

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Parts 61, 91, 119, 121, 135, and 136**

[Docket No.: FAA-1998-4521; Amendment Nos. 61-115, 91-295, 121-328, 135-107, 136-1]

RIN 2120-AF07

**National Air Tour Safety Standards**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This final rule sets safety and oversight rules for a broad variety of sightseeing and commercial air tour flights. The rule responds to National Transportation Safety Board (NTSB) recommendations, Government Accountability Office (GAO) reports, and Department of Transportation Inspector General Reports that recommend better oversight of the sightseeing and commercial air tour industry. The intended effect of this final rule is to standardize requirements for air tour operators and consolidate air tour safety standards within part 136.

**DATES:** This final rule is effective March 15, 2007, except for amendments to §§ 119.1(e)(2), 121.1, and 135.1(a)(5) and (a)(8), which are effective September 11, 2007. Also, affected parties do not have to comply with the information collection requirements in §§ 91.146, 91.147, 136.7, and 136.13 until the FAA publishes in the **Federal Register** the control number assigned by the Office of Management and Budget (OMB) for this information collection requirement. Publication of the control number notifies the public that OMB has approved this information collection requirement under the Paperwork Reduction Act of 1995.

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**SUPPLEMENTARY INFORMATION:****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>).

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You can also get an electronic copy using the Internet through the FAA's web page at or the Government Printing Office's Web page at: <http://www.access.gpo.gov/sudocs/aces/acrs140.htm>. You can also get a copy of this final rule by mail by submitting a request to the Federal Aviation Administration, Office of Rulemaking, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-9680.

**Small Business Regulatory Enforcement Fairness Act**

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. You can find out more about SBREFA on the Internet at <http://www.faa.gov/avr/arm/sbreffa.cfm>. All operators affected by this final rule are "small" by definition.

**Authority for This Rulemaking**

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. This rule is issued under the authority granted to the Administrator by Congress in 49 U.S.C. section 40103. Under section 40103(b)(1), the Administrator is given the authority to "develop plans and policy for the use of the navigable airspace and assign by regulation or order the use of the airspace necessary to ensure the safety of aircraft \* \* \*" Section 40103(b)(2) grants the Administrator the authority to "prescribe air traffic regulations on the flight of aircraft including regulations on safe altitudes for (A) navigating, protecting and identifying aircraft; (B) protecting individuals and property on the ground; (C) using the navigable airspace efficiently; and (D) preventing collision between aircraft, between aircraft and land or water vehicles, and between aircraft and airborne objects."

**Table of Contents**

- I. Background
- II. Summary of the Final Rule
  - A. Applicability
  - B. Changes From the NPRM
  - C. Compliance Dates
  - D. Before and After This Rule
- III. Comment Summary
- IV. General Comments on the Proposal
  - A. NTSB Recommendations
  - B. SFAR 71 Should Not Be the Model
  - C. Withdraw the NPRM and Establish an Advisory Committee
  - D. Accident Data Does Not Support the Change
  - E. Increased Noise and Other Impacts on National Parks
- V. Comments on Part 135 Certification
  - A. Against Part 135 Certification
  - B. "Sightseeing" vs. "Commercial Air Tour"
  - C. Antique/Vintage Civil and Military Aircraft
- VI. Comments on Part 91 Operations
  - A. Charity, Nonprofit, and Community Events
    - 1. What is the difference between an exception, an exemption and a deviation?
    - 2. What is a charitable organization, a nonprofit, and a community event?
    - 3. The Four-Event Limit for Charitable and Non-Profit Organizations and the One-Event Limit for Community Events
    - 4. Private Pilots and the 500-Hour Requirement
    - 5. Reporting Requirements
  - B. Life Flights, Angel Flights, and "Emergency or Medical Service"
    - 1. What Is the Difference Between an Operations Specification and a Letter of Authorization?
    - 2. Where Are the FAA's Drug and Alcohol Regulations and Who Has To Comply With Them?
- VII. Comments on Part 136 Operating Requirements
  - A. Applicability and Definitions
  - B. Letters of Authorization
  - C. Minimum Altitudes, Standoff Distances, Visibility, and Cloud Clearance
  - D. Affect of the Final Rule on Grand Canyon and Hawaiian Operations
  - E. Passenger Briefings
  - F. Overwater Operations
    - 1. Passenger Briefing for Overwater Operations
    - 2. Life Preservers
    - 3. Helicopter Floats
  - G. Helicopter Performance Plan and Operations
- VIII. Regulatory Notices and Analyses
- IX. The Amendment—Final Rule Language

**I. Background**

Air Tour operations are conducted in all parts of the United States over various types of terrain. This terrain includes, but is not limited to, national parks, fairgrounds, and urban, coastal, and mountainous areas that range from unpopulated to densely populated. The operators conducting these 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.

Commercial air tours vary in many ways, but certain characteristics apply to nearly all: (1) A single pilot typically conducts the flight during daylight hours in a single engine airplane or helicopter; (2) flights are typically conducted in visual meteorological conditions, often without radar coverage or traffic advisories from an air traffic control facility; (3) flights may be conducted near popular scenic areas geographically limited in size and in dense air traffic in which the mix of airplanes and helicopters may have different flight characteristics (e.g., speed and maneuverability). Because of all of these factors and characteristics, a pilot must use heightened vigilance and greater precision in navigation to conduct a commercial air tour successfully and safely.

In addition, terrain is often a major factor considered in a safely conducted flight. 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, commercial air tours are normally conducted at relatively low altitudes, between 500 and 1,500 feet above ground level (AGL). Flights conducted at these altitudes may be close to obstructions and often are alongside higher terrain. In addition, many air tour operators conduct flights over water. When the terrain factor is added to those discussed above, you have a unique industry needing equally unique regulations to ensure a safe and pleasurable experience for the passenger.

Currently, commercial air tours beyond 25 statute miles of the departure airport, and most commercial air tours over a unit of the national park system, must be conducted by someone certificated under Title 14 of the Code of Federal Regulations (14 CFR) part 119, Certification: Air Carriers and Commercial Operators. These commercial air tours must operate in accordance with either part 121; Operating Requirements: Domestic, Flag, and Supplemental Operations, or part 135; Operating Requirements: Commuter and On Demand Operations and Rules Governing Persons On Board Such Aircraft. Parts 121 and 135 contain operational, safety, and training rules that are not limited to air tour operations.

Part 91, General Operating and Flight Rules, applies to air tour operators that takeoff and land at the same airport and stay within 25 miles of that airport

using a "25-mile exception" in 14 CFR 119.1(e)(2), 121.1(d), and 135.1(a)(5).

In order to address the unique circumstances surrounding air tour operations, the FAA published a notice of proposed rulemaking (NPRM) in the **Federal Register** on October 22, 2003 (68 FR 60572). The proposed rule was modeled on Special Federal Aviation Regulation (SFAR) 71, which currently governs the commercial air tour industry in Hawaii. In the NPRM, we proposed to improve the overall safety of all commercial air tours by requiring certification under part 119, except for certain charitable, nonprofit, or community events. New safety standards in part 136 were proposed in the NPRM for all air tour operators, and the proposal would have resulted in renaming and expanding the entire part. We proposed removing the 25-mile exception altogether. The proposals presented in the NPRM have been dropped, revised, or adopted as discussed in this final rule.

## II. Summary of the Final Rule

### A. Applicability

This final rule applies to commercial air tours conducted in airplanes and helicopters only. It does not apply to gliders (powered or unpowered), balloons, parachutes (powered or unpowered), gyroplanes, or airships.<sup>1</sup> In this final rule we address three groups of commercial air tour operations in airplanes and helicopters:

Group 1. Part 119 certificate holders with authority to conduct commercial air tour flights in accordance with either part 121 or part 135;

Group 2. Part 91 operators conducting commercial air tour flights in accordance with the exception contained in section 119.1(e)(2) (also known as the 25-mile exception); and

Group 3. Part 91 operators conducting flights for certain charitable, nonprofit, or community events in accordance with the exception contained in § 119.1(e)(2).

#### Group 1

This group of commercial air tour operators must be certificated under 14 CFR 119, to operate in accordance with either part 121 or 135. Part 121 and part

<sup>1</sup> The National Parks Air Tour Management Act of 2000 (49 U.S.C. 40128) (Act) is only peripherally implicated by this rule in that the existing regulations are moved from part 136, subpart A to part 136, subpart B. The Act applies to all powered aircraft, not just airplanes and helicopters. To the extent an operator covered by this rule flies within an area covered by the Act, it must meet all requirements imposed either directly or by regulations implemented under the Act. If not a helicopter or airplane, the requirements imposed by this rule will not apply.

135 contain operational, safety, and training rules for these operators. Additionally, this group must comply with the safety provisions in part 136. This first group continues to be subject to the drug and alcohol testing requirements of parts 121 and 135.

#### Group 2

This group consists of air tour operators that would have been certificated as an air carrier like the first group if it weren't for the 25-mile exception in §§ 119.1(e)(2), 121.1(d), and 135.1(a)(5). Because of the exception, this group is allowed to conduct flights under the operating rules of part 91. The exception will continue, except for flights over the Grand Canyon National Park.<sup>2</sup> Even though flights are not conducted under part 121 or part 135, this second group of operators continues to be subject to drug and alcohol testing requirements. The number of flights allowed is not limited,<sup>3</sup> but private pilots may not be used. Each operator must apply for, and operate in accordance with, a Letter of Authorization (LOA) issued by the FAA. This group must comply with the safety requirements of part 136 subpart A (as mandated in § 91.147).

#### Group 3

This last group of operators conducts commercial air tours for certain charitable, nonprofit, and community events. The flights of this group will be limited to the 25-mile exception. This final rule establishes a new § 91.146 for charitable, nonprofit, and community event flights allowing them to continue operating in part 91.<sup>4</sup> Section 61.113(d) is revised to delete the word "airlift," and a reference to the new § 91.146 is added to allow private pilots to fly such events, and it allows them to operate without drug and alcohol testing. Private pilots must have at least 500 hours total flight time. Sponsors and their pilots for charitable and nonprofit events are limited to four events each

<sup>2</sup> The exception continues in a limited sense over all other national parks, because the Act allows a total of five commercial air tours per month by someone who does not hold a part 119 certificate. (See SFAR 50-2; part 93, subpart U; and part 136, subpart B).

<sup>3</sup> Other than at most national parks where flights are limited to not more than five per month through § 136.37.

<sup>4</sup> The FAA finds that (1) logging flight time is a form of compensation; (2) most charities are a business holding out to the public through advertising and collection of fees directly through payment of money much like an air carrier, or indirectly through "donations"; and (3) private pilots normally may not fly for compensation or hire. However, the FAA finds that it is in the public interest to allow some charitable, nonprofit, and community event flights to be conducted under part 91.

calendar year. Sponsors and their pilots for a community event are limited to one event per calendar year. An "event" may involve several flights but may not last more than three consecutive days. New § 91.146 defines three kinds of flights that can be operated under part 91, and need not be operated under part 135. The operators of these flights must comply with the safety requirements in part 136 subpart A, but are not required to conduct drug and alcohol testing.

This group was previously allowed to operate without drug and alcohol testing requirements through individual exemptions. The language from those exemptions is incorporated into § 91.146.

**B. Changes From the NPRM**

The final rule differs substantially from what was proposed in the NPRM in several areas. Most of the changes are directly in response to comments submitted by the public. Most of the significant changes are listed here and the justification for the changes can be found under the discussion of comments and FAA response that follows. The changes include:

- Part 136 is divided into subparts. Subpart A is National Air Tour Safety Standards. Subpart B is National

Parks Air Tour Management (previously the only thing in part 136). Subpart C is reserved for SFAR 50–2 and Part 93, subpart U (both addressing Grand Canyon flight operations).

- The proposed elimination of the 25-statute mile exception in § 119.1 will not be adopted. The 25-mile exception remains in §§ 119.1(e)(2), 121.1(d), and 135.1(a)(5).
- Commercial air tour operators in parts 121 or 135 who also conduct commercial air tours in part 91 must have both operations specifications and a Letter of Authorization.
- SFAR 71 for Hawaii is removed and has been incorporated into the final rule language as Appendix A to part 136.
- Section 135.1(c) is removed because certain references to drug and alcohol testing have been rewritten.
- Proposed deviation authority in the NPRM is deleted.
- Proposed changes to minimum altitudes, standoff distances, visibility, and cloud clearance in the NPRM are deleted.
- The final rule section for life preservers for overwater operations (proposed § 136.13, final § 136.9) is modified to greatly reduce the burden

for operators for airplanes with floats, and to some degree, the burden for helicopters with floats. "Life preserver" and "shoreline" are defined in § 136.1.

- Helicopter performance plan (proposed § 136.17) and Helicopter operating limitations (proposed § 136.19) are merged (final § 136.13) and amended.

**C. Compliance Dates**

This final rule is effective thirty days after publication. Operators must demonstrate compliance with the new requirements 180 days thereafter. The only exception is for helicopter floats. The FAA recognizes that affected operators may need more than six months to equip their helicopters with floats. Accordingly, we are allowing 18 months for operators who need to modify their helicopters to complete those modifications.

**D. Before and After this Rule**

To further help readers understand the changes to commercial air tour operations in this final rule, we include here a chart that clearly illustrates which existing regulations this final rule affects and what new requirements are included.

Regulatory section	Before this rule	After this rule
<b>PART 61</b>		
Section 61.113 .....	Paragraph (d) of this section provided for the use of private pilots during charity flights. The section contained certain conditions and limitations on how private pilots could operate for compensation or hire in the interest of charity. Some of those conditions and limitations included who was considered a charity, how a sponsor must notify the FAA of an operation, what kind of airport was acceptable for such operations, the airworthiness of the aircraft in operation, and the number of hours a private pilot must have to operate such flights.	Section 61.113 now directs the reader to 91.146.
<b>PART 91</b>		
Section 91.146 .....	Did not exist .....	Many of the conditions and limitations from 61.113 are retained in this new section. They are kept mostly intact with some revisions to the private pilot hour requirement, what information the FAA requests of the sponsor, and the number of events a sponsor and pilot may participate in each year <sup>5</sup> . New requirements in this section include: 1. We define the terms charitable event, non-profit event, and community event. 2. A private pilot operating a flight described in this section must have 500 hours. This is increased from the previous requirement for 200 hours. 3. Operations under this section are limited for sponsors and pilots. No sponsor or pilot may exceed 4 charitable or non-profit events per calendar year, or exceed 1 community event per calendar year. 4. All flights under this section must be non-stop, beginning and ending at the same airport, and flown within a 25-mile radius of the airport. This has always been the case, but not as easy to find.

Regulatory section	Before this rule	After this rule
Section 91.147 .....	Did not exist .....	<p>5. Operators under this section must conduct operations in airplanes or helicopters with a standard airworthiness certificate.</p> <p>6. Operators under this section must comply with part 136, subpart A (National Air Tour Safety Standards).</p> <p>This section applies to part 91 operations for compensation or hire.</p> <ol style="list-style-type: none"> <li>1. Operators under this section must apply for and receive a Letter of Authorization (LOA). This removes the burden of Operations Specifications that come with full air carrier status, yet allows the FAA to build a database of part 91 compensation or hire operators conducting air tour operations.</li> <li>2. Operators under this section must comply with drug and alcohol requirements. This is not a new requirement, but some operators have misunderstood the requirement. Certain operators have received an exemption from drug and alcohol testing requirements.</li> <li>3. Operators under this section must comply with part 136, subpart A (National Air Tour Safety Standards).</li> <li>4. Operators under this section must conduct operations in airplanes or helicopters with a standard airworthiness certificate. Some Antique/Vintage civil and military aircraft operating under this section will continue to need exemptions from this requirement.</li> </ol>

**PART 119**

Section 119.1 .....	This section prescribes Applicability, and paragraph (e)(2) describes the "25-mile exception" cited in the final rule.	<p>Paragraph (e)(2) remains largely the same. The differences in the final rule are:</p> <ol style="list-style-type: none"> <li>1. The paragraph used to refer to "sightseeing flights," (undefined) and now refers to "Commercial Air Tours" (defined in 119.3 and part 136, subpart A).</li> <li>2. The paragraph clarifies that operations in this exception are for compensation or hire.</li> <li>3. Operators using this exception must comply with the LOA issued under 91.147.</li> <li>4. Operations in this exception must be conducted in airplanes or helicopters with a standard airworthiness certificate.</li> </ol>
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**PART 121**

Section 121.1 .....	This section prescribes Applicability for Part 121. Paragraph (d) addresses sightseeing flights.	Paragraph (d) is amended to replace the term "sightseeing" with "Commercial Air Tours." This section also requires compliance with part 136, subpart A (National Air Tour Safety Standards). We make a technical correction in paragraph (d) to include alcohol testing requirements in two sections that were inadvertently removed in a previous rulemaking (121.458 and 121.459).
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**PART 135**

Section 135.1 .....	This section prescribes Applicability for Part 135. Paragraph (a)(5) addresses sightseeing flights, and paragraphs (c) and (d) defined "operator" and drug and alcohol testing requirements.	<ol style="list-style-type: none"> <li>1. Paragraph (a)(5) is amended to replace the term "sightseeing" with "Commercial Air Tours." Also, the paragraph now makes reference to 119.1, and requires compliance with part 136, subpart A (National Air Tour Safety Standards).</li> <li>2. Paragraph (c) is amended. Previously, paragraph (c) defined an "Operator" as it pertains to the requirements for Part 135. We now reference part 119 to provide the drug and alcohol definition for "Operator" and replace the testing old paragraph (c) with a new one that is made up of the requirements previously found in paragraph (d). Part 119 did not exist when 135.1(c) was written, so this is a technical amendment.</li> </ol>
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**PART 136**

Subpart A (136.1–136.13).	Did not exist .....	This Subpart contains the safety standards and definitions applicable to Commercial Air Tours.
Subpart B .....	Did not exist .....	We moved the requirements that were previously the whole of part 136 into new sections and this new subpart, but didn't change any of the substance. This subpart contains National Parks Air Tour Management regulations.
Subpart C .....	Did not exist .....	We created a Subpart C and reserved the space for the possible movement of the Grand Canyon air traffic rules (SFAR 50–2 and Part 93 Subpart U) so commercial air tour regulations are in one location.
Appendix A .....	Did not exist .....	This Appendix holds all of the requirements once found in SFAR 71—Operations in Hawaii. These requirements were previously attached to Part 91, but we moved them into this newly created Appendix to have all Commercial Air Tour regulations in one location: Part 136.

Regulatory section	Before this rule	After this rule
<b>Miscellaneous Requirements</b>		
SFAR 71 .....	Was a separate rule located in front of Part 91.	SFAR 71 has always been attached to Part 91. We have taken all of SFAR 71 and inserted it as Appendix A into Part 136. Now air tour operators in Hawaii will find the same conditions and limitations in SFAR 71 in this new Appendix. We have not changed the text, only the location.
SFAR 50–2 and Part 93, Subpart U.	SFAR 50–2 is a separate SFAR located in front of Part 91, and Part 93, Subpart U is where it is.	These regulations pertaining to air traffic routes and guidance in Grand Canyon National Park remain unchanged. We reserve “Subpart C” in Part 136 for whenever we decide to co-locate these regulations with other Commercial Air Tour regulations.

**III. Comment Summary**

We received more than 2,300 comments to this rule from individual pilots, trade organizations, commercial air tour operators, charity organizations, historic aircraft operators and others. At the request of commenters, the FAA extended the comment period twice, allowing a total of 240 days in which to comment. The FAA also convened two face-to-face public meetings; one in Washington, D.C. on May 11, 2004, and the other in Las Vegas, NV on May 21, 2004. In addition, the FAA conducted a two-week Virtual Public Meeting on the Internet from February 23 to March 5, 2004, that was further extended an additional two weeks to March 19, 2004 due to the many comments received.

While some commenters supported the proposed rule, most notably the National Transportation Safety Board (NTSB), most commenters opposed the NPRM on one or more of the following grounds:

1. FAA is attempting to impose a one-size-fits-all mentality.
2. FAA does not recognize the geographical and environmental differences associated with different operations.
3. Part 91 operators will go out of business if forced into part 135.
4. Millions of Americans would be denied the opportunity to experience flight at a grassroots level. This would ground vintage aircraft, barnstorming, military history, and other areas of aviation promotion and heritage.
5. The existing rules are more than adequate if obeyed by operators and enforced by the FAA against operators who do not obey them.
6. The proposal is not supported by accident data. Since air tour accidents are all in part 135, why does the FAA propose to place all operators in part 135?
7. There is insufficient evidence to ensure that the proposed rules, if

adopted, would result in increased safety.

8. Flights operated for “charity” would be stopped.
9. Deviation authority should not be in the rule.
10. The proposed rule mixes helicopters and airplanes at one altitude (compression).
11. Compliance with proposed minimum altitudes and standoff distances result in an undesirable tour and thus would result in a loss of business.

12. Many operators have agreements with air traffic to conduct flights a certain way and this proposal conflicts with those specific agreements.

Below we discuss and respond to the many suggestions and arguments presented to us during the comment period. We broke our response to comments into four major categories to make it easier to read. Within those four categories, we have tried to address some general concerns before providing any detailed response. For instance, it became obvious when reading comments that many people did not understand the difference between an “exemption,” an “exception,” and a “deviation.” Therefore, we answer that question before going into specific comments under the “part 91 operations” section of comment response. The four categories we’ve used to organize our response to comments are:

1. General comments on the proposal;
2. Comments on extending part 135 certification for the entire industry;
3. Comments on part 91 operations; and
4. Comments on part 136 operating requirements.

**IV. General Comments on the Proposal**

The comments addressed here were in opposition to the general nature of the rule. Comments in opposition to specific parts of the proposal are addressed in the sections two, three, and four of this preamble.

*A. National Transportation Safety Board (NTSB) Recommendations*

The Aircraft Owners and Pilots Association (AOPA) stated that the “FAA has promulgated this NPRM in response to NTSB recommendations concerning the safety of commercial air tours.” AOPA argued that FAA had already issued regulations to address most of the NTSB’s concerns through SFARs 50–2 (Grand Canyon) and 71 (Hawaii), and therefore, the sole justification for the NPRM was NTSB recommendation A–95–58, which recommended eliminating the 25-mile sightseeing exception in § 119.1(e)(2). AOPA asserted that the FAA’s accident data does not support inclusion of sightseeing and charity flights,” and contended that “the FAA is NOT compelled to adopt all NTSB recommendations and has the authority and ability to close NTSB recommendations with alternative or no action.” AOPA cited a few specific examples from the 549 NTSB recommendations it found “that were closed with no action taken because the FAA either disagreed with the NTSB’s recommendation or failed to take action in a timely manner.”

The FAA agrees with AOPA that it is not compelled to adopt NTSB recommendations. The NTSB is charged with issuing recommendations that it believes will improve the safety of aviation without any consideration of the costs of these recommendations. In this case, the recommendations were based on a study of the entire air tour industry; including operations conducted under the 25-mile exception. The FAA decided during the NPRM stage of this rulemaking that the NTSB recommendations had some validity and attempted to meet their intent with proposed rule language.

In view of the comments, we have decided not to eliminate the 25-mile exception as presented in the proposal. The cost associated with placing all air tour operations into part 121 or part 135 far outweighs any potential increase in safety. However, aviation safety requires these commercial air tours comply with

<sup>5</sup> We have imported several conditions for private pilot operations in support of charity, non-profit, and community event flights from approximately 100 existing exemptions.

some additional safety rules. The problems that resulted in the NTSB recommendations are not limited to the Grand Canyon and Hawaii. They are common to most commercial air tour flights conducted throughout the U.S. Thus, many aspects the special aviation safety rules that apply to commercial air tour operations in the Grand Canyon and Hawaii should also apply to the rest of the country.

The NTSB, in its comments submitted to the NPRM, supported the proposed rule and believed implementation of the requirements in the proposal was long overdue. We have analyzed all comments received in response to the NPRM and find that the regulatory action the FAA is taking is an appropriate and responsible response to the NTSB recommendations.

#### *B. SFAR 71 Should Not Be the Model*

A number of commenters, including the Experimental Aircraft Association (EAA), the United States Air Tour Association (USATA), the Helicopter Association International (HAI), Blue Hawaiian Helicopters, Air Vegas Airlines, and the National Air Transportation Association (NATA), questioned the FAA's basis for modeling the proposed rules on SFAR 71, which governs the commercial air tour industry operating in Hawaii. Commenters argued that the SFAR 71 rules were not responsible for the improved safety in air tour operations in Hawaii. They stated that air tour operations in Hawaii are safer because of improved technology and operators taking more action to improve safety. Specifically, Papillon Airways Inc., commenting on behalf of the Tour Operators Program of Safety (TOPS), cited two reports that state SFAR 71 had no effect on the accident rate reduction since its enactment. One report posited that the altitude restriction in SFAR 71 has actually made air tours in Hawaii more dangerous by compressing available airspace. The other acknowledged a decrease in accidents but did not credit SFAR 71 with that decrease. Papillon claimed that the reduction in the number of accidents since SFAR 71 is due entirely to replaced engines (resulting in fewer power failures) and the creation of TOPS.

Other commenters, including the NTSB and NorthStar, stated that FAA did not complete a review of the effectiveness of SFAR 71 in this rulemaking process, which they believe is necessary to evaluate whether the SFAR 71 rules actually accomplished their intended goal. They also commented that the majority of existing

part 121 and 135 air tour operations are concentrated in unique areas of the nation, primarily Hawaii and the Grand Canyon, and that these environments are not typical of the remainder of the country. They suggested it would not be appropriate to extrapolate regulations that might be working in one specialized area to the entire universe of air tour operations. Additionally, they stated that there are already layers of regulations applicable to Hawaii and the Grand Canyon, and the NPRM would establish complicated rules, making compliance all the more difficult.

The FAA agrees that there may be multiple reasons for accident rate improvement in Hawaii and other parts of the country. However, we also believe that SFAR 71 has had a positive impact. Certainly, improved technology aided in making air tour operations in Hawaii safer, but we do not support the claim that technology and operator action are solely responsible for improved safety. Rather, we believe there is a relationship between the imposition of a minimum, mandatory safety standard and the decrease in accidents. Purely voluntary improvements that significantly increase safety would be unlikely to coincide so neatly with the implementation of SFAR 71.

The United States has many areas with rugged terrain, bodies of water, and vertical cliffs that are subject to rapidly changing weather patterns. Although air tours may vary as to what kind of terrain is flown over, the FAA's concerns over flights conducted throughout the United States are the same. For example, flight over water presents a risk to passengers regardless of whether that water is the Pacific Ocean, Lake Mead, or a large reservoir.

#### *C. Withdraw the NPRM and Establish an Advisory Committee*

A number of commenters (AOPA, NATA, Antique Airplane Association, Aviation Foundation of America (AFA), The Lightship Group) recommended the FAA withdraw the NPRM on the grounds that, as NATA asserted, "There is a lack of sufficient data to support the FAA's determination of a need for, and the costs associated with, the proposed regulations." AOPA stated, "Nothing in the original **Federal Register** notice or information that has been made available during the comment period, including the FAA virtual meeting, indicates there is a significant safety issue on sightseeing and charity flights that the FAA must address by advancing this rulemaking initiative."

The Antique Airplane Association suggested the FAA consider "the formation of an industry run

organization to effect and enhance these type operations." AFA and The Lightship Group recommended the FAA establish an Aviation Rulemaking Committee or an Aviation Rulemaking Advisory Committee to assist in drafting a rule taking the aviation community's concerns into account.

We declined to establish a rulemaking committee to develop national air tour standards. The FAA already developed an NPRM for National Air Tour Safety Standards, had a 240-day comment period, and conducted an Internet meeting and two public meetings. We received over 2,300 comments in the docket. We do not believe a rulemaking committee would provide any additional information. Accordingly, we have developed this final rule based on the comments already submitted.

#### *D. Accident Data Does Not Support Change*

A number of commenters questioned the accident data used by the FAA to justify the proposed rule changes. Most of these commenters questioned the basis for requiring operation under part 135 since a high number of the cited accidents involved aircraft operating under part 135 at the time of the accident. Collings said, "Since many of the accidents involve part 135 operators, it should be clear that part 135 is not the answer." The Seaplane Pilots Association stated, "Of the 12 accidents cited as exemplary of the need for this change, 83% were conducted under part 135." Similarly, the Tennessee Department of Transportation stated, "Part 135 air tours resulted in almost twice as many deaths as their part 91 counterparts."

The Minnesota Department of Transportation (MDOT) raised questions about the statistics cited in the NPRM and asserted that they did "not bolster the argument that part 135 operations are safer." MDOT said that there was no data that would allow the reader to put the cited numbers in context. MDOT asked, "Did the 75 accidents stem from 1,000 or 10,000 or 100,000 total operations?"

The Professional Airways Systems Specialists (PASS) questioned the FAA's use of the August 24, 1997, crash off Ocean City, MD, as one of the reasons for changing the rules. The NTSB report indicated that the aircraft stalled and crashed because the pilot began an aerobic maneuver at an altitude of approximately 300 feet AGL. PASS asked, "Since the aircraft was already in violation of a FAR, how is making the pilot meet part 119 and part 135 going to keep this kind of accident from happening?" The Seaplane Pilots

Association also asserted, "Many of the accidents profiled resulted from actions that are prohibited under both part 91 and part 135, and part 135 status appeared to have little effect on the safety of the flights profiled in the NPRM." TOPS said, "Safety statistics do not justify special regulations for helicopter tours conducted by commercial operators under part 135 (as differentiated from "sight-seeing" flights conducted on an ad hoc basis under part 91)." It continued, "TOPS operators during calendar year 2003 experienced 1.13 accidents per 100,000 air tour hours, compared with 998 accidents per 100,000 flying hours for the civil helicopter fleet at large."

Kenmore Air Harbor questioned the use of accidents in Hawaii (particularly helicopter accidents) to justify the proposed rule. Kenmore stated, "Needed regulations, which address safety deficiencies in Hawaii should not nor need not apply to other geographical areas." HAI, NorthStar Trekking (NorthStar), and other commenters also questioned the use of Hawaii accidents to justify the proposed rule changes. In a similar vein, AFA stated that the accidents cited as justification for the NPRM are mostly helicopter operations over water in Hawaii and do not reflect the "superb safety record of part 91 fixed wing operators\* \* \*"

The NTSB argued that better reporting requirements could lead to the development of better data. It stated, "national air tour safety standards should include a provision that is similar to 14 CFR 121.693(e), which requires the certificate holder to include a list of passengers' names on the load manifest or to secure this information by another means."

The FAA acknowledges that the data on part 91 accidents is less than ideal. Thus, comparing a list of part 135 accidents against a list of part 91 accidents is not productive. Only a few of the total number of part 91 accidents researched were listed in the NPRM. The official NTSB accident reports we researched didn't specify whether the flight was "sightseeing." Some reports said "sightseeing" in the narrative, but most only noted the flight as part 91. Because of these limitations in the data, the FAA cannot assume that part 91 flights are, in fact, safer than part 135 flights. An accident during a part 91 operation at a traditional sightseeing spot like the Grand Canyon, Niagara Falls, or at a water fall in Hawaii is normally expected to be a sightseeing flight, but it might not be. An accident report that doesn't say "sightseeing" or "air tour" is not necessarily a definitive report that sightseeing did not take

place, or that the flight would not be considered an air tour. The data on part 135 operations is more robust. A part 135 sightseeing accident is normally listed that way; as a sightseeing accident. The part 135 operators conducting sightseeing flights are well known and their accidents are usually newsworthy. Most part 135 sightseeing operators conduct sightseeing flights all day, every day (although some are seasonal) providing more data points.

In other words, the accident data presented in the NPRM may have given the impression that there were more part 135 accidents than part 91, but that is not necessarily true, particularly as a percentage of total sightseeing operations. As we discussed in the NPRM, we have definitive data between 1993 and 2000 that there were 75 part 91 commercial air tour accidents, and 53 part 135 commercial air tour accidents. While the data is simply not accurate enough for us to conclude an exact number of part 91 flights that include sightseeing and how many of those have had an accident, the captured part 91 flights need new standards for their operation. MDOT makes a good point in its comment that the number of accidents listed is hard to put into perspective unless it is known how many part 91 and part 135 commercial air tour flights took place in that time. The first step in gathering enough information to calculate an accurate accident rate will be the establishment of the database supported by the application and approval of LOAs, as required in § 91.147. Since we are not requiring part 91 operators to report flight hours in this final rule, we still will not be able to calculate an accident rate when this rule is published. However, part of the safety improvements in this rule include increased FAA oversight of these operations. Through the LOA, we will now have geographic oversight of operations on which we previously did not have information. In response to the NTSB comment and recommendation to include a provision similar to 14 CFR § 121.693(e) in the rule, which would have required operators to list passenger names on load manifests, that recommendation is outside the scope of this rulemaking. However, we anticipate that the database based on LOA applications will generate useful data for future analysis.

The FAA does not agree with the commenters who believe rulemaking to improve regulatory safety is not justified unless an actual accident is experienced by a particular operator, group of operators, type of operator, or foundation. Such an approach would

result in an impracticable regulatory scheme and would inevitably result in the FAA failing to adequately assure the safety of the flying public. When the NTSB and FAA investigate an accident, the recommendations are applied to the broad category of operators or persons who conduct the same type of operation and who might have the same potential risk of a similar accident. For instance, if particular operators using 30-passenger turboprop airplanes crash on approach due to preventable crew errors, the FAA would not regulate only those particular crew members. The FAA would regulate all operators and crews using the same equipment. In this final rule the FAA is regulating the air tour industry, not just those air tour operators experiencing an accident.

#### *E. Increased Noise and Other Impacts on National Parks*

The USATA believed the proposed lower altitudes for multi-engine helicopters provided an incentive to convert to noisier twin-engine helicopters. The commenter believed this was in conflict with the National Parks Air Tour Management Act of 2000, which mandates incentives for quiet technology aircraft. USATA stated, "This mixed message is confused and shows a lack of policy coherence and initiative. Which way does the FAA want the helicopter air tour industry to go? The FAA should have a well reasoned, coherent and coordinated plan that addresses both public safety and noise abatement for the air tour industry."

NorthStar commented that the proposed altitude restrictions would be less safe and would result in more noise impact. NorthStar also commented that the FAA had not included any noise data or analysis as a part of this NPRM and had therefore not provided an adequate opportunity for comment on what appears to be the rationale behind the change in minimum altitudes.

The National Park Service (NPS) was particularly concerned about the potential for adverse effects on wildlife resources as a result of the proposed altitude restrictions. The NPS was concerned that the proposed minimum standard of 1,000 feet AGL over "raw terrain" may affect sensitive park resources or visitor experience. Of special concern to NPS were the proposed special deviations that would have allowed the FAA to approve a lower minimum altitude of not less than 500 feet AGL for single engine helicopters, and not less than 300 feet AGL for multi-engine helicopters. The NPS commented that the scientific community had studied the effects of

aircraft flight on wildlife for many years and provided details on studies that showed negative impacts to wildlife due to low-level aircraft. NPS concluded, "The NPS appreciates the concerns of the NTSB and the FAA that minimum flight standards could create a compressed flight environment, particularly over areas of high interest. However, no analysis of alternatives has been presented for the suggested AGL and therefore, without additional information, it is not possible to determine if there is an option that affords greater protection to park resources while also allowing for a safe, high quality air tour."

NPS also stated that it was a cooperating agency and cosignatory with the FAA and they together are responsible for implementation of the National Parks Air Tour Management Act of 2000. Accordingly, the NPS had some concern regarding the potential impact this rulemaking process will have on the National Environmental Policy Act (NEPA) analyses and resultant air tour management plans (ATMPs). NPS stated that the National Parks Air Tour Management Act also outlines appropriate alternative actions that may be considered in an ATMP. These actions, NPS commented, may include the prohibition of air tours over a national park, in whole or in part, and may establish conditions for the conduct of commercial air tours. The operations may include commercial air tour routes, maximum or minimum altitudes, time of day restrictions and maximum number of flights per a unit of time. NPS stated that two of these actions, commercial air tour routes and maximum or minimum altitudes, are identical to the type of actions identified in the proposed rule.

We did not propose any commercial air tour routes, time of day restrictions, or maximum number of flights per unit of time in the NPRM, because this rule is limited to addressing the safety of air tours, not their impact on the environment. As noted by NPS, those concerns are more appropriately handled as part of the ATMPs. In regard to altitudes, we did not adopt any of the proposed altitude changes, and the long-standing altitude restrictions continue unchanged. Accordingly, the FAA does not believe that this rule changes the ATMP analysis in this regard.

The FAA does not agree that this rule will circumvent the goal of the Act and its promotion of quieter aircraft. The FAA anticipates ATMPs will address NPS's concerns for the national parks by establishing tour routes, altitude limits, incentives for quiet aircraft technology, and other requirements where

necessary. Since many of the air tour operators fly inside and outside national parks, the conversion to quiet technology will have a broader benefit than just inside national parks. In any event, this final rule does not change any of the altitude minimums already in place. Those altitudes are safety-driven. Any future ATMP final rule that changes altitude minimums must meet established safety standards.

With regard to the NPS's specific concern about allowing airplanes to descend to 1,000 feet AGL and helicopters to 500 feet AGL or 300 feet AGL, the FAA notes that current part 135 Visual Flight Rule (VFR) minimum altitudes are established in § 135.203 at 500 feet above the surface during daytime for airplanes, and 300 feet above the surface for helicopters operating over congested areas. There is no listed minimum for helicopters over other-than-congested areas. In other-than-congested areas, helicopters may go below 300 feet AGL. FAA Advisory Circular 91-36D, Visual Flight Rules (VFR) Flight Near Noise-Sensitive Areas (as amended, September 17, 2004), recommends a 2,000 feet AGL limit over "noise sensitive areas." This is a voluntary limit that is based on general environmental concerns and not the safety concerns that are the identified purpose of this final rule.

The FAA has more restrictive altitude standards for air tours in Grand Canyon National Park and Hawaii because of the large number of commercial air tour flights in a relatively small amount of airspace and the demonstrated hazards. In view of many of the comments and our reassessment of the relative safety risks, the FAA decided not to change minimum altitudes in other portions of the country. For the same reasons, we decided not to adopt the proposed visibility, cloud clearance, and standoff distance restrictions for other portions of the country. Any ATMP supplements this final rule.

## V. Comments on Part 135 Certification

### A. Against Part 135 Certification

Some commenters stated that the requirement to be certificated under part 119 and obtain approval to operate under part 135 would be difficult or impossible for certain types of aircraft and operations. Sopwith Ltd., used as an example the Ford TriMotor aircraft it operates, and stated, "While the Ford is a type-certificated design and holds a standard airworthiness certificate, the Ford cannot be operated under part 135, because it cannot meet all the requirements of part 135." Similarly, AFA commented that many vintage ex-

military aircraft and foreign type-certificated aircraft do not hold standard airworthiness certificates and cannot qualify under part 135. EB Air asked how operators of such aircraft would address and conform to the many part 135 requirements regarding time life items such as engine and propeller total times, engine accessory service life, and replacement of parts.

Bar Harbor Aviation commented that the additional paperwork, bookkeeping, manual writing, equipment, time, and money required to become a part 135 operation would not make the operation any safer, just more complex and expensive to operate. Waldo Wright's Flying Service commented that, "Because of the increased regulatory standards and certification costs of a multi-pilot part 135 certificate, I would have no choice but to split my company up and apply for a one aircraft-one operator part 135 certificate for each aircraft." Waldo Wright also commented on the difficulty and expense of obtaining insurance for operations conducted under part 135, compared to part 91. USATA believed a "one-size-fits-all" approach was not the most prudent way to approach the issue. USATA stated that the FAA failed to take into consideration the uniqueness of full-time commercial air tour operations and the considerable experience of current part 135 and 121 commercial air tour operators in publishing the NPRM, and would impose additional new requirements with too broad a regulatory brush. USATA stated, "Evidence of that is clear since nearly every operational regulatory provision contained in this NPRM also contains a way in which the FAA Administrator may grant exceptions. If nearly all of these proposed requirements are 'exceptionable,' then the justification for imposing them in the first place must be suspect." AFA stated that there is no statistical data that can lead one to conclude that the affected operations would be any safer if required to become certificated and operated under part 135.

AOPA stated that "It is important to note that the primary reason for eliminating the part 91 exemption under the National Parks Air Tour Management final rule was not because of safety, but was a regulatory means to control these operations for purposes of conducting air tours over national parks." Similar comments were made during public face-to-face meetings and the Internet meeting.

In the National Park Air Tour Management final rule, certification under part 119 was required for all

operators with limited exceptions. The FAA issued the final rule for the National Parks requiring certification for many reasons, including improved safety and oversight, and to meet requirements contained in legislation.

Many of these part 91 operators compete with part 135 commercial air tour operators, and have chosen to operate under the exception provided in § 119.1(e)(2). In making this choice, the operator does not have the flexibility provided to an air carrier but can significantly lower operational costs while receiving compensation for the flight. The FAA recognizes that many of the commenters *could* meet the requirements to operate under part 135, but only at a significant increase in overall cost of operation.

Aircraft with an airworthiness certificate that is other than “standard” (e.g., “Restricted Category,” “Limited Category,” or “Experimental Category”) cannot be used to carry people for compensation or hire.<sup>6</sup> (14 CFR 91.313, 91.315, 91.317, and 91.319.) An “Experimental Category” certificate does not allow carrying passengers at all. Most, if not all, of the military and many vintage airplanes have restricted airworthiness certificates. Thus, the operators of such aircraft can only carry persons for compensation or hire if they have an exemption. Many of the commenters said they do not fit into part 135, but it is evident that some of those same commenters also may not fit into part 91 when carrying passengers for compensation or hire. The FAA recognizes that some of the aircraft with other than standard airworthiness certificates could meet standard airworthiness certificate requirements. Operators of these aircraft could apply for a standard airworthiness certificate, which would relieve them of any obligations to operate under an exemption.

In response to many of these comments, the FAA will allow operators currently conducting air tours under part 91 to remain in part 91. The 25-mile exception in § 119.1(e)(2) will not be eliminated as proposed. Since these operations tend to be similar to commercial air tour operations (i.e., day-time VFR, low-level, single pilot, short-term, non-stop flights over varying types of terrain), we will require these flights to comply with the safety provisions of part 136 subpart A.

The 25-mile exception is for passenger-carrying compensation or hire flights in airplanes (of a certain size) and helicopters (of a certain size) operating within 25-statute miles of the

departure airport, and the flight must return to that same airport. As has always been the case, the exception does not apply to point-to-point transportation landing at a second airport. Passenger-carrying flights operated for compensation or hire outside the exception must be conducted in accordance with the operating provisions of parts 121 or 135 as appropriate, or under an exemption.

We added the requirement to § 91.147, Passenger carrying flights for compensation or hire (Not otherwise covered by § 91.146), for operators to apply for and operate in accordance with a Letter of Authorization (LOA). LOAs are legal documents required by rule to be in writing and under which the operator must provide certain information concerning how it conducts its business. This provision addresses the concerns voiced in NTSB Recommendation A-95-58, where the NTSB expressed concern that the FAA did not have any way of overseeing these operators, because FAA didn't know who they were and where they operated. This LOA requirement provides us with basic information on the operator and its business that is less extensive than the information and numerous other requirements needed to become an air carrier, but greater than what we have under the existing regulations. The LOA merely adds some data elements to the registration requirements already applicable to these operators under the FAA's drug and alcohol testing regulations. We have determined that the LOA is significantly less burdensome than obtaining a part 119 certificate for operations under 135. Because the LOA requirement provides a relationship between the FAA and the § 91.147 operator, as well as the information the FAA needs for tracking the operator, we believe it satisfies the substance of the NTSB's recommendation.

#### *B. “Sightseeing” vs. “Commercial Air Tours”*

EAA maintained there should be a regulatory distinction between “air tour operators” and “sightseeing” flight operations. EAA saw air tour operators as being fairly substantial commercial ventures operating a fleet of aircraft in continuous (perhaps seasonal) service over recognized public attractions such as national parks and monuments. However, EAA believed operators conducting more casual “sightseeing” flights using a single aircraft and more random general interest routing should not be held to the same standards as “air tour operators.” In this regard, EAA believed the existing exception for

“sightseeing flights” from parts 119 and 135 is appropriate. EAA provided suggested rule language to clarify the definition of “commercial air tour” and to make other changes.

PASS stated that the FAA's proposed response to the NTSB's recommendation number A-95-58 is flawed and unworkable because it failed to recognize the differences between operators providing public air transportation in the full sense of the word (i.e. a certificated air carrier), and those providing a lesser service. PASS stated that Congress intended the FAA to provide only a sensible “minimum level of safety standard” for other air commerce operations when they enacted the FAA Act of 1958, and again when they re-codified the law at 49 U.S.C. 44701. In the FAA's set of proposals, PASS stated, the FAA did not adequately consider the differences between public transportation of an air carrier, and the unique type of “sightseeing event” this segment of air commerce provides to the public.

The General Aviation Manufacturers Association (GAMA) commented that “The air tour industry is rich in its diversity with companies ranging from individuals that offer rides in single airplanes to organizations specializing in vintage flying to helicopter and fixed wing operators with large fleets operating in the nation's national parks.” According to GAMA, the NPRM did not properly accommodate the range of operations performed by these different entities.

HAI also commented that a distinction should be drawn and recognized by the FAA between commercial air tours and sightseeing operations. According to HAI, commercial air tours, for the most part, are conducted under part 135 where the operator realizes a major part of its income is from air tours and advertises, either seasonally or annually, for air tours over specific and recognizable scenic features. Sightseeing, on the other hand, tends to fall under part 91, where less specific, more generalized flights are conducted over different and varying routes. HAI commented that there are significant numbers of operators who safely conduct thousands of sightseeing flights under part 91. HAI stated the FAA did not produce any compelling evidence indicating that the relatively small percentage of passengers choose to sightsee via part 91 operations do so at an increased risk.

Similarly, Sopwith, Ltd., stated that the FAA had lost sight of what is, and what is not, a “commercial air tour.” The problem, according to Sopwith, is confusion over the word “sightseeing.”

<sup>6</sup> See 14 CFR 91.313, 91.315, 91.317, and 91.319.

Sopwith believes local flights flown as introductory rides or as barnstorming rides in vintage aircraft may be characterized as "sightseeing", but they are not a "commercial air tour" activity. Sundance Helicopters, Columbia Seaplane Pilots Association, Papillon Airways, Inc., U.S. Parachute Association, and the Collings Foundation made similar comments.

Offering a different view, NATA believed "there is sufficient cause to maintain local sightseeing in part 91," and "FAA could take steps to identify the population and implement any necessary safety standards within part 91, should they be necessary."

We have listened to the comments and decided not to force any part 91 operators to move into part 135 as long as they adhere to the conditions of the 25-mile exception. Many operators in part 91 now operate a business similar to an air carrier that is limited to conducting commercial air tours. They advertise for hire and carry more passengers than many air carriers. Their Websites are replete with advertising, and many operate every day and move from airport to airport seasonally.

HAI commented that there are thousands of part 91 flights conducted in a single aircraft, with a single pilot. We know there are many operators who conduct flights under part 91 (single pilot, compensation or hire flights in an on-demand environment), under the existing 25-mile exception. Some of these operators go to a different airport each weekend and conduct flights under the 25-mile exception at that new airport. These operators have been conducting flights with little oversight by the FAA since they have no fixed base of operation and no assigned Flight Standards District Office (FSDO). This rule captures these part 91 operations by requiring the operators to report to the local FSDO or through an LOA stored in an FAA database.

One purpose of this rule is to raise the existing level of safety specifically for current part 91 air tour operators. In view of several comments, we believe that if we eliminated the 25-mile exception, many operators who now operate under that exception would go out of business. The FAA believes there are other alternatives to achieve satisfactory safety goals, minimize impact on the industry, and still increase the level of safety, rather than eliminating the 25-mile exception. We are imposing the safety requirements found in part 136 subpart A on all commercial air tour operators, including those operating under the 25-mile exception. We set forth our justification for the part 136 subpart A safety

requirements further in the document. In addition, we are adopting the data collection provisions that would have been included had these operators been required to comply with part 135 (see new § 91.147). The data that we collect will assist the FAA in monitoring these operations, which will result in greater oversight of the industry and the ability to measure the safety benefits of the rule.

Before this final rule, § 119.1(e)(2) applied to certain "sightseeing" flights for compensation or hire conducted within 25 miles of the takeoff airport and return to the same airport (not point-to-point transportation). In this final rule, we have deleted the word "sightseeing" from the 25-mile exception and inserted the phrase "commercial air tour" in its place. (See new § 119.1(e)(2)) It is important to note that commercial air tours are defined as flights of which one purpose is sightseeing. Sightseeing is one of the several factors the FAA considers when assessing whether or not a flight is an air tour operation. (See "commercial air tour" definition new sections 136.1 and 119.3).

#### C. Antique/Vintage Civil and Military Aircraft

Many commenters addressed the applicability of the proposals to classic and vintage military aircraft used for "barnstorming" rides. The AFA stated that the result of implementing the NPRM "would be the elimination of 'barnstorming' as we know it. In the process tens of thousands of people will be deprived each year of the opportunity to experience golden age, classic and vintage military aircraft by riding in such aircraft at air shows, county fairs or just for the fun of going to a local airport where such rides are offered." GAMA did not believe that the air tour rules should address "barnstorming," stating, "there is no accident record indicating that this type of operation is at risk. These airplanes are maintained by enthusiasts who are highly safety conscious and well equipped at properly managing the risk of that type of flight operation."

AFA also commented that virtually no historic or vintage aircraft can meet part 135 regulations, and the burden on the owner/operator of such aircraft to write manuals, become certified, keep records, and operate under part 135 rules would impose a severe economic burden that few would choose to meet even if the aircraft qualified under part 135. NATA commented that many businesses are built around the concept of "seeing the sights" in an antique or vintage aircraft. NATA conducted a

survey on the NPRM and found that those who reported sightseeing rides were their primary business also reported that they did not believe their aircraft could meet part 135 requirements.

Commenters stated that the main obstacle to part 135-certification would be meeting the airworthiness requirements. Waldo Wright's Flying Service listed some types of aircraft used for barnstorming, such as the Travel Air 4000, the New Standard D-25, the Brunner Winkel Bird, the Boeing Stearman, the Waco UPF and YKS models, and stated, "While some of the above aircraft manufactured in the 1940's may have Pilot Operating Handbooks, Maintenance and Parts Manuals, the aircraft vintage 1929-1939 have no such luxury; they are operated in accordance with markings, placards and operations limitations. To bring aircraft like these into conformity with FAR Part 135 would be very costly to small operators, if not impossible." They suggest that, instead of requiring certification under part 119, part 91 operators be required to submit a Written Statement of Operation that states who will do what flights, where, when, and in what equipment. This statement could be renewed annually along with the submission of a flight hour summary and completion of a survey. The FAA could then monitor the industry and collect reliable and accurate data that could then be used for future comparison and study.

Alaska Seaplanes suggested that part 91 operators be registered with their local FSDO, which would help the FAA develop statistics and enforce the current rules. Alaska Seaplanes also suggested leaving part 91 as it is but with the addition of §§ 135.117 (briefing), 135.183 (over water), and §§ 135.203 and 135.205 (altitude and visibility) for these compensation and hire flights.

Various commenters suggested ways to limit the applicability of the proposed rule. Waldo Wright's Flying Service suggested the FAA impose the floats requirement or restrict overwater flights in helicopters, but leave other operators alone. Sopwith Ltd. suggested adding barnstorming flights and introductory rides to the list of excluded operations in proposed § 119.1. Similarly, Belle Air Tours suggested that vintage aircraft be added to the list of aircraft excluded from these rules, such as balloons, gliders, warbirds, and aerobatic and air combat simulation flights. The Collings Foundation suggested excluding non-profit organizations, currently operating safely under exemption letters, from this rule. EB Air commented that this

segment of aviation is most often operated by small one or two plane operations constrained by the high cost of aircraft ownership, maintenance, rising fuel costs, and seasonal weather. PartAir, Inc., stated that the NPRM is "an ill-considered and misplaced effort at improving 'safety' through elimination-by-regulation of a significant area of aviation."

Barnstorming Adventures, Ltd., commented that sightseeing and air tour operations could be made safer; however it strongly recommended to the FAA that a layer of regulation is not the answer. This commenter provided an extensive summary of its sightseeing operations and the economics of the industry. Barnstorming Adventures, Ltd. suggested that some oversight of the industry would be acceptable compared to the proposed certification as a part 135 air carrier. The commenter suggested that certification, as proposed in the NPRM, would be costly and unjustified.

There are many terms for the types of aircraft considered in these comments. The terms include: barnstorming, vintage, military, warbirds, antique, and classic. The FAA recognizes that this type of operation is often a "business" traveling from airport to airport offering rides for a fee, much like those aircraft operators traveling from farm to farm offering airplane rides in the early part of the 20th century. Today, "barnstormers" travel from airport to airport and offer rides in antique and vintage airplanes, thus recreating the experience of the past by using the same airplanes used during that era. There is no way to know which flights are only "introductory" flights. The FAA also recognizes that in order for these businesses to exist and collect money, a means to allow compensation or hire flights must be provided in the regulations.

Prior to the FAA proposal, the only exception provided from certification under part 119 that effectively fit these flights was the 25-mile sightseeing exception in aircraft with standard airworthiness certificates. Although commenters have stated that sightseeing is not always a purpose of the flight, the FAA considers the overall character of the flight to be sightseeing, even if a primary purpose may be the experience of flight in an historic aircraft. There are hundreds of part 135 small one or two-plane operations that are also constrained by high cost, aircraft ownership, maintenance, rising fuel cost and seasonal weather. In response, we have decided to retain this 25-mile exception with some minor revisions.

- "Barnstorming" operators using aircraft with standard airworthiness certificates may continue to operate under part 91, but if they desire to continue to use the 25-mile exception, they must comply with the process provided by FAA in this final rule to allow an operator to apply for and receive an LOA. The LOA, obtained through the operator's FSDO, will include information such as the operator's name, address, management, maintenance responsibility, aircraft information, and the operator's drug and alcohol prevention program. Sufficient time is provided in the rule for operators to apply for and receive the approved LOA from the FAA. Once received, operators must comply with the provisions of the LOA when operating under new § 91.147. The operator must keep the information in the LOA current. This will develop a database as NTSB and Alaska Seaplanes recommended.

- "Barnstorming" operators should realize that the new § 91.147, which allows them to operate under part 91 rather than part 135, continues to require each aircraft have a standard airworthiness certificate (not Limited, Restricted, or Experimental Categories). We know that many of the aircraft used in these types of experience flights can never have standard airworthiness certificates and operate under an exemption today.<sup>7</sup> These operators will continue to need an exemption from the standard airworthiness requirement for all compensation or hire aircraft operations.

## VI. Comments on Part 91 Operations

### A. Charity, Nonprofit, and Community Events

Before discussing the specific comments about part 91 operations, we believe it is beneficial to the reader and those affected by this rule to explain some of our terms up front. It became apparent, especially during the Internet meeting, that many affected by this final rule were confused about certain terms we use.

1. What is the difference between an exception, an exemption, and a deviation?

Many comments indicated confusion with the terms "exception" and "exemption." An exemption is permission the FAA grants pursuant to 14 CFR part 11 to a specific party to

allow that party to operate outside the regulations. The party requesting the exemption must show unique circumstances why a particular regulation, or portions of that regulation, should not apply to it. The party must also demonstrate that granting an exemption will not adversely impact safety. Grants of exemption generally have conditions and limitations specific to the request made by the petitioner. The exemption applies only to the person(s) or company it is issued to, and has a specific exemption number assigned to it. Exemptions are designed to address unique circumstances not contemplated by existing regulations and are not applicable to a significant portion of the regulated entities. A familiar type of exemption granted by the FAA are those to sponsors and pilots conducting certain flights for charitable organizations that allow them to operate without drug and alcohol testing.

An exception is written into the regulation with the word "except" and is available to everyone. An operator does not have to apply for an exception. If an operator meets the conditions for the exception, the general rule no longer applies for the operator. For example, a rule might read: "Except in the cases described in paragraphs (d) through (g) of this section, all aircraft must be painted red before takeoff." The exceptions to red paint would be found in paragraphs (d), (e), (f), and (g).

A deviation is provided in regulatory language when the FAA foresees circumstances under which the general rule language shall not apply. A deviation is different from an exception in that a deviation requires specific approval from the Administrator. However, unlike an exemption (which also requires Administrator approval), deviations can be approved at the local level whenever good cause is shown. It is not necessary to demonstrate unique circumstances. For example, proposed § 136.7, Visibility, had a two statute mile visibility requirement during the day in paragraph (a), but paragraph (b) allowed for authorization by the Administrator to operate a helicopter during the day in visibility of at least one statute mile in accordance with the deviation procedures of § 136.21. The proposed Visibility and Deviation authority have been deleted in this final rule in response to public comments.

By reading the thousands of comments, the FAA found that many different types of operators use the "25-mile exception." This exception relieves the operator from holding a part 119 air carrier certificate and permits it to operate under part 91. Some operators

<sup>7</sup> Today, the FAA issues exemptions for World War II era airplanes with Experimental and Restricted Category airworthiness certificates that include extensive maintenance and operational requirements.

don't know they use the 25-mile exception, but they would need to hold a part 119 air carrier certificate for their operations without it. Many of these commenters said they are not offering "sightseeing" flights, and that they just let the passengers "experience" something—e.g., aviation history, military history, or freedom. What some commenters misunderstood is that the general rule requires that someone carrying people or property for compensation or hire must comply with air carrier rules. While there are exceptions to this general rule (such as those found in 119.1(e)), there is no exception for "experience" flights. We believe many of these operators not only give the passengers an "experience," but also do some form of sightseeing and thus fall within the 25-mile exception. The same set of safety standards will apply to these flights regardless of how the operator chooses to describe them. In § 136.1, we define a commercial air tour and list what we will consider in determining what kind of operation is considered a commercial air tour. Sightseeing is described in the definition. Therefore, if you are offering sightseeing as part of one of these "experience" flights, you might fall within the 25-mile exception, but you would be subject to the safety provisions of part 136 subpart A.

In addition, many pilots appear not to know the conditions and limitations of the exemption they operate under. During the FAA's Internet meeting, one private pilot said that he had already conducted certain flights for a couple of years and didn't have 200 hours yet. The sponsor for whom this pilot flew clearly requires 200 hours of total time for private pilots.<sup>8</sup> Either the sponsor holding the exemption did not brief that particular pilot, or the pilot did not know he was operating under an exemption at all. The conditions and limitations of an exemption are specific and require the sponsor (to whom the exemption was issued) to brief the pilots about the exemption prior to each event. This discussion continues under the private pilot hour requirement heading below.

Also during the FAA's Internet meeting, it became clear some pilots don't know the FAA's drug and alcohol testing requirements apply to them. Some commenters openly admit they advertise for customers, charge for flights, pay their workers, and otherwise operate as a business. They are clearly not flying for charity, and are not

operating under any exemption. These operations are for compensation or hire and are subject to the drug and alcohol testing requirements.

In this final rule, the FAA gives relief for drug and alcohol testing for the limited operations in § 91.146 in the interest of charity. Section 91.147 may be used by those not willing to be limited to a certain number of events in a calendar year. Section 91.147 requires drug and alcohol testing compliance.

## 2. What are charitable, nonprofit, and community events?

For the purposes of our rule, we have categorized organizations and operations that operate for "free" or solely for the benefit of others in three different ways. These events are either sponsored by a "charitable" or "nonprofit" organization, or qualify as a "community event."

A charitable event is an event that raises funds for a charitable organization recognized as such by the U.S. Department of the Treasury under 26 U.S.C. section 170 (Internal Revenue Code). Sponsoring pilots and donors may deduct contributions that raise funds for the benefit of a charitable organization. An example of a charitable organization event is a pancake breakfast at which passengers make a contribution to an organization, such as the American Cancer Society, in exchange for breakfast and a flight over their town. A nonprofit event is an event that raises funds for a nonprofit entity organized under State or Federal law, with one of the entity's purposes being the promotion of aviation safety. The sponsor or the pilot(s) of nonprofit event flights would not deduct contributions under section 170 of the Internal Revenue Code. For example, aviation museums conduct flights to raise funds to keep the museum in operation and preserve the aircraft in their possession. A community event is a flight flown for a good or worthy cause and occurs only once in a calendar year, January 1–December 31. The sponsor or pilot of community event flights would not deduct contributions under section 170 of the Internal Revenue Code. An example of a community event is flights to raise money to assist a family whose home was destroyed by fire. Another example is a raffle for a free flight; the money raised from the raffle goes to purchase new computers at the youth center.

The operating limitations and regulations for charitable, nonprofit, and community events are found in this rule under §§ 91.146 and 91.147. Those sections provide the total duration (three days) allowed under each

designation (charitable, nonprofit, community event) and describe who is eligible to conduct such events. Part 91 operators who want to continue in part 91 and operate charity flights may do so under § 91.146. Part 91 operators who are uncomfortable with the limitations in § 91.146 and wish to continue flights benefiting charities, nonprofit organizations, and individuals or organizations supporting a community event may use § 91.147. Charities or nonprofits also have the option of becoming a part 135 operator.

While the FAA has clarified the regulatory language in the final rule, the comments to the NPRM disclosed several misconceptions about the differences between charitable, nonprofit, and community events.

One major misconception relates to the difference between a flight that is "free" and one flown for compensation or hire. Several charities receive compensation through "donations." Some passengers donate money to a charity and expect a flight in return for donating money. Another popular "free" flight is one given at an event that charges a fee for attendance and each person paying the fee receives a "free" aircraft ride during the event. The FAA considers these flights to be operated for compensation or hire.

It is often hard to determine whether a pilot is working for "free," or is being compensated in some manner. In the interest of charity, the FAA has allowed certain forms of compensation or hire, such as the ability to log pilot time and the ability to accept payment for aircraft fuel and oil. Some pilots own or borrow the aircraft used and aren't paid for their pilot time. Some pilots rent an aircraft and are reimbursed by the sponsor. Some pilots are reimbursed for aircraft rental but provide their time for free. Some pilots who own the aircraft they fly are able to "write-off" some ownership expenses. Some pilots are paid to fly.

A pilot who flies his or her own aircraft every weekend of the year and receives compensation each weekend is not working for "charity" when a portion of the proceeds is given to the airport manager the last day of the event. At best, that is a gift to the airport manager and is often given to guarantee an invitation to the next event. Other pilots and mechanics are retired or wealthy and really do work for free, a true gift to charity.

Some charities have full-time pilots and mechanics on their payroll and maintain expensive aircraft and facilities. These organizations need money for employees of the organization and for maintaining their

<sup>8</sup>The operation was subject to EAA's Exemption No. 7830 for "Young Eagles" and is discussed in more detail later in this preamble.

facilities, but that does not exclude them from the list of charity, nonprofit, or community event operators. The aircraft used for charity, nonprofit, and community event flights must be maintained and that money must come from somewhere. All of the flights by these museums and charities involve "compensation," but in the interest of public good and charity, the FAA has allowed them to operate outside of part 135 requirements. In this final rule, operators of these kinds of flights will continue to be allowed to operate outside of part 135 requirements, even though the FAA considers the operations to be for compensation or hire. However, there are certain new requirements they must abide by, and those are found in §§ 91.146 and 91.147.

### 3. The Four-Event Limit for Charitable and Non-Profit Organizations and the One-Event Limit for Community Events

AFA and Sopwith Ltd. objected to the proposed condition in § 119.1(e)(11) limiting charitable rides conducted under part 91 to four events per organization per year with each event lasting no longer than 3 days. The commenters thought the proposed restriction is not justified and is unnecessary.

The Collings Foundation went further by commenting that many of the proposed restrictions, including the requirements for a standard airworthiness certificate and a limit of four or fewer events per calendar year per organization or pilot without a clearly defined exemption, would totally eliminate the capability of nonprofit organizations to fly historic aircraft. Organizations such as the EAA, Commemorative Air Force, Collings Foundation, National Warplane Museum, and Yankee Air Force, fly historic aircraft at many locations around the country. Collings argued that these organizations would no longer be able to function. Also, many nonprofit aviation organizations could not survive without donations associated with a flight experience or special donations to keep certain aircraft flying. The Collings Foundation cited estimates that more than one-half of all B-17s and all of the B-24s and B-29s flying today would be grounded by the proposed rule.

EAA stated that its organization and its network of nearly 1,000 chapters is one of the largest sponsors of charitable and community flight operations in the world. EAA stated that its success rate and safety record are unparalleled and are supported by strenuous training and oversight programs sponsored by the association. EAA stated that it and several other organizations also conduct

aircraft demonstration flights all over North America, giving the public an unmatched opportunity to experience firsthand the history of aviation in such aircraft as the Ford Tri-Motor, a Boeing B-17 bomber, and a replica of the famous Spirit of St. Louis. EAA opposed inclusion of additional requirements on these operations in the strongest terms.

The Owls Head Transportation Museum commented that the proposed rules would affect not only the Museum, but also many other nonprofit organizations in the mid-coast Maine area. The museum stated that it has high standards placed on its aircraft, maintenance, and pilots. The museum also boasted that, although it has given more than 3,000 rides, it has maintained a perfect safety record, incurring neither accident nor incident. The Museum also donates a number of rides to other nonprofit organizations so that they may raffle the rides to raise funds. The Owls Head Transportation Museum stated that these are the groups that will suffer the most in mid-coast Maine if the 25-mile exception is eliminated in the final rule.

AFA objected to the proposal that restricts charitable flights to only four events per calendar year, per organization, lasting no longer than 3 days each. AFA suggests that this restriction is nonsensical and that by adopting this limit, the FAA is convinced that these flights are too dangerous to be flown often. AFA commented that by the FAA's logic, these flights should be completely eliminated. AFA asks if it is safe to operate charitable flights in four events per year, why is it not safe to operate them 365 days each year?

In summary, commenters believed that the rule, if adopted as it was proposed, would result in an end to charity and community event flights for various foundations. They also believed the rule is not justified based on safety, nor is needed to improve safety. Some commenters stated they are against any limitations on charity and community events while others are against the elimination of the 25-mile exception.

Determining that certain comments have merit, we made some revisions to the final rule. The intent of the proposal is maintained in this final rule. All flights on behalf of charitable or nonprofit organizations, as defined in the rule, may continue in part 91, and a limited number are allowed without meeting the drug and alcohol rules that would otherwise apply. Flights sponsored by charitable and nonprofit organizations are limited to four events per year. Local chapters of national charities or non-profit organizations are

considered separately for this rule, with each chapter entitled to four events per year. The AFA comment with regard to the four-event limitation has merit, but suggests the commenter does not understand why this limit should be imposed. As stated above, charitable, nonprofit, and community event flights are events for compensation or hire. However, we recognize these events are a tremendous benefit to the public and deserve some exceptions from the normal regulations necessary for part 91 compensation or hire flights. Therefore, we created a rule (§ 91.146) that allows sponsors of charitable, nonprofit, and community event flights to employ pilots, often as volunteers, to give rides to the public without meeting drug and alcohol requirements normally imposed on a part 91 compensation or hire flight, and without having a certificate under part 119.

The four-event limit is the current limit imposed through exemptions.<sup>9</sup> This limit is not new; nor is it based on safety concerns. Rather, the concern is with the nature of these flights. To maintain the charitable nature of these flights, it is necessary to place some restrictions on them. If the interest of charity were taken out of the equation and all else were equal, operations of this kind would be required to be part 135, and thus be subject to more stringent regulation and oversight. The regulatory standards applied to part 135 flights would likely turn charitable organizations away from their practice, which is not the FAA's intent with this rulemaking. The FAA has historically chosen four events per year as a reasonable balance that separates a charitable event from an event run by an air carrier. The one event per year limitation on community events recognizes that the primary interest of the operator is more likely to be business-oriented than a charitable or non-profit organization. If an operator is unhappy with the limit, it may fly more than four events per calendar year, but it must comply with the requirements in § 91.147. Those requirements include implementing a drug and alcohol testing program in accordance with 14 CFR part 121, appendices I and J. An operator complying with § 91.147 would also not be able to use private pilots. The operator has a choice of which regulation to follow, and operators currently conducting flights under an exemption should not find the four-

<sup>9</sup> Exemption No. 7112, held by AOPA, contains this event limitation. That exemption, along with others, is the basis for the event limitation in this final rule.

event limitation to be new or unexpected.

Many of the commenters who operate antique aircraft seem to believe that if they operate in accordance with an exemption, the FAA will cancel the exemption once this final rule is published. Because the rule encapsulates current exemptions to charitable or non-profit organizations from drug and alcohol testing, as long as participation is limited to four events per year, charitable or non-profit organizations will no longer need these exemptions. Any exemptions issued because a commercial air tour operator does not have a standard airworthiness certificate for its airplane will need to continue. When the expiration date on the exemption arrives, the petitioner may re-apply for renewal. At that point, the FAA may grant, deny, or change the exemptions. This rule does not change that policy.

The FAA has determined that the conditions and limitations included in the exemptions should also be included in this final rule. Since commenters failed to provide any rational basis to not include certain proposed limitations for "charitable, nonprofit, or community events," the FAA has incorporated those limits in new § 91.146. In creating the new § 91.146 for charitable, nonprofit, and community events, we have 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. Community events are limited to only one per sponsor in a calendar year, as proposed in the NPRM. This limit is not specifically derived from community event exemptions, but was proposed so that a community event sponsor would not have to go through the extra effort of applying for and receiving an IRS classification.

This final rule will continue current FAA policy. Current exemptions allow for a pilot to fly only four events per year for a charity, nonprofit, or community event. As stated above, this limit is not new, and has been included in exemptions issued for years. For example, Exemption 7112C,<sup>10</sup> issued to AOPA on May 20, 2004 states in condition and limitation #11:

The event sponsor may conduct no more than four events in a calendar year. Each person operating under this exemption must provide AOPA with a statement on behalf of the event sponsor, indicating that neither the event sponsor nor any participating pilot has

participated in more than four similar events in a calendar year.

The event limitations were also explained in the NPRM.

For operators choosing to exceed the four-event minimum, we have incorporated a new § 91.147 in this final rule to provide relief from the need to certify as an air carrier. It does not provide exclusion from the existing "drug and alcohol" testing requirements. The new § 91.147 does not place any limitation on the number of events as long as the operator registers with the FAA as required in the rule. For example, Owls Head Transportation Museum may continue its operations in accordance with § 91.146, if its raffle flights are grouped to fit into the requirement of no more than four events per year. If that doesn't work, they may operate in accordance with § 91.147. If their aircraft do not have standard airworthiness certificates, the museum will continue to need an exemption.

There may be cases where a sponsor could qualify for all three categories. A sponsor with separate chapters is allowed four events for each chapter. So, the 1,000 chapters of EAA may each sponsor four, three-day events each year. Each pilot is limited to a maximum of 12 calendar days of flying per year (four events, three days per event). Each event (charitable, nonprofit, or community) may be up to three days in duration. Each situation counts as one event for that pilot. In this final rule we do not limit the number of flights conducted during each event, although a normally prudent pilot and event sponsor would consider pilot fatigue.

In the NPRM, we proposed limiting both the sponsor and the pilot to four events per calendar year. We have kept that limitation in the final rule. Commenters questioned the source and reasoning for the limit. The source is existing exemptions, and its reasons are the public policy considerations separating charitable, nonprofit, and community events from events run solely for profit or business. Operators who do not wish to comply with the limitations of § 91.146 may operate in accordance with § 91.147. Operators of either part may also become air carriers in accordance with parts 119 and 135.

#### 4. Private Pilots and the 500-Flight Hour Requirement

Most of the commenters on the issue of private pilots objected to the proposed increase in pilot flight time from 200 to 500 hours. AOPA, NATA, AFA, PASS, and EAA commented that the FAA did not provide any safety data

or statistics to support this change. EAA believed it is irresponsible for the FAA to create additional regulatory burdens on the general public when no information has been presented to indicate that there is currently a safety concern, or that any significant increase in safety would result from the change.

AFA stated that the proposal would shrink the pool of pilots able to help local charities and will drive hundreds of small sightseeing operations out of business. AFA also asked what the logic was behind the 500-hour limit. AFA also suggested there should be a cutoff date for when the 500 hours was accumulated so that most of it was not done too far in the past, such as 50 years. AOPA cited its own study, which found that 22 percent of pilots surveyed provide charity sightseeing flights and would no longer be eligible if the higher hour requirement were implemented. AOPA also stated that charities predict annual losses of nearly \$200,000 if the 500-hour requirement is imposed. AOPA stated that organizations benefiting from these flights include Vietnam Veterans of America, Visiting Nurses Association, Wings of Mercy (medical flights), Volunteer Fire Departments, and local technical schools.

We discussed the 500-hour requirement for private pilots flying charitable, nonprofit, and community events at length during the public meetings (including the Internet meeting). Over the years, we have issued exemptions with the 500-hour private pilot requirement with breakdowns of what the 500 hours must include. The hourly breakdown required for Exemption No. 7830, issued to EAA, is found below. Although it is required in the exemption, we did not propose, nor do we adopt, a specific breakdown of the required hours necessary to conduct a flight described in § 91.146. The 500-hour requirement for private pilots who wish to fly in a charitable, nonprofit, or community event is not a new requirement for many; it has simply never been written into regulation.

Commenters stated that many flights would be grounded by the 500-hour flight time requirement proposed for private pilots. It is likely some of these commenters were operating under a 500-hour condition and limitation for private pilots in an exemption today. For example, Exemption No. 7830 was issued to EAA for "Young Eagles" flights. In that exemption, we stated that:

"A higher safety standard of 500 hours of flight time for private pilots is proposed for

<sup>10</sup> Exemption No. 7112 was originally issued to AOPA on February 3, 2000.

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 conditions and limitations in Exemption No. 7830 are more restrictive than the proposal or this final rule. Below is condition and limitation #2 from Exemption No. 7830:

2. Each pilot who conducts flights under this exemption must—

a. Hold at least a private pilot certificate with the appropriate category, class, and type rating, if necessary, for the aircraft to be used under this exemption in accordance with § 61.31(a), (d), (e), (f), (h), (i), and part 61, subpart E.

b. Have a minimum of 500 hours total flight time.

c. Have a minimum of 200 hours in the category of aircraft to be flown.

d. Have a minimum of 50 hours in the class of aircraft to be flown.

e. Meet the currency requirements in § 61.56 for a flight review and § 61.57 for takeoffs and landings.

f. Hold a current third-class medical certificate in accordance with § 61.23(a)(3).

g. Meet the requirements of § 61.113(d).

h. Have a logbook entry for each event in which he or she participates.

Exemption No. 7830 was extended in 2004 and applies to all private pilots flying “Young Eagles” flights. Therefore, we are surprised to receive comments from EAA regarding the 500-hour minimum for private pilots conducting charitable flights. EAA is the holder of Exemption No. 7830, which clearly states a 500-hour minimum for private pilots as discussed above. We received some comments from pilots conducting operations under this exemption who are completely unaware of the limitation. During the Internet public meeting in 2004, we received one comment from a private pilot who stated:

“I’ve flown a dozen or so Cub Scouts and Boy Scouts, and have flown 4 ‘Young Eagles’ since earning my Private Pilot’s license in 2000. Why does the FAA suddenly feel I am unqualified simply because I only have 150 hours in my logbook? I’m either qualified to fly or I am not.”

The commenter was obviously unaware of the 500-hour requirement in the exemption under which he was operating, as well as the 200-hour requirement in § 61.113. Some exemptions issued in the past have required private pilots to have only 200 hours to fly these charitable, nonprofit, or community events. We have decided to adopt the more stringent criteria set

forth in Exemption No. 7830, which requires 500 hours. We are not amending exemptions with this final rule, but we are amending § 61.113(d).

While AOPA commented in opposition to the 500-hour private pilot requirement, its own findings indicate that pilots with 500 hours of total time are involved in fewer accidents than those with fewer hours. Safety support for setting 500 hours as a minimum requirement is found in the 2005 AOPA Air Safety Foundation’s Nall Report (page 9 of 19). The report shows that pilots with fewer than 500 hours of total time accounted for 34% of all accidents (28% of all fatal). The report states specifically that “The first 500 hours of a pilot’s flying career are the most critical, with 34.4 percent of the total and 28.7 percent of fatal accidents occurring then.”

The 500-hour requirement is also consistent with the part 135 rules regarding single pilot-in-command flying visual flight rules. We believe 500 hours is a more appropriate limit, because each event that can last up to three days and can carry numerous passengers on what is essentially a pleasure ride for hire. The existing § 135.243, Pilot in Command Qualifications, requires a minimum pilot qualification to conduct part 135 operations. It involves the most non-complex part 135 flight: single engine, day, VFR, single pilot. § 135.243 includes the requirements that a pilot:

- Hold at least a commercial pilot certificate with appropriate category, class, and type ratings
- Have at least 500 hours time as a pilot, including:
  - At least 100 hours cross-country;
  - At least 25 hours at night; and
  - An instrument rating.
- At least a 2nd class pilot medical certificate
- Pass oral and practical examinations at least once a year.

Lastly, the Antique Airplane Association commented that § 61.129 requires only 250 hours flying experience to hold a commercial pilot’s certificate, yet the proposed rule would not allow commercial pilots to conduct flights for charity until they meet the 500 hour requirement. The 500-hour requirement is only for private pilots. A Commercial or Airline Transport Pilot is not limited to any number of flight hours and is eligible to fly in a charitable, nonprofit, or community event by virtue of holding the certificate. Some might wonder why this is the case.

It may seem incongruous that the FAA would require more of private

pilots than of commercial pilots. However, the FAA has substantially more oversight over the quality and type of hours required for a commercial certificate. In order to advance to the commercial certificate, a pilot’s training demands 100 hours in powered aircraft, 100 hours as pilot-in-command, and at least 50 hours in cross-country flight, among other more detailed requirements. A private pilot can have 200 hours of flight time that includes none of this experience. In other words, because of approved curriculum, we know a commercial pilot with 200 hours will have the experience we demand to conduct an air tour flight. We have no such assurances for a private pilot, but have determined that the additional hours should be sufficient to adequately protect the flying public.

