Will publish in the Federal Register on October 22, 2003.

[4910-13]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 61, 91, 119, 121, 135, 136

[Docket No. FAA-1998-4521; Notice No. 03-10]

RIN 2120-AF07

National Air Tour Safety Standards

Agency: Federal Aviation Administration (FAA), DOT

Action: Notice of proposed rulemaking (NPRM).

Summary: The FAA is proposing national safety standards to govern commercial air tours (i.e., sightseeing). These safety standards are proposed as a result of accidents and incidents involving air tour operators and subsequent National Transportation Safety Board recommendations. The proposed rule is intended to increase the safety of commercial air tours on a national basis by requiring certification of air tour operators and by establishing new safety requirements.

DATES: Send your comments on or before [Insert date 90 days after date of publication in the Federal Register].

ADDRESS: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590-0001. You must identify the docket number FAA-1998-4521 at the beginning of your comments, and you should submit two copies of your comments. If you wish

to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to http://dms.dot.gov. You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Alberta Brown, Air Transportation Division, AFS-200, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone: (202) 267-8166; Email: Alberta.Brown@faa.gov.

SUPPLEMENTARY INFORMATION: The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the ADDRESSES section of this preamble between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the web address in the ADDRESSES section.

Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) web page (http://dms.dot.gov/search).

(2) On the search page type in the last four digits (4521) of the Docket number shown at the beginning of this notice. Click on "search."

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the document number of the item you wish to view.

You can also get an electronic copy using the Internet through the Office of Rulemaking's web page at http://www.faa.gov/avr/armhome.htm or the Federal Register's web page at http://www.access.gpo.gov/su_docs/aces/aces140.html.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267-9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

I. Background

A. General overview of commercial air tours

Commercial sightseeing flights over areas of scenic or general interest to passengers have increased considerably since the 1970s. During the peak growth years, the air tour industry estimates that 2 million passengers flew annually on such flights. Sightseeing operations are conducted in all parts of the United States, over various types of scenic areas, including

national parks, urban, coastal, and mountainous areas. The operators who conduct sightseeing flights as a regular part of their business are commonly known as air tour operators and their operations are often referred to as commercial air tours.

Air tour operators typically are single-pilot operations that are conducted in airplanes or helicopters. While some commercial air tours are conducted in hot air balloons and gliders, this proposed rule is intended to regulate commercial air tours conducted in powered aircraft only. Commercial air tours are conducted in visual meteorological conditions (VMC), normally without radar coverage or traffic advisories from an air traffic control facility.

Commercial air tours are often conducted in dense air traffic near popular scenic areas. These areas tend to be geographically limited in size. Air tour traffic typically is a mix of airplanes and helicopters, which have different flight characteristics (e.g., speed and maneuverability). As a result of these factors, pilots conducting air tours must use heightened vigilance and greater precision in navigation.

Many popular scenic areas are located in remote, rugged terrain where the attraction is the natural beauty of the site. To view the natural beauty of popular sites, commercial air tours normally are conducted at relatively low altitudes, between 500 and 1,000 feet above ground level (AGL). Flights conducted at

these altitudes are close to ground obstructions and often are horizontal to high terrain. In addition, many air tour operators conduct flights over water. Currently, commercial air tours that are conducted beyond 25 statute miles of the departure airport, or over a unit of the national park system, must be certificated under Title 14 CFR part 119 to operate in accordance with either part 121 or 135. Part 121 and part 135 contain operational, safety and training rules that are not limited to air tour operations. Exceptions to the certification requirements are contained in 14 CFR 119.1(e). One of these exceptions, § 119.1(e)(2), applies to non-stop sightseeing flights conducted within 25 statute miles of the departure airport that takeoff and land at the same airport. Operators conducting flights under this exception are not required to be certificated under part 119 and are not subject to the operational requirements of either part 121 or 135. These excepted operations are subject only to the requirements of part 91.

This proposed rule would seek to improve the overall safety of commercial air tours by requiring all air tour operators, with a limited exception for certain charitable and community events, to be certificated under part 119. Additionally the proposed rule would increase the overall safety of commercial air tours by establishing requirements for low-level flight, visibility limits and over water flights. The proposed rule is modeled on Special

Federal Aviation Regulation (SFAR) 71, which currently governs the commercial air tour industry operating in Hawaii. During the 6 years from 1989 through 1994, there were 18 air tour accidents in Hawaii, or an average of 3.46 accidents per 100,000 flight hours. The number of accidents peaked at 8 accidents in 1994. SFAR 71 was issued in September of 1994. There were 8 accidents in the 6 years from 1995 through 2000, dropping to an average of 1.48 accidents per 100,000 flight hours. The FAA believes that SFAR 71 has improved the overall safety of the commercial air tour industry in Hawaii and now seeks to use its experience with this SFAR to improve commercial air tour safety throughout the United States. If this rulemaking is adopted, the rule will replace the requirements of SFAR 71 in Hawaii and apply throughout the country.

B. Accident History

The commercial air tour industry experienced considerable growth from the 1970s through the mid-1990s. During that period of rapid growth, fatalities also increased. By improving the regulation of commercial air tours, the FAA hopes to reduce the number of fatalities and serious injuries.

Currently, with the exception of commercial air tours conducted under § 119.1(e)(2) (flights within 25 miles of the departing airport), all air tour operators must be certificated

under 14 CFR part 119 to operate in accordance with part 121 or 135. This certification process enables the FAA to exercise greater oversight of certificated operators. In contrast, flights conducted under § 119.1(e)(2) are operated in accordance with the general aviation requirements of part 91; the operators do not have to be certificated under part 119 and, thus, do not have to operate in accordance with the requirements of part 121 or 135. The requirements of part 121 and 135 are stricter than those of part 91. Parts 121 and 135 contain requirements for aircraft equipment performance and maintenance, crewmember training, crewmember flight and duty time limitations and rest requirements, reporting and recordkeeping and flight locating.

As the commercial air tour industry has grown, the number of flights conducted under the § 119.1(e)(2) exception has increased, as has the number of accidents. Between 1993 and 2000 there were 75 accidents involving part 91 commercial air tours, resulting in 38 fatalities, and 53 accidents involving part 135 commercial air tours, resulting in 72 fatalities. The accidents listed below involving part 91 and 135 operators illustrate some of the safety issues raised by the National Transportation Safety Board (NTSB) that are addressed in this proposed rule. A few accidents outside of the 1993 - 2000 timeframe are listed because of the safety issues they show.

(1) On May 20, 1989, an Aerospatiale AS350D helicopter,

which was touring Waialae Falls in Hawaii with six passengers on board, crashed. After hovering at a low altitude near the falls, the pilot began a pedal turn and forward movement for the initial climb away from the falls. The main rotor revolutions per minute (rpm) decayed, and the pilot turned back toward the upper falls, where he thought he could land. However, the helicopter settled into a ravine, damaging the helicopter and injuring the pilot and passengers. The National Transportation Safety Board (NTSB) determined that the probable cause of the accident was the pilot's failure to maintain rotor rpm while turning and taking off from a hover with a relatively heavy gross weight. Additional factors related to the accident were the high-density altitude and rough/uneven (rocky) terrain in the emergency landing area.

(2) On June 11, 1989, a Beechcraft BE-H18, on a revenue air tour flight conducted under part 135, crashed in the Waipio Valley of the Kohala Mountains on the island of Hawaii. Its destination was Maui. The flight was conducted under visual flight rules (VFR). The pilot and 10 passengers were fatally injured, and the airplane was destroyed. The NTSB found that the pilot of the airplane flight entered an enclosed canyon and proceeded beyond a point from which a safe exit could be made.

(3) On April 22, 1992, a Beech Model E18S (BE-18) collided with a mountain on the island of Maui, Hawaii, while on a

commercial air tour from Hilo to Honolulu, Hawaii. The flight was conducted under VFR as an on-demand charter flight. The pilot and all eight passengers sustained fatal injuries and the airplane was destroyed. The NTSB found that the primary cause of the accident was that the captain mistakenly deviated from his intended route because he did not use his navigation charts to confirm the correct heading. The mountain was obscured by mist, and the pilot did not see it until it was too late. While the pilot was certificated and medically qualified, he had falsified his employment history and did not possess the minimum hours of experience stipulated by the company to qualify as a pilot.

(4) On September 29, 1992, a U.S.-registered helicopter operating under part 91 on a commercial air tour collided in flight with a commercial Canadian air tour helicopter over Niagara Falls, Canada. The four occupants of the U.S. helicopter were fatally injured.

(5) On January 25, 1993, a Fairchild Hiller helicopter was destroyed during a commercial air tour conducted under part 91 at Volcanoes National Park, Hawaii. Before the accident, the pilot had been hovering near the shoreline, between 100 and 150 feet above sea level. When the pilot attempted to resume forward flight, he experienced a total left pedal failure. The pilot lost control and the helicopter landed in the ocean and sank. The helicopter was not equipped with floats and the pilot and

four passengers were not wearing life preservers. Only the pilot survived. The NTSB found that the operator's failure to provide the passengers with life preservers was one factor contributing to their deaths.

(6) On July 14, 1994, two commercial air tour accidents occurred in the State of Hawaii. Both involved Aerospatiale AS350-series helicopters and forced landings in the water adjacent to the shore. The first accident occurred off the island of Kauai. The flight was proceeding parallel to the shoreline approximately 9 miles west of the community of Hanalei when a total loss of power occurred. The pilot performed an autorotation to the water approximately 150 feet from the shoreline, which was at the base of a cliff. All occupants exited the helicopter uninjured but without wearing life preservers. Three of the occupants, including the pilot, drowned when they were unable to climb onto the rocks along the shoreline. The helicopter, which was not equipped with floats, sank and was recovered the following day. Life preservers were found aboard the helicopter, located in their containers beneath each seat. Surviving passengers said that they had not been briefed that life preservers were aboard. The NTSB determined that the probable causes of the accident and fatalities were "...failure of the engine-driven fuel pump, which resulted in the loss of power, and the lack of aircraft flotation equipment."

Related factors were "...flight over water adjacent to terrain that afforded no suitable forced landing site, and lack of passenger briefing by the operator on the location and operation of life preservers."

The second accident occurred off the island of Molokai. The flight had been scheduled to tour the island of Maui. However, after receiving information from other tour pilots that the weather conditions along the planned route were deteriorating, the pilot decided to take the passengers to Moloka'i. According to the pilot, the helicopter was in a hover approximately 50 feet above the water and 150 feet from the shoreline to allow passengers to view a large sea cave when the pilot sensed a slowing of the engine/rotor system. The helicopter was equipped with inflatable floats, which the pilot activated as the helicopter entered the water. In order to activate the floats the pilot had to remove his hand from the collective control. According to the NTSB, this action may have led to a hard impact. Of the seven occupants, the passenger who occupied the forward left seat received serious injuries due to water impact and the other six occupants were uninjured. After stabilizing on the surface, the occupants donned life preservers and swam to shore, where they spent the night before being rescued. The NTSB determined that the probable cause of the accident was "...the pilot's failure to properly monitor power required versus power

available to maintain rotor rpm, resulting in rotor rpm decay and a forced landing." Related factors were "...the pilot's change of the tour route without notifying the company, which delayed rescue, and the location of the arm and fire switches for the flotation equipment, which required the pilot to remove his hand from the collective control to activate that equipment."

(7) On July 3, 1997 an airplane lost power near Skagway, Alaska while on an air tour to view glaciers. The airplane ditched about 100' from shore near small cliffs. There were five passengers in addition to the pilot. The passengers exited the airplane without life preservers into 39-degree water. The pilot threw one life preserver out and exited the airplane as it sank. The pilot and one passenger survived. The surviving passenger reported that her husband located the life preserver that was thrown. Her husband placed the life preserver over her head after they were both in the water. The passenger indicated she was not aware the preserver had an inflation cylinder. At one point the passenger noticed the mouth inflation tube on the life preserver when it bumped into her face. She attempted to blow air into the tube, and partially inflated the preserver. The surviving passenger did not recall any briefing about the location or use of the life preservers. Her husband, who was not wearing a life preserver, did not survive. No other life preservers were taken from the airplane. A nearby air tour

helicopter arrived after the passengers were in the water and threw additional life preservers near the passengers. Two passengers drowned and two passengers were not found.

(8) On August 24, 1997, a Waco YMF (biplane) crashed into the ocean off the coast of Ocean City, Maryland. The pilot and 2 passengers, who had purchased the 15-minute sightseeing flight, received fatal injuries. According to the NTSB, visual meteorological conditions (VMC) prevailed and the pilot had not filed a flight plan for the part 91 flight. Numerous witnesses on the beach reported watching as the airplane maneuvered off shore. According to their accounts, the airplane was flying between 500 feet and 1,000 feet above the ocean. The witnesses stated that the airplane did two climbing turns, the first heading north, and the second heading south, with the flight path parallel to the shoreline. On a third climbing turn, heading north again, the airplane entered a tight spiral or spin at the top of the climb, and then the rotation stopped. The airplane had approximately a 45-degree, nose-down attitude when it impacted the water. After the wreckage was recovered, a preliminary inspection revealed no mechanical anomalies.

