DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 110, 119, 121, 125, 136

[Docket No. FAA–2022–1563; Notice No. 23–03]

RIN 2120–AL80

Update to Air Carrier Definitions

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to amend the regulatory definitions of certain air carrier and commercial operations. This proposed rule would add powered-lift to these definitions to ensure the appropriate sets of rules apply to air carriers' and certain commercial operators' operations of aircraft that FAA regulations define as powered-lift. The FAA also proposes to update certain basic requirements that apply to air carrier oversight, such as the contents of operations specifications and the qualifications applicable to certain management personnel. In addition, this proposed rule would apply the rules for commercial air tours to powered-lift. This proposed rule is an important step in the FAA's integration of new entrant aircraft in the National Airspace System (NAS).

DATES: Send comments on or before February 6, 2023.

ADDRESSES: Send comments identified by docket number FAA–2022–1563 using any of the following methods:

Federal eRulemaking Portal: Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.

Mail: Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

Hand Delivery or Courier: Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Fax: Fax comments to Docket Operations at 202–493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), Department of Transportation solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jackie Clow, Aviation Safety Inspector, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: 202–267–8166; email: *jackie.a.clow@faa.gov.*

SUPPLEMENTARY INFORMATION:

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I. Executive Summary

FAA regulations that apply to air carrier operations define five kinds of air carrier operations. The terms the FAA uses for air carrier operations are found in the applicability provisions for the appropriate set of operating rules. With this proposed rule, the FAA incorporates powered-lift into the definitions of five kinds of air carrier operations—commuter, domestic, flag, on-demand, and supplemental. The current air carrier definitions, as well as certain regulations that apply to other commercial operations of aircraft, only refer to ''airplanes'' and ''rotorcraft.'' To enable air carrier operations with powered-lift, the FAA proposes adding powered-lift to the definitions in § