

Accident Rates

Using the figures that supported the original promulgation of SFAR 71, a commenter concludes that the accident rate for helicopters was one-fourth that of airplanes. Between 1982 and 1994, air tour airplanes had an accident rate of over 24 per million flights, and helicopters had a rate of 5.9 per million flights. This commenter maintains that the accident rates for helicopters in Hawaii were lower than many other states. Further, the commenter posits that the drop in the accident rate for helicopters is due to better equipment, not the SFAR, and that the majority of the accidents from 1982 to 1994 were because of mechanical failures.

FAA's Response

The commenter is incorrect; the analysis addresses the benefits of the rule to airplanes and helicopters separately. While the commenter correctly cites information in the FAA's 1994 regulatory evaluation (which are also incorporated in the evaluation for this rulemaking) regarding airplane and helicopter accident rates, the cited accident rates only apply to accidents attributable to weather and flying low, and are not a comprehensive rate for all accidents which the commenter apparently assumes. The FAA's estimate of accidents avoided is only based on accidents rates related to specific provisions of the rule and are not related to accidents due to mechanical failures. Since accidents attributed to mechanical failures are not included, the helicopter accident rate is not misleading.

Affordability Analysis

A commenter notes that the FAA stated that the drop in business since the enactment of the SFAR was due to the nature of tourism. This commenter claims that the majority of helicopter services have lost a great deal of income due to a lack of repeat customers because of the altitude and standoff distances. The claim is that prior to SFAR 71 almost 25% of the air tour business was made up of returning tourists.

FAA's Response

The FAA cannot use this cost estimate because the information is insufficient and undocumented. It is also at odds with a comment by a large helicopter operator that the helicopter tour industry in Hawaii "has flown well over 80,000 hours per year in every year since 1985."

Cost-benefit Analysis

A commenter contests "the elusive cost-benefit analysis" because no real analysis, statistics, or time parameters are provided. This commenter claims that the FAA promised, both in 1997 and 2000, that such an analysis would be provided in a final rule, which has not been forthcoming. The commenter further remarked that the estimated number of fatalities avoided lacked sufficient detail and another commenter questioned the basis for the accident rate referenced in the NPRM.

FAA's Response

The regulatory evaluation provided a list of all Hawaii air tour accidents related to the provisions of SFAR 71 from 1982 to June 30, 2003. The commenters included a listing of helicopter accidents in Hawaii covering the period from November 19, 1985—July 23, 2003 based on NTSB data. The FAA used the same database but for the time period of 1982-June 30, 2003 and with some differences in the results. The commenters included three helicopter accidents that the NTSB narratives do not indicate were sightseeing or air tours and therefore are not incorporated in the FAA's analysis.¹ The number of accidents, fatalities, and injuries associated with each of the major provisions of the rule were extracted and the accident rate per million air tour flights was calculated for helicopters and airplanes. The number of air tour flights was derived from the FAA's Terminal Area Forecast, the 1994 FAA final regulatory evaluation and FAA operations specification data on air tour operators.² The accident rate was determined for the 1982–1994 and 1995–2002 time periods. The difference between the post-SFAR and the pre-SFAR accident rates were then applied to the number of forecasted helicopter and airplane air tour flights to arrive at the estimated number of accidents that would be avoided by adoption of the minimum altitude and weather provision of the rule. The 1982–1994-accident rate related to helicopter flotation gear requirement was applied to the forecast

¹ Accidents not identified by NTSB as air tours: LAX86FA243, LAX87FA112, and LAX01LA083. The first 2 accidents occurred in the take-off phase of operation and the third during a pre-departure check. None appear to be related to the SFAR provisions. The FAA has therefore not added these accidents to the database used in the regulatory analysis.

² FAA Office of Aviation, Policy, and Plans: *Terminal Area Forecast, Fiscal years 2002–2020*. Final Regulatory Evaluation, Final Regulatory Flexibility Determination, and Trade Impact Assessment: "Air Tour Operators in the State of Hawaii" August 1994.

number of helicopter flights to estimate the number of fatalities that would be avoided by adoption of the flotation gear provision.

The Final Rule

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

Justification for Immediate Adoption

The FAA finds that good cause exists under 5 U.S.C. 553(d) for this final rule to become effective upon issuance. The FAA notes that this final rule does not change the long-standing requirements of SFAR 71 for air tour operators in Hawaii; it only eliminates the termination date.

Environmental Review

In accordance with FAA Order 1050.1D, the FAA has determined that this amendment is categorically excluded from environmental review under section 102(2)(C) of the National Environmental Policy Act. In 1994 the original SFAR 71 established procedural, operational, and equipment safety requirements for air tour aircraft in the state of Hawaii. This amendment will maintain those requirements and is part of an ongoing action. The continuation of SFAR 71 will not involve any significant impacts to the human environment and the FAA has determined that there are no extraordinary circumstances. This rule does not change the existing environment and is not likely to effect listed, endangered or threatened species. Comments requesting that the FAA ban overflights from critical habitat are beyond the scope of this rule.

Regulatory Evaluation Summary

Proposed 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 impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. sections 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider