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SFAR 71-1

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Part V

Department of Transportation

Federal Aviation Administration

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91 and 135

[Docket No. 27919; Special Federal Aviation Regulation (SFAR) No. 71–1]

RIN 2120–AG44

Air Tour Operators in the State of Hawaii

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Interim rule; disposition of comments; and request for comments on a draft Environmental Assessment.

SUMMARY: On September 26, 1994, the FAA issued an emergency final rule as SFAR 71, which established certain procedural, operational, and equipment requirements for air tour operators in the State of Hawaii. The final rule was effective October 26, 1994; the FAA invited public comments on the rule until December 27, 1994. This document responds to public comments and extends the expiration date for SFAR 71 until October 26, 2000. This action will ensure that regulatory requirements for the safe operation of air tours in the airspace over the State of Hawaii remain in effect.

DATES: Comments must be received on or before December 29, 1997. This interim rule is effective October 26, 1997.

ADDRESSES: Comments on this interim rule should be mailed 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 may also be sent electronically to the Rules Docket by using the following Internet address: 9–NPRM–CMTS@mail.faa.dot.gov. Comments must be marked as Docket No. 27919. Comments may be examined in Room 915G on weekdays between 9:00 a.m. and 5:00 p.m., except on federal holidays.

FOR FURTHER INFORMATION CONTACT: For a copy of this rule, contact the Office of Rulemaking at (202) 267–9677. For technical questions, contact David Metzbower, Air Transportation Division, AFS–200, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591; Telephone (202) 267–3724.

SUPPLEMENTARY INFORMATION:

Availability of Interim Rule

Any person may obtain a copy of this interim 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 proposal.

An electronic copy of this interim rule may be downloaded using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (703–321–3339), or the Federal Register's electronic bulletin board service (telephone 202–512–1661). Internet users may reach the FAA's web page at http://www.faa.gov, or the Federal Register's page at http://www.access.gpo.gov/su_docs, for access to recently published rulemaking documents.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires the FAA to report inquiries from small entities concerning information on, and advice about, compliance with statutes and regulations within the FAA's jurisdiction, including interpretation and application of the law to specific sets of facts supplied by a small entity.

The FAA's definitions of small entities may be accessed through the FAA's web page (http://www/faa.gov/avr/arm/sbrefa.htm), by contacting a local FAA official, or by contacting the FAA's Small Entity Contact listed below.

If you are a small entity and have a question, contact your local FAA official. If you do not know how to contact your local FAA official, you may contact Charlene Brown, Program Analyst Staff, Office of Rulemaking, ARM–27, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 1–888–551–1594. Internet users can find additional information on SBREFA in the "Quick Jump" section of the FAA's web page at http://www.faa.gov and may send electronic inquiries to the following Internet address: 9-AWA-SBREFA@faa.dot.gov

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 of 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 tour flights. By 1991, these numbers had increased to approximately 101,000 for helicopters and 18,000 for airplanes. Currently in Hawaii, the air tour industry carries about 500,000 passengers annually. The Honolulu Flight Standards District Office reports that currently twenty-six operators conduct air tours under Part 135, using 77 aircraft of which 18 are airplanes and 59 are helicopters. Approximately 9 operators conduct air tours under Part 91 using approximately 16 aircraft, of which 9 are airplanes and 7 are helicopters.

History and Escalation of Accidents

The growth of the air tour sightseeing industry in Hawaii has been associated with an escalation of accidents. During the 9-year period 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, the escalation of accidents occurred, indicating a need for additional measures to ensure safe air tour operations in Hawaii.

On September 26, 1994, the FAA published an emergency final rule as Special Federal Aviation Regulation (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.

The comment period for the emergency rule closed on December 27, 1994.

Discussion of Comments

General

The FAA received more than 200 comments on the SFAR. Commenters included the National Transportation Safety Board (NTSB), state and local governments, air tour operators, helicopters associations, tourism-related organizations, citizen and environmental groups, and individuals. The most controversial provision of the SFAR was the minimum altitude requirement.

The following discussion contains a summary of comments according to the specific subject areas defined in the SFAR. It should be noted that comments which were not relevant to these subject areas or were considered to be speculative are not included in this discussion.

Because of the time that has expired since the publication of SFAR 71, some of these comments may not have the same relevance because of subsequent events. In addition, air tour operators and the FAA have worked together to mitigate concerns that the rule is overly burdensome. The FAA's response to these comments is summarized at the end of the comment discussion.

Safety Record

Several commenters, including the Hawaii Helicopter Operators Association (HHOA) and the Helicopter Association International (HAI), state that Hawaii's air tour operators have a good safety record that exceeds that of helicopter operations in other parts of the United States, and a safety record that exceeds the national average of general aviation aircraft. Other commenters say that the accident rate is low considering the number of flight hours and the number of passengers flown. HHOA and others state that recent accidents were caused by pilot error and mechanical failure, and not the altitude at which the aircraft were operated.

Two comments were received from persons who were personally involved in air tour accidents in Hawaii. In addition to asking that all of the safety tools, such as flotation devices for aircraft and passengers, be used, they also comment on the lack of rescue support, which cost several lives in one accident. One of these individuals suggests that the SFAR should apply everywhere, commenting that "Water, helicopters, floats, and life jackets do not perform differently from one state to another."

Need for Emergency Rulemaking

Several commenters state that there is little supporting data to justify the FAA's issuance of the SFAR under emergency rulemaking provisions.

In a petition to the FAA to withdraw or stay the SFAR (which was also submitted as a comment), HHOA states that, because there was no true emergency, the FAA should not have used the "good cause" exception of the Administrative Procedures Act (APA) to avoid rule issuance without notice and public comment. Some commenters believe that the real reason for SFAR 71 is noise, not safety.

Applicability and Definitions

Some commenters, including HHOA, contend that states such as Alaska, California, and Oregon have rugged coastlines and terrain that pose the same hazards to air tours as Hawaii's terrain. These commenters posit that the SFAR, which is being imposed only on Hawaii, is discriminatory and puts the air tour industry in Hawaii at a competitive disadvantage.

Flotation Devices

HHOA states that limiting the flotation requirement to helicopters is arbitrary and capricious because the SFAR assumes that only helicopters sink rapidly after forced landings on water.

Other commenters favor requiring both flotation equipment and the wearing of personal flotation gear. The NTSB; the Department of Transportation Airports Division for the State of Hawaii; and the Sierra Club Legal Defense Fund point out that because helicopters sink more quickly in water, the use of external flotation equipment would provide the necessary time for passengers to exit the helicopter.

The NTSB states that at its public hearing on air tour safety, air tour operators and helicopter manufacturers expressed concern about the capabilities of airframe-mounted helicopter flotation systems. They point out that a helicopter's emergency water entry may easily exceed the certificated vertical speed values of current systems and result in failure of this equipment to perform as expected. In its comment, the NTSB recommends that SFAR No. 71 be modified to provide for two redundant means of occupant survival: airframe-mounted flotation equipment and the wearing of a life preserver by each person while on board.

Helicopter Performance Plan

One operator contends that this requirement is not necessary because § 91.9 requires compliance with the operating limitations specified in the approved rotorcraft flight manual (RFM). Also, § 135.345(b)(2) requires aircraft performance characteristics to be part of an operator's required training program.

HHOA states that this requirement would, in effect, result in a one-state certification program because the information requested in the operators' certification performance plans would not be required elsewhere in the United States.

Helicopter Operating Limitations

HAI states that the operating limitations could adversely affect operations that are routinely performed in or near the curve, such as external load lifting, and that operating within the height-velocity curve should be left to the discretion of the operator.

Several commenters, including HHOA, contend that this requirement already exists in 14 CFR section 91.9, which states that the shaded areas or dead-man's curve area is to be avoided except under specific circumstances.

The NTSB states that comments from operators and manufacturers at its public hearing on air tour safety question whether helicopter operating limitations should be placed solely on air tour operators in Hawaii, while non-tour operations in Hawaii and operators in other states remain unregulated in this area. The NTSB recommends that the FAA conduct discussions with interested parties to resolve the issue of helicopter height-velocity diagram performance.

Standoff Distance

HHOA states that under the 1,500 foot lateral clearance (standoff) requirement, pilots would be forced to fly farther offshore than now permitted, increasing the power-off glide distance to shore in the event of an engine failure. HHOA adds that this requirement will cause two-way air traffic congestion in and over scenic canyons by forcing pilots to follow the midline of the canyon, thereby further decreasing the pilot's ability to keep a close visual surface reference sufficient to safely control the helicopter.

Minimum Flight Altitudes

A number of commenters point out that the 1,500 foot above ground level (AGL) requirement does not take into account cloud cover and weather conditions in Hawaii. Commenters say that the requirement will increase the probability of flying into bad weather, and prevent helicopters from flying below the clouds where they can maintain visual reference to the ground.

The NTSB believes that the requirement may lead to increased operating time over water, difficulties in regulatory enforcement, and possible disregard of the FAA regulation.

Some commenters state that the SFAR's minimum altitude and standoff requirements should not apply to fixed-wing aircraft. One operator says that accidents cited in the SFAR were due to pilot error and disregard for existing regulations which already prevent fixed-wing VFR flights into IMC conditions. HHOA adds that requiring helicopters to fly at 1,500 feet forces pilots to operate helicopters as fixed-wing aircraft which is contrary to the certification requirements of helicopters.

Many commenters, including the NTSB, HHOA, ALPA, and the Chamber of Commerce of Hawaii, state that the minimum altitude requirement will cause air tour traffic to be concentrated at the same altitude, increasing the likelihood of midair collisions.

Several commenters, including HHOA, state that the minimum altitude requirement will create additional hazards for emergency landings. At low altitudes, pilots are better able to spot a suitable landing site; at higher altitudes it takes longer to land and shut off the engine, thereby increasing the risk of a fire and further mechanical failure. One operator states that the minimum altitude requirement is not needed because § 91.119 says that no person may operate an aircraft below an altitude that does not allow for an emergency landing without undue hazard to persons or property on the surface.

Visibility and Cloud Clearance

Several commenters point out that the minimum altitude requirements in the SFAR do not take into account changing cloud cover and weather conditions in Hawaii which affect pilots' visibility and ability to maintain required distances from clouds. NTSB notes that the 1,500 foot altitude may cause encounters with cloud layers not found at lower altitudes. Some commenters say that pilots would best avoid unforeseen weather conditions and maintain sufficient visibility by flying below the clouds and maintaining visual reference to the ground.

Briefing Passengers

Commenters on this issue express support for the requirement. HAI states that although passenger briefing is already standard practice for most operators, the requirement will ensure that passenger briefing takes place.

Costs

Many commenters state that the SFAR will devastate Hawaii's helicopter tourist industry and related businesses, many of which are small businesses. Commenters say that over 650,000 visitors take helicopter tours annually, and that the helicopter tour industry contributes $100 million per year to Hawaii's economy. Several tourism organizations say that since the SFAR took effect, bookings dropped 40 to 50 percent which is equivalent to an annual revenue loss of $35 million. Some of these commenters add that the SFAR will impact 1,000–2,000 people employed by the helicopter tour industry and related businesses. A pilot commented that the air tour industry raises $100 million annually, and noted that this represents a considerable tax contribution to the State of Hawaii. Commenters on this issue included hotel associations, a trade association, a visitors' bureau, a publishing company, and a resort association. A number of form letters were received expressing that Hawaii has an unemployment problem and that this rule will be tantamount to taking away jobs. A different form letter stated that the rule is excessive, that most tour operators are "eco-friendly", and that air tour operators perform valuable community assistance in supporting disaster assistance.

Several operators cite revenue losses since the SFAR took effect due to the necessity of grounding flight operations when cloud ceilings were below 1,500 feet AGL. Several commenters, including HAI, contend that the SFAR underestimates the number of no-fly days tour operators experience because of low cloud ceilings.

HAI quotes from the SFAR, which states ". . . although the 1,500 foot minimum altitude requirement has a significant economic impact on a substantial number of small entities, it provides superior operational safety." HAI says that this equates to the notion of "overly burdening" these same small entities.

Monitoring, Enforcement, and Voluntary Efforts

Some commenters, including HAI, point out that better enforcement of existing regulations would help prevent air tour accidents and that Hawaii's FSDO staff should be increased for this purpose. HHOA adds that air safety would be improved if expanded weather operations were provided by more than the one Flight Service Station in Honolulu.