#### 5. Reporting Requirements

EAA strongly opposed the proposed § 91.147(a)(2), which requires that event sponsors track and document the participation of pilots and operators in all prior events, including those not under the purview of the current event sponsor. According to EAA, it is unreasonable for it to track and document pilots flying charitable flights for other sponsors throughout the year. If anything, it should only be required to track and document flights that it sponsors. EAA stated that this provision creates a significant increase in time spent on needless paperwork and unnecessarily burdens the FAA’s field inspector workforce. EAA’s exemption (Exemption No. 7111 as amended) currently requires the sponsor to provide the FAA with an annual report of all persons who have conducted operations under the exemption. The report must include the date of the event, the event sponsor, the pilot’s name and certificate number, and the charitable or community event for which funds are being raised. That exemption is the origin for the requirement we proposed; however, we inadvertently exceeded the exemption’s reporting requirement.

The proposal (§ 91.147(a)(2)) mandated documentation of “all prior events participated in by the sponsor(s), pilot(s) or operator(s).” We agree with EAA that it is unnecessarily burdensome to require documentation beyond the current calendar year. We never intended to have a sponsor report all previous activity. We have revised the final rule language (§ 91.146(e) (1) and (3)) so that the sponsor reports prior events in which the sponsor participated for only the current calendar year. Additionally, the pilot must certify his or her own statement of

prior events in which he or she participated for the current calendar year. EAA is not responsible for keeping track of the flying their pilots do for other sponsors. Rather, their pilots are responsible for giving EAA a signed statement of prior events participated in during the current calendar year regardless of which sponsor they flew for. EAA must include that statement when reporting to the FSDO in accordance with § 91.146(e). The 1,000 chapters of EAA may each qualify as a sponsor.<sup>11</sup>

#### 6. Life Flights, Angel Flights, and "Emergency or Medical Service"

We proposed amending § 61.113(d)(1) through (d)(7) in the NPRM to create two new sections numbered § 61.113(d)(1) and § 61.113(d)(2). These sections were specific in that paragraph (d)(1) referred to emergency or medical services and did not refer to nonstop flights being conducted from the same airport (the 25-mile exception). Paragraph (d)(2) was developed for the 25-mile exception. The purpose of the amended language was to eliminate confusion with the term "passenger-carrying airlift" in § 61.113(d) that applied only to private pilots. The unintended result was confusion of a different kind. As discussed above, this final rule has been rewritten to continue private pilot flights for charitable activities and to define the three kinds of charities (§ 61.113 and § 91.146).

In addition, the FAA erred when writing the NPRM. In the NPRM, we presented § 61.113 and proposed allowing private pilots to fly point-to-point and beyond 25 miles from the departure airport (in proposed § 61.113(d)(1)), carrying passengers for compensation or hire.

Flights previously conducted under the provisions of § 61.113(d) always were restricted to nonstop flights originating and landing at the same airport, never going beyond 25 miles from that airport. The use of the term "airlift" in the current regulation is unfortunate because it is misleading. The purpose for the "airlift" exception in § 61.113, as interpreted, has always been to raise money for an IRS-recognized charity. The "airlift" exception was never intended to authorize point-to-point transportation for compensation or hire of sick or injured people, or their families. Moreover, even if such transportation was done under the auspices of a charitable organization, if any compensation was given to that organization to transport sick or injured

people, or their families, the FAA has required that operation to be done by a certificated air carrier. The FAA believes, in general, that the operations should be conducted by certificated on-demand air carriers, including air ambulances. In the past, some charitable organizations have tried to persuade the FAA that when a third-party pays the organization to transport a sick or injured person (or family member) in point-to-point service, that transportation should not be recognized as compensation or hire. The FAA has consistently rejected those arguments. If an aircraft operator is paid by a passenger or a third party to transport the sick or injured person, or family member, from point A to B, the operator must be certificated.

It is worthwhile to give some examples of what has been permitted under the rules and what will continue to be permitted under the regulations, as amended in this final rule. Some organizations such as Angel Flights make arrangements with corporate aircraft operators to take sick or injured people, or family members, from point-to-point without the corporate aircraft operator being compensated by the passenger or by Angel Flights. Such flights are permitted. Additionally, nothing in the old rules and nothing in this new rule prohibits a private pilot from taking a sick or injured person from point to point as long as it is not for compensation or hire. By longstanding enforcement policy, the FAA has allowed aircraft operators who take a charitable tax deduction to transport a sick or injured person without that operator having an air carrier certificate. No other form of compensation may be received.

If an organization has used § 61.113 to operate flights from point-to-point with private pilots, that organization is put on notice that operations like that are not covered by § 61.113. We have dropped the term "airlift" to reduce any further confusion. Additionally, the term "emergency or medical service" has not been adopted because it was confusing. We are adopting the requirement for 500 hours, as proposed in the NPRM and discussed earlier in this document.

It is unlikely that the "transportation needs of persons with medical and financial need" would have ever complied with the 25-mile exception. Returning such passengers to the departure airport would serve no purpose. If organizations have used § 61.113 for "life flights" or "angel flights," (carrying sick or injured passengers, or a family member) for compensation or hire, they have been

doing so against FAA policy. They will need to comply with this final rule, or apply for and receive a grant of exemption to conduct any future flights of this kind. Section 61.113 now refers private pilots to § 91.146 and clearly states that all operations must be nonstop, takeoff and land from the same airport, and be flown within a 25-mile radius of that airport.

#### B. Other Flights for Compensation or Hire

During the Internet meeting, we explored the possibility of part 91 commercial air tour operators remaining in part 91 and not requiring them to comply with air carrier rules (part 121 or 135). Air carrier certificate holders operating under parts 121 or 135 automatically need Operations Specifications. In this final rule, the FAA does not require certain part 91 commercial air tour operators to become air carriers, but we will create an FAA database with information similar to Operations Specifications. We adopted § 91.147 to require such part 91 operators to send us the appropriate information in an LOA.

1. What's the difference between an Operations Specification and a Letter of Authorization?

Operations Specifications (OpSpecs) are a set of documents required by regulations that, among other things, set forth how a certificated operator will conduct all its operations. An OpSpec specific to air tour operations is appropriate for those operators conducting operations in accordance with part 121 or 135. If all commercial air tour operators had been moved into part 135 (or 121), all air tour operators would have been required to have an OpSpec specific to air tour operations included in its set of OpSpecs.

A Letter of Authorization (LOA) is an authorizing document required by regulation for a specific kind of operation conducted under part 91. One intended outcome of this rulemaking is to be able to identify all air tour operations in a national database. The seven items listed in section 91.147(c) are considered to be the minimum amount of information needed in the national database for the issuance of the air tour LOA to the part 91 operator to conduct air tour operations.

All standard OpSpec and LOA templates are developed at FAA Headquarters and are maintained in the same document management system. FAA Headquarters, FAA FSDOs, and the operators may have electronic access to the OpSpec and the LOA templates. Part 91 operators may have LOAs

<sup>11</sup> It is possible for a pilot to be a sponsor.

issued, including but not limited to, an LOA authorizing special airspace operations.

2. Where are the FAA's drug and alcohol testing requirements and who has to comply with them?

The FAA's drug and alcohol testing requirements are set forth in 14 CFR part 121, appendices I and J. The drug and alcohol testing regulations provide a comprehensive listing of specific drug and alcohol testing provisions contained in 14 CFR parts 61, 63, 65, 67, 91, 121, and 135.

Commercial air tour operators under part 121 or 135 must comply with drug and alcohol testing requirements. Flights conducted in accordance with § 91.147 (Passenger carrying flights for compensation or hire (Not otherwise covered by § 91.146)) formerly referred to as 135.1(c) operations, will continue to be required to comply with the drug and alcohol testing requirements. Flights conducted in accordance with § 91.146 (Passenger carrying flights for the benefit of a charitable, nonprofit, or community event) do not need to comply with drug and alcohol testing requirements.

In this final rule, if a charity or community event operator goes beyond the limits established in § 91.146 (e.g., four charity events, one community event, use of private pilots, etc.), then that operator is conducting operations for compensation or hire and will operate under § 91.147. These operations must comply with those drug and alcohol testing requirements that apply to all compensation or hire operations.

These drug and alcohol requirements are not new for charity events. Prior to this final rule, previously granted exemptions had similar conditions and limitations and relieved the charity flights from drug and alcohol testing requirements. This new rule language includes appropriate conditions and limitations in § 91.146 so that exemptions are not needed.

## VII. Comments on Part 136 Operating Requirements

This final rule removes the proposed Minimum Altitudes (136.3), Standoff Distance (136.5), Visibility (136.7), and Cloud Clearance (136.9), based on comments. Several commenters stated that the proposal would promote compression (mixing of airplanes and helicopters at the same altitudes) and perhaps increase noise. We attempted to have one national standard for these items, but it became too difficult with so many variables present. There were always disadvantages for a particular

type of operator. The result of this final rule deletion is that the operators will continue to use the standards they used prior to this rule. For example, a part 91 operator who used § 91.119 for minimum altitudes and standoff distances will continue to do so. A part 135 operator who used § 135.203 or Operation Specifications for minimum altitudes and standoff distances will continue to do so. We needed to retain the minimums for Hawaii listed in SFAR 71, but move those Hawaii air tour rules into part 136. SFAR 71, Section 6 entitled, Minimum Flight Altitudes, is accordingly incorporated into the final rule as § 136.5, "Additional Requirements for Hawaii."

We have removed the separate section for Helicopter operating limits (proposed § 136.19). We maintain the intent of the section by including the language, "Except for the approach to and transition from a hover for the purpose of takeoff and landing, or during takeoff and landing, the pilot in command must make a reasonable plan to operate the helicopter outside of the caution/warning/avoid area of the limiting height/velocity or height/speed diagram" to the rule language of Helicopter performance plan and operations (final rule § 136.13).

We completely eliminated the proposal in the NPRM for Deviation Procedures (proposed § 136.21) since we are not adopting the standoff, altitude and cloud clearance minima proposed in the NPRM.

In summary, four sections (§§ 136.3–136.9) were deleted; section (§ 136.3) has been added; section (§ 136.5) has been added for operations in Hawaii only; the section for helicopter performance plan (§ 136.17) and helicopter operating limitations (§ 136.19) have been merged into one section (§ 136.13); and one section for deviations (§ 136.21) has been deleted. We also added a new paragraph (e) to § 136.1 to permit pilot deviation from part 136, subpart A in the event of an in-flight emergency.

### A. Applicability and Definitions (§ 136.1)

EAA objected to the proposed mandate for part 91 flights for charity or community events be conducted in accordance with the operational rules for commercial air tour flights in part 136, subpart A. EAA stated, "The FAA has presented no data that would suggest a need to place charitable and community fundraising operations under the provisions of the proposed part 136. EAA maintains that the FAA is required to at least identify and substantiate the existence of a safety

concern before drafting regulations that would impose additional restrictions on an activity that has been safely conducted for at least 50 years under the existing regulations." EAA asserted that a "charity or community event is not an 'air tour.'"

Section 91.146 in this final rule addresses passenger carrying flights for charitable, nonprofit, and community events. The section does not indicate that such flights are air tours. It does, however, require such flights be conducted in accordance with the safety provisions of part 136, subpart A. Section 91.205(b)(12) requires, for aircraft operated for hire over water and beyond power-off gliding distance from shore, approved floatation gear readily available to each occupant and, unless the aircraft is operating under part 121, at least one pyrotechnic signaling device. In general, part 91 doesn't require the pilot to brief the passengers on how to use a life preserver or how to exit the aircraft after a water ditching. However, § 91.509, Survival Equipment For Overwater Operations, applies to flights more than 50 nautical miles beyond the shoreline because subpart F, Large and Turbine Powered Multiengine Airplanes and Fractional Ownership Program Aircraft, recognizes that special requirements are appropriate for larger airplanes that may not make sense for the entire general aviation community. The same rationale applies here. Because charitable, nonprofit, and community event flights involve passengers who may be unfamiliar with the risks of flight over water, these new requirements assure an appropriate level of safety when flying over water. The requirement obviously does not apply to those flights not conducted over water. Hence, when EAA sponsors flights conducted in small airplanes not over water and not in Hawaii, the passenger-briefing requirement (§ 136.7) is the only safety provision applicable.

The Lightship Group stated that, as an operator of airships, it is concerned its industry will be included in the final rule without regard to its clean safety record, which is better than hot air balloon and glider operations. The Lightship Group commented that, since the airship industry is very small due to high operating costs, new regulations requiring additional infrastructure would pose a serious financial strain on current operators. This commenter works with the FAA on the Aviation Rulemaking Committee (ARC) Airship Work Group for the purpose of clarifying regulations governing the operation of airships, and suggests that other issues be addressed within that workgroup. The U.S. Parachute

Association was also concerned about the rule's applicability to its operation.

The U.S. Parachute Association was concerned with language proposed in § 136.1, when a flight for compensation or hire has another purpose in addition to sightseeing, that the flight is subject to subpart A. Although this commenter believes the FAA's intent was to ensure that part 136 applied to operators attempting to mask sightseeing flights behind other supposed purposes, it was concerned the proposed language may allow the converse. That is, it may allow the FAA to "see" a sightseeing flight when, in fact, the flight is truly made for another purpose. The U.S. Parachute Association recommended the language be revised to make it clear that part 136 only applies to flights where the primary purpose is sightseeing.

On the other hand, the Antique Airplane Association questioned the justification for excluding gliders and hot air balloons.

Part 136 subpart A rules do not apply to operations conducted under part 105 (parachutes), part 101 (balloons), nor do they apply to operations conducted in gliders (powered or unpowered). Gliders and hot air balloons were not considered when we published the NPRM because they did not fit into the NTSB recommendations that inspired the proposal. Since they were not part of the proposal, we are not including them within the scope of this final rule.

Some commenters (Coastal Helicopters, Inc., and Venture Travel, LLC) questioned the need for part 136 at all. The Tennessee Department of Transportation agreed that requiring flotation devices for overwater flights and mandatory passenger briefings should be standard practice, but suggested that those requirements be within the existing regulatory framework rather than the proposed new part 136.

A goal of establishing part 136 is to have one location for all air tour rules. For the operators staying in part 91, life preservers are not otherwise required until an aircraft goes beyond 50 nautical miles from shore, and part 91 doesn't address passenger briefings on exiting the aircraft after a water ditching at all. To put a new life preserver mandate in part 91 would be more confusing than the approach adopted here.

Part 136 was created in 2003 with the codification of the National Park Air Tour Management Act into FAA rules. The FAA envisioned at that time that part 136 would become the regulatory part specific to air tour regulation. Currently, air tour regulation is spread throughout the FAA rules, with some SFARs being attached to part 91, others

attached to part 121, and a set of rules covered under part 93. This only adds to confusion among operators who are trying to locate rules applicable to their operations.

#### *B. Letters of Authorization (§ 136.3)*

Since the proposal would have moved many commercial air tour operators from part 91 into part 121 or 135, the operators would have needed Operations Specifications had we adopted the final rule as proposed. Now that the final rule allows these same part 91 operators to remain in part 91, Operations Specifications will not be issued to these commercial air tour operators. The air carriers have Operations Specifications while part 91 operators do not. The part 91 operators will apply for, receive, and comply with an LOA. This new section does not impose new requirements, but modifies the proposals in the NPRM.

As discussed above, one of the tasks of this rulemaking is to develop a database of air tour operators. We discussed the need for a database during our public meeting on the Internet. During the meeting we explained items that Operations Specifications include and an air carrier participant explained how Management Specifications work in part 91 subpart K, Fractional Ownership Operations. No participant expressed objection to a database.

The Hawaii air tour operators using SFAR 71 always have included part 91 operators. Those part 91 operators have LOAs instead of Operations Specifications. The LOAs are maintained in the same electronic database as Operations Specifications but contain much less data. Operations Specifications may be amended or reconsidered through § 119.51. Section 136.3 now allows amendment and reconsideration of LOAs through § 119.51 as well.

#### *C. Minimum Altitudes, Standoff Distances, Visibility, and Cloud Clearance (§ 136.3–136.9 in the NPRM)*

In this final rule, the four sections proposed in the NPRM are eliminated and a new § 136.5 addresses only minimum altitudes and standoff distances in the State of Hawaii taken from the regulation formerly known as SFAR 71. This approach allows us to delete SFAR 71.

Commentators objected to many aspects of the proposed rule, stating that: (1) There was no FAA consideration of geographic differences throughout the country; (2) they opposed minimum altitudes; (3) helicopters and airplanes should not be lumped together; (4) there was no FAA

consideration of differences between single and multiengine aircraft; (5) standoff distances for air tour operators should not be more restrictive than for any other operator; (6) visibility requirements were too restrictive; and (6) cloud clearance distances were impractical.

We find many of the comments have merit. Developing safety standards for all commercial air tour operators generic enough for use by operators in part 91, including those using private pilots, as well as commercial air tour operators in 121 or 135, required consideration of many disparate regulations found in parts 1, 91, 93, 121, 135, 136, SFAR 50–2, SFAR 71, park manuals, procedures documents, exemptions, Operations Specifications, and LOAs. In response to commentators, we have chosen to return to the regulatory regime that existed before the NPRM.

The FAA recognizes that our various offices, including Air Traffic and Flight Standards, have established procedures with operators necessary to resolve certain local airspace safety issues. These procedures may be established by rule, on aviation charts, or by some form of agreement with the operators.

We have eliminated the proposed deviation authority based on comments. We integrated what might have been deviation approvals into rule language as much as possible. Most commenters supported the idea of standardized language so they don't have to apply for and justify a deviation. As discussed below, we have moved the substance of SFAR 71 into new Appendix A to part 136. Those rules continue to have more restrictive altitude and standoff requirements than other operations, and we retain a deviation provision in Appendix A.

#### *D. Effect of Final Rule on Grand Canyon and Hawaiian Operations*

This final rule does not replace SFAR 50–2 (Operations in Grand Canyon). However, since the FAA envisions its future location in a subpart of part 136, we reserved a place for it and for part 93 subpart U (Special Flight Rules in the Vicinity of Grand Canyon National Park, AZ). The actual move does not occur in this final rule. Accordingly, SFAR 50–2 and part 93 subpart U will remain in their present locations, but may be moved in the future.

However, SFAR 71 has been moved into part 136 as Appendix A. Placement of SFAR 71 into part 136 is not a substantive change. Accordingly, commercial air tour operators in Hawaii may continue to operate in accordance with their FAA-approved training

programs, procedures documents, Operations Specifications, and LOAs.

More specifically, this final rule does not change the established routes or altitudes for the Grand Canyon Special Flight Rules Area. The Grand Canyon manual and route/map or allocations structure approved by FAA Headquarters and the Las Vegas FSDO are not canceled by this rule. Grand Canyon operators may continue to operate commercial air tours in accordance with FAA-approved training programs; the provisions and limitations of their manual; <sup>12</sup> the FAA-developed Grand Canyon Route Map; and FAA-issued Operations Specifications. Grand Canyon commercial air tour operators will continue to use the altitudes and standoff distances approved for them by the FAA and contained in their manual maintained at the Las Vegas FSDO. The effect on Grand Canyon air tour operations will be felt through the safety rules in subpart A of part 136. Specifically, commercial air tour operators operating at the Grand Canyon will now have a more detailed helicopter performance plan, and be required to either outfit their aircraft with helicopter floats, or have passengers don life preservers while traveling over water (Lake Mead the most likely), dependent upon the ability to glide to beyond the shoreline in the event of engine failure. The safety rules in subpart A of part 136 are applicable to Grand Canyon air tour operations.

#### *E. Passenger Briefings (§ 136.7)*

Coastal Helicopters and Air Vegas Airlines commented that the passenger briefing should be addressed in part 135 and should not be required for operations not flying over water. Air Vegas Airlines commented that briefing passengers on water ditching procedures is unnecessary for operations covered by SFAR 50–2 because the duration of flight over water is so short and chances of landing in water are minimal. GAMA believed the NTSB recommendation on passenger briefings is appropriate and justified because of specific accidents where passenger briefings were perceived by the NTSB to constitute a problem.

