

**[4910-13]**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Parts 91 and 135**

**[Docket No. 27919; Special Federal Aviation Regulation (SFAR 71)**

**RIN 2120-AG-44**

**Air Tour Operators in the State of Hawaii**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** On October 23, 1997, the FAA extended Special Federal Aviation Regulation (SFAR) 71, which established certain procedural, operational, and equipment requirements for air tour operators in the State of Hawaii, for 3 years. The purpose of this extension was to provide additional time for the agency to complete and issue a notice of proposed rulemaking that would apply to all air tour operators. The FAA anticipates that this national rule, when finalized, would replace SFAR 71, which would then be rescinded. The FAA proposes to extend SFAR 71 for another 3 years, which would provide the additional time necessary to issue the proposal addressing commercial air tour safety standards and maintain the current regulatory requirements for the safe operation of air tours in the airspace over the State of Hawaii.

**DATES:** Send your comments on or before September 22, 2000.

**ADDRESSES:** Address your comments, in triplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-200),

Docket No. 27919, 800 Independence Ave., SW, Washington, DC 20591.

Comments may also be sent electronically to the Rules Docket by using the following Internet address: 9-NPRM-CMTS@mail.faa.gov. Comments must be marked as Docket No. 27919. Comments may be examined in Room 915G on weekdays between 9:00 a.m. and 5:00 p.m., except on federal holidays.

**FOR FURTHER INFORMATION CONTACT:** For a copy of this rule, contact the Office of Rulemaking at (202) 267-9677. For technical questions, contact Gary Davis, Air Transportation Division, AFS-200, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591; Telephone (202) 267-8166.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this document also are invited. Substantive comments should be accompanied by cost estimates. Comments must identify the regulatory docket or notice number and be submitted in duplicate to the address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

All comments received on or before the closing date will be considered by the Administrator before taking action on this proposed rulemaking. Comments filed late will be

considered as far as possible without incurring expense or delay. The proposals in this document may be changed in light of the comments received.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this document must include a pre-addressed, stamped postcard with those comments on which the following statement is made: "Comments to Docket No. 27919." The postcard will be date stamped and mailed to the commenter.

### **Availability of the Proposed Rule**

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the FedWorld electronic bulletin board service (telephone: (703) 321-3339).

Internet users may reach the FAA's web page at <http://www.faa.gov/avr/arm/nprm/nprm/.htm> or the GPO's web page at <http://www.access.gpo.gov/nara> to access recently published documents.

Any person may obtain a copy of this interim rule 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) 267-9677. Requests should be identified by the docket number of this proposal.

Persons interested in being placed on the mailing list for future rulemaking documents should request from the above office a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

### **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. Therefore, any small entity that has a question regarding this document may contact their local FAA official.

Internet users can find additional information on SBREFA on the FAA's web page at <http://www.faa.gov/avr/arm/sbrefa.htm>.

## **Background**

Since 1980, the air tour industry in the State of Hawaii has grown rapidly, particularly on the islands of Oahu, Kauai, Maui, and Hawaii. The growth of the tourist industry, the beauty of the islands, and the inaccessibility of some areas on the islands generated significant growth in the number of air tour flights. In 1982, there were approximately 63,000 helicopter and 11,000 airplane tour flights. By 1991, these numbers had increased to approximately 101,000 for helicopters and 18,000 for airplanes.

The growth of the air tour sightseeing industry in Hawaii has been associated with an escalation of accidents. During the 9 years between 1982 and 1991, there were 11 air tour accidents with 24 fatalities. The accident data shows an escalation of accidents in the 3-year period between 1991 and 1994, during which time there were 20 air tour accidents with 24 fatalities. The apparent causes of the accidents ranged from engine power loss to encounters with adverse weather. Contributing factors to the causes and seriousness of accidents were: operation beyond the demonstrated performance envelope of the aircraft, inadequate preflight planning for weather and routes, lack of survival equipment, and flying at low altitudes (which does not allow

time for recovery or forced landing preparation in the event of a power failure). Despite voluntary measures taken by some Hawaii air tour operators and an increase in FAA's inspections, a rise in the number of accidents occurred, indicating a need for additional measures to ensure safe air tour operations in Hawaii.

On September 26, 1994, the FAA published the emergency final rule, SFAR No. 71 (59 FR 49138). This action was taken 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 emergency regulatory action established additional operating procedures, including minimum safe altitudes (and associated increases in visual flight rules (VFR) weather minimums), minimum equipment requirements, and operational limitations for air tour aircraft in the state of Hawaii. On October 30, 1997, SFAR 71 was extended until October 26, 2000.

Since the FAA believes that SFAR 71 has been successful in preventing further accidents, the FAA is developing a national air tour safety rule that would address similar issues identified in SFAR 71. Once that rulemaking is complete, this national rule would replace SFAR 71, which would then be rescinded.

This proposal would extend SFAR 71 for an additional 3 years. As stated in the extension of SFAR 71, the FAA intends to issue a notice of proposed rulemaking applicable to all air tour operators concerning air tour safety. This national rule will be responsive to NTSB comments and will consider issues raised by commenters who responded to SFAR 71 in 1994.

## **Environmental Review**

Because this proposal would maintain the current conditions, no further environmental review is required.

### **Regulatory Evaluation Summary**

SFAR 71 established certain procedural, operational, and equipment requirements for air tour operators operating in the State of Hawaii. Compliance with SFAR 71 was estimated to increase total costs approximately \$2.1 million, in 1994 dollars, over the three year period, 1994 to 1997. Most of the increase in costs was associated with lost revenue that resulted from tour cancellations when the new minimum flight altitudes could not be achieved. Based on data identified during the promulgation of SFAR 71, the FAA estimated that the cost associated with revenue loss totaled approximately \$1.9 million. Additional costs associated with SFAR 71 included \$201,000 to provide life vests on subject helicopters and \$10,000 for the development of a helicopter performance plan. The estimated potential safety benefits associated with SFAR 71 totaled approximately \$33.7 million over three years. A copy of the Final Regulatory Evaluation, Final Regulatory Flexibility Determination, and Trade Impact Assessment completed for the original SFAR was placed in the docket.

