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14 CFR Parts 91 and 135
Air Tour Operators in the State of Hawaii; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91 and 135

[Docket No. 27919; Special Federal Aviation Regulation (SFAR) No. 71]

RIN 2120–AF53

Air Tour Operators in the State of Hawaii

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action establishes certain procedural, operational and equipment requirements for air tour operators in the State of Hawaii. This emergency rule is necessary because of an escalation of air tour accidents. The regulation is intended to enhance the safety of air tour operations within the State.

DATES: This final rule is effective October 26, 1994. Comments must be received on or before December 27, 1994.

ADDRESSES: Send comments on this final rule in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. 27919, 800 Independence Ave., SW., Washington, DC 20591. Comments delivered must be marked Docket No. 27919. Comments may be examined in room 915G weekdays between 8:30 a.m. and 5 p.m., except on Federal holidays.

Commenters who wish the FAA to acknowledge the receipt of their comments must submit with their comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 27919." The postcard will be date stamped by the FAA and returned to the commenter.

FOR FURTHER INFORMATION CONTACT: Brian Calendine, Air Transportation Division, AFS–200, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, D.C. 20591; Telephone (202) 267–8166.

SUPPLEMENTARY INFORMATION:

Availability of Final Rule

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Requests should be identified by the docket number of this rule.

Persons interested in being placed on a mailing list for notices of proposed rulemaking should request a copy of Advisory Circular No. 11–2A, "Notice of Proposed Rulemaking Distribution System," which describes the application procedure.

Background

The Air Tour Industry

Since 1980, the air tour industry in the State of Hawaii has grown rapidly, particularly on the islands of Oahu, Kauai, Maui, and Hawaii. The growth of the tourist industry, the beauty of the islands, and the inaccessibility of some areas on the islands has generated tremendous growth in the number of air tour flights. In 1982, there were approximately 63,000 helicopter and 11,000 airplane air tour flights. By 1991, these numbers had increased to approximately 101,000 for helicopters and 18,000 for airplanes. After a slight decline due to Hurricane Iniki in 1992, air tour flights in 1994 are projected to reach the 1991 levels. In Hawaii, the air tour industry carries about 400,000 passengers annually. Thirty-eight operators are conducting air tours within the State of Hawaii, using approximately 97 helicopters and 16 fixed-wing aircraft. During the 9-year period between 1982 and 1991, there were eight fatal accidents with 24 fatalities. The accident data shows an escalation of fatal accidents during the 3-year period between 1991 and 1994. During this time, there were five fatal accidents with 24 fatalities. (See table and figure)

Use of Helicopters in Air Tours

Helicopters are uniquely suited for air tours in Hawaii because they can operate at slow speeds and hover over scenic areas. Helicopter air tours are often conducted close to the ground, near scenic attractions so passengers can see and experience the thrill of being close to geological and terrain features, such as lava flows and waterfalls.

Some air tour operators advertise dramatic overwater flights to view whales, shorelines, cliffs, and waterfalls; entry into one-way canyons; flying close to hot molten lava; and hovering over the shoreline where molten lava flows into the ocean. Some advertising brochures, for example, describe air tours as "excitement to the boiling point," and invite tourists to "fly into the heart and heat of an active volcano" and "close enough to waterfalls to feel the cooling mist." One fixed-wing air tour operator formerly advertised that "[w]e fly you lower and slower than any twin engine plane can . . . lower and slower than many helicopters do . . ."

While passengers are often attracted to the thrill associated with low-flying air tours, they are generally not aware of the risks involved. Risks associated with low flying air tour operations include: unpredictable winds that create less stable flying conditions; fewer options to escape unforeseen weather; unmarked or unknown obstructions; less time to select suitable emergency landing areas; increases in pilot workload because of quick stops, rapid turns, and watching for obstructions; inability to be detected by air traffic control radar; inability to conduct two-way radio communication; increased likelihood of ingesting foreign debris, including salt water spray, into the engine; less overall reaction time; and congestion of low flying traffic at scenic locations. Further, many air tours are conducted over scenic areas along rugged coasts, where, in the event of an engine failure, the pilot must ditch in the ocean. A helicopter without flotation devices, unlike most light airplanes, may sink within moments.

History and Escalation of Accidents

The growth of the air tour sightseeing industry in Hawaii has been associated with an escalation of accidents. The proximate causes of the accidents range from engine power loss to encounters with adverse weather. Contributing factors to the causes and seriousness of accidents are: operation beyond the demonstrated performance envelope of the aircraft, inadequate preflight planning for weather and routes, lack of survival equipment, and flying at low altitudes (which does not allow time for recovery or forced landing preparation in the event of a power failure).

The following table is a synopsis of selected air tour accidents involving aircraft damage, minor or serious injuries, or fatalities that occurred between September 1982 and September 1994.

SELECTED AIR TOUR ACCIDENTS IN HAWAII, SEPTEMBER 1982–SEPTEMBER 1994

Date	Type	Part	Location	Injuries	Fatalities
9/2/82	Bell 206–L	135	Lihue	2 serious 3 minor	
4/8/84	Grumman AA–5A	91	Kamuela		4
9/26/85	Aerospatiale	135	Kula	5 minor	1
1/1/86	Cessna R172K	135	Kamuela	4 serious	1
5/18/86	Bell 206B	91	Maui	1 serious 1 minor	2
3/29/87	Bell 206B	135	Kona	3 serious 1 minor	1
4/24/87	Cessna 172N	91	Lihue		4
5/29/88	Bell 206B	135	Honolulu	2 minor	
5/20/89	Aerospatiale AS350D	135	Waialae Falls	7 minor	
6/11/89	Beech H18	135	Waipio Valley		
8/19/89	Aerospatiale AS350D	135	Volcano	1 serious 5 minor	11
5/5/91	Hughes 369HS	135	Keanae	3 minor	
6/6/91	Bell 206B	91	Lihue	3 serious 1 minor	
11/9/91	Bell 206B	135	Hilo	1 serious 2 minor	
4/22/92	Beech E18S	135	Mount Haleakala		9
9/16/92	Aerospatiale AS350B	135	Hana		7
9/21/92	Bell 47	91	Volcano National Park	3 minor	
1/25/93	Fairchild Hiller FH–1100	91	Volcano National Park	1 minor	4
2/23/94	Aerospatiale AS350B	135	Volcano National Park	1 serious 1 minor	
3/25/94	Hughes 369D	135	Hawaii National Park		
4/18/94	Hughes 369D	135	Waimea	4 serious	1
7/14/94	Aerospatiale AS350D	135	Hanalei		3
7/14/94	Aerospatiale AS350D	135	Molokai		
8/11/94	Aerospatiale AS350D	135	Waipio Valley		
9/3/94	Hughes 369D	135	Hilo		

