA) plus one hour is more likely to prove accurate for helicopter operations than for airplane operations, and flight planning for helicopter operations should be based on the destination forecast at ETA plus one hour rather than one hour before ETA to one hour after

ETA. Focusing on weather forecasts for times, such as one hour before ETA, are not as relevant and do not add any discernible benefit to the safe operation of the helicopter.

Commenters to the NPRM observed that there was no provision for reduction of alternate weather minima for airports that have non-standard approach minima. They maintain that non-standard approach minima are based on an airplane's ability to conduct circling approaches, Helicopters, on the other hand, do not conduct circling approaches because they are able to fly any available instrument approach, regardless of wind direction. Helicopters are also able to land at the approach threshold regardless of runway length by pivoting into the wind just before touchdown. The FAA agrees with these comments and is proposing to change § 9 I. 169 (c) to differentiate the flight plan requirements for helicopters as opposed to flight plan requirements for airplanes. The proposal allows helicopter operators to use the prescribed weather minima for airports with both standard and non-standard approach minima. These changes would allow helicopter pilots to use the lower-than-standard alternate airport minima regardless of the approach flown.

III. BENEFITS

There are both quantifiable and non-quantifiable benefits that can be attributed to this SNPRM. Non-quantifiable benefits include the reduction in the level of aircraft noise experienced by individuals on the ground when helicopters fly at higher altitudes and cost savings associated with enhanced corporate flight operations. These benefits are difficult to accurately measure, and are discussed in Part A under Qualitative Benefits. Other benefits would be any reduction in the

number of fatal and serious accidents that occur in marginal weather conditions. These benefits can be estimated more readily, and are discussed in Part B under Quantitative Benefits.

A. Qualitative Benefits

During periods of marginal or inclement weather conditions, helicopter operators are often unable to utilize the IFR system because they are unable to meet the IFR flight plan requirements and criteria for specifying an alternate airport. When this occurs, helicopter operators often will fly under either VFR or Special VFR at lower altitudes. By flying at lower altitudes, third party costs (increased level of aircraft noise), are experienced by individuals on the ground.

All noise has the potential to annoy because of interference with speech, sleep, work, or other activities.¹ However, aircraft noise is a function of aircraft altitude, and noise or sound energy can be reduced by increasing the flight altitude.² Therefore, by providing helicopter operators with the opportunity to increase the altitude of a helicopter flight through increased access to the IFR system, the proposed rule will help to reduce the sound energy on the ground generated by that helicopter. For example, if a helicopter flying VFR at 250 ft above ground level (AGL) in

¹ Noise is commonly defined as unwanted sound, and so the measurement of noise is linked to the measurement of sound. The basic unit of sound measurement is the decibel (dB), which is a logarithmic transformation of sound energy. The logarithmic scale permits a relatively narrow scale to represent a wide range of sound energy that can be detected by the human ear. Consequently, the decibel ladder is a scale of reference and not a measure of absolute physical quantities. As explained in *The Economic Value of Peace and Quiet*, Starkie, D. N. M and Johnson, D. M., Saxon House and Lexington Books, D. C. Heath & Co., Lexington, MA, 1975., p 3., 30 decibels is a soft whisper, while 60 decibels represents moderate speech heard at about a yard. These changes differ dramatically in sound energy; the increase from 30 dB to 60 dB represents a thousand fold increase in sound intensity.

² Analysis and Evaluation Branch, Office of Environment and Energy, Federal Aviation Administration. Sound or noise energy can be reduced by 6 dB for each doubling in altitude.

marginal weather conditions is able to fly IFR at 1,000 ft AGL in the same marginal weather conditions. the sound energy is reduced by 24 dB,³ which represents a decrease to less than one-hundredth the level of sound intensity experienced by third parties on the ground.

Another benefit of this rule that is difficult to quantify is the reduction of the opportunity cost⁴ of idle executive and other management time. Due to the high level of concern many companies have regarding the safety of their senior executives, the safe operation of their corporate helicopters receives a high priority. As such, during periods of marginal or adverse weather conditions, many corporate helicopter operations are canceled rather than flown VFR under those conditions. Because helicopters provide prompt and effective transportation, a portion of the opportunity cost resulting from cancelled operations can be measured by the lost productivity associated with the extra time involved by executives and other personnel using alternate forms of transportation, such as an automobile. By enabling more helicopter pilots to operate under IFR in marginal weather conditions, these opportunity costs could be avoided.

B. Quantitative Benefits

The quantitative benefits of this **rulemaking** are derived from a potential reduction in weather related accidents associated with helicopters operating under VFR or special VFR. The FAA

³ Sound energy is reduced by 6 dB for each doubling in altitude, sound energy will be reduced by 24 dB if the altitude is doubled four times (500 ft, 1,000 ft, 2,000 ft, and 4,000 ft). A reduction of 20 dB represents a hundred-fold decrease in sound intensity.

⁴ Opportunity cost is a forward-looking view of costs that are forgone by not putting a firm's resources to its highest use.

believes that many weather related accidents of the type that in the past occurred under VFR can be prevented in the future by enhanced helicopter operator access into the IFR system. The FAA further believes that this proposed rule will result in increased safety and offer greater operational flexibility for helicopter operators. The FAA bases this belief largely on the U.S. Army's experience of no mishaps over the past 16 years associated with flight planning criteria' similar to the FAA's proposed rule.

Table 1 below illustrates the helicopter accidents over the 10-year period from 1988 to 1997 where weather was a cause or factor. The data used was obtained from the National Transportation Safety Board (NTSB)'s data base. The most recent accidents that occurred in 1998 are still under review; therefore, because the data record is not complete, no data from 1998 is used in this analysis. During the 10-year period studied, there were a total of 258 helicopter

Year	Flight Plan		
	IFR	VFR	NONE
1988	0	5	22
1989	0	10	25
1990	0	4	30
1991	0	8	15
1992	0	10	18
1993	1	8	22
1994	1	11	12
1995	1	3	16
1996	0	6	16
1997	0	8	6
TOTAL	3	73	182

Source: National Aviation Safety Data Analysis Center, February, 1999

⁵ U. S. Army Safety Center, Fort Rucker, Alabama.

accidents where weather was a cause or factor of the accident. The total includes 182 accidents involving VFR flight⁶ without a flight plan filed, 73 accidents where a VFR flight plan was filed, and three accidents where an IFR flight plan was filed. As shown in Table I, the 182 accidents involving VFR flights is approximately 60 times greater than the three accidents that occurred under an IFR flight plan. In addition, the 73 accidents where VFR flight plans were filed is approximately 24 times greater than the three in IFR operation. When the 182 accidents are added to the 73 accidents, the result is a total of 255 accidents which represents approximately 99 percent of all the accidents that occurred when weather was a cause or factor.

According to informal industry surveys, approximately 10 percent of all helicopter flights flown are performed under an IFR flight plan.⁷ To corroborate the results of the industry surveys, the FAA conducted a simple random sample of helicopter flight plans.* The sample consisted of 104 randomly selected helicopter flight plans from the Southern Region. The results showed 33 helicopter flight plans were IFR and 71 were VFR. To approximate the proportion of VFR flights that occurred without a flight plan compared to the sample number of VFR flights, the FAA calculated the ratio of VFR flights without a flight plan to VFR flight plans from the observed accident history. The FAA then multiplied that ratio by the number of VFR flight plans from the sample. The computation produced an estimate of 178 helicopter flights flown

⁶ According to FAA Flight Standards Service, General Aviation and Commercial Division, a helicopter pilot may fly VFR under any weather condition with the exception of when there is zero visibility and zero ceiling. Therefore, because the 182 accidents where no flight plan was filed did not occur under the condition of zero visibility and zero ceiling they are regarded as legal VFR flights.

⁷ Federal Aviation Administration, Flight Standards Service, General Aviation and Commercial Division

⁸ A simple random sample is a sample selected such that the following conditions are satisfied: (1) each element selected comes from the same population; and (2) each element is selected independently.

VFR without a flight plan” during the time period to compare with the 33 flight plans of the sample.

The calculation can be summarized as follows:

$$SVFR_{nfp} = (OVFR_{nfp} / OVFR_{fp}) * SVFR_{fp}$$

where:

$SVFR_{nfp}$ = Sample VFR flight without flight plans

$SVFR_{fp}$ = Sample VFR tiled flight plans

$OVFR_{fp}$ = Observed VFR tiled flight plans in accident database

$OVFR_{nfp}$ = Observed VFR flight without flight plans in accident database

Once an estimate of the number of VFR flights without a flight plan was determined (178), the

FAA then added that to the number of sample VFR flight plans filed (71) and the sample IFR

flight plans tiled (33). That total (282) was divided into the number of IFR flight plans (33).