(9) On June 25, 1998, a Eurocopter AS-350-BA helicopter, operated by a Hawaiian air tour company crashed into rugged terrain in the Waialeale Canyon on the island of Kauai, Hawaii. The pilot and all five passengers received fatal injures, and the

helicopter was destroyed. The flight departed from Lihue Airport. Approximately 42 minutes after departure, the pilot completed a position report. That report was the last known contact between the pilot and the tour operator. When the pilot failed to make further reports, a search was initiated. Searchers located the helicopter from the air, approximately 9 miles northwest of the Lihue Airport, where it struck steep terrain near the top of a ridge. Poor weather was reported in the area of the accident and some operators had cancelled flights on that day.

(10) On July 21, 2000, a commercial air tour helicopter collided with mountainous terrain in the Iao Valley on the island of Maui. The impact site was located on the north face of a 2,900-foot-high mountain, with a slope estimated in excess of 60 degrees. The recorded radar data indicated that at 1019:47 the helicopter was at 3,700 feet and on a northerly track. About 5 seconds later the helicopter commenced a course reversal. Between 1019:52 and 1019:56, the helicopter completed the turn and began flying along a southerly track. The helicopter's location was last recorded by radar at 1020:06. At this time it had descended to 3,100 feet. The accident site was found about 1/8-mile further south from this radar location. Three other helicopter pilots stated that they modified their tour routes to exclude the area flown by the accident pilot because of the

inclement weather conditions they observed.

(11) On August 25, 2000, an airplane on an air tour ditched in the Pacific Ocean while attempting an emergency landing at Hilo International Airport, Hawaii. When the pilot determined that he could not reach the airport, he instructed the passengers to don their life preservers and briefed them to prepare for ditching. After the airplane landed in the water, all passengers except one were able to exit the airplane and were reached by rescue personnel within 15 minutes. One passenger was missing and was subsequently located in the airplane under 80 feet of water.

C. The NTSB Report and recommendations

On June 1, 1995, the NTSB issued a special investigative report entitled, "Safety of the Air Tour Industry in the United States" (NTSB/SIR-95/01). The report is based on NTSB accident investigations and on information gained from two public hearings held during the week of October 19, 1994, in Phoenix, Arizona, and Honolulu, Hawaii. The Report explained the NTSB's concerns about the safety of the air tour industry in the United States. The Report focused on the adequacy of air tour regulations and the FAA's previous amendments to those regulations, the use of emergency equipment, and the effectiveness of the FAA's oversight and certification of air tour operators.

As a result of the special investigation, the NTSB developed

six safety recommendations it presented to the FAA. These recommendations are designed to prevent future accidents and to enhance the potential for occupant survival if an accident does occur. These recommendations are as follows:

Recommendation No. A-95-58. Develop and implement national standards by December 31, 1995, within 14 CFR Part 135, or equivalent regulations, for all air tour operations with powered airplanes and rotorcraft to bring them under one set of standards with operations specifications and eliminate the exception currently contained in 14 CFR Part 135.1 (reiteration of exception for non-stop sightseeing flights within 25 miles of the airport).

Recommendation No. A-95-59. Require special conditions within the operations specifications established by A-95-58 for all air tour operators, similar to the special conditions contained in SFAR 50-2, SFAR 71, and FAA Handbook 8400.10 Bulletin 92-01, to accommodate localized airspace restrictions and other unique conditions for such operations.

Recommendation No. A-95-60. Develop and issue appropriate definitions for key terms such as "air tour," "air tour operator," and "suitable landing area."

Recommendation No. A-95-63. Require that all helicopters equipped with inflatable flotation systems have the activation switch for those systems located on one of the primary flight

controls.

Recommendation No. A-99-57. Require all occupants of single-engine airplanes and single-engine helicopters operated for hire (air taxi and air tour) to wear life preservers when the aircraft is operating over water, whether float-equipped or not, unless it is operated at an altitude that allows it to reach a suitable landing area in the case of an engine failure.

Recommendation No. A-99-58. Require passenger briefings on ditching procedures and the use of required flotation equipment for all air taxi and air tour passenger flights that operate over water at an altitude that would not allow them to reach a suitable landing area, including those that operate less than 50 miles from the shoreline.

D. The FAA's responses to the NTSB

The FAA's specific responses to the NTSB's recommendations are as follows:

NTSB Recommendation No. A-95-58(Establish national standards for air tours). The FAA believes that this proposed rule would establish national standards for commercial air tours that would be supplemented by localized airspace restrictions. The FAA also proposes to eliminate the broad exception currently in § 119.1(e)(2). Those operators conducting non-stop operations for either a charitable or community event within 25 miles of an airport would be exempted from the certification requirements of

part 119, although they would still be subject to the safety regulation at new part 136, subpart A.

NTSB Recommendation No. A-95-59 (Provide for localized airspace restrictions). The FAA already has adopted regulations pertaining to special areas that provide localized airspace restrictions and address issues specific to that locale and it anticipates that it would continue to do so as needed. Currently, commercial air tours operating in Hawaii are subject to SFAR 71. That SFAR will be replaced by this proposed rule, if the proposal is adopted. Commercial air tours operating in the Grand Canyon National Park (GCNP) currently are subject to the regulations in part 93, subpart U. All operators conducting commercial air tours at GCNP already are required to be certificated under part 119 to operate in accordance with either part 121 or 135. The proposed rule would supplement the existing GCNP regulations by providing basic safety requirements that would apply to all commercial air tours, unless a different site-specific requirement is established.

Additionally, commercial air tours operating over units of the national park or adjoining tribal lands are subject to the National Park Air Tour Management Act of 2000 (hereafter, Air Tour Act). Under the Air Tour Act, all commercial air tour operators are required to be certificated under part 119 and to operate under either part 121 or 135. There is a limited

exception in that Act that allows commercial air tour operators to conduct commercial air tour operations under part 91 provided they have a letter of authority from the FAA and there are no more than five part 91 flights in a month conducted over a particular national park. The FAA, in cooperation with the National Park Service (NPS), will adopt air tour management plans for each national park over which "commercial air tour operations" are flown.

NTSB Recommendation No. A-95-60 (Adopt standard definitions to establish a uniform terminology). The FAA recognizes the need to standardize language governing commercial air tour regulation. The Air Tour Act adopted a definition of the term "commercial air tour operation" that is specific to flights over national parks. In contrast, part 93, subpart U contains a definition of the term "commercial air tour" that is not limited by area of flight. This proposed rule would adopt the definition of "commercial air tour" contained in part 93 since that definition can apply to all commercial air tours, regardless of locale. This NPRM also proposes standardized definitions for other terms.

NTSB Recommendation No. A-95-63 (Location of activation switch).

The FAA proposes to require that the activation switch for the inflatable flotation systems for helicopters be located on one of the primary flight controls. In a helicopter, float activation switches that are not located on the primary controls

require pilots to remove a hand from the flight controls during the ditching maneuver. The FAA believes that requiring the activation switch to be on a primary flight control would improve the pilot's ability to control the helicopter in an emergency situation.

NTSB Recommendation No. A-99-57 (Wearing life preservers).

The FAA proposes to exceed the NTSB recommendation by requiring that all occupants of airplanes and helicopters operated as commercial air tours over water wear life preservers during the flight, for both single and multi-engine aircraft. The FAA believes that this will address the problems associated with donning life preservers in the limited time available to passengers from the onset of an emergency to a water landing. By wearing life preservers from the beginning of the flight, occupants would be prepared for water entry, in the event of an emergency. This is especially significant for occupants who are children, elderly, handicapped, non-English speaking, or those not familiar with aircraft operations.

NTSB Recommendation No. A99-58 (Passenger briefings). The FAA also proposes to require pre-flight passenger briefings on water ditching procedures, the use of required flotation equipment and procedures for exiting the aircraft in an emergency.

III. The Proposal

The FAA proposes to establish national commercial air tour safety regulations for all operators conducting commercial air tours. The FAA is proposing a new subpart A in part 136 that would establish the general safety regulations particular to all commercial air tours, including those over the Grand Canyon, and those "commercial air tour operations" conducted over national parks. The FAA anticipates that part 136 would be dedicated to air tour regulation. Included in this part would be the regulations pertaining to Grand Canyon National Park and Rocky Mountain National Park, and the regulations implementing the National Parks Air Tour Management Act.

In proposing any such regulation, the FAA is required by Federal law to consider whether an exception is necessary for the state of Alaska. Specifically, § 1205 of the Federal Aviation Reauthorization Act of 1996, Pub. L. 104-264, states:

> In modifying regulations contained in title 14, Code of Federal Regulations, in a manner affecting intrastate aviation in Alaska, the Administrator of the Federal Aviation Administration shall consider the extent to which Alaska is not served by transportation modes other than aviation, and shall establish such regulatory distinctions as the Administrator considers appropriate.

The FAA has considered this requirement and proposes to

impose these regulations on all commercial air tours including those occurring in the State of Alaska. Alaska has a number of air tour operators that conduct commercial air tours over national parks, water, and rugged, remote terrain. Because of its remoteness, the terrain in Alaska is more difficult to reach and thus, persons may need to rely on their survival skills for a longer period of time prior to rescue. Passengers on Alaskan air tours would benefit from increased safety like passengers elsewhere. This rule would not negatively impact the ability of the average Alaskan to travel by air to remote villages since the proposed rule would only apply to passengers on commercial air tours.

FAA agrees with the NTSB that the same safety standard should be applied to all commercial air tours wherever they are conducted. The FAA believes that applying these proposed requirements to Alaskan commercial air tours would improve safety in Alaska and would establish the same standard for Alaska that is being applied to the rest of the country.

A. Applicability and Definitions Sections

The proposed amendments would create a new subpart A in part 136. This subpart would apply to any person operating or intending to operate a commercial air tour and, when applicable, to all occupants of an aircraft engaged in a commercial air tour. This would include persons conducting commercial air tours for

charitable or community events, in accordance with the proposed certification exception at part 119.1(e)(11).

The terms "sightseeing" and "sightseeing flights" have been used for years in the FAA's regulations, but are now being replaced with the term "commercial air tour." As previously noted above, the Air Tour Act specifically defines the term "commercial air tour operation" to apply only to sightseeing flights over units of the national park system, or adjoining tribal lands that meet specified conditions. The regulations pertaining to GCNP (14 CFR part 93, subpart U), contain a broad definition for "commercial air tour". The FAA proposes to adopt the definition of "commercial air tour" that is currently contained in Title 14 CFR section 93.303 (the definition section for subpart U) and incorporate it into subpart A of part 136. This would create a uniform definition for all commercial air tours, except those regulated by the Air Tour Act. Under the proposed rule, new definitions would be added for the terms "air tour operator," "raw terrain," "suitable landing area," and "shoreline". The term "commercial air tour operator" is already a defined term under the Air Tour Act and is particular to flights over national parks. Thus, we must use another term to refer to these operators and to differentiate them from those operators regulated by the Air Tour Act. Consequently, the FAA is proposing to use the term "air tour operator."

B. The exceptions

Section 119.1(e) contains the exceptions to the part 119 certification requirements. Currently, part 119 does not apply to the following operations, unless the aircraft has a passenger-seat configuration of 20 seats or more or a payload capacity of 6,000 pounds or more and common carriage is not involved: 1) student instruction; 2) nonstop sightseeing flights with aircraft having a passenger seat configuration of 30 or fewer and a payload capacity of 7,500 pounds or less that begin and end at the same airport and are conducted within a 25 statute mile radius of that airport; 3) ferry or training flights; 4) aerial work operations, including i) crop dusting, seeding, spraying and bird chasing; ii) banner towing; iii) aerial photography or survey; iv) firefighting; v) helicopter operations in construction or repair work (but it does apply to transportation to and from the site of operations); and vi) powerline or pipeline patrol; 5) sightseeing flights conducted in hot air balloons; 6) nonstop flights conducted within a 25 statute mile radius of the airport of takeoff for the purpose of parachute jumps; 7) certain helicopter operations; 8) operations conducted under part 133 of this chapter or 375 of this title; 9) emergency mail service under 49 U.S.C. 41906; or 10) flights carrying candidates in elections.