The table shows a total of 24 air tour fatalities between 1982 and 1991 (9 years). Even though there was a decline in the number of air tour flights in 1992, the accident data show an escalation of fatal accidents between 1991 and 1994. From July 1991 through July 1994 (3 years), there were 20 air tour accidents involving 24 fatalities. (See figure.) Since January 1993, three helicopter accidents have involved landings in the ocean with two of those accidents resulting in seven fatalities. The most recent fatal accident occurred on July 14, 1994. The most recent non-fatal accident occurred on September 3, 1994. (See table.)

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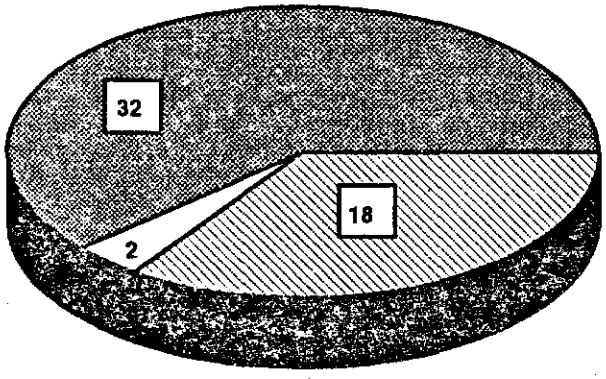
HAWAIIAN AIRCRAFT ACCIDENT ANALYSIS
JULY 1991 THROUGH JULY 1994

Total Aircraft Accidents 52

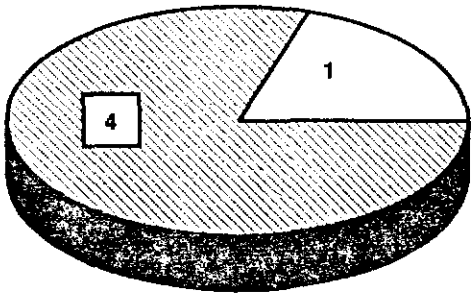


Helicopter Air Tour

Airplane Air Tour

Other than Air Tour (all categories)

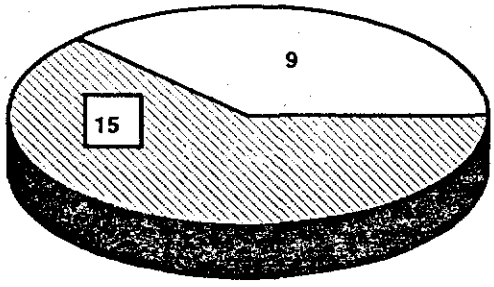
Fatal Air Tour Accidents 5



Helicopter

Airplane

Air Tour Fatalities 24



Helicopter

Airplane

SOURCE: NTSB

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National Transportation Safety Board Recommendations

Based on its investigation of the April 22, 1992, accident in Haleakala National Park, the National Transportation Safety Board (NTSB) recommended that the FAA "[c]reate a specific classification for, and operating rules governing, commercial air tour operators based on the complexity of flight operations, aircraft flown, flight frequency, number of passengers carried, air traffic densities in the area of operation, and other relevant factors" (A–93–8). In addition, the NTSB recommended that the FAA "[i]dentify airspace which warrants special protection due to air tour operations," and "[c]reate special operating rules for such airspace to reduce the potential for midair collisions and other accidents commensurate with meteorological and terrain considerations." (A–93–10) In response to the NTSB's recommendations, the FAA has informed the NTSB that it is considering a special rule for air tour operators in Hawaii.

Based on the NTSB recommendations, accident investigations, and discussions with the NTSB, the FAA has identified the following as needing to be addressed:

(1) Air tour operators fly too close and too low to various attractions and land features.

(2) There is no clear definition of "suitable landing site" for helicopters.

(3) Sightseeing helicopters are operating in the avoid area of the height-speed envelope (deadman's curve) where successful autorotations are not possible.

(4) Helicopters operating along the shorelines of the Hawaiian Islands should be equipped with appropriate flotation equipment.

(5) Passengers should be briefed before flights on the use of flotation gear.

Actions Other Than Rulemaking to Address the Problems

The FAA, the State of Hawaii, and the air tour industry have been attempting to correct safety problems that affect air tour operations.

In 1986, the FAA conducted a study of helicopter sightseeing operations in Hawaii. The study team was composed of representatives from the FAA, the State of Hawaii, and industry Based on the study, recommendations were made to the State and to operators in Hawaii to improve safety and community relations. Recommendations included the following:

(1) The FAA should study the possibility of imposing limitations, through operations specifications, that would require the helicopter to be operated at a combination of height and forward speed (including hover) that would permit a safe landing in event of engine power loss, in accordance with the height-speed envelope for that helicopter under current weight and aircraft altitude. These limitations would also prevent the helicopter from being flown over areas in which a safe forced landing could not be made.

(2) The FAA should advise helicopter operators who conduct passenger-carrying operations under part 91 or part 135 that a flight (1) over an area in which a successful forced landing could not be made, or (2) at an airspeed and altitude combination that places the aircraft beyond its performance capability to successfully autorotate, would be considered a reckless operation under § 91.13 (formerly § 91.9).

The study team was also concerned about the lack of helicopter flotation equipment on some aircraft, particularly for operations along the coastlines of the islands, where cliffs and rocks make a successful autorotation to shore virtually impossible. The team believes that the shoreline must offer a reasonable chance to land safely in the event of engine failure, and that, if no such area exists, appropriate helicopter flotation equipment should be required.

Also, in 1986, the FAA conducted a joint study with the State of Hawaii on helicopter heliport and airport access. A result of that study was the Helicopter Operating Plan for Hawaii. Based on portions of that plan, the Hawaiian Helicopters Operators Association (HHOA) developed its "Fly Neighborly" program. The HHOA plan calls for voluntary compliance with a standoff distance of 1,500 feet and a minimum altitude of 1,500 feet over communities. In addition, the plan calls for a 3,000-foot standoff distance in areas of Volcanoes National Park. The HHOA program includes part 91 operators as well as part 135 certificated operators. This is a voluntary program without FAA oversight.

