

The FAA conducted the required review of this rule and determined that it will have a significant economic impact on a substantial number of small entities. Accordingly, pursuant to Section 603 of the Regulatory Flexibility Act, the Federal Aviation Administration has prepared the following final regulatory flexibility analysis.

Reasons Why Agency Action Is Being Considered

The FAA will continue the existing safety standards in SFAR 71 without a termination date as a result of the reduction in accidents and incidents involving air tour operators in Hawaii and NTSB recommendations. The rationale for the major provisions of the rule are summarized below:

Safety provisions addressing the risks of beyond the shore operations. Based on an analysis of the risks of beyond the shore operations and NTSB recommendations, the FAA concludes that the benefits of these provisions justify the costs. Based on survivors' testimony, life vests alone are insufficient in preventing loss of life in helicopter accidents over water. Without floats, helicopters sink very quickly upon impact, giving occupants little time to exit the aircraft. The FAA believes that helicopter floats, in conjunction with life vests and pre-flight briefing on water ditching procedures, will significantly improve the chances of survival. Therefore, this rule requires life vests and passenger briefings for all air tours and floats for helicopters.

Provisions addressing weather. Between 1982 and 1994 there were 12 weather related accidents in Hawaii while between 1994 and 2002 there were 3 weather related accidents. This illustrates the effectiveness of the existing SFAR 71 weather related provisions and warrant their continuation.

Summary of Significant Issues Raised In Comment Period

The FAA received four comments related to economic evaluation issues, and the FAA has determined none of the comments were significant. One comment mistakenly interpreted accident rate data presented in the economic analysis to support removing the altitude restriction on helicopters. Another comment questioned the basis for the accident rate referenced in the NPRM, and a third claimed a lack of detail on the estimated number of fatalities avoided. The FAA has provided a detailed response to these comments and determined the analysis

questioned is accurate and complete. A fourth comment claimed the rule has resulted in a loss of income due to a lack of repeat customers, which prior to 1994 accounted for almost 25 percent of tour business. The comment was not supported by any documentation and was contrary to a comment by a small, but well-known operator, that the helicopter tour industry in Hawaii "has flown well over 80,000 hours per year in every year since 1985".

Statement of Objectives and Legal Basis

The objective of this rule is to continue a higher level of safety for Hawaii air tours. Under the United States Code, the FAA Administrator is required to consider the following matter, among others, as being in the public interest: assigning, maintaining, and enhancing safety and security as the highest priorities in air commerce. [See 49 U.S.C. § 40101(d)(1).] Additionally, it is the FAA Administrator's statutory duty to carry out her responsibilities "in a way that best tends to reduce or eliminate the possibility or recurrence of accidents in air transportation." [See 49 U.S.C. § 44701(c).] Accordingly, this rule will amend Title 14 of the Code of Federal Regulations to continue the safety requirements of air tour operations in Hawaii, without a termination date.

Description of Small Entities Affected

The FAA concludes that all of the entities affected by the rule are small according to thresholds established by the Small Business Administration (*i.e.*, employ fewer than 1,500 employees). An estimated 6 part 91 operators and 24 part 135 operators will be affected by the rule. The part 91 operators own about 11 aircraft, while the part 135 operators have about 80 aircraft. This rule will impose total annualized costs per operator of approximately \$99,000. According to a Small Business Administration analysis of Bureau of Census data for non-scheduled air transportation firms, firms with fewer than 500 employees have average revenues of \$1.87 million. The estimated cost to each of these small entities is approximately 5.3 percent of the average revenue of non-scheduled air transportation firms with fewer than 500 employees based on the SBA's Census data cited.

Projected Reporting, Recordkeeping and Other Compliance Requirements

The annualized cost for completing the performance plan and conducting the passenger briefing will impose average annualized costs per operator of approximately \$43,500.

Overlapping, Duplicative, or Conflicting Federal Rules

The rule will not overlap, duplicate, or conflict with existing Federal Rules.

Analysis of Alternatives

Affected operators and helicopter air tour pilots have petitioned the FAA to amend SFAR 71. They argue that SFAR 71's 1,500 feet minimum altitude requirement is cumbersome and lacks flexibility in dynamic circumstances. The petitioners also maintain that allowing air tour flights as low as 300 feet above the surface would make SFAR 71 safer in certain circumstances.

The FAA has considered the petitioners' views in formulating this rule. The issues raised are similar to comments received by the agency during the three SFAR rulemaking preceding this rule. The FAA concludes that 1,500 feet provides a pilot with more distance, and thus time, to avoid an accident or to deal with an error. An altitude of 300 feet provides 80 percent less distance and thus, much less reaction time.

Affordability Analysis

The FAA lacks reliable revenue and profit data on the individual entities affected by this rule, but the estimated cost to each of these small entities is approximately 5.3 percent of the average revenue of non-scheduled air transportation firms with fewer than 500 employees based on the SBA's Census data. Hawaii air tour operators have been subject to the provisions of this rule since 1994.

Business Closure Analysis

The FAA estimates that none of the operators currently providing air tour flights will elect to stop providing the service. These operators have been complying with these provisions since 1994. While there are fewer operators today than in 1994, the cause cannot be directly attributed to SFAR 71, but rather the vagaries and nature of the tourism market. New air tour operators have entered the market after making the business decision to accept the provisions of this rule.

Disproportionality Analysis

All Hawaiian entities in the air tour market are small. Accordingly, the costs imposed by this rule will be borne almost entirely by small businesses. The estimated costs are proportional to the frequency of operations and thus the burden is not disproportionate. Air tour safety in Hawaii has been significantly improved, and the FAA believes that the only way to continue this is to maintain these higher standards on these entities.