

ceiling. They state that general aviation airplanes fly low in this area to stay below the helicopter tour flights. They assert that this practice is "contrary to common sense, increases the potential for mid-air collisions, and increases noise exposure for coastal communities." Finally, petitioners state that a review of the pre-SFAR helicopter accidents in Hawaii would disclose that "a 300 foot restriction would have been equally effective in preventing almost every accident attributed to low altitude."

In an identical addendum to the petition, some petitioners state that SFAR 71 should be rescinded and that the rules governing helicopter flight and equipment should be uniform throughout the United States. These petitioners maintain that parts 91 and 135 are established safety regulations acceptable to helicopter tour pilots and tour operators on a nationwide level. They contend that SFAR 71 was imposed because of a political outcry for increased regulations. They also maintain that the accident history used to support SFAR 71 shows that if the pilots and operators had complied with existing regulations, the accidents would not have occurred or the outcomes would have been different.

The FAA's Response

The FAA has considered the petitioners' views, arguments and information in formulating this notice of proposed rulemaking. During the years that SFAR 71 has been in effect, the FAA has received many comments about the minimum altitude requirement; it continues to be a contentious issue. When the FAA issued SFAR 71 in 1994 as an emergency rule, the National Transportation Safety Board and others criticized the minimum altitude requirement because of a concern that tour operations would be concentrated at that altitude increasing the risk of mid-air collisions and derogating safety. In practice, the FAA has granted deviations to a majority of the operators, which has mitigated this concern. By granting the deviations, the FAA has provided the majority of air tour operators with specific interpretations of how the minimum altitude requirement of SFAR 71 applies to them in light of their individual safety qualifications and differences in local terrain and prevailing conditions.

The petitions and addendums to the petitions raise issues again that are similar to comments received by the agency during the three rulemaking proceedings on this SFAR. The helicopter air tour operators do not

agree with the 1,500-ft. altitude minimum and they want to fly lower at 300 feet over other than congested areas in Hawaii without obtaining an FAA authorized deviation. They acknowledge, however, that a minimum altitude of 300 feet would not have prevented all the pre-SFAR accidents attributable to low altitude. SFAR 71 limits the minimum altitude at which air tours may be conducted and, to that extent, the FAA agrees with petitioners that SFAR 71 has taken away a pilot option. An altitude of 1,500 feet provides a pilot with more distance, and thus time, to avoid an accident or to deal with an error.

In summary, SFAR 71 has been successful in reducing the air tour accident rate in Hawaii and does not compromise safety. Any FAA issued deviations from the altitude requirement will continue to be site specific because the public interest in safety requires a case-by-case and site-by-site assessment for each altitude deviation request.

The Proposal

The FAA proposes to continue the safety requirements of SFAR 71 without a termination date because of the success of SFAR 71 in reducing the air tour accident rate in Hawaii and the proven effectiveness of the SFAR's requirements.

Environmental Review

In accordance with FAA Order 1050.1D, the FAA has determined that this proposed rule is categorically excluded from environmental review under section 102(2)(C) of the National Environmental Policy Act. The original SFAR 71 established procedural, operational, and equipment safety requirements for air tour aircraft in the state of Hawaii. This proposal would maintain the same requirements. This rulemaking will not involve any significant impacts to the human environment and the FAA has determined that there are no extraordinary circumstances.

Regulatory Evaluation Summary

This regulatory evaluation estimates the benefits and costs of a proposed rule that would continue the existing safety requirements in SFAR 71 and eliminate its termination date. Currently, SFAR 71 is a final rule that will expire on October 26, 2003. Since 1994, the FAA has extended SFAR 71 for two 3-year periods. The procedural, operational, and equipment safety requirements of SFAR 71 would continue to apply to parts 91, 135, and certain 121 air tour operators in Hawaii. SFAR 71 does not apply to operations conducted under

part 121 in airplanes with a passenger-seating configuration of more than 30 seats and a payload capacity of more than 7,500 pounds or to flights conducted in gliders or hot air balloons.

The FAA estimates the total cost of this proposed rule at \$29.8 million or \$20.9 million, discounted. The costs reflect maintenance and operating costs attributable to flotation devices and flotation gear, operating costs required for calculating helicopter performance plans and providing passenger briefing for emergency egress in the event of a water landing. Lost opportunity costs would also be incurred due to the minimum weather provisions.

The quantified monetary benefits of the proposed rule are estimated at \$125.3 million. An estimated 39 fatalities would be avoided, if the rule were 100 percent effective and the rule would have to be less than 23 percent effective for the cost per fatality avoided to exceed the benchmark value of \$3.0 million.

The FAA has determined that the benefits of the proposed rule would exceed the cost. The rule would not impact on international trade because the affected operators do not compete with foreign operators. The rule would not have an unfunded mandate exceeding \$100 million annually on the private sector or state, local, and tribal governments. The FAA has determined that the proposed rule would have a significant impact on a substantial number of small air tour operators.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

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

Paperwork Reduction Act

SFAR 71 contains information collection requirements. Those same requirements apply to this extension. OMB approval (No. 2120-0620) has been extended through January 31, 2004.