Some commenters state that the helicopter air tour industry is already using voluntary measures to ensure safety and reduce noise. An operator, the Kauai County Council, and the Maui Air Traffic Association say that HHOA's "Fly Neighborly" program, which recommends a 1,500 foot minimum altitude, is a good means to ensure voluntary compliance with existing regulations.

Environmental Impacts

A number of commenters state that the minimum altitude should be 2 miles, not 1,500 feet. These commenters cite the value of the wilderness experience and the protection of wildlife as justification for banning flights over national parks in Hawaii. They urge the FAA to make the SFAR permanent.

One commenter who lives 14 miles from Kahului Airport expresses concern that in an emergency, a helicopter with little altitude would be forced to land near her house and urges enforcement of the 1,500 foot restriction. A major environmental association states that deviations from the rule should only be allowed for reasons of safety.

Other commenters state that the air tour industry is growing so rapidly in Hawaii that private heliports are springing up, allowing even more uncontrolled growth. Therefore, more controls than are provided by SFAR 71 may be needed.

The docket contains comments from several neighborhood associations who comment that the SFAR is forcing tours to be rerouted over their property, that the FAA is not enforcing the 1,500 foot restriction for all operators, that all pilots conducting air tour operations should be required to have Part 135 certificates, and that the FAA should implement a system for tracking violators. One association suggests a $2,000 fine, per violation, per day, for each offender.

FAA's Response

The FAA finds that the issuance of SFAR 71 is justified by the accidents that occurred from 1982–1991. The Court of Appeals for the Ninth Circuit supported the FAA's finding by holding that the FAA had good cause for emergency rulemaking because of the increase in recent fatal accidents (U.S. Court of Appeals for the Ninth Circuit, No. 94–70703, March 29, 1995; *Hawaii Helicopter Operators* v. *Federal Aviation Administration*, 51 F. 3d 212 (9th Cir. 1995). Moreover, the FAA finds that the rule has been successful in accident prevention. Since its issuance, there have been only three incidents—

all engine failures that landed safely with no injuries.

One of the most contentious aspects of the SFAR for operators was the minimum operating altitude. The FAA, after working closely with air tour operators, believes that this problem has been somewhat mitigated. Since 1994, the FAA has allowed deviations from SFAR 71 for the majority of air tour operators. Air tour operators of fixed-wing aircraft have been granted deviations to conduct air tours at a minimum altitude of 1,000 feet; air tour operators of single-engine helicopters have been granted deviations to conduct air tours at a minimum of 500 feet. The use of deviations has provided separation between the fixed-wing aircraft and helicopters around the scenic areas where the traffic is the most dense. The FAA has provided an equivalent level of safety to that of the higher altitude by additional safety measures for those air tour operators. Each air tour operator that is granted a deviation from the higher altitude is evaluated on a case by case basis. Each deviation is site-specific and allows operation only over areas of raw terrain (areas devoid of any persons, vessels, vehicles or structure). The altitude over populated areas and other than raw terrain remains at 1500 feet. The pilots for each respective operator must demonstrate knowledge of the specific sites during FAA flight checks at each specific site. Also during those flight checks, the pilots must demonstrate the ability to successfully autorotate to an alternate emergency landing area at each specific site.

In response to the comments on costs, the FAA believes that that the SFAR has not had a direct impact on the viability of the air tour industry in Hawaii. Because of the willingness of the air tour operators to work with FAA, viable air tours have been created without an adverse impact on safety. It is important to remember that these comments on costs were made immediately following the issuance of the SFAR and before the deviations were in place.

In response to comments suggesting that the purpose of SFAR 71 was to mitigate noise, the FAA reiterates its strong statement made in the emergency final rule that the purpose of that rulemaking was for reasons of safety.

In response to comments on flotation devices and performance flotation gear, the FAA has by operations specifications required each helicopter operator to require passengers to wear personal flotation gear when operating over water whether or not the helicopter is equipped with exterior flotation devices.

The FAA has prepared a draft Environmental Assessment (EA) which addresses the environmental comments previously submitted during the emergency rulemaking and analyzes the environmental impacts of this rule, the extension of SFAR 71.

With the rulemaking, the FAA will extend SFAR 71 for an additional 3 years. During this time the FAA intends to issue a notice of proposed rulemaking which will apply to all air tour operators. This national rule will be responsive to NTSB comments and those operators who commented that the SFAR was discriminatory against operators in Hawaii. The proposed rulemaking will consider some of the same issues that commenters have noted in responding to SFAR 71; in this context, the comments on SFAR 71 have been helpful to the FAA. Since the national air tour rulemaking is not yet ripe, the FAA cannot divulge details of the proposed rule, but does encourage those persons who commented on SFAR 71 to submit comments to the proposed national rule when it is published. The FAA anticipates that the national rule, when finalized, will replace SFAR 71–1, which would then be rescinded.

Environmental Review

Because there were a considerable number of comments on the environmental effects of the emergency final rule issued as SFAR 71, the FAA has prepared a draft Environmental Assessment to assure compliance with the National Environmental Policy Act of 1969 (NEPA) and other applicable environmental laws, regulations and orders.

A copy of the draft EA may be obtained by calling Linda Williams, Office of Rulemaking, FAA, 800 Independence Ave., SW, Washington, DC 20591, at (202) 267–9685. An electronic copy is available at http://www.faa.gov. Comments on the draft EA should be mailed to the address given or sent electronically to 9–NPRM–CMTS@faa.dot.gov and clearly marked as "Comments to the draft EA for Extension of SFAR 71." The comment period for the draft EA is the same as for the interim rule, on or before December 29, 1997.

Based upon the draft EA and comments received on the draft EA, the FAA will determine whether to issue a final EA and a Finding of No Significant Impact (FONSI) or to prepare an environmental impact statement. If a final EA and FONSI are determined appropriate for the final rule, these documents will be available in Docket No. 27919 and on the Internet at http://www.faa.gov.

Regulatory Evaluation Summary

In accordance with SFAR 71, certain procedural, operational, and equipment requirements were established for air tour operators currently operating in the State of Hawaii. Compliance with SFAR 71 was estimated to increase costs approximately $2.1 million, in current 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 lifevests 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. All these dollar estimates have been updated to current dollars from 1994 dollars. A copy of the Final Regulatory Evaluation, Final Regulatory Flexibility Determination, and Trade Impact Assessment completed for the original SFAR have been placed in the docket.

The FAA has worked with the air tour operators to lessen the burden of lost revenue from canceled tours. This has been accomplished by allowing deviations from SFAR 71 for specific air tour operations evaluated on a case by case basis. When deviations of 1,000 feet for fixed-wing aircraft and 500 feet for single-engine helicopters are granted, the estimated revenue loss may be overstated, because the deviations allow a tour operation to take place that otherwise would have been canceled under the minimum flight altitudes of SFAR 71. Therefore, because of the FAA allowing deviations from SFAR 71 for the majority of air tour operators in Hawaii, much of the estimated $1.9 million revenue loss did not occur. However, due to other safety measures for air tour operators, such as separation between fixed-wing and helicopter operations around scenic areas, deviations from flight altitudes have not compromised safety. Since the issuance of SFAR 71, there have been no fatalities or injuries as a result of the new procedural, operational or equipment requirements. In view of the foregoing, the FAA has determined that the extension to SFAR 71 is cost beneficial.

This regulation is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) because it was

issued originally as an emergency final rule. 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**. The FAA has determined that this action is a significant regulatory action under Executive Order 12866.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Federal regulations. The RFA requires a Regulatory Flexibility Analysis if a proposed rule would have "significant economic impact on a substantial number of small entities." FAA Order No. 2100.14A outlines the FAA's procedures and criteria for implementing the RFA. The FAA's criteria for "a significant impact" is an annualized cost threshold of at least $4,900.

The FAA's original regulatory flexibility analysis indicated that the SFAR would impose a "Significant economic impact on a substantial number of small entities." (See copy of original Regulatory Flexibility Determination included in the docket for this rulemaking.) The FAA estimated the total annualized cost of the final rule was approximately $712,000, in current dollars. The annualized cost of the 1,500 foot minimum altitude requirement for the air tour industry (fixed-wing and helicopter) was approximately $635,700. After assessing the annualized cost for individual operators on a per seat basis, the FAA determined that the SFAR would impose costs greater than the annualized cost threshold of $4,900 for 31 of 37 of the affected air tour operators, most of whom are small entities. The FAA calculated the annualized cost regarding alternative minimum altitude requirements of 500 feet, 800 feet, and 1,000 feet. Based on this figure, the FAA determined that a minimum altitude requirement of 500 feet would be necessary to lower the annualized cost below the $4,900 threshold for all but four of the air tour operators. However, after analyzing the safety implications of lowering the minimum altitude to 500 feet, the FAA determined that to do so would result in a decline in safety benefits.

Since the issuance of the SFAR, the FAA received requests from several operators to fly at lower altitudes. Air tour operators requested "deviations" from the rule to obviate the economic burden imposed upon them by the SFAR. The FAA worked with the operators to create individual exceptions under which air tours could occur at lower altitudes but with other conditions imposed. The resulting exception, referred to as a deviation, was designed to minimize the potential adverse economic effects on the air tour operators while maintaining the same level of safety as that afforded at 1,500 feet.

A deviation allows an operator to fly at lower altitudes with the imposition of certain additional safety requirements. Operators must individually request a deviation from the FAA. The FAA considers each request on a case by case basis and, after close scrutiny of each air tour operation, determines whether the issuance of a deviation from the SFAR will achieve the desired goals. The imposition of additional safety requirements varies from operator to operator. Requirements can include safety equipment modifications and/or special operation procedures, such as separation between fixed-wing and helicopter operations around scenic areas. Currently, 16 of the 26 air tours operating under part 135, and 2 of the 9 air tours operating under part 91, have sought and have received deviations from the SFAR. Those operators who have not sought a deviation are operating under air traffic control (ATC) positive control and are not, therefore, required to comply with the provisions of the rule, or were already operating at higher altitudes. The practical impact of FAA issued deviations, considered along with ATC positive control, is that the majority of small entities are currently operating at lower altitudes. The FAA anticipates that it will continue to grant deviations as it has up to this point, which will in effect work to mitigate the economic impact of the SFAR on small entities.

The FAA is compelled to stand by the results of its original regulatory flexibility analysis despite the reasonable conclusion that can be drawn from these facts, namely, that those operators who requested deviations did so because they believed it would be less costly than complying with the SFAR. Although the agency believes that costs of compliance are now lower than originally estimated, the agency has no data to show the extent of any change in the economic impact on small businesses as reported in the original regulatory flexibility analysis. Accordingly, the FAA certifies that this extension has a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

When the FAA promulgated SFAR 71, it found that SFAR would not have an adverse impact on the international trade because the affected operators do not compete with foreign operators. The FAA certifies that this 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.

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, 1998.

SFAR 71, which became 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. Using these numbers, 400,000 minutes = 6,667 hours × $10.00 equals approximately $.70 per flight.

For the deviations collection, two calculations must be done since operators first requested deviations to 1,000 feet, and then to 500 feet. 1,000 ft. deviations were granted to approximately 35 operators, and it is estimated that the preparation 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 deviation requests to 500 feet 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' time) for all deviations is estimated to be 35 × 3 hours × $50.00 or $5,250.00.

Organizations and individuals desiring to submit comments on the information collection requirements of SFAR 71 should send them to the FAA's Rules Docket, the address for which is given in the **ADDRESSES** section of this interim rule.

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 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.

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 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, the FAA certifies that this 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 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. 71–1—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, 2000.

Issued in Washington, DC, on October 23, 1997.

Jane F. Garvey,

Administrator.

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Part 135
SFAR 78

14 CFR Parts 91, 119, 121 and 135

[Docket No. 28577, Special Federal Aviation Regulation (SFAR) No. 78]

RIN 2120–AG11

Special Flight Rules in the Vicinity of the Rocky Mountain National Park; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final rule published in the **Federal Register** (62 FR 1192) on January 8, 1997. The final rule establishes temporary Special Federal Aviation Regulations (SFAR) at Rocky Mountain National Park (RMNP) to preserve the natural enjoyment of visitors to RMNP by preventing any potential adverse noise impact from aircraft-based sightseeing overflights.

EFFECTIVE DATE: February 11, 1997.

FOR FURTHER INFORMATION CONTACT: Neil Saunders (202–267–8783).

