DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91 and 135

[Docket No. 27919; Special Federal Aviation Regulation (SFAR) No. 71–1]

RIN 2120–AG44

Air Tour Operators in the State of Hawaii

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Interim rule; disposition of comments; and request for comments on a draft Environmental Assessment.

SUMMARY: On September 26, 1994, the FAA issued an emergency final rule as SFAR 71, which established certain procedural, operational, and equipment requirements for air tour operators in the State of Hawaii. The final rule was effective October 26, 1994; the FAA invited public comments on the rule until December 27, 1994. This document responds to public comments and extends the expiration date for SFAR 71 until October 26, 2000. This action will ensure that regulatory requirements for the safe operation of air tours in the airspace over the State of Hawaii remain in effect.

DATES: Comments must be received on or before December 29, 1997. This interim rule is effective October 26, 1997.

ADDRESSES: Comments on this interim rule should be mailed 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.dot.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 David Metzbower, Air Transportation Division, AFS–200, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591; Telephone (202) 267–3724.

SUPPLEMENTARY INFORMATION:

Availability of Interim Rule

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.

An electronic copy of this interim rule may be downloaded using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (703–321–3339), or the Federal Register's electronic bulletin board service (telephone 202–512–1661). Internet users may reach the FAA's web page at http://www.faa.gov, or the Federal Register's page at http://www.access.gpo.gov/su__docs, for access to recently published rulemaking documents.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires the FAA to report inquiries from small entities concerning information on, and advice about, compliance with statutes and regulations within the FAA's jurisdiction, including interpretation and application of the law to specific sets of facts supplied by a small entity.

The FAA's definitions of small entities may be accessed through the FAA's web page (http://www/faa.gov/avr/arm/sbrefa.htm), by contacting a local FAA official, or by contacting the FAA's Small Entity Contact listed below.

If you are a small entity and have a question, contact your local FAA official. If you do not know how to contact your local FAA official, you may contact Charlene Brown, Program Analyst Staff, Office of Rulemaking, ARM–27, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 1–888–551–1594. Internet users can find additional information on SBREFA in the ''Quick Jump'' section of the FAA's web page at http://www.faa.gov and may send electronic inquiries to the following Internet address: 9-AWA-SBREFA@faa.dot.gov

Background

The Air Tour Industry

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 of the islands has generated tremendous 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. Currently in Hawaii, the air tour industry carries about 500,000 passengers annually. The Honolulu Flight Standards District Office reports that currently twenty-six operators conduct air tours under Part 135, using 77 aircraft of which 18 are airplanes and 59 are helicopters. Approximately 9 operators conduct air tours under Part 91 using approximately 16 aircraft, of which 9 are airplanes and 7 are helicopters.

History and Escalation of Accidents

The growth of the air tour sightseeing industry in Hawaii has been associated with an escalation of accidents. During the 9-year period 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, the escalation of accidents occurred, indicating a need for additional measures to ensure safe air tour operations in Hawaii.

On September 26, 1994, the FAA published an emergency final rule as Special Federal Aviation Regulation (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.

The comment period for the emergency rule closed on December 27, 1994.

Discussion of Comments

General

The FAA received more than 200 comments on the SFAR. Commenters included the National Transportation Safety Board (NTSB), state and local governments, air tour operators, helicopters associations, tourism-related organizations, citizen and environmental groups, and individuals. The most controversial provision of the SFAR was the minimum altitude requirement.

The following discussion contains a summary of comments according to the specific subject areas defined in the SFAR. It should be noted that comments which were not relevant to these subject areas or were considered to be speculative are not included in this discussion.

Because of the time that has expired since the publication of SFAR 71, some of these comments may not have the same relevance because of subsequent events. In addition, air tour operators and the FAA have worked together to mitigate concerns that the rule is overly burdensome. The FAA's response to these comments is summarized at the end of the comment discussion.

Safety Record

Several commenters, including the Hawaii Helicopter Operators Association (HHOA) and the Helicopter Association International (HAI), state that Hawaii's air tour operators have a good safety record that exceeds that of helicopter operations in other parts of the United States, and a safety record that exceeds the national average of general aviation aircraft. Other commenters say that the accident rate is low considering the number of flight hours and the number of passengers flown. HHOA and others state that recent accidents were caused by pilot error and mechanical failure, and not the altitude at which the aircraft were operated.

Two comments were received from persons who were personally involved in air tour accidents in Hawaii. In addition to asking that all of the safety tools, such as flotation devices for aircraft and passengers, be used, they also comment on the lack of rescue support, which cost several lives in one accident. One of these individuals suggests that the SFAR should apply everywhere, commenting that ''Water, helicopters, floats, and life jackets do not perform differently from one state to another.''

Need for Emergency Rulemaking

Several commenters state that there is little supporting data to justify the FAA's issuance of the SFAR under emergency rulemaking provisions.

In a petition to the FAA to withdraw or stay the SFAR (which was also submitted as a comment), HHOA states that, because there was no true emergency, the FAA should not have used the ''good cause'' exception of the Administrative Procedures Act (APA) to avoid rule issuance without notice and public comment. Some commenters believe that the real reason for SFAR 71 is noise, not safety.

Applicability and Definitions

Some commenters, including HHOA, contend that states such as Alaska, California, and Oregon have rugged coastlines and terrain that pose the same hazards to air tours as Hawaii's terrain. These commenters posit that the SFAR, which is being imposed only on Hawaii, is discriminatory and puts the air tour industry in Hawaii at a competitive disadvantage.

Flotation Devices

HHOA states that limiting the flotation requirement to helicopters is arbitrary and capricious because the SFAR assumes that only helicopters sink rapidly after forced landings on water.

Other commenters favor requiring both flotation equipment and the wearing of personal flotation gear. The NTSB; the Department of Transportation Airports Division for the State of Hawaii; and the Sierra Club Legal Defense Fund point out that because helicopters sink more quickly in water, the use of external flotation equipment would provide the necessary time for passengers to exit the helicopter.

The NTSB states that at its public hearing on air tour safety, air tour operators and helicopter manufacturers expressed concern about the capabilities of airframe-mounted helicopter flotation systems. They point out that a helicopter's emergency water entry may easily exceed the certificated vertical speed values of current systems and result in failure of this equipment to perform as expected. In its comment, the NTSB recommends that SFAR No. 71 be modified to provide for two redundant means of occupant survival: airframe-mounted flotation equipment and the wearing of a life preserver by each person while on board.

Helicopter Performance Plan

One operator contends that this requirement is not necessary because § 91.9 requires compliance with the operating limitations specified in the approved rotorcraft flight manual (RFM). Also, § 135.345(b)(2) requires aircraft performance characteristics to be part of an operator's required training program.

HHOA states that this requirement would, in effect, result in a one-state certification program because the information requested in the operators' certification performance plans would not be required elsewhere in the United States.

Helicopter Operating Limitations

HAI states that the operating limitations could adversely affect operations that are routinely performed in or near the curve, such as external load lifting, and that operating within the height-velocity curve should be left to the discretion of the operator.

Several commenters, including HHOA, contend that this requirement already exists in 14 CFR section 91.9, which states that the shaded areas or dead-man's curve area is to be avoided except under specific circumstances.

The NTSB states that comments from operators and manufacturers at its public hearing on air tour safety question whether helicopter operating limitations should be placed solely on air tour operators in Hawaii, while non-tour operations in Hawaii and operators in other states remain unregulated in this area. The NTSB recommends that the FAA conduct discussions with interested parties to resolve the issue of helicopter height-velocity diagram performance.

Standoff Distance

HHOA states that under the 1,500 foot lateral clearance (standoff) requirement, pilots would be forced to fly farther offshore than now permitted, increasing the power-off glide distance to shore in the event of an engine failure. HHOA adds that this requirement will cause two-way air traffic congestion in and over scenic canyons by forcing pilots to follow the midline of the canyon, thereby further decreasing the pilot's ability to keep a close visual surface reference sufficient to safely control the helicopter.

Minimum Flight Altitudes

A number of commenters point out that the 1,500 foot above ground level (AGL) requirement does not take into account cloud cover and weather conditions in Hawaii. Commenters say that the requirement will increase the probability of flying into bad weather, and prevent helicopters from flying below the clouds where they can maintain visual reference to the ground.

