

could agree on. In fact, a procedures manual used by operators in the Grand Canyon Special Flight Rules Area was developed by the Flight Standards District Office (FSDO) in cooperation with the operators and is a primary document used in the training of new pilots.

The FAA continues to be puzzled by comments it has received on this rule proposal. On the one hand, commenters are demanding that SFAR 71 needs to be rescinded, while on the other hand, commenters seem to want more procedural regulation. The FAA is more than willing to provide additional guidance and, as a result of recent accidents and the comments received in this rulemaking, the FAA has decided to hold a series of safety meetings to discuss these issues with pilots and operators. Additional procedural guidance may result from these meetings.

Public Disclosure of SFAR 71 Rulemaking Proceedings

A commenter requests that the Administrator produce for public comment and inspection in the FAA docket all rulemaking documents related to the promulgation of SFAR 71. This commenter believes that this action would disclose the "deficient safety analysis" of SFAR 71 and also would highlight the Congressional pressure to limit helicopter operations in Hawaii.

FAA's Response

Commenters should be aware that the FAA rulemaking process is a public process, and issues involved with the rule are in a public docket open for all persons to review. The Congressional record and NTSB recommendations are also public documents that are readily available through the Internet.

However, deliberative material and internal FAA working documents used in the development of an NPRM or rule are not subject to public scrutiny and do not belong in the public docket. These documents are predecisional and are exempt from public review under the Freedom of Information Act. Moreover, they are not helpful to anyone since the decision of the FAA to issue a proposal may change as issues are discussed internally within the FAA.

During the development of this proposal and disposition of comments in this final rule, it has become apparent that many commenters believe SFAR 71 is a noise rule and is not related to safety. The FAA cannot change what commenters believe, nor will it try since neither this commenter nor any other commenter has provided any evidence that the FAA should support their

opinions instead of the NTSB and the FAA's aviation safety expertise.

In support of commenters, it is a matter of public record that the Hawaii Congressional delegation believes low flying aircraft are causing serious noise pollution. They have written numerous pieces of correspondence to the FAA concerning this issue. Air tour operators do not need to receive copies of internal FAA documents in order to know what their delegation thinks because their public position is very clear. On the other hand, the FAA has not been directed by any act of Congress to regulate air tour operators in Hawaii for noise with the exception of the recently passed the National Parks Air Tour Management Act. That act has been codified as part 136 and its provisions were developed by a National Parks Overflights Working Group (NPOWG), which included an air tour operator from Hawaii.

No Justification for Altitude Restrictions

A commenter states that although accident statistics show that a compelling argument can be made for the life vest requirement in SFAR 71, just the opposite is true of the altitude restriction. This commenter notes that 77% of the accidents attributable to engine failures occurred before the SFAR was issued; 23% occurred afterward. The engines used in the pre-SFAR timeframe are no longer in use. The engines used predominantly in the post-SFAR timeframe have proven very reliable.

FAA's Response

The decrease in engine failures is encouraging; however, in-flight engine failures (e.g., mechanical failures, fuel starvation) continue to occur.

To the extent that commenters are suggesting that the altitude restriction and associated increases in weather minimums are not necessary, the FAA disagrees. The SFAR's life vest and altitude requirements have been analyzed in the regulatory evaluation and each measure provides a safety benefit. The altitude baseline in the SFAR, which is higher than those altitudes suggested by some commenters, gives a pilot a better opportunity to make a safe landing should an engine failure occur. The FAA has granted deviations from the baseline altitude of 1,500 feet to lower altitudes based on numerous factors, including whether the terrain permits a safe landing and the performance capabilities of the aircraft.

Additional Training as an Alternative

A commenter states that given the unique terrain and climate features of Hawaii, if the FAA is really concerned about safety, it should mandate additional training instead of imposing artificial altitudes. Another commenter credits the Tour Operators Program of Safety (TOPS), that has been in effect since the mid-1990's, with providing great benefits to the safety of air tour operations in Hawaii.

FAA's Response

The FAA considered the uniqueness of Hawaii when it issued SFAR 71 in 1994. Additional training may be necessary in the future but the FAA does not consider such measures necessary at this time.

Operators are always free to provide additional training; the regulations contain only minimum requirements. The FAA encourages programs such as TOPS that can provide pilots additional training benefits and help develop a culture of compliance.

The FAA's Claim That the SFAR Has Increased Safety Is Misleading

Some commenters believe that the altitude restriction has not been the contributing cause to the decrease in accidents, but rather cite three factors: (1) Efforts of air tour operators and pilots to increase training and standards; (2) the replacement of helicopters with engines that had a high failure rate with helicopters with reliable engines; and (3) a number of safety devices, such as the use of flotation devices, that were mandated by the SFAR. This commenter states that it is the operators' opinion that the altitude restriction may have added to the accident potential.

Other commenters state that the intent of the SFAR was to reduce accidents and fatalities/injuries due to loss of power in cruise.

FAA's Response

The FAA agrees that the overall decrease in the accident rate may be due to a number of unquantifiable factors. However, as stated previously, the altitude restrictions in SFAR 71 are needed. The reasons the FAA issued the SFAR, with the altitude restriction, are articulated in the 1994 final rule and discussed in the extensions. The stated intent of the 1,500-foot altitude provision is not to prevent accidents solely due to loss of power in cruise. Comments that the SFAR increases the potential for accident have been addressed in prior rules, and the FAA disagrees with such comments.