



Hawaii Island Coalition Malama Pono (HICoP)
PO Box 6002
Kurtistown, HI 96760

November 27, 2017

The Honorable Attorney General Jeff Sessions
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

To Honorable Attorney General Jeff Sessions:

Hawaii Island Coalition Malama Pono (HICoP) is requesting on behalf of Hawaii Island residents that the Office of the Attorney General investigate collusion in the State of Hawaii, between the FAA, Department of Land and Natural Resources (DLNR), and the Air Tour Industry (ATI). The FAA has stymied all efforts by the National Park Service (NPS) to implement an Air Tour Management Plan (ATMP), which was mandated by Congress in 2000, see attachment A. Furthermore, both the FAA and the DLNR continue to advocate on behalf of the ATI companies to promote destructive tourism at the expense of the disabled, less affluent, sick and our kupuna of Hawaii Island. Residents of Hawaii Island are deprived of the peaceful habitation of their homes by disruptive sightseeing tourism. The ATI companies determine how, when and where they operate their tour businesses solely based on economic factors, as stated in a June 23, 2017 Tribune Herald article, see attachment 1A. Furthermore, ATI along with their co-conspirators have put air tour profits above the health and well-fare of Hawaii Island residents and obstructing all publicly contested avenues.

The FAA, claiming to be impartial, appears to be pressured and influenced by the powerful aviation industry. Case in point: June 2015 the Department of Transportation (DOT) was ask to investigate the FAA based on a Fox Business Report due to misconduct and cheating. More recently, the FAA rebuked the effort to implement new rules to regulate seat spacing, so Flyers Rights took its demands to court and won the right to move forward. On July 29, a three-judge panel gave the Federal Aviation Administration six months to provide documentation to back up its argument that it shouldn't regulate seat size.

The Hawai'i Volcano National Park (HVNP) is the most over flown national park in the country with an average of 80 flights daily, over residential homes, in and out of the park. The ATI companies frequently operate over the same residential communities, subjecting residents to incessant near constant tour helicopter noise. Noise that is so disruptive that a study was commissioned by Airports Division, Hawaii Department of Transportation and completed by Professor Prevedouros, Chair of Civil and Environmental Engineering at the University of Hawaii.



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His findings are as follow:

- Overall, about 25% of the respondents feel annoyed from helicopter noise. However, the perception on annoyance from helicopter noise is very negative (very annoying) in the rural Hilo (Hawaii) district and somewhat negative in the Haiku-to-Hana (Maui) district.
- When annoyance from other noise sources is compared with helicopter-caused annoyance, the aforementioned results are reinforced.
- The clear majority of all respondents feel that the government should impose more regulation on helicopter operations.
- More than 65% of the respondents are willing to tolerate one or more flyovers per day. Four or five helicopter flyovers per day is the maximum that the majority of respondents would tolerate.

In conclusion, “Annoyance increased exponentially with increasing frequency of overflights, whereas it increases linearly with increasing total daily duration of audible overflights. The results are consistent with similar studies: Annoyance seems to set in when frequency exceeds about 10 overflights per day, and the operations become very annoying as they reach 20 overflights.” Professor Prevedouros further concluded “some form of government regulation are the likely ingredients of the solution to the problem”. See attachment 1B

The FAA refuses to grant the less affluent residents of Hawaii Island the same protection afforded to the citizens of Long Island in New York. Numerous objections by the ATI companies are the same objections rebuffed by the Long Island ruling, 14 CFR part 93. See Attachment 1C. Representative *Patsy Mink* introduced H.R. 1696 legislation back in 1994 to address this growing problem what has gone on unabated for the past 30 years.

Both the FAA and the DLNR view Hawaii Island residential complaints as inconsequential and frivolous. The FAA does not have a permanent Flight Standards District Office (FSDO) on Hawaii Island, and has very little aircraft monitoring infrastructure to validate residential complaints. FSDO investigators use public transportation from Oahu to coordinate their investigations, and are usually followed-up days after the complaint, which cannot be substantiated by investigators and always result in the same conclusion. Even when violations are witnessed by FSDO investigators, they find justifications to not issue citations, e.g. “although they were below the minimum altitude the aircraft appeared to be moving higher.” See attachment 1D. In fact, after hundreds of residential complaints the FAA has never issued a single violation. Nor has the FAA ever required the ATI companies to install modern transponders that would allow for better verification of violations.

The State of Hawaii, Department of Transportation enter into many back room dealings that have excluded public input. Case in point: In 2009 the Hawaii inter-island ferry was forced to shut down after being embroiled in



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numerous lawsuits including the lack of an environmental review. More recently, the Board of Land and Natural Resources (BLNR), behind closed doors, issued a building permit to the TMT institutions to construct the 30 meter telescope on Mauna Kea. In December of 2015, the State Supreme Court rescinded the construction permit issued to TMT, stating BLNR failed to follow due process by approving the permit in 2011 before a contested case hearing. Most Recently BLNR, in an executive session behind closed doors, issued a Revocable Permit for Aircraft Parking to K&S Helicopters, Inc. at Hilo International Airport, even though a Petition for a Contested Case Hearing was submitted, and subsequently dismissed with no explanation. See attachment 1E

In conclusion, the ATI companies have assigned their "quality of life" standard to Hawaii Island residents. They continue to lobby for no regulations and operate pretty much as they please with no set routes or enforceable height restrictions. Tour operators fly over residential homes relentlessly, many experience over 100 flights daily with no recourse. Tour operators tell residents "they have the right to fly over your home as many times as they like." They state: "we are doing nothing illegal."

Hawaii Island residents strongly encourage the Office of the Attorney to get involved and investigate the lack of cooperation with the FAA, the DLNR and the NPS to address the relentless noise pollution, pollution to our catchment drinking water, and the health and wellbeing of our citizens on Hawaii Island. We patiently look forward to your response and can be contacted via our website at www.HICoP.org

Sincerely,

President
(808) 968-8611

cc:

Honorable Director Michael P. Huerta	Governor David Ige
Honorable Director Jonathan B. Jarvis	Mayor Harry Kim
Honorable Director Scott Pruitt	Rick Blangiardi (KGMB)
Honorable Senator Brian Schatz	Becky Anderson (CNN)
Honorable Senator Mazi Hirono	Lester Holt (NBC)
Honorable Congresswoman Colleen Hanabusa	Adam Shapiro (FBN)
Honorable Congresswoman Tusli Gabbard	Norwegian Cruise Line

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PUBLIC EMPLOYEES FOR)
ENVIRONMENTAL RESPONSIBILITY)
962 Wayne Ave., Suite 610)
Silver Spring, MD 20910)

and)

HAWAII ISLAND COALITION)
MALAMA PONO)
PO BOX 6002)
Kurtistown, Hawaii 96760)

Plaintiffs,)

v.)

FEDERAL AVIATION ADMINISTRATION)
800 Independence Ave., S.W.)
Washington, D.C. 20591)

Defendant,)

Civil Action No. 17-2045

COMPLAINT

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. Plaintiffs bring this action for injunctive and declaratory relief to require the Defendant, the Federal Aviation Administration (“FAA”), to develop an Air Tour Management Plan (“ATMP”) or voluntary agreements as directed by statute for Hawaii Volcanoes National Park, Haleakalā National Park, Lake Mead National Recreation Area, Muir Woods National Monument, Glacier National Park, Great Smoky Mountains National Park, and Bryce Canyon National Park (hereinafter “parks impaired by overflights” (“PIO”) within two years. Plaintiffs also seek an injunction of any further air tour operations over the PIOs where ATMPs or

voluntary agreements are not in place 24 months after the Court's order, and an award of Plaintiffs' reasonable costs and expenses of this litigation, including attorneys' fees.

2. Plaintiffs include a public interest organization dedicated to reducing the impact of noise from helicopters on the State of Hawaii; and a public interest organization whose mission is to advocate for public employees, including those who are employed at a PIO, and whose members regularly use PIOs but find that the overflights disrupt their enjoyment of the parks.

3. Plaintiffs claim that the FAA's failure to develop ATMPs or to enter voluntary agreements for the PIOs violates the Administrative Procedure Act of 1946, as amended, ("APA"), 5 U.S.C. § 701, *et seq.*; and the National Park Air Tour Management Act of 2000, as amended, ("NPATMA"), 49 U.S.C. § 40128.

4. Plaintiffs further claim that Defendant is in violation of the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4321, *et seq.*, in failing to prepare an environmental impact statement ("EIS") or other environmental documents required by NEPA before repeated grants of interim authority for air tour operators in the PIOs without ever developing an ATMP or entering voluntary agreements pursuant to the NPATMA.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action under 28 U.S.C. § 1331 (federal question) and the Declaratory Judgment Act, 28 U.S.C. § 2201.

6. This Court has the authority to award costs, expenses and attorneys' fees under the Equal Access to Justice Act, 28 U.S.C. § 2412(d).

7. Venue is properly vested in this court under 28 U.S.C. § 1391(e) because the Defendant resides in this district, one Plaintiff is incorporated in this district, and because a substantial part of the acts and omissions giving rise to this claim occurred in this district.

8. The United States has waived sovereign immunity with respect to the claims raised herein under 5 U.S.C. § 702.

PARTIES AND STANDING

9. Plaintiff Public Employees for Environmental Responsibility (“PEER”) is a nonprofit organization incorporated in the District of Columbia and headquartered in Silver Spring, MD. It is a national alliance of local, state and federal resource professionals. PEER’s articles of incorporation declare its mission to include educating the public and speaking out, as well as defending those who speak out, about environmental ethics and compliance with environmental laws. PEER works nationwide with government scientists, land managers, environmental law enforcement agents, field specialists, and other resource professionals committed to responsible management of America’s public resources, including national parks and other public lands. PEER members include individuals who hike or bird-watch in the PIOs, and whose enjoyment of these parks is diminished by the presence of overflights that are unregulated by any ATMP or voluntary agreement.

10. PEER members include individuals who recreate, study wildlife and soundscapes, or operate businesses in the PIOs, and whose enjoyment of these parks, whose vocations and enterprises are diminished by excessive overflights that are unregulated in frequency, route, or timing by an ATMP or voluntary agreement. All of these members complain of noise and disruption from excessive overflights, including:

- (a) A recorder of soundscapes in Haleakalā National Park whose work product, which includes assisting national parks with soundscape studies and identifying wildlife species, has been interrupted by over 4,500 annual overflights which mask the natural ambience and negatively affect the behavior of wildlife, thus making soundscape recording and wildlife identification significantly more difficult to obtain;
- (b) A retired ecologist who now leads tours and birding expeditions through the Lake Mead National Recreation Area, as well as camps and hikes in the area himself—who has found that the aircraft diminish the natural quiet he enjoys, reduce the quality of his tours, and make it harder to listen for birds;
- (c) A tour company operator and an environmental educator in Muir Woods National Monument who have experienced disturbances, every few minutes, from over 1,000 annual overflights. The tour operator’s business is negatively affected by diminishing customer experience when customers are forced to cover their ears constantly. The environmental educator, who lives near the National Monument, experiences decreased quiet enjoyment of her own property by having to keep all windows closed to maintain concentration.
- (d) In Glacier National Park, a nearby resident’s weekly all day hikes have been ruined by the constant noise of over 750 annual overflights. These overflights are also heard from his property from 7 a.m. to 7 p.m. PEER members also include three former public employees at Glacier National Park – a former backcountry ranger and wildlife biologist, a former backcountry ranger and water systems operator, and a former state and national park management employee – whose professional experiences with nature in Glacier National Park have been altered by the overflights.

- (e) In Great Smoky Mountains National Park, the owner of a tour guide company whose work and personal life have been disrupted by over 800 annual overflights which interrupt silent walks and destroy a key purpose of the guided tours - positive experiences with nature - by causing employees and customers to want to duck every fifteen minutes from the constant buzzing overhead; and
- (f) A former Bryce Canyon National Park employee whose photographs have been ruined by the high altitude airplane contrails of over 450 annual overflights entering his landscape photography and who has also been deprived of the subtle natural sounds of wildlife, ultimately displacing his hiking locations;

11. Plaintiff Hawaii Island Coalition Malama Pono (“HICoP”) is an advocacy nonprofit coalition of homeowners whose houses are impacted by air tours headed towards Hawaii Volcanoes National Park. Their homes lie in the path between Hawaii Volcanoes National Park and the airfields from which the helicopters conduct air tours. As a result this group of over three hundred homeowners have suffered the adverse consequences of frequent and unregulated air tours. In some cases, as many as 80 flights a day roar over their homes. They have suffered the near-constant noise from the helicopters, and have had their skies marred by the unattractive metal monsters. Contacts in the group have additionally suffered medical, economic, and social consequences. Residents have had trouble sleeping and are afflicted by stress, anxiety, and high blood pressure. Home prices have declined, and the noise from the helicopters has negatively impacted their ability to generate rental income. Furthermore, the noise has caused distress in their pets, which could cause additional veterinary bills. As a further impact of the air tours, homeowners in HICoP have found fewer occasions to entertain guests and feel their privacy has been impinged upon by the presence of airborne tourists over their

homes. If the FAA were to develop an ATMP, it would probably reduce the number of air flights, or reroute some of them over unpopulated areas. Both actions would significantly mitigate the adverse consequences suffered by HICoP.

12. Defendant FAA is an administration of the Department of Transportation. 49 U.S.C. § 106. Among other mandates, the Administrator of the FAA must “develop plans and policy for the use of the navigable airspace and assign by regulation or order the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace.” 49 U.S.C. § 40103(b)(1). Congress has assigned responsibility for managing commercial air tours over national park lands to the FAA. *See* 49 U.S.C. § 40128.

FACTS

13. NPATMA was passed 17 years ago in the year 2000. The Act mandated that there would be no commercial air tours over national parks or within one half mile of a national park (defined to include any unit of the National Park System), unless the air tour was authorized by this statute. 49 U.S.C. §§ 40128(a)(1); 40121(g)(4)(a); 40128(g)(5).

14. In order to conduct commercial air tour operations, an operator must apply to the FAA for operating authority. 49 U.S.C. §§ 40128(a)(2)(A). NPATMA directs that the Administrator of the FAA, in cooperation with the Director of the National Park Service, “shall establish an air tour management plan for any national park or tribal land for which such a plan is not in effect whenever a person applies for authority to conduct a commercial air tour operation over the park.” 49 U.S.C. §§ 40128(b)(1)(A). FAA is required to develop and implement an ATMP before granting operating authority. 49 U.S.C. §§ 40128(a)(2)(D). FAA is to “make every effort” to act on applications for operating authority not later than 24 months after the application is received. 49 U.S.C. §§ 40128(a)(2)(E). Since an ATMP is required to grant

operating authority, this means that an ATMP must be developed within 24 months of any air tour operator application.

15. All of the PIOs had existing air tour operators at the time NPATMA was enacted in 2000, which were then required by NPTMA to apply for operating authority, thus triggering the requirement for an ATMP within 24 months. However, no ATMPs have ever been established in those parks or any others.

16. NPATMA was amended in 2012. FAA Modernization Reform Act of 2012, Pub. L. No. 112-95, 126 Stat. 11. The amendments contained two exceptions to the previous requirement that all park units with tour operators have ATMPs. The first is that a national park unit, if it has few enough flights (no more than 50 per year), could be exempted from NPATMA's requirements. 49 U.S.C. § 40128(a)(5)(A). The FAA is required to promulgate an annual list of exempt parks. 49 U.S.C. § 40128(a)(5)(C)(i). In 2015, based on the latest available list, 54 units of the national park system were exempt. 81 Fed. Reg. 75,183 (Oct. 28, 2016). For those park units, the FAA is not required to develop an ATMP.

17. The only years for which data on air tour numbers exists are 2013, 2014, 2015, and 2016, because the number of flights over a park only became relevant when the exemption for parks with fewer than 50 flights went into effect. In 2013, there were more than 50 flights per year at all of the PIOs. NATIONAL PARK SERVICE, REPORTING INFORMATION FOR COMMERCIAL AIR TOUR OPERATIONS OVER NATIONAL PARK UNITS: 2013 ANNUAL REPORT (2016). In 2014, there were more than 50 flights per year at all of the PIOs. NATIONAL PARK SERVICE, REPORTING INFORMATION FOR COMMERCIAL AIR TOUR OPERATIONS OVER NATIONAL PARK UNITS: 2014 ANNUAL REPORT (2015). In 2015, there were more than 50 flights per year at all of the PIOs, including 14,645 commercial air tours conducted over Hawaii Volcanoes

National Park. NATIONAL PARK SERVICE, REPORTING INFORMATION FOR COMMERCIAL AIR TOUR OPERATIONS OVER NATIONAL PARK UNITS: 2015 ANNUAL REPORT (2017). In 2016, there were more than 50 flights per year at all of the PIOs. NATIONAL PARK SERVICE, REPORTING INFORMATION FOR COMMERCIAL AIR TOUR OPERATIONS OVER NATIONAL PARK UNITS: 2016 ANNUAL REPORT (2017). The number of air tours conducted over Hawaii Volcanoes National Park increased to 15,489. *Id.*

18. Given that the PIOs exceeded that cap in 2013, 2014, 2015, and 2016, it is very likely that flight numbers have remained above 50 in 2017.

19. The second exception to the requirement for ATMPs in the 2012 amendments is an alternative to ATMPs whereby the Administrator of the FAA and the Director on the National Park System may enter into voluntary agreements with all operators over the park as described at 49 U.S.C. § 40128(b)(7).

20. Thus, currently, if the number of flights over a park exceeds 50 per year, NPATMA requires that the FAA develop an ATMP for the park as described at 49 U.S.C. § 40128(b)(1)(B), or enter into a voluntary agreement with all operators over the park as described at 49 U.S.C. § 40128(b)(7).

21. The NPATMA also provides for the grant of interim operating authority to operators on an annual basis pending development of an ATMP and terminating 180 days after the establishment of an ATMP. 49 U.S.C. § 40128.

22. NPATMA provides that the “objective of any air tour management plan shall be to develop acceptable and effective measures to mitigate or prevent the significant adverse impacts, if any, of commercial air tour operations upon the natural and cultural resources, visitor experiences, and tribal lands.” 49 U.S.C. § 40128(b)(1)(B).

23. To accomplish that goal, the FAA is allowed to ban, in whole or in part, air tour flights over the park, and “may establish conditions for the conduct of commercial air tour operations over a national park, including commercial air tour routes, maximum or minimum altitudes, time-of-day restrictions, restrictions for particular events, maximum number of flights per unit of time, intrusions on privacy on tribal lands, and mitigation of noise, visual, or other impacts[.]” 49 U.S.C. § 40128(b)(3)(A), (B).

24. Voluntary agreements as an alternative to ATMPs “shall address the management issues necessary to protect the resources of such park and visitor use of such park” and may include provisions similar to those for ATMPs. 49 U.S.C. § 40128(b)(7)(B). They are also subject to required public review and consultation with affected Indian Tribes. 49 U.S.C. § 40128(b)(7)(C).

25. Plaintiffs suffer from noise and visual impacts of park overflights during their various activities in the parks. If there were fewer aircraft and less noise, the hikers, birdwatchers, tour operators, soundscape recorders, environmental educators, and nearby residents who belong to PEER would be able to enjoy the parks and their properties more. Moreover, the Hawaiian homeowners in HICoP would have less disruption to the quiet enjoyment of their properties. If the FAA were to develop an ATMP for each PIO, or voluntary agreements with all of the operators, then the FAA would have to consider and mitigate the impacts on Plaintiffs. Even minor changes to altitudes, routes, number of flights per hour, and time-of-day restrictions would significantly mitigate the harm to Plaintiffs from the status quo.

26. However, by the FAA’s own account, in the 17 years since the passage of the NPATMA, it has not developed a single ATMP. Nor has it focused its efforts on the voluntary agreement alternative, for there are currently only two operative voluntary agreements that cover

Big Cypress National Preserve and Biscayne National Park. As of 2015, there were 24 parks with more than 50 flights per year. NATIONAL PARK SERVICE, REPORTING INFORMATION FOR COMMERCIAL AIR TOUR OPERATIONS OVER NATIONAL PARK UNITS: 2015 ANNUAL REPORT (2017). In addition, the NPS withdrew the exemption for Death Valley National Park and Mount Rainier from the list for 2014 and 2015. 81 Fed. Reg. 75,183 (Oct. 28, 2016). Thus, as of 2015, 26 park units were subject to the ATMP requirement or voluntary agreement alternative.

27. In lieu of following the statutory scheme requiring the development of ATMPs or voluntary agreements, the FAA has repeatedly granted annual interim operating authority to commercial air tour operators, far beyond the 24 months the statute allows for developing ATMPs and making decisions on the operating authority applications. 49 U.S.C. § 40128(c)(2)(A).

28. In the case of the PIOs that are the subject of this complaint, there have been overflight operators since before the enactment of NPATMA, and the operators in those parks have been operating based on interim authority since the law was enacted in 2000. The interim authority for each of these operators has been renewed annually for the past 17 years without ever developing an ATMP or entering a voluntary agreement. In some cases, new operators in the PIOs have been granted interim operating authority. All such operators have been operating based on interim authority and without ATMPs or voluntary agreements for at least eight years.

29. As a result, members of PEER and HICoP have been injured in the following ways, among others: loss of aesthetic enjoyment, decline in property value, damage to businesses and professional pursuits, reduced hiking enjoyment, loss of sleep, and increased stress.

30. The FAA has deliberately ignored a statutory mandate to pursue an alternative policy that it prefers. In order to end the agency's obstructionism, the FAA must be compelled

to either develop ATMPs for the PIOs or enter into voluntary agreements with all of the commercial air tour operators for those park units.

STATUTORY BACKGROUND

A. National Park Air Tour Management Act

31. The National Park Air Tour Management Act, 49 U.S.C. § 40128, was passed by Congress in response to the problems of uncontrolled low-flying aircraft conducting extended tours over national park lands. Those problems included noise pollution, wildlife disruption, and injury to visitor experiences.

32. NPATMA originally required an ATMP for every park where there were overflights, but the FAA Modernization Reform Act of 2012 introduced exemptions for parks with fewer than 50 flights per year and the alternative of voluntary agreements between operators and the FAA. FAA Modernization Reform Act of 2012, Pub. L. No. 112-95, 126 Stat. 11.

33. NPATMA requires the establishment of an ATMP by the Administrator of the FAA in cooperation with the Director of the National Park Service “for any national park or tribal land where such a plan is not in effect whenever a person applies for authority to conduct a commercial air tour operation over the park.” 49 U.S.C. § 40128(b)(1)(A).

34. Before beginning a commercial air tour operation, the air tour operator is required to apply for authority to conduct the operations over the park. 49 U.S.C. § 40128(a)(2)(A).

35. The Administrator of the FAA “shall make every effort to act on any application under this paragraph and issue a decision on the application not later than 24 months after it is received or amended.” 49 U.S.C. § 40128(a)(2)(E).

36. Upon application for authority to conduct operations from an existing commercial air tour operator, defined as an air tour operator that has conducted commercial air tour

operations within the last 12 months over the park, 49 U.S.C. § 40128(g)(2), the FAA must grant interim operating authority to the applicant. 49 U.S.C. § 40128(c)(1). Interim operating authority provides for the greater of either the number of flights flown within the 12 month period preceding the enactment of the statute or the average number of flights per 12 month period within the preceding 36 month period. 49 U.S.C. § 40128(c)(2)(A)(i),(ii).

37. The FAA may, in cooperation with the Director of the National Park Service, grant interim operating authority to a new entrant air operator provided the Director of the National Park Service agrees. 49 U.S.C. § 40128(c)(3)(A)(iii).

38. Interim operating authority expires 180 days after the establishment of an ATMP for a park unit. 49 U.S.C. § 40128(c)(2)(E).

B. Administrative Procedure Act

39. The Administrative Procedure Act (“APA”) makes final agency action subject to judicial review, 5 U.S.C. § 704, and authorizes courts reviewing agency action to hold unlawful and set aside final agency action, findings and conclusions that are arbitrary and capricious, an abuse of discretion or otherwise not in accordance with law. 5 U.S.C. § 706(2)(A).

40. The APA allows a court to compel agency action unlawfully withheld or unreasonably delayed. 5 U.S.C. § 706(1).

C. National Environmental Policy Act

41. The National Environmental Policy Act (NEPA), 42 U.S.C. § 4321, *et seq.*, is the “basic national charter for protection of the environment.” 40 C.F.R. 1500.1. Its purposes are to “help public officials make decisions that are based on understanding of environmental consequences, and to take actions that protect, restore, and enhance the environment,” *id.* at § 1500.1(c), and to “insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken.” *Id.* at § 1500.1(b).

42. To accomplish these purposes, NEPA provides that a Federal agency must prepare an environmental impact statement (“EIS”) for “proposals for...major Federal actions significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C); *see also* 40 C.F.R. § 1502.3. The Council on Environmental Quality regulations list a number of factors that an agency must consider in deciding whether to prepare an EIS. 40 C.F.R. § 1508.27. The agency must prepare the EIS or otherwise comply with NEPA *before* going forward with an action. Moreover, actions subject to NEPA “include the circumstance where the responsible officials fail to act and that failure to act is reviewable by courts or administrative tribunals under the Administrative Procedure Act or other applicable law as agency action.” 40 C.F.R. § 1508.18.

43. The NEPA process requires the acting agency to first determine whether the action is one that normally requires an EIS. 40 C.F.R. § 1501.4(a)(1). An agency action does not normally require an EIS if it falls within a categorical exclusion. *Id.* § 1501.4(a)(2). “Categorical exclusion” is defined as “a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations.” 40 C.F.R. § 1508.4. If an agency determines that the action is not the kind that normally requires an EIS and does not invoke a categorical exclusion, the agency is required to prepare an environmental assessment (“EA”) to determine whether an EIS is necessary. *Id.* §§ 1501.3, 1501.4(b), 1508.9. If the agency concludes, based on the EA, that an EIS is not required, it must prepare a finding of no significant impact (“FONSI”) which explains the agency’s reasons for its decision. *Id.* §§ 1501.4(e), 1508.13.

CLAIMS FOR RELIEF

Count I – Violation of the Administrative Procedure Act

44. Plaintiffs re-allege and incorporate by reference each and every allegation in the preceding paragraphs.

45. The APA allows a plaintiff to sue to compel agency action unlawfully withheld or unreasonably delayed. 5 U.S.C. § 706(1).

46. The failure to develop ATMPs for the PIOs or voluntary agreements in accordance with 49 U.S.C. § 40128(b) is agency action unlawfully withheld in violation of 5 U.S.C. § 706(1).

47. The failure to develop ATMPs for the PIOs or voluntary agreements in accordance with 49 U.S.C. § 40128(b) is agency action unreasonably delayed in violation of 5 U.S.C. § 706(1).

Count II – Violation of the National Park Air Tour Management Act

48. Plaintiffs re-allege and incorporate by reference each and every allegation in the preceding paragraphs.

49. The PIOs are subject to NPATMA and not exempted based on less than 50 flights per year.

50. The commercial air tour operators in the PIOs have been operating based on interim authority, without the establishment of an ATMP or a voluntary agreement, for at least eight years, and in most cases, for the entire 17 years since the enactment of NPATMA.

51. The grant of interim operating authority is based upon an application for authority to conduct commercial air tour operations.

52. FAA is required to develop and implement an ATMP before granting operating authority. 49 U.S.C. §§ 40128(a)(2)(D).

53. The NPATMA states that the Administrator of the FAA “shall make every effort to act on any application under this paragraph and issue a decision on the application not later than 24 months after it is received or amended.” 49 U.S.C. § 40128(a)(2)(E).

54. Therefore, upon the initial grant of interim operating authority to the applying operators, the FAA had 24 months to develop an ATMP or enter a voluntary agreement with each operator.

55. The FAA has been annually reauthorizing the interim operating authority of the operators in those parks well in excess of the 24 months the FAA had to develop an ATMP or enter a voluntary agreement, which would remove the need for interim operating authority.

56. The FAA has failed to develop an ATMP for each PIO or a voluntary agreement with each operator in each PIO within 24 months of application for operating authority, as NPATMA requires.

57. Defendant’s failure to develop the mandatory ATMPs or voluntary agreements in the PIOs is in violation of the NPATMA. Its actions should be set aside and found unlawful.

Count III – Violation of the National Environmental Policy Act

58. Plaintiffs re-allege and incorporate by reference each and every allegation in the preceding paragraphs.

59. The National Environmental Policy Act requires that agencies “include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on -- (i) the environmental impact of the proposed action, (ii) any adverse

environmental effects which cannot be avoided should the proposal be implemented, (iii) alternatives to the proposed action, (iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.” 42 U.S.C. § 4332(C).

60. The NPTMA requires NEPA compliance by means of an EIS or EA for ATMPs. 49 U.S.C. § 40128(b)(2).

61. The FAA’s repeated grants of interim authority for air tours without the development of ATMPs or voluntary agreements is likewise a “major Federal action “ that has impacts on the environment and is subject to NEPA.

62. The FAA’s failure to act to develop ATMPs or voluntary agreements, as required by law, is also subject to NEPA. Actions subject to NEPA “include the circumstance where the responsible officials fail to act and that failure to act is reviewable by courts or administrative tribunals under the Administrative Procedure Act or other applicable law as agency action.” 40 C.F.R. § 1508.18.

63. The FAA’s failure to act is reviewable under the APA, because discretion to ignore the statutory mandate cannot be committed to the FAA.

64. Commercial air tour operations conducted over parklands result in noise that can cause adverse effects on human environmental quality and wildlife and deleterious health effects. Even though one flight may be insignificant, there are hundreds or thousands of flights over the 7 PIOs, which could have serious cumulative impacts. Moreover, the presence of air tours could potentially harm a species listed under the Endangered Species Act, 15 U.S.C. § 1531, *et seq.*

65. The FAA has not prepared an EIS or EA concerning its grants of interim authorities or its failure to prepare ATMPs or voluntary agreements for the PIOs. Nor has FAA properly claimed a categorical exclusion from NEPA. The FAA is therefore in violation of NEPA.

PRAYER FOR RELIEF

Wherefore, Plaintiffs respectfully request the court to order the following relief:

A. Declare that Defendant has violated the APA, 5 U.S.C. § 706(1), providing that agency actions must not be unreasonably delayed or unlawfully withheld, by failing to develop any ATMPs or voluntary agreements for the PIOs, which are required by law.

B. Declare that Defendant has violated the NPATMA, 49 U.S.C. § 40128, by failing to develop any ATMPs or voluntary agreements for the PIOs, as NPATMA requires the FAA to do within 24 months of an air tour operator's application for operating authority.

C. Declare that Defendant has violated NEPA by failing to prepare an environmental impact statement and by failing to conduct any environmental analysis of the effect of its multiple and repeated grants of interim authority and of its inaction in developing ATMPs or voluntary agreements.

D. Order Defendant to develop an ATMP for each PIO or voluntary agreements with each operator in each PIO, as soon as possible and no later than 24 months from the Court's order.

E. Enjoin any further air tour operations over the PIOs where ATMPs or voluntary agreements are not in place 24 months after the Court's order.

F. Award Plaintiffs their reasonable litigation expenses, including attorneys' fees, court costs and other expenses pursuant to the Equal Access to Justice Act, 29 U.S.C. § 2412, *et seq.*

G. Grant such additional relief as the Court deems just and proper.

Dated: October 4, 2017

Respectfully submitted,

A handwritten signature in cursive script that reads "Paula Dinerstein".

Paula Dinerstein

D.C. Bar No. 333971

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Up in the air?

Coalition to challenge helicopter parking permit

By **JEFF HANSEL**
Hawaii Tribune-Herald

Should tourism helicopters fly only over the ocean instead of neighborhoods to decrease their noise? Or will that endanger lives — and the tourism industry?

Those questions might appear far removed from the seemingly simple process of helicopters getting permission to park at the Hilo International Airport. It's something they've done for a long time.

But the parking permit is on the agenda for today's Board of Land and Natural Resources meeting in Honolulu. The board meets at 9 a.m.

A community group known as Hawaii Island Coalition Malama Pono, or HICoP (www.hicop.org), plans to request a contested case hearing about a parking permit at Hilo International Airport for Kailua-Kona-based Paradise Helicopters, formerly K&S Helicopters Inc.

"HICoP has met with the tour helicopter operators on Hawaii Island and shown them extensive video coverage of their helicopters overflying our homes and told them in explicit detail how their continuing operations impact our quality of life, our health and the noise nuisance their tour helicopters cause depriving us of the use and enjoyment of our property," said HICoP President and board member Bob

"It can interrupt your telephone calls, it can interrupt your sleep, it can interrupt your nap. It interrupts your life — it just becomes your life."

BOB ERNST
 HICoP president and board member

Ernst in an email.

Ernst said during an interview Thursday that the organization wants all tour helicopter companies to be required to fly directly over water from both major Big Island airports, including the Ellison Onizuka Kona International Airport at Keahole in Kailua-Kona, because that's the only way the noise can be eliminated.

"It can interrupt your telephone calls, it can interrupt your sleep, it can interrupt your nap. It interrupts your life — it just becomes your life," he said.

Ernst said he's not sure how many active members HICoP has, but it sends emails to "hundreds" of people who signed up to get them.

Ernst said HICoP took the step of requesting the contested case hearing so the airport parking permit might be denied because the Federal Aviation Administration controls air traffic, leaving the organization searching for help from the state. Ernst said he thinks the parking permit request is intended to add a helicopter or helicopters to already congested flights on the Big Island.

However, Troy Scott, acquisition division chief and a pilot for Paradise Helicopters, said his company requested the

Flying over the ocean would add time to the flight path between Hilo and the lava ocean entry.

parking permit only because the Hilo airport wanted to build a new access road going through one of Paradise Helicopters' existing spots (Pad 1). To do that, the airport requested Paradise give up Pad 1 and request a permit for a new spot (Pad 11).

He said there currently are no plans for new helicopters.

Noise is a complex issue that the helicopter tourism industry has addressed in many ways throughout the years, Scott said.

Although helicopter tourism is a for-profit industry, tour providers operate on a thin margin, he said. Flying over the ocean would add time to the flight path between Hilo and the lava ocean entry. And, in the helicopter tourism industry, time in the air equates to more money for fuel and fewer tours with less money coming in as a result.

In addition, Scott said, the FAA requires helicopters that fly over water to be capable of coasting to land if an engine fails. Most tour helicopters on the Big Island have only a single engine, Scott said. That means tour companies would need to buy dual-engine helicopters, which cost more to operate, or flotation equipment.

If the FAA was to require tour

companies to fly only over the ocean, Scott said, "some operators may have to go out of business."

"Our firm alone, we employ over 100 families on the Big Island," he said.

Cost of the additional flight time would be borne by customers, he said, and that likely would leave some current customers unable to afford the flights.

But Ernst said there were 15,489 flights over Hawaii Volcanoes National Park in 2016 and the DLNR should hold the contested case hearing and block the helicopter parking permit.

"We see it as the only viable solution to bring serenity back to Hawaii Island," Ernst said.