Because this notice proposes to extend SFAR 71, there is no additional cost associated with it. The FAA believes that the extension of SFAR 71 would continue to prevent accidents and provide additional benefits.

This regulation is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) because it was issued originally as an emergency final rule.

## **Regulatory Flexibility Determination**

The Regulatory Flexibility Act of 1980 (RFA) establishes “as principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.” To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their action. The Act covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule would have a significant economic impact on a substantial number of small entities, If the determination is that it will, the agency must prepare a regulatory flexibility analysis.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 Act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA’s original regulatory flexibility analysis indicated that SFAR 71 would impose a “significant economic impact on a substantial number of small entities.” (See the copy of the original Regulatory Flexibility Determination included in the docket.)

Although the FAA has issued a number of "deviations" since the issuance of the SFAR, the overall impact on small entities remains significant. Although this proposal only would extend the current rule, the effect of the extension of SFAR 71 is still significant for small

entities. Accordingly, the FAA certifies that this extension has a significant economic impact on a substantial number of small entities.

### **International Trade Impact Assessment**

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. In addition, consistent with the Administration's belief in the general superiority and desirability of free trade, it is the policy of the Administration to remove or to diminish to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods to foreign countries and barriers affecting the import of foreign goods and services into the United States.

In accordance with the above statute and policy, the FAA has assessed the potential effect of this proposed rule and has determined that it would have only a domestic impact and therefore no effect on any trade-sensitive activity.

### **Paperwork Reduction Act**

SFAR 71 contains information collection requirements, specifically in Section 6, Minimum flight altitudes, and Section 7, Passenger briefing. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507 (d)), the FAA submitted these requirements to OMB. As

a result, an emergency clearance of the information collection requirement (No. 2120-0620) was been approved.

The original accounting for the paperwork burden was as follows. SFAR 71, effective on October 26, 1994, applies to air tour operators in the state of Hawaii. Under the SFAR, both Part 91 and Part 135 operators are required to provide a passenger safety briefing on water ditching procedures, use of required flotation equipment, and emergency egress from the aircraft in event of a water landing. The FAA estimates that 100,000 air tour operations are conducted annually by 35 operators, that each safety briefing takes 3-4 minutes, and that the cost of the briefing is \$10.00 an hour. Using these numbers,  $400,00 \text{ minutes} = 6,667 \text{ hours} \times \$10.00$  equals \$66,667.00, or approximately \$.70 per flight.

To account for the deviation information collection requirement, two calculations must be performed. First, operators requested deviations to 1,000 feet, and second to 500 feet. The FAA granted 1,000 ft. deviations to approximately 35 operators. It is estimated that the preparation of a deviation request took each operator 2 hours at \$15.00 an hour for a total of approximately \$1,050.00. The cost for the government to review the deviations is estimated to be 1 hour of review and operations preparation using 35 hours of inspector time or approximately \$1,750.00 in costs. The 500 feet deviation requests cost the operators  $35 \times 1 \text{ hour at } \$15.00 \text{ per hour}$  or \$525.00. Cost of an inspector's review is estimated at  $35 \times 1/2 \text{ hour}$  or \$875.00. In addition, it is necessary to include the costs for FAA inspectors checking pilots on specific sites for the 500 feet deviation, and the cost for operators' check pilots to check line pilots. The former is estimated to be  $35 \times 3 \text{ hours at an operator/aircraft cost of } \$250.00$  or \$26,250.00. The cost to check line pilots is estimated to be  $100 \times 1 \text{ hour} \times \$250.00$  or \$25,000.00. The cost to the

government (inspectors' time) for all deviations is estimated to be 35 x 3 hours x \$50.00 or \$5,250.00.

### **Unfunded Mandates Reform Act**

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104-4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by state, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of \$100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

The FAA has determined that this rule does not contain any Federal intergovernmental mandates, but does contain a private sector mandate. However, because expenditures by the

private sector will not exceed \$100 million annually, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

### **Federalism Implications**

The regulations herein will not have substantial direct effects on the States, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, the FAA certifies that this regulation will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

### **List of Subjects**

#### 14 CFR Part 91

Aircraft, Airmen, Aviation safety.

#### 14 CFR Part 135

Air taxi, Aircraft, Airmen, Aviation safety.

### **THE PROPOSED AMENDMENT**

The Federal Aviation Administration proposes to amend 14 CFR parts 91 and 135 as follows:

#### **PART 91 -- GENERAL OPERATING AND FLIGHT RULES**

1. The authority citation for part 91 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46502, 46504, 46506-46507, 47122, 47508, 47528-47531.

**PART 135 -- OPERATING REQUIREMENTS: COMMUTER AND ON-DEMAND OPERATIONS**

2. The authority citation for part 135 continues to read as follows:

**Authority:** 49 U.S.C. 106(G), 40113, 44701-44702, 44705, 44709, 44711-44713, 44715-44713, 44715-44717, 44722.

3. SFAR NO. 71-- Special Operating Rules For Air Tour Operators In The State Of Hawaii is revised to read as follows:

**SFAR NO. 71-- Special Operating Rules for Air Tour Operators in The State of Hawaii**

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Section 8. Termination date. This Special Federal Aviation Regulation expires on October 26, 2003.

Issued in Washington, DC, on August 21, 2000.

L. Nicholas Lacey

Director, Flight Standards Service