Correction of Publication

In the rule document (FR Doc. 97–435) on page 1192 in the issue of Wednesday, January 8, 1997, Amendment numbers were inserted incorrectly in the docket line of the heading. Please make the following corrections: On page 1192, column 1, in the heading, the docket line in brackets is corrected to read as set forth above.

Issued in Washington, DC on February 11, 1997.

Donald P. Byrne,

Assistant Chief Counsel.

[FR Doc. 97–4210 Filed 2–19–97; 8:45 am]

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Part 135
SFAR 78

federal register

Wednesday
January 8, 1997

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 91, et al.
Special Flight Rules in the Vicinity of the Rocky Mountain National Park; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 119, 121, and 135

RIN 2120–AG11

[Docket No. 28577; Amendment Nos. 91–254, 119–3, 121–263, 135–67 Special Federal Aviation Regulation (SFAR) No. 78]

Special Flight Rules in the Vicinity of the Rocky Mountain National Park

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a temporary Special Federal Aviation Regulation (SFAR) at Rocky Mountain National Park (RMNP) to preserve the natural enjoyment of visitors to RMNP by preventing any potential adverse noise impact from aircraft-based sightseeing overflights. This action temporarily bans commercial air tour operations over RMNP while the FAA develops a broader rule that will apply to RMNP as well as other units of the National Park system. The final rule will expire as soon as a general rule on such overflights is adopted.

EFFECTIVE DATE: February 7, 1997.

FOR FURTHER INFORMATION CONTACT: Neil Saunders, Airspace and Rules Division, ATA–400, Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591; Telephone: 202–267–8783. For the Final Environmental Assessment and Finding of No Significant Impact, contact Mr. William J. Marx, Manager, Environmental Programs Division, ATA–300, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone: (202) 267–3075.

SUPPLEMENTARY INFORMATION:

Availability of the Final Rule

Any person may obtain a copy of this final 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. Communications must identify the amendment number of this final rule.

Background

The designation of an area as a National Park is one of the highest recognition given to any area in the country for its natural beauty and the importance of its protection. In view of the significance of this designation, Congress requires that National Parks by managed consistently with the "high public value and integrity of the National Park System and [such management] shall not be exercised in derogation of the values and purposes for which these areas have been established to conserve the scenery and the nature and the historic objects and the wildlife therein, and to leave them unimpaired for future generations." Organic Act, 16 U.S.C. § 1a–1; 16 U.S.C. 273–273d, 273f. The National Park Service ("NPS") and the Federal Aviation Administration ("FAA") recognize that noise from aircraft may interfere with the natural park experience for visitors on the ground and with efforts to preserve these and other park values.

On December 22, 1993,the Department of the Interior and the Department of Transportation joined to form an interagency working group ("IWG") with the objective of protecting National Parks from the adverse effects due to excessive aircraft noise. The IWG's tasks included reviewing the environmental and safety concerns caused by park overflights, and working towards resolution of impacts on specific parks.

The FAA's role in the IWG is to ensure the maintenance of aviation safety and provide for the safe and efficient use of airspace, while working with the Department of the Interior to achieve its role in the IWG to protect public land resources in the national park system, preserve environmental values for those areas, and provide for the public enjoyment of those areas.

On April 22, 1996, President Clinton issued a memorandum for Heads of Executive Departments and Agencies, in which he announced his Earth Day initiative, Parks for Tomorrow. Included in that initiative was the directive to the Secretary of Transportation, in consultation with other appropriate officials, to consider a rulemaking to address the potential adverse impact on Rocky Mountain National Park and its visitors of overflights by sightseeing aircraft. The President's announcement also directed that the value of natural quiet and the natural experience of the park be factors in any rulemaking action, along with protection of public health and safety.

FAA Statutory Authority

The FAA has broad authority and responsibility to regulate the operation of aircraft and the use of the navigable airspace and to establish safety standards for and regulate the certification of airmen, aircraft, and air carriers. 49 U.S.C. 40104, et seq., 49 U.S.C. 40103(b). Subtitle VII of Title 49 U.S.C. provides guidance to the Administrator in carrying out this responsibility. However, the FAA's authority is not limited to regulation for aviation safety and efficiency.

The FAA has authority to manage the navigable airspace to protect persons and property on the ground. The Administrator is authorized to "prescribe air traffic regulations on the flight of aircraft (including regulations on safe altitudes) for * * *. (B) protecting individuals and property on the ground" 49 USC 40103(b)(2). In addition, under 49 USC Section 44715(a) the Administrator of the FAA, in consultation with the Environmental Protection Agency, is directed to issue such regulations as the FAA may find necessary to control and abate aircraft noise and sonic boom to "relieve and protect the public health and welfare."

The FAA construes these provisions, taken together, to authorize the adoption of this regulation, which is intended to minimize the limit the adverse effects of aircraft noise to protect visitor enjoyment of RMNP. The FAA finds that the regulation of the navigable airspace, as authorized under 49 U.S.C. 40103(b)(2), is necessary, on a temporary, limited basis, as discussed below, to control and abate aircraft noise at RMNP under 49 U.S.C. 44715. Current policies support the exercise of FAA authority to protect the RMNP in these unique circumstances, at least as an interim step while the FAA proceeds to complete a rulemaking that will address the larger issue of protecting national parks. See generally, Section 101 of the National Environmental Policy Act of 1969, as amended 42 U.S.C. 4321 and Executive Order 11514, as amended by Executive Order 11991.

Rocky Mountain National Park

RMNP receives approximately three million visitors a year, making it the sixth most visited national park in the United States, despite its relatively small size (for a major Western national park) of 265,727 acres. RMNP is located approximately 40 miles outside the city limits of Denver, Colorado, and approximately 50 miles from the Denver International Airport. The topography of the park is characterized by steep mountains, narrow valleys, and high elevations (8,000 to 14,250 ft). Seventy percent of park terrain is above 10,000 feet. In fact, excluding Hawaii and Alaska, RMNP has the highest percentage of mountainous elevations above 10,000 feet, compared to any other national park.

RMNP presents pilots with a challenging flying environment. It has high winds, often in excess of 100 mph. The Park's high altitudes diminish engine performance and propeller efficiency, making it more difficult for an aircraft to perform in high winds. The rugged terrain limits maneuverability, and the rapidly changing weather can unexpectedly envelop an aircraft. Perhaps in part for these reasons, the use of the airspace over RMNP for commercial air tour operations has so far not been extensive. Unlike many other national parks, there are currently no air tour operators overflying the park or operating in the surrounding airspace. However, other aviation users do operate in the airspace above RMNP. Due to the Park's proximity to the Denver International Airport, aircraft operating to or from the airport overfly RMNP. Arrival and departure routes above the Park are necessary to ensure the safe and efficient handling of air traffic into the airport. Traffic into the airport operates at minimum altitudes of 19,000 feet above mean sea level (MSL) for jets and 16,000 feet above MSL for turboprop aircraft. Non-commercial general aviation aircraft also overfly the Park. While these non-commercial aircraft have not themselves created any noise problem, their presence establishes the feasibility of relatively low-level overflights within the park of operators of commercial sightseeing tours with comparable equipment.

The Park provides for automobile access within its boundaries from which there are numerous opportunities for viewing the park's vistas. Park officials estimate that 54 percent of the park can be seen from points along the 149 miles of roads.

Ninety-two percent of the park is proposed for inclusion in the National Wilderness Preservation System and is required by law to be managed by the National Park Service as a de facto wilderness until action is taken by Congress. This means that, among other things, most motorized vehicles must be contained within the existing roadway system, and future development is limited.

The Governor of Colorado, members of the Colorado Congressional delegation, and other officials have requested the Department of Transportation to place a preemptive ban on commercial air tour operations at RMNP. Even though there are no commercial air tour operations at the Park currently, some operators have expressed an interest in starting commercial air tours to officials of Estes Park, Colorado and to the NPS. The government officials who have requested regulatory action are concerned that an influx of commercial air tour operations at RMNP would undermine the enjoyment of the Park by visitors on the ground.

The FAA wishes to be responsive to concerns about the effects of overflights on the national park system. Although the FAA is still developing nationwide standards for overflights of national parks, a relatively unusual set of circumstances has occurred at RMNP. Judging from the requests received by the FAA, there is broad support to protect the park environment by a ban on overflights among local leaders, even in the absence of current commercial air tour overflights. In addition, the FAA acknowledges the value in being able to take the initiative now, before any commercial overflights occur. At this point, there has been no environmental loss from commercial air tour overflights, and a temporary ban on such flights will cause no economic loss to any incumbent operator.

This temporary Special Federal Aviation Regulation will expire as soon as a general rule on overflights over the national park system is adopted. The FAA and DOI will be collecting quantitative data in conjunction with the development of this broader rule that will apply to all units of the National Park System.

Within 24 months of the effective date of this temporary ban, the FAA, in conjunction with the NPS, will complete a review of this temporary ban on commercial air tour operations over RMNP and publish its findings in the Federal Register. The FAA will determine whether the ban continues to be necessary to meet the objectives of the FAA and NPS. This review will consider any data collected during the development of the broader rule, as well as any other additional data that could be relevant to the temporary ban. The FAA also will consider any new issues relevant to RMNP that may have arisen, the effect of the temporary ban on the benefits of the park experience, including natural quiet, and any unanticipated burden the ban may have imposed on the air tour industry.

Discussion of Comments

A. Introduction

On May 15, 1996 (61 FR 24582), the FAA published an NPRM proposing several alternative methods of preserving the natural park experience of Rocky Mountain National Park by imposing restrictions on commercial aircraft-based sightseeing overflights. Commenters were invited to address three alternatives: (1) A total ban; (2) limits on operations, and (3) a voluntary agreement. As of September 1, 1996, the FAA received 4,527 comments from individuals, air tour operators from other geographic locations, environmental and civic organizations, state and local governments, and groups representing the interests of various segments of aviation. The overwhelming majority of these commenters favor Alternative One, a ban on overflights of RMNP, while a minority of commenters, virtually all representing aviation interests (e.g., National Air Transport Association (NATA), Airline Owners and Pilots Association (AOPA), and Helicopter Association International (HAI)) state opposition to any regulation of overflights at RMNP. Specifically, 4,479 or 98.94 percent of the commenters favor Alternative One; 14 or .30 percent favor Alternative Two; and 7 or .15 percent favor Alternative Three. Opposition to the NPRM and to any regulation of RMNP overflights is expressed by 27 or .60 percent of the commenters.

The vast majority of the comments that opposed sightseeing overflights are from private citizens who appear to have been informed about the NPRM by newsletters and other publications distributed by organizations such as the National Parks and Conservation Association (NPCA). In addition, the public was informed of this proposed action through public involvement activities at Rocky Mountain National Park.

A summary of the views presented by the commenters follows. First, the general issues raised by the commenters are discussed. Second, the three alternatives included in the NPRM are explained and commenters' arguments supporting and opposing each alternative are summarized.

B. General Issues Raised by Commenters

1. FAA Authority and Procedural Rules

Helicopter Association International (HAI) (comment 4357) states that this NPRM does not cite a statutory basis for the proposed action, but if the basis is 49 U.S.C. 44715, the FAA failed to consult the Environmental Protection Agency (EPA). HAI also states that the NPRM exceeds the mandate of Congress as stated in Public Law 100–91 to "provide for the substantial restoration of the natural quiet and experience of the park and protection of public health and safety from adverse effects associated with aircraft overflight in the Grand Canyon National Park." The primary concern of HAI is that there is no Congressional mandate to restore the

natural quiet in the RMNP. Additionally, HAI claims that the NPRM is not in compliance with the Administrative Procedure Act, in that the NPRM is not informative enough to allow a concerned party the opportunity to comment appropriately, is not promulgated on the basis of safety, but on the unsubstantiated and subjective environmental impacts of future overflights, and is not in compliance with the FAA's own procedural requirements in Title 14 of the Code of Federal Regulations (14 CFR § 11.65. HAI also cites the lack of an Environmental Impact Statement (EIS).

National Air Transport Association (NATA) (comment 4229) states that this NPRM allows federal land management agencies like the NPS to "effectively usurp FAA jurisdiction over air traffic and airspace itself" which is contrary to the Federal Aviation Act of 1958 that" * * * specifically charge[d] the FAA with assuring safety and fostering the development of air commerce." NATA and HAI state that this NPRM represents an undue threat to the public right of transit through the navigable airspace of the U.S. as provided for in Section 104 of the Federal Aviation Act. For the FAA to propose such a rulemaking would be to remove its authority to promote air commerce and safety, which would be "an incomprehensible dereliction of responsibility," in NATA's opinion.