This produced the estimated percentage of all helicopter flights flown IFR (11.7%), which is only 1.7 percent greater than the industry survey results of IO percent.

The percent for IFR flights from the sample approximately equals the industry survey results.

These comparable ratios provide some corroborative evidence that IO percent of all helicopter

operations are conducted under an IFR flight plan. As such, the number of accidents flying IFR

would be expected to be approximately IO percent of the total accidents, or 26 accidents.

However, instead of 26 accidents only three accidents occurred under an IFR flight plan.

⁹ The FAA assumes there is no difference in the level of safety exercised between those pilots who file a VFR flight plan and those pilots who do not file a flight plan. A primary reason for filing a VFR flight plan is for flight following, so if the flight becomes overdue at the destination, a search for the aircraft would be initiated.

Because the actual number of accidents (3) is approximately 12 percent of the expected number of accidents (26), this information suggests that IFR flight is safer than VFR flight when marginal weather conditions are present

Injuries sustained in weather-related helicopter accidents are illustrated in Table 2. When the fatalities sustained during the study period flying with no flight plan (67) are added to the fatalities sustained flying with a VFR flight plan (64) the result is 131 fatal injuries. There were 10 fatal injuries sustained under a IFR flight plan. Similarly, when serious injuries sustained flying with no flight plan (46) are added to the serious injuries sustained flying with a VFR flight plan (41), the result is 87. There was one serious injury sustained in IFR flight.

Year	No Flight Plan		VFR Flight Plan		IFR Flight Plan	
	Fatal	Serious	Fatal	Serious	Fatal	Serious
1988	5	5	4	7	0	0
1989	5	7	3	7	0	0
1990	9	4	6	8	0	0
1991	6	2	11	0	0	0
1992	12	10	13	8	0	0
1993	16	7	2	3	3	1
1994	1	3	14	4	4	0
1995	7	6	9	0	3	0
1996	5	1	0	1	0	0
1997	1	1	2	3	0	0
TOTAL	67	46	64	41	10	1

Source: National Aviation Safety Data Analysis Center, February, 1999.

In aggregate, the number of fatalities and serious injuries that occurred under VFR flight is significantly greater than those that occurred under an IFR flight plan. The FAA is aware that

even though weather was a cause or contributing factor in all of these accidents. this rulemaking would not have prevented all of these accidents or injuries. However, the data from Table I and Table 2 suggest IFR flight is safer than VFR flight when marginal weather conditions are present.

Further research revealed that in 19 of the 255 accidents involving VFR flight,” the pilot-in-command had instrument ratings for helicopters, or for a combination of helicopters and airplanes. The FAA believes that with the revised weather minimums and the revised standard/nonstandard approach minima provided by the proposal, the pilots with instrument ratings **could** have taken advantage of positive air traffic control services (such as obstacle avoidance) and flown IFR. However, due to the uncertainty regarding the weather at the destination airports, the FAA recognizes that not all of these 19 accidents may have been avoided. Therefore, the FAA applied the same percentage described above regarding the expected and actual accidents under IFR ($3/26 \cong 12\%$) where weather was a cause or factor of the accident **and** determined that 3 of the 19 accidents ($19 \times 12\% \cong 3$) would not have been avoided due to this rulemaking.

Table 3, below, illustrates all the serious injuries and fatalities that were sustained in the 19 accidents involving VFR flight where the pilot-in-command had instrument ratings for helicopters, or for a combination of helicopters and airplanes. To determine the potential benefits that will result from this **SNPRM**, the FAA estimated the average costs associated

¹⁰ Reference Table I on page 7, All Helicopter Accidents Where Weather was a Cause or Factor.

TABLE 3 Injuries Sustained from VFR flight into IMC Conditions Pilot in Command Helicopter Instrument Rated			
Injury Type	No Flight Plan	VFR Flight Plan	Total
Fatal	5	13	18
Serious	a	a	16

Source: National Aviation Safety Data Analysis Center, February, 1999.

with all the injuries and fatalities illustrated in Table 3. An economic value of \$2.7 million and \$518,000 was applied to each human fatality and serious injury, respectively.” This computation resulted in an estimate of approximately \$57 million” in casualty costs. Also, the value of the destroyed aircraft was estimated to be \$8 million.” If this rulemaking (the NPRM plus the SNPRM) helps prevent 88 percent of these injuries and fatalities that resulted from 19 accidents, the expected potential safety benefits evenly distributed over the next ten years will be approximately \$57 million (\$40 million, discounted), as shown in Table 4.

