

either part 121 or 135. Part 121 and part 135 contain operational, safety and training rules that are not limited to air tour operations. Exceptions to the certification requirements are contained in 14 CFR 119.1(e). One of these exceptions, § 119.1(e)(2), applies to non-stop sightseeing flights conducted within 25 statute miles of the departure airport that takeoff and land at the same airport. Operators conducting flights under this exception are not required to be certificated under part 119 and are not subject to the operational requirements of either part 121 or 135. These excepted operations are subject only to the requirements of part 91.

This proposed rule would seek to improve the overall safety of commercial air tours by requiring all air tour operators, with a limited exception for certain charitable and community events, to be certificated under part 119. Additionally the proposed rule would increase the overall safety of commercial air tours by establishing requirements for low-level flight, visibility limits and over water flights. The proposed rule is modeled on Special Federal Aviation Regulation (SFAR) 71, which currently governs the commercial air tour industry operating in Hawaii. During the 6 years from 1989 through 1994, there were 18 air tour accidents in Hawaii, or an average of 3.46 accidents per 100,000 flight hours. The number of accidents peaked at 8 accidents in 1994. SFAR 71 was issued in September of 1994. There were 8 accidents in the 6 years from 1995 through 2000, dropping to an average of 1.48 accidents per 100,000 flight hours. The FAA believes that SFAR 71 has improved the overall safety of the commercial air tour industry in Hawaii and now seeks to use its experience with this SFAR to improve commercial air tour safety throughout the United States. If this rulemaking is adopted, the rule will replace the requirements of SFAR 71 in Hawaii and apply throughout the country.

B. Accident History

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

Currently, with the exception of commercial air tours conducted under § 119.1(e)(2) (flights within 25 miles of the departing airport), all air tour operators must be certificated under 14 CFR part 119 to operate in accordance with part 121 or 135. This certification

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

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

(1) On May 20, 1989, an Aerospatiale AS350D helicopter, which was touring Waialeale Falls in Hawaii with six passengers on board, crashed. After hovering at a low altitude near the falls, the pilot began a pedal turn and forward movement for the initial climb away from the falls. The main rotor revolutions per minute (rpm) decayed, and the pilot turned back toward the upper falls, where he thought he could land. However, the helicopter settled into a ravine, damaging the helicopter and injuring the pilot and passengers. The National Transportation Safety Board (NTSB) determined that the probable cause of the accident was the pilot's failure to maintain rotor rpm while turning and taking off from a hover with a relatively heavy gross weight. Additional factors related to the accident were the high-density altitude and rough/uneven (rocky) terrain in the emergency landing area.

(2) On June 11, 1989, a Beechcraft BE-H18, on a revenue air tour flight conducted under part 135, crashed in the Waipio Valley of the Kohala Mountains on the island of Hawaii. Its destination was Maui. The flight was conducted under visual flight rules (VFR). The pilot and 10 passengers were fatally injured, and the airplane was

destroyed. The NTSB found that the pilot of the airplane flight entered an enclosed canyon and proceeded beyond a point from which a safe exit could be made.

(3) On April 22, 1992, a Beech Model E18S (BE-18) collided with a mountain on the island of Maui, Hawaii, while on a commercial air tour from Hilo to Honolulu, Hawaii. The flight was conducted under VFR as an on-demand charter flight. The pilot and all eight passengers sustained fatal injuries and the airplane was destroyed. The NTSB found that the primary cause of the accident was that the captain mistakenly deviated from his intended route because he did not use his navigation charts to confirm the correct heading. The mountain was obscured by mist, and the pilot did not see it until it was too late. While the pilot was certificated and medically qualified, he had falsified his employment history and did not possess the minimum hours of experience stipulated by the company to qualify as a pilot.

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

(5) On January 25, 1993, a Fairchild Hiller helicopter was destroyed during a commercial air tour conducted under part 91 at Volcanoes National Park, Hawaii. Before the accident, the pilot had been hovering near the shoreline, between 100 and 150 feet above sea level. When the pilot attempted to resume forward flight, he experienced a total left pedal failure. The pilot lost control and the helicopter landed in the ocean and sank. The helicopter was not equipped with floats and the pilot and four passengers were not wearing life preservers. Only the pilot survived. The NTSB found that the operator's failure to provide the passengers with life preservers was one factor contributing to their deaths.

(6) On July 14, 1994, two commercial air tour accidents occurred in the State of Hawaii. Both involved Aerospatiale AS350-series helicopters and forced landings in the water adjacent to the shore. The first accident occurred off the island of Kauai. The flight was proceeding parallel to the shoreline approximately 9 miles west of the community of Hanalei when a total loss of power occurred. The pilot performed an autorotation to the water approximately 150 feet from the shoreline, which was at the base of a cliff. All occupants exited the helicopter