Other issues under consideration during the state Board of Land and Natural Resources meeting today include:

- A request to extend a West Hawaii land lease for an additional 35 years for the Food Basket, Hawaii Island's food bank. The nonprofit has a warehouse on the land in question where it collects and distributes food.

- Administrative enforcement for violation of administrative rules against Samuel Perez Hulst "for engaging in illegal commercial activity on state lands and in state waters adjacent to Kailua Beach Park," with a possible fine of \$11,000.

Email Jeff Hansel at jhansel@hawaii-tribune-herald.com.

Residents' Perceptions and Field Measurements of Helicopter Operations

PANOS D. PREVEDOUROS AND B. PRASAD

Despite the considerable research in the area of perceptions and annoyance in relation to noise levels research outside the context of commercial airports and military bases is lacking. Little is known about reactions to helicopter operations in areas where such disturbances are unexpected. Examples of such locations include several national parks and various communities in Hawaii affected by tour operations. A special federal aviation regulation has been enacted for the Grand Canyon National Park, and others may be precipitated from Public Law 100-91. At present, however, no legislative initiatives cover residential communities. The basic question that the research attempted to answer was whether, in towns of low-residential-density, exposure to loud, frequent, or long-lasting helicopter overflights corresponds to a negative attitude toward helicopter tour operations. Perceptual and actual noise measurements were collected, the former with a mail-back questionnaire survey and the latter with an extensive field survey. Investigations in four communities focused on potential relationships between people's annoyance and actual operational characteristics, such as noise intensity, frequency, and overflight duration. The expectation was substantiated that more exposure to helicopter overflights, particularly in terms of frequency and duration, relates to increasing annoyance.

This paper contributes to the existing knowledge of helicopter noise impacts on rural communities by describing the major findings of a study sponsored by the Airports Division of the Hawaii Department of Transportation (HDOT) which, in its role as operator of the statewide system of airports, has been facing a problem of increasing severity in recent years. The 1994 study (1) developed a set of recommendations based on (a) a comprehensive literature review of research in acoustics and prior experience on human response to helicopter noise, (b) the identification of the extent of the problem in rural areas of the state and a comparison of the impact on exposed and nonexposed communities with analysis of a mail-back survey, and (c) the measurement of ambient, traffic, and helicopter noise in exposed communities to either substantiate or refute the findings of the survey.

The major elements of the literature review have been reported (2). The assessment of the problem of helicopter noise and comparisons of the impact on exposed and nonexposed communities also have been reported (3). This last study, stemming from the aforementioned HDOT research grant, addresses the relationship between perceptions and actual measurements from helicopter operations over rural residential areas.

Although considerable research has been done in the area of perceptions and annoyance in relation to noise levels, almost no research has been done outside the context of commercial airports and military bases. Little is known about annoyance at and reactions

to noise in areas where such disturbances are unexpected. Examples of such locations include several national parks and various communities in Hawaii affected by tour operations.

A special federal aviation regulation (SFAR 50-2) has been enacted for the Grand Canyon National Park, and others similar to SFAR 50-2 may be precipitated by Public Law 100-91, which requires that the National Park Service conduct studies and cooperate with FAA for the protection of the environment and ambience in national parks.

At this time, no legislative initiatives cover residential communities. Only FAA's 14 CFR § 135.203(b), for Part 135 operators, requires the maintenance of a minimum altitude of 91.44 m (300 ft) above ground level in congested areas. Note that there is no specification about residences or residential areas. Other operators are required by 14 CFR § 91.119(d) to operate the "in a manner that is not hazardous to persons or property."

The basic question that our research attempted to answer was, Does exposure to loud, frequent, or long-lasting helicopter overflights correspond to a negative attitude toward helicopter operations among low-residential-density towns in Hawaii affected by helicopter tour operations? Emphasis was placed on operational characteristics of helicopter overflights, such as frequency and duration of overflights.

A field measurement survey was conducted on the island of Hawaii because this island has been the nearly exclusive focus of the helicopter noise issue since 1992. Four communities (Keaau, Kurtistown, Mountain View, and Pahoa) were selected as the sites for field measurements. The specifics of field measurement procedures and instruments are given in the next section, along with a description of the research methodology. They are followed by a presentation of the results and the conclusions.

METHODOLOGY AND DATA

The research methodology is shown in Figure 1. It begins with the collection of perceptual and actual field measurements. Perceptual data were gathered with a mail-back questionnaire survey. Actual data on helicopter operations were collected during a field survey of fairly extensive coverage and duration. Various analyses were conducted with the two data sets. For instance, identification of ambient- and helicopter-noise profiles at each station within each community were done with the field data, and estimation of annoyance models was done with the perceptual data. Segments from the two data sets, selected based on zip codes, were also compared to reveal potential relationships between people's perceptions of noise and actual operational characteristics, such as noise intensity, frequency, overflight duration, and combinations of these three descriptors. The data sets are described below.

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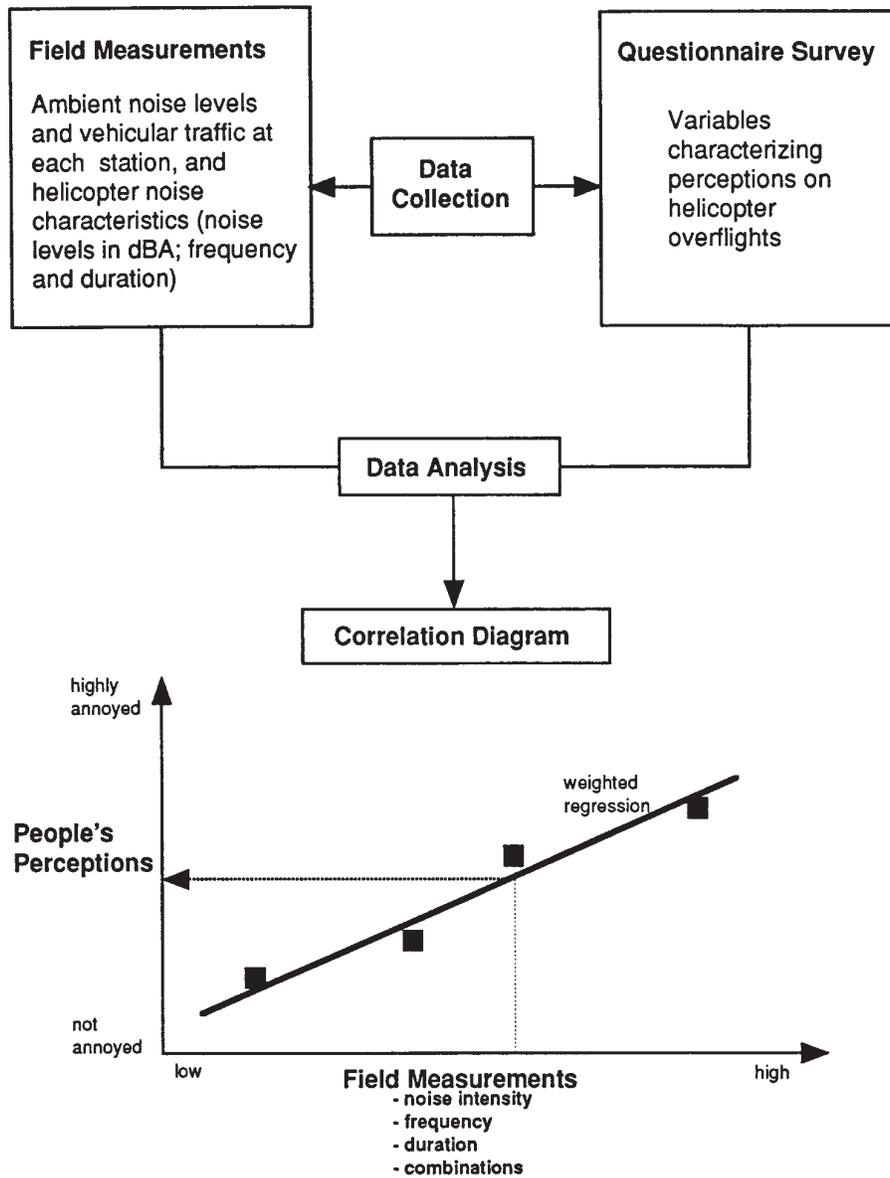


FIGURE 1 Methodology of analysis.

Field Measurements of Helicopter Noise

The noise measurements were taken with a Bruel and Kjaer sound level meter (Precision Integrating Sound Level Meter Type 2230). All measurements were taken in the A scale. To achieve continuous measurements, the noise readings were recorded by using a multimeter (FLUKE 45). The multimeter was used as an interface between the sound level meter and a portable computer, for automatic storage of the noise readings in the computer.

The noise measurements were taken for 2 hrs at every station. The 2-hr span was determined partly by the objective of cover in a multiple stations with limited manpower and the need to replace or recharge the computer's batteries. Two types of noise measurements were taken at every station. The first type was continuous noise measurements taken during the first half hour to identify the

ambient and traffic noise levels. The second type was interrupted noise measurements taken during the remaining 1.5 hr to record only the helicopter noise levels. Noise measurements were taken for 2 days (one on a weekday and the other on a weekend day) in each of the four towns.

Ten days were spent on the east side of the island of Hawaii for to collect noise measurement. (A few days were consumed by reconnaissance, identification of suitable locations for measurements, and inactivity because of heavy rain.) Noise measuring stations were identified within and around the residential areas of each town based on the following selection criteria: The location should be (a) near three or more residences; (b) at least 3 m (10 ft) away from major noise sources such as vehicular traffic, people in the neighborhood, children playing on the street, barking dogs, lawn mowers, etc.; (c) away from tall buildings, large trees, solid fences,

etc., which may bias the readings; and (d) on the side of public property, to avoid trespassing.

Questionnaire Survey

Questionnaires were sent to a random sample of households on the islands of Hawaii and Maui to assess people's perceptions of helicopter noise as experienced in their neighborhood. Overall, more than 1,400 completed responses were received. This part of the research, however, focused on the east side of the island of Hawaii, which is by far the greatest source of helicopter-noise complaints to HDOT's Airports Division. Furthermore, the research focused on four rural communities, which can be readily identified geographically and by zip code (3, p. 70). Geographic identification is necessary so that field measurements are conducted within the boundaries of the communities. By using zip code identification, the field-measured helicopter operations data and perceptions of annoyance can be properly matched and compared.

For purposes of this investigation, only the perceptual responses to the questionnaire were considered. [Analysis of most variables from the survey has been presented elsewhere (3)]. Variables (Y_i), where Y_i equals annoyance, represent each questionnaire statement; they are given in Table 1 with their corresponding statements. The respondents were asked to rate each statement depending on their level of agreement or disagreement with it (e.g., -2 for, "strongly disagree" to $+2$ for "strongly agree").

The first five variables in Table 1 are similar because they assess the people's concerns about the helicopter noise present in their neighborhood. They were combined into a single variable using factor analysis. Application of factor analysis provides the user with the coefficients (factor loadings or weights) corresponding to each variable for the creation of a single variable from a set of given independent variables.

$$Y_F = 0.215 * Y_1 + 0.192 * Y_2 + 0.173 * Y_3 + 0.203 * Y_4 + 0.217 * Y_5 \quad (1)$$

The parameters shown in the equation above result from the execution of factor analysis with SSPS/PC+ using the maximum-likelihood (ML) factor extraction procedure. ML was selected as the most rigorous estimation method available in SSPS/PC+. Y_F is the resultant variable. The χ^2 test (invoked automatically) and the eigenvalues of the five initial factors determined that one factor is sufficient for combining the independent variables Y_1 to Y_5 (Y_F explains 68.7 percent of the variance of these five variables). The Kaiser-Meyer-Olkin measure of sampling adequacy is 0.855, which is rated as "meritorious," whereas for comparison, a value below 0.5 is "unacceptable." The Bartlett test of sphericity is also significant (higher than 99 percent).

The model described by Equation 1 has been estimated from 1,420 questionnaire responses. Its application to this study should be reliable, but its transferability to other locales may be inappropriate because of the homogeneity of the sample (e.g., from rural Hawaii only). However, one may observe that most factor loadings (coefficients) are not considerably far from 0.20, the default weight, which corresponds to the assumption that all Y_i ($i = 1$ to 5) are equally important.

ANALYSIS

Noise profiles were drawn from the half-hour of continuous noise measurements and from the noise levels of individual helicopter overflights. Ambient noise levels and traffic noise levels at each station were identified from the continuous noise profiles. Duration, frequency, and noise are the three helicopter noise characteristics considered for comparison with the perceptual data.

A sample of the data collected in the field is shown in Figure 2. The top graph details the ambient noise level at Station 2 in Kurtis-

TABLE 1 Variables Derived from Perceptual Data

Variable	Questionnaire statements
Y_1	I am often annoyed by helicopter noise at my home
Y_2	I am often annoyed by helicopter noise while at work
Y_3	I am often worried that one of the helicopters will crash on my property
Y_4	Helicopter flights disturb my sleep or the sleep of somebody else in my household
Y_5	My household's privacy is invaded by some of the helicopter overflights
Y_6	Noise from cars and trucks is very annoying in my neighborhood
Y_7	Noise from work activities, hunters or other people is very annoying in my neighborhood
Y_8	Noise from nature is very annoying in my neighborhood
Y_9	Government regulators should adopt stricter helicopter noise regulations
Y_{10}	Helicopter pilots can fly in ways which would lessen noise in my neighborhood
Y_{11}	Yesterday I heard helicopter noise when I was at home during day time
Y_{12}	Yesterday I heard helicopter noise when I was outdoors during day time

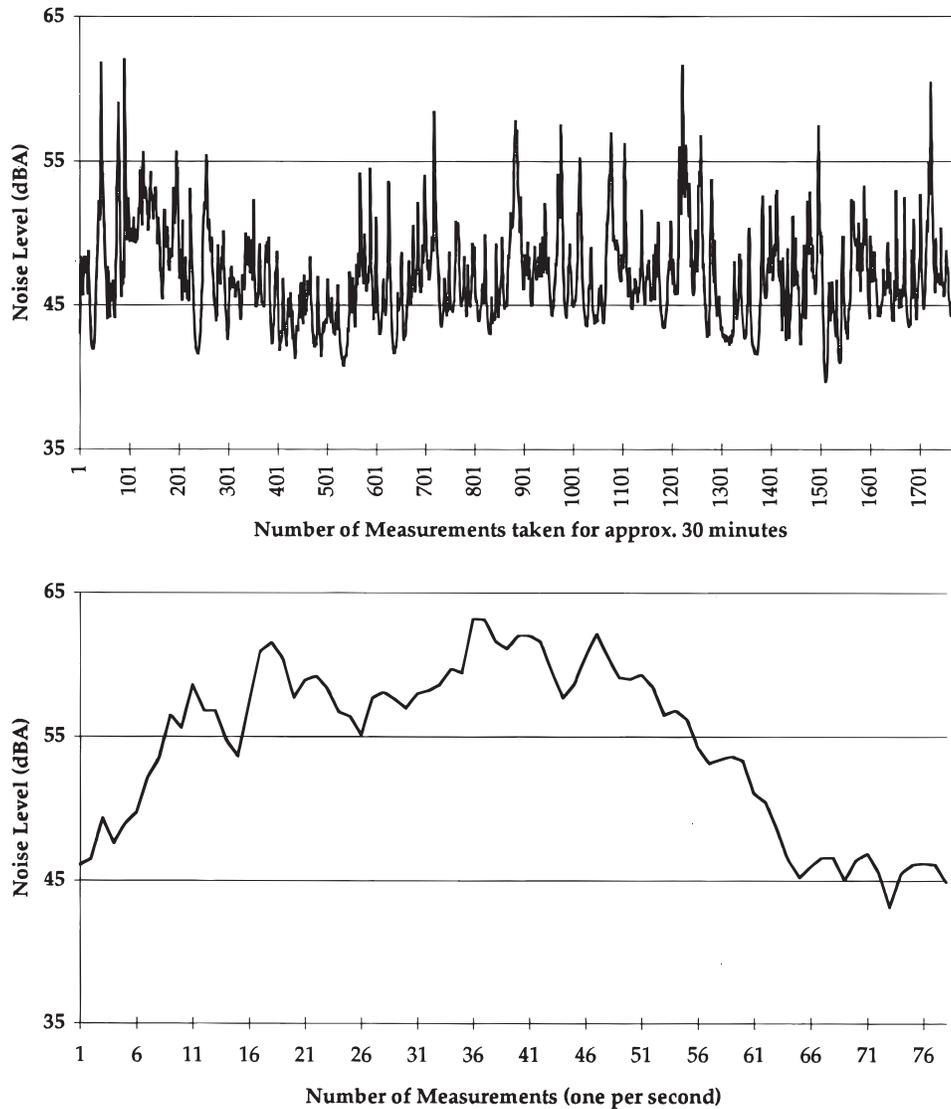


FIGURE 2 Kurtistown (Station 2) sample: (top) background noise profile and (bottom) helicopter noise profile.

town. The average ambient noise level at the specific location is slightly less than 50 dB (A). The bottom graph is a detailed noise profile of one helicopter overflight. The peak noise level for this flight was about 64 dB (A). Dozens of similar profiles were generated.

The data selected for analysis include only the helicopter overflights for which a clear measurement of helicopter noise was made (helicopter plus ambient noise level, to be exact); it excludes all cases where a noisy vehicle, strong wind gusts, and people or animal sounds interfered with the helicopter noise. Proper note-taking during the survey made such a screening possible.

There are more appropriate methods and equipment for noise measurement [i.e., day-night sound averages (DNL) taken near homes], but equipment and other resources made their use infeasible. As a result, the analysis presented here focuses more on frequency and duration of overflights (since the mea-

surements are, in all likelihood, unbiased and proper) and less on noise intensity.