Under this proposed rule, § 119.1(e) would be amended to clarify certain exceptions and modify the exception for nonstop sightseeing flights conducted within 25 miles of the departing airport. Specifically, the student instruction exception at § 119.1(e)(1) would be amended to include flights for the purpose of introducing persons to flight. Introductory flights are intended to be part of flight instruction or to encourage new pilot certification.

Section 119.1(e)(2) would be removed 6 months from the date the final rule is published in the Federal Register.

Section 119.1(e)(3) would be amended to add to the current exception aircraft demonstration flights including aerobatic demonstration or training flights, air combat or formation training flights, and aircraft sales demonstration flights.

New § 119.1(e)(11), would apply only to nonstop passenger carrying flights in aircraft having a passenger seating configuration of 30 seats or fewer, excluding each crewmember seat, having a maximum payload capacity of 7500 pounds, that begin and end at the same airport. The flights would be required to be conducted within a 25 statute mile radius and part of a charitable or community event. Charitable and community events are infrequent functions that enable the general aviation community to contribute in a positive way to charitable and local causes. These flights are offered at local charitable or

community events to raise funds for the sponsoring cause and to foster positive and productive working relations among the community, pilots, airport authorities, airport neighbors, and other members of the general public. When conducted by nonprofit organizations dedicated to promoting aviation safety, these events also assist in educating the general public about general aviation. Such events serve the public policy goals of allowing grass roots support of charitable and community fundraising efforts or of promoting aviation safety initiatives. In creating the proposed exceptions to the air carrier certification requirements for certain charitable and community events, the FAA has attempted to strike a careful balance between the recognition of the public benefits of such fundraising activities and the need to set aviation safety standards.

In order to qualify for an exception to the air carrier certificate requirements of part 119, a charitable or community event must qualify as one of three types of events. The first exception is for an event conducted to raise funds for the benefit of a charity identified by the U.S. Department of Treasury. The second exception is for an event conducted to raise funds for the benefit of a nonprofit entity, organized under state or Federal law, with one of the entities' purposes being the promotion of aviation safety. The third exception is for an event conducted to raise funds for the benefit of a local

community cause not covered in the first two paragraphs of the exception.

For the purposes of the charitable event exception, a charitable organization is identified as such by the U.S. Treasury. The FAA has tied this subparagraph to the U.S. Treasury because, through the Treasury's Internal Revenue Code, the federal government has already clarified which entities it believes serve a charitable public purpose and benefit the public good. The FAA's proposed exception recognizes the public policy interest in encouraging private fundraising activities for entities operating for a charitable purpose. However, to prevent such charitable fundraising events from operating as commercial aviation businesses themselves, the FAA proposes to limit this exception to four or fewer events per calendar year, with each event lasting no longer than 3 days in duration. If a large charitable organization has multiple offices or chapters, then each office or chapter is subject to the four or fewer limitation, rather than limiting the large organization (as a whole) to the four or fewer limitation. For example, if the American Red Cross in Los Angeles, California sponsors four events under the charitable exception in a calendar year, this would not preclude the Boise, Idaho chapter of the American Red Cross from sponsoring four such events of its own.

For the exception proposed for an event conducted to raise

funds for the benefit of a nonprofit entity, organized under state or Federal law, it was important to require that one of the entities' purposes must be the promotion of aviation safety. The FAA proposes that a nonprofit entity would qualify for this exception if they promote aviation safety through the types of activities they sponsor or the publications they issue. The FAA believes that encouraging other organizations that promote aviation safety is consistent with its statutory mandate to promote and encourage aviation safety. As in the charitable event exception, the exception for nonprofit entities that promote aviation safety is limited to four or fewer events per calendar year, with each event lasting no longer than 3 days in duration. This limitation is intended to prevent nonprofit entities from operating as commercial aviation businesses themselves. As in the charitable event example, if one office or chapter of a large nonprofit entity that promotes aviation sponsors four fundraising events, this would not preclude another independent chapter of the same entity from conducting four of its own fundraising events under this exception.

The third exception proposed allows one event lasting 3 days or fewer in duration per calendar year, conducted to raise funds for the benefit of a local community cause not covered in the charitable or nonprofit entities exceptions set forth above. For several years, the FAA has issued exemptions to individual and/or

sponsors seeking to conduct fundraising activities to benefit local causes, which have not been included in the first two exceptions set forth above. Specifically, members of a community may bond together to: raise funds to assist a member of the community who has suffered a tragic loss or needs medical care; raise funds for a common purpose; or get together for a cause that has not been incorporated in a formal charitable or nonprofit legal entity. It is this type of grass roots community support that the FAA proposes to continue to recognize as being in the public interest and being worthy of an exception to the air carrier certificate requirements. However, because such causes have not received a recognized legal status and do not otherwise fit within the other two exceptions, they will only be permitted to operate one event per year to prevent abuse of the exception and to ensure that such causes will not operate as a commercial aviation business.

The FAA is proposing additional restrictions on the exceptions for charitable and fundraising events. To ensure that the events are not merely profitable ventures for the pilots involved, the FAA is proposing to allow the pilot to retain or be reimbursed only for fuel and oil expenses, flight time and/or a charitable tax deduction.

To prevent air carriers from benefiting directly from such events, the FAA proposes language to clarify that the beneficiary

of the funds raised must not be an entity in the business of transportation by air. This would not limit conducting an event to raise funds for a pilot, flight attendant, mechanic, or other person who works in aviation but has an independent need for fundraising as a member of the community. For example, a community event could be conducted to raise funds for a commercial pilot, who needed a bone marrow transplant.

To prevent pilots, sponsors and organizations from traveling around a state, region, or nation to conduct multiple commercial air tours throughout the year, the FAA proposes to limit the number of events conducted by any participant in the fundraiser. For the charitable organization and the nonprofit entity exceptions, each pilot, organization or sponsor must not exceed four events in any calendar year. For the third exception (community events), each pilot, organization or sponsor is limited to one such event in any calendar year.

To ensure that applicable operational safety provisions are met by the pilots conducting charitable and community event flights, the FAA proposes to require that all flights conducted under the exceptions be in compliance with part 91 and subpart A of part 136. These requirements contain safety provisions such as minimum altitudes, horizontal stand off distances, overwater limitations, etc.

Finally, to keep the FAA informed of the intent to conduct

charitable and community event flights and to provide the FAA with the information it needs to perform appropriate oversight of aviation, the FAA has proposed a notification provision. Specifically, the FAA proposes that the sponsor of the charitable or community flight(s) provide the local Flight Standards District Offices with at least 7-days advance notice that one or more flights will be conducted under the charitable or community event exception. The details of what must be provided in the notification to the Flight Standards District Office are set forth in the proposed section 91.147.

The proposed § 91.147 sets forth the following specific requirements and prohibitions for the aircraft operator of a flight conducted under the charitable or community events exception. Most of these requirements are similar to § 61.113(d) and have been included in the recent exemptions for charitable and community events.

The specifics of § 91.147 are set forth as follows:

(1) The sponsor of the flights would be responsible for notifying the Flight Standards District Office with responsibility over the area at least 7 days prior to the event. The FAA proposes that the sponsor of the flights provide a signed letter listing the name of the sponsor, purpose of the event, date, time and location of the event as well as all prior events participated in by the sponsor, pilots or operators.

(2) The sponsor would be responsible for providing a photocopy of each pilot in command's pilot certificate, medical certificate, and logbook entries showing that the pilot is current in accordance with §§ 61.56 and 61.57 and, for private pilots, that the pilot has logged at least 500 hours of flight time. These provisions would help the FAA enforce these requirements and ensure that the charitable and community events exception is not used by someone in the business of air transportation.

(3) The event must occur at a public airport, unless otherwise approved by the FAA.

(4) No aerobatic or formation flights would be permitted.

(5) All aircraft would have to hold standard airworthiness certificates and each aircraft would have to be airworthy and in compliance with the requirements of part 91, subpart E.

(6) Flights would be required to be made during day VFR conditions, unless otherwise approved by the Administrator.

(7) All flights would be required to be conducted in accordance with part 136, subpart A.

As proposed, the charitable and community events exception does not apply to flights operated in the Grand Canyon National Park Special Flight Rules Area since those flights already are required to be certificated under part 119. Additionally, the proposed exception does not apply to commercial air tours

conducted over Rocky Mountain National Park, since the Air Tour Act specifically prohibited all commercial air tours, regardless of altitude, over that park. The proposed exception applies to other flights over national parks, but they must be conducted in accordance with the provisions of part 136, subpart B and the Air Tour Act. Under the Air Tour Act, operators may conduct five flights per month over a national park or abutting tribal land under part 91, if the operators conducting those flights have a letter of agreement from the FAA Flight Standards District Office for those flights.

As part of creating this exception, the FAA also is proposing to modify § 61.113(d) to establish the number of hours a private pilot must log prior to flying in a charitable or community event. The FAA is proposing that pilots at these events have logged at least 500 hours, instead of the current 200-hour requirement established by the existing § 61.113(d)(1)(ii), herein renumbered as § 61.113(d)(1), for private pilots who want to conduct charitable airlifts. A higher safety standard of 500 hours of flight time for private pilots is proposed for charitable and community events because these events typically involve a larger number of passengers, are held over a period of one to three days, and are generally a pleasure activity for the passenger. The lower standard of 200 hours of flight time for a private pilot conducting a charitable airlift

is justified because of the emergency or medical service nature of the charitable airlift.

C. Certification under part 119

Under the proposed rule, all air tour operators not excepted under § 119.1(e)(11) would have to be certificated under part 119 to operate in accordance with either part 121 or part 135. This includes those operators who have been operating under part 91, pursuant to the exception in § 119.1(e)(2). The FAA does not anticipate that exemptions from these requirements would be granted. All part 91 operators affected by the changes of this proposal would be encouraged to begin the certification process as early as possible. Air tour operators who conduct commercial air tour operations over units of the national park under part 91 already are required by the Air Tour Act to be certificated under part 119.

The FAA expects that the impact of the certification requirement on Hawaiian operators will be minimal since the majority of air tour operators in Hawaii already are certificated under part 119 and conduct their commercial air tours under part 135 and SFAR 71. Air tour operators at the Grand Canyon, who are regulated under part 93, subpart U, also are required to be certificated under part 119 to operate in accordance with either part 121 or part 135. Operators in the Grand Canyon would be

subject to proposed subpart A of part 136. The FAA invites comments on specific rules in proposed subpart A that commenters believe would conflict with current SFAR 50-2 or part 93 rules.

Commercial air tours conducted in accordance with part 121 or part 135 are subject to a higher level of safety than those conducted in accordance with part 91 because of the number of passengers they carry, the type of aircraft used in such operations and the frequency of the operations. For instance, most operators conducting operations in accordance with part 135 and all part 121 operators are required to --

(1) Prepare operating, maintenance, and training manuals, and have them accepted or approved by the Administrator;

(2) Acquire and install any equipment required for their operations under part 121 or part 135, as appropriate;

(3) Train and test their crewmembers to show that those crewmembers are qualified to serve under part 121 or part 135, as appropriate;

(4) Maintain flight locating or dispatch procedures; and

(5) Develop recordkeeping systems to show that they can comply with part 121 or part 135 crewmember and maintenance requirements on an ongoing basis.

All currently certificated air tour operators would have specific authority in their operations specifications to conduct commercial air tours under the proposed rules. The operations

specifications would list any special authority or deviations granted to them. Part 91 operators are not normally required to have operations specifications. Under this proposed rule, however, those part 91 operators conducting sightseeing flights who file for certification under part 119 within the designated time period would receive transition operations specifications to allow them to continue operating. These transition operations specifications would be effective until the certification process was completed. During the transition time period, any deviations or authorizations would be noted in their transition operations specifications.

D. Specific operating requirements

The FAA proposes to adopt a new subpart, subpart A, in part 136, for commercial air tours that will address the additional risks inherent in these operations. The safety provisions contained in proposed subpart A include: minimum altitudes; standoff distance, visibility requirements; cloud clearance and requirements for over water operations.

1. Minimum altitudes

Proposed § 136.3 would establish minimum altitudes for commercial air tours that would apply in all instances, except during takeoff and landing or unless otherwise authorized by the

NTSB reiterated its concern that the SFAR 71 minimum flight altitudes concentrate air traffic "...into a compressed flight environment," in its letter to the FAA Administrator dated January 26, 1996.

