

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Parts 91, 121 and 135****[Docket No. FAA-2003-14830; Special Federal Aviation Regulation (SFAR) No. 71]****RIN 2120-AH02****Air Tour Operators in the State of Hawaii****AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Final rule.

SUMMARY: This final rule continues the existing safety requirements in Special Federal Aviation Regulation No. 71 (SFAR 71) and eliminates the termination date for SFAR 71. The procedural, operational, and equipment safety requirements of SFAR 71 will continue to apply to Parts 91, 121, and 135 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.

DATES: This final rule is effective October 26, 2003.

FOR FURTHER INFORMATION CONTACT: Alberta Brown, Aviation Safety Inspector, Air Transportation Division, AFS-200, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone (202) 267-8321, or by e-mail at Alberta.Brown@faa.gov.

SUPPLEMENTARY INFORMATION:**Availability of the Rulemaking Documents**

You can download an electronic copy of this final rule through the Internet by:

(1) Searching the Department of Transportation's (DOT) electronic Docket Management System (DMS) Web page (<http://dms.dot.gov/search>); by going to the DOT in person; or by requesting by mail to DOT at 400 Seventh Street, SW., Washington, DC 20590;

(2) Visiting the Office of Rulemaking's Web page at <http://www.faa.gov/avr/armhome.htm>; or

(3) Accessing the **Federal Register's** Web page at http://www.access.gpo.gov/su_docs/aces/aces140.html.

You also can get a copy 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) 267-9680. Make sure you

put docket number FAA-2003-14830 on your request, to identify this rulemaking.

You may review the public docket containing this final rule, any comments received, and any final disposition, in person in the Docket Management System office (*see* address above) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act

Anyone is able to search the electronic form of all comments received into our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Statement in the **Federal Register** published on April 11, 2000 (volume 65, Number 70, pages 19477-78), or you may visit <http://dms.dot.gov>.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires the FAA to comply with small entities requests for information or advice about compliance with statutes and regulations within its jurisdiction. Internet users can find additional information on SBREFA on the FAA's Web page at <http://www.2faa.gov/avr/arm/sbref.htm>. Persons without Internet access may call the office of rulemaking at (202) 267-8677 for more information.

Background

On August 8, 2003, the FAA published a notice of proposed rulemaking (NPRM) that would continue the safety requirements of SFAR 71 and eliminate its termination date. (68 FR 47269) The FAA omitted the Regulatory Flexibility Analysis from the final document. Therefore, on August 20, 2003, the FAA published a correction to the proposed rule including the Regulatory Flexibility Analysis (68 FR 50085).

Summary of Comment on the Proposal

Note: "Petitioners" as used in this summary of comments refers to the 15 petitioners who filed a petition for rulemaking to operate helicopters at 300 feet above uncongested terrain, dated October 15, 2002, Docket FAA-2002-13959. The petition may also be reviewed in Docket FAA-2003-14830. All material and relevant comments have been reviewed. Most of the comments raised issues that the FAA has already addressed in prior rulemakings regarding this SFAR.

Eliminate SFAR 71

Some commenters want SFAR 71 eliminated completely. They maintain that the air tour operators in Hawaii should be allowed to operate under parts 91 and 135 like the rest of the air tour operators in the United States. They claim that the SFAR's additional requirements have not reduced the accident rate, or fatalities, and may have contributed to accidents and fatalities. These commenters believe that restrictions are unnecessary because SFAR 71 adds to pilot workload and fatigue. These commenters argue that pilot judgment should dictate altitude and standoff distances, not the SFAR, in accordance with regulatory practices and flight conditions. Some individual pilots state that the SFAR's 1500-foot altitude minimum has forced them into controlled airspace to maintain cloud clearance. They also state the SFAR's minimum altitude requirements increase the possibility of flying inadvertently into instrument meteorological conditions.

FAA Response

The issues from the comments summarized above have been addressed in prior rulemakings concerning SFAR 71. Commenters have provided no new information.

SFAR 71 as a Noise Abatement Rule

Some commenters continue to refer to SFAR 71 as a noise abatement regulation and ask the FAA to continue the rule or enhance it. Others maintain that SFAR 71 was issued to address noise and environmental issues, not safety, and want the SFAR eliminated. Elected officials and environmental groups characterize SFAR 71 as reducing noise pollution in Hawaii's national parks, forests, and scenic wildlife areas and ask for its continuation or enhancement.

FAA Response

In 1994, the FAA issued SFAR 71 as an emergency final rule 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 FAA extended the SFAR in 1997 and 2000 to keep the SFAR's safety requirements in place. There were Congressional concerns that noise could be addressed at the same time, but noise was not the reason for issuing the rule. The FAA's mandate for this rulemaking was safety. The comments regarding noise, noise impacts, and noise benefits are speculative.