On January 17, 1992, the FAA issued Handbook Bulletin No. 92–01, Air Tour/ Sightseeing Operations. The bulletin advises principal operations inspectors to recommend to operators that they include procedures in their operations manuals for conducting air tour/ sightseeing operations. The bulletin also advises the inclusion of charts of air tour areas, procedures for obtaining current weather, provisions for pilot training, and other information specific to air tour operations.

In January 1994, the FAA held four public meetings in Hawaii to investigate complaints regarding flight safety, aircraft noise, and possible intrusive flights of helicopters. While the vast majority of the commenters addressed the noise issue, some commenters did raise safety issues. Some of the public meeting comments and subsequent comments submitted to the FAA highlight a number of personal experiences of individuals who witnessed helicopters flying dangerously low over scenic areas and above people and property on the ground. In some instances, witnesses claimed that the aircraft flew lower than the people who were walking on high elevation trails.

The Honolulu Flight Standards District Office, during the past 3 years, has conducted an extensive inspection and surveillance program of the air tour industry. On July 15, 1994, in response to a number of recent accidents, the FAA initiated a comprehensive review of operations and maintenance practices of the Hawaiian air tour operators. In addition, the FAA requested that all air tour operators in the State of Hawaii immediately conduct a "stand down" safety review of their operational and maintenance practices.

Need for Emergency Rulemaking

Despite the voluntary measures, the cooperation of the Hawaii air tour operators, and the FAA's inspections, the accident data show that additional measures are necessary to ensure safe air tour operations in Hawaii. The current regulatory scheme is not comprehensive enough to ensure the safety of all air tour operations in Hawaii.

Section 91.119 prescribes minimum altitudes for airplanes and helicopters that provide for the protection of persons and property on the surface. Generally, a pilot may not operate below an altitude allowing, if power failure occurs, an emergency landing without undue hazard to persons or property on the surface. Helicopters may be operated at lower altitudes than airplanes if the operation is conducted without hazard to persons or property on the surface and the pilot can conduct a safe emergency landing in the event of power failure.

Under ideal conditions, a helicopter, unlike an airplane, can land at or near zero forward speed, provided the landing area is relatively level and free of obstructions. Factors that make an emergency landing site unsuitable include obstacles, rugged terrain, congested areas and water Obstacles range from natural terrain features and

trees to buildings and utility towers with wires strung between them.

A major factor affecting safety of flight in any single engine aircraft at low altitude is the limited choice of suitable emergency landing areas. Hawaii's unique topography—active volcanoes spewing hot molten lava, sharp cliffs, cascading waterfalls, rugged coastlines, mist-shrouded mountains, dense tropical rainforests and deep, closed canyons—often complicates access to suitable emergency landing areas. The air tour accidents in Hawaii indicate that helicopter pilots have had insufficient time to locate suitable landing areas after engine power loss or other problems leading to accidents.

Based on the recent escalation of accidents caused by unsafe operating practices, and the fact that voluntary measures are insufficient, the FAA is implementing this emergency final rule as Special Federal Regulation (SFAR) No. 71.

The Special Federal Aviation Regulation

The FAA is promulgating these requirements in an SFAR, rather than a general rule, to address the unique problems associated with the Hawaiian air tour operating environment.

This emergency regulatory action establishes additional operating procedures, including minimum safe altitudes (and associated increases in visual flight rules (VFR) weather minimums), minimum equipment requirements, and operational limitations for air tour aircraft in the State of Hawaii.

Applicability and Definitions

This SFAR applies to parts 91 and 135 air tour operators in the State of Hawaii (section 1). In section 2, "air tour" is defined as any VFR sightseeing flight conducted in an airplane or helicopter for compensation or hire. "Air tour operator" is defined as any person who conducts an air tour.

Flotation Devices

The SFAR requires that any single-engine air tour helicopter flown beyond the shore of any island must be amphibious or equipped with emergency floats and approved flotation gear easily accessible for each occupant, or that each person on board the helicopter wear approved flotation gear. An amphibious helicopter or one equipped with floats will allow a safe emergency ditching. This requirement is specific to helicopters because helicopters, unlike airplanes, may sink rapidly after forced landings on water.

These requirements should reduce the risk of drowning, such as the deaths that occurred on January 25, 1993, when a helicopter, operating under part 91, crashed in deep water while on a sightseeing flight to view molten lava flowing into the ocean off the coast of Volcanoes National Park. Before the accident, the pilot had been hovering near the shoreline between 100 and 150 feet above sea level. When the pilot attempted to resume forward flight, he experienced a total left pedal failure. The pilot lost control and the helicopter landed in the ocean and sank. The helicopter was not equipped with flotation devices, and the pilot and four passengers were not wearing lifevests. Only the pilot survived. The NTSB found that a factor which contributed to the passengers' fatal injuries was the operator's failure to provide lifevests to the passengers.

In a July 14, 1994, accident, an air tour helicopter with seven people on board made a forced landing in the Pacific Ocean after losing power off Kauai's Na Pali Coast. Three passengers swam to shore and another was rescued from the water. The pilot and two other passengers drowned. The helicopter was not equipped with flotation devices, and the passengers did not have sufficient time to don the lifevests on board the helicopter.

Later, on the same day, a different air tour helicopter made a forced landing after losing power off the north coast of Molokai. All persons aboard the helicopter swam to shore and were rescued the next day. The helicopter was equipped with flotation devices, and the pilot and passengers had sufficient time to don the lifevests.

Flotation equipment on a helicopter should allow the helicopter to remain afloat long enough for the persons to egress safely; the individual flotation gear should allow the survivors an opportunity to swim to shore or to be picked up by rescue personnel. Flotation equipment/lifevests helped to ensure the survival of the passengers in the second accident on July 14.

The FAA is considering changing the rule to require that all single-engine helicopters conducting air tour operations beyond the shore of any island be amphibious or fitted with flotation devices. Therefore, the FAA is requesting comments on this possibility. At the close of the comment period, the FAA will analyze the comments received and, based on its analysis, determine if further rulemaking is necessary.