The FAA has considered these comments in light of its years of experience with both SFAR 71 in Hawaii and regulation of commercial air tours at Grand Canyon National Park. While the FAA agrees with the NTSB that some areas of raw terrain and some scenic areas may experience a compressed flight environment, the FAA believes that these proposed rules would provide the flexibility necessary to separate aircraft to accommodate for traffic density and differences in speed and maneuverability between airplanes and helicopters. Under proposed § 136.3(a), unless otherwise authorized by the Administrator, airplanes and helicopters would be allowed to fly no closer than 1,500 feet AGL above any person, structure, vehicle, or vessel over any area on the surface, including water, or no lower than 1,000 feet AGL over raw terrain. Under proposed § 136.3(b), the Administrator could approve a lower minimum altitude not below 500 feet AGL, at specific areas of raw terrain for single engine helicopters and multi-engine helicopters that are not capable of flying under power to a safe landing area with one engine out. Multi-engine helicopters capable of flying under power to a safe landing area with one engine out, could be approved by the Administrator for

flight at specific areas of raw terrain for flight at altitudes as low as 300 feet AGL.

Section 136.3(c) would require operators of multi-engine helicopters that are not capable of flying with only one engine to a safe landing area and all single engine helicopters, to have a suitable landing area available at all times when operating at approved altitudes of less than 1,000 feet. These helicopters would also be required to operate at a combination of airspeed and altitude that is outside the avoid area of that helicopter's height/velocity diagram. The operators would be required to designate and document both the specific areas for such low level operations and suitable landing areas, in a form and manner acceptable to the Administrator. Photographs could be used for this purpose. In addition, the Administrator would require the pilot operating the helicopter to demonstrate in flight familiarity with the designated areas and suitable landing areas.

Multi-engine helicopters that are capable of flying under power to a safe landing area with one engine out, when operating at approved altitudes below 1,000 feet AGL would be required to be able to reach a safe landing area after an engine power loss. A safe landing area, in comparison to a suitable landing area required for single engine helicopters, is not required to be within the auto-rotation range of the helicopter, does not require prior FAA approval, and includes any area where the

helicopter could safely land.

2. Standoff distance

Section 136.5 would contain standoff distance requirements for commercial air tours. Under proposed paragraph (a), no person may conduct a commercial air tour closer than a horizontal radius of 1,500 feet to any person, structure, vehicle, or vessel; or 1,000 feet to raw terrain. Paragraph (b) of this section would, however, provide for deviations from the limits for raw terrain. Under this provision, the Administrator could authorize an air tour operator to conduct commercial air tours at site-specific areas of raw terrain, at a horizontal radius of no less than 500 feet to raw terrain for airplanes and 300 feet AGL for helicopters. The determination of whether to grant a deviation under these provisions would be made in accordance with § 136.21.

3. Visibility

Proposed § 136.7 would contain visibility requirements for commercial air tours operating in Class G airspace (i.e., uncontrolled airspace) at an altitude of 1,200 feet or less above the surface, regardless of Mean Sea Level (MSL) altitude. Under the proposed rule, pilots would be prohibited from conducting a commercial air tour in an airplane or a helicopter when the visibility is less than 2 statute miles during the day or 3 statute miles at night. Section 136.7(b)

would permit the Administrator to authorize a helicopter to operate during the day when the visibility is at least 1 statute mile. Section 136.7(c) would permit the Administrator to authorize a helicopter to operate at night when the visibility is at least 2 statute miles and the helicopter is being operated at a speed that provides adequate opportunity to see and avoid air traffic or obstructions. The determination of whether to grant a deviation under §§ 136.7(b) or (c) would be made in accordance with § 136.21. This proposal would help pilots avoid changing weather conditions and maintain visual reference to the ground.

Currently, under § 91.155, pilots operating in Class G airspace at 1,200 feet or less above the surface, must have visibility of at least 1 statute mile during the day and 3 statute miles at night. The proposed requirement would be stricter in daytime than that provided for under § 91.155 because the operations that would be conducted under the new subparts are common carriage passenger-carrying operations often conducted over rugged terrain or water. A higher visibility requirement for nighttime operations is not deemed to be necessary at this time. The FAA believes that 3 miles would provide an adequate level of safety.

4. Cloud clearance

Proposed § 136.9 would provide that while operating in Class G airspace at an altitude of 1,200 feet AGL or less above the surface, regardless of Mean Sea Level (MSL) altitude, no person may conduct a commercial air tour in an aircraft closer than 500 feet below, 1,000 feet above, and 2,000 feet horizontally from any cloud. Section 136.9 would permit deviations from these requirements for certain helicopter operations. The determination of whether to grant a deviation under § 136.9 would be made in accordance with § 136.21.

Under § 136.9, a person could operate a helicopter clear of clouds in accordance with the deviation procedures of § 136.21 if (1) the helicopter is in compliance with the equipment requirements of § 135.159 (carrying passengers under VFR at night or under VFR over-the-top); and (2) the pilot conducting the flight has demonstrated to the Administrator the ability to execute emergency procedures for inadvertent flight into instrument meteorological conditions (IMC). The FAA believes that these additional requirements will provide an equivalent level of safety that would allow the helicopter operator to operate clear of clouds.

5. Over water operations

a. Engine power loss and ditching, the problem. Commercial air tours are often conducted over water to facilitate better

views of specific scenic areas. This exposes the aircraft to the potential for an emergency water ditching.

Regardless of the type of aircraft, occupants generally experience stress and panic when an aircraft ditches. Stress and panic, added to the extreme physical exertion involved in exiting an aircraft that is filling with water or actually underwater, make escape difficult. Occupants tend to focus on the immediate need to get out of the aircraft and do not always consider equipment they may need to survive once they exit the aircraft. This problem exists even when passengers have been properly briefed pre-flight. However, occupants who successfully exit the aircraft wearing an uninflated life preserver may have an increased chance of survival while swimming to shore or waiting for rescue personnel, provided they understand how to use the life preserver.

Helicopters pose additional problems. Unlike airplanes, helicopters normally roll quickly to one side in water because they are top heavy. Once inverted, the helicopter will fill quickly with water and sink. Additionally, helicopters do not have the gliding capabilities of airplanes, so a single engine helicopter is less likely to be able to reach shoreline prior to landing in the event of an engine failure. Consequently, ditching in helicopters is potentially more dangerous for passengers than ditching in airplanes.

b. Discussion of existing provisions. Section 121.340 applies to airplane operations conducted over water under part 121. It requires life preservers or an approved flotation means (e.g., flotation cushions) for any over water operations. Section 121.340(b) provides for a deviation from the requirement for life preservers or an approved flotation means provided the operator can show that the water over which the airplane is to be operated is not of such size and depth that this equipment is required for the survival of its occupants in the event the flight terminates in that water.

Under §§ 121.339(a)(1) and 135.167, aircraft conducting extended over water operations (i.e., more than 50 miles from shore) must be equipped with life preservers. In addition, part 135 contains other requirements for land aircraft engaged in any over water operation. To conduct an over water operation, § 135.183 (performance requirements for land aircraft operated over water) requires that passenger carrying aircraft satisfy one of the following conditions: 1) be operated at an altitude that allows it to reach land in the event of an engine failure; 2) be necessary for take off or landing; 3) be a multi-engine aircraft with certain single-engine climb characteristics; or 4) be a helicopter equipped with flotation devices (hereinafter called helicopter floats).

c. Proposed requirements. Commercial air tours generally

operate at lower altitudes for longer periods of time than other types of flights. Considering the heightened risks associated with commercial air tours conducting over water operations, the FAA has concluded that more stringent regulations are necessary for aircraft used in these operations.

Proposed § 136.11 would require occupants of all commercial air tour aircraft operating over water to wear approved life preservers while in flight. The life preserver must be worn un-inflated to permit the passenger to exit the aircraft quickly in an emergency. In addition, single-engine and certain multi-engine helicopters operated over water would be required to have helicopter floats installed on the aircraft.

i. Life preservers. There are several types of inflatable and non-inflatable life preservers approved for use on aircraft. Air tour operators using life preservers that are not inflatable would be required to show to the satisfaction of the Administrator that occupants wearing such life preservers can exit the aircraft easily. The most common type of life preserver is inflatable and is worn over the shoulders like a vest. If the life preserver is not worn in-flight un-inflated, the occupant must take it out of a container, put it on, and adjust it. Another type of life preserver is contained in a pouch or pack secured around the waist of each occupant. To use the life preserver, the occupant would pull a tab and then lift the life

preserver over his or her head in a single motion. The life preserver is then ready for its intended purpose once inflated. Inflation normally takes about 2 seconds. Another type is a yoke type worn around the neck like a collar.

While the proper donning and securing of a life preserver may not take a lot of time under normal non-stressful situations, it can be a time-consuming process in a time of high stress. Thus, to eliminate the delay this proposal would require air tour operators to ensure that all occupants don life preservers during pre-flight preparation and wear them throughout the duration of the flight.

Deviations would be permitted if the air tour operator could demonstrate that the aircraft is operated over water that is of such size and depth that it is not necessary to wear a life preserver in order to survive in the water. The determination to grant a deviation would be made in accordance with § 136.21.

ii. Helicopter Floats. In addition to the life preserver requirement, single engine helicopters and certain multi-engine helicopters operated in commercial air tours over water would have to be equipped with fixed or inflatable floats under proposed § 136.15, unless the flight over water is necessary only for take off or landing. This provision is more stringent than the existing § 135.183 because the FAA has determined that equipping certain helicopters with floats for over water

operations increases the likelihood of occupant survival in the event of an emergency water ditching. Floats would allow the helicopter to remain on the surface of the water for a longer period of time, thus allowing the occupants time to exit while the helicopter is still on the surface of the water. For those helicopters equipped with inflatable floats, § 136.15(b) would require that the inflation activation switch be located on one of the primary flight controls (NTSB recommendation No. A-95-63) and armed under certain conditions.

In § 136.15(c), the FAA proposes an 18-month compliance date for retrofitting helicopters with floats and relocating the activation switch where necessary. The FAA requests comments on the proposed compliance date.

6. Passenger briefing

Proposed § 136.13 would require the pilot in command to ensure that passengers are briefed on water ditching procedures, use of life preservers, and emergency egress from the aircraft before a commercial air tour that includes a flight segment conducted over water. This provision is intended to ensure that occupants understand how to use the life preservers they are wearing and what to do in the event of a water ditching.

7. Helicopter performance plan

Proposed § 136.17 would require air tour operators to complete a helicopter performance plan before each departure. The pilot in command would be required to review and comply with the performance plan. The proposed rule would require the plan to be based on information in the rotorcraft flight manual considering actual conditions that day.

The proposed requirement is intended to enhance flight safety by providing operators with information necessary for weight and balance determinations. The FAA believes that this requirement is necessary in light of certain accidents, including the May 20, 1989 accident discussed above that involved a helicopter on a commercial air tour to view Waialae Falls in Hawaii.

8. Helicopter operating limitations

The height/velocity diagram in the Rotorcraft Flight Manual for each helicopter provides the pilot with important safety information that helps the pilot fly at a combination of height above the ground and speed that will allow the pilot in command to land in the event of a power failure. In certain types of operations that do not involve the carriage of passengers for compensation or hire, it is sometimes necessary for a pilot to operate briefly within the avoid area of the height/velocity

diagram. The FAA believes that air tour operations require a higher safety standard because they carry members of the public for compensation or hire. SFAR 71 requires pilots to operate the helicopter at a combination of height and forward speed (including hover) that would permit a safe landing in event of engine power loss, in accordance with the height/velocity envelope for that helicopter under current weight and aircraft altitude, except for approach to and transition from a hover. The FAA proposes removing the exception for approach to and transition from a hover because transition from and to a hover is a critical phase in helicopter operations, particularly at the relatively low altitudes above ground level where the height/velocity diagram applies. Operating in accordance with the height/velocity diagram would provide the pilot sufficient time to complete a successful autorotation in the event of a power failure.

Proposed § 136.19 would require the pilot in command to operate the helicopter at a combination of height and forward speed (including hover) necessary to permit a safe landing under current weight and aircraft altitude, in accordance with the height-velocity chart in the rotorcraft flight manual. Using the chart, the pilot in command would determine the altitudes and airspeeds needed to make a safe autorotation in the event of an engine power loss, considering the current weight of the aircraft

and atmospheric conditions. This proposal is intended to prohibit pilots from operating within the avoid area of the height/velocity diagram for that helicopter. It is necessary because a safe landing may not be possible if the helicopter is within the avoid area of the height/velocity envelope when an engine power loss occurs. Therefore, the requirement would increase safety in the event of an engine power loss.

9. Deviations

Section 136.21 would set forth the deviation procedures for part 136, subpart A. In determining whether to grant deviations from the minimum altitude, standoff distance, visibility, cloud clearance, life preservers and helicopter float requirements, the Administrator would make sure that the deviation would maintain an equivalent level of safety. In so doing, the Administrator would consider eleven specific factors and any other factors that may provide an equivalent level of safety. Deviations from the life preserver requirement or the float requirement would require the Administrator to consider the size and nature of the body of water, together with any other factors.