Based on the half-hour profiles of ambient and traffic noise measurements at each station, a number of vehicle profiles (9 to 39, depending on availability) were selected for the estimation of traffic $L(\max)$ and $L(\text{mean})$. Single-vehicle passages were selected so that complex decompositions of overlapping noise profiles would be avoided. Then basic noise statistics were derived from the sample of vehicular noise profiles.

The ambient noise level, $L(\text{amb})$, the average traffic noise, $L(\text{mean})$, and the maximum traffic and helicopter noise, $L(\max)$, are plotted in Figure 3. The ambient noise level has been subtracted from the other noise indicators plotted; thus, the helicopter and traffic $L(\max)$ reflect the net noise level generated. The plot has been sorted in an ascending order for helicopter $L(\max)$, which is represented by the thick solid line.

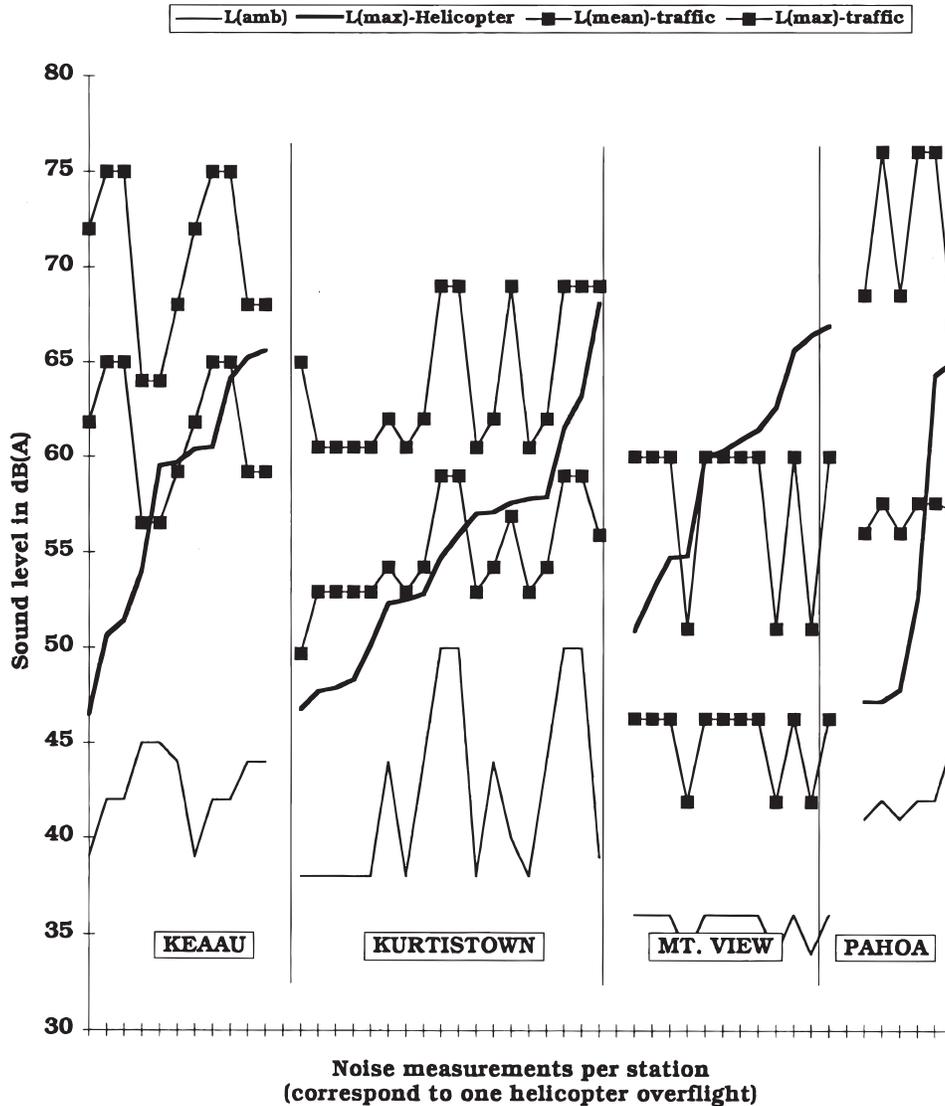


FIGURE 3 Helicopter, ambient, and vehicular traffic noise levels in four towns.

It is obvious that the helicopter noise level in all cases is clearly above the ambient noise level, and that in the majority of the cases it exceeds the mean traffic noise level. As expected, the helicopter noise level rarely exceeds the traffic $L(max)$, not only because several traffic maxima are due to noisy motorcycles or poorly maintained vehicles, but also because the distance of the noise equipment in the field was about 3 to 6 m (10 to 20 ft) away from major roadways, whereas most helicopters flew at a considerable altitude. (No attempt was made to record the distance and altitude of helicopter flights because they would be subjective and inaccurate since they are influenced by such factors as direction and speed of flight, size of helicopter, visibility conditions, etc.)

Notably, helicopter noise is most intrusive in Mountain View. This is because the station for the instruments was about 45 m (150 ft) away from the major roadway in the area. Thus, traffic $L(max)$ is much lower than at the other sites; consequent-

ly, the helicopter $L(max)$ exceeds the traffic $L(max)$ in most cases.

Table 2 summarizes the average frequency of helicopter overflights per hour. Day of the week, weather, and cruise ship arrivals affect our helicopter flight frequency and cause an irregular pattern. For example, no helicopter operations took place during the 2.5 hr of observation at Keaau, Station 1, starting at 8:00 a.m. on a Saturday. But five overflights corresponding to an average frequency of about three overflights per hour were recorded at the same station and approximate time on a Monday. In some instances, nearly six overflights per hour took place at Kurtistown and Mountain View.

The averages for helicopter operational characteristics in the sampled communities are specified in Table 3, which also contains the respective samples of field measurements and questionnaire responses.

TABLE 2 Frequency of Helicopter Flights

Location	Stn.	Day	Start Time	Duration of Meas. (min.)	Occurrences	Hourly Freq.
Keaau	1	SA	8:00	150	0	0.0
	2	SA	10:40	140	5	2.1
	3	SA	13:13	135	6	2.7
	1	SA	15:35	40	1	1.5
	1	MO	8:27	105	5	2.9
	2	MO	10:39	121	7	3.5
	3	MO	13:15	105	0	0.0
	1	MO	15:07	53	1	1.1
Kurtistown	1	SU	8:07	93	0	0.0
	2	SU	9:45	135	4	1.8
	3	SU	12:20	130	1	0.5
	4	SU	14:40	80	5	3.8
	1	TU	8:10	115	3	1.6
	2	TU	10:12	118	6	3.1
	3	TU	12:37	93	9	5.8
	4	TU	14:19	104	1	0.6
Mt. View	1	TH	8:00	120	1	0.5
	2	TH	10:14	111	11	5.9
	3	TH	12:13	107	2	1.1
	2	TH	14:06	114	10	5.3
	1	SU	8:00	122	1	0.5
	2	SU	10:09	114	3	1.6
	3	SU	12:10	112	3	1.6
	2	SU	14:07	116	5	2.6
Pahoa	1	FR	8:07	118	4	2.0
	2	FR	10:12	168	6	2.1
	3	FR	13:43	137	3	1.3
	1	SA	8:00	150	3	1.2
	2	SA	10:38	142	5	2.1
	3	SA	13:02	178	0	0.0

The frequency statistics presented in Table 3 were derived from the original field measurements, which are summarized in Table 2, by using a weighted average to yield the average weekly frequency based on (a) the weekday and weekend field observations, and (b) the duration of the field observations, as follows:

TABLE 3 Summary of Selected Characteristics

Community	Frequency (overflights per day)	Duration (min /day)	Noise (μPa & dBA)	Questionnaire Responses (Perceptions)	Field Measures (Overflights)
Keaau	15	0.15	22,440 61.0	16	11
Kurtistown	18	0.36	17,419 58.8	48	18
Mt. View	16	0.24	26,063 62.3	31	12
Pahoa	10	0.07	20,231 60.1	90	6

$$X = [2 \cdot (8 \cdot F_{we}/t_{we}) + 5 \cdot (8 \cdot F_{wd}/t_{wd})]/7 \tag{2}$$

where

- X_1 = average daily frequency of helicopter operations,
- F_{we} = frequency of weekend operations (e.g., 12 for Keaau, Table 2),
- t_{we} = duration of weekend field measurements in hours (e.g., 7.75 for Keaau),
- F_{wd} = frequency of weekday operations (e.g., 13 for Keaau, Table 2), and
- t_{wd} = duration of weekday field measurements in hours (e.g., 6.4 for Keaau).

Substitution of the example numbers given in the description of Equation 2 for the community of Keaau in Equation 2 yields an average frequency of 15 overflights on a typical day, which is shown in Table 3. A similar calculation was performed to derive the average daily duration of overflights.

As stated earlier, the questionnaire survey and the field measurements were conducted independently. The averages of the helicopter operation characteristics listed above were coded into the questionnaire survey data based on the geographical (zip code) correspondence. In addition, the number of field measurements (last column in Table 3) was input to be used as weights in the subsequent modeling efforts. This was done because, conceivably, more measurements tend to translate to more reliable averages of the conditions over the boundaries of each community.

Linear and nonlinear regressions were estimated using SPSS/PC+ (and invoking the subcommand REGWGT in the REGRESSION procedure). The relationship between the independent variables of frequency (X_1) and duration (X_2) and the dependent variables Y_1 (helicopter noise annoyance at home) and Y_F (composite variable estimated according to Equation 1, including annoyance at home, and at work, fear of crashes, and sleep and privacy disturbances) were sought. The models are shown in Table 4 and Figure 4.

A nonlinear relationship fits frequency best, whereas a linear one is best for duration. Although the models display a mediocre overall fit to the data (based on the R^2 index), they are strongly statistically significant as evidenced by the t -statistic for each parameter estimate and the overall model F -score. In Figure 4, annoyance begins in the neighborhood of 1 (“annoyed”). Annoyance strictly from noise (Y_1 , solid line plot) is more bothersome than the composite factor annoyance (Y_F , dashed line plot). This outcome is correct since respondents have indicated lesser disturbance from noise at work or from fear of crashes, sleep deprivation, and invasion of privacy.

The model indicates that, on the average, some form of annoyance sets in at a frequency of overflights of about 10 or more per day. Given the methodology with which data were gathered, the model includes all flights that are audible at the point of reception. The findings are in accord with those in a study by the Rumson Corporation (1,2) in which about 8 overflights form the threshold beyond which annoyance increases exponentially and 25 overflights are deemed extremely annoying (rating of nearly 12 on a scale from 0 to 12). Indeed, our results indicate that 20 or more overflights are likely to cause people to respond as “very annoyed.” Similar observations can be made for duration (bottom graph). Annoyance sets in after a total of about 10 min of audible helicopter overflights in a day.

Two new variables were created to separate the population sample into those who are likely to be highly annoyed (rating exceeding

TABLE 4 Models Connecting Helicopter Flight Characteristics with Annoyance

MODEL	MODEL FIT STATISTICS
$Y_1 = -0.09 + 0.0053 X_1^2$	$R^2 = 0.16$, $F = 33.9$, $t_1 = 14.6$ (99%), $t_X = 5.8$ (99%), $N = 158$
$Y_F = -0.40 + 0.005 X_1^2$	$R^2 = 0.16$, $F = 30.8$, $t_1 = 11.8$ (99%), $t_X = 5.5$ (99%), $N = 158$
$\%HA_H = 0.203 + 0.00156 X_1^2$	$R^2 = 0.09$, $F = 18.5$, $t_1 = 2.6$ (98%), $t_X = 4.3$ (99%), $N = 158$
$\%HA_F = 0.107 + 0.00125 X_1^2$	$R^2 = 0.06$, $F = 12.7$, $t_1 = 1.4$ (84%), $t_X = 3.6$ (99%), $N = 158$
Duration of of flyovers (X_2)	
MODEL	MODEL FIT STATISTICS
$Y_1 = 0.21 + 4.083 X_2$	$R^2 = 0.15$, $F = 31.1$, $t_1 = 20.1$ (99%), $t_X = 5.6$ (99%), $N = 184$
$Y_F = -0.32 + 3.728 X_2$	$R^2 = 0.15$, $F = 27.4$, $t_1 = 16.5$ (99%), $t_X = 5.2$ (99%), $N = 184$
$\%HA_H = 0.298 + 1.162 X_2$	$R^2 = 0.08$, $F = 16.1$, $t_1 = 4.7$ (99%), $t_X = 4.0$ (99%), $N = 184$
$\%HA_F = 0.178 + 0.956 X_2$	$R^2 = 0.06$, $F = 11.7$, $t_1 = 2.9$ (99%), $t_X = 3.4$ (99%), $N = 184$

Notes: All F-scores are statistically significant at the 99% level; t_1 = t-statistic for the intercept, t_X = t-statistic for the independent variable (both based on 2-tailed test); Y_1 , Y_F , $\%HA_H$ and $\%HA_F$ are defined in the text.

1 on the -2 to $+2$ scale) and those who are not. The variable “% highly annoyed” based on the Y_1 variable (noise annoyance at home) is $\%HA_H$, whereas $\%HA_F$ is based on the Y_F variable (composite annoyance). The models are shown in Table 4 and Figure 5; they display a mediocre to poor R^2 but they are strongly statistically significant. The models indicate that the majority of the population examined is likely to be highly annoyed by helicopter overflights when frequency exceeds 14 flights per day, or 18 flights per day, based on the composite index. The same reaction should be expected when the duration of audible overflights exceeds about 10 min (noise-based) or about 20 min (composite annoyance-based) per day.

CONCLUSIONS

The logical expectation that more exposure to helicopter overflights would cause more negative perceptions about helicopter operations has been substantiated. In proving a specific research hypothesis, it was shown that although helicopter flights on the island of Hawaii do not generate a remarkably high level of noise, their noise is clearly above the ambient and the mean traffic noise levels at locations near major roadways. The difference between helicopter and

ambient noise level should be greater at locations far from major roadways. More importantly, specific relationships between annoyance and helicopter operation characteristics, such as frequency and duration of overflights, were identified. Annoyance increased exponentially with increasing frequency of overflights, whereas it increases linearly with increasing total daily duration of audible overflights. The results are consistent with similar studies: Annoyance seems to set in when frequency exceeds about 10 overflights per day, and the operations become very annoying as they reach 20 overflights.

It may be argued that the nonsimultaneous measurement of perceptions and noise (as in studies in the vicinity of airports and military installations) may be problematic. This research approach may be more appropriate in semirural communities because people’s perceptions reflect long-time beliefs and do not carry the bias of a controlled experimental study. In addition, the field measurements covered a wide area; they were not restricted to a specific neighborhood, thus giving a more representative picture of the problems in a wide flight corridor. Finally, the field measurements were done without the knowledge of anybody involved in the issue (i.e., residents, helicopter operators, aviation officials, etc.). Thus, the field data, particularly frequency and duration, are likely to be unbiased and representative of the actual field conditions.

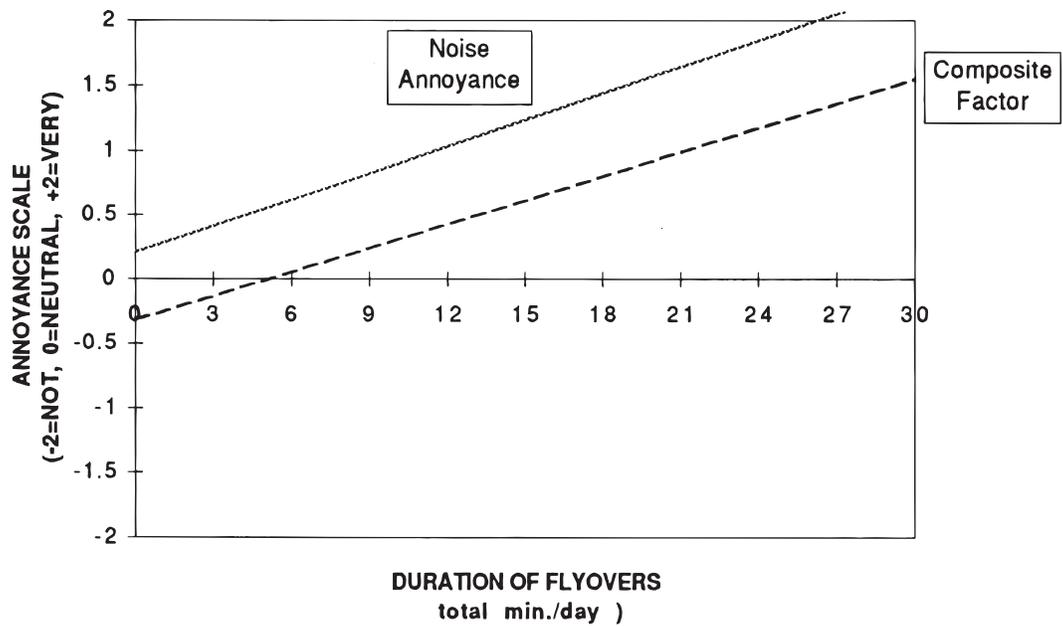
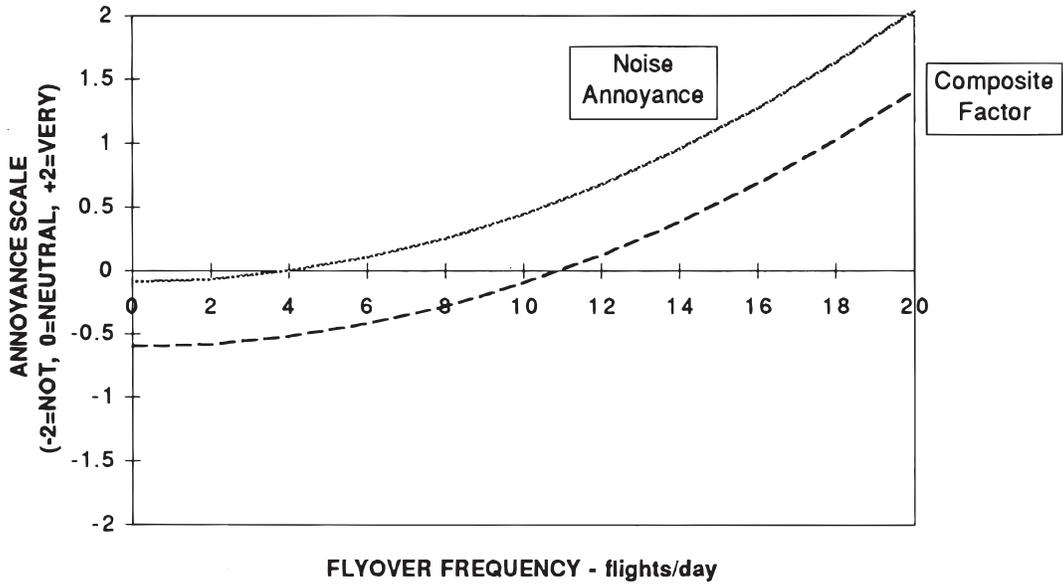


FIGURE 4 Effect on annoyance of (top) flyover frequency and (bottom) duration.