Helicopter Performance Plan

Section 4 requires that, before departure, the air tour operator must complete a performance plan for the helicopter flight. The pilot in command (PIC) is required to comply with the performance plan. The plan must be based on information in the rotorcraft flight manual (RFM), considering the maximum density altitude to which the operation is planned and must address such elements as maximum gross weight and center of gravity, maximum gross weight for hovering in or out of ground effect, and maximum combination of weight, altitude, and temperature for which height-velocity information in the RFM is valid. This requirement is necessary in light of accidents attributable to the failure of the pilot to stay outside the avoid area of the helicopter height-velocity envelope. The flight is not limited to the out-of-ground effect (OGE) ceiling, and the helicopter may be operated at a higher altitude provided no hovering is planned.

This requirement should enhance flight safety in light of certain accidents, including that which took place on May 20, 1989. On that date, an Aerospatiale AS350D was on a local sightseeing flight to view Waialae Falls with six passengers on board. After hovering at a low altitude near the falls, the pilot began a pedal turn and forward movement for the initial climb away from the falls. The main rotor revolutions per minute (rpm) decayed, and the pilot turned back toward the upper falls, where he thought he could land. However, the helicopter settled into a ravine, damaging the helicopter and injuring the pilot and passengers. The NTSB determined that the probable cause of the accident was the pilot's failure to maintain rotor rpm, while turning and taking off from a hover with a relatively heavy gross weight. Additional factors related to the accident were the high density altitude and rough/uneven (rocky) terrain in the emergency landing area.

Helicopter Operating Limitations

Section 5 requires that the PIC shall operate the helicopter at a combination of height and forward speed (including hover) that would permit a safe landing in the event of engine power loss, in accordance with the height-velocity envelope for that helicopter under current weight and aircraft altitude. This requirement is necessary to prevent pilots from hovering for periods of time beyond the performance capability of the helicopter and outside what the height-velocity diagram permits for safe operation.

This requirement prohibits aircraft from being operated in dangerous flight regimes, such as the January 25, 1993, accident discussed previously (when

the pilot was hovering at a low altitude over a lava flow). It also is intended to prevent the type of accidents that occurred on March 25, 1994, and April 18, 1994. On March 25, 1994, the pilot of a Hughes 369D helicopter operated under part 135 lost control and collided with mountainous terrain by the Puu'oo Vent in Hawaii National Park. The helicopter had become enveloped in a steam cloud at a 40-foot hover just before the pilot lost control. The helicopter was destroyed; the pilot and passengers sustained minor injuries. On April 18, 1994, a Hughes 369D helicopter lost power during an OGE hover and collided with rocky terrain below Waimea Falls, Waimea, Kauai. The helicopter was on a sightseeing flight operated under part 135. The pilot and three passengers were seriously injured. One passenger was fatally injured.

The requirement increases the possibility of safe landing in the event of engine failure. A safe landing may not be possible if the helicopter is within the avoid area of the height-velocity envelope when the engine failure occurs.

Minimum Flight Altitudes

Section 6 requires that, unless operating in compliance with an air traffic control clearance, or as otherwise authorized by the Administrator, air tour operations may not be conducted below an altitude of 1,500 feet above the surface; and closer than 1,500 feet from any person or property; or below any altitude provided by Federal statute or regulation. As noted earlier, Hawaii's unique topography often complicates access to suitable emergency landing areas. The air tour accidents in Hawaii have been characterized by insufficient time for pilots to locate suitable landing areas after engine power loss or other problems leading to accidents. The requirement to maintain an altitude of 1,500 feet above the surface is necessary for safety because it allows the pilot sufficient time to react in an emergency, to notify and instruct passengers, and to prepare for a forced landing. An aircraft operating at least 1,500 feet above the surface allows the pilot a greater opportunity to select a suitable landing site than would be the case at lower altitudes. The FAA notes that these minimum distances are consistent with HHOA's Fly Neighborly program.

The accident data also show low-flying aircraft flying VFR into instrument meteorological conditions (IMC). An additional benefit from the 1,500-foot minimum altitude will be the increased basic VFR weather minimums for these air tour operations. This provision is necessary in light of the numerous accidents that have occurred when the aircraft flew into terrain because of low visibility or because the pilot was flying too low The accident data show that this is a problem for both airplanes and helicopters. For instance, on April 24, 1987, an air tour flight operated under part 91 collided with terrain in the Waimae Canyon. Marginal visual meteorological conditions were reported in the vicinity of the accident site. The pilot and three passengers were fatally injured. In the January 25, 1993, accident, in which the helicopter crashed in deep water after hovering between 100 and 150 feet above sea level, the NTSB noted that a contributing factor to the accident was the pilot's choice of a hover altitude/position inadequate to reach a shoreline in the event of an emergency.

On June 11, 1989, a Beechcraft BE–H18, operating under part 135 on a sightseeing flight, crashed near a waterfall in the Waipio Valley of the Kohala Mountains on the island of Hawaii. After filing a VFR flight plan, the pilot had departed Hilo International Airport for Maui. The pilot entered a closed canyon and ultimately impacted the canyon wall 600 to 900 feet below the rim. The pilot and 10 passengers were fatally injured, and the airplane was destroyed by impact forces and postcrash fire. The NTSB determined that the probable cause of the accident was the pilot's improper decision to maneuver with insufficient altitude in a canyon area.

On April 22, 1992, a Beechcraft E–18S operating on a VFR air tour flight collided with mountainous terrain in Haleakala National Park in an area where fog had reduced visibility around the mountain top. The FAA had provided a full weather briefing to the pilot, including an advisory that VFR flight was not recommended over the interior sections of all islands, and a forecast indicating isolated areas of 3 miles visibility due to haze and moderate rainshowers. The aircraft was destroyed, and the pilot and eight passengers were killed. Weather reports and witness statements indicate that IMC existed in the area at the time of the accident. The NTSB determined that the probable cause of this accident was the pilot's decision to continue visual flight into IMC that obscured rising mountainous terrain and his failure to use properly available navigational information to remain clear of the island.

On September 16, 1992, an Aerospatiale AS–350B departed on a sightseeing flight even though adverse weather conditions including thunderstorms, rainshowers, and poor visibility were reported. A witness reported rainshowers and mountain obscuration about the time of the accident. He stated that he saw a helicopter flying in and out of clouds and stated that he could not understand why a helicopter would be flying so close to the mountains given the adverse weather conditions. The NTSB determined that a probable cause of the accident, which involved seven fatalities, was the pilot's inflight decision to continue VFR flight into adverse weather conditions. A factor in the accident was the pilot's inability to see and avoid the mountainous terrain due to the thunderstorms.