The deviation application would be submitted to the certificate holding Flight Standards District Office (FSDO) or the FSDO responsible for issuing transition operations specifications. Deviations would be detailed in the operator's

operations specifications, or in the transition operations specifications, if the operator is a non-certificated air tour operator.

E. Compliance schedule

The proposed rule sets forth the following compliance schedule:

1) The rule would become effective 120 days after the date of publication of the final rule in the Federal Register.

2) As of the effective date, all operators conducting commercial air tours, including those operators conducting operations under part 91, would be required to begin complying with the safety requirements of subpart A, part 136.

3) Those operators conducting sightseeing flights under the 25-mile exception at part 119.1(e)(2) would have 180 days to file for certification under part 119 and bring their operations into compliance with part 121 or part 135, as appropriate. However, these operators would be subject to the safety requirements of part 136, subpart A, as of 120 days from the publication date of the final rule.

4) Operators conducting commercial air tours over water in single engine and some twin engine helicopters that are not equipped with floats would have to retrofit their helicopters by the end of 18 months from publication of the final rule.

5) Flights would be permitted under § 119.1(e)(2) for a

period of 180 days from the publication of the final rule in the Federal Register. At the end of the 180 days, however, this exception would no longer be available. Only qualifying charity event flights or community event flights would be able to operate as per § 119.1(e)(11) without complying with part 119 certification requirements and either the part 121 or 135 requirements. These charity or community event flights would have to begin complying with part 136, subpart A by the effective date of the rule.

The FAA requests additional information from the public on how many operators would be affected, what the impact would be on those individual operators, and the compliance schedule.

Regulatory Evaluation Summary

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency to propose or adopt a regulation only if the agency makes a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. section 2531-2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S.

standards, this Trade Act requires agencies to consider international standards and where appropriate, as 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).

In conducting these analyses, FAA has determined this rule:
1) has benefits which do justify its costs, is not a "significant regulatory action" as defined in the Executive Order but is "significant" as defined in DOT's Regulatory Policies and Procedures;
2) will have a significant impact on a substantial number of small entities;
3) imposes no barriers to international trade; and
4) does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector.

These analyses, available in the docket, are summarized below.

Description of Affected Operators and Aircraft

Based on surveys of FSDOs and an analysis of the FAA's *General Aviation Survey* data, this analysis estimates that one or more provisions of the proposed rule could affect approximately 2,100 operators and 4,400 aircraft. Approximately 1,670 operators with 3,100 aircraft currently provide commercial air tour flights under part 91, and about 450 operators with 1,300 aircraft provide commercial air tours under part 135. However, these estimates include operators subject to the provisions of the National Parks Air Tour Management Act of 2000 (the Act), and operators that may be eligible for an exception under 14 CFR 119.1(e)(2), and thus are overstated.

The Act required part 91 air tour operators conducting commercial air tour operations over units of the national park system or abutting tribal lands to apply for certification under part 119 with certain exceptions. Therefore, some part 91 air tours already are required to obtain a part 119 certificate. In addition, an unknown number of air tour operators will qualify for an exception from the Act's requirement to obtain a part 119 certificate. An exception in the Act allows operators to continue operating over parks under Part 91 if such activity is permitted under Part 119, and the operator secures a letter from the Administrator and the national park superintendent for that particular park. The total number of all operations under this exception is limited to not more than 5 flights in any 30-day

period. When these operators are identified through the implementation of the National Parks Air Tour Management rule the cost and benefit will be adjusted.

Under 14 CFR 119.1(e)(11), part 91 operators engaged in certain air tours or aircraft rides provided in conjunction with charitable or community events, for a local community cause not covered by the preceding exceptions would not have to obtain a part 119 certificate. Data are not available to estimate the number of operators that would be affected by this exception and the cost and benefit will be adjusted when these operators are identified through the exception process.

Analysis of Costs

The proposed rule is estimated to cost approximately $238 million ($148 million, discounted) over ten years. Costs associated with individual provisions are described below.

The proposed amendments, by removing regulatory differences between part 91 sightseeing and part 135 commercial air tour operations, would impose certification and increased operating costs on existing part 91 operators. The FAA expects that part 91 sightseeing operators would take one of three options following issuance of the rule: exit the sightseeing industry; become certificated under part 135 as a single pilot operation, thereby reducing certification costs; or become certificated under part 135 and operate with more than one pilot. Existing

part 91 sightseeing operators, therefore, would incur the following costs if required to operate under the current requirements of part 135: (1) revenue losses to firms that exit the air tour industry; (2) revenue losses to firms that scale back to a single-pilot operation under part 135; (3) administrative costs incurred during the part 135 certification process; and (4) additional operating expenses associated with part 135 operations, including increased personnel and maintenance costs and additional reporting and recordkeeping requirements.

The FAA estimates there are a total of 1,670 operators who conduct operations under part 91, pursuant to the exception at 119.1(e)(2). These operators use a total of 3,100 aircraft. A portion of these operators conduct flights over national parks and they are already required to be certificated under part 91. Approximately 41 percent of these operators conduct air tours less than 10 hours a year. These would likely exit the industry. Approximately 57 percent are one pilot operations, and would likely convert their operations to part 135 operations as one pilot operators. Approximately 2 percent would convert to part 135 operations with more than one pilot.

Based on these cost categories, the FAA estimates that affected part 91 entities would incur approximately $137 million ($85 million, discounted) in certification related costs over a

ten-year period. About three percent of these costs, $4.7 million, reflect net revenue losses to entities that choose to exit the industry as a result of the rule.

In addition to the costs of converting to and operating under current part 135 requirements, the proposed rule would impose costs related to a new subpart A in part 136. The FAA estimates that the following part 136 provisions added by this proposal would impose costs on commercial air tour operators already operating under part 135, as well as those obtaining new part 135 certificates: (1) the combined effect of altitude minima, visibility, and ceiling requirements; (2) helicopter float systems; (3) personal life preservers for aircraft occupants, (4) helicopter performance plans, and (5) passenger briefings.

The proposed rule would establish minimum flight altitudes, visibility, and cloud clearance requirements. The cost of these provisions--measured as the expected net revenue loss associated with commercial air tour flights that would be canceled as a result of this proposed rule--is approximately $7.45 million per year. Over ten years, the costs would be approximately $74.5 million ($46 million, discounted). Of the total, approximately $61.5 million ($37.7 million, discounted) would be borne by those currently operating under part 135 and the balance would be borne by part 91 operators that convert to part 135.

While the FAA believes that the requirements described above would reduce the probability of emergency ditching, the FAA also believes that the additional water safety equipment proposed in this rule would contribute to saving lives and is an important element of the overall strategy to improve commercial air tour safety. The proposed rule would require any helicopter flown over water beyond any shoreline to be equipped with floats. Incremental costs associated with this requirement include: (1) flotation system design approval or certification costs; (2) equipment costs; (3) installation labor costs; (4) aircraft downtime required for installation; (5) maintenance and inspection costs; and (6) operating costs due to the weight of the system.

Assuming that about 25 percent of commercial air tour helicopters, or 112 helicopters, would be affected by these provisions, the total cost of helicopter floats is estimated to be $15.4 million over ten years ($10.3 million, discounted).

When a helicopter without floats lands in water, it typically sinks quickly. Life preservers that were worn un-inflated prior to ditching would increase the chances of surviving either an airplane or helicopter emergency ditching by assisting passengers to swim to shore. The floats provide additional time to exit the aircraft. For this reason, the proposed rule would also require that all passengers wear an

approved un-inflated life preserver throughout commercial air tours conducted over water beyond any shoreline with an aircraft. This would apply whether or not the airplane is within gliding distance of the shoreline, and, for helicopters, whether the helicopter is capable of autorotating to the shoreline. The costs associated with this provision include: (1) procurement, (2) maintenance (including the incremental cost of vest replacement), and (3) additional operating costs associated with the weight of the vests. In the absence of reliable data on the number of air tours conducted over water beyond any shoreline, the FAA assumes that of the approximately 2,850 airplanes and 450 helicopters currently engaged in air tour or sightseeing service 25 percent of these aircraft would be affected by these provisions. Thus some 713 airplanes and 112 helicopters would incur costs. The FAA requests comment on this assumption and requests that comments be accompanied with clear and supporting economic documentation. The FAA estimates that incremental costs associated with this provision would total approximately $2.2 million ($1.4 million, discounted) over ten years.

The proposed rule would require that an air tour operator complete a helicopter performance plan before each helicopter flight. The pilot in command would be required to comply with the performance plan. The plan must be based on information in the helicopter flight manual, considering the maximum density

altitude to which the operation is planned, and must address such elements as maximum gross weight and center of gravity (CG), maximum gross weight and CG for hovering in or out of ground effect, and maximum combination of weight, altitude and temperature. The FAA estimates that the cost of this provision would total approximately $7.6 million ($4.7 million, discounted) over ten years.

The proposed rule would require that passengers be briefed before takeoff for an air tour flight with a flight segment that is conducted over water beyond any shoreline. The briefing would include information on water ditching procedures, use of personal flotation gear, and emergency egress procedures. The FAA estimates that incremental costs associated with this provision would total approximately $1.5 million ($900,000, discounted) over ten years.

Consumer Losses

Air tour passengers may incur direct costs or opportunity costs as a result of this proposed rule. These costs could be attributable to either a tour operator exiting the tour business as a result of this proposed rule or an increase in flight cancellations due to the proposed minimum flight altitudes, visibility, and cloud clearance requirements. The FAA is unable to provide a quantitative estimate of these losses. However, based on the assumptions made in this evaluation, the FAA has

estimated the number of air tour flight hours lost. Assuming one-hour tours, there would be approximately 46,000 fewer air tours available to the public or approximately 92,000 fewer air tour flights assuming half hour tours. The FAA requests comments on how the dollar value to consumers of the lesser availability of air tours should be estimated in the final rule.

Analysis of Benefits

The FAA estimates that the proposed rule would accrue annual benefits of approximately $49 million, for total benefits of $490 million ($301 million, discounted) over ten years. The FAA believes the proposed rule would improve the safety of commercial air tours throughout the country. The benefits associated with individual provisions are described below.

The purpose of requiring air carrier certification is to reduce the number of accidents and incidents associated with sightseeing operations. Based on a comparison of accident rates for part 91 sightseeing tours and part 135 commercial air tours, the FAA estimates that restricting the 25-mile exception under § 119.1(e)(2) could produce benefits of $48 million ($30 million, discounted) over ten years.

The estimated benefits associated with minimum altitude, visibility, and cloud clearance requirements can be attributed to: (1) increased time available for the pilot to react in an emergency, (2) prevention of situations in which the pilot

unexpectedly encounters IMC, and (3) avoidance of adverse weather conditions. Estimated benefits are based on an analysis of Hawaiian air tour operations because data for this region are the most complete. This data is different from the data used in the part 119 exception analysis since it includes 10 accidents occurring prior to 1993. It is being employed since it is the best representative data to address the proposed weather provisions. The causes of accidents involving commercial air tours appear, from the data available, to be relatively uniform throughout the country (inadvertent Instrument Meteorological Conditions (IMC), Controlled Flight Into Terrain) and commercial air tours, wherever they occur, tend to have similar characteristics (they fly relatively slow, low, and close to physical landmarks). This analysis shows that the rate of air tour accidents related to low flying and weather is approximately 9.49 accidents per million flight hours. The analysis also shows that while the part 135 accident rate is lower, the fatality rate is much higher than that of part 91 operators. This apparent anomaly is due to two factors: (1) at least for airplane operations, part 121/135 operators tend to have larger airplanes and carry more passengers, therefore, a single fatal accident in a large airplane can significantly raise the fatality rate, and (2) although rare, the typical part 121/135 commercial air tour accident involves controlled flight into terrain at cruise speed,

resulting in a high fatality rate and few survivors. On the other hand, part 91 commercial air tour operators experience more accidents than part 135 operators but a higher proportion result from mechanical problems. Accidents caused by mechanical problems are often survivable, particularly helicopter accidents. The FAA estimates that the potential ten-year benefits for the affected air tour fleet would be approximately $405 million ($249 million, discounted).

The benefits associated with helicopter flotation systems and personal life preservers are considered together. Based on an analysis of three overwater accidents, one of which occurred prior to 1993, the FAA estimates that the potential benefits for flotation systems and life preservers are $37 million ($23 million, discounted) over ten years. While Hawaiian air tour operators usually cannot adjust their routes to avoid flying over water, it is possible that air tour operators on the mainland might have more opportunities to adjust their routes to avoid the fuel penalty and the expense of a flotation system. However, even on the mainland, many of the known commercial air tours fly over water at Lake Mead; Niagara Falls; the Statue of Liberty; Ocean City, Maryland; in Alaska and in Florida. The FAA does not know what effect these possible route adjustments would have on the estimated benefits or consumer enjoyment. The FAA therefore requests comments, including economic data, on this issue.

Benefit/Cost Comparison

The FAA estimates the total costs of the proposed rule to be approximately $238 million over ten years ($148 million, discounted) and the total benefits to be approximately $490 million ($301 million, discounted) over the same period. Accordingly, the FAA concludes that the total benefits of the rule would justify the total costs.

To state the comparison differently, the FAA has also computed the cost of the rule per estimated life saved. Based on an adjusted cost of $220 million (to reflect the cost savings attributable to avoided aircraft damage expenses resulting from fewer accidents) and an estimated 130 lives saved if the rule is 100 percent effective over 10 years and no other factors were involved, the rule is estimated to cost $1.7 million per life saved. If, for example, the rule were 75 percent effective, the FAA estimates that the cost per life saved would be $2.2 million. The rule would have to be less than 56 percent effective for the cost per fatality avoided to appreciably exceed $3.0 million.

Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the

scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

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

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

The FAA conducted the required review of this proposal and determined that it would have a significant economic impact on a substantial number of small entities. Accordingly, pursuant to Section 603 of the RFA, the Federal Aviation Administration has prepared the following initial regulatory flexibility analysis.

Reasons Why Agency Action is Being Considered

The FAA is proposing national safety standards to govern commercial air tours as a result of accidents and incidents involving air tour operators and NTSB recommendations made in response to those accidents and incidents. The rationale for each of the major provisions of the NPRM--discussed in detail in the regulatory evaluation--are summarized below:

Restriction of the exception for sightseeing flights under 14 CFR §119.1(e)(2). Based on available accident data, the FAA concludes that (1) there are significant differences in risks between sightseeing flights conducted under part 91 and air tour flights conducted under air carrier/commercial operator regulations, and (2) these risk differentials justify the proposal that the exception (from parts 119, 121, and 135 certification and operating requirements) for part 91 sightseeing operators be restricted. Regulatory action is also justified in view of the public expectation that all operators offering commercial air tours are regulated and surveilled to a level of safety higher than that applied to the general aviation operator.

Safety provisions addressing the risks of overwater

Administrator's statutory duty to carry out his or her responsibilities "in a way that best tends to reduce or eliminate the possibility or recurrence of accidents in air transportation." [See 49 U.S.C. §44701(c).] Accordingly, this notice proposes to amend Title 14 of the Code of Federal Regulations to provide definitions for commercial air tours `and establish new safety requirements for such operations.

Description of Small Entities Affected

The FAA concludes that virtually all of the entities affected by the proposed amendments are small according to thresholds established by the Small Business Administration (i.e., employ fewer than 1,500 employees). An estimated 1,672 part 91 operators and 453 part 121/135 operators would be affected by the rule. The part 91 operators own about 3,100 aircraft, while the part 121/135 operators have about 1,300 aircraft. This rule would impose annualized costs per operator of: (1) $600 to part 91 operators who exit the sightseeing industry; (2) $11,200 to part 91 operators who obtain part 135 certificates as single-pilot operators; (3) $75,000 to part 91 operators who obtain part 135 certificates and operate with more than one pilot; (4) $14,400 to current part 135 operators; (5) $19,200 to $39,500 to any operator owning one helicopter that is operated over water; and (6) $220 additional to any operator

owning an airplane that is operated over water.

Projected Reporting, Recordkeeping and Other Compliance Requirements

Entities converting to part 135 operations would be subject to the reporting requirements applicable to all part 135 air carriers. The FAA estimates the annualized cost for a single pilot operator would be $510 and for an operator with more than one pilot $2,540. The reporting requirements of part 136 would impose an additional cost of $30 for an airplane that is operated over water, and $340 for any operator owning one helicopter operated over water.

Overlapping, Duplicative, or Conflicting Federal Rules

The proposed rule would not overlap, duplicate, or conflict with existing Federal Rules.

Analysis of Alternatives

The FAA invites comment from potentially affected operators regarding possible alternatives to the provisions discussed above. Some options that were considered during the formulation of this proposal are discussed below.

Grandfather part 91 operators: The FAA considered allowing existing part 91 sightseeing operators to continue operating

under part 91, while requiring that operators entering the sightseeing/air tour market operate under part 135. While this alternative could reduce the cost of the rule by more than $150 million over ten years, it could also reduce total benefits by more than $148 million over the same period. While the costs marginally outweigh the benefits, the FAA believes that the rule's objective--improving the safety of air tours and providing one level of air tour safety for the flying public--would not be met under this alternative. Accordingly, the FAA has chosen not to grandfather existing operators.

Lengthen the compliance period: As written, the rule would require certification within six months of the date the final rule is issued. Safety requirements included in subparts O of part 121 and subpart E of part 135 would be met within 120 days from the date the final rule is issued. Helicopter float requirements in part 136.15 have a separate compliance schedule. To reduce the burden on small entities, the FAA considered a longer compliance period. Lengthening the compliance period to ten years, for example, would have saved some compliance costs on aircraft due to be removed from service within the ten-year period. The FAA believes, however, that the sightseeing/air tour accident history justifies government action in the near term. Between 1993 and 2000, there were some 75 accidents involving part 91 sightseeing flights and 53 accidents involving part 135

air tours. Combined, some 110 people died in these accidents. The FAA believes, therefore, that the higher standards should be implemented expeditiously and has chosen not to adopt this alternative.

Require helicopter floats or life preservers instead of both: The proposed rule would require both floats and life preservers for overwater air tour flights in helicopters. In lieu of this requirement, the FAA considered requiring either floats or life preservers--rather than both--similar to existing requirements under SFAR 71 for operations in Hawaii. Under this alternative, operators could avoid the costs of flotation systems ($15.4 million over ten years) by purchasing personal flotation devices ($403,000 over ten years). Although this alternative would result in substantial cost savings, the FAA believes that the safety objectives would not be met through this alternative. Based on survivors' descriptions, the FAA believes that life preservers alone are insufficient in preventing loss of life in helicopter accidents over water. Helicopters typically take on water and sink very quickly upon impact, giving passengers little time to exit the aircraft. Helicopter floats, in conjunction with life preservers, would significantly improve the chances of survival. For this reason, the FAA has chosen not to adopt this alternative.

Affordability Analysis

The FAA lacks reliable revenue and profit data for many of the entities affected by this rule and, therefore, is unable to explicitly compare the potential costs imposed to revenues or profits. This is because part 91 operators represent the small end of the industry, entering and exiting the market easily and continuously with no reporting or notification requirements. The FAA believes, however, that the higher-cost provisions of the rule (e.g., helicopter floats) would be borne by the larger, more profitable part 135 entities. The FAA invites comment on the potential impact of the rule on revenues and profits.

Business Closure Analysis

The FAA estimates that about 700 part 91 operators currently providing sightseeing flights would elect to stop providing the service. These operators, however, provide relatively few sightseeing flights (fewer than ten hours annually). The FAA concludes, therefore, that sightseeing revenue represents a small percentage of total revenue, and that these operators would remain in business and obtain revenues elsewhere.

Disproportionality Analysis

Almost all entities in the air tour/sightseeing market are small. Accordingly, the costs imposed by this proposed rule

would be borne almost entirely by small businesses. It is likely that the larger of the small entities would be better able to absorb the costs of the rule and could experience a competitive advantage over the smaller entities operating in the same market. Air tour safety needs to be and can be significantly improved, and the FAA believes that the only way to accomplish this is to impose higher standards on these entities.

Key Assumptions Analysis

The FAA has made several conservative assumptions in this analysis, which may have resulted in an overestimate of the costs of the proposed rule. For example, the FAA assumes that one-quarter of all helicopters in air tour service will incur the costs of floats. It is highly possible that the actual percentage will be lower than one-quarter because some operators already have floats to comply with § 135.183, and others who currently operate marginally over water may change their flight plans to remain over land. Also, the helicopter life preserver costs may be overestimated since there is a voluntary industry standard to which 13 helicopter tour operators subscribe that requires occupants to wear a personal flotation device.

The FAA has also endeavored to avoid underestimating revenue losses to part 91 operators. To estimate lost revenue associated with scaling down operations to obtain a certificate using only a

single pilot, the FAA assumes that part 91 operators have as many pilots as they do aircraft. In fact, some operators have one pilot and more than one aircraft. Such operators would experience little or no loss in revenue by becoming single-pilot part 135 operators, even though this analysis assumes some lost revenue for all but the first aircraft.

In addition, the FAA assumes that no requests for exemptions will be granted, that performance penalties apply to all flights (not just air tours), and that additional paperwork will take additional time (i.e., it will not be absorbed into existing recordkeeping duties). Each of these assumptions leads to a conservative estimate of costs.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this proposed rule and has determined that it would only have a domestic impact and therefore no affect on any trade-sensitive activity. The FAA is

unaware of any evidence that suggests that safety regulations (as opposed to noise limitations) adopted in Hawaii and the Grand Canyon National Park, for example, affected the demand for air tour flights by foreign visitors. Conversely, widely publicized air tour accidents may adversely affect all air tour operators. The proposed regulations strengthen the entire air tour industry by standardizing requirements for all operators.

Unfunded Mandates Reform Act Analysis

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act 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 (adjusted annually for inflation) 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."

This proposed rule does not contain such a mandate. The requirements of Title II do not apply.

Paperwork Reduction Act

This proposal contains the following new information

collection requirements subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. § 3507(d)). Organizations and individuals desiring to submit comments on the information, billing, and collection requirements should direct them to the U.S. Department of Transportation Dockets at the address listed in the **ADDRESSES** section of this document.

The FAA can only roughly estimate the effect of the proposed rule on air tour operators because accurate and complete data on the number of operators, tours, and aircraft is not yet available. This is because there are no formal reporting requirements for air tour operations and comprehensive industry data is scarce. One purpose of this rule is to establish a definition of Commercial Air Tour that may be used to subsequently collect data on the air tour industry.

Proposed § 136.13 would require the pilot in command to ensure that passengers are orally briefed before takeoff for an air tour flight that includes a flight segment that is conducted over water beyond any shoreline. This briefing would be in addition to the passenger briefings required by §§ 121.571, 121.573 and 135.117. The briefing would include information on water ditching procedures, use of personal flotation gear, and emergency egress from the aircraft. The FAA estimates that this requirement would affect approximately 101,550 air tours annually

by approximately 825 operators, assuming half the required briefings would be provided by a recorded announcement. Each safety briefing would take 3 minutes, and that the pilot conducts the briefing at an average rate of $29 per hour. Using these numbers, compliance will require 5,078 hours at a combined annual cost to the affected operators of $147,275.

This proposal would require part 91 air tour operators to apply under part 119 for certification under either part 135 or part 121. The FAA estimates that approximately 60 percent of the 1,650 part 91 operators that are currently conducting air tours would convert to part 135. It is unlikely that any would apply under part 121. The FAA estimates that the remaining part 91 operators would discontinue air tours but continue in other lines of business. This burden would affect only part 91 operators. For many part 91 operators, air tours comprise only an occasional portion of their business, if at all. They would only apply for certification under parts 135 or 121 if the benefits outweigh the costs. For the approximate 980 part 91 operators that would certificate under parts 135 and 119, the certification costs would become applicable. See OMB-2120-0039 (for part 135 certification requirements) and OMB-2120-0593 (for part 119 certification requirements).

Proposed § 136.17 would require a performance plan for helicopter tour operations. It would require a one-page document

that the operator would develop per the rotorcraft flight manual for each type of helicopter considering density altitude, gross weight, and center of gravity limits. Although required by this NPRM, an evaluation of aircraft performance is a requirement during flight planning for any flight, including for rotorcraft. The performance would be different for each make and model of helicopter and different for each flight since conditions would be different. These performance plans are already required for helicopters operating in Hawaii. The FAA estimates that 375 helicopters would be required to prepare performance plans. This would require 26,250 hours per year at a cost of $761,250.

The agency is soliciting comments to (1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, information technology (for example, permitting electronic submission of responses).

Individuals and organizations may submit comments on the

information collection requirement by [Insert date 60 days after publication in the Federal Register.] Comments should be submitted to the address listed in the **ADDRESSES** section of this document.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The public will be notified of the OMB control number when assigned.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with 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 proposed regulations.

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and

responsibilities among the various levels of government, and therefore would not have federalism implications.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this proposed rulemaking action qualifies for a categorical exclusion.

List of Subjects

14 CFR Part 61

Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 91

Aircraft, Airmen, Air traffic control, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 119

Administrative practice and procedures, Air carriers, Aircraft, Aviation safety, Charter flights, Commuter operations, On demand operations, Reporting and recordkeeping requirements.