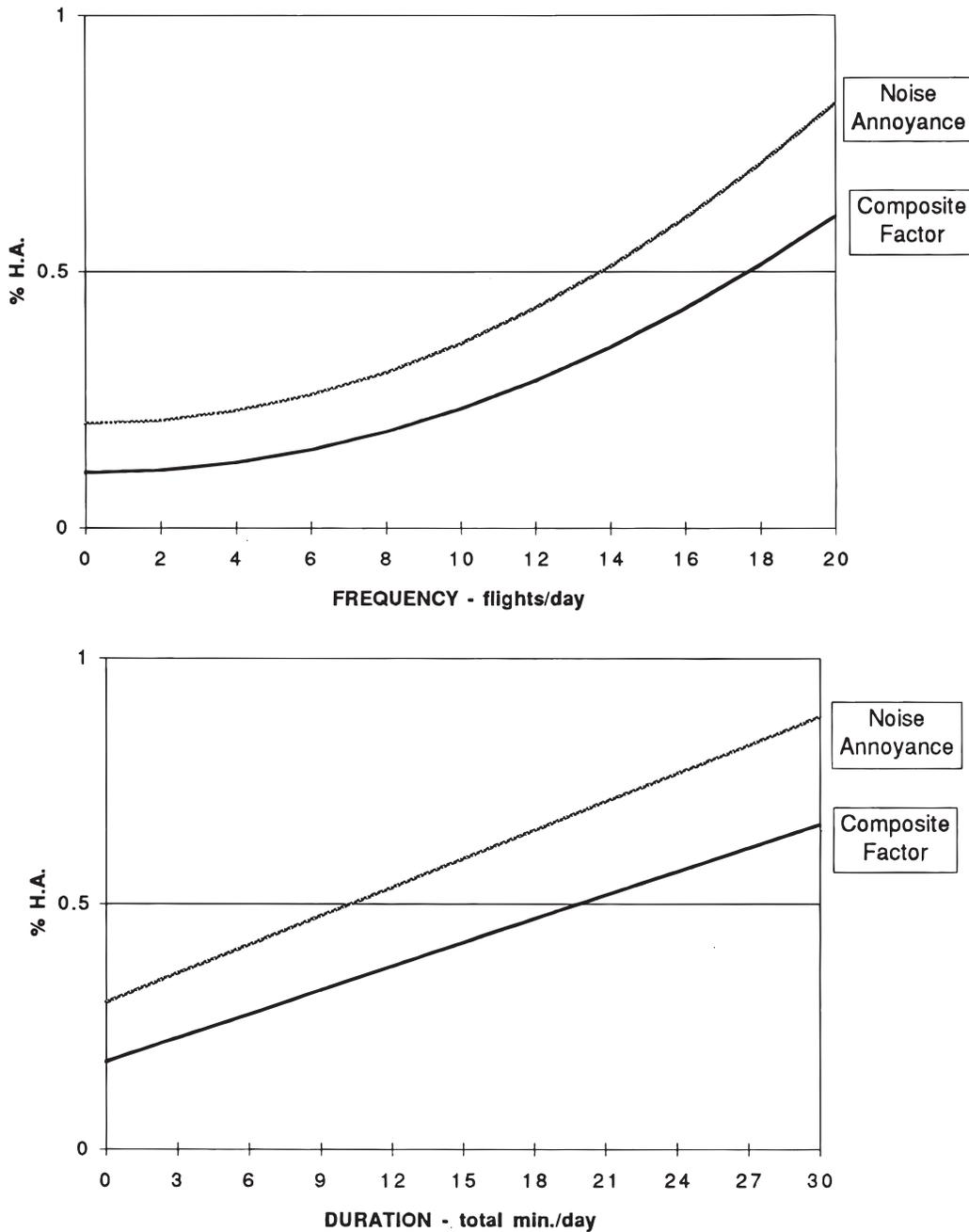


FIGURE 5 Effect on “% highly annoyed” of (top) flyover frequency and (bottom) flyover duration.

ACKNOWLEDGMENTS

This paper was based on research supported by the Airports Division of HDOT. The final version of this paper owes much to valuable comments from three reviewers. References 1 and 2 contain extensive lists of literature relevant to this research. These lists have not been duplicated here because of space considerations.

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Opinions expressed in this paper are those of the authors and may not reflect the positions of either HDOT or the University of Hawaii.

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[4910-13]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

Docket No.: [FAA-2010-0302; Amdt. No.]

RIN 2120-AJ75

The New York North Shore Helicopter Route

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action requires helicopter pilots to use the New York North Shore Helicopter Route when operating along the north shore of Long Island, New York. The North Shore Helicopter Route was added to the New York Helicopter Route Chart in 2008 and prior to this action, its use has been voluntary. The purpose of this rule is to protect and enhance public welfare by maximizing utilization of the existing route flown by helicopter traffic one mile off the north shore of Long Island and thereby reducing helicopter overflights and attendant noise disturbance over nearby communities. This rule will lapse in 2 years unless the FAA determines that a permanent rule is merited.

DATES: Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: For information on where to obtain copies of rulemaking documents and other information related to this final rule, see “How To Obtain Additional Information” in the SUPPLEMENTARY INFORMATION section of this document.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this rule contact Gary A. Norek, Airspace, Regulations and ATC Procedures Group, AJV-11, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone 202-267-8783. For legal questions concerning this rule contact Rebecca MacPherson, AGC-200, Office of Chief Counsel, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone 202-267-3073.

SUPPLEMENTARY INFORMATION:

Authority for this Rulemaking

The FAA has broad authority and responsibility to regulate the operation of aircraft, the use of the navigable airspace and to establish safety standards for and regulate the certification of airmen, aircraft, and air carriers. (49 U.S.C. 40104 et seq., 40103(b)). The FAA’s authority for this rule is contained in 49 U.S.C. 40103 and 44715. Under § 40103, the Administrator of the FAA has authority to “prescribe air traffic regulations on the flight of aircraft (including regulations on safe altitudes) for * * * (B) protecting individuals and property on the ground. (49 U.S.C. 40103(b)(2)). In addition, § 44715(a), provides that to “relieve and protect the public health and welfare from aircraft noise,” the Administrator of the FAA, “as he deems necessary, shall prescribe * * * (ii) regulations to control and abate aircraft noise * * *”

I. Executive Summary

In response to continued concerns from a large number of local residents who are disturbed by the level of noise from helicopters operating over Long Island, the FAA adopts this

final rule, as proposed, to require helicopter pilots whose route of flight takes them over the north shore of Long Island to fly the North Shore Helicopter Route. This route is based on a voluntary route that the FAA established in 2008. The route is published on the New York Helicopter Route Chart. This rule also provides that when necessary for safety, weather, or when transitioning to or from a point of landing, a pilot may deviate from the published altitudes and routes. This action is part of an on-going process to enhance public health and welfare by reducing helicopter noise for residents along the north shore of Long Island.

The FAA believes this rule is justified for several reasons. Maximizing the utilization of the existing route by making it mandatory is expected to help to further decrease levels of noise that have already been voluntarily achieved. Because the route is approximately one mile off the northern shore of Long Island and away from the residential communities on Long Island that are the source of hundreds of comments supporting the rule, it should not in itself cause any environmental harm. Other than necessary deviations or transitions, the noise from the helicopters would be over water, and there is no evidence of any significant effect of the rule on water quality, ecological resources, or other aspects of the environment.

The rule fully addresses any safety concerns by beginning the route at a point that minimizes interaction with LaGuardia's airport traffic, and allowing deviations at the pilot's discretion for safety and weather concerns.

Since the extra distance traveled is relatively minor to get to and return from the approximately one-mile offshore route, the costs for fuel and extra time would also be minimal. In addition, no new equipment is required.

The FAA has noted five circumstances, the combination of which is likely unique to Long Island, that support using our statutory authority to move forward with a final rule.

1. Because Long Island is surrounded by water, it was possible to develop a route that took helicopters a short distance off the shoreline. Thus, the North Shore Helicopter Route does not negatively impact other communities and operators can use the route without significant additional costs.
2. There are disproportionately more multi-engine helicopters flying in Long Island than the national averages (approximately 65% versus 10-15% nationally.) This allows for greater use of the off-shore route.
3. There are visual waypoints along the route that allow pilots to fly along the route with no additional equipment during good weather.
4. The helicopter traffic along the north shore of Long Island is largely homogenous, in that it is primarily point-to-point transit between New York City and the residential communities along the northern and eastern shores of Long Island.
5. The population corridor along the north shore of Long Island is significant, and coupled with the number of airports/heliports on the island, the FAA found it reasonable to develop a route to mitigate noise impacts.

Since a voluntary route already exists, the only available remaining option to further abate this noise problem is to make the route mandatory to the extent consistent with aviation safety. In light of the minimal costs imposed and the substantial number and volume of complaints, the FAA finds that this rule is justified. However, the FAA recognizes that there

may already be a high rate of compliance with the voluntary route and that it is imprudent to mandate that all helicopters follow the route under all circumstances. Accordingly, it is possible that the actual rates of compliance may not improve significantly or that noise levels that are currently dispersed may inadvertently be concentrated as a result of the rule. Consequently, the FAA has decided to sunset the rule in 2 years in the event the agency concludes that the rule does not reduce or alleviate noise concerns. During the time that the rule is in effect, the FAA will continue to review and monitor the implementation of this rule and work with stakeholders to ensure that the rule addresses the problem; if it does not, the FAA will allow the rule to lapse at the end of 2 years. Alternatively, the FAA may amend the rule to implement meaningful changes should they be identified.

II. Background

A. Statement of the Problem

Helicopter traffic between New York City and eastern Long Island has traditionally followed one of three paths. The helicopters fly along the north shore of Long Island and then travel to the south to the intended destination; they travel across the middle of the island along the Long Island Expressway until branching off to the destination; or they travel along the south shore of Long Island and then turn inland to the final destination. Many of the helicopters take off or land in the Hamptons. There are two airports and a helipad that service the Hamptons. Other operators take off or land at one of the many other airports or heliports throughout the island. There are no airports and very few heliports along the north shore of Long Island. Accordingly, one might think that operators would prefer to travel along the south shore or along the Long Island Expressway. In fact, many operators prefer to travel along the north shore of Long Island and then travel inland to the desired landing spot. This is because this is a faster

route and because at some locations, most notably the Hamptons, weather delays are common for aircraft approaching from the south.

In October 2007, Senator Charles Schumer and Representative Tim Bishop conducted a meeting with the FAA, local helicopter operators and airport proprietors to specifically address noise complaints stemming from helicopter operations along the north shore of Long Island. As a result of this meeting, the FAA designed a visual flight rules (VFR) helicopter route, the North Shore Helicopter Route, for helicopters to use when transiting the area that would reduce the noise impact of helicopter traffic on populated areas by having these operations offshore.

The FAA published the route on the Helicopter Route Chart for New York, effective May 8, 2008. Subsequently, New York public officials advised the FAA that they continue to receive noise complaints in this area even with the voluntary North Shore Helicopter Route in place. The local FAA Flight Standards District Office has also received similar complaints.

Uniqueness of the Situation

There are a number of unique characteristics that, taken together, made development of an alternative over-water route along the north shore of Long Island appropriate and feasible and consistent with the FAA's safety mandate. First, because Long Island is surrounded by water, it was possible to develop a route that took helicopters a short distance off the shoreline. Thus, the North Shore Helicopter Route does not negatively impact other communities, and operators can use the route with minimal additional costs. Second, the fleet mix in Long Island consists of significantly more multi-engine helicopters than the national mix, allowing more operators to use the route. There are limits on the distance certain helicopters can prudently operate from shore without being equipped for overwater operation. Unlike fixed wing aircraft,

helicopters are not able to glide in the event of total loss of power for any significant distance. Thus, pilots of single-engine rotorcraft not equipped for overwater operation need to operate close to shore so they can land safely in the event of a loss of power. Nationally, the vast majority (roughly between 85 and 90 percent)¹ of helicopters have only one engine. However, the FAA believes that about two-thirds of commercial helicopters flying from New York City to Long Island are multi-engine helicopters, while about one-third of the helicopters being used for this purpose have only one engine.² Thus, the need to stay close to land is less of an issue along the North Shore than it would be in other areas of the country where the number of single-engine helicopters is significantly greater. This relatively unique situation allows us to implement an inexpensive alternative that should effectively and safely address the considerable complaints. Third, there are visual waypoints along the route that allow pilots to fly along the route with no additional equipment during good weather. While many pilots use Global Positioning System (GPS) coordinates to track a portion of the route, they are not required to do so. Fourth, the helicopter traffic along the north shore of Long Island is largely homogenous, in that it is primarily point-to-point transit between New York City and the residential communities along the northern and eastern shores of Long Island. Unlike helicopter traffic in urban areas, where the destination points and reasons for using a helicopter diverge widely (e.g., news reporting, aerial traffic updates, as well as point-to-point transit), the nature of helicopter traffic over and along the North Shore

¹ A review of the Registry database indicated that approximately 90 percent of all registered helicopters have a single-engine. A review of the 2010 GA survey indicated that approximately 85 percent of the active helicopter population is single-engine. The discrepancies in the two data sets are a function of filters in the survey that are designed to focus on helicopters that are actively flown.

² See Eastern Region Helicopter Council Operations Analysis – Suffolk County, Memorial Day Weekend 2010, June 23, 2010, Docket No. FAA-2010- 0302-0898.

lends itself to the development of a single route that could be used consistently. Finally, the population corridor along the north shore of Long Island is significant, and coupled with the number of airports/heliports on the island, the FAA found it reasonable to develop a route to mitigate noise impacts.

Safety Implications

In developing this route, the FAA considered the potential safety implications associated with helicopters flying in VFR conditions off the coastline and the interaction with other traffic at or above the specified minimum altitude. The route begins approximately 20 miles northeast of LaGuardia in order to minimize interaction of the traffic operating to or from that airport.

Community Involvement

The FAA, airport sponsors, state and local government, aircraft operators, and local communities all have a role to play in reducing aircraft noise. Community noise concerns about aircraft overflights are uniquely local in nature and are best resolved in a voluntary manner, at the local level, and with the participation of all affected parties. In this instance, local participation was crucial to the development of the voluntary route. Based on the number of complaints and public comments to the proposed rule, the local effort, while successful in many regards, has not fully resolved community annoyance with helicopters flying over homes in northern Long Island.

The FAA's experience with aircraft noise has shown that community flight path preferences vary significantly; some communities prefer to concentrate noise over a particular area while others prefer to disperse the flight paths so that individual neighborhoods experience less noise overall. Thus, the FAA's policy is to respond to requests for noise abatement flight procedural changes from airport sponsors and to encourage the development of such proposals

through the FAA's Airport Noise Compatibility Program established under the Aviation Safety and Noise Abatement Act of 1979.

Future Technology

While helicopter noise appears to have recently roused the greatest number of noise complaints, over time helicopters will incorporate better technology and become less noisy. The FAA is developing rules to impose more stringent noise standards for all new rotorcraft models being certificated. As these quieter aircraft are built and incorporated into the fleet, noise levels associated with helicopter operations should correspondingly decrease.³

However, these standards are not yet in place. Given the existence of a voluntary route that reduces noise to some extent, the only available remaining option to further abate this noise problem is to require utilization of the route to the extent consistent with aviation safety.

B. Summary of the NPRM

On May 26, 2010, the FAA published the NPRM titled "The New York North Shore Helicopter Route" (75 FR 29471). The FAA proposed requiring civil helicopters operating along Long Island, New York's northern shoreline to utilize the published New York North Shore Helicopter Route between the fixed waypoint Visual Point Lloyd Harbor (VPLYD) and Orient Point. Specifically, the mandatory portion of the route begins at a waypoint 20 miles northeast of LaGuardia Airport (LGA) and near Huntington, NY; remains approximately one mile offshore, extends to the eastern end of Long Island; and terminates at Orient Point, near the eastern edge of Long Island. Helicopters operating on this route would have to remain at or above 2,500 feet mean sea level (MSL). The proposal contemplated helicopter pilots would deviate from the published altitude and route under several conditions. The conditions take into

consideration the wide variety of helicopters, their associated performance and mission profiles, the dynamic weather environment along the route, and the pilot's responsibility to conduct safe operations at all times. The proposal also contemplated allowing operators to deviate from the route in order to reach their final destination.⁴ The comment period closed on June 25, 2010.

C. General Overview of Comments

The FAA received approximately 900 comments. Many comments were from residents, local government, citizen groups, and businesses. Slightly more than a third of the total number of commenters complained about the levels of helicopter noise that they are exposed to, particularly during the summer months. The FAA also received numerous comments from individual pilots, many of whom were opposed to the implementation of a mandatory route on principle. In addition, the agency received comments from the Aircraft Owners and Pilots Association (AOPA), the Eastern Region Helicopter Council (ERHC), the General Aviation Manufacturers Association (GAMA), the National Air Transportation Association (NATA), the National Business Aviation Association (NBAA), and United Technologies Corporation (UTC/UTFlight).

The number and tenor of the comments demonstrates affected parties at odds with each other.

On the one hand, the residents along the north shore of Long Island emphatically agreed that helicopter overflights during the summer months are unbearable and negatively impact their quality of life. They opposed any route over communities, even sparsely settled areas, and suggested the route go over the ocean. One commenter noted

³ Should the FAA decide against allowing the rule to sunset, we may evaluate the affected fleet as the quieter technologies are incorporated into the helicopter fleet as a whole and may reevaluate the continued need for a mandatory route if the majority of affected helicopters have the quieter engines.

he had counted over 25 helicopter operations in a 2-hour period. He also said the flights started early in the morning and continued to early evening. Other commenters noted that the helicopter noise interferes with sleep, conversation, and outdoor activities. Still others complained that the helicopters fly so low that their walls vibrated.

On the other hand, helicopter operators and their associations argued that the helicopter noise levels over Long Island are not appreciable, that operators are already largely flying on the voluntary route, and that any mandated route would result in an unacceptable imposition of cost and safety risk.

The FAA received more specific comments on the following general areas of the proposal:

- Justification for the rule,
- Safety issues,
- Route location,
- Environmental concerns,
- Procedural/miscellaneous, and
- Economic evaluation.

III. Discussion of Public Comments and Final Rule

A. Justification for the Rule

Several commenters alleged that the proposal does not have adequate factual support. Some commenters argued that according to industry measurements, compliance on the voluntary route is very high already and that mandating this route is therefore not necessary. According to data collected by ERHC after the voluntary route was

⁴ While the route extends to Orient Point, it is unlikely that many operators would stay on the route that long

implemented, roughly 85-95 percent of operators observed over multiple holiday weekends comply with the North Shore Helicopter Route.⁵ ERHC noted that it believes the noise complaints are coming from a relatively small number of households. While ERHC can demonstrate that relatively few households call its noise hotline, it cannot demonstrate these individuals are the only ones disturbed by the existing noise levels.

Other commenters stated that the lack of environmental analysis makes it impossible to determine that the rule actually addresses the concerns. ERHC and the Town of East Hampton contended that without such analysis, it is arbitrary and capricious to conclude that the route reduces noise on nearby communities.

As stated earlier, the original reason for establishing the North Shore Helicopter Route was to reduce noise from helicopter flights over communities along the north shore of Long Island by moving those flights offshore and establishing a minimum altitude. Because the route applies only to VFR flights, the FAA cannot definitively determine its current level of use. Even assuming the level of use is high, as alleged by the commenters, it is neither arbitrary nor capricious for the FAA to conclude, even without a specific noise analysis, that increasing use of the route by making it mandatory will further reduce noise impacts from helicopters operating along the north shore of Long Island. ERHC's contention that only a small number of households object to the helicopter noise levels is called into question by the hundreds of comments the FAA received supporting the mandatory use of the offshore route and the complaints filed with local government and FAA.

No one contends that pilots are using the route 100 percent of the time, and the FAA cannot determine how long operators fly along the route (either geographically or at the specified

because Orient Point is located at the far eastern point of the island, well east of any significant population centers.

altitudes) when they do use it. While the final rule allows operators to deviate from the route for safety (including adverse weather) or to reach their destination, the FAA is unable to determine whether operators are currently deviating for other reasons. However, based on comments to the NPRM and the continued concerns expressed by the residents' elected officials, the FAA understands that helicopter overflights continue to be a problem for the residents along the north shore of Long Island.

The FAA, with the assistance of the John A. Volpe National Transportation Systems Center (Volpe Center), analyzed data from the Performance Data Analysis and Reporting System (PDARS) to assess the noise of flight operations along the north shore of Long Island.⁶ The FAA reviewed helicopter traffic for the Memorial Day and Fourth of July weekends in the summer of 2011. That data indicated that helicopter traffic is greater on the Fridays before the long holiday weekends and on the last day of the holiday weekend than in the interim period. Based on this limited data set, as well as the assertions in the comments that the problem is greater in the summer, it is reasonable to assume that traffic is not evenly distributed throughout the year and on all days of the week. Thus, while overall cumulative noise levels may be low when averaged across the year, helicopter overflights could be more disturbing on certain days when they are experienced several times over a period of several hours or the course of a day. Maximizing the utilization of the existing route by making it mandatory will secure and improve upon the decreased levels of noise that have been voluntarily achieved.

B. Safety Issues

⁵ The FAA has not been able to independently assess the validity or reliability of these estimates. In any event, the FAA continued to receive noise complaints after implementation of the voluntary route.

⁶ The Performance Data Analysis and Reporting System (PDARS) supports the collection, archiving, and reporting of flight plan and radar track data from Air Route Traffic Control Centers, Terminal Radar Approach Control facilities, and Air Traffic Control Towers to manage aviation activity within the National Airspace System (NAS). The PDARS data analyzed by the FAA for this rule represents visual flight rule (VFR) aircraft operating in Class E

ERHC objected to the over-water route because it places some helicopters beyond the autorotation performance distance needed to reach land in the event of an engine failure or other emergency.

The FAA notes that safety is its highest priority. To the extent a helicopter operator cannot safely fly along the North Shore Helicopter Route, this rule specifically allows for deviation.

The FAA recognizes the varying capabilities of helicopters, and this rule permits pilots to deviate from the rule for safety, weather, or when transitioning to or from a destination or point of landing. Under § 91.3, the pilot in command is directly responsible for and is the final authority as to the operation of that aircraft. Therefore, if flight along this route places a helicopter beyond the autorotation performance distance to the shore and the helicopter is not equipped with flotation devices, such as life jackets or helicopter floats, the pilot is permitted to deviate from the route and altitude.

AOPA stated there is no altitude discrimination between opposite direction helicopter traffic transiting the route. AOPA further stated that the FAA, at a minimum, should provide additional guidance on altitude assignments for opposite direction traffic in order to decrease the risk of a mid-air accident over Long Island.

As an initial matter, the FAA agrees that additional guidance is useful and is developing guidance that will be available before use of the route becomes mandatory. The FAA also acknowledges that opposite direction VFR traffic takes place along this route, but this is not unusual. There already are rules governing rights of way in VFR conditions, and sections 91.113 and 91.155 are applicable to pilots operating along this

and G airspace along the northern shoreline of Long Island, New York. The data represent aircraft using a transponder code indicating VFR operation and altitude.

route. These rules respectively address right of way rules for converging aircraft, approaching aircraft head on, overtaking aircraft, and the appropriate visibility minimums.

The FAA encourages operators to identify industry best practices and operational procedures for use on the route. The FAA also will develop a voluntary training awareness course for operators, which will include these best practices and emphasize industry's "fly neighborly" program as described on the New York Helicopter Route Chart. Most importantly, this rule provides pilots with the needed flexibility to maneuver off the route and/or altitude for weather, safety, or transition to/from a point of landing. FAA guidance on conducting operations subject to this rule will enhance pilot awareness and the safety of flights operating within the vicinity of this route. Should the level of traffic indicate an unacceptable level of safety risk, the FAA may choose to mandate separation standards for east- and westbound traffic in a subsequent rulemaking. Nothing in this rule should be construed as restricting or limiting in any way an air ambulance operator's ability to deviate from this route in order to provide emergency medical services.

ERHC argued that under the current rules, only the New York Helicopter Route Chart and New York Sectional depict the North Shore Helicopter Route, neither of which is required to be carried by pilots operating under VFR. ERHC further argued that the New York Sectional and New York Terminal Area Chart would need to be updated with the mandatory route and would need to be made mandatory for flight. ERHC asserted that the FAA would have to address the charting of the route as well as requirements to carry charts and sectionals, as no such requirements currently exist.

In accordance with § 91.103, the pilot in command is responsible before the beginning of a flight to become familiar with all information concerning the flight. Under this final rule, that responsibility includes being aware of the mandatory route when planning to fly along the north shore of Long Island. Though there is no specific requirement for pilots to carry aeronautical charts, the FAA believes that prudent pilots would carry charts, especially given the complexity and volume of air traffic in the greater New York City metropolitan area. The FAA will issue a notice to airmen (NOTAM) providing the operational requirements of this rule to augment information available to pilots.

Some commenters alleged this route would mix together VFR and instrument flight rules (IFR) aircraft. Portions of the route are located in Class E airspace where both IFR and VFR operations are conducted. However, this is not a unique situation for any Class E airspace area. Existing FAA regulations and air traffic control procedures provide for the safe integration of VFR and IFR operations. VFR pilots are responsible to see and avoid other traffic, which is how they operate today. Again, it must be emphasized that utilizing this route does not exempt pilots from this responsibility.

C. Route Location

This action requires helicopter operators to use the currently published North Shore Helicopter Route when transiting the north shore of Long Island. The mandatory portion of the route begins at VPLYD waypoint located approximately 20 miles northeast of LGA, remains approximately one mile offshore, and extends to the eastern end of Long Island, terminating at Orient Point.

Some commenters stated that the definition of the geographical boundaries of the route is insufficient and difficult to identify visually.

The FAA believes the route is sufficiently defined. A VFR route is to be flown under visual conditions. Pilotage, as defined in 14 CFR 1.1, is an acceptable means by which to conduct operations along the route. Most of the route is located just one mile off the shoreline, which provides adequate visual reference for navigation purposes. The route was developed and designed by the FAA in cooperation with local helicopter operators, many of whom according to ERHC, have been flying this route for several years. The FAA meets regularly with local helicopter operators to discuss safety and noise issues. In the four years since this route was published, the FAA is not aware of any concerns regarding navigating the route.

ERHC asserted proposed airspace changes would lower Class B dimensions and impose higher workloads on air traffic controllers and IFR traffic. ERHC further asserted that since the controllers have no ability to deny VFR operators clearance, the burden would be higher on the air traffic controllers (ATC) and IFR operators. ERHC posited that if the North Shore Helicopter Route falls within the redesigned Class B Airspace, the VFR helicopter operators would further burden ATC controllers as they would be required to receive special VFR (SVFR) clearances whenever weather minimums are less than those prescribed in the Code of Federal Regulations.

The FAA notes that while airspace changes for the New York Class B Airspace area have been under discussion for many years, there are no formal proposals under consideration to date. With respect to the ATC workload, controllers provide services on a first come, first serve basis. If necessary, controllers may direct aircraft to remain clear of the Class B airspace or to standby, or controllers may refuse traffic from other sectors.

If weather conditions deteriorate to the point where a pilot requires a SVFR clearance, the same first come first serve basis applies. The FAA notes that fixed wing SVFR operations are currently prohibited in the New York Class B Airspace Area.

Most residents and local government groups supported the over-water location of the route, and moving the helicopter traffic away from their communities by overflying the water. However, numerous commenters expressed opposition to the route, mistakenly believing the route would pass over land and therefore, bring helicopter overflights over their homes and communities. Obviously all helicopter operators planning on landing on Long Island will, at some point, have to fly inland in order to land. Were there no provision to allow operators to leave the route to transit to their destination, the likely impact on a few communities, notably those near VPLYD and Orient Point, would bear the brunt of the noise associated with the majority of helicopters flying over their communities. However, there are nine airports and 16 heliports on Long Island to the east of VPLYD. The noise associated with flying to an airport or other landing site should be dispersed among the affected communities. This is because this final rule allows pilots to deviate from the route for purposes of reaching their destination. The FAA notes that a local news article published during the comment period incorrectly placed the route over land. It is possible that some of the commenters were responding to the incorrect information contained in that news article.

ERHC also objected to the route, stating the route is difficult to navigate, and will require the purchase of helicopter charts and GPS equipment to comply with the regulation.

The NPRM did not propose any changes to the current published route, which is over water. This route was the result of many meetings and consultations between the FAA, local helicopter operators, residents, and elected officials. The FAA and the interested parties selected and agreed on the waypoints that are located near, or parallel to easily seen and identified locations along the shore. For example, VPLYD and VPJAY were chosen because of their proximity to two physically prominent locations (Lloyd Point, situated at the northern most spot on Lloyd Neck, and Old Field Point, a lighthouse location near Port Jefferson, respectively). The FAA designed the route to be over water, as it would prevent helicopter traffic from overflying residential areas. This voluntary route was charted and has been flown by helicopter operators for several years. The FAA is not aware of any navigational or safety issues associated with the use of this route.

D. Environmental Concerns

Several commenters contended that the FAA has failed to analyze adequately the final rule's environmental consequences, as required by the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. 4321 et seq. ERHC alleged that without an adequate description of the proposed route, it is impossible to provide comments on whether there would be extraordinary circumstances that would preclude use of a categorical exclusion to comply with NEPA. ERHC further noted the lack of analysis to determine whether increased noise and operations over the water would affect water quality or ecological resources. Several commenters asserted that the rule would cause noise to concentrate over some communities.

The FAA's analysis of its PDAR data indicates that existing levels of helicopter noise is below levels at which homes are significantly impacted.⁷ Beyond making use of the North Shore

⁷ Long Island North Shore Helicopter Route Environmental Study, John A. Volpe National Transportation Systems Center. The FAA analyzed data from the PDARS. The PDARS supports the collection, archiving, and reporting of

Helicopter Route mandatory, the rule does not change the existing route, which has been charted and flown by helicopter operators for several years. The rule allows pilots to deviate from the route when transitioning to or from a destination or point of landing, thus avoiding concentrated operations at any particular point of entry or exit along the route. Therefore, it is reasonable to assume that those pilots currently complying with the voluntary route will continue to follow the same flight paths to the extent they have been following them in the past, with the same resulting pattern of noise dispersion among underlying communities.

The FAA does not believe that this rule will create a negative impact on the public welfare. It is possible that compliance with the rule by pilots not currently complying with the voluntary route could result in some additional flights over some communities. However, because of the deviation allowed by the rule, the FAA cannot reliably predict the specific flight paths these pilots will follow on their way to or from the route. As a result, any specific noise impacts of such flight paths are not reasonably foreseeable.

In accordance with FAA Order 1050.1E, “Environmental Impacts: Policies and Procedures,” the FAA has determined that the rule is categorically excluded from environmental review under paragraph 312f of the order, which applies to “regulations . . . (excluding those which if implemented may cause a significant impact on the human environment).” There are no significant noise or emissions impacts, which would be the primary concerns. The FAA determined that there are no extraordinary circumstances that would preclude the applicability of

flight plan and radar track data from Air Route Traffic Control Centers, Terminal Radar Approach Control facilities, and Air Traffic Control Towers to manage aviation activity within the National Airspace System (NAS). The PDARS data analyzed by the FAA for this rule represents visual flight rule (VFR) aircraft operating in Class E and Class G airspace in the vicinity of the northern shoreline of Long Island, New York. The data represent aircraft using a transponder code indicating VFR operation and altitude. The FAA’s analysis modeled noise from approximately 15,600 flight operations, based on an average of 42.8 operations per day over 11 days around Memorial Day and July 4, 2011. The resulting noise levels were below DNL 45 dB. Under federal guidelines, residential land uses are considered compatible with noise levels below DNL 65 dB. 14 CFR Part 150, Appendix A, Table 1.

this categorical exclusion, and ERHC does not provide any facts supporting the presence of any such circumstances. Moreover, ERHC does not identify any significant effects the rule would have on water quality, ecological resources, or any other aspect of the environment, and the FAA has no reason to believe that any such effects would occur.

Were the rule to require pilots to follow the route in its entirety without regard to their origin or destination, it would be reasonable to expect an increase in noise in communities near the route's termination points (i.e., the VPLYD waypoint and Orient Point), due to the resulting concentration of operations entering and exiting the route at those locations. However, the rule allows pilots to deviate from the route when transitioning to or from a destination or point of landing. Therefore, it is reasonable to assume that those pilots currently complying with the voluntary route will continue to follow the same flight paths they have been following, with the same resulting pattern of noise dispersion among underlying communities. Compliance with the rule by pilots not currently complying with the voluntary route could result in additional flights over some communities. However, because of the deviation allowed by the rule, the FAA cannot reliably predict the specific flight paths these pilots will follow on their way to or from the route. As a result, any specific noise impacts of such flight paths are not reasonably foreseeable. In any event, based on the number of helicopter operations the ERHC estimates occur along the north shore of Long Island, any noise increase in residential communities from further concentration of those operations would not be significant. This conclusion is further supported by an FAA analysis of radar and flight plan data, a copy of which has been placed in the docket for this rulemaking.

The FAA notes that it is likely noise impacts will be felt most keenly near airports or heliports, as the helicopters descend to land. Nothing in this rule makes that a unique

phenomenon. Rather, aircraft noise is typically concentrated near airports, which is why the FAA typically addresses aircraft noise through the Airport Noise Compatibility Program.⁸

Several commenters alleged that the rule would require helicopter operators to fly more miles and therefore burn more fuel, and that this would cause significant environmental impacts. Specifically, ERHC alleged, without supporting documentation,⁹ that compliance with the rule would increase average flight time by 10 minutes, resulting in the consumption of nearly 117,000 additional gallons of fuel per year.

As stated above, the rule does not mandate entry or exit points, nor does it require operators to fly any specific route to or from the North Shore Helicopter Route. Therefore, it is not possible to reliably determine the amount of any increase in fuel consumption that might occur as a result of the rule. However, assuming ERHC is correct that average flight time would increase by 10 minutes, the commenter's estimated increase of 117,000 gallons per year would result in air emissions well below levels determined by the U.S. Environmental Protection Agency (EPA) to be *de minimis*.¹⁰ One commenter stated that aircraft on the North Shore

⁸ Presumably those airports and heliports near larger population centers will receive have more take-offs and landings than the airports and heliports near smaller population centers. But this may not actually be true. It is possible that the airports and heliports near relatively small, but more affluent population centers will handle most of the helicopter traffic.

⁹ The FAA is unable to validate the assumptions of ERHC because it is impossible to determine where operators would choose to divert from the route to reach their intended destinations. However, the FAA did evaluate what it believes would be one of the worst case scenarios in terms of additional distance by looking at the distance between the initial waypoint at VPLYD and the Alexanders East Heliport, which is the southernmost heliport on the far south shore of Long Island. Assuming a 100 knot groundspeed, the FAA calculated the direct route time as 23.4 minutes (39 nm) and the North Shore route time as 30.6 minutes (51 nm), a difference of 7 minutes.

¹⁰ See Long Island North Shore Helicopter Route Environmental Study, John A. Volpe National Transportation Systems Center. The North Shore Helicopter Route is located entirely within Suffolk County, New York, which has been designated under the Clean Air Act as a nonattainment area for particulate matter (PM-2.5) and a moderate nonattainment area for ozone. See U.S. Environmental Protection Agency (EPA), "Currently Designated Nonattainment Areas for All Criteria Pollutants," available at <http://www.epa.gov/oaqps001/greenbk/ancl.html>. In addition, the state of New York is within the Ozone Transport Region established in section 184(a) of the Clean Air Act, 42 USC 7511c(a). EPA has determined that for such nonattainment areas, emissions of less than 50 tons per year of volatile organic compounds and 100 tons per year of nitrogen oxides, PM-2.5, or sulfur dioxide are *de minimis*. 40 CFR 93.153(b)(1). Using conservative assumptions, an analysis by the FAA (a copy of which has been placed in the docket for this rulemaking), indicates that emissions of these pollutants from combustion of an additional 117,000 gallons of fuel would be well below these *de minimis* levels.

Helicopter Route could impact wildlife. However, the commenter does not provide any information in support of this assertion, and the FAA is not aware of any reasonably foreseeable adverse impacts on wildlife from helicopters flying on the route at or above 2,500 feet MSL.

The Town of East Hampton raised several objections to the FAA's use of the cited categorical exclusion for the rule. First, the Town asserted that the categorical exclusion is inconsistent with the FAA's intent in proposing the rule. According to the Town, if the rule would not significantly affect the human environment, there is no basis for saying it would reduce noise impact on nearby communities as stated in the NPRM. Second, the Town contended that the FAA mischaracterized the legal standard for a categorical exclusion by limiting the analysis to adverse impacts. Third, the Town claimed that the FAA used the wrong categorical exclusion for the rule.

The FAA does not agree that the cited categorical exclusion, paragraph 312f of FAA Order 1050.1E, is inconsistent with the purpose of the rule. As stated above, the purpose of the rule is to maximize use of the North Shore Helicopter Route and reduce the noise impact of helicopter flights over nearby communities. Categorical exclusion of the rule from further environmental review under NEPA is fully consistent with that purpose and is based on the FAA's analysis of the environmental effects of the rule. The FAA also disagrees with the Town's contention that the agency erred in basing its application of the categorical exclusion on the absence of significant adverse environmental impacts. The agency is not aware of any controlling authority that precludes application of a categorical exclusion to an action because the action has an environmental benefit. Finally, the cited categorical exclusion specifically applies to regulations and therefore is appropriate for this rule.

E. Procedural/Miscellaneous

ERHC argued the FAA has not cited the proper authority for this rule and that reliance on § 44715 is “overstated and misapplied.” ERHC further commented that the FAA failed to consult with the Administrator of the EPA prior to prescribing standards and regulations under § 44715(a), as required. It also contended that § 44715(a) was intended to authorize the FAA to promulgate regulations addressing certification standards, not airspace matters.

NATA, UTC/UTFlight, and AOPA commented that this is the first action by the FAA to mandate the use of a noise abatement procedure without providing some type of operational or environmental analysis. They argued that, historically, the FAA addresses noise abatement action areas initiated by an airport sponsor, as it applies to takeoffs and landings, not to the enroute operation of the aircraft.

In response to the procedural comment, the FAA did consult with the Administrator of the EPA prior to issuing the NPRM, in accordance with the requirements of § 44715(a). That communication and the EPA response have been placed in the docket for this proceeding. In promulgating this rule, the FAA cites to §§ 40103(b)(2) and 44715 to articulate the breadth of its authority to address noise stemming from aircraft overflights, aircraft operations in the airport environment and setting aircraft certification standards. Contrary to the commenters’ assertion, the FAA possesses and has exercised its authority in the past to address noise issues associated with aircraft overflights.¹¹ The FAA continues to believe that noise generated by aircraft overflights generally is best addressed locally and with voluntary measures as the primary

¹¹ See: 33 FR 11748; August 20, 1968 (final rule designating special air traffic rule for Lorain County Regional Airport, Lorain, Ohio to route low altitude terminal traffic away from the Oberlin College Conservatory of Music to avoid audible disturbances; 35 FR 5466; April 2, 1970 (final rule designating Prohibited Airspace (P-66) Mount Vernon, VA based on a concern over the danger to irreplaceable historic structures and the noise nuisance caused by the low flying aircraft, including helicopters, over Mount Vernon grounds); 62 FR 1192; January 8, 1997 (final rule temporarily banning commercial air tour operations over Rocky Mountain National Park in order to prevent any potential adverse noise impact from these sightseeing aircraft).

consideration. However, the FAA is within its authority to address the issue by regulatory action.

UTC/UTFlight argued that the appropriate regulatory structure already exists in 14 CFR 91.119, which provides for minimum safe altitudes. UTC/UTFlight contended that this mandatory route redefines minimum safe altitudes.

The FAA disagrees with UTC/UTFlight that compliance with § 91.119 adequately addresses this issue. Section 91.119 provides the minimum safe altitudes for aircraft and helicopters and is not intended to address aircraft noise. Pilots must follow this provision, unless an altitude is otherwise specified for certain operations. Part 93 in 14 CFR sets forth specific rules for aircraft operations that are necessary for designated airports or defined areas.

GAMA, ERHC, and AOPA contended that the 30-day comment period was too compressed to provide the needed analysis and response to a proposal that raises significant technical, safety, environmental, and operational concerns. A number of the commenters requested that the FAA withdraw the NPRM and some commenters further requested that the FAA instead engage in a series of public meetings and a process to establish routes that would produce effective noise mitigation and provide safety and operational enhancements.

The Administrative Procedure Act¹² does not specify a minimum period for comment. The FAA finds 30 days is not an unreasonable amount of time to comment on the use of a route that has been in place since 2008 and, according to ERHC, has a high rate of use. The FAA also notes that within the 30-day comment period, approximately 900 comments were filed, some of which were extensive. Furthermore, FAA regulations governing rulemaking provide that late filed comments will be considered to the extent possible only if they do not significantly delay

¹² 5 U.S.C. 551 et seq.

the rulemaking process. (See 14 CFR 11.45(b)) The Agency notes that some commenters submitted late comments, and they were considered by this agency.

ERHC also commented the FAA did not perform the required full regulatory evaluation under Executive Order 12866 and Department of Transportation Order 2100.5. ERHC argued that the FAA incorrectly concluded that the cost of the NPRM would be so minimal as to not require full review and that the NPRM was “not a significant regulatory action” and therefore exempt from review of the Office of Management and Budget (OMB).

As further discussed in the section addressing economic concerns, at the NPRM stage and now, the action was—and is—not expected to result in more than minimal additional costs on the affected helicopter operators. Consequently, the FAA properly determined that the proposal was not a significant regulatory action, as defined under Executive Order 12866, was not significant in accordance with DOT’s policy, and did not require a full regulatory evaluation under either document. Upon OMB appraisal of the NPRM, it agreed with FAA that it was non-significant.

ERHC commented that the regulatory text is “unconstitutionally vague” and that the “NPRM’s lack of clarity would almost certainly result in inadvertent violations and inconsistent enforcement of the rule,” which violates the Due Process Clause of the Fifth Amendment to the U.S. Constitution.

The FAA notes that ERHC was instrumental in working with the FAA to develop the North Shore Helicopter Route. Since this route was charted in 2008, the FAA is not aware of complaints from any operator about inability to navigate along the route, or any concern with the route as designed and charted. Unlike a route designed for IFR use, a VFR route does not have lateral dimension. The mandatory portion of the route follows the northern shoreline of Long Island from the VPLYD waypoint point to the northern tip

of Long Island at Orient Point. As stated previously, the FAA chose waypoints that were based on the proximity to easily identifiable visual landmarks. The FAA believes that the route was developed using visual references that pilots can easily identify. We do not conclude that the requirements of this rule are vague and will result in inconsistent enforcement.

As with any other rule, the FAA will enforce this rule to the best of its capabilities. Reports of violations will be investigated to determine if the operator deviated for reasons of safety, weather, or to transit to its destination. While operators will be given the maximum latitude for deviations related to safety, a pattern of deviations would indicate that an operator was interested more in cutting short the route rather than any legitimate safety concerns. Any violation of this rule may result in a civil penalty or the suspension or revocation of the pilot's airman certificate.

F. Economic Evaluation

The FAA received several comments on our regulatory evaluation and the small business impact. These commenters included ERHC, GAMA, HAI, NATA, and NBAA, who stated the potential economic impact of the proposed regulatory changes, particularly on small businesses, is significant. The commenters believed the rulemaking's cost is significant because the change in flight procedures would drive longer flight paths for rotorcraft operating in the North Shore airspace. This in turn would have an impact on fuel consumed. They also believed that the final rule would force costs for additional avionics equipage.

ERHC asserted that mandating use of the North Shore Helicopter Route, as proposed, would increase the average flight of operations not currently using the route by 10 minutes. It estimated that 15 percent of current operations (approximately 2,250 operations) do not follow

the voluntary route. Based on these assumptions, ERHC argued (assuming an 85 percent compliance rate) that the rule would result in the additional consumption of slightly less than 117,000 gallons of fuel per year.

The FAA cannot confirm that the route is currently being used 85 percent of the time. However, for the sake of estimating the cost of the rule, the FAA assumes that ERHC is correct. Using ERHC's numbers, the FAA calculated the cost associated with the use of the additional fuel. The nominal fuel price per gallon from the latest FAA fuel price forecast for the second half of 2012 through the first half of 2014 is \$3.17.¹³ Multiplying the average fuel price by ERHC's estimate of the additional fuel burn, over 2 years, that nominal cost equals \$745,875, or \$714,569 at a 7 percent discount rate. Applying the nominal value on a per flight basis, the nominal increase in fuel costs on a per flight basis is approximately \$150. However, as noted in footnote 12, the FAA calculated the increase in travel time from the VPLYD and Alexanders East Heliport, which the FAA believes represents the worst case in terms of additional travel time, and found that the increase in time should be approximately 7 minutes. Assuming ERHC's estimate of the amount of fuel burned per minute of flight time is correct, then with an increase in flight time of 7 minutes there would be an increase in fuel cost of \$105 for that flight. Since an operation between these two points represents the worst case, the average of all affected flights would be somewhat lower. Thus the total discounted cost over a 2-year period would be significantly lower than \$714,569.

The FAA has determined that this action is not expected to result in more than minimal additional costs on the affected helicopters. Operators that cannot comply with the route as published due to operational limitations, performance factors, weather

¹³ http://www.faa.gov/about/office_org/headquarters_offices/apl/aviation_forecasts/aerospace_forecasts/2012-2032/

conditions, or safety considerations are allowed to deviate from the provisions of Subpart H.

G. Sunset Provision

As discussed above, it is both impractical and imprudent to require all helicopters to fly along the entire North Shore Helicopter Route. Operators must land at some point, and will have to deviate from the route for that reason. Additionally, safety considerations make use of the route imprudent under some circumstances and for some aircraft. As has also been noted above, the FAA does not know what the current rate of compliance with the route is or the circumstances surrounding decisions not to use it. ERHC contends that the current rate of compliance is already very high. There is no reason to retain this rule if the FAA determines that it is not actually improving the noise situation along the north shore of Long Island.

The FAA has decided to sunset this rule in 2 years if we determine there is no meaningful improvement in the effects of helicopter noise on quality of life. Should there be such an improvement, the FAA may, after appropriate notice and opportunity for comment, decide to make the rule permanent. Likewise, should the FAA determine that reasonable modifications could be made to the route to better address noise concerns, we may choose to modify the rule after notice and comment.

The FAA recognizes that we did not contemplate a sunset provision when we published the NPRM. The FAA has decided to finalize this provision without providing an additional opportunity to comment because we have determined that providing such a comment period is unnecessary. The FAA has already received hundreds of comments on the advisability of finalizing this rule. Commenters fall squarely into three camps:

those who oppose the rule as burdensome and unnecessary, those who oppose the rule because they believe it does not go far enough, and those who support the rule. The FAA does not anticipate that providing an opportunity to comment on a sunset provision will generate any discussion beyond that which has already been provided in the comments received on the NPRM. The FAA does note that any decision to extend the rule beyond 2 years or to modify the existing route will be subject to notice and an opportunity to comment.

IV. Regulatory Notices and Analyses

A. Regulatory Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 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 (Public Law 96-354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Public Law 96-39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Public Law 104-4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation with base year of 1995).

This portion of the preamble summarizes the FAA’s analysis of the economic impacts of this final rule.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this final rule. The reasoning for this determination follows.

This action is not expected to result in more than minimal additional costs on the affected helicopter operators because many of the existing operators already comply with the final rule requirements. Further, no new systems are required. Thus, the rule imposes no more than minimal cost. However, given the number of comments submitted in response to the NPRM, this final rule has been designated as significant under Executive Orders 12866 and 13563.

B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Public Law 96-354) (RFA) establishes “as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.” 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 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 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.

This final rule will impact a substantial number of small entities, but it will not have a significant economic impact on them. For aircraft operators, these include all firms with less than 1,500 employees. ERHC has 35 members who provide commercial operations. According to ERHC's comments to the NPRM, the majority of these operators fly over Long Island and could be impacted in some way by this final rule. The FAA presumes that all 35 commercial operators have fewer than 1,500 employees. However, assuming ERHC's estimates of current compliance are correct, somewhere between zero and fifteen percent of total operations are likely to be directly affected by this rule.

As noted above, the FAA believes those changes would result in an estimated increase in costs of \$105 to \$150 dollars per affected flight. The costs of commercial operations between Manhattan and the east end of Long Island generally range between \$3,500 and \$9,500 per trip, depending on the number of engines and available seats. The FAA believes that the vast majority of operators conduct operations on behalf of paying customers because of the cost associated with owning and maintaining a helicopter for personal use. Accordingly, we base our determination that the impact on small entities will not be significant on the additional cost

associated with flying along the North Shore Helicopter Route. At an additional \$150, the increase per affected operation would range between 4 and 1.5 percent. At an additional \$105, the increase per affected operation would range between 3 and 1.1 percent. The FAA also believes that, given the cost of the overall operation to a paying customer, much of that cost is likely to simply be passed on to the customer. To the extent private operators incur the additional fuel cost, the FAA believes those costs the operators will turn to additional forms of transportation only if they determine the additional cost in fuel justifies the longer times required to reach their destination by other forms of transportation. Given the cost between commercial helicopter rates and the cost to take a train or drive, the FAA believes private operators will likely absorb the additional cost because they value their time at a rate that already far exceeds the existing cost difference between helicopter travel and other forms of transportation. The rule does not require the purchase of additional equipment and allows pilots to deviate from the provisions if necessary, due to operational limitations of the helicopter, performance factors, weather conditions, or safety considerations. Therefore, the rule imposes only minimal operating cost.

The FAA received several comments from the private sector and industry based on our regulatory evaluation and the small business impact. ERHC, GAMA, HAI, NATA, and NBAA commented that the potential economic impact of the regulatory changes, particularly on small businesses, is significant. These commenters believed the rulemaking's cost is significant because the change in flight procedures will drive longer flight paths for helicopters operating in the North Shore airspace, which will have an impact on fuel consumed. They also believed that the final rule would force costs for additional avionics equipage.

The FAA notes that numerous small business helicopter charter operators commented that they were already in compliance with the final rule. The FAA further notes that operators that cannot comply with the route as published due to safety, weather conditions, or transitioning to or from a destination or point of landing are allowed to deviate from the provisions of Subpart H. Therefore, this action is not expected to result in more than minimal additional costs on the affected helicopters because those operators are allowed to deviate from the provisions of the final rule.

Therefore, as the acting FAA Administrator, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

C. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104-4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a “significant regulatory action.” The FAA currently uses an inflation-adjusted value of \$143.1 million in lieu of \$100 million. This final rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

D. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there is no current or new requirement for information collection associated with this amendment.

E. International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

F. Environmental Analysis

Under regulations issued by the Council on Environmental Quality, Federal agencies are required to establish procedures that, among other things, identify agency actions that are categorically excluded from the requirement for an environmental assessment or environmental impact statement under the National Environmental Policy Act of 1969 because they do not have a significant effect on the human environment. See 40 CFR 1507.3(b)(2)(ii), 1508.4. The required agency procedures must also “provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect.” See 40 CFR 1508.4. For FAA actions, these “categorical exclusions” and “extraordinary circumstances” are listed in Chapter 3 of FAA Order 1050.1E, “Environmental Impacts: Policies and Procedures.”

