

The pilot in command would be required to review and comply with the performance plan. The proposed rule would require the plan to be based on information in the rotorcraft flight manual considering actual conditions that day.

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

#### 8. Helicopter Operating Limitations

The height/velocity diagram in the Rotorcraft Flight Manual for each helicopter provides the pilot with important safety information that helps the pilot fly at a combination of height above the ground and speed that will allow the pilot in command to land in the event of a power failure. In certain types of operations that do not involve the carriage of passengers for compensation or hire, it is sometimes necessary for a pilot to operate briefly within the avoid area of the height/velocity diagram. The FAA believes that air tour operations require a higher safety standard because they carry members of the public for compensation or hire. SFAR 71 requires pilots to operate the helicopter at a combination of height and forward speed (including hover) that would permit a safe landing in event of engine power loss, in accordance with the height/velocity envelope for that helicopter under current weight and aircraft altitude, except for approach to and transition from a hover. The FAA proposes removing the exception for approach to and transition from a hover because transition from and to a hover is a critical phase in helicopter operations, particularly at the relatively low altitudes above ground level where the height/velocity diagram applies. Operating in accordance with the height/velocity diagram would provide the pilot sufficient time to complete a successful autorotation in the event of a power failure.

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

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

#### 9. Deviations

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

The deviation application would be submitted to the certificate holding Flight Standards District Office (FSDO) or the FSDO responsible for issuing transition operations specifications. Deviations would be detailed in the operator's operations specifications, or in the transition operations specifications, if the operator is a non-certificated air tour operator.

#### E. Compliance Schedule

The proposed rule sets forth the following compliance schedule:

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

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

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

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

(5) Flights would be permitted under § 119.1(e)(2) for a period of 180 days from the publication of the final rule in the **Federal Register**. At the end of the 180 days, however, this exception would no longer be available. Only qualifying charity event flights or community event flights would be able to operate as per § 119.1(e)(11) without complying with part 119 certification requirements and either the part 121 or 135 requirements. These charity or community event flights would have to begin complying with part 136, subpart A by the effective date of the rule.

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

#### Regulatory Evaluation Summary

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency to propose or adopt a regulation only if the agency makes a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. section 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and where appropriate, as the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation).

In conducting these analyses, FAA has determined this rule:

(1) Has benefits which do justify its costs, is not a “significant regulatory action” as defined in the Executive Order but is “significant”