Briefing Passengers

Section 7 contains the requirement that passengers be briefed (in addition to §§ 91.102 and 135.117) before takeoff for an air tour flight with a flight segment beyond the ocean shore of any island. The briefing shall include information on water ditching procedures, use of personal flotation gear, and emergency egress from the aircraft. The PIC must orally brief passengers, distribute written instructions, or ensure that passengers have been briefed on emergency procedures. This provision is necessary in light of the flotation equipment requirements set forth in this emergency rule.

Related Rulemaking

This SFAR is an emergency final rule addressing air tour operations in the State of Hawaii in light of the increasing frequency of accidents. The FAA is considering other rulemaking action to address noise and other issues concerning sightseeing overflights in national parks and other scenic areas. On March 17, 1994, the FAA and the National Park Service (NPS) issued a joint advance notice of proposed rulemaking (ANPRM) (59 FR 12740) seeking public comment on general policy and specific recommendations for voluntary and regulatory actions to address the effects of aircraft overflights on national parks. The FAA is currently analyzing comments submitted in response to the ANPRM. This SFAR is an emergency rule and not a final action in response to the joint FAA/NPS ANPRM.

The promulgation of requirements and restrictions in this SFAR, including the minimum flight altitude restriction, does not preclude the FAA from revisiting the issues addressed in the SFAR. As mentioned above, changes to this SFAR may be necessitated after a review of the comments received from

related regulatory proposals. Additionally, this SFAR may be amended after consideration of the comments received on this SFAR.

Paperwork Reduction Act

This rule contains no information collection requests requiring approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act (44 U.S.C. 3507 et. seq.).

Regulatory Evaluation Summary

Introduction

Changes to Federal regulations are required to undergo several economic analyses. First, Executive Order 12866 directs each Federal agency to propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. With respect to this rule, the FAA has determined that it: (1) is "a significant regulatory action" as defined in the Executive Order; (2) is significant as defined in the DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) will have a significant impact on a substantial number of small entities; and (4) will not constitute a barrier to international trade. Therefore, a full regulatory analysis, which includes the identification and evaluation of cost-reducing alternatives to this rule, has been prepared. This regulatory evaluation summary presents a concise analysis of the costs and benefits associated with the final rule that amends the Federal Aviation Regulations by establishing certain operational, procedural, and equipment requirements for air tour operators in the State of Hawaii.

Costs

The FAA estimates the total cost of the SFAR to be about $2.0 million, with a present value of $1.8 million (7 percent discount rate), from 1995 to 1997. The FAA assumes that air tour operators will elect to have lifevests on board the helicopter rather than installing external flotation gear because the costs are dramatically lower. This present value cost includes the cost of about $190,000 to provide lifevests on the affected helicopters; the potential of $1.6 million in lost revenue to air tour operators due to minimum flight altitudes; and $10,000 for the development of a helicopter performance plan. Other requirements of the rule—helicopter operating limitations and passenger briefing—will impose little if any cost.

Benefits

Since 1982, Hawaiian air tour operators have experienced 15 accidents involving at least one serious injury or fatality where the lack of flotation gear, flying into bad weather, or flying low has played a role in the cause of the accident. These accidents have resulted in 48 fatalities and 30 injuries (16 serious and 14 minor). This evaluation divides these accidents into three categories: (1) Inadvertent air tour helicopter water landings without flotation gear; (2) air tour helicopter accidents related to flying into bad weather or flying low; and, (3) air tour airplane accidents related to flying into bad weather or flying low.

The potential benefits of preventing all potential sightseeing accidents of a similar nature over the next 3 years totals $36.8 million, with a present value of about $32.2 million, of which $13.7 million would be for the prevention of helicopter accidents and $18.6 million would be for the prevention of airplane accidents.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) helps to assure that Federal regulations do not overly burden small businesses, small nonprofit organizations, and airports located in small cities. The RFA requires regulatory agencies to review rules that may have "a significant economic impact on a substantial number of small entities." A substantial number of small entities, defined by FAA Order 2100.14A, "Regulatory Flexibility Criteria and Guidance," is more than one-third, but not less than 11, of the small entities subject to the existing rule. To determine if the rule will impose a significant cost impact on these small entities, the annualized cost must not exceed the annualized cost threshold established in FAA Order 2100.14A.

Small entities potentially affected by the final rule are small on-demand air tour operators in Hawaii using helicopter and fixed-wing aircraft. The FAA assumes that air tour operators will elect to have lifevests on board the helicopter rather than installing external flotation gear because the costs are dramatically lower. The FAA estimates that the annualized cost associated with acquiring lifevests for all helicopter occupants is about $127 per seat. This estimate incorporates the cost of purchasing the lifevests, maintenance, and the associated weight penalty. Also, the FAA estimates that the annualized cost of the 1,500-foot minimum altitude requirement is about $989 per seat. This cost incorporates the estimated lost profits for days when tour operations are prohibited due to inclement weather.

FAA Order 2100.14A defines small on-demand operators as those operating with a fleet of nine or fewer aircraft, which includes 37 (7 fixed-wing and 30 helicopter) of the 38 air tour operators in Hawaii. The annualized cost threshold for small operators is $4,700 in 1994 dollars. The FAA has determined that the final rule will have a significant economic effect on 6 of the 7 fixed-wing air tour operators and 25 of the 30 affected helicopter air tour operators. The final rule will impose costs greater than the annualized cost threshold of $4,700 for all affected operators except for six of the small air tour operators.

Due to the significant economic impact of the final rule on a substantial number of small entities, the FAA examined an alternative minimum altitude requirement for the affected operators. The FAA evaluated various minimum altitude requirements including 500, 800, and 1,000 feet so as to reduce the annualized cost of the final rule on individual operators. The FAA has determined that a minimum altitude requirement of 500 feet will be necessary to lower the annualized cost of the final rule below the $4,700 threshold for most air tour operators. (Under § 91.155, pilots conducting VFR flights more than 1,200 feet above the surface in class G airspace must maintain a 500-foot vertical clearance below the clouds. Pilots operating VFR in class G airspace 1,200 feet or less above the surface must remain clear of clouds.) The FAA estimates that the annualized cost of a 500-foot minimum altitude requirement is about $81 per seat. Including the cost of the lifevests, the FAA has determined that the combined cost of the lifevests and the alternative requirement for a 500-foot minimum altitude will lower the annualized cost below the $4,700 threshold for all fixed-wing air tour operators and 26 of the 30 helicopter air tour operators.

