

distances in narrow valleys makes a safe environment hazardous because they must fly in the middle of the valley rather than near the sides where there is less wind turbulence.

FAA Response

We disagree. The FAA did not propose to make changes to the standoff distances in this rulemaking. The FAA does not agree that the SFAR's standoff distances should be reduced or eliminated for valleys for the reasons discussed in this and prior rulemakings. The commenters have not presented a compelling safety argument for reducing the rule's baseline standoff distance. Generally speaking, the greater the standoff distance, the greater the chances that the pilot can avoid a collision with steep rugged terrain. The FAA has granted deviations from the baseline standoff distance after making safety assessments on a location-by-location basis.

The National Air Tour Safety Rule

A commenter states that to codify the flawed SFAR instead of designing a national air tour policy is unsound. A proposed national rule would force the FAA to provide a competent safety analysis. A national rule would eliminate the "improper and extraordinary impact on the rulemaking process heretofore enjoyed by the Hawaii Congressional delegation."

In a related comment, an air tour operator argues that the FAA's policy of "equivalent level of safety" should move the agency to either eliminate SFAR 71 or to get Part 135 in line with it, if the agency is not going to issue a national rule anytime soon.

Another commenter states that the FAA should present a new version of SFAR 71 or replace it with a national rule.

Numerous pilots state that the rule is inherently unfair. If air tour operators under Part 135 can fly at a 300-foot altitude over congested areas in the United States mainland, why should Hawaii pilots be restricted to 1,500 feet?

FAA Response

The FAA is not certain what the commenters are attempting to say in its discussion of the advantage enjoyed by Congressional interest of Hawaii, so it will not discuss that portion of the comment.

The SFAR has been in effect without substantive change since 1994, and it has been successful in reducing the rate of air tour accidents in Hawaii. This final rule continues SFAR 71 with no changes other than the elimination of the expiration date; it allows SFAR 71

to continue until further notice from the FAA. The FAA continues to work on a proposed national air tour safety rule that could, if adopted, supersede the SFAR.

To the extent that any commenter believes that it is only fair to have the altitude restriction and standoff distances in SFAR 71 apply to all part 135 air tour operators nationally, the FAA responds as follows: First, the existing SFAR and the SFAR adopted today apply to all air tour operators in Hawaii regardless of whether they are conducting tours under parts 91, 121 or 135. Second, as we have previously stated, the FAA is considering whether aviation safety requires that the longstanding air tour safety rules in Hawaii should be applied nationally and whether Part 91 commercial air tour operators should be required to operate under part 135.

The FAA disagrees with some commenters' argument that the Hawaii SFAR should be set aside until the national rule is developed. The FAA received a series of recommendations from the NTSB, which it acted on, and the resulting regulatory effort was SFAR 71. Those rules have been effective, they have withstood court challenge, and the FAA will not rescind the SFAR while it considers whether to issue a national rule.

Continue or Increase the Minimum Altitude and Standoff Distances; Eliminate the Deviation Authority of SFAR 71.

More than 100 individuals, residents of Hawaii or persons who enjoy the environment there, filed almost identical comments to support maintaining or increasing the 1500-foot altitude, eliminating the lower altitudes exceptions (deviations), and giving the state of Hawaii and the National Park Service (NPS) the ability to restrict tour overflights of state and national parks and wilderness areas. They would like the SFAR's minimum altitude increased. Further, they object to petitioners' request for an amendment that would permit a 300-foot above the surface altitude for helicopters over uncongested areas. In support, they state that "government studies" have demonstrated that higher minimum altitudes save lives, constant noise adversely impacts human health and can ruin the wilderness experience for hikers and campers, and overflights disrupt Hawaii's wildlife. They also note that the vibration from helicopters flying close to cliffs and precarious rock structures may cause landslides or rock falls.

FAA Response

In this rulemaking, the FAA proposed only to eliminate the expiration date. Comments regarding changing the altitude restriction or eliminating deviations are beyond the scope of this rulemaking and will not be considered.

In response to commenters who wish to give sole authority to regulate the airspace of parks to the National Park Service (NPS) or State governments, the FAA has sole and exclusive jurisdiction and control over the navigable airspace. That power cannot be delegated to the NPS or a State absent express Congressional legislation. The comments are also beyond the scope of this rulemaking. As to national parks, the FAA is working cooperatively with the NPS on development of certain air tour management plans, as required by 14 CFR part 136, National Parks Air Tour Management. This work is being conducted independently of SFAR 71, and when appropriate, public participation will be invited.

Frequency and Reporting Requirements

One individual comments that many pilots have discontinued the practice of reporting position, altitude, and direction of flight or report only the legal details required by SFAR 71.

FAA's Response

The SFAR does not require any special reporting by pilots. However, since the purpose of the comment is unclear, the FAA offers the following. As a matter of general practice, the FAA allows operators to develop standard procedures as to how they operate in the scenic areas. As long as the operating procedures are not in conflict with the regulations, the FAA generally will not be involved. If the commenter is saying that pilots are ignoring operating procedures that have been approved by the FAA as part of the operator's manual, then the FAA urges the commenter to provide the necessary information to the Flight Standards District Office for investigation and appropriate action.

Using Landmarks for Reporting Requirements

Another commenter recommends that, to the extent there is an increased risk of midair collisions, a system of common frequency and reports over landmarks should be used.

FAA's Response

Development and implementation of a procedures manual for pilots does not require regulatory action. Incorporation of landmarks and common frequencies are issues that the operators and pilots