In the NPRM, we proposed to move certain part 91 operators into part 135, forcing these air tour operators to meet the passenger-briefing requirements in part 135. Because we are keeping the 25-mile exception, those operators will not be covered by the passenger briefing requirements of part 135. However, as

proposed, we are requiring all commercial air tour operators (including those allowed to continue to operate under part 91, including SFAR 50–2) to complete passenger safety briefings. That requirement is now found in part 136 subpart A. Overwater briefings are required for flights traveling over water beyond the shoreline only. Those not traveling over water do not need to abide by the overwater equipment or overwater briefing requirements in this rule. Our additional passenger briefing requirement in part 136 specifies overwater operations and the need for operators to brief passengers before takeoff on procedures for water ditching, use of required life preservers, and emergency exit procedures in the event of a water landing. We understand Air Vegas Airlines is concerned about having to brief passengers on overwater procedures even though these passengers travel only briefly over Lake Mead. Although it may be unlikely that Air Vegas Airlines will have to attempt a landing on the water, it is possible and passengers should be briefed for that possibility. Thus, if the operator is flying over Lake Mead or the Colorado River at any point during the flight, they need to brief passengers on overwater procedures before takeoff.

We added three requirements for passenger briefings proposed in the NPRM under the assumption that a part 91 operator would have complied with part 135. Since part 91 operators are not moving to part 135, we need to include some requirements for passenger briefings in part 136. Required briefings now include:

- (1) Procedures for fastening and unfastening seatbelts;
- (2) Prohibition on smoking; and
- (3) Procedures for opening exits and exiting the aircraft.

Part 135 operators already have briefing rules and the above three briefing requirements are no more stringent than those existing rules. All operators need to consider that some passengers may not understand English. This final rule does not discuss seat pocket cards, videos, recordings, pictures, or personally “showing” a passenger how to comply. Rather, it establishes a performance standard that an operator may meet through various means.

#### *F. Overwater Operations*

Under this final rule, if you do not operate a commercial air tour over water beyond the shoreline, you do not need to brief for overwater evacuation procedures or have overwater life preservers or helicopter floats. If you do operate a commercial air tour over

water, this final rule requires a passenger briefing before takeoff. This final rule also specifies when life preservers for each occupant are required to be available on the aircraft, and when those life preservers are required to be worn by all occupants. Life preservers discussed in this rule apply to both airplanes and helicopters. Floats discussed in this rule apply only to helicopters. Each helicopter required to have floats is also required to have life preservers. If you fly an airplane or helicopter over water beyond the shoreline, you must brief the passengers and comply with the life preserver requirements, regardless of whether you have floats.

#### *1. Passenger Briefings for Overwater (§ 136.7)*

If you intend a flight over water beyond the shoreline, passenger briefings are mandatory. Passengers on a commercial air tour who travel over water must be briefed before takeoff on the appropriate requirement for life preservers. If the life preserver is required to be worn during the flight, the operator must brief passengers on when to inflate it in the event of an emergency evacuation. Properly instructing passengers to don life preservers when already in an emergency situation is difficult since the aircraft may be unstable and taking on water and panic sets in. Since most of these ditched flights are flown by a single pilot, the pilot must concentrate on managing the emergency, not on individual passengers. Thus, it is important that, prior to flight overwater, passengers understand how to don life preservers or be required to wear them. They must also know how to open exits and exit the aircraft. Each of these steps is covered in the passenger briefing before takeoff.

The Department of Transportation's Office of Inspector General completed an audit report entitled Oversight of the Air Tour Industry, May 28, 1999 (Control # AV–1999–099). “Crashes into water” are described on page 8 of that report. One accident in Hawaii resulted in three fatalities after all seven people aboard a helicopter survived ditching, since the occupants were unable to use life preservers “still located in their containers beneath each seat.” The report may be found at [http://www.oig.dot.gov/item\\_details.php?item=235](http://www.oig.dot.gov/item_details.php?item=235).

#### *2. Life Preservers (§ 136.9)*

In this final rule, we define “Life Preserver” and “shoreline” in § 136.1 for the purposes of part 136 subpart A. We prefer commercial air tour operators

<sup>12</sup> The “manual” is FAA Order 1380.2A, Las Vegas FSDO Grand Canyon National Park Special Flight Rules Area Procedures Manual.

outfit their aircraft with the pouch type inflatable life preserver, but we do not require that specific type. When donned by the passenger, an inflatable life preserver must stay in an uninflated state until after exiting the aircraft in an emergency. It is easier for occupants to keep the life preserver on from before takeoff until after landing if they are wearing the pouch type life preserver. These life preservers could be issued and re-collected while on the ground with less wear on the preserver and fewer passengers keeping them as a souvenir. The pouch type life preservers are not bulky or uncomfortably hot when flying in high temperatures, so they may be more suitable for commercial air tours in hot climates. During the development of this rule, we considered mandating the pouch type of life preserver. As long as individuals can safely exit the aircraft, there is no need to mandate a pouch, or even an inflatable design. Because of comfort, wear, and replacement concerns, we expect most operators will use the pouch type preserver. Accordingly, our definition also permits life preservers that are not inflatable, provided the commercial air tour operator demonstrates to the FAA that such a preserver can be used during an evacuation and will allow all passengers to exit the aircraft without blocking the exit.

Scenic Airlines and Sundance Helicopters stated that the FAA has exceeded the NTSB's recommendation in this area by proposing that occupants must wear life preservers for the entire flight (even over land) in twin-engine airplanes and twin-engine helicopters, even if they can reach the shoreline in the event of a single engine failure. Air Vegas Airlines, Papillon, Seaplane Pilots Association, and NATA agreed that the proposal went beyond the NTSB recommendations with respect to power-off glide to land. Belle Air Tours and Waldo Wright's Flying Service believed that the overwater requirements should apply only when a flight is being operated outside gliding distance to shore. Commenters specifically argued that the proposal was contradictory to NTSB Recommendation A-99-57, which provided an exception if the airplane or single-engine helicopter "is operated at an altitude that allows it to reach a suitable landing area in the case of an engine failure." Consistent with our authority, we proposed a requirement that exceeded the NTSB recommendation. Based on comments, we have rewritten § 136.9 to consider aircraft with floats and aircraft operating

within power-off gliding distance of the shoreline. This change does not, however, relieve operators from the requirement to have life preservers readily available and accessible to all occupants, or to brief occupants on the use of those life preservers. All affected aircraft, including those with floats, must have life preservers.

Coastal Helicopters and Bar Harbor Aviation stated that wearing life preservers could actually make the operation less safe. Coastal stated that excited passengers who inflate the preserver before exiting the aircraft will be buoyed to the top and not be able to exit the aircraft. Bar Harbor feared that in the cramped quarters of small aircraft, life preservers can get entangled in the aircraft controls as passengers attempt to exit.

Seaplane Pilots Association stated that life preservers worn continuously in commercial service will be subject to wear and tear far in excess of that experienced by traditional one-time-use life preservers, which would significantly increase operating costs and may render the life preserver inoperative when it is actually needed. Seaplane also cited case studies showing that it was the lack of instruction on the use of life preservers, not the location of the life preservers, that had the most significant impact on survivability. Kenmore commented that passengers asked to wear life preservers and passengers observing others wearing them prior to boarding would feel a sense of anxiety about the impending flight. Kenmore claimed training for pilots and a thorough passenger briefing can improve chances for underwater egress. It recommended allowing operators to choose between the use of inflatable life jackets and accessible floatation cushions.

Merely briefing passengers on emergency exit procedures does not adequately assure the safety of occupants. Likewise, the risk of a life preserver inflating inside the aircraft, or some lines getting tangled in cramped quarters, does not outweigh the need to have occupants wear the life preservers or know where they are and how to use them. Life preservers worn every flight do indeed wear out faster than life preservers tucked away in sealed heavy plastic, and we leave it up to operators to find the best way to maintain them. As discussed below, the life preserver requirement also provides an alternative in which the life preserver must only be available and accessible to each occupant and not physically worn for the duration of each flight. Thus, we will permit the life preservers to be stored in containers as long as

passengers can easily open them. The FAA does not find a floating cushion to be acceptable as a life preserver for the purposes of part 136 subpart A. Unlike life preservers, seat cushions have no follow-on inspection requirement. Floating cushions do not replace life preservers.

Sundance Helicopters recommended that the FAA should significantly modify the proposed requirement to address only the specific geographic locations and operators to whom these requirements should apply. Sundance Helicopters commented that the proposed rules are based on SFAR-71, which imposed certain requirements for life preservers and floatation devices on helicopters, because many of the Hawaiian operations were conducted over large bodies of water. It stated that, " \* \* \* to impose those same requirements in a national rule on commercial air tour companies which typically fly over deserts or frozen tundra is ludicrous and shows just how little thought the FAA has put into these proposed regulations." Echoing this sentiment, Kenmore Air Harbor argued against the life preserver proposal because water conditions in Hawaii are rough, unlike the conditions in other parts of the country where air tours are conducted. Kenmore recommended applying the rule on a regional basis only.

The NTSB recommended that we establish one set of standards for all air tour operations (NTSB Rec. A-95-58). With respect to life preserver requirements, we created one set of standards for all commercial air tours. However, we disagree with comments to follow the NTSB recommendation (A-95-59) that suggested we accommodate localized airspace restrictions. That recommendation (A-95-59) is not suitable for this safety provision, because the risk of drowning is present any time an aircraft goes down over water.

In the life preserver requirements, you will see that we have provided relief in some instances from the requirement that each occupant must wear a life preserver. Occupants onboard certain aircraft only need to have the life preservers readily available and accessible. If the airplane is float-equipped or can power-off glide to the shoreline, a life preserver must only be available and accessible to each occupant and need not be worn by each occupant. If a helicopter is float-equipped, life preservers must only be available and accessible to each occupant but need not be worn by each occupant.

It is important for those required to wear life preservers to do so even if the flight is operated within power-off gliding distance of the shoreline. In an emergency, the pilot might not maneuver to get to an acceptable landing area beyond the shoreline. Also, the pilot might know the power-off glide distance, but might err in estimating the actual distance to shore. In other words, pilots of both helicopters and airplanes may overestimate gliding capability.

### 3. Helicopter Floats (§ 136.11)

The FAA inadvertently proposed in the NPRM that all helicopters be equipped with floats even if they are not operated over water. This was not the FAA's intention. Under this rule, helicopter floats for commercial air tours only apply if a portion of the flight is over water, except if that portion is during takeoff or landing only.

We have rewritten the "Helicopter Floats" section in this final rule (§ 136.11) to address the ability of a helicopter to power-off glide to beyond the shoreline. If the helicopter operator knows the performance<sup>13</sup> of the helicopter (as published by the manufacturer) would allow the helicopter to glide (autorotate) beyond the water to a landing spot, the operator may not need helicopter floats. Operators must make sure that the ability to glide (autorotate) to land when the engine fails will include the ability to put the aircraft down safely in an area beyond the shoreline. We define shoreline in part 136 subpart A, and it excludes areas that are intermittently under water at the time of the flight, or areas that are otherwise unsuitable for landing such as a vertical cliff. The burden is on the operator to know the power-off gliding distance for existing conditions at the time of flight. Thus, the operator must determine how far over the water they may go.

A helicopter need not be equipped with floats if each occupant is wearing a life preserver while the helicopter is within power-off gliding distance of the shoreline. The life preserver must be worn from before take-off until the flight is no longer over water. If the helicopter goes beyond power-off gliding distance, floats are required for all single-engine helicopters and multi-engine helicopters described in § 136.11(a)(2). The multi-engine helicopters described in that section don't have the performance to operate on one engine and must comply with the same requirements as a single

engine helicopter. We have allowed operators 18 months to equip their helicopters with floats, which is consistent with the proposal.

Papillon Airways commented that adding helicopter floats for its operations would not increase the safety of operators, but rather decrease it, when these operations are compared to conducting all operations within gliding distance of the shore. Papillon also provided details on the expected costs of installing floats, including purchase costs, maintenance costs, and added weight that it asserted would reduce the passenger load by one person per trip. Papillon estimated that the cost of floats alone could amount to over \$1 million a year when the costs of added flight hours, reduced passenger loads, and all other factors are considered. In addition, USATA obtained several equipment cost estimates from its members. These estimates mostly reflected three major cost elements: (1) The cost of obtaining the new equipment; (2) The cost of installing and maintaining the new equipment; and (3) lost revenue, because the added weight of the new equipment would cause a reduction of one passenger per flight.

The float requirement is relaxed in this final rule to allow for power-off glide to land beyond the shoreline. Therefore the burden on operators is reduced from what was initially proposed in the NPRM. A full evaluation of the costs associated with adding floats to the affected helicopters can be found in the final regulatory evaluation that accompanies this rule.

We received several comments regarding Grand Canyon operations that traverse Lake Mead. We recognize the burden of requiring overwater equipment for operators who fly over hot desert most of the time. However, we also realize that Lake Mead is a large, deep body of water that is too big to go around readily. While we have not had an incident of a Grand Canyon tour operator ditching in Lake Mead, that doesn't mean there couldn't be an incident in the future.

If operations into the Grand Canyon are in helicopters described in § 136.11(a), then floats will be required if the helicopters operate over Lake Mead and beyond the power off glide distance to shore. For operations within the power off glide distance for the entire time the helicopter flies over water, floats are not required if passengers are wearing life preservers.

Lake Mead is outside Grand Canyon National Park and outside the airspace of SFAR 50-2. The FAA has worked with the Grand Canyon operators for nearly 20 years and the Las Vegas FSDO

has oversight. The operators have manuals, an FAA issued map, and FAA issued routes that apply inside the SFAR.

The Hawaii operators' history of helicopter floats is well established, and they hardly commented about the issue. We believe there will be no reduction in safety because the helicopter float final rule language requires the available shoreline to be suitable for landing once the glide is completed. Although this section includes power-off gliding distance, which SFAR 71 did not, it still requires the landing to be done at a location beyond the shoreline. While there is a great deal of land that may be within power-off gliding distance in Hawaii, the terrain is often dangerous and a landing would be nearly impossible on such terrain.

This final rule does not provide an exception for Alaska, because the safety risks associated with a water ditching in Alaska are at least as grave as safety risks associated with a water ditching elsewhere.

### G. Helicopter Performance Plan and Operations (§ 136.13)

The Helicopter performance plan (proposed § 136.17) and Helicopter Operating Limitations (proposed § 136.19) are combined in the final rule in § 136.13, Helicopter performance plan and operations.

Various terms are used to describe helicopter performance. One of these terms is the height/velocity diagram. However, the FAA has used similar terms in other parts of the regulations. For example, 14 CFR part 27 (§ 27.79) uses the term "height-speed envelope." 14 CFR part 29 uses the terms "height-velocity envelope" (§ 29.87), and "height-speed envelope" (§ 29.1517). For the purposes of this rule, both terms are synonymous and are presented as the height/velocity diagram (H/V diagram) used in Rotorcraft Flight Manuals (RFM). The terms "curve," "chart," and "diagram," when used in describing the H/V diagram, should be considered the same in this rule. The "avoid" area, "warning" area, and "caution" area of the height/velocity diagram are also used synonymously. For the purposes of this discussion, this area is called the "avoid area." The H/V diagram typically shows combinations of airspeeds and heights above the surface in which safe one-engine inoperative (autorotation in the case of single-engine helicopter) landings have not been demonstrated during certification.

The final rule language in § 136.13 uses the term "height/velocity information." This information includes

<sup>13</sup> Knowledge of performance applies to each make and model helicopter and under conditions of each flight to include density, altitude, and handling characteristics.

not on the "H/V diagram," but also a consideration of gross weight and density altitude and their effect on the diagram. (See Rotorcraft Flying Handbook, FAA-H-8083-21, published in 2000).

Papillon Airways commented that requiring a plan before each flight is not practical since tour flights occur on a regularly specified route throughout the day. The operators take into consideration weight and balance, gross weight, duration of flight, fuel and route of flight in ever-changing meteorological conditions, according to Papillon. Since these conditions change, often after departure, the pilot must maintain the flexibility of making decisions in flight as climatic conditions change. Operators in Hawaii made a similar comment during the Internet Public Meeting. Liberty Helicopters stated that all of its New York City operations, except for takeoff and landings, are outside the height/velocity envelope and that it currently monitors the gross weight and center of gravity of all flights. Liberty Helicopters commented that the requirement to produce a performance plan for each flight, however, would impose an onerous amount of paperwork for each 11-minute flight and jeopardize its ability to continue operations.

HAI and several helicopter air tour operators (Coastal Helicopter, Papillon, Sundance Helicopters, and NorthStar) strongly opposed proposed § 136.19 regarding the height/velocity diagram. HAI stated that our proposal was inconsistent with previously published FAA guidance on the use of the height/velocity diagram. Papillon agreed and stated that the proposal would prohibit it from operating at its current facility. Similarly, Sundance Helicopters stated, "This section is probably the most problematic and troubling part of this new rule. If adopted it would make present helicopter tour operations nearly obsolete in any but airport operations."

Sundance Helicopters asked if the goal is to provide a high level of safety, why this proposal would not be imposed on all helicopter passenger operations, such as for offshore workers, fire fighters, and air ambulance patients, not just sightseeing passenger flights? NorthStar Trekking made a similar comment.

Commenters noted that the height/velocity diagram is used to advise a helicopter operator and is not meant to be a limitation. As long as the flight plan supports avoiding the caution/warning/avoid area of the height/velocity diagram, commenters believed there should be no violation of the rule.

Commercial air tour operators in Hawaii under Section 5 of SFAR 71 have been required to operate helicopters at a combination of height and forward speed (including hover) that would permit a safe landing in the event of an engine power loss, in accordance with the height/speed envelope for that helicopter under current weight and aircraft altitude. This requirement is retained under section five of Appendix A to part 136. Thus, in Hawaii, it would be a violation of the safety rules if the helicopter operator merely planned, but failed, to operate the aircraft in the manner described above (except when necessary for approach to and transition from a hover, or where necessary for safety of flight). The FAA did not propose to reduce any of the requirements or restrictions for commercial air tour operations in Hawaii.

As to commercial air tours in the rest of the country, the FAA can and has placed limitations on the operation of certain aircraft in the operating limitations of the RFM, as well as other places. Commenters' arguments that the only place the Agency could put an additional limitation would be in the operating limitations in the RFM, and that the Agency should not require helicopter operators to operate in accordance with the height/velocity diagram are in error. As outlined above, SFAR 71 had a longstanding requirement that helicopter operators actually operate the aircraft in a manner consistent with the height/velocity diagram. In § 136.17 of the NPRM, we proposed that operators develop a plan and operate within that plan. In § 136.19 of the NPRM, we proposed that all operators remain outside of the caution/warning/avoid area of the height/velocity diagram, except for takeoff and landing. In § 136.13(b) of this final rule, we require operators to make a reasonable plan to operate the aircraft outside the caution/warning/avoid area of the height/velocity diagram. In § 136.13(c), we require operators to operate the helicopter in accordance with the plan, except when issues of flight safety arise.

For the commercial air tour industry, the FAA believes aviation safety requires the operator to operate in accordance with the plan. Unlike many other commercial uses of helicopters where the operator has a financial incentive to get from point A to B as efficiently as possible, part of the business plan of a commercial air tour operator is to give the passengers opportunities to see certain sites on the surface by flying lower, slower, and incorporating in-flight delays at certain

scenic areas. Commercial air tour operation business plans may result in operations within the "avoid" portion of the height/velocity diagram as a routine operating environment. Extended operation within the "avoid" portion of the height/velocity diagram increases the exposure to the risk of not being able to execute successfully an autorotation landing in the event of an engine failure, or in the case of multiengine helicopters, a safe one-engine-inoperative landing. Therefore, aviation safety requires that commercial air tour operators not only plan, but also operate in accordance with the plan. It is likely that with each new tour, the passenger weights will be different, temperature will be different, and altitude will vary. Those differences can have a significant impact on the performance plan required in § 136.13. However, operators can develop performance plans in advance, which identify maximum weights, highest temperatures and lowest altitudes for planned tours and load the aircraft accordingly to comply with this requirement. Paragraph (c) of the Helicopter performance plan and operations requires the pilot in command to comply with the plan, and any operation within the caution/warning/avoid area should be limited to maneuvering necessary only for takeoff and landing, or safety of flight.