The FAA has determined that this final rule qualifies for the categorical exclusion identified in paragraph 312f of FAA Order 1050.1E. That categorical exclusion applies to “[r]egulations, standards, and exemptions (excluding those which if implemented may cause a significant impact on the human environment).” The existing New York North Shore Helicopter Route is a VFR route, use of which is voluntary. Additionally, the route is located entirely over water and away from noise-sensitive locations. Furthermore, the number of helicopter operations along the north shore of Long Island is not high enough for this rule to have any potential to result in significant noise impacts. An analysis of emissions based on an overly

conservative fuel burn estimate shows that the resulting air emissions would be well below levels determined by the EPA to be *de minimis*.¹⁴

Therefore, implementation of this final rule is not expected to result in significant adverse impacts to the human environment. Moreover, implementation of the final rule will not involve any of the extraordinary circumstances listed in Section 304 of FAA Order 1050.1E.

V. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. The agency determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, does not have Federalism implications.

B. Executive Order 13211, Regulations that Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it is not a “significant energy action” under the executive order and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

¹⁴ See Long Island North Shore Helicopter Route Environmental Study, John A. Volpe National Transportation Systems Center. The North Shore Helicopter Route is located entirely within Suffolk County, New York, which has been designated under the Clean Air Act as a nonattainment area for particulate matter (PM-2.5) and a moderate nonattainment area for ozone. See U.S. Environmental Protection Agency (EPA), “Currently Designated Nonattainment Areas for All Criteria Pollutants,” available at <http://www.epa.gov/oaqps001/greenbk/ancl.html>. In addition, the state of New York is within the Ozone Transport Region established in section 184(a) of the Clean Air Act, 42 U.S.C. 7511c(a). EPA has determined that for such nonattainment areas, emissions of less than 50 tons per year of volatile organic compounds and 100 tons per year of nitrogen oxides, PM-2.5, or sulfur dioxide are *de minimis*. 40 CFR 93.153(b)(1). Using conservative assumptions, an analysis by the FAA (a copy of which has been placed in the docket for this rulemaking), indicates that emissions of these pollutants from combustion of an additional 117,000 gallons of fuel would be well below these *de minimis* levels.

VI. How To Obtain Additional Information

A. Rulemaking Documents

An electronic copy of a rulemaking document may be obtained by using the Internet —

1. Search the Federal eRulemaking Portal (<http://www.regulations.gov>);
2. Visit the FAA's Regulations and Policies Web page at

http://www.faa.gov/regulations_policies/ or

3. Access the Government Printing Office's Web page at <http://www.gpo.gov>.

Copies may also be obtained by sending a request (identified by notice, amendment, or docket number of this rulemaking) to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-9680.

B. Comments Submitted to the Docket

Comments received may be viewed by going to <http://www.regulations.gov> and following the online instructions to search the docket number for this action. Anyone is able to search the electronic form of all comments received into any of the FAA's dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.).

C. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document, may contact its local FAA official, or the person listed under the FOR FURTHER

INFORMATION CONTACT heading at the beginning of the preamble. To find out more about SBREFA on the Internet, visit http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.

VII. The Amendment

List of Subjects in 14 CFR Part 93

Air Traffic Control, Airspace, Navigation (air)

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations as follows:

PART 93— SPECIAL AIR TRAFFIC RULES

1. The authority citation for part 93 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40109, 40113, 44502, 44514, 44701, 44715, 44719, 46301.

2. Amend part 93 by adding subpart H to read as follows:

Subpart H—Mandatory Use of the New York North Shore Helicopter Route

93.101 Applicability.

93.103 Helicopter operations.

Subpart H—Mandatory Use of the New York North Shore Helicopter Route

§ 93.101 Applicability.

This subpart prescribes a special air traffic rule for civil helicopters operating VFR along the North Shore, Long Island, New York, between [insert effective date] and [insert date 2 years after the effective date].

§ 93.103 Helicopter operations.

(a) Unless otherwise authorized, each person piloting a helicopter along Long Island, New York's northern shoreline between the VPLYD waypoint and Orient Point, shall utilize the North Shore Helicopter route and altitude, as published.

(b) Pilots may deviate from the route and altitude requirements of paragraph (a) when necessary for safety, weather conditions or transitioning to or from a destination or point of landing.

Issued in Washington, DC, on

Michael P. Huerta
Acting Administrator



U.S. Department
of Transportation
**Federal Aviation
Administration**

Western-Pacific Region
Honolulu Flight Standards District Office

135 Nakolo Place
Honolulu, HI 96819-1845

Telephone: (808) 837-8300
Facsimile: (808) 837-8399

August 7, 2017

Mr. Rick Turner
P.O. Box 782
Pahoa, HI 96778

Dear Mr. Turner:

This letter is in response to your complaint on June 19, 2017, regarding noise and flight paths of the air tour operators going to and from the Volcanoes National Park. We have found insufficient evidence to proceed with enforcement action and consider this matter closed. However, if you have any further information that would assist the FAA in pursuance of an action, please contact this Flight Standards District Office. ■ ■

Thank you for your concern and cooperation in this matter.

Sincerely,

Christopher M. Howard
Principal Operations Inspector

Enclosure
Help FAA Identify Unauthorized Low-Flying Aircraft

From: "christopher m howard" <christopher.m.howard@faa.gov>
To: "Webmail rce1" <rce1@isp.com>, "robert a hisson" <robert.a.hisson@faa.gov>, "Darett I Kanayama" <Darett.I.Kanayama@faa.gov>
Sent: Thursday, August 3, 2017 12:52:44 PM
Subject: RE: JULY 2, 2017, RICK TURNER COMPLAINT INVESTIGATION, 35TH STREET, ORCHIDLAND

Good afternoon Bob,

Please look at number 4. I got the same comment from Toma this am. The noise is not significant. My retort, 31,000 times a year. Read the change.org comments.

I have a few corrections on several of the points you listed below. I will address each by number.

#4: I did not consider the noise impact to be significant. I understand that you and the other residents do feel the noise level to be significant.

#5: The only time the PCAS did not read an aircraft's altitude was when the aircraft was above 2,500 feet AGL. The PCAS monitors targets within a six mile radius up to 2,500 above and below the monitor.

#9: It could not be determined if an aircraft passed through a cloud from our position. It could be that the cloud was between us and the aircraft, thus obscuring the aircraft from our view once it passed abeam the cloud. We discussed how difficult it is to determine aircraft position relative to clouds.

#16: I am not aware that any of the tour operators had prior knowledge of my planned surveillance activities.

Of the 24 aircraft we observed, only one was below the prescribed altitude of 1,500 feet AGL (1,300 and climbing). I could not substantiate resident claims of overflights below 1,000 feet or flights through clouds. It was an ideal VFR day with excellent flying conditions so I did not get to monitor air tour traffic in low ceilings and marginal visibility.

Thank you for your time yesterday and I hope I was able to address at least some of the questions and concerns you and your fellow Hilo neighbors had.

Respectfully,

Christopher M. Howard
Principal Operations Inspector
Federal Aviation Administration
Honolulu Flight Standards District Office
(808) 837 8330

From: Bob Ernst [<mailto:rce1@isp.com>]
Sent: Thursday, August 03, 2017 12:15 PM

ATTACHMENT 1D

To: Howard, Christopher M (FAA); robert a hisson

Subject: JULY 2, 2017, RICK TURNER COMPLAINT INVESTIGATION, 35TH STREET, ORCHIDLAND

Aloha Chris,

Mahalo for a very interesting and informative time yesterday morning at Rick's place. I just wanted to recap what we experienced:

1. We were there from about 8:30am to 11:00am.
2. The ambient noise level was super low, ultra quiet,
3. You recorded 24 tour helicopter overflights, BH, Safari, and Paradise,
4. No matter the AGL the noise impact was significant,
5. We sat on the lanai under the roof and we could hear them coming before we saw them and then we would spot them, record the AGL on the PCAS when it worked,
6. We could see them pass over and then watch them depart,
7. Most operations were north to south, Hilo to Pu'u O'o,
8. The sky was 80% clear with blue white fluffy clouds,
9. I did point out to you numerous times the copters flew through clouds, were obscured by the clouds,
10. Often copter was followed by copter, Paradise md500 by same and BH followed by BH,
11. Each company used a slightly different track,
12. The copter noise disturbance certainly was a significant disturbance to any one on the property,
13. You were aware that the good flying weather may have influenced their flight tracks,
14. You said you would come back on cruise day Tuesday and monitor a mauka location that usually has complete cloud cover,
15. HICoP offered to assist you in any way to do this monitoring including arranging locations etc.,
16. We discussed that the tour helicopter operators may know you are monitoring them (This common knowledge is often discussed),
17. We discussed that a violation may not take place during the short time FSDO monitors on Hawaii island,
18. We discussed that a lot of times the overflown residents see copters operating in the clouds in violation of 14 CFR Part 91.155, VFR 500 below cloud clearance,
19. And I certainly enjoyed the experience of monitoring with you.

Did I overlook anything?

Please feel free to contact me if HICoP or I can assist you in anyway including future monitoring on Hawaii Island,

Bob

For the HICoP Board

DAVID Y. IGE
GOVERNOR



DOUGLAS S. CHIN
ATTORNEY GENERAL

RUSSELL A. SUZUKI
FIRST DEPUTY ATTORNEY GENERAL

STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
LAND TRANSPORTATION DIVISION
Room 300, Kekuanao'a Building
465 King Street
Honolulu, Hawaii 96813

WRITER'S DIRECT LINE
(808) 587-2991

WRITER'S E-MAIL
colin.j.lau@hawaii.gov

August 2, 2017

Bob Ernst
c/o Hawaii Island Coalition Malama Pono ("HICoP")
P.O. Box 6002
Kurtistown, HI 96760

RE: REQUEST FOR CONTESTED CASE AS TO REVOCABLE PERMIT ISSUED TO
K & S HELICOPTERS, INC.

Dear Mr. Ernst:

Item M-4 on the agenda for the Board of Land and Natural Resource's July 28, 2017, was the Department of Transportation's request to approve issuance of a revocable permit for aircraft parking to K & S Helicopters, Inc. at Hilo International Airport, Tax Map Key No. (3) 2-1-012:por. 90.

On behalf of the Hawaii Island Coalition Malama Pono ("HICoP"), you opposed issuance of the revocable permit and submitted a written request for a contested case. The Board was required to act on the request for contested case before considering the revocable permit itself.

The Board did so. It denied your request for a contested case. It then approved issuance of the revocable permit.

This matter will not be brought back to the Board.

Very truly yours,

A handwritten signature in black ink, appearing to read "Colin J. Lau".

Colin J. Lau
Deputy Attorney General

cc: Bin C. Li



STATE OF HAWAII
BOARD OF LAND AND NATURAL RESOURCES

PETITION FOR A CONTESTED CASE HEARING

OFFICIAL USE ONLY	
Case No.	Date Received
Board Action Date / Item No.	Division/Office

INSTRUCTIONS:

- File (deliver, mail or fax) this form within ten (10) days of the Board Action Date to:
 Department of Land and Natural Resources
 Administrative Proceedings Office
 1151 Punchbowl Street, Room 130
 Honolulu, Hawaii 96813
 Phone: (808) 587-1496, Fax: (808) 587-0390
- DLNR's contested case hearing rules are listed under Chapter 13-1, HAR, and can be obtained from the DLNR Administrative Proceedings Office or at its website (<http://dlnr.hawaii.gov/forms/contested-case-form/>). Please review these rules before filing a petition.
- If you use the electronic version of this form, note that the boxes are expandable to fit in your statements. If you use the hardcopy form and need more space, you may attach additional sheets.
- Pursuant to §13-1-30, HAR, a petition that involves a Conservation District Use Permit must be accompanied with a \$100.00 non-refundable filing fee (payable to "DLNR") or a request for waiver of this fee. A waiver may be granted by the Chairperson based on a petitioner's financial hardship.
- All materials, including this form, shall be submitted in **three (3)** photocopies.

A. PETITIONER		
(If there are multiple petitioners, use one form for each.)		
1. Name: Hawaii Island Coalition Malama Pono "HICoP"	2. Contact Person: Bob Ernst	
3. Address: PO BOX 6002	4. City: Kurtistown	5. State and ZIP: Hawaii, 96760
6. Email: board@hicop.org	7. Phone: 808 968-8611	8. Fax: 808 968-1102

B. ATTORNEY if represented}		
9. Attorney Name: To be determined	10. Firm Name	
11. Address	12. City	13. State and ZIP
14. Email	15. Phone	16. Fax

C. SUBJECT MATTER	
17. Board Action Being Contested: Approval of agenda item M-4, Issuance of a revocable Permit for Aircraft Parking, K&S Helicopters, INC, Hilo International Airport, Tax Map Key:(3)2-1-12: Portion of 90.	
18. Board Action Date: July 28, 2017	19. Item No: M. OTHERS 4. Issuance of a Revocable Permit for Aircraft Parking, K&S Helicopters, Inc., Hilo International Airport.
20. Nature and Extent of Petitioner's Interest That May Be Affected by the Board Action: . Petitioner, Hawaii Island Coalition Malama Pono (HICoP, hicop.org) is a State of Hawaii non-profit organization. The sole purpose of HICoP is to address the incessant near constant tour helicopter noise nuisance on Hawaii Island. In 2016 the FAA/NPS documented a minimum of 31,000 tour helicopter overflights on Hawaii Island. See attachment. A	
21. Any Disagreement Petitioner May Have with an Application before the Board: The remarks section of the HDOT document is misleading to the BLNR by stating "The Department of Transportation (DOT) has no objections to K&S request" when HDOT, Airports Division is fully aware of the incessant near constant 31,000 tour helicopter overflights on Hawaii Island of which Paradise Helicopters is a substantial part and further knows that Paradise Helicopters is not in compliance with the required HAR 19-34-2 Permit.	
22. Any Relief Petitioner Seeks or Deems Itself Entitled to: When the subject lease is not approved by BLNR, Paradise would not operate a helicopter in violation of their permit from the subject lease location and would require HDOT, Airports Division to address the incessant near constant tour helicopter noise nuisance on Hawaii island.	
23. How Petitioner's Participation in the Proceeding Would Serve the Public Interest: HICoP would present in greater detail documentation of the Paradise Helicopter noise impacts on Hawaii Island which are not in the Public Interest and provide detailed documentation of the noncompliance with the HAR 19-34-2 Permit. Both of these would result in the Airports Division acting in the Public Interest .	
24. Any Other Information That May Assist the Board in Determining Whether Petitioner Meets the Criteria to Be a Party under Section 13-1-31, HAR: All the members of the HICoP Board of Directors are homeowners on Hawaii Island. All of their homes are impacted daily by the 31,000 annual tour helicopter overflights and the attendant incessant near constant noise nuisance from these tour helicopter overflights. HICoP maintains a contact list of Hawaii Island residents that have signed up with HICoP to support the HICoP advocacy efforts to return serenity to Hawaii Island free of tour helicopter noise.	

Check this box if Petitioner is submitting supporting documents with this form.

Check this box if Petitioner will submit additional supporting documents after filing this form.

HICoP (Bob Ernst)

Bob Ernst

7/27/2017

Petitioner or Representative (Print Name)

Signature

Date

Petitioner, Hawaii Island Coalition Malama Pono (HICoP, hicop.org) is a State of Hawaii non-profit organization. The sole purpose of HICoP is to address the incessant near constant tour helicopter noise nuisance on Hawaii Island. In 2016 the FAA/NPS documented a minimum of 31,000 tour helicopter overflights on Hawaii Island. HDOT, Airports Division has clear knowledge of the Paradise Helicopter Inc. tour helicopter noise impact to the residents of Hawaii Island. HICoP met with Ross Higashi, Deputy Director Airport Division, on August 9, 2016. HICoP described in detail how the tour helicopters including Paradise K&S were impacting the quality of life, the health, the use and enjoyment of our property and the value of our property. HICoP met with Henry Bruckner, HDOT, Airports Division, General Aviation Officer, on September 22, 2016, and showed explicit videos of the tour helicopters flying over our homes and the attendant noise, and described in detail the impacts of this incessant near constant noise.

The Airports Division has a toll free aircraft noise complaint telephone number and from the complaint calls are fully aware of the tour helicopter noise impact.

HDOT, Airports Division contracted for and paid for a study conducted by the University of Hawaii Manoa in 1991-1994. The report "EFFECTS OF HELICOPTER NOISE ON RURAL RESIDENTS OF HAWAII AWAY FROM AIRPORTS AND HELIPORTS" was presented to HDOT Airports Division in April 1994.

Airports Division, Deputy Director Ross Higashi and General Aviation Officer Hank Bruckner know full well the tour helicopter noise impacts on Hawaii Island. It is unconscionable that the Director of Transportation signs the HDOT request with the statement under REMARKS: "The Department of Transportation (DOT) has no objections to K&S' request" when Higashi and Bruckner are fully aware of the noise impacts caused by Paradise Helicopters. It is possible for tour helicopters to continue operation on Hawaii Island with little to no impact by utilizing the offshore route, which the Airports Division is also aware of and which is the FAA helicopter noise solution for Islands.

Furthermore, Hawaii Administrative Rules (HAR) 19-34-2 requires that aircraft tour operators have a Tour Aircraft Operators Permit which is issued by the Airports Division. Paradise Helicopters is not in compliance with the requirements of this permit which the Airports Division is well aware of.