¹¹ Based on critical economic value guidelines developed by the U. S. Department of Transportation.

¹² Calculated as follows: \$2.7 million times 18 fatalities equals \$48,600,000 and \$518,000 times 16 serious injuries equals \$8,288,000. Adding \$48,600,000 and \$8,288,000 equals \$56,888,000 rounded to \$57 million.

¹³ Estimates based on values listed in Airclaims, International Aircraft Price Guide, Winter, 1996. Values used represented the lowest in a range for each make and model helicopter involved. Actual estimated value of destroyed aircraft was \$8,321,600 rounded to \$8 million.

TABLE 4		
Expected Value of Potential Safety Benefits		
(1997 dollars)		
Year	Annual Safety Benefits	Discounted Safety Benefits
1999	\$ 5,738,445	\$ 5,363,033
2000	\$ 5,738,445	\$ 5,012,180
2001	\$ 5,738,445	\$ 4,684,280
2002	\$ 5,738,445	\$ 4,377,832
2003	\$ 5,738,445	\$ 4,091,432
2004	\$ 5,738,445	\$ 3,823,768
2005	\$ 5,738,445	\$ 3,573,615
2006	\$ 5,738,445	\$ 3,339,827
2007	\$ 5,738,445	\$ 3,121,334
20081	\$ 5,738,445	\$ 2,917,134
Total	\$ 57,384,448	\$ 40,304,435

Source: U. S. Dept. of Trans., FAA, APO-310, February, 1999.

IV. COSTS

As was the case with the preceding NPRM, this SNPRM would not impose any additional equipment, training, or other cost to the aviation industry. Therefore, the FAA believes there is no apparent compliance cost associated with this SNPRM. However, the FAA solicits comments regarding the plausibility and extent of the adverse impacts on operators from implementation of the proposed rule.

V. COMPARISON OF COSTS AND BENEFITS

The rule would not place any additional requirements on the aviation industry. Therefore, there are no compliance costs associated with the proposed rule. Qualitative benefits from the proposed rule would come from reducing the level of aircraft noise experienced by individuals on the ground and from cost savings associated with reducing transportation time for corporate executives and other personnel.

The quantitative benefits come from a potential reduction in accidents by enabling more helicopter pilots to operate under IFR in marginal weather conditions. The regulatory evaluation for the original NPRM found that there were potential safety benefits of \$48 million (\$34 million, present value) in addition to the non-quantified benefits discussed above. In this regulatory evaluation of the original NPRM plus the SNPRM the potential safety benefits are approximately \$9 million greater due primarily to more current data. Over the next 10 years, the estimated safety benefit of the proposed rule could be \$57 million or \$40 million, present value. Therefore, the FAA has determined that both the original NPRM and this SNPRM are cost beneficial.

IV. DRAFT REGULATORY FLEXIBILITY DETERMINATION

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 tailor regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.” To achieve that goal, 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 would have a significant economic impact on a substantial number of small entities. If the determination is that it would, 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 rule will impact entities regulated by part **91**. The FAA has determined that there are no compliance costs associated with this rule, but in the Notice of Proposed Rulemaking published September 2, 1998, solicited comments from operators who felt they would be negatively impacted from implementation of the proposed rule. Only positive comments were received supporting the FAA's position that this rulemaking will not place any additional requirements on the aviation industry. Therefore, the FAA believes that there are no compliance costs associated with the proposed rule. Accordingly, the Federal Aviation Administration certifies that this rule would not have a significant economic impact on a substantial number of small entities.

VII. INTERNATIONAL TRADE IMPACT STATEMENT

This proposed rule is not expected to impose a competitive disadvantage to either U.S. air carriers doing business abroad or foreign air carriers doing business in the United States. This assessment is based on the fact that this SNPRM would not impose additional costs on either U.S. or foreign air carriers. This SNPRM would have no effect on the sale of foreign aviation products or services in the United States, nor would it affect the sale of United States aviation products or services in foreign countries.

VIII. UNFUNDED MANDATES REFORM ACT ASSESSMENT

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), codified in 2 U.S.C. 1501-1571, 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 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, 2 U.S.C. 1534(a), 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 proposed “significant intergovernmental mandate.” A “significant intergovernmental mandate” under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of \$100 million (adjusted **annually** for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall

have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This rule does not contain any Federal intergovernmental or private sector mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.