Liberty commented that the requirement to produce a performance plan for each flight would jeopardize its ability to continue operations. The performance plans may be pre-developed by the operator for standard conditions. The pilot in command would add any adjustments for actual conditions. This is no different than the current practice of using pre-developed flight plans. The operator develops the flight plans and the pilot in command adds any differences at the time of the flight if necessary. From the descriptions the commenters have made they are already doing performance plans without any documentation.

In conclusion, regarding the requirements for a performance plan, the FAA believes it is not onerous or unusual for the pilots-in-command to be aware of the gross weight, power requirements, and center of gravity limits of their aircraft, and that the planned operation will be conducted safely within those limits. Much of this data can be preplanned through the use of tabular performance data, computation of potential maximum loading, expected "worst case" weather conditions, etc.

The FAA, in response to commenters, acknowledges that the height/velocity diagram is not a limitation per se. The

rule language was amended from the NPRM proposal. Now the operator must be aware of and familiar with the H/V diagram, and consider that information during the operation. Because accidents have occurred while the aircraft remained in the caution/warning/avoid area of the H/V diagram, it is essential to highlight the significance and potential hazard of these operations for the commercial air tour operators.

The FAA does not see the considerations of the elements of performance plans or the knowledge of the H/V diagram as additional requirements, but merely considerations in preflight planning and essential operational knowledge of the aircraft being flown in commercial, passenger-carrying operations.

### VIII. Regulatory Notices and Analyses

#### *Economic Assessment, Regulatory Flexibility Determination, Trade Impact Assessment, and Unfunded Mandates Assessment*

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 upon 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. 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 also requires agencies to consider international standards and, where appropriate, use them 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 has benefits that justify its costs, and is a “significant regulatory action” as defined in section 3(f) of Executive Order 12866 because it raises novel policy issues contemplated under that executive order, the proposal of which generated significant public comment. Accordingly, this rule has been reviewed by OMB. The rule is also “significant” as defined in DOT’s

Regulatory Policies and Procedures. The rule will have a significant economic impact on a substantial number of small entities, but it will not reduce barriers to international trade and does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector. These analyses, available in the final regulatory evaluation supporting today’s rule, are summarized below.

#### *Final Regulatory Evaluation Summary of Cost and Benefits*

The quantified potential benefits are estimated in this final regulatory evaluation at \$54.1 million or \$38 million, present value, and the costs are estimated at \$29 million or \$20.7 million, present value. The potential benefits are based on avoiding 17 fatalities and eight serious injuries, and damage or destruction of the aircraft involved over the next 10 years, discounted at 7 percent. Part 135 commercial air tour operators will incur 82 percent of the costs of the rule while part 91 operators will incur 18 percent of the costs. Ninety-nine percent of costs to part 135 operators are associated with equipping their helicopters with float systems and preparing helicopter performance plans before each flight. The cost-benefit ratio is greater than 1.0 for each major cost center as well as by type of operation. However, the substantial number of part 91 and part 135 helicopter operators that have to equip their helicopters with floats to operate over water beyond the shoreline will experience a significant economic impact.

#### *Final Regulatory Flexibility Determination*

The Regulatory Flexibility Act of 1980 (RFA) establishes “as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.” To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a

regulatory flexibility analysis as described in the RFA.

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

The FAA conducted the required review of this final rule and determined that it will have a significant economic impact on a substantial number of small entities. Accordingly, pursuant to Section 603 of the Regulatory Flexibility Act, the Federal Aviation Administration has prepared the following final regulatory flexibility analysis.

#### *Reasons Why Agency Action Is Being Taken*

The FAA is adopting these national safety standards to govern commercial air tours as a result of accidents and incidents involving commercial air tour operators directly linked to the major provisions of the rule and NTSB recommendations made in response to air tour and sightseeing accidents and incidents. The rationale for each of the major provisions of the final rule are summarized below:

*Briefing provision.* A basic tenet of aviation safety is that passengers know procedures for opening exits and exiting the aircraft and, for flight segments over water beyond the shoreline, procedures for water ditching and use of life preservers. The FAA believes that passenger briefings will improve the chances of survival in the event of an accident.

*Safety provisions addressing the risks of overwater operations.* Based on an analysis of the risks of overwater operations and NTSB recommendations, the FAA concludes that the benefits of these provisions justify the costs and potential inconvenience to passengers. Airplane occupants will also benefit from the requirement for life preservers when air tours are conducted over water. Based on survivors’ testimony, life preservers alone are insufficient in preventing loss of life in helicopter accidents over water. Without floats, helicopters sink quickly upon impact, giving occupants little time to exit the aircraft. The FAA believes that helicopter floats, in conjunction with life preservers, will significantly improve the chances of survival. Therefore, this final rule will require life

preservers for both airplanes and helicopters and floats for helicopters that operate overwater beyond the shoreline without gliding capability.

#### *Statement of Objectives and Legal Basis*

The objective of this proposal is to provide a higher and uniform level of safety for all commercial air tours.

Under the United States Code, the FAA Administrator is required to consider the following matter, among others, as being in the public interest: assigning, maintaining, and enhancing safety and security as the highest priorities in air commerce [see 49 U.S.C. § 40101(d)(1)]. Additionally, it is the FAA Administrator's statutory duty to carry out her responsibilities "in a way that best tends to reduce or eliminate the possibility or recurrence of accidents in air transportation." [see 49 U.S.C. § 44701(c)]. Accordingly, this notice proposes to amend Title 14 of the Code of Federal Regulations to 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.

An estimated 645 part 91 operators will be affected by the rule. This rule will impose annualized costs per Section 91.147 operator of: (1) \$115 to provide passenger briefings and paperwork; (2) an additional \$45 to operators of airplanes whose occupants must wear life preservers for a total of \$160; (3) \$3,290 to helicopter operators to complete performance plans and provide briefings; and (4) \$9,300 to helicopter operators who have to provide life preservers and equip their aircraft with floats in addition to completing performance plans and providing briefings for a total cost of \$12,600. An estimated 90 part 121/135 operators will be affected by the rule. This rule will impose annualized costs per part 135 operator conducting commercial air tours of: (1) \$110 to provide passenger briefings and paperwork; (2) an additional \$205 to operators of airplanes whose occupants must wear life preservers for a total of \$315; (3) \$27,800 to helicopter operators to complete performance plans and provide briefings; and (4) \$88,400 to helicopter operators whose occupants must wear life preservers and equip their aircraft with floats in addition to completing performance plans and providing briefings, at a cost of \$27,800, for a total cost of \$116,200.

#### *Projected Reporting, Recordkeeping and Other Compliance Requirements*

Pilots flying for charitable, non-profit, or community events must provide a signed statement that the pilot has not flown more than three previous events covered by section 91.146 during the current calendar year at a cost of \$7 per statement. Operators conducting flights under section 91.147 must apply for and receive a Letter of Authorization from the FAA at a cost of approximately \$24 per operator. Section 136.13 requires each operator to complete a performance plan before each helicopter flight by a commercial air tour operator or a flight operated under Sections 91.146 or 91.147. The pilot must review for accuracy at a cost of approximately \$2 per flight.

#### *Overlapping, Duplicative, or Conflicting Federal Rules*

The final rule will not overlap, duplicate, or conflict with existing Federal Rules. The Small Business Administration commented that the requirements of the proposed rule are duplicative with the National Parks Air Tour Management requirements. The FAA does not agree with this comment since this final rule addresses how commercial air tour flights are to be conducted, rather than where such flights may be conducted. This is a safety rule. Under the National Parks Air Tour Management requirements, each park will determine specific park rules as they see fit. Each park may be different.

#### *Analysis of Alternatives*

*Alternative 1:* Lengthen the compliance period: The final rule will require full compliance within six months from the date of issuance with complete phase-in of the helicopter floats within 18 months of the effective date. The FAA issued the NPRM in October 2003 alerting the public to the proposal. In view of the more than 2,000 comments received and the holding of public and Internet meetings, the FAA believes that the compliance times provided are adequate. Lengthening the compliance period to 10 years, for example, would save some compliance costs on aircraft due to be removed from service within the 10-year period. The FAA believes, however, that the sightseeing/air tour accident history justifies FAA action in the near term. Between 1996 and 2005, there were 17 fatalities and eight serious injuries involving part 91 sightseeing flights and part 135 air tours. The FAA believes, therefore, that the higher standards should be implemented expeditiously

and has chosen not to adopt this alternative.

*Alternative 2:* Require helicopter floats for all operations beyond the shoreline: The NPRM required each helicopter to be equipped with a floatation system for a flight over water except if the overwater portion of the flight was only necessary for take-off or landing. The final rule will only require floats if the overwater operations are beyond the helicopter's power-off gliding distance of the shoreline. This change from the NPRM reduces the scope of this provision and reduces the associated costs.

The FAA believes that the safety objectives will be met through this alternative. The FAA believes that helicopter floats alone are insufficient to prevent loss of life. The rule requires helicopters with floats to have life preservers for all occupants. Based on survivors' descriptions, the FAA believes that life preservers alone are insufficient in preventing loss of life in helicopter accidents over water. Helicopter floats, in conjunction with life preservers, would significantly improve the chances of survival. For this reason, the FAA has chosen to adopt this alternative.

*Alternative 3:* Grandfather part 91 operators: The final rule continues to allow flights for compensation or hire to operate under part 91, with certain provisions. The NPRM would have required part 91 sightseeing operators to obtain part 135 certification. Adoption of this alternative reduces the cost of the rule to part 91 operators from about \$150 million over 10 years, to \$5.8 million over the same period.

#### *Affordability Analysis*

The FAA lacks specific revenue and profit data for most of the entities affected by this rule. The United States Census Bureau data for 2002 provides annual receipt information for Scenic and Sightseeing Transportation, Other (NAICS 4879) which includes airplane and helicopter operators.<sup>14</sup> The receipt information is grouped into five categories. The FAA has reviewed this information and found that the 20 largest firms had average revenues of \$5.6 million and includes some firms with receipts that exceed the SBA threshold. The average annual receipts excluding the 20 largest firms was \$333,357; the average annual receipts excluding the 50 largest firms was \$181,230. The FAA believes it is appropriate to assess the impact of the final rule's costs on Section 91.147 operators using the \$181,230 average

<sup>14</sup> See Appendix Table 1.

and the \$333,357 amount for most part 135 operators.

The FAA determines the \$160 annualized cost to part 91 airplane operators is not a significant cost to the operator with average revenues of \$181,230. The annualized cost to 33 helicopter operators to complete performance plans and provide briefings is a significant cost as it accounts for approximately 1.8 percent of annual receipts. Requiring helicopter occupants to wear life preservers and installing floats increases the annualized costs of 17 operators to approximately 6.9 percent of annual receipts.

The FAA determines the \$315 annualized cost to airplane operators is not a significant cost to the part 135 operator with average revenues of \$333,357. The annualized cost to 38 helicopter operators to complete performance plans and provide briefings is a significant cost as it accounts for approximately 8.3 percent of annual receipts. Requiring helicopter occupants to wear life preservers and installing floats increases the annualized costs of 15 operators to approximately 35 percent of annual receipts. The FAA believes, however, that the helicopter float costs will apply to the larger, more financially viable part 135 entities with receipts exceeding the average revenues used. As noted above the Census data indicates that the 20 largest firms had average revenues of \$5.6 million; using this average revenue lowers the annualized cost to 2.1 percent.

While there are significant costs to helicopter operators, there are a number of options the operators may exercise to avoid or minimize these costs. If air tours do not constitute a significant share of an operator's net revenues, an operator may elect not to continue to provide air tours. Other operators may alter the air tour route to avoid the compliance costs, but this may adversely affect tour revenues. Some operators, depending on the volume of their commercial air tour operations, may elect to only equip part of their fleet to ensure the affordability to their business. The FAA concludes these operators will be able to afford to comply with the final rule and remain in business.

#### *Business Closure Analysis*

The FAA will allow operators conducting flights for compensation or hire under part 91 to remain under part 91. This change will allow the part 91 operators currently providing sightseeing flights to continue to provide their service. The requirement for helicopter floats will impose significant costs on operators who opt to

continue flying over water beyond the shoreline. These operators have 18 months to determine whether to equip all their helicopters, formulate financial plans to meet the initial capital float cost, or devise alternate routing to avoid the expense. The FAA concludes that these operators would remain in business, although we have added operator relief for ability to glide to beyond the shoreline.

#### *Disproportionality Analysis*

Almost all entities in the commercial air tour/sightseeing market are small (annual receipts of \$6 million or less). Accordingly, the costs imposed by this rule will be borne almost entirely by small businesses. Helicopter operators will incur much higher costs than airplane operators due to the requirement to equip their aircraft with floats if they conduct operations overwater and the requirement to prepare helicopter performance plans. The FAA believes that the only way to accomplish the commercial air tour safety needs for helicopter operations is to impose these higher standards on these entities.

#### *Key Assumptions Analysis*

The FAA has made several conservative assumptions in this analysis, which may have resulted in an overestimate of the costs of the final rule. For example, the FAA assumes that all helicopters in commercial air tour service in areas that require floats will equip all their helicopters with floats. It is highly possible that the number will be lower because some operators already have floats to comply with 14 CFR 135.183 and SFAR 71 for Hawaii, some operators do not use all the helicopters in their fleet for commercial air tours, 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 that requires occupants to wear a life preserver provided by the tour operator. To the extent this is a current practice for some operators, it is not a cost of this rule. We have estimated that the pilot may complete the helicopter performance plans although the rule permits the plan to be calculated by a lower paid employee as long as the pilot reviews it for accuracy.

#### *International Trade Impact Assessment*

The Trade Agreements 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 Federal agencies to consider international standards and, where appropriate, use the foreign standards as the basis for U.S. standards. In accordance with the above statute, the FAA has assessed the potential effect of this final rule and determined that it would have only a domestic impact and therefore no effect on any trade-sensitive activity.

#### *Unfunded Mandates Assessment*

The Unfunded Mandates Reform Act of 1995 (Public Law 104-4) 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 the expenditure of \$100 million or more (adjusted annually for inflation with the base year 1995) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of \$128.1 million in lieu of \$100 million.

This final rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

#### *Paperwork Reduction Act*

This final rule 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 this final rule on air tour operators because accurate and complete data on the number of operators, tours, and aircraft is not yet available. 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.

Section 91.146(d) will require each pilot to certify in a signed statement that the pilot has not flown more than three previous events covered by this section during the current calendar year. Pilots currently must provide sponsors with

their pilot and medical certificates and log book under Section 61.113(d)(1). Some sponsors have also had to submit the latter information because of the exemptions they hold and would simply add the certification statement For the first year, this will require 2,200 pilot × 10 minutes each × \$41.66 hourly = 366.7 hours and \$15,277.

Initial hours = 366.7  
 Initial cost = \$15,277  
 Recurring hours = 3,300  
 Recurring cost = \$137,493  
 Total Hours = 3,667.7  
 Total Cost = \$152,770

Section 91.147 requires that operators apply for, receive and comply with a Letter of Authorization from the FAA to conduct nonstop passenger-carrying flights for compensation or hire. These operators are already subject to the FAA's drug and alcohol requirements (and thus not a part of this rule) and most of the information that must be submitted under this section is the same general business information (addresses, names of personnel) provided for those programs, plus aircraft information. Initially, 645 operators will apply and thereafter, 16 new operators will register each year. The application will take each operator 20 minutes to complete the process. Initial hours and cost = 645 operators × 20 minutes each × \$73.77 hourly = 215 hours and \$15,860.

Initial hours = 215  
 Initial cost = \$15,860  
 Recurring hours = 48  
 Recurring cost = \$3,510  
 Total Hours = 263  
 Total Cost = \$19,370

Section 136.7 requires air tour operators to provide passenger briefings. There are numerous options for presenting the required information

given the current state of electronics. Nation-wide charitable and non-profit organizations could produce videos and distribute to local chapters at very little cost. Commercial air tour operators are also likely to use videos as some already do. Some 935 videos (200 by charitable and non-profit groups, 645 by Section 91.147 operators and 90 by part 135 operators) are estimated to be produced at an initial cost of \$500 each and be replaced over a 10-year period. Presenting the information by video is less costly than oral briefings because the cost of producing the video can be amortized over 10 years which results in lower per briefing cost. While the automated methods are available to individuals providing local community flights, it is more likely the pilot will orally transmit this information to passengers because videos would not be cost-effective. Pilot briefings are estimated to take 3 minutes at a cost of \$2.08 per briefing.

Initial videos will take 5 hours to produce at a cost of \$100 per hour or a total of 4,675 hours and a cost of \$467,500. Initial oral briefings are estimated to take 3 minutes each at a cost of \$2.08 per briefing and given before 1,000 flights.

Initial hours = 4,725 (4,675 for video productions + 50 hours for oral briefings)

Initial cost = \$469,580 (\$467,500 for videos + \$2,080 for oral briefings)  
 Recurring hours = 4,657.5 (4,207.5 for video productions + 450 hours for oral briefings)

Recurring cost = \$439,470 (\$420,750 for videos + \$18,720 for oral briefings)  
 Total Hours = 9,382.5 (8,882.5 for video productions + 500 hours for oral briefings)

Total Cost = \$909,050 (\$888,250 for videos + \$20,800 for oral briefings)

Section 136.13 will require each operator to complete a performance plan before each helicopter flight by a commercial air tour operator. These estimates include all of the helicopters in the operator's fleet although the entire fleet may not be used for commercial air tours. Pilots will take 3 minutes to review the performance plan before each flight at a cost of \$2.08 per review. The total number of charity and non-profit helicopter flights per year are estimated at 9,600. The number of Section 91.147 flights is based on 42 helicopters conducting 400 air tour flight hours per year and performing 3 tours per flight hour (42 × 400 × 3 = 50,400). The number of part 135 commercial air tour flights are a combination of two categories of operations: (1) Air tour hours for operations of 134 AS 350 helicopters at 1,253 hours per year per aircraft and (2) that the average flight takes 45 minutes (134 × 1253 × (60/45) = 223,869). Commercial air tours by 169 other helicopters used by part 135 operators are based on 556 air tour hours per aircraft and performing 3 tours per flight hour (169 × 556 × 3 = 281,892). The total number of affected part 135 helicopter flights is about 505,800.

Initial hours = 28,290 (9,600 + 50,400 + 505,800 = 565,800 flight × 3 minutes per flight = 1,697,400 minutes / 60 minutes per hour = 28,290 hours)  
 Initial cost = \$1,176,864 (565,800 flights × \$2.08 per flight)  
 Recurring hours = 2,636,010  
 Recurring cost = \$10,591,776  
 Total Hours = 282,900  
 Total Cost = \$11,768,640

SUMMARY OF INITIAL AND TOTAL PAPERWORK HOURS AND COSTS

Category	Initial hours	Initial cost	Ten year hours	Ten year costs
Pilot certification .....	366.7	\$15,277	3,667.7	\$152,770
Letter of Authorization .....	215	15,860	263	19,370
Passenger briefings .....	4,725	469,580	9,382.5	909,050
Performance plans .....	28,290	1,176,864	282,900	11,768,640
<b>Total .....</b>	<b>33,596.7</b>	<b>1,677,581</b>	<b>296,213.2</b>	<b>12,849,830</b>

**Note:** Section 136.5, Minimums for Hawaii, contains paperwork items that have already been addressed in the paperwork package for SFAR 71. Section 136.7, Passenger Briefings is partially covered in paperwork packages for part 91 and for part 135.

