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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 121 and 135

Docket No. FAA-2003-14830; Special Federal Aviation Regulation (SFAR) No. 71

RIN 2120-AH02

Air Tour Operators in the State of Hawaii; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM), Correction.

SUMMARY: The FAA published a notice of proposed rulemaking on August 8, 2003 (68 FR 47269) to continue the existing safety requirements in Special Federal Aviation Regulation No. 71 (SFAR 71) and eliminate the termination date for SFAR 71. In that proposed rule, the FAA inadvertently omitted the Regulatory Flexibility Analysis. This publication corrects that error and publishes the Regulatory Flexibility Analysis for public comment.

DATES: Comments must be received on or before September 8, 2003.

ADDRESSES: You may submit comments to FAA-2003-14830 by any of the following methods:

- Web Site: http://dms.dot.gov. Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1-202-493-2251
- Mail: Docket Management Facility: U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-001

• Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 am and 5 pm, Monday through Friday, except Federal Holidays.

•Federal Rulemaking Portal: Go to http://www.regulations.gov. Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the SUPPLEMENTARY INFORMATION section of this document. Note that all comments received will be posted without change to http://dms.dot.gov, including any personal information provided. Please see the Privacy Act heading under SUPPLEMENTARY INFORMATION and Regulatory Notices.

Docket: For access to the docket to read background documents or comments received, go to http://dms.dot.gov at any time or to Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 am and 5 pm, Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Alberta Brown, Aviation Safety Inspector, Air Transportation Division, AFS-200, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone (202) 267-8321, or by email at *Alberta.Brown@faa.gov*.

SUPPLEMENTARY INFORMATION:

The FAA published a notice of proposed rulemaking on August 8, 2003, (68 FR 47269) and the section titled "Initial Regulatory Flexibility Analysis" was inadvertently left out. This document corrects that error.

Correction: In FR Doc. 03-20277 published on August 8, 2003 (68 FR 47269), on page 47271, in column 3, before the paragraph heading "International Trade Impact Assessment," add the following information:

JDC 8/15/03

Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a 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 RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA 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 will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

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 RFA

provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA conducted the required review of this proposal and determined that it would 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 initial regulatory flexibility analysis.

Reasons Why Agency Action Is Being Considered

The FAA is proposing to 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 NPRM 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 preservers 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 preservers and pre-flight briefing on water ditching procedures, would significantly improve the chances of survival.

Therefore, this proposal would require life preservers 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.

Statement of Objectives and Legal Basis

The objective of this proposal 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 notice proposes to 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 proposed amendments 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 would be affected by the rule. The part 91 operators own about 11 aircraft, while the part 135 operators

have about 80 aircraft. This proposed rule would 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,[1] 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 would impose average annualized costs per operator of approximately $43,500.

Overlapping, Duplicative, or Conflicting Federal Rules

The proposed rule would 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 1500-foot 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 proposed rule. The issues raised are similar to comments received by the agency during the three SFAR rulemaking preceding this proposed rule. The FAA concludes that 1,500 feet provides a pilot with more

[1] Source: .SBA Advocacy Office statistics for 1997. All Hawaii air tour operators are assumed to have fewer than 500 employees.

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 proposed provisions of this rule 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. The FAA invites comment on the potential impact of the proposal on revenues and profits.

Business Closure Analysis

The FAA estimates that none of the operators currently providing air tour flights would elect to stop providing the service. These operators have been complying with these provisions since 1994.

Disproportionality Analysis

All Hawaiian entities in the air tour market are small. Accordingly, the costs imposed by this proposal would 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.

Key Assumptions Analysis

The FAA has made several conservative assumptions in this analysis, which may have resulted in an overestimate of the costs of the proposal. For example, the FAA assumes that the pilot in command would conduct all pre-flight briefings but the provision only requires the pilot to "ensure that each passenger has been briefed". The briefing could be recorded or provided by a lower paid employee. Also, the helicopter life preserver costs may be overestimated since there is a voluntary industry standard to which 13 helicopter tour operators subscribe that requires occupants to wear a personal flotation device.

Issued in Washington, DC on August 18, 2003.

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Certified to be a True Copy
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