14 CFR Part 121

Air carriers, Aircraft, Airmen, Alcohol abuse, Aviation

safety, Charter flights, Drug abuse, Drug testing, Reporting and recordkeeping requirements, Safety.

14 CFR Part 135

Aircraft, Alcohol abuse, Aviation safety, drug abuse, drug testing, Reporting and recordkeeping requirements.

14 CFR Part 136

Air transportation, Aircraft, Airplanes, Air tours, Air safety, Aviation safety, Commercial air tours, Helicopters, National Parks, Recreation and recreation areas, Reporting and recordkeeping requirements.

The Proposed Amendment

For the reasons set forth above, the Federal Aviation Administration proposes to amend Title 14 of the Code of Federal Regulations parts 61, 91, 119, 121, 135 and ~~add a new part~~ 136 as follows:

PART 61—CERTIFICATION: PILOTS, FLIGHT INSTRUCTORS, AND GROUND INSTRUCTORS

1. The authority citation for part 61 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701-44703, 44707, 44709-44711, 45102-45103, 45301-45302.

2. Amend § 61.113 by revising paragraph (d) to read as follows:

§ 61.113 Private pilot privileges and limitations: Pilot in command.

* * * * *

(d) A private pilot may act as pilot in command of an aircraft used only in the following passenger-carrying operations for compensation or hire:

(1) the operation is a charitable airlift for the benefit of a charity identified by the U.S. Department of Treasury that provides emergency or medical service and the pilot has logged at least 200 hours of flight time and complies with all of the conditions of this paragraph; or

(2) the operation is for a charitable or community event described in § 119.1(e)(11), in accordance with the provisions and limitations of § 91.147 and subpart A of part 136, and provided the pilot has logged at least 500 hours of flight time.

* * * * *

PART 91--GENERAL OPERATING AND FLIGHT RULES

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

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717,

44722, 46306, 46315, 46316, 46504, 46506-46507, 47122, 47508, 47528-47531, articles 12 and 29 of the Convention on International Civil Aviation (61 stat.1180).

SPECIAL FEDERAL AVIATION REGULATION No. 71 - SPECIAL OPERATING RULES FOR AIR TOUR OPERATORS IN THE STATE OF HAWAII [Removed]

4. Remove SFAR No. 71.

5. Add § 91.147 to read as follows:

§ 91.147 Passenger-carrying flights for charity or community events.

(a) A passenger-carrying flight for a charity or community event, as described in § 119.1(e)(11) of this chapter, for which the passengers make a donation to the charitable or community organization may be conducted under the following conditions and limitations:

GMA 10/15/03

(1) Unless otherwise authorized by the Administrator, the sponsor of the flight must notify the FAA Flight Standards District Office with jurisdiction over the area concerned at least 7 days before the event;

(2) The sponsor must furnish a signed letter that shows the name of the sponsor, the purpose of the event, the date and time of the event, the location of the event and all prior events participated in by the sponsor(s), pilot(s) or operator(s);

(3) The sponsor must furnish a photocopy of each pilot in command's pilot certificate, medical certificate, and logbook entries that show the pilot is current in accordance with §§61.56

and 61.57 of this part, and that any private pilot who will be used has logged at least 500 hours of flight time;

(4) The flight is conducted from a public airport that is adequate for the aircraft to be used, or from another airport that the FAA has approved for the operation;

(5) No aerobatic or formation flights are conducted;

(6) Each aircraft used for the charitable or community event holds a standard airworthiness certificate;

(7) Each aircraft used for the charitable or community event is airworthy and complies with the applicable requirements of subpart E of part 91 of this chapter;

(8) Each flight for the charitable or community event is made during day VFR conditions; and

(9) No person may conduct a flight under the provisions of this paragraph unless that flight is conducted in accordance with the appropriate safety provisions for commercial air tour flights described in part 136, subpart A of this chapter, for the type aircraft being used.

(b). [Reserved]

JMA 10/15/03

JMA 10/15/03

PART 119 -- CERTIFICATION: AIR CARRIERS AND COMMERCIAL OPERATORS

6. The authority citation for part 119 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1153, 40101, 40102, 40103, 40113, 44105, 44106, 44111, 44701-44717, 44722, 44901, 44903,

44904, 44906, 44912, 44914, 44936, 44938, 46103, 46105.

7. Amend § 119.1 by revising paragraphs (e)(1), (e)(2), (e)(3) and (e)(4)(iii) and by adding paragraph (e)(11) to read as follows:

§ 119.1 Applicability.

* * * * *

(e) * * *

(1) Student instruction, including introductory flights given by a certificated flight instructor;

(2) Nonstop commercial air tours conducted before [insert date six months from the date the final rule is published], with aircraft having a passenger-seat configuration of 30 seats or fewer and a maximum payload capacity of 7,500 pounds or less that begin and end at the same airport, and are conducted within a 25-statute mile radius of that airport. Such operations are subject to the provisions specified in §§ 121.1(d) or §135.1(a)(5) of this chapter, as applicable. For nonstop commercial air tours conducted in the vicinity of the Grand Canyon National Park, Arizona, the requirements of SFAR 50-2, subpart U of part 93, and part 119, as applicable, apply.

gmm 10/15/03

(3) Ferry, demonstration, or training flights, including:

(i) Aerobatic demonstrations or training flights;

(ii) Air combat or formation training flights;

(iii) Aircraft sales demonstration flights; or

(iv) Aircraft demonstration flights other than those specified above (does not include flights where the purpose is sightseeing).

(4) * * *

(iii) Aerial photography or survey (does not include sightseeing);

* * * * *

(11) A nonstop sightseeing flight in support of a charitable or community event when the following requirements are met:

(i) The flight must be in aircraft having a passenger seat configuration of 30 seats or fewer, excluding each crewmember seat, and a maximum payload capacity of 7500 pounds;

(ii) The flight must begin and end at the same airport, and be conducted within a 25 statute mile radius of that airport;

(iii) Each charitable or community event must qualify as one of the following:

(A) One of four or fewer events per calendar year, with each event lasting 3 days or fewer in duration, conducted to raise funds for the benefit of a charity identified by the U.S. Department of Treasury;

(B) One of four or fewer events per calendar year, lasting 3 days or fewer in duration each, conducted to raise funds for the benefit of a nonprofit entity, organized under state or Federal

law, with one of the entities' purposes being the promotion of aviation safety; or

(C) One event per calendar year, lasting 3 days or fewer in duration, conducted to raise funds for the benefit of a local community cause not covered in ~~subparagraphs~~ (e)(iii) (A) or (B) ~~above~~ of this section

(iv) The aircraft operator may retain, or be reimbursed for, only that portion of the passenger payments for the flight that does not exceed the pro rata cost of owning, operating and maintaining the aircraft for that flight;

(v) The beneficiary of the funds raised must not be an entity in the business of transportation by air;

(vi) All flights conducted under this provision must be in compliance with Subpart A, Part 136 of this Chapter and Part 91 of this Chapter;

(vii) In accordance with the requirements of § 91.147 of this chapter, the sponsor of the flight must notify the FAA Flight Standards District Office with jurisdiction over the area concerned at least 7 days before the event and furnish the required details of the charitable or community event and the pilots who will be operating the flights;

(viii) An operator or pilot conducting operations described in ~~subparagraphs~~ (e)(iii) (A) and (B) ~~above~~ of this section must not participate in more than 4 charitable or community events in a calendar year;

(ix) An operator or pilot conducting operations described in

~~sub~~paragraph (e)(iii)(C) above must not participate in more than one community event in a calendar year;

(x) Paragraph (e)(11) of this section does not apply to nonstop sightseeing flights for compensation or hire conducted within the Grand Canyon National Park (GCNP) Special Flight Rules Area (SFRA). Flights conducted in the GCNP SFRA must be certificated under part 119 in accordance with section 93.315 of this Chapter;

(xi) Paragraph (e)(11) of this section applies to nonstop sightseeing flights conducted over units of the national park, or abutting tribal lands, provided the operator has secured a letter of agreement from the FAA as specified under subpart B of part 136 and is operating in accordance with that agreement; and

(xii) Paragraph (e)(11) of this section does not apply over Rocky Mountain National Park.

PART 121--OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

8. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701-44702, 44705, 44709-44711, 44713, 44716-44717, 44722, 44901, 44903-44904, 44912, 45101-45105, 46105.

9. ~~Amend § 121.1 by revising paragraph (d) introductory~~ text, ~~adding new paragraph (e), and by redesignating existing~~ paragraphs (e) and (f) to (f) and (g). ~~The additions and revisions~~ read as follows: 9. Amend section § 121.1 by
a. revising paragraph (d) introductory text,
b. redesignating paragraphs (e) and (f) as (f) and (g), respectively; and
c. adding a new paragraph (e).
The additions and revisions read as follows:

§ 121.1 Applicability.

* * * * *

(d) Before [~~insert~~ date six months from the date the final rule is published in the Federal Register], nonstop commercial air tours conducted for compensation or hire in accordance with § 119.1(e)(2) of this chapter with airplanes having a passenger-seat configuration of 30 seats or fewer and a maximum payload capacity of 7,500 pounds or less that begin and end at the same airport and are conducted within a 25-statute-mile radius of that airport must comply only with ~~sections~~ §§ 121.455, 121.457, 121.458 and 121.459. An operator who does not hold an air carrier certificate or an operating certificate is permitted to use a person who is otherwise authorized to perform aircraft maintenance or preventive maintenance duties and who is not subject to FAA-approved anti-drug and alcohol misuse prevention programs to perform—

(1) * * *

(2) * * *

(e) Nonstop sightseeing flights described in paragraph (d) ~~above~~ must comply with the provisions of Part 136, Subpart A of this chapter by [~~insert~~ date 120 days after publication of the final rule in the Federal Register].

* * * * *

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

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

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

11. Amend § 135.1 by revising paragraph (a)(5) and paragraph (c) to read as follows:

§ 135.1 Applicability.

(a) * * *

(5) Before [~~insert~~ date six months after the date the final rule is published in the Federal Register], nonstop commercial air tours conducted for compensation or hire in accordance with § 119.1(e)(2) of this chapter that begin and end at the same airport and are conducted within a 25-statute-mile radius of that airport; provided further that these operations must comply only with ~~sections~~ 88 135.249, 135.251, 135.253, 135.255, and 135.353 and with

part 136, subpart A of this chapter by [~~insert~~ date 60 days after the final rule is published in the Federal Register].

* * * * *

(c) Before [~~insert~~ date that is six months after the date that the final rule is published in the Federal Register] for the purpose of ~~sections~~ §§ 135.249, 135.251, 135.253, 135.255, and 135.353, operator means any person or entity conducting non-stop commercial air tours in an airplane or helicopter that begin and end at the same airport and are conducted within a 25 statute mile radius of that airport, except for flights specified in § 119.1(e)(11) of this chapter.

* * * * *

~~**PART 136—NATIONAL PARKS AIR TOUR MANAGMENT**~~

~~12. Revise the heading of part 136 to read as follows:~~

~~**PART 136 - AIR TOURS**~~

~~13. Redesignate sections 136.1 through 136.11 as subpart B—National parks Air Tour Management, consisting of sections 136.31 through 136.41, respectively.~~

~~14. Add new subpart A to read as follows:~~

Subpart A - Commercial Air Tours

PART 36 – AIR TOURS

12. The authority citation for part 36 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701-44702, 44705, 44709-44711, 44713, 44716-44717, 44722, 44901, 44903-44904, 44912, 46105.

13. Revise the heading for part 136 as shown above.

14. Redesignate the following sections to consist of a new Subpart B—National Parks Air Tour Management:

Current	Redesignated as:
136.1	136.31
136.3	136.33
136.5	136.35
136.7	136.37
136.9	136.39
136.11	136.41

15. Add a new subpart A to read as follows:

Subpart A – Commercial Air Tours

Sec.

136.1 Applicability and definitions.

136.3 Minimum altitudes.

136.5 Standoff distance.

136.7 Visibility.

136.9 Cloud clearance.

136.11 Passenger briefing.

136.13 Life Preservers.

136.15 Helicopter floats.

136.17 Helicopter performance plan.

136.19 Helicopter operating limitations.

136.21 Deviation procedures.

136.23-136.29 [Reserved]

Authority: ~~49 U.S.C. 106(g), 40113, 40119, 44101, 44701-44702, 44705, 44709-44711, 44713, 44716-44717, 44722, 44901, 44903-44904, 44912, 46105.~~

10/15/03

§ 136.1 Applicability and definitions.

(a) This subpart applies to each person operating or intending to operate a commercial air tour and, when applicable, to all occupants of an aircraft engaged in a commercial air tour. When any requirement of this part is more stringent than any other requirement of this chapter, the person operating the commercial air tour must comply with the requirement in this

part. Furthermore, when a flight for compensation or hire has another purpose in addition to sightseeing, that flight is subject to this subpart as well as any other applicable rules.