The United States Air Tour Association (USATA) (comment 4563) states that the FAA fails to cite the statutory authority for the rulemaking, which it suggests is a tacit indication that the FAA does not have the requisite statutory authority to enact the rules put forth in the NPRM.

The Colorado Pilots Association, Inc. (comment 4429) states that the proposed ban would act as an unreasonable interference with interstate and intrastate commerce.

The National Association of State Aviation Officials (NASAO) (comment 4433) points out in a resolution issued at its Washington conference on March 10, 1996, that the proposed rule would give the NPS authority to direct the FAA in the use of the national airspace, which would be interfering with the FAA's mandate under Federal law.

Southwest Safaris (comment 4583) comments that the FAA does not have the regulatory power, as determined by Congress, to regulate that which does not exist. This commenter adds that the FAA was mandated by Congress to foster and promote the growth of commercial aviation, not to "regulate it out of existence" and that if the NPRM is implemented, commercial aviation would be discouraged instead of constructively regulated on behalf of the general public's interests.

The Northern California Airspace Users Worker Group (NCAUWG) (comment 4424), claims that the NPRM is inconsistent with the NPS Organic Act, unduly discriminatory against aviation, and would establish an undesirable precedent that could be used in other areas to affect negatively the safe and efficient use of airspace. This commenter states that the NPS was created by Congress to "promote and regulate the use of Federal areas known as national parks * * * [so as to] conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such a manner and by such means as will leave them unimpaired for the enjoyment of future generations" (16 U.S.C. 1). This commenter contends that regulating overflights over the RMNP does nothing to maintain the objectives listed above.

In contrasts, the Sierra Club/Grand Canyon Chapter (comment 2035) and the Citizens for Aircraft Noise Abatement/Sedona (CANA/S) (comment 4227) contend that natural quiet has been identified by the Park Service as a resource, citing the National Park Service Organic Act, as amended by the Redwoods Act of 1978, that defines resource preservation as the primary goal of the national parks. In addition, these commenters cite the Wilderness Act of 1964, which was enacted to protect the "primeval character" of designated lands and to provide "outstanding opportunities for solitude."

The Utah Air Travel Commission (comment 1113) oppose the NPRM because it questions the thoroughness and completeness of the scientific basis of the NPS's Report to Congress, in which aircraft noise alone was singled out as obtrusive, making this report both incomplete and biased. This commenter believes a new study is required, complete with the identification of all obtrusive noise source, before further regulation of park airspace is enacted. In addition, this operations of national parks may violate the Americans with Disabilities Act. This commenter is also concerned with the unconditional restriction imposed on aircraft due to noise, and asks if silent engines of the future will still be restricted.

The Utah Air Travel Commission also cites the conclusion of a study, Tour Passenger Survey Results, that the NPS considered biased because it was a survey of air tour passengers. The Commission believes that while the study may be incomplete, it does not recommend the elimination of park overflights; rather, it identifies the major value of overflights. This, in the commenter's opinion, indicates that no further regulation of overflights is warranted or needed.

2. Lack of Safety Justification of Any Rulemaking

The HAI (comment 4357) opposed the NPRM because there are no studies stating that the proposed rules will promote aviation safety or protect the environment and there has been no research conducted stating that health issues will be advanced.

The Montana Department of Transportation (comment 4349) asserts that aircraft overflights do not damage scenery, natural and historical objects or wildlife in the parks. Therefore, this commenter opposes this NPRM as it believes that "all categories of aviation are already by the use of navigable airspace for all respective flight activities at this time."

The Colorado Pilots Association, Inc. (comment 4429) states that the proposed ban is unnecessary because aerial tours do not operate over RMNP for obvious reasons: the high altitudes of the park; aircraft loading factors; and the attendant operating costs associated with running successful aerial tour operations. Thus, "it is inappropriate to restrict an activity that is unlikely to ever occur."

Geo-Seis (comment 4350), a part 135 certificate holder and provider of certain air tour operations in various parts of the U.S., oppose the NPRM, contending that "while no specific plans currently exist, [it] is an operato that is contemplating operations in the RMNP," especially given the close proximity of its offices to the Park and the type of helicopters this company operates. This commenter asserts that since it operates high altitude helicopters with an excellent safety record, it requests the FAA to reconsider prohibiting helicopter operations in the RMNP in the future.

3. National Standards/General Aviation

National Business Aircraft Association, Inc. (NBAA) (comment 1843), the Grand Canyon Air Tour Council (comment 2006), NATA (comment 4229), Aircraft Owners and Pilots Association (AOPA) (comment 4356), and the NCAUWG (comment 4424) are concerned about the potential for this proposed rule becoming the model for national overflight standards affecting all national parks. While the NBAA (comment 1843) has no vested interest in commercial sightseeing operators, it takes issue with a

requirement to detour around the airspace of national parks while engaging in normal operations. NBAA is opposed to regulation prohibiting overflights by persons other than those engaged in for-hire sightseeing service because "there is no substantial evidence of significant noise impact on park area from normal (non-sightseeing) overflights by general aviation aircraft." Each of these commenters are wary of the implications of the NPRM based on the Grand Canyon National Park Rule, that is their opinion, are inherently discriminatory towards general aviation. AOPA (comment 4356) contends that due to the Grand Canyon National Park Rule, general aviation is required to fly higher altitudes than air tour operators, even though it constitutes very little transient traffic, as opposed to the thousands of overflights conducted by air tour operators. A similar point is made by NASAO (comment 4433). Several of the commenters point out that general aviation does not disturb the natural quiet of RMNP, and the current voluntary overflight altitude of 2,000 feet is one result of voluntary cooperation.

The Grand Canyon Air Tour Council (comment 2006) comments that the RMNP proposal is not separable from the FAA's and the Department of the Interior's project to develop national standards that will attempt to regulate all air traffic over all national parks and other possible federal land, and states that the broader issue "needs to be brought into the public domain for proper viewing." The council recommends a voluntary agreement until the debate on national standards for park overflights is available for national scrutiny.

AOPA (comment 4356) opposes any altitude restrictions for general aviation over RMNP. It asserts that general aviation does not disturb the natural quiet of the RMNP, and the current voluntary overflight altitude of 2,000 feet has served well to negate the potential impact of general aviation overflights.

4. Economic Considerations

Since there are no operators currently performing sightseeing air tour operations over RMNP, the FAA in the NPRM determined that the expected impact of this regulatory action is negligible and that this proposed amendment would not have a significant impact on a substantial number of small entities. Since operators may be considering starting these types of operations over the park in the future, the FAA asked for comment on whether any person intends to institute commercial sightseeing operations at RMNP.

HAI (comment 4357) disagrees with the rationale that there was no need to conduct a regulatory impact analysis because "there are no operators currently performing sightseeing air tour operators over RMNP, therefore the regulatory impact is negligible." HAI states that it is incumbent upon the FAA that an analysis of the future impact of this rule be conducted.

The Grand Canyon Air Tour Council (comment 2006) claims that the cost issue is not fully considered by the FAA. This commenter asserts that if the FAA can use a potential noise issue to justify its proposal it can use potential air tour operation in determining what is and what is not a cost on society. It recommends that the FAA: (1) Assess the monetary value of the RMNP's worth to society; (2) examine the potential revenue that could be appropriately generated through present and future business development (including air tours); and (3) develop a financial mode that would attempt to ascertain cost to society versus other values, e.g., the opportunity to see the seventy percent of the RMNP terrain that is above 10,000 feet.

The Grand Canyon Air Tour Council further asserts that it is very difficult to comprehend how the FAA concluded in the Regulatory Evaluation section that "this rule would not have a significant impact on a substantial number of small entities and would not constitute a barrier to international trade." The council states that the majority of air tour operators fall within the federal definition of a small business and that the majority of revenue produced by air tour operators are from foreign visitors.

5. Quiet Aircraft

McDonnell Douglas Helicopter Systems (MDHS) (comment 4552) states that the use of quiet aircraft technology would be more effective in reducing noise than would flight restrictions or the imposition of a ban. This commenter cites Congressional testimony and reports by the NPS and FAA/National Aeronautics and Space Administration (NASA) on the use of quiet aircraft technology and how it can be used as a noise reduction methodology. For example, in a 1994 report to Congress, the NPS recommended the use of quiet aircraft technology as a means to reduce the noise effect on National Parks.

C. Proposed Alternatives

The NPRM outlined three alternative methods of preserving the natural enjoyment at RMNP and requested specific comments on how such agreements could be handled. Alternative One would ban commercial aviation sightseeing tours in the vicinity of RMNP. Alternative Two would allow commercial sightseeing tours, but would restrict the operations to routes that would be restricted to minimum altitudes and would follow the existing road system, among other restrictions. Variations of this alternative were presented in the NPRM. Alternative Three would call for voluntary agreements between air tour operators and the NPS.

Since there were no air tour operators conducting overflights at the time the NPRM was proposed, the three proposed alternatives were an attempt to provide a fair representation of the possible ways to mitigate the predicted effect of aircraft noise generated by future air tour operators. Using the alternatives, which included suggestions ranging from the maintenance of the status quo through the use of voluntary agreements and restrictions on time, season, and altitudes, to a complete ban on all future air tour operations, the FAA made an informed decision. After considering the public policy favoring the preservation of the natural enjoyment of our National Parks, the strong demand from Colorado residents to ban commercial air tour overflights, the special situation and unique features of RMNP, and the numerous comments and alternatives, the FAA concluded that a ban on commercial air tour operations over RMNP will ultimately inure to the benefit of all. In effect, the ban will operate to preserve the status quo, because there are currently no commercial air tour operations at RMNP. The ban clearly protects the enjoyment of the park while avoiding the imposition of restrictions that would result in a less than meaningful opportunity for commercial air tours to operate over RMNP.

1. Alternative One—Ban Sightseeing Tours

a. *Support.* The majority of commenters (99 percent) support a ban on commercial aviation sightseeing tours. Most of these commenters are individuals who live near the park and/or have visited the park. Organizations that support a ban include: CANA/S, Sierra Club, NPCA, Wilderness Land Trust, League of Women Voters, Town of Estes Park, Estes Valley Improvement Association, Inc., Larimer County Board of County Commissioners, The Wilderness Society, and other local governmental and non-governmental organizations. Reasons that commenters give for supporting the ban include:

(i) *Preserve the Natural Enjoyment of the Park.* Commenters stress that the total ban would preserve the natural enjoyment and tranquillity of the park, which is what visitors value most in their national park experience. Some commenters cite statistics. e.g., 96 percent of park visitors value tranquillity, and 81 percent of park visitors are directly opposed to tour overflights. Some commenters point out that most of the park's visitors come from urban areas and are seeking the peace and quiet offered by the park. Others point out that the original purpose of national parks and wilderness areas was to provide this natural tranquillity and that overflights would destroy this objective.

Commenters assert that the allowance of overflights at other national parks (e.g., Grand Canyon National Park) has resulted in unacceptable noise levels which spoil the experience of park visitors. For example, commenter #2698 says that commercial sightseeing tours in Sedona, Arizona's Red Rock and Canyon regions continually violate FAA regulations which limit flight altitudes.

Roy Romer, the Governor of Colorado (comment 2156), supports Alternative One. He cites the counties, chambers of commerce, and hundreds of area citizens who have shown their unanimous support for a ban on helicopter tour overflights and who believe that helicopter tours of the park would be inconsistent with the long-term economic development goals and quality of life in their communities. Similarly, CANA/S (comment 4227) references two memos: One from Department of Agriculture, Secretary Dan Glickman, to Department of Transportation, Secretary Federico Peña (dated July 31, 1996); and the other from the Forest Service Chief Jack Ward Thomas to Secretary Glickman (dated April 11, 1996): "We believe that commercial helicopter flights over wildernesses are inconsistent with the values for which these areas were established by Congress."

Estes Valley Improvement Association (comment 155) claims that tour operations would shatter the silences in the RMNP "bowl of a valley." It is this commenter's belief that because the air is thin in this area, larger and stronger helicopter engines would be necessary. This would result in unendurable noise in the valley, thereby negatively impacting the ground tourism as well as the quality of life for the residents of the area.

The NPCA (comment 3634) states that, unlike commercial passenger jets and general aviation operations, commercial air tour operations are characterized by frequent, low-altitude flying to maximize contact with scenic points of interest. From the perspective of NPCA's members, this impacts on the park visitor's experience and the preservation of natural quiet.