The FAA has evaluated the level of safety for the 1,500-foot minimum altitude requirement in the final rule and that provided by a 500-foot minimum altitude requirement. Although the 1,500-foot minimum altitude requirement has a significant economic impact on a substantial number of small entities, it provides

operational safety superior to that provided by a 500-foot minimum altitude and is necessary in the public interest. With the 1,500-foot minimum altitude, fixed-wing aircraft and helicopters have a longer power off gliding time, and the pilots are better able to select a suitable landing area in the event of a power failure. Hawaii's unique topography often complicates access to suitable emergency landing areas. The air tour accidents in Hawaii have been characterized by insufficient time for pilots to locate suitable landing areas after engine power loss or other problems leading to accidents. Therefore, the additional safety margins at the 1,500-foot minimum altitude should be provided when conducting passenger flights.

International Trade Impact Analysis

The SFAR will not have any impact on international trade because the affected operators do not compete with foreign operators. The SFAR will not constitute a barrier to international trade, including the export of U.S. goods and services to foreign countries and the import of foreign goods and services to the United States.

Good Cause for Immediate Adoption

The FAA is implementing this emergency final rule due to the recent escalation of fatal air tour accidents. Despite voluntary measures, the cooperation of the Hawaii air tour operators, and the FAA's inspections, the accident data show that voluntary measures and existing regulations are insufficient to ensure safe air tour operations in Hawaii. The recent accidents discussed above indicate an urgent safety problem that cannot be adequately addressed solely by enforcement of existing regulations. For this reason, I find that notice and public procedure are impracticable and contrary to the public interest. However, interested persons are invited to submit such comments as they desire regarding this SFAR. Communications should identify the docket number and be submitted in triplicate to the Rules Docket address noted above. All communications received on or before the close of the comment period will be considered by the Administrator, and this SFAR may be changed in light of the comments received. All comments will be available, both before and after the closing dates for comments, in the Rules Docket for examination by interested parties.

International Civil Aviation Organization and Joint Aviation Regulations

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with the Standards and Recommended Practices of the International Civil Aviation Organization to the maximum extent practicable. The FAA is not aware of any differences that this amendment will present.

Federalism Implications

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this regulation will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this regulation is a significant regulatory action under Executive Order 12866. In addition, the FAA certifies that this regulation will have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This regulation is considered significant under DOT Regulatory Policies and Procedures. A final regulatory evaluation of the regulation, including a Regulatory Flexibility Determination and Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under "FOR FURTHER INFORMATION CONTACT."

List of Subjects

14 CFR Part 91

Aircraft, Airmen, Aviation safety

14 CFR Part 135

Air taxi, Aircraft, Airmen, Aviation safety

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends parts 91 and 135 of the Federal Aviation Regulations (14 CFR parts 91 and 135) as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. app. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 stat. 1180); 42 U.S.C. 4321 et seq.; E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970 Comp., p. 902; 49 U.S.C. 106(g).

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

2. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. app. 1354(a), 1355(a), 1421 through 1431, and 1502; 49 U.S.C. 106(g).

3. In parts 91 and 135, Special Federal Aviation Regulation No. 71, the text of which will appear at the beginning of part 91, is added to read as follows:

SFAR No. 71—Special Operating Rules for Air Tour Operators in the State of Hawaii

Section 1. Applicability. This Special Federal Aviation Regulation prescribes operating rules for airplane and helicopter visual flight rules air tour flights conducted in the State of Hawaii under parts 91 and 135 of the Federal Aviation Regulations. This rule does not apply to flights conducted in gliders or hot air balloons.

Section 2. Definitions. For the purposes of this SFAR:

"Air tour" means any sightseeing flight conducted under visual flight rules in an airplane or helicopter for compensation or hire.

"Air tour operator" means any person who conducts an air tour.

Section 3. Helicopter flotation equipment. No person may conduct an air tour in Hawaii in a single-engine helicopter beyond the shore of any island, regardless of whether the helicopter is within gliding distance of the shore, unless:

(a) The helicopter is amphibious or is equipped with floats adequate to accomplish a safe emergency ditching and approved flotation gear is easily accessible for each occupant; or

(b) Each person on board the helicopter is wearing approved flotation gear.

Section 4. Helicopter performance plan. Each operator must complete a performance plan before each helicopter air tour flight. The performance plan must be based on the information in the Rotorcraft Flight Manual (RFM), considering the maximum density altitude for which the operation is

planned for the flight to determine the following:

(a) Maximum gross weight and center of gravity (CG) limitations for hovering in ground effect;

(b) Maximum gross weight and CG limitations for hovering out of ground effect; and,

(c) Maximum combination of weight, altitude, and temperature for which height-velocity information in the RFM. is valid.

The pilot in command (PIC) must comply with the performance plan.

Section 5. Helicopter operating limitations. Except for approach to and transition from a hover, the PIC shall operate the helicopter at a combination of height and forward speed (including hover) that would permit a safe landing in event of engine power loss, in accordance with the height-speed envelope for that helicopter under current weight and aircraft altitude.

Section 6. Minimum flight altitudes. Except when necessary for takeoff and landing, or operating in compliance with an air traffic control clearance, or as otherwise authorized by the Administrator, no person may conduct an air tour in Hawaii:

(a) Below an altitude of 1,500 feet above the surface over all areas of the State of Hawaii, and,

(b) Closer than 1,500 feet to any person or property; or,

(c) Below any altitude prescribed by federal statute or regulation.

Section 7. Passenger briefing. Before takeoff, each PIC of an air tour flight of Hawaii with a flight segment beyond the ocean shore of any island shall ensure that each passenger has been briefed on the following, in addition to requirements set forth in § 91.107 or 135.117:

(a) Water ditching procedures;

(b) Use of required flotation equipment; and

(c) Emergency egress from the aircraft in event of a water landing.'

Section 8. Termination date. This Special Federal Aviation Regulation expires on October 26, 1997.