The NTSB believes that the requirement may lead to increased operating time over water, difficulties in regulatory enforcement, and possible disregard of the FAA regulation.

Some commenters state that the SFAR's minimum altitude and standoff requirements should not apply to fixed-wing aircraft. One operator says that accidents cited in the SFAR were due to pilot error and disregard for existing regulations which already prevent fixed-wing VFR flights into IMC conditions. HHOA adds that requiring helicopters to fly at 1,500 feet forces pilots to operate helicopters as fixed-wing aircraft which is contrary to the certification requirements of helicopters.

Many commenters, including the NTSB, HHOA, ALPA, and the Chamber of Commerce of Hawaii, state that the minimum altitude requirement will cause air tour traffic to be concentrated at the same altitude, increasing the likelihood of midair collisions.

Several commenters, including HHOA, state that the minimum altitude requirement will create additional hazards for emergency landings. At low altitudes, pilots are better able to spot a suitable landing site; at higher altitudes it takes longer to land and shut off the engine, thereby increasing the risk of a fire and further mechanical failure. One operator states that the minimum altitude requirement is not needed because § 91.119 says that no person may operate an aircraft below an altitude that does not allow for an emergency landing without undue hazard to persons or property on the surface.

Visibility and Cloud Clearance

Several commenters point out that the minimum altitude requirements in the SFAR do not take into account changing cloud cover and weather conditions in Hawaii which affect pilots' visibility and ability to maintain required distances from clouds. NTSB notes that the 1,500 foot altitude may cause encounters with cloud layers not found at lower altitudes. Some commenters say that pilots would best avoid unforeseen weather conditions and maintain sufficient visibility by flying below the clouds and maintaining visual reference to the ground.

Briefing Passengers

Commenters on this issue express support for the requirement. HAI states that although passenger briefing is already standard practice for most operators, the requirement will ensure that passenger briefing takes place.

Costs

Many commenters state that the SFAR will devastate Hawaii's helicopter tourist industry and related businesses, many of which are small businesses. Commenters say that over 650,000 visitors take helicopter tours annually, and that the helicopter tour industry contributes $100 million per year to Hawaii's economy. Several tourism organizations say that since the SFAR took effect, bookings dropped 40 to 50 percent which is equivalent to an annual revenue loss of $35 million. Some of these commenters add that the SFAR will impact 1,000–2,000 people employed by the helicopter tour industry and related businesses. A pilot commented that the air tour industry raises $100 million annually, and noted that this represents a considerable tax contribution to the State of Hawaii. Commenters on this issue included hotel associations, a trade association, a visitors' bureau, a publishing company, and a resort association. A number of form letters were received expressing that Hawaii has an unemployment problem and that this rule will be tantamount to taking away jobs. A different form letter stated that the rule is excessive, that most tour operators are ''eco-friendly'', and that air tour operators perform valuable community assistance in supporting disaster assistance.

Several operators cite revenue losses since the SFAR took effect due to the necessity of grounding flight operations when cloud ceilings were below 1,500 feet AGL. Several commenters, including HAI, contend that the SFAR underestimates the number of no-fly days tour operators experience because of low cloud ceilings.

HAI quotes from the SFAR, which states ''. . . although the 1,500 foot minimum altitude requirement has a significant economic impact on a substantial number of small entities, it provides superior operational safety.'' HAI says that this equates to the notion of ''overly burdening'' these same small entities.

Monitoring, Enforcement, and Voluntary Efforts

Some commenters, including HAI, point out that better enforcement of existing regulations would help prevent air tour accidents and that Hawaii's FSDO staff should be increased for this purpose. HHOA adds that air safety would be improved if expanded weather operations were provided by more than the one Flight Service Station in Honolulu.

Some commenters state that the helicopter air tour industry is already using voluntary measures to ensure safety and reduce noise. An operator, the Kauai County Council, and the Maui Air Traffic Association say that HHOA's ''Fly Neighborly'' program, which recommends a 1,500 foot minimum altitude, is a good means to ensure voluntary compliance with existing regulations.