(ii) *Safety.* Estes Valley Improvement Association (comment 155) cites the danger that tour operators would put themselves in by flying in an area known for extreme variations in weather, as sudden storms are common in the Great Divide and have been known to destroy airplanes. This, in turn, is a great source of danger for helicopters, people on the ground, and rescue operations.

Another commenter (comment 1335), based on his experience as a park ranger at the RMNP, states that bursts of wind would prove difficult for piston-engine aircraft to maintain altitude, air speed, and control when operating in the "rarefied air of these altitudes" of the RMNP. Also, he comments that the terrain of the park is more vertical than horizontal and is not safe for the operation of any aircraft and that a further danger would be for rescue personnel and victims of an incident. He cites the specific example of a recent airplane accident on Mount Epsilon, where the plane exploded from impact on the mountainside; when the airplane and pilot were found, there was no safe way to retrieve the pilot's body due to the potential of avalanches caused by the perilous plane position on the snow cornices on top of the cliff.

One commenter asserts that Alternative One would ensure the safety of park visitors (passengers on overflights and visitors on the ground) by preventing flying in a potentially unsafe mountainous area with varying elevations and unpredictable weather conditions (e.g., quick-forming thunderstorms, strong mountain wave winds and accompanying turbulence). One commenter (comment 540) also asserts that the crash of any aircraft could likely ignite a catastrophic forest fire.

(iii) *Wildlife.* From an ecological standpoint, commenters 295 and 1335 assert that increased air traffic can affect animals in many negative ways: adversely affecting breeding behaviors of birds and mammals, interrupting nesting habits, and causing stress to certain species. Animals indigenous to these areas are apt to respond to this noise stress by either migrating from the area or simply dying off, unable to handle the stress to their natural habitat. In addition, there may be an increased danger from rock falls and avalanches. To this commenter, the most important issue is that the RMNP should serve as a tranquil refuge to the wildlife. Posing a similar ecological concern, a park ranger (comment 1335) mentions the greater pollution problem when dealing with airplane crashes, scattering fuel loads and airplane parts throughout the fragile tundra ecosystems, which require years to recover from such accidents.

A complete ban would prevent potential negative impacts on wildlife. Some commenters state that RMNP is one of the last refuges for many species, and that overflights would devalue their natural habitat and safety. This, in turn, would impact visitors' experience of the park because many of them value wildlife sightings. It would also be consistent with the national policy of providing protection for national park lands.

(iv) *Access for Disabled.* To counter the claim that prohibiting the flight of helicopters would disadvantage the elderly or disabled from enjoying the park, the Estes Park Accommodations Association (comment 257) states that there are areas for cars to travel as well as tour vans to accommodate them. The Wilderness Land Trust (comment 2027) similarly assert that there are opportunities to partake of the scenic vistas, making aviation sightseeing unnecessary.

Visitors who cannot or choose not to see the park on foot can already get a good view of the park and look down on the mountains by driving on one of the park's several roads (e.g., Trail Ridge Road) or by using the handicap accessible trails. Thus, overflights are unnecessary.

(v) *Cost.* CANA/S (comment 4227) states that the benefit (natural quiet for the vast majority of visitors and residents who value this resource) of Alternative One justifies its costs (a disappointed prospective air tour operator of some unknown time in the future). The same analysis applies to the option of maintaining the status quo (avoiding any additional expenses now), which according to this commenter does not "justify its costs (uncertainty about the advent of RMNP air tours, as well as the failure of FAA to address problems in their early or pre-existent stages, not to mention even higher expenses to solve problems retroactively.)" The benefits of Alternatives Two and Three (economic transactions between the few and the fewer) do not justify their costs (shattered natural quiet for most individuals, and enormous governmental expenses for dealing with the problems).

(vi) *Other.* The Wilderness Society (comment 4457) states that, as has occurred at other national parks, correction of overflight problems will be

virtually impossible once commercial flights have become established. Thus, FAA action is necessary to preclude the establishment of commercial air tour operations within RMNP and provide the highest degree of protection for the park's resources and visitors.

The Sierra Club, Grand Canyon Chapter (comment 2035) strongly supports Alternative One and adds the following recommendations: the rule should be implemented permanently; four bordering Congressionally designated wilderness areas should also be covered under this no-air-tour-flight rule, specifically, Comanche Peak, Indian Peak, Neota, and the Neversummer Wildernesses; general aviation should be subjected to the same rule as air tour operators, except that low altitude flights may be required for emergency purposes like search and rescue, fire-fighting, etc.; and the rule should apply to airspace adjacent to the protected areas as well.

b. *Oppose.* (i) Air Transportation—Least Damaging. Commenters such as the HAI (comment 4357) and Geo-Seis (comment 4350) claim that helicopters and other air tours are the most environmentally sound means to enjoy RMNP because, unlike those visitors on foot, the air tour visitors do not trample vegetation, disturb artifacts or leave behind any refuse. In addition, air tours do not require roads or other infrastructure development. More importantly, they provide a service to the handicapped and elderly, who would not otherwise be able to visit the park. Finally, these tours may fulfill the need to provide rescue and emergency airlift.

NATA (comment 4229) and HAI (comment 4357) state that these proposals are discriminatory in nature as no other modes of access to the Park have been proposed to be limited. NATA states that ground traffic "extol a much more tangible price on the natural beauty of the Park" while air tours "leave no residual effects within the Park that affect the enjoyment of the Park by persons on the ground."

(ii) *Temporary Ban While Studying.* NATA (comment 4229) notes that the idea behind the prohibition of all flights is to allow the FAA and NPS the opportunity to "study the situation and to develop a plan for controlling these overflights to minimize or eliminate their effect on park visitors on the ground." This commenter thinks that this alternative is counter-intuitive to this stated objective, as no data would be able to be collected if no flights were permitted to take place in the RMNP. In order to accurately determine the effect of air tours within the Park, air tours must be allowed within the Park, as extrapolating or estimating the data from other sources would be inaccurate due to the unique characteristics of all parks. In conclusion, NATA believes that the fact no sightseeing operators provide service to the Park is irrelevant and future opportunities to provide access to the Park are eliminated unfairly.

(iii) *Air Tour Operators comparable to General Aviation Aircraft.* The USATA (comment 4563) points out that, according to the NPRM, commercial aircraft currently overfly the park on a daily basis at 19,000 and 16,000 feet above mean sea level (MSL). USATA says that these altitudes are less than 2,000 feet above the highest peaks and also adds that, since seventy percent of the park terrain at RMNP is 10,000 feet MSL, most of the general aviation aircraft currently flying through RMNP are following routes where the Park's peaks rise above these aircraft. USATA states that with numerous aircraft moving in, around and above RMNP, NPS officials, in discussions with the FAA, have found that these aircraft have not caused any serious noise problem. USATA believes that air tour aircraft are akin to general aviation aircraft and commercial overflights, and if used properly, would present negligible effects.

(iv) *Other.* Temsco Helicopters (comment 4575), an operator that conducts air tours in Alaska, says that prohibiting air tours would be discriminatory to air tour operators. This commenter also says that alternative one would create interpretation problems. For example, "are flights that are point to point but fly through RMNP air tours? Is a photo flight an air tour?"

2. Alternative Two—Permit Sightseeing tours with Limitations

a. *Support.* Geo-Seis (comment 4350) would support some time-specific restrictions under this option and suggests that the times be modified to parallel optimum flight conditions, which are primarily earlier in the mornings to mid-afternoon.

b. Oppose. (i) Enforcement. The Estes Valley Improvement Association (comment 155) claims that limiting operations is completely unsatisfactory primarily because of the inability of any agency to monitor this regulation. This commenter and others believe that the proposed requirement of flying 2,000 feet above ground-level is not practical or enforceable since the ground-level varies so drastically from 7,500 to 14,255 feet.

CANA/S (comment 4227) claims that the FAA's 2,000-foot above-ground-level guideline for flights over noise-sensitive areas is routinely ignored by air tour operators. In addition, HAI's flight guidelines are also often ignored.

An individual commenter (comment 325) says that a 2,000 ft. above ground level restriction is meaningless because "[o]ver much of the park's terrain hikers could throw rocks down on the occupants of a plane complying with the restriction." Also, seasonal restrictions are meaningless because the park is used year-round by skiers and others.

(ii) Noise Issue. Estes Valley Improvement Association (comment 155) states that since noise from aircraft reverberates all over the valley, this option to keep flying only over roads would not solve the reduction in noise issue, as this area is where the highest percentage of residents, visitors and lower groups of animals would be affected.

Similarly, CANA/S (comment 4227) adds, noise from aircraft flying at 2,100 feet above ground is, for all intents and purposes, indistinguishable from that at 2,000 feet. Therefore, this alternative and the voluntary agreement fail to address many aspects of the natural quiet equation. This commenter adds, according to NPS's 1992 *Aircraft Overflight Study: Effect of Aircraft Altitude upon Sound Levels at the Ground,* any doubling of flight altitude (say from 2,000 feet to 4,000 feet) would, based on divergence alone, result in only a 12 decibel reduction (NPS, page 3). This commenter contends that this may be helpful in the instance of already quiet aircraft, but loud aircraft would still shatter the quiet.

The Wilderness Society (comment 4457) states that the restrictions of Alternative Two would not eliminate the degradation of visitors' experiences. Routing flights over road corridors would mean that more visitors would be affected by the noise, and routing flights over backcountry areas would affect the highest quality wilderness and wildlife habitat. In addition, restrictions on elevation above ground level would not eliminate the noise problem, and would result in as a de facto ban at those altitudes where noise levels were reduced to an acceptable level because the distance from the ground to the aircraft would be too great to afford a decent view. Finally, it would also be extremely difficult to enforce an altitude restriction.

(iii) Lack of Data. Taking a different approach to this alternative, NATA (comment 4229) perceives that the variants presented by this alternative

offer nothing more than varying forms of restrictions. This commenter assumes that the basis for this action is to enhance the environment of the Park by visitors on the ground by limiting air tour operations during these periods. However, NATA asserts, no quantifiable data exists as to how limiting air access to the Park will enhance the experience of visitors on the ground. According to a survey of Park users conducted by the NPS, about 90 percent of the visitors to the Park stated that their enjoyment of the Park would be affected by helicopter noise. This commenter states that using this data to limit all overflight operations is ludicrous, and "the FAA cannot apply theoretical data to a nonexisting situation."

HAI (comment 4357) believes that this NPRM does not provide sufficient information for meaningful comment. For instance, no information on what routes are considered in Alternative Two was included and there are no maps or charts provided for an analysis of proposed routes. This lack of information makes it impossible to comment in detail.

(iv) Other. NPCA (comment 3634) states that, in a park environment that is totally free of commercial air tour activity, placing limitations on operations would invite the establishment of such activity. NPCA adds that any limit, less restrictive than a total and permanent ban, would result in the derogation of park values rather than any improvement of current conditions.

Temsco Helicopters (comment 4575), which supports alternative three, states that time and seasonal restrictions of alternative two would make any kind of air tour operation unworkable. For example, seasonal restrictions would make operations economically unfeasible and would close the park to one type or class of visitor for a portion of the year.

USATA (comment 4563) disapproves of imposing limits on the routes used by air tour aircraft and points out that the ability of these aircraft to operate away from populated areas is a positive factor. USATA states that air tours would cause the least amount of environmental damage to wilderness areas and would therefore be supporting the mission of the Wilderness Act to preserve the "primeval character and influence" of these areas.

USATA goes on to point out its difficulties with Variants A, B, and C. USATA says that the 2,000 feet AGL limitation of Variant A would be in effect a "one-size-fits-all" approach would could exacerbate the presence of sound from aircraft; this was the case in Haleakala National Park which was required to meet a 1,500 foot AGL minimum by SFAR 71. USATA also states that the time limitations of Variant B would be unreasonable because it would be impossible to present many of the wonders of the park in the absence of flight. Finally, USATA says that the seasonal limitations of Variant C would threaten the viability of air tour operations seeking to operate in RMNP because many of these companies would need to operate year round in order to stay in business.

