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FAD-1998-4521-1481

Feb. 6, 2004

R2 - NAT11 Air Tour Safety Standards

DEPT. OF TRANSPORTATION
PO BOX 100

04 FEB -9 PM 4:29

(Gentlemen) -

I have briefly reviewed the proposed standards to govern commercial air tour operations and have many concerns.

The proposal goes beyond regulating commercial endeavors. I don't see you

have the constitutional authority to address community events such as Young Eagles

days, yet your proposal would give the

that authority over a group of private

citizens giving rules to a group of children, the event having no commercial interest.

As your interest furthers the freedom of us citizens, or furthering our society

toward freedom. The concept of a government

endeavoring to tell a group

of private citizens how, what, when, where

and why they donate their time should be sufficient to justify your removal from office.

Good Brief -

Bradley S. Berg

515 S. Franklin St
Kirkcubitt, Mo 63501

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 January 20, 2004.

ADDRESSES: 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 a.m. and 5 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; e-mail: 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 a.m. and 5 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

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

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