Environmental Impacts

A number of commenters state that the minimum altitude should be 2 miles, not 1,500 feet. These commenters cite the value of the wilderness experience and the protection of wildlife as justification for banning flights over national parks in Hawaii. They urge the FAA to make the SFAR permanent.

One commenter who lives 14 miles from Kahului Airport expresses concern that in an emergency, a helicopter with little altitude would be forced to land near her house and urges enforcement of the 1,500 foot restriction. A major environmental association states that deviations from the rule should only be allowed for reasons of safety.

Other commenters state that the air tour industry is growing so rapidly in Hawaii that private heliports are springing up, allowing even more uncontrolled growth. Therefore, more controls than are provided by SFAR 71 may be needed.

The docket contains comments from several neighborhood associations who comment that the SFAR is forcing tours to be rerouted over their property, that the FAA is not enforcing the 1,500 foot restriction for all operators, that all pilots conducting air tour operations should be required to have Part 135 certificates, and that the FAA should implement a system for tracking violators. One association suggests a $2,000 fine, per violation, per day, for each offender.

FAA's Response

The FAA finds that the issuance of SFAR 71 is justified by the accidents that occurred from 1982–1991. The Court of Appeals for the Ninth Circuit supported the FAA's finding by holding that the FAA had good cause for emergency rulemaking because of the increase in recent fatal accidents (U.S. Court of Appeals for the Ninth Circuit, No. 94–70703, March 29, 1995; *Hawaii Helicopter Operators* v. *Federal Aviation Administration*, 51 F. 3d 212 (9th Cir. 1995). Moreover, the FAA finds that the rule has been successful in accident prevention. Since its issuance, there have been only three incidents—

all engine failures that landed safely with no injuries.

One of the most contentious aspects of the SFAR for operators was the minimum operating altitude. The FAA, after working closely with air tour operators, believes that this problem has been somewhat mitigated. Since 1994, the FAA has allowed deviations from SFAR 71 for the majority of air tour operators. Air tour operators of fixed-wing aircraft have been granted deviations to conduct air tours at a minimum altitude of 1,000 feet; air tour operators of single-engine helicopters have been granted deviations to conduct air tours at a minimum of 500 feet. The use of deviations has provided separation between the fixed-wing aircraft and helicopters around the scenic areas where the traffic is the most dense. The FAA has provided an equivalent level of safety to that of the higher altitude by additional safety measures for those air tour operators. Each air tour operator that is granted a deviation from the higher altitude is evaluated on a case by case basis. Each deviation is site-specific and allows operation only over areas of raw terrain (areas devoid of any persons, vessels, vehicles or structure). The altitude over populated areas and other than raw terrain remains at 1500 feet. The pilots for each respective operator must demonstrate knowledge of the specific sites during FAA flight checks at each specific site. Also during those flight checks, the pilots must demonstrate the ability to successfully autorotate to an alternate emergency landing area at each specific site.

In response to the comments on costs, the FAA believes that that the SFAR has not had a direct impact on the viability of the air tour industry in Hawaii. Because of the willingness of the air tour operators to work with FAA, viable air tours have been created without an adverse impact on safety. It is important to remember that these comments on costs were made immediately following the issuance of the SFAR and before the deviations were in place.

In response to comments suggesting that the purpose of SFAR 71 was to mitigate noise, the FAA reiterates its strong statement made in the emergency final rule that the purpose of that rulemaking was for reasons of safety.

In response to comments on flotation devices and performance flotation gear, the FAA has by operations specifications required each helicopter operator to require passengers to wear personal flotation gear when operating over water whether or not the helicopter is equipped with exterior flotation devices.

The FAA has prepared a draft Environmental Assessment (EA) which addresses the environmental comments previously submitted during the emergency rulemaking and analyzes the environmental impacts of this rule, the extension of SFAR 71.

With the rulemaking, the FAA will extend SFAR 71 for an additional 3 years. During this time the FAA intends to issue a notice of proposed rulemaking which will apply to all air tour operators. This national rule will be responsive to NTSB comments and those operators who commented that the SFAR was discriminatory against operators in Hawaii. The proposed rulemaking will consider some of the same issues that commenters have noted in responding to SFAR 71; in this context, the comments on SFAR 71 have been helpful to the FAA. Since the national air tour rulemaking is not yet ripe, the FAA cannot divulge details of the proposed rule, but does encourage those persons who commented on SFAR 71 to submit comments to the proposed national rule when it is published. The FAA anticipates that the national rule, when finalized, will replace SFAR 71–1, which would then be rescinded.