Issued in Washington, DC, on September 22, 1994.

David R. Hinson,

Administrator.

[FR Doc. 94–23840 Filed 9–22–94; 11:42 am]

BILLING CODE 4910–13–M

Part 135
SFAR 71

SFAR 71
Issued: 12/12/95
Published: 12/20/95 (60 FR 65832)

[See Amendment 135-58]

Federal Register

Friday,
September 29, 2000

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 91 and 135
Air Tour Operators in the State of Hawaii; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91 and 135

[Docket No. 27919; Special Federal Aviation Regulation (SFAR 71)]

RIN 2120–AG–44

Air Tour Operators in the State of Hawaii

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: On August 21, 2000, the FAA proposed to extend for 3 years Special Federal Aviation Regulation (SFAR) 71, which established certain procedural, operational, and equipment requirements for air tour operators in the State of Hawaii. This final rule, which adopts the proposals, will provide additional time for the agency to complete and issue a notice of proposed rulemaking for a national rule that would apply to all air tour operators. The FAA anticipates that the national rule, when finalized, would replace SFAR 71, which would then be rescinded. Thus the FAA is extending SFAR 71 for another 3 years to maintain the current requirements for the safe operation of air tours in the airspace over the State of Hawaii and provide the additional time necessary to issue the national rule.

DATES: This final rule is effective on October 26, 2000.

FOR FURTHER INFORMATION CONTACT: Gary Davis, Air Transportation Division, AFS–200, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591; Telephone (202) 267–8166.

SUPPLEMENTARY INFORMATION:

Availability of the Final Rule

You may obtain an electronic copy of this document using a modem and suitable communications software from the FAA regulations section of the FedWorld electronic bulletin board service (telephone: (703) 321–3339).

Internet users may reach the FAA's web page at *http://www.faa.gov/avr.arm.nprm/nprm/.htm* or the GPO's web page at *http://www/access.gpo.gov/nara* to access recently published documents.

You may also obtain a copy of this rule by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–9677. Requests should be identified by the docket number of this rule.

Small Entity Inquires

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires the FAA to comply with small entities requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official.

Internet users can find additional information on SBREFA on the FAA's web page at http://www.faa.gov/avr/arm/sbrefa.htm.

Background

Since 1980, the air tour industry in the State of Hawaii has grown rapidly, particularly on the islands of Oahu, Kauai, Maui, and Hawaii. The growth of the tourist industry, the beauty of the islands, and the inaccessibility of some areas on the islands generated significant growth in the number of air tour flights. In 1982, there were approximately 63,000 helicopter and 11,000 airplane tour flights. By 1991, these numbers had increased to approximately 101,000 for helicopters and 18,000 for airplanes.

The growth of the air tour sightseeing industry in Hawaii has been associated with an escalation of accidents. During the 9 years between 1982 and 1991, there were 11 air tour accidents with 24 fatalities. The accident data shows an escalation of accidents in the 3-year period between 1991 and 1994, during which time there were 20 air tour accidents with 24 fatalities. The apparent causes of the accidents ranged from engine power loss to encounters with adverse weather. Contributing factors to the causes and seriousness of accidents were: Operation beyond the demonstrated performance envelope of the aircraft, inadequate preflight planning for weather and routes, lack of survival equipment, and flying at low altitudes (which does not allow time for recovery or forced landing preparation in the event of a power failure). Despite voluntary measures taken by some Hawaii air tour operators and an increase in FAA's inspections, a rise in the number of accidents occurred, indicating a need for additional measures to ensure safe air tour operations in Hawaii.

On September 26, 1994, the FAA published the emergency final rule, SFAR No. 71 (59 FR 49138). This action was taken because of the increase in the number of fatal accidents involving air tour aircraft during the period 1991–1994 and the causes of those accidents. The emergency regulatory action established additional operating procedures, including minimum safe altitudes (and associated increases in visual flight rules (VFR) weather minimums), minimum equipment requirements, and operational limitations for air tour aircraft in the state of Hawaii. On October 30, 1997, SFAR 71 was extended until October 26, 2000.

Since the FAA believes that SFAR 71 has been successful in preventing further accidents, the FAA is developing a national air tour safety rule that would address similar issues identified in SFAR 71. This proposal for a national rule will also be responsive to NTSB comments and will consider issues raised by commenters who responded to SFAR 71 in 1994. The FAA still anticipates that the national rule would replace SFAR 71. This final rule extends SFAR 71 for an additional 3 years, which will allow time to issue the national rule, applicable to all air tour operators concerning air tour safety.

Comments on the Extension of SFAR 71

As stated above, SFAR was extended in October 1997 until October 2000. The FAA published that extension as an interim final rule and asked for comments on the extension. The FAA received four comments on the interim final rule; all four supported the extension of SFAR 71. Commenters included two individuals, a National Park Service Superintendent, and the Director of Transportation for the State of Hawaii.

On August 21, 2000, the FAA issued and subsequently published at 65 FR 51511 (August 23, 2000), a notice of proposed rulemaking to extend SFAR 71 until October 26, 2003. One comment was received on the proposal.

Blue Hawaiian Helicopters comments that although there has been ample time for the FAA to receive input from Hawaii air tour operators and pilots, effective communication has not occurred. This commenter also states that some air tour pilots believe the altitude restrictions of SFAR 71 may have contributed to the three accidents that have occurred since the SFAR was adopted in 1994. Blue Hawaiian Helicopters also reports that at a recent meeting with the FAA in Hawaii the decision was made to form an air tour safety working group comprised of FAA representatives and an operator and pilot from each of the Hawaiian islands. The commenter applauds this decision as it will provide a forum leading to a safer tour environment for the flying public.

FAA Response: The FAA justified its promulgation of the emergency final rule, SFAR 71, based on the large number of accidents that occurred in Hawaii between 1982 and 1991. Following the publication of that emergency final rule, the FAA determined that rulemaking was needed to ensure the safety of all air tour operations. Thus the FAA dedicated rulemaking resources to the development of a national air tour safety rule. By definition, SFAR's are not permanent regulations. The FAA intends to replace SFAR 71 with a national rule. The interim final rule that extended SFAR 71 until October 26, 2000, received 4 comments; all of the commenters supported the extension of SFAR 71.