3. Alternative 3—Voluntary Agreement

a. *Support.* The Grand Canyon Air Tour Council (comment 2006) contends that this is the only viable option. This commenter believes that a voluntary agreement is necessary, because such an agreement provides a solution "where no authority exists for effecting regulatory options (as in the case of this RMNP NPRM)." This commenter provides reasons why the other two alternatives are not acceptable: the disregard to the interests of the elderly and handicapped to have air tour availability in the RMNP, the lack of an Environmental Impact Statement prior to the implementation of the proposed SFAR, and the fact that this proposal is based on a request by Colorado's Governor, the Congressional delegation, and other officials from Colorado specifically, none of whom are the owners of this national park and do not represent a federal statutory authority nor a legislative mandate. Therefore, in this commenter's opinion, it "would appear incumbent upon the FAA to decide to proceed only with Alternative Three and request the involvement of potential tour operators in the establishment of a voluntary agreement to prohibit or limit operations."

Temsco Helicopters (comment 4575) points out that there are good examples of existing voluntary agreements that are working well. For example, in Alaska, where this commenter operates, the best routes and altitudes have been refined over the years and have resulted in the least impact and very few complaints. This commenter states that an SFAR would not allow for the kind of refinements and positive results that such agreements have fostered.

Geo-Seis (comment 4350), an air tour operator, believes that given the personal preferences of paying customers on these flights and limitations on flights due to adverse weather conditions, voluntary and satisfactory operating agreements could easily be established with most operators.

AOPA (comment 4356) believes "cooperation between general aviation pilots and the NPS has always been a cornerstone of aviation's efforts to preserve the park experience of ground visitors. The current voluntary overflight altitude of 2,000 feet is one result of this cooperation."

USATA (comment 4563) supports the use of voluntary agreements and says that its organization would work with the FAA, NPS, and others in drafting a letter of agreement. The agreement should address these issues: (1) areas that would be covered, (2) possible restrictions and identities of the participants, (3) discussion on how an agreement would be implemented in the necessary time frame, (4) how an altitude restriction would be enforced, (5) suggested penalties for violations, and (6) the circumstances under which an agreement could be terminated.

b. *Oppose.* Many commenters say that voluntary compliance is unrealistic because operators would not voluntarily limit their own profits and because it would be difficult to enforce. For example, commenter #325 says that the park is sufficiently large to be a challenge to monitoring of compliance.

The Estes Valley Improvement Association (comment 155) believes that this proposal is completely unrealistic since, currently, operators do not exist in the RMNP, and no possible route of overflights could make tolerable the noise which would fill the Valley and the Park.

NPCA (comment 3634) states that voluntary agreements have a history of failure and cites the experience at Hawaii Volcanoes National Park where many operators, after having given verbal agreements to park management, backed away from written agreements for fear that a rogue operator would capitalize on non-compliance and seize market share. Similarly, the Wilderness Society (comment 4457) states that voluntary agreements have not successfully protected park resources and that violations occur for which the Park Service has no recourse.

On the NPRM's use of the Statue of Liberty and Jefferson National Expansion Memorial as examples of successful voluntary flight agreements, CANA/S (comment 4227) refutes the ability of the FAA to use them as examples. These locales are site-specific, urban ones, where "natural quiet" did not already exist to any appreciable degree, particularly with the 500-foot above ground level altitude agreements in effect. These locales are in no way comparable to those of much more vast territory, much of it wilderness, and much of it relatively

quiet. The sightseeing objective of those two examples is to swoop around a single entity. Similarly, NATA (comment 4229) claims that while these self-regulated, self-policing cases have been successful for those specific parks, no air tour operators currently provide service to the RMNP, and no agreements can be made between the government and "air tour operators which may exist in the future."

Response to Comments

As will be described in greater detail below, the comments offered many cogent and informative remarks for consideration by the FAA. The number and quality of the comments received demonstrated to the FAA the importance and complexity of this issue as it relates to RMNP. All comments were thoroughly read and analyzed.

Many of the commenters offered similar arguments for either acceptance or rejection of the various alternatives presented in the NPRM. Due to the vast number of the comments, the section below is a summary of the assertions alleged in the comments and the corresponding response by the FAA.

FAA Authority To Manage the Airspace

Several commenters questioned what they considered was the apparent usurpation by the NPS of the FAA's statutory authority and jurisdiction to regulate the national airspace system. They asserted that the NPS, through this rule, had gained control over the navigable airspace in complete disregard to the FAA's statutory mandate. The regulation of navigable airspace is the sole responsibility of the FAA. The United States Congress has clarified this issue by vesting the FAA with sole authority for the management and control of the navigable airspace. In addition, safety remains the FAA's primary consideration and plays a necessary and integral role in any decision made by the agency.

The allegation that the NPS has assumed jurisdiction for the management of the national airspace is unfounded. The FAA and NPS worked closely together, however, to base any regulatory action on FAA's statutory authority and responsibility. Toward this end, for example, no action was even proposed until the FAA made a determination that there would be no adverse effect on aviation safety in navigable airspace from any of the proposals stated in the NPRM.

Several commenters argued that the FAA lacked the authority to regulate a problem that "does not exist." These commenters argue that it is premature for the FAA to regulate this area, where commercial air tours do not presently operate over RMNP. The Administrator of the FAA is charged with the duty of regulating the use of the navigable airspace, adopting regulations deemed necessary to abate aircraft noise, and protecting persons and property on the ground. The Administrator has the authority to regulate whenever previous history or evidence has revealed a propensity for future problems.

The FAA acknowledges that each of the national parks differ in their topography, nature, size and purpose, but certain experiences found in one park also occur in other parks. Experience with commercial air tour operations in Badlands National Park, Bryce Canyon National Park, Glacier National Park, Glacier Bay National Park, Great Smokey Mountains National Park, Grand Canyon National Park and Mt. Rushmore National Memorial have demonstrated the rise in the number of commercial air tour operations conducted over the parks and a concomitant increase in the noise from such operations.

For example, at Glacier National Park, The NPS estimates that from 1986–1996 the number of fixed wing and helicopter tours at the park increased from 100 to 800 and the number of tour operators from one to five. At Badlands National Park, NPS estimates that the single air tour operator offering helicopter tours conducted over 400 flights in a five month period, or an average of three flights per hour during peak periods. These flights are repetitive in nature concentrated in two basic circular flight patterns over the same area again and again, constantly disturbing the quiet of the park. The air tour operations have led to numerous complaints by visitors to the park.

Bryce Canyon has air tour operations from several locations within the vicinity of the park. At Bryce Canyon Airport, located 3.5 miles north of the park, NPS reports that the number of enplanements has increased dramatically from 1299 in 1991 to approximately 4700 per year in the current year. Likewise, the number of air tour operators, from all locations, has increased from one to five. At the Mt. Rushmore National Memorial, the Park Service estimates that the number of overflights has increased from 2400 per year to 4000 per year along with an increase of tour operators from one to four. All of the tour operators use helicopters and the majority of these flights are concentrated in the summer months at the rate of approximately 30 per day.

In addition, the Park Service has conducted a survey of park users at RMNP, which indicated that ninety-three percent of visitors considered tranquility to be an "extremely" or "very" important value in the park. Approximately ninety percent of the visitors surveyed stated that noise from helicopter tours would affect their enjoyment of the park. A copy of the survey has been placed in the docket of this proceeding.

Based upon this information from RMNP visitors, the growth of tour operations at these other parks, and the apparent representations of potential tour operators, the FAA has concluded that the introduction of air tour operations at RMNP is a real possibility in the absence of regulation. Further, if commercial air tours are established at RMNP, the actions by commercial air tour operators at the other parks suggests that the number of commercial air tour operators and the number of daily over flights would both increase beyond *de minimus* levels. Air tour operations would tend to visit many of the points of interest where ground-based visitors are likely to concentrate and to conduct operations at altitudes so as to maximize contact with these points of interest. The increase in operations and their proximity to major points of interest would lead to increased noise levels thereby impacting the quiet enjoyment of RMNP expected and desired by visitors to the park.

While the FAA has determined that a permanent rule regarding oversights of Rocky Mountain National Park by commercial tour operators should be made part of the overall rulemaking on overfights of all national park units, the FAA is taking this temporary action now to avert the introduction of such operators into RMNP while the national rule is completed. The experience gained from other national parks forms part of the basis for the Administrator's decision to move at this time to protect Rocky Mountain National Park.

Administrative Procedure Act

One commenter alleged that the FAA has failed to comply with the Administrative Procedure Act's notice and opportunity for comment requirements by failing to provide sufficient information to allow a meaningful response to Alternative Two. As an example, the commenter suggests that, under Alternative Two, the absence of maps and charts deprives the commenter of a meaningful opportunity to analyze the proposed routes.

Section 553(b) of the Administrative Procedure Act provides that "notice shall include—(3) either the terms of substance of the proposed rule or a

description of the subjects and issues involved." Under the alternatives section, the FAA solicited comments on numerous proposals, while requesting new ideas on possible restrictions. The Agency received many comments on the proposed alternatives, but no new alternative that had not already been proposed. (Had the FAA received a new, significantly different, proposal on which it relied, the FAA would have issued a Supplemental NPRM to solicit comments on the new proposal prior to taking action.) The number and specificity of the received comments demonstrate a general understanding of the proposed alternatives. Therefore, the FAA concludes that it has provided sufficient detailed information concerning the description of the subjects and issues involved to comply with the terms of the Administrative Procedure Act by affording interested parties with a meaningful opportunity to comment on the proposal.

"Natural Quiet" Standard

One commenter challenged the action of the FAA as proposed in the NPRM by alleging that the actions of the FAA exceeded the Congressional mandate provided under Public Law 100–91 to substantially restore the natural quiet of the Park, because that standard was devised solely for the protection of the Grand Canyon. The commenter further opined that the attempt to achieve "natural quiet" in RMNP was inappropriate and without any Congressional mandate.

It is true that Public Law 100–91 was directed to restoring the "natural quiet" of Grand Canyon National Park only and not to the other parks in the national system. Public Law 100–91 provides for the substantial restoration of the natural quiet and experience of the Grand Canyon National Park and protection of public health and safety from adverse affects associated with aircraft overflights. The FAA is taking separate action on restoring the quiet of Grand Canyon National Park.

In this final rule, however, the FAA is carrying out President Clinton's directive to promote natural quiet at Rocky Mountain National Park. As noted above, the President's *Parks for Tomorrow* initiative specified that the restoration of natural quiet, and the natural enjoyment of RMNP are goals to be addressed by this rulemaking. By promulgating this final rule, the FAA is cooperating with the NPS to further the goal of protecting Rocky Mountain National Park, its environment, and visitors' enjoyment, to ensure that the potential problems associated with noise from commercial air tour operations do not arise while a long-term solution is developed to protect RMNP and other national park units from the adverse effects of overflights by tour operators.

Another commenter asserted that NPS's report to Congress, while espousing the restoration of natural quiet, singled out only noise as being obtrusive. The commenter alleged that this made the report incomplete and biased.

The NPS's report to Congress: *Report on Effects of Aircraft Overflights on the National Park System* responded to the Congressional mandate set forth in Public Law 100–91. The scope of the mandate was limited to the impacts of aircraft overflight on the national park system with distinctions to be made among various categories of aircraft overflights. The law made no provision to identify or compare any impacts on the national park system from other activities or sources. To the extent that other activities, such as ground transportation, may have an adverse effect on parks' environment or visitor experience, these effects can be dealt with by the NPS under its authority.

NEPA Requirements

Some commenters maintain that the FAA should prepare an environmental impact statement (EIS) pursuant to the National Environmental Policy Act of 1969, prior to issuing the final rule because they contend that implementation of any of the alternatives of the proposed SFAR, except the ban alternative (Alternative 1), will have a significant adverse affect on the quality of the human environment.

According to the FAA's Environmental Order 1050.1D, the final rule is a Federal action which requires compliance with the NEPA. Consistent with the FAA Order 1050.1D, Para. 35, the FAA prepared a draft environmental assessment (DEA). The DEA did not disclose potentially significant direct or indirect impacts affecting the quality of the human environment. On November 21, 1996, the FAA announced the availability of the DEA for notice and comment. The comment period on the DEA remained open until December 23, 1996. Based on the comments received on the DEA and further analysis, the FAA has issued a Final EA. The FAA has determined that no additional environmental analysis is required and has issued a finding of no significant impact (FONSI). The final EA and FONSI has been issued and is available for review in the Docket. For copies of the documents, contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section listed above.

This final rule constitutes final agency action under 49 U.S.C. 46110. Any party to this proceeding having a substantial interest may appeal the order to the courts of appeals of the United States or the United States Court of Appeals for the District of Columbia upon petition, filed within 60 days after entry of this Order.

EPA Consultation

One commenter states that the NPRM does not cite a statutory basis for the proposed action, but if the basis is 40 U.S.C. 44715, the FAA failed to consult the EPA.