Environmental Review

Because there were a considerable number of comments on the environmental effects of the emergency final rule issued as SFAR 71, the FAA has prepared a draft Environmental Assessment to assure compliance with the National Environmental Policy Act of 1969 (NEPA) and other applicable environmental laws, regulations and orders.

A copy of the draft EA may be obtained by calling Linda Williams, Office of Rulemaking, FAA, 800 Independence Ave., SW, Washington, DC 20591, at (202) 267–9685. An electronic copy is available at http://www.faa.gov. Comments on the draft EA should be mailed to the address given or sent electronically to 9–NPRM–CMTS@.faa.dot.gov and clearly marked as ''Comments to the draft EA for Extension of SFAR 71.'' The comment period for the draft EA is the same as for the interim rule, on or before December 29, 1997.

Based upon the draft EA and comments received on the draft EA, the FAA will determine whether to issue a final EA and a Finding of No Significant Impact (FONSI) or to prepare an environmental impact statement. If a final EA and FONSI are determined appropriate for the final rule, these documents will be available in Docket No. 27919 and on the Internet at http://www.faa.gov.

Regulatory Evaluation Summary

In accordance with SFAR 71, certain procedural, operational, and equipment requirements were established for air tour operators currently operating in the State of Hawaii. Compliance with SFAR 71 was estimated to increase costs approximately $2.1 million, in current 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 lifevests 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. All these dollar estimates have been updated to current dollars from 1994 dollars. A copy of the Final Regulatory Evaluation, Final Regulatory Flexibility Determination, and Trade Impact Assessment completed for the original SFAR have been placed in the docket.

The FAA has worked with the air tour operators to lessen the burden of lost revenue from canceled tours. This has been accomplished by allowing deviations from SFAR 71 for specific air tour operations evaluated on a case by case basis. When deviations of 1,000 feet for fixed-wing aircraft and 500 feet for single-engine helicopters are granted, the estimated revenue loss may be overstated, because the deviations allow a tour operation to take place that otherwise would have been canceled under the minimum flight altitudes of SFAR 71. Therefore, because of the FAA allowing deviations from SFAR 71 for the majority of air tour operators in Hawaii, much of the estimated $1.9 million revenue loss did not occur. However, due to other safety measures for air tour operators, such as separation between fixed-wing and helicopter operations around scenic areas, deviations from flight altitudes have not compromised safety. Since the issuance of SFAR 71, there have been no fatalities or injuries as a result of the new procedural, operational or equipment requirements. In view of the foregoing, the FAA has determined that the extension to SFAR 71 is cost beneficial.

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. A final regulatory evaluation of the regulation, including a Regulatory Flexibility Determination and Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under **FOR FURTHER INFORMATION CONTACT**. The FAA has determined that this action is a significant regulatory action under Executive Order 12866.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Federal regulations. The RFA requires a Regulatory Flexibility Analysis if a proposed rule would have ''significant economic impact on a substantial number of small entities.'' FAA Order No. 2100.14A outlines the FAA's procedures and criteria for implementing the RFA. The FAA's criteria for ''a significant impact'' is an annualized cost threshold of at least $4,900.

The FAA's original regulatory flexibility analysis indicated that the SFAR would impose a ''Significant economic impact on a substantial number of small entities.'' (See copy of original Regulatory Flexibility Determination included in the docket for this rulemaking.) The FAA estimated the total annualized cost of the final rule was approximately $712,000, in current dollars. The annualized cost of the 1,500 foot minimum altitude requirement for the air tour industry (fixed-wing and helicopter) was approximately $635,700. After assessing the annualized cost for individual operators on a per seat basis, the FAA determined that the SFAR would impose costs greater than the annualized cost threshold of $4,900 for 31 of 37 of the affected air tour operators, most of whom are small entities. The FAA calculated the annualized cost regarding alternative minimum altitude requirements of 500 feet, 800 feet, and 1,000 feet. Based on this figure, the FAA determined that a minimum altitude requirement of 500 feet would be necessary to lower the annualized cost below the $4,900 threshold for all but four of the air tour operators. However, after analyzing the safety implications of lowering the minimum altitude to 500 feet, the FAA determined that to do so would result in a decline in safety benefits.