A final report on the causes of the three accidents that have occurred in Hawaii since 1994—June 28, 1998, September 28, 1999, and July 21, 2000—has not been issued by the National Transportation Safety Board. Therefore, it would be premature for the FAA to comment on the causes of these accidents. Nevertheless, the complete accident history of tour operations in Hawaii supports the extension of SFAR 71.

The FAA welcomes the suggestion of an air tour safety working group and expects that the group will maintain a balanced representation of the interested parties.

Environmental Review

In accordance with FAA Order 1050.1D, the FAA has determined that this proposed rule is categorically excluded from environmental review under section 102(2)(C) of the National Environmental Policy Act (NEPA). The original SFAR 71 established operating procedures, including minimum safe altitudes, minimum equipment requirements and operational limitations for air tour aircraft in the State of Hawaii. The proposed rule would extend SFAR 71 for 3 years, thereby maintaining the same requirements. The extension of SFAR 71 will not involve any significant impacts to the human environment and the FAA has determined that there are no extraordinary circumstances.

Regulatory Evaluation Summary

SFAR 71 established certain procedural, operational, and equipment requirements for air tour operators operating in the State of Hawaii. Compliance with SFAR 71 was estimated to increase total costs approximately $2.1 million, in 1994 dollars, over the three year period, 1994 to 1997. Most of the increase in costs was associated with lost revenue that resulted from tour cancellations when the new minimum flight altitudes could not be achieved. Based on data identified during the promulgation of SFAR 71, the FAA estimated that the cost associated with revenue loss totaled approximately $1.9 million. Additional costs associated with SFAR 71 included $201,000 to provide life vests on subject helicopters and $10,000 for the development of a helicopter performance plan. The estimated potential safety benefits associated with SFAR 71 totaled approximately $33.7 million over three years. A copy of the Final Regulatory Evaluation, Final Regulatory Flexibility Determination, and Trade Impact Assessment completed for the original SFAR was placed in the docket.

Because this final rule extends SFAR 71, there is no additional annual cost associated with it. The FAA believes that the extension of SFAR 71 would continue to prevent accidents and provide additional benefits.

SFAR 71 was considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) because it was issued originally as an emergency final rule. However, this final rule extending SFAR 71 is not considered significant.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes "as 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 Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their action. 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 would 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.

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 Act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA's original regulatory flexibility analysis indicated that SFAR 71 would impose a "significant economic impact on a substantial number of small entities." (See the copy of the original Regulatory Flexibility Determination included in the docket.)

Although the FAA has issued a number of "deviations" since the issuance of the SFAR, the overall impact on small entities remains significant. Although this final rule only extends the current rule, the effect of the extension of SFAR 71 is still significant for small entities. Accordingly, the FAA certifies that this extension has a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or 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. In addition, consistent with the Administration's belief in the general superiority and desirability of free trade, it is the policy of the Administration to remove or to diminish to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods to foreign countries and barriers affecting the import of foreign goods and services into the United States.

In accordance with the above statute and policy, the FAA has assessed the potential effect of this final rule and has determined that it will have only a domestic impact and therefore no effect on any trade-sensitive activity.

Paperwork Reduction Act

SFAR 71 contains information collection requirements, specifically in Section 6, Minimum flight altitudes, and Section 7, Passenger briefing. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA submitted these requirements to OMB. As a result, an emergency clearance of the information collection requirement (No. 2120–0620) has been approved through February 28, 2001.

The original accounting for the paperwork burden was as follows. SFAR 71, effective on October 26, 1994, applies to air tour operators in the state of Hawaii. Under the SFAR, both Part 91 and Part 135 operators are required to

provide a passenger safety briefing on water ditching procedures, use of required flotation equipment, and emergency egress from the aircraft in event of a water landing. The FAA estimates that 100,000 air tour operations are conducted annually by 35 operators, that each safety briefing takes 3–4 minutes, and that the cost of the briefing is $10.00 an hour. Using these numbers, 400,000 minutes=6,667 × $10.00 equals $66,667.00, or approximately $.70 per flight.

To account for the deviation information collection requirement, two calculations must be performed. First, operators requested deviations to 1,000 feet, and second to 500 feet. The FAA granted, 1,000 ft. deviations to approximately 35 operators. It is estimated that the preparation of a deviation request took each operator 2 hours at $15.00 an hour for a total of approximately $1,050.00. The cost for the government to review the deviations is estimated to be 1 hour of review and operations preparation using 35 hours of inspector time or approximately $1,750.00 in costs. The 500 feet deviation requests cost the operators 35 × 1 hour at $15.00 per hour or $525.00. Cost of an inspector's review is estimated at 35 × ½ hour or $875.00. In addition, it is necessary to include the costs for FAA inspectors checking pilots on specific sites for the 500 feet deviation, and the cost for operators' check pilots to check line pilots. The former is estimated to be 35 × 3 hours at an operator/aircraft cost of $250.00 or $26,250.00. The cost to check line pilots is estimated to be 100 × 1 hour × $250.00 or $25,000.00. The cost to the government (inspectors' times) for all deviations is estimated to be 35 × 3 hours × $50.00 or $5,250.00.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, 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, or tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 240(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.

The FAA has determined that this rule does not contain any Federal intergovernmental mandates, but does contain a private sector mandate. However, because expenditures by the private sector will not exceed $100 million annually, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Federalism Implications

The regulations herein will not have substantial direct effects of the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, the FAA certifies that the regulation will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects

14 CFR Part 91

Aircraft, Airmen, Aviation safety.

14 CFR Part 135

Air taxi, Aircraft, Airmen, Aviation safety.

The Amendment

The Federal Aviation Administration amends 14 CFR parts 91 and 135 as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46502, 46504, 46506–46507, 47122, 47508, 47528–47531.

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON-DEMAND OPERATIONS

2. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44709, 44711–44713, 44715–44713, 44715–44717, 44722.

3. In parts 91 and 135, SFAR No. 71, Special Operating Rules For Air Tour Operators In The State Of Hawaii, Section 8 is revised to read as follows:

SFAR NO. 71—Special Operating Rules for Air Tour Operators in The State of Hawaii

* * * * *

Section 8. Termination date. This Special Federal Aviation Regulation expires on October 26, 2003.

Issued in Washington, DC, on September 26, 2000.

Jane F. Garvey,

Administrator.

[FR Doc. 00–25139 Filed 9–27–00; 11:26 am]

BILLING CODE 4910–13–M