The FAA is, in fact, relying on 40 U.S.C. 44715 and has consulted with EPA. The EPA believes that the environmental assessment adequately supports a finding of no significant impact.

Airline Deregulation Act

Another commenter believes that by promulgating the NPRM, the FAA has violated Section 102 of the Airline Deregulation Act of 1978 by failing to: (1) Encourage the entry of new carriers into air transportation, (2) foster the expansion of existing carriers into additional air transportation markets, and (3) insure the existence of a competitive airline industry. The commenter cites the possibility that interstate operators might become interested in commercial air tours in the future.

The statutory obligation to encourage development and competition among air carriers is not unconstrained. The FAA has authority to regulate, restrict, or prohibit activities by operators when necessary in the public interest. The final rule effects a temporary ban on commercial air tour operations over the Rocky Mountain National Park; the FAA has determined such a ban is necessary to allow for the orderly development of a comprehensive approach to regulating air tour operations at RMNP and other parks in a manner that is consistent with the needs of park visitors on the ground. The potential that an interstate operator will become interested in commercial air tour operations at RMNP at some unspecified point, let alone during this interim period, is pure speculation, irrespective of the informal remarks of the commenters, and fails to rise to the level of a protectable interest. Moreover, it is important to recognize that a major reason the final rule has been promulgated, prior to the existence of commercial air tours, is to avoid the unnecessary interruption of established commercial service by whatever

regulation is adopted in the broader national rulemaking now underway on park overflights.

This rulemaking arose in response to public demand. The policy for preserving the natural enjoyment at our national parks has been formulated by the FAA to facilitate the adaptation of the air transportation system to the present and future needs and interests of the public. Any potential air tour operator currently evaluating whether to provide air tour operations within Rocky Mountain National Park will be able to participate in the development of the rulemaking on national park overflights at all parks, including RMNP.

Americans With Disabilities Act

Several comments were received alleging that the final rule will violate the Americans With Disabilities Act, § 2(a)(8) by depriving disabled persons of equal opportunity for full participation in the enjoyment of the Rocky Mountain National Park. According to these comments, commercial air tour operations will be the only way disabled individuals can enjoy the vistas of RMNP.

To the contrary, Rocky Mountain National Park offers an unique opportunity for disabled individuals to enjoy its spectacular vistas via its extensive road system. Approximately 54% of the RMNP can be viewed from some point along its 149 miles of winding road. In this aspect, RMNP is unique in its ability to provide access to recreational experiences via trails which allow access to backcountry and scenic vistas. Moreover, the NPS has established facilities and programs within RMNP to enhance the opportunities for visitors with disabilities to experience the Park. Thus, FAA believes that this rule does not violate the ADA.

Economic Costs

One commenter suggested that the FAA should conduct a cost/benefit analysis to determine whether the costs of implementing the NPRM will exceed its ultimate value to society. The imposition of this ban will not have an economic impact on commercial air tour operations over RMNP today because they are non-existent. Nor does the FAA consider it probable that significant levels of new services will arise during the temporary period between adoption of this rule and completion of the more comprehensive rulemaking on national park overflights. The FAA's intent is specifically to avert economic damage to commercial air tour operators by acting prior to one of more operators commencing business on the assumption that they will be allowed to operate over RMNP once the general rule is adopted. By acting expeditiously, the FAA will enable these operators to avoid making the capital investments necessary to engage in these operations that may be subject to future restrictions as part of the national rule.

However, it would be an error to minimize the true impetus for the final rule which is to preserve the natural resources at RMNP, including the quiet and solitude. In this respect, it is difficult to assign a monetary value to the benefit to be gained by this rule. Specifically with respect to the economic value attached to the preservation of environmental values, some economic analysis models (such as use of a "willingness to pay" analysis) could ascertain an economic value to society of such an asset. However, such analysis is not necessarily directly comparable in a cost/benefit basis with the economic valuations of costs and benefits that the FAA undertakes for other rulemakings. As a result, the information provided through such an effort would have little analytical or probative value.

National Standards/General Aviation

Many of the commenters that expressed opposition to this rule stated that it is premature for the FAA to take action concerning one park within the national park system when it is currently drafting a rule to cover all aviation operations within the total national park system. The commenters felt that parks should not be dealt with on a case-by-case basis, but should be incorporated into any national standards that are promulgated.

To some extent, the FAA agrees with these concerns. For that reason, this rule will terminate when national standards are adopted. However, in view of the strong local demand for action to ensure preservation of Rocky Mountain National Park and the ripeness of this proceeding, the FAA is taking the opportunity to establish temporary protective measures at RMNP while the national standards are being adopted. By Presidential Declaration dated April 22, 1996, the President directed the Secretary of Transportation to consider and draft a Notice of Proposed Rulemaking that would propose national standards for air tour overflights of the national parks. The FAA is working on that national rule currently and will follow rulemaking procedures, including proceeding with notice and opportunity for comment, prior to taking any final action. The FAA has designed its Rocky Mountain National Park rule to terminate on the adoption of national standards.

Certain commenters raised an objection that even though the air tour ban would apply to only commercial air tour operators, the rule proposed still represents an undue threat to the public right, including that of general aviation aircraft, to transit the navigable airspace of the United States. This final rule is strictly limited to overflights by commercial air tour operators over RMNP. Air tour operations differ from general aviation operations in the frequency of trips and their operational altitudes. In addition, air tours generally operate over picturesque areas where ground traffic congregates and at altitudes intended to maximize contact with these areas. Therefore, air tour operations are distinguishable from general aviation operations to such a degree as to remove any perceived threat to the right of general aviation aircraft to transit RMNP. Under the provisions of the final rule, all other aircraft will remain undisturbed in their current routes and altitudes of flight.

Quiet Technology

Another commenter recommends that rather than banning commercial air tours over the RMNP, the FAA should follow the recommendations of a 1994 report to Congress where the NPS suggested the use of quiet aircraft technology as a means of reducing the noise effect on National Parks. The NPS report to Congress suggested that quieter aircraft could be used in substantial restoration of natural quiet in Grand Canyon National Park (GCNP). It identified Dtt C–6–300, Vistaliner and Cessna 208 Caravan airplanes, and the McDonnell Douglas "No Tail Rotor" helicopters as the quietest aircraft currently operating in GCNP. The NPS made this determination based on its evaluation of aircraft certification data derived from applicable noise certification standards in Part 36 of Title 14 of the CFR, and from NPS flyover noise measurements taken in the park. Because of the temporary nature of this rule, the FAA determined that quiet technology would not provide an adequate alternative. Quiet technology ultimately holds great promise for ensuring the compatibility of air tour overflights and the maintenance of quiet for ground-based visitors of national parks. Indeed, movement toward the use of quiet technology forms a cornerstone of the FAA's proposal for a long-term solution to overflights of the Grand Canyon. And the FAA will want to explore the role quiet technology should play in the national rule. However, for this interim period, a temporary ban on

commercial air tour operations will maintain the status quo and allow an orderly resolution of questions pertaining to quiet technology and other issues. To the extent that technological change would allow the operation of commercial air tours within RMNP in a manner consistent with the protection of the Park, its resources, and its enjoyment by visitors, the FAA will review this rule in the future.

The Lack of Air Tour Operators

Certain commenters questioned whether this rule was even necessary, because aerial tours do not operate over RMNP for obvious reasons: the high altitudes of the park; aircraft loading factors; and the attendant operating costs associated with running successful aerial tour operations. The FAA, in cooperation with the NPS, is currently developing regulations to govern aircraft overflight of national parks. Since the inception of that effort, interest has been expressed by an operator to commence commercial air tour service at RMNP. As a practical matter, it was the fact that a commercial air tour operator was contemplating engaging in flights over RMNP that caused the Governor of Colorado, members of the Colorado Congressional delegation, and Estes Park, Colorado officials to request the FAA to preemptively ban such operations at RMNP.

The fact that commercial air tour service is being contemplated for RMNP supported the FAA determination that immediate action was necessary to preserve the natural enjoyment of visitors to RMNP by implementing a *temporary* ban on commercial air tour operations. In addition, the FAA believes it is critical to act expeditiously on this matter to avoid any potential environmental and economic impact.

Alternatives

As previously mentioned, the FAA is attempting to implement a regulation over RMNP that achieves the goal of preserving the natural enjoyment of the Park by visitors by averting the future and potential adverse effects of aircraft noise. The comments received on the alternatives were crucial in the FAA's decision. Based on the comments, the FAA determined that Alternatives 2 and 3 would not achieve the desired goal. Therefore, the FAA has determined that the best alternative in application and result would be Alternative One on a temporary basis.

In response to the voluntary agreement alternative and the comments received on that alternative, the FAA determined that since there are currently no air tour operators conducting operations over the Park, there are no operators to participate in a meaningful discussion and negotiation with the NPS officials at the Park. The FAA is appreciative of the willingness of certain aviation groups, such as USATA and HAI, to participate in the drafting and implementation of a voluntary agreement. However, without actual operators that would be willing to be made a party to the voluntary agreement, the FAA determined that this alternative would not achieve its desired goal.

Alternative 2 proposed to permit *sightseeing tours with several suggested* limitations. The FAA partially agrees with some of the commenters who stated that the imposition of partial restrictions would not provide a meaningful result for the commercial air tour operators or achieve the goal of this rulemaking. Moreover, in reviewing the different options that could be used in conjunction with air tour restrictions listed in Alternative 2, the FAA concluded that the application of these options would be operationally difficult for the commercial air tour operators. The terrain within RMNP is quite varied and irregular, with mountain peaks and valleys differing in elevations by thousands of feet. This forces a pilot to be more attentive to the varying topography.

The FAA agrees with the commenters that cited the difficulty in requiring air tour operators to conduct operations only over the existing roadways in RMNP. Certain flight corridors may become necessary in the future, but their establishment will necessitate a much more comprehensive aeronautical and environmental review that just designating the existing roadways. Given the challenging operational environment, the FAA agrees with those comments which claim that restrictions based on the season, time of day, or day of the week would be economically unfeasible for air tour operators.

As noted above, the FAA can reasonably infer from the varied and instructional information received at other parks as to the effects of aircraft noise due to commercial air tour operations. An altitude restriction that would increase the minimum altitude above 2,000 feet above ground level would still have the potential to adversely impact both visitors and resources. Therefore, the FAA determined that the most efficient method of mitigating the potential adverse effects from aircraft noise in this particular case would be to place the preemptive ban on all commercial air tour operations.

Comments Received During the Reopened Comment Period

On November 21, 1996, the FAA reopened the comment period on this rule in order to allow comment on the Draft Environmental Assessment (DEA) that was made available at that time; public responses were also invited to material from the National Park Service that was placed in the docket on December 11, 1996, concerning commercial air tour operations over national park lands.

The information showed that commercial sightseeing operations have become very popular at a number of units of the national park system, and are growing in popularity in others. Many park areas have either documented or estimated significant increases in the volume of air tour activity over the last ten years. For example, air tour flights over Grand Canyon National Park have increased from a few hundred flights per year in the 1960's, to 40,000 to 50,000 per year in 1986, to 80,000 to 95,000 per year in 1996, with up to 40 companies offering sightseeing flights over the park, according to industry, FAA and/or media estimates. Experience at Hawaii Volcanoes and Haleakala National Park in Hawaii has been similar in trend but lower in magnitude, with highs of 23,000 flights per year and 10 operators estimated at Hawaii Volcanoes.

Hard statistics are lacking on the number of sightseeing operations conducted over national park areas because, with the exception of recent fee legislation for Grand Canyon, Hawaii Volcanoes, and Haleakala National Parks, there are no requirements for operators to provide such data. Even at the three parks in the fee legislation, accurate data has not been readily available. In virtually all cases, overflight data has to be estimated based upon a variety of sources, such as airport operations data, limited field observations, FAA projections for airport master planning, industry publications, and voluntary responses to surveys and requests for information.

The trends based upon such numbers indicate increasing interest and levels of sightseeing operations over many national park areas, which correlates with trends for ground visitation. For example, Glacier National Park estimates that between 1986 and 1996 the number of overflights increased from 100 to 800 per year, and the number of commercial air tour operators increased from one to five. Mount Rushmore estimated an increase from 2,400 to 4,000 overflights and from one to four operators during the same time

period. Sightseeing tour operators have become based within a few miles of the park boundary during the past two years at Bryce Canyon and Canyonlands, with major expansion of airport facilities either proposed or approved to accommodate increasing tour operations at both places. At present, a new helicopter tour operation is in the process of starting up at Chickamauga-Chattanooga National Military Park.