Since the issuance of the SFAR, the FAA received requests from several operators to fly at lower altitudes. Air tour operators requested ''deviations'' from the rule to obviate the economic burden imposed upon them by the SFAR. The FAA worked with the operators to create individual exceptions under which air tours could occur at lower altitudes but with other conditions imposed. The resulting exception, referred to as a deviation, was designed to minimize the potential adverse economic effects on the air tour operators while maintaining the same level of safety as that afforded at 1,500 feet.

A deviation allows an operator to fly at lower altitudes with the imposition of certain additional safety requirements. Operators must individually request a deviation from the FAA. The FAA considers each request on a case by case basis and, after close scrutiny of each air tour operation, determines whether the issuance of a deviation from the SFAR will achieve the desired goals. The imposition of additional safety requirements varies from operator to operator. Requirements can include safety equipment modifications and/or special operation procedures, such as separation between fixed-wing and helicopter operations around scenic areas. Currently, 16 of the 26 air tours operating under part 135, and 2 of the 9 air tours operating under part 91, have sought and have received deviations from the SFAR. Those operators who have not sought a deviation are operating under air traffic control (ATC) positive control and are not, therefore, required to comply with the provisions of the rule, or were already operating at higher altitudes. The practical impact of FAA issued deviations, considered along with ATC positive control, is that the majority of small entities are currently operating at lower altitudes. The FAA anticipates that it will continue to grant deviations as it has up to this point, which will in effect work to mitigate the economic impact of the SFAR on small entities.

The FAA is compelled to stand by the results of its original regulatory flexibility analysis despite the reasonable conclusion that can be drawn from these facts, namely, that those operators who requested deviations did so because they believed it would be less costly than complying with the SFAR. Although the agency believes that costs of compliance are now lower than originally estimated, the agency has no data to show the extent of any change in the economic impact on small businesses as reported in the original regulatory flexibility analysis. Accordingly, the FAA certifies that this extension has a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

When the FAA promulgated SFAR 71, it found that SFAR would not have an adverse impact on the international trade because the affected operators do not compete with foreign operators. The FAA certifies that this SFAR will not constitute a barrier to international trade, including the export of U.S. goods and services to foreign countries and the import of foreign goods and services to the United States.

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) has been approved through February 28, 1998.

SFAR 71, which became 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. Using these numbers, 400,000 minutes = 6,667 hours × $10.00 equals approximately $.70 per flight.

For the deviations collection, two calculations must be done since operators first requested deviations to 1,000 feet, and then to 500 feet. 1,000 ft. deviations were granted to approximately 35 operators, and it is estimated that the preparation 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 deviation requests to 500 feet cost the operators 35 × 1 hour at $15.00 per hour or $525.00. Cost of an inspector's review is estimated at 35 × ½ 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 × 3 hours at an operator/aircraft cost of $250.00 or $26,250.00. The cost to check line pilots

is estimated to be 100 × 1 hour × $250.00 or $25,000.00. The cost to the government (inspectors' time) for all deviations is estimated to be 35 × 3 hours × $50.00 or $5,250.00.

Organizations and individuals desiring to submit comments on the information collection requirements of SFAR 71 should send them to the FAA's Rules Docket, the address for which is given in the **ADDRESSES** section of this interim rule.

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 Amendment

The Federal Aviation Administration amends 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. In SFAR NO. 71—Special Operating Rules For Air Tour Operators In The State Of Hawaii, section 8 is revised to read as follows:

SFAR NO. 71–1—Special Operating Rules for Air Tour Operators in the State of Hawaii

* * * * *

Section 8. Termination date. This Special Federal Aviation Regulation expires on October 26, 2000.

Issued in Washington, DC, on October 23, 1997.

Jane F. Garvey,

Administrator.

[FR Doc. 97–28724 Filed 10–24–97; 5:03 pm]

BILLING CODE 4910–13–M