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High court refuses Kauai firm's appeal

The U.S. Supreme Court refused yesterday to hear an appeal of a challenge to a federal rule requiring tour helicopters in Hawaii to fly at a minimum 1,500 feet.

Kauai-based Safari Helicopter Tours had challenged the Special Federal Aviation Administration Regulation (SFAR 71) issued in 1994 after a rash of deadly helicopter and tour plane crashes in the islands.

It was upheld by the 9th U.S. Circuit Court of Appeals in a 1995 challenge brought by the Hawaii Helicopter Operators Association, and again in August after Safari challenged the FAA's move in 2000 to extend the original SFAR 71 for three more years. Safari argued that the rule actually decreases aviation safety and increases the risk of predictable accident scenarios.

Safari's attorney, David Bettencourt, said he was disappointed by the high court's decision not to consider the challenge to the rule. "It's made helicopter flights more noisy and more dangerous," he said.

In support of its 1994 rule, the FAA noted last year that between 1982 and 1991, during a nine-year period of substantial growth in the tour industry, there were eight air tour accidents in Hawaii resulting in 24 deaths. It noted that in the following three years through July 1994, there were 20 air tour accidents and 24 deaths.

In the challenge to extending the rule for three years, the 9th U.S. Circuit Court in San Francisco ruled Aug. 26 that the FAA had a rational basis for the rule and had not denied Safari an opportunity to participate in the rule-making process.