The extended comment period closed on December 23, 1996. Forty-nine submissions were received during the reopened comment period, most of which were substantive comments on the proposed rule. Many of the commenters during the reopened period had commented previously, but were either supplementing their prior comments or were adding to or extending their arguments.

Thirty-one commenters used the reopened comment period to express overall support for a complete ban on commercial tour overflights. These include the comments from the Estes Valley Improvement Association, the Town of Grand Lake, CO, the National Parks and Conservation Association, the Pourdre Canyon Group of the Sierra Club, the Estes Park League of Women Voters, and the League of Women Voters of the United States and numerous individuals. These commenters typically stressed the need to maintain the natural enjoyment of the Park's solitude and quiet and argued that overflights by commercial air tour operators would adversely affect that enjoyment. Among those expressing general opposition to the proposal were several other individuals and Bell Helicopters Textron, Inc. Every comment submitted during the reopened comment period was read and considered, although neither all comments nor all points raised will be addressed individually in this preamble. Many of the arguments presented are similar to those that were submitted earlier and discussed above. Several comments, however, suggested new arguments against the imposition of a ban on commercial tour overflights, and these are discussed below.

The new comments that addressed the DEA are discussed in the Final Environmental Assessment for this rule and are not mentioned in the preamble to this rule. A copy of the Final Environmental Assessment has been placed in the rulemaking docket and is available upon request to the person listed in the FOR FURTHER INFORMATION CONTACT section above.

Alleging that the reopened comment period was too short, the Helicopter Association International, the Grand Canyon Air Tour Council, and the United States Air Tour Association requested that the DEA be withdrawn and/or the comment period extended to allow additional time for further analysis. However, several commenters such as the League of Women Voters, the Estes Valley Improvement Association, Inc., and the Town of Grand Lake, stated that the time allowed was sufficient to analyze the DEA and found the document adequate in its review of the relevant environmental consequences associated with this rule. Further, as discussed above, the FAA believes that prompt completion of this rulemaking is necessary, because the proposed ban on commercial air tours contained in the NPRM may affect the business and investment decisions of operators. Therefore, while in the abstract it is always desirable to have more rather than less time for public comments, that desire must be balanced against the need to complete the rulemaking in a timely manner. This means that the temporary ban should be implemented before any air tour operator attempts to start commercial air tour operations at RMNP and then is adversely affected financially by the imposition of the subsequent ban. Experience at other national park units suggests that while commercial air tour operations do not cease in the winter months, the number of commercial air tour operations in the winter (as well as the number of new start-up air tour businesses) is not as high as in the warmer months of the year. Therefore, the FAA wants to impose the temporary ban in the more dormant months of the year before new air tour operations are started.

Even though the comments offered by Southwest Safaris (Safaris) focus on the DEA, Safaris alleges certain points that pertain both to the DEA and this final rule. Safaris argues, among other things, that the FAA has no basis on which to ban overflights by commercial air tour operations, because there are no such operations currently. In the absence of such operations, Safaris argues, there is no "measurable" need to prohibit them. Safaris also dismisses National Park Service data indicating that approximately 90 percent of park visitors surveyed stated that noise from helicopters would affect their enjoyment of the park. ("In the last sentence, the word, 'would,' does not mean 'does.' The impact of helicopter noise over RMNP is entirely hypothetical.") The problem with Safaris' argument is that it necessarily implies that the FAA has no authority to act to prevent reasonably foreseeable problems before they occur, and this is simply false. The agency is not obliged to wait until damage occurs before exercising its authority to stop such damage. This issue arises more frequently in the safety context, where most of FAA's regulations arise, but it applies with no less force in the exercise of FAA's other authorities.

Safaris also challenges the FAA's right to apply information gained from experience with commercial tour overflights of other national parks to RMNP. While each park has unique characteristics, the FAA believes that some general understanding can be gained with respect to the business of conducting tour overflights, including its growth pattern and market considerations. The FAA's and NPS experience extends as well to an appreciation of the effect of such overflights on park visitors and resources. While specific topography and park characteristics must be taken into account, the agencies general knowledge can and must inform its projections about the nature and effects of any air tour operations at RMNP. The FAA acknowledges that additional information would improve our ability to forecast specific noise impacts. The agency has determined to impose only a temporary ban on commercial tour overflights at RMNP while a broader rule is considered. This rulemaking allows the FAA to prevent an overflight problem from air tour overflight from developing in RMNP, as it has in so many other national parks.

Safaris goes on to argue, as does the Northern California Airspace Users Working Group, that air tour operations increase rather than diminish the value of parks, and that compared to automobile visitors, air tour visitors cause less damage to park resources. The FAA will not be drawn into any attempt to compare the benefits and costs to park resources of air and ground visits. Experience from other parks that do have air tour operations is that most air tour national park visitors (though by no means all) are also ground visitors. Indeed, this was confirmed by representatives of the air tour industry at the Grand Canyon in discussions with FAA staff earlier this year. Therefore, air tour operations do not in any large measure replace ground visits. In view of RMNP's ready accessibility to a major metropolitan area and the convenience with which it may be visited by automobile, it is reasonable to assume that this will be particularly true at RMNP.

HAI argues that the NPRM should be withdrawn because, in HAI's view, the regulatory language is too vague to be enforceable. HAI claims that the

proposed rule would prohibit regional air carrier and on-demand air taxi flights that now traverse the park. The FAA has already addressed the argument that a prohibition on air tours at RMNP would also apply to other kinds of air operations. The short answer is that it would not. The FAA has the same response to the comment of the Soaring Society of America. The Soaring Society's comment argues that gliders do not pollute measurably, either in noise or emissions, and it states the Society would therefore oppose a general ban of aircraft flights over a National Park. The FAA has not imposed any general ban on all aircraft at Rocky Mountain National Park. Only commercial air tour operations would be affected by the temporary ban adopted in this rule.

As to HAI's suggestion here that air tour operations cannot be distinguished from point-to-point service, we believe that neither the operators nor the FAA will have any difficulty in understanding the difference between the high-frequency air tour service that concentrates at places of particular interest and flights that travel as directly as feasible between two distant cities, and happen to traverse the park on a particular route. However, if HAI believes, as it says, that a more specific definition is necessary, we invite HAI to propose one, either for future use at RMNP or as part of the development of a national rule on air tour overflights at national parks.

Regulatory Evaluation

Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall 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 effects of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this rule is a "significant regulatory action" as defined in the Executive Order and the Department of Transportation Regulatory Policies and Procedures.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) helps to assure that Federal regulations do not overly burden small businesses, small non-profit organizations, and airports located in small cities. The RFA requires regulatory agencies to review rules which 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 eleven, 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 imposed on them must not exceed the annualized cost threshold established in FAA Order 2100.14A.

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall 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 effects of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this rule is "a significant regulatory action" as defined in the Executive Order and the Department of Transportation Regulatory Policies and Procedures. This rule will not have a significant impact on a substantial number of small entities and would not constitute a barrier to international trade. The FAA's criteria for "substantial number" are a number which is not less than 11 and which is more than one third of the small entities subject to this rule.

This regulatory evaluation examines the costs and benefits of special flight rules in the vicinity of Rocky Mountain National Park (RMNP). The rule is intended to preserve the natural enjoyment of RMNP from any potential adverse impact from aircraft-based sightseeing overflights. Since the impacts of the changes are relatively minor as well as temporary, a full regulatory analysis, which includes the identification and evaluation of cost-reducing alternatives to this rule, has not been prepared.

Costs

At present there are no air tour operations over RMNP and, despite some expression of interest, none have taken definitive action to initiate service at this time. Considering the historical record, the FAA assumed that this final rule will not lead to increased costs to an operator over the next ten years since there are no operators. Moreover, applications for air tour operations have been repeatedly turned down by the town of Estes Park, and it is unlikely that opposition to air tour operators will lessen over time there.

However, while there are no air tour operators that are currently expected to operate in RMNP, information supplied to the docket shows that from time to time small operators have tried to gain approval for operating over RMNP from local authorities. In order not to overlook the potential costs imposed by this rule to potential operators in this analysis, the FAA has attempted to estimate this potential cost. To estimate the potential costs to these potential operators, the FAA employed recent data from the proposed rulemaking on "Flight Rules in the Vicinity of Grand Canyon National Park."

Financial data from two small scheduled fixed wing operators and a helicopter operator that operate over the Grand Canyon were utilized. The three operators chosen are: a 5 passenger CE 206 operator, a 3 passenger Piper Pa–28–180 airplane operator, and a SA–341–G helicopter operator. The estimated annual operating revenues for these operators are respectively, $53,000, $10,000, and $16,000.

Even if the FAA assumes that three relatively small operators would eventually gain authority to operate over RMNP in the next ten years, the costs will still be quite small. The FAA estimates costs in lost revenues to operators due to this rule will range from zero, which is most likely, to $79,000 per year if three operators are denied the ability to do business over RMNP due to the rule.

Benefits

This rule serves to preserve the desired state of quiet and solitude in the park. Currently, the natural enjoyment of the Park is not disturbed by air tour operators and will not be after the rule is promulgated.

Conclusion

Small entities potentially affected by the final rule are potential air tour operators that in the absence of the rule would operate over Rocky Mountain National Park. The FAA estimates from zero to three operators might be affected by the rule, well below the substantial number criteria. The FAA thus concludes that there will not be a significant economic impact on a substantial number of small entities.

International Trade Impact Analysis

The final rule will not have any impact on international trade because the potentially affected operators do not

compete with foreign operators. The rule also 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.

Federalism Implications

This action will not have substantial 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. Indeed, State and local government representatives have been among the advocates for FAA regulatory action to protect RMNP from the noise created by overflights. Therefore, in accordance with Executive Order 12612, it is determined that this action will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

International Civil Aviation Organization and Joint Aviation Regulations

In keeping with United States obligations under the convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization Standards and Recommended Practices (SARP) to the maximum extent practicable. For this action, the FAA has reviewed the SARP of Annex 10. The FAA has determined that this action will not present any differences.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13), there are no requirements for information collection associated with the proposed regulation.

Conclusion

For the reasons set forth above, the FAA has determined that this rule is a significant regulatory action under Executive Order 12866. The FAA certifies that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This rule is considered significant under DOT Regulatory Policies and Procedures.

List of Subjects

14 CFR Part 91

Aircraft, Airmen, Aviation Safety.

14 CFR Part 119

Air carriers, Aircraft, Aviation safety, Charter flights.

14 CFR Part 121

Air carriers, Aircraft, Aviation safety, Safety, Transportation.

14 CFR Part 135

Air Taxis, Aircraft, Airmen, Aviation safety.

The Amendment

The FAA wishes to be responsive to concerns about the effects of overflights on the national park system. For that reason and due to the unique situation at RMNP the FAA is temporarily banning commercial air tour operations in the vicinity of the RMNP for sightseeing purposes for the limited duration of the SFAR. In consideration of the foregoing, the Federal Aviation Administration amends Title 14 of the Code of Federal Regulations (14 CFR) parts 91, 119, 121, 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 119—CERTIFICATION: AIR CARRIERS AND COMMERCIAL OPERATORS

2. The Authority citation for part 19 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1153, 40101, 4010, 40103, 40113, 44105, 44106, 44111, 44701–44717, 44722, 44901, 44903, 44904, 44906, 44912, 44914, 44936, 44938, 46103, 46105..

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

3. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

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

4. The authority citation for part 135 is revised to read as follows.

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

5. In parts 91, 119, 121, and 135, Special Federal Aviation Regulation No. 78, the text of which will appear at the beginning of part 91 is added to read as follows:

SFAR No. 78—Special Operating Rules for Commercial Air Tour Operators in the Vicinity of the Rocky Mountain National Park

Section 1. Applicability. This Special Federal Aviation Regulation prescribes operating rules for commercial air tour flight operations within the lateral boundaries of the Rocky Mountain National Park, CO.

Section 2. Definition. For the purpose of this SFAR: "commercial air tour" means: the operation of an aircraft carrying passengers for compensation or hire for aerial sightseeing.

Section 3. Restriction. No person may conduct a commercial air tour operation in the airspace over Rocky Mountain National Park, CO.

Expiration: This SFAR will expire on the adoption of a final rule in Docket No. 27643.

Issued in Washington on January 3, 1997.

Linda Hall Daschle,

Acting Administrator.

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