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. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA submitted a copy of the new information collection requirements(s) in this final rule to OMB for its review. OMB is still reviewing the submission and will provide an OMB Control Number when the review is complete. That Control

Number will then be published separately in the **Federal Register**.

*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 regulations.

#### *Executive Order 13132, Federalism*

The FAA has analyzed this final 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.

#### *Regulations Affecting Intrastate Aviation in Alaska*

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the FAA, when modifying its regulations in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish appropriate regulatory distinctions. In the NPRM, we requested comments on whether the proposed rule should apply differently to intrastate operations in Alaska. We received comments that specifically related to intrastate aviation in Alaska and the section we received comments about (minimum altitudes in part 136) has been deleted in the final rule. The comments by NorthStar are addressed in the preamble above.

#### *Environmental Analysis*

In accordance with FAA Order 1050.1E, the FAA has determined that this amendment is categorically excluded from environmental review under section 102(2)(C) of the National Environmental Policy Act. In 1994 the original SFAR 71 established procedural, operational, and equipment safety requirements for air tour aircraft in the state of Hawaii. This final rule maintains those requirements. Neither SFAR 71 nor this final rule involves any significant impacts to the human environment and the FAA has determined that there are no extraordinary circumstances. This rule does not change the existing environment and is not likely to effect listed, endangered or threatened species. Comments requesting that the FAA ban overflights from critical habitat are beyond the scope of this rule. The National Park Service commented about our proposed minimum altitude changes but they have not been adopted in this final rule. A more detailed response to those issues is included in the discussion of comments above.

#### *Regulations that Significantly Affect Energy Supply, Distribution, or Use*

The FAA has analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a "significant energy action" under the executive order because it is not a "significant regulatory action" under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

#### **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 Amendment**

■ For the reasons set forth above, the Federal Aviation Administration is amending Title 14 of the Code of Federal Regulations parts 61, 91, 119, 121, 135 and 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 a charitable, nonprofit, or community event flight described in § 91.146, if the sponsor and pilot comply with the requirements of § 91.146.

\* \* \* \* \*

#### **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**

■ 4. Remove SFAR No. 71 from part 91.

■ 5. Add § 91.146 to read as follows:

#### **§ 91.146 Passenger-carrying flights for the benefit of a charitable, nonprofit, or community event.**

(a) *Definitions.* For purposes of this section, the following definitions apply:

*Charitable event* means an event that raises funds for the benefit of a charitable organization recognized by the Department of the Treasury whose donors may deduct contributions under section 170 of the Internal Revenue Code (26 U.S.C. Section 170).

*Community event* means an event that raises funds for the benefit of any local or community cause that is not a charitable event or non-profit event.

*Non-profit event* means an event that raises funds for the benefit of a non-profit organization recognized under State or Federal law, as long as one of the organization's purposes is the promotion of aviation safety.

(b) Passenger carrying flights for the benefit of a charitable, nonprofit, or community event identified in paragraph (c) of this section are not subject to the certification requirements of part 119 or the drug and alcohol testing requirements in part 121, appendices I and J, of this chapter, provided the following conditions are satisfied and the limitations in paragraphs (c) and (d) are not exceeded:

(1) The flight is nonstop and begins and ends at the same airport and is conducted within a 25-statute mile radius of that airport;

(2) The flight is conducted from a public airport that is adequate for the airplane or helicopter used, or from another location the FAA approves for the operation;

(3) The airplane or helicopter has a maximum of 30 seats, excluding each crewmember seat, and a maximum payload capacity of 7,500 pounds;

(4) The flight is not an aerobatic or a formation flight;

(5) Each airplane or helicopter holds a standard airworthiness certificate, is airworthy, and is operated in compliance with the applicable requirements of subpart E of this part;

(6) Each flight is made during day VFR conditions;

(7) Reimbursement of the operator of the airplane or helicopter is limited to that portion of the passenger payment for the flight that does not exceed the pro rata cost of owning, operating, and maintaining the aircraft for that flight, which may include fuel, oil, airport expenditures, and rental fees;

(8) The beneficiary of the funds raised is not in the business of transportation by air;

(9) A private pilot acting as pilot in command has at least 500 hours of flight time;

(10) Each flight is conducted in accordance with the safety provisions of part 136, subpart A of this chapter; and

(11) Flights are not conducted over a national park, unit of a national park, or abutting tribal lands, unless the operator has secured a letter of agreement from the FAA, as specified under subpart B of part 136 of this chapter, and is operating in accordance with that agreement during the flights.

(c) (1) Passenger-carrying flights or series of flights are limited to a total of four charitable events or non-profit events per year, with no event lasting more than three consecutive days.

(2) Passenger-carrying flights or series of flights are limited to one community event per year, with no event lasting more than three consecutive days.

(d) Pilots and sponsors of events described in this section are limited to no more than 4 events per calendar year.

(e) At least seven days before the event, each sponsor of an event described in this section must furnish to the FAA Flight Standards District Office with jurisdiction over the geographical area where the event is scheduled:

(1) A signed letter detailing the name of the sponsor, the purpose of the event, the date and time of the event, the location of the event, all prior events

under this section participated in by the sponsor in the current calendar year;

(2) 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 chapter and that any private pilot has at least 500 hours of flight time; and

(3) A signed statement from each pilot that lists all prior events under this section in which the pilot has participated during the current calendar year.

■ 6. Add § 91.147 to read as follows:

**§ 91.147 Passenger-carrying flights for compensation or hire.**

Each Operator conducting passenger-carrying flights for compensation or hire must meet the following requirements unless all flights are conducted under § 91.146.

(a) For the purposes of this section and for drug and alcohol testing, *Operator* means any person conducting nonstop passenger-carrying flights in an airplane or helicopter for compensation or hire in accordance with §§ 119.1(e)(2), 135.1(a)(5), or 121.1(d), of this chapter that begin and end at the same airport and are conducted within a 25-statute mile radius of that airport.

(b) An Operator must comply with the safety provisions of part 136, subpart A of this chapter, and apply for and receive a Letter of Authorization from the Flight Standards District Office nearest to its principal place of business by September 11, 2007.

(c) Each application for a Letter of Authorization must include the following information:

(1) Name of Operator, agent, and any d/b/a (doing-business-as) under which that Operator does business;

(2) Principal business address and mailing address;

(3) Principal place of business (if different from business address);

(4) Name of person responsible for management of the business;

(5) Name of person responsible for aircraft maintenance;

(6) Type of aircraft, registration number(s), and make/model/series; and

(7) An Antidrug and Alcohol Misuse Prevention Program registration.

(d) The Operator must register and implement its drug and alcohol testing programs in accordance with part 121, appendices I and J, of this chapter.

(e) The Operator must comply with the provisions of the Letter of Authorization received.

**PART 119—CERTIFICATION: AIR CARRIERS AND COMMERCIAL OPERATORS**

■ 7. 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.

■ 8. Effective September 11, 2007, amend § 119.1 by revising paragraph (e)(2) to read as follows:

**§ 119.1 Applicability.**

\* \* \* \* \*

(e) \* \* \*

(2) Nonstop Commercial Air Tours conducted after September 11, 2007, in an airplane or helicopter having a standard airworthiness certificate and 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, in compliance with the Letter of Authorization issued under § 91.147 of this chapter. For nonstop Commercial Air Tours conducted in accordance with part 136, subpart B of this chapter, National Parks Air Tour Management, the requirements of part 119 of this chapter apply unless excepted in § 136.37(g)(2). For Nonstop Commercial Air Tours conducted in the vicinity of the Grand Canyon National Park, Arizona, the requirements of SFAR 50–2, part 93, subpart U, and part 119 of this chapter, as applicable, apply.

\* \* \* \* \*

■ 9. Amend § 119.3 by adding the following definition:

**§ 119.3 Definitions.**

\* \* \* \* \*

*Commercial air tour* means a flight conducted for compensation or hire in an airplane or helicopter where a purpose of the flight is sightseeing. The FAA may consider the following factors in determining whether a flight is a commercial air tour:

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

(2) 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;

(3) The area of operation;

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

(5) The route of flight;

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

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

(8) Any other factors that the FAA considers appropriate.

\* \* \* \* \*

**PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS**

■ 10. 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.

■ 11. Effective September 11, 2007, amend § 121.1 by revising paragraph (d) introductory text to read as follows:

**§ 121.1 Applicability.**

\* \* \* \* \*

(d) Nonstop Commercial Air Tours conducted for compensation or hire in accordance with § 119.1(e)(2) of this chapter must comply with drug and alcohol requirements in §§ 121.455, 121.457, 121.458 and 121.459, and with the provisions of part 136, subpart A of this chapter by September 11, 2007. 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 anti-drug and alcohol misuse prevention programs to perform—

\* \* \* \* \*

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

■ 12. 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.

■ 13. Effective September 11, 2007, amend § 135.1 by revising paragraph (a)(5) and adding a new paragraph (a)(8) to read as follows:

**§ 135.1 Applicability.**

(a) \* \* \*

(5) Nonstop Commercial Air Tour flights 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 the drug and alcohol testing requirements in §§ 135.249, 135.251, 135.253, 135.255,

and 135.353; and with the provisions of part 136, subpart A, and § 91.147 of this chapter by September 11, 2007.

\* \* \* \* \*

(8) Commercial Air tours conducted by holders of operations specifications issued under this part must comply with the provisions of part 136, Subpart A of this chapter by September 11, 2007.

\* \* \* \* \*

■ 14. Amend § 135.1 by removing paragraph (c), redesignating paragraph (d) as paragraph (c), and revising new paragraph (c) introductory text to read as follows:

**§ 135.1 Applicability.**

\* \* \* \* \*

(c) An operator who does not hold a part 119 certificate and who operates under the provisions of § 91.147 of this chapter is permitted to use a person who is otherwise authorized to perform aircraft maintenance or preventive maintenance duties and who is not subject to anti-drug and alcohol misuse prevent programs to perform—

\* \* \* \* \*

**PART 136—COMMERCIAL AIR TOURS AND NATIONAL PARKS AIR TOUR MANAGEMENT**

■ 15. The authority citation for part 136 continues to read as follows:

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

■ 16. Revise the heading of part 136 to read as set forth above.

■ 17. Redesignate existing §§ 136.1, 136.3, 136.5, 136.7, 136.9, and 136.11 as new subpart B consisting of §§ 136.31, 136.33, 136.35, 136.37, 136.39, and 136.41, respectively, and reserve §§ 136.43 through 136.49.

■ 18. Add a heading for new subpart B of part 136 consisting of newly designated §§ 136.31, 136.33, 136.35, 136.37, 136.39, and 136.41 to read as follows:

**Subpart B—National Parks Air Tour Management**

■ 19. In new subpart B of part 136, remove the words “this part” and replace with the words “this subpart” in the following paragraphs: 136.31(a), 136.31(b), 136.31(b)(2), 136.31(c), introductory text in 136.33, 136.33(d)(2), 136.37(d), and 136.37(e).

**Subpart C [Added]**

■ 20. Add new Subpart C, titled “Grand Canyon National Park,” and reserve sections 136.51 through 136.69.

■ 21. Add new subpart A to read as follows:

**Subpart A—National Air Tour Safety Standards**

Sec.

- 136.1 Applicability and definitions.
- 136.3 Letters of Authorization.
- 136.5 Additional requirements for Hawaii.
- 136.7 Passenger briefings.
- 136.9 Life preservers for over water.
- 136.11 Helicopter floats for over water.
- 136.13 Helicopter performance plan and operations.
- 136.15–136.29 [Reserved]

**§ 136.1 Applicability and definitions.**

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

(b) As of September 11, 2007, this subpart is applicable to:

- (1) Part 121 or 135 operators conducting a commercial air tour and holding a part 119 certificate;
  - (2) Part 91 operators conducting flights as described in § 119.1(e)(2); and
  - (3) Part 91 operators conducting flights as described in 14 CFR 91.146
- (c) This subpart is not applicable to operations conducted in balloons, gliders (powered or un-powered), parachutes (powered or un-powered), gyroplanes, or airships.

(d) For the purposes of this subpart the following definitions apply:

*Commercial Air Tour* means a flight conducted for compensation or hire in an airplane or helicopter where a purpose of the flight is sightseeing. The FAA may consider the following factors in determining whether a flight is a commercial air tour for purposes of this subpart:

- (1) Whether there was a holding out to the public of willingness to conduct a sightseeing flight for compensation or hire;
- (2) 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;
- (3) The area of operation;
- (4) How often the person offering the flight conducts such flights;
- (5) The route of the flight;
- (6) The inclusion of sightseeing flights as part of any travel arrangement package;
- (7) Whether the flight in question would have been canceled based on

poor visibility of the surface below the route of the flight; and

(8) Any other factors that the FAA considers appropriate.

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

*Life preserver* means a flotation device used by an aircraft occupant if the aircraft ditches in water. If an inflatable device, it must be un-inflated and ready for its intended use once inflated. In evaluating whether a non-inflatable life preserver is acceptable to the FAA, the operator must demonstrate to the FAA that such a preserver can be used during an evacuation and will allow all passengers to exit the aircraft without blocking the exit. Each occupant must have the physical capacity to wear and inflate the type of device used once briefed by the commercial air tour operator. Seat cushions do not meet this definition.

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

*Shoreline* means that area of the land adjacent to the water of an ocean, sea, lake, pond, river or tidal basin that is above the high water mark and excludes land areas unsuitable for landing such as vertical cliffs or land intermittently under water during the particular flight.

*Suitable landing area for helicopters* means an area that provides the operator reasonable capability to land without damage to equipment or injury to persons. Suitable landing areas must be site-specific, designated by the operator, and accepted by the FAA. These site-specific areas would provide an emergency landing area for a single-engine helicopter or a multiengine helicopter that does not have the capability to reach a safe landing area after an engine power loss.

(e) In an in-flight emergency requiring immediate action, the pilot in command may deviate from any rule of this subpart to the extent required to meet that emergency.

### § 136.3 Letters of Authorization.

Operators subject to this subpart who have Letters of Authorization may use the procedures described in 14 CFR 119.51 to amend or have the FAA reconsider those Letters of Authorization.

### § 136.5 Additional requirements for Hawaii.

No person may conduct a commercial air tour in the State of Hawaii unless they comply with the additional requirements and restrictions in appendix A to part 136.

### § 136.7 Passenger briefings.

(a) Before takeoff each pilot in command shall ensure that each passenger has been briefed on the following:

- (1) Procedures for fastening and unfastening seatbelts;
- (2) Prohibition on smoking; and
- (3) Procedures for opening exits and exiting the aircraft.

(b) For flight segments over water beyond the shoreline, briefings must also include:

- (1) Procedures for water ditching;
- (2) Use of required life preservers; and
- (3) Procedures for emergency exit from the aircraft in the event of a water landing.

### § 136.9 Life preservers for over water.

(a) Except as provided in paragraphs (b) or (c) of this section, the operator and pilot in command of commercial air tours over water beyond the shoreline must ensure that each occupant is wearing a life preserver from before takeoff until flight is no longer over water.

(b) The operator and pilot in command of a commercial air tour over water beyond the shoreline must ensure that a life preserver is readily available for its intended use and easily accessible to each occupant if:

- (1) The aircraft is equipped with floats; or
- (2) The airplane is within power-off gliding distance to the shoreline for the duration of the time that the flight is over water.

(3) The aircraft is a multi engine that can 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 Airplane Flight Manual or the Rotorcraft Flight Manual, as appropriate.

(c) No life preserver is required if the overwater operation is necessary only for takeoff or landing.

### § 136.11 Helicopter floats for over water.

(a) A helicopter used in commercial air tours over water beyond the shoreline 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 Rotorcraft Flight Manual (RFM).

(b) Each helicopter that is required to be equipped with an inflatable flotation system must have:

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

(2) The flotation system armed when the helicopter is over water and is flying at a speed that does not exceed the maximum speed prescribed in the Rotorcraft Flight Manual for flying with the flotation system armed.

(c) Fixed floats or an inflatable flotation system is not required for a helicopter under this section if:

(1) The helicopter is over water only during the takeoff or landing portion of the flight, or

(2) The helicopter is operated within power-off gliding distance to the shoreline for the duration of the flight and each occupant is wearing a life preserver from before takeoff until the aircraft is no longer over water.

(d) Air tour operators required to comply with paragraphs (a) and/or (b) of this section must meet these requirements on or before September 5, 2008.

### § 136.13 Helicopter performance plan and operations.

(a) Each operator must complete a performance plan before each helicopter commercial air tour, or flight operated under 14 CFR 91.146 or 91.147. 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) Except for the approach to and transition from a hover for the purpose of takeoff and landing, or during takeoff and landing, the pilot in command must make a reasonable plan to operate the helicopter outside of the caution/warning/avoid area of the limiting height/velocity diagram.

(c) Except for the approach to and transition from a hover for the purpose of takeoff and landing, during takeoff and landing, or when necessary for safety of flight, the pilot in command must operate the helicopter in compliance with the plan described in paragraph (b) of this section.

**§§ 136.15–136.29 [Reserved]**

■ 22. Add new appendix A to part 136 as follows:

**Appendix A to Part 136—Special Operating Rules for Air Tour Operators in the State of Hawaii**

*Section 1. Applicability.* This appendix prescribes operating rules for airplane and helicopter visual flight rules air tour flights conducted in the State of Hawaii under 14 CFR parts 91, 121, and 135. This appendix does not apply to:

(a) Operations conducted under 14 CFR part 121 in airplanes with a passenger seating configuration of more than 30 seats or a payload capacity of more than 7,500 pounds.

(b) Flights conducted in gliders or hot air balloons.

*Section 2. Definitions.* For the purposes of this appendix:

“Air tour” means any sightseeing flight conducted under visual flight rules in an airplane or helicopter for compensation or hire.

“Air tour operator” means any person who conducts an air tour.

*Section 3. Helicopter flotation equipment.* No person may conduct an air tour in Hawaii in a single-engine helicopter beyond the shore of any island, regardless of whether the helicopter is within gliding distance of the shore, unless:

(a) The helicopter is amphibious or is equipped with floats adequate to accomplish a safe emergency ditching and approved flotation gear is easily accessible for each occupant; or

(b) Each person on board the helicopter is wearing approved flotation gear.

*Section 4. Helicopter performance plan.* Each operator must complete a performance plan before each helicopter air tour flight. The performance plan must be based on the information in the Rotorcraft Flight Manual (RFM), considering the maximum density altitude for which the operation is planned for the flight to determine the following:

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

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

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

The pilot in command (PIC) must comply with the performance plan.

*Section 5. Helicopter Operating Limitations.* Except for approach to and transition from a hover, and except for the purpose of takeoff and landing, the PIC shall 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-speed envelope for that helicopter under current weight and aircraft altitude.

*Section 6. Minimum flight altitudes.* Except when necessary for takeoff and landing, or operating in compliance with an air traffic control clearance, or as otherwise authorized by the Administrator, no person may conduct an air tour in Hawaii:

(a) Below an altitude of 1,500 feet above the surface over all areas of the State of Hawaii, and,

(b) Closer than 1,500 feet to any person or property; or,

(c) Below any altitude prescribed by federal statute or regulation.

*Section 7. Passenger briefing.* Before takeoff, each PIC of an air tour flight of Hawaii with a flight segment beyond the ocean shore of any island shall ensure that each passenger has been briefed on the following, in addition to requirements set forth in 14 CFR 91.107, 121.571, or 135.117:

(a) Water ditching procedures;

(b) Use of required flotation equipment; and

(c) Emergency egress from the aircraft in event of a water landing.

Issued in Washington, DC, on December 22, 2006.

**Marion C. Blakey,**  
Administrator.

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