(b) As of the effective date of this rule, no person may conduct a commercial air tour without notifying the FAA and receiving commercial air tour authority in its operations specifications, or for part 91 operators seeking certification under part 119, receiving transitional operations specifications.

(c) For the purposes of this part the following definitions apply.

Commercial air tour—

(1) Means any flight conducted for compensation or hire in a powered aircraft where a purpose of the flight is sightseeing.

(2) The Administrator may consider the following factors in determining whether a flight is a commercial air tour for purposes of this part—

(i) Whether there was a holding out to the public of willingness to conduct a sightseeing flight for compensation or hire;

(ii) Whether the person offering the flight provided a narrative that referred to areas or points of interest on the surface below the route of the flight;

(iii) The area of operation;

(iv) How often the person offering the flight conducts such flights;

(v) The route of flight;

(vi) The inclusion of sightseeing flights as part of any travel arrangement package;

(vii) Whether the flight in question would have been canceled based on poor visibility of the surface below the route of the flight; and

(viii) Any other factors that the Administrator and Director consider appropriate.

Air tour operator means any person who conducts a commercial air tour.

Raw terrain means any area on the surface, including water, devoid of any person, structure, vehicle, or vessel.

Suitable landing area means an area that provides the operator reasonable capability to land without damage to equipment or persons, designated by the operator and accepted by the Administrator, at a specific site that provides an emergency landing area for a single-engine helicopter in the event of an engine power loss, or a multiengine helicopter that does not have the capability to reach a safe landing area after an engine power loss.

Shoreline means that area of the land adjacent to the water of an ocean, sea, lake, river or tidal basin that is above the

high water mark and excludes land areas that are intermittently under water.

§ 136.3 Minimum altitudes.

(a) Except when necessary for takeoff and landing, or unless otherwise authorized by the Administrator, no person may conduct a commercial air tour:

(1) Below an altitude of 1,500 feet AGL above any person, structure, vehicle, or vessel.

(2) Below an altitude of 1,000 feet AGL over raw terrain.

(b) Notwithstanding paragraph (a)(2) of this section, operators conducting commercial air tours in helicopters may be authorized by the Administrator to operate:

(1) Multi-engine helicopters that are not capable of flying under power to a safe landing area with one engine out, and single engine helicopters, at altitudes as low as 500 feet AGL at site-specific areas of raw terrain in accordance with the deviation procedures of § 136.21, or

(2) Multi-engine helicopters that are capable of flying under power to a safe landing area with one engine out, at altitudes as low as 300 feet AGL at site-specific areas of raw terrain in accordance with the deviation procedures of § 136.21.

(c) When operating at approved altitudes of less than 1,000 feet AGL, air tour operators must comply with the following:

(1) For multi-engine helicopters that are not capable of flying under power to a safe landing area with one engine out, and single-engine helicopters:

(i) Have an approved, suitable landing area available at all times and

(ii) Operate at an approved combination of airspeed and altitude that is not within the avoid areas of the helicopter's height velocity diagram, according to the data in the appropriate rotorcraft flight manual. When designating a suitable landing area, the air tour operator must ensure that the area selected can be reached based upon the helicopter's autorotative capabilities, as provided in the appropriate rotorcraft flight manual.

(2) For multi-engine helicopters that are capable of flying under power to a safe landing area with one engine out:

(i) Be able to reach a safe landing area after an engine power loss, considering weight and atmospheric conditions; and

(ii) Operate at an approved combination of airspeed and altitude that is not within the avoid areas of the helicopter's height velocity diagram according to the data in the appropriate rotorcraft flight manual.

(3) For multi-engine helicopters that are not capable of flying under power to a safe landing area with one engine out, and single engine helicopters:

(i) Designate and document the specific areas of proposed operation below 1,000 feet and suitable landing areas within those areas, in a form and manner acceptable to the Administrator; and

(ii) Have the pilot demonstrate to the Administrator in-flight familiarity with the designated areas of low-level operation and the suitable landing area.

§ 136.5 Standoff distance.

(a) No person may conduct a commercial air tour in an aircraft closer than a horizontal radius of --

(1) 1,500 feet to any person, structure, vehicle, or vessel; or

(2) 1,000 feet to raw terrain.

(b) Notwithstanding paragraph (a)(2) of this section, an air tour operator of airplanes may be authorized by the Administrator to conduct commercial air tours at specific areas of raw terrain, at a horizontal radius of no less than 500 feet to raw terrain in accordance with the deviation procedures of § 136.21.

(c) Notwithstanding paragraph (a)(2) of this section, air tour operators of helicopters may be authorized by the Administrator to conduct commercial air tours, at site-specific areas of raw terrain, at a horizontal radius of no less than 300 feet to raw terrain in accordance with the deviation procedures

of § 136.21. In such instances, the Administrator may impose additional safety requirements.

§ 136.7 Visibility.

(a) While operating in Class G airspace at an altitude of 1,200 feet or less above the surface, regardless of MSL altitude, no person may conduct a commercial air tour in an aircraft under VFR when the flight visibility is less than the following:

(1) Day - 2 statute miles.

(2) Night - 3 statute miles.

(b) Notwithstanding paragraph (a)(1) of this section, an air tour operator may be authorized by the Administrator to operate a helicopter during the day in visibility of at least 1 statute mile in accordance with the deviation procedures of § 136.21.

(c) Notwithstanding paragraph (a)(2) of this section, an air tour operator may be authorized by the Administrator to operate a helicopter at night in visibility of at least 2 statute miles when the helicopter can be operated at a speed that provides adequate opportunity to see and avoid air traffic or obstructions in accordance with the deviation procedures of § 136.21.

§ 136.9 Cloud clearance.

(a) Except as provided in paragraph (b) of this section, while operating in Class G airspace at an altitude of 1,200 feet or less above the surface, regardless of MSL altitude, no person may conduct a commercial air tour in an aircraft closer than 500 feet below, 1,000 feet above, or 2,000 feet horizontally from any cloud.

(b) In accordance with the deviation procedures of § 136.21, an air tour operator may be authorized by the Administrator to operate a helicopter clear of clouds when:

(1) The helicopter is in compliance with the equipment requirements of § 135.159 of this chapter; and

(2) The flight is conducted by a pilot who has demonstrated to the Administrator the ability to execute emergency procedures for inadvertent flight into instrument meteorological conditions.

§ 136.11 Passenger briefing

Before takeoff, each pilot in command of a commercial air tour with a flight segment that is conducted over water shall ensure that each occupant has been briefed on all of the following:

(a) Procedures for water ditching.

(b) Use of required personal flotation equipment.

(c) Procedures for emergency egress from the aircraft in the

event of a water landing.

§ 136.13 Life Preservers

(a) All persons conducting commercial air tours in aircraft over water beyond any shoreline must comply with this section, except when the over water operation is necessary only for takeoff or landing, or unless otherwise authorized by the Administrator in accordance with the deviation procedures of § 136.21. This requirement applies regardless of the requirements of § 135.183 of this chapter, or whether the airplane is capable of gliding to the shoreline or the helicopter is capable of autorotating to the shoreline.

(b) Except as provided in paragraph (d) of this section, prior to take-off the air tour operator and pilot in command must ensure that each occupant is wearing an approved un-inflated life preserver that is ready to use for its intended purpose.

(c) An air tour operator may be authorized by the Administrator to use one of the following for any occupant with the physical capacity to use it:

(1) A life preserver contained in a pouch that is worn around the waist, where the un-inflated life preserver can be operated by pulling on a tab and lifting it over the head in a single motion and the life preserver is ready to use for its intended purpose, once inflated; or

(2) Any other type of life-preserver configuration determined by the Administrator to be comparable to the life preserver described in paragraph (c)(1) of this section with respect to speed, ease of donning, and use.

(d) An air tour operator may be authorized by the Administrator to operate an aircraft over water without complying with paragraphs (b) or (c) of this section, if the air tour operator shows in accordance with the deviation procedures under § 136.21 that the water over which the aircraft is to be operated is not of such size and depth that wearing a life preserver, as prescribed in this section, would be required for the survival of its occupants in the event the flight terminates in that water.

§ 136.15 Helicopter floats

(a) A helicopter used in commercial air tours must be equipped with fixed floats or an inflatable flotation system adequate to accomplish a safe emergency ditching, if—

(1) It is a single-engine helicopter; or

(2) It is a multi-engine helicopter that cannot be operated with the critical engine inoperative at a weight that will allow it to climb, at least 50 feet a minute, at an altitude of 1,000 feet above the surface, as provided in the helicopter's rotorcraft flight manual.

(b) Each helicopter required to be equipped with an

inflatable flotation system must

(1) Have the activation switch for the flotation system on one of the primary flight controls and

(2) Have the flotation system armed when the helicopter is over water and is flying at a speed that does exceed the maximum speed prescribed in the Rotorcraft Flight Manual for flying with the flotation system armed.

(c) Air tour operators required to comply with paragraphs (a) and (b) of this section must meet these requirements on or before [~~insert~~ date that is 18 months after the date the final rule is published in the Federal Register.]

(d) The requirements of this section do not apply if the flight over water is necessary only for take-off or landing.

(e) An air tour operator may be authorized by the Administrator to operate an aircraft over water without complying with paragraphs (a) or (b) of this section, if the air tour operator shows in accordance with the deviation procedures under § 136.21 that the water over which the aircraft is to be operated is not of such size and depth that helicopter floats, as prescribed in this section, would be required for the survival of its occupants in the event the flight terminates in that water.

§ 136.17 Helicopter performance plan.

(a) Each air tour operator must complete a performance plan for each helicopter commercial air tour before departure. The pilot in command must review for accuracy and comply with the performance plan on the day the flight is flown. The performance plan must be based on the information in the Rotorcraft Flight Manual (RFM) for that helicopter, taking into consideration the maximum density altitude for which the operation is planned, in order to determine:

(1) Maximum gross weight and center of gravity (CG) limitations for hovering in ground effect;

(2) Maximum gross weight and CG limitations for hovering out of ground effect; and

(3) Maximum combination of weight, altitude, and temperature for which height-velocity information in the RFM is valid.

(b) [Reserved].

§ 136.19 Helicopter operating limitations.

Except for take-off and landing, the pilot in command shall operate a helicopter at a combination of height and forward speed (including hover) necessary to permit a landing in the event of an engine power loss, in accordance with the height-velocity diagram in the rotorcraft flight manual for the helicopter and the helicopter's current weight and altitude.

§ 136.21 Deviation procedures.

An air tour operator may be issued a deviation by the Administrator from the following sections of this subpart if the Administrator finds that the operation can be conducted with an equivalent level of safety under the terms of the deviation: § 136.3, Minimum altitudes; § 136.5, Standoff distance; § 136.7, Visibility; § 136.9, Cloud clearance; § 136.13, Life preservers; and § 136.15, Helicopter floats.

(a) For § 136.3, Minimum altitudes; § 136.5, Standoff distance; § 136.7, Visibility; and § 136.9, Cloud clearance; the Administrator considers the following factors, as appropriate, when determining whether to approve a deviation:

(1) Traffic density;

(2) Mix of traffic;

(3) Nature of operation;

(4) Ability to operate the aircraft at a speed that will provide adequate opportunity to see and avoid air traffic and obstructions;

(5) Character of terrain;

(6) Size of the area of operation;

(7) Pilot workload (e.g., number of pilots performing an operation and whether routine narrative is provided);

(8) Quality and quantity of meteorological services;

(9) Navigational facilities;

(10) Weather conditions in the area of operation;

(11) Size and type of the aircraft; and

(12) Any other relevant factors that may provide an equivalent level of safety.

(b) For § 136.13, Life preservers, and § 136.15, Helicopter floats, the Administrator will consider the size and nature of the body of water and any other factors, as appropriate, when determining whether a deviation will be approved.

(c) An application for a deviation under this part must be made in writing and in a manner prescribed by the Administrator. The application must be submitted to the certificate-holding Flight Standards District Office or the Flight Standards District Office responsible for issuing operations specifications.

(d) Any deviation granted under this section will be detailed in the certificated air tour operator's operations specifications or in transition operations specifications issued to a non-certificated air tour operator, pending certification. In granting a deviation, the Administrator may impose additional requirements to provide an equivalent level of safety. A deviation is effective when placed in the air tour operator's operations specifications.

§ 136.23 - 136.29 [Reserved]

16. In newly designated subpart B of part 136, remove the words "this part" wherever they appear and add, in their place, the words "this subpart".

Issued in Washington, D.C., on OCT 0 9 2003

James Ballough
Director, Flight Standards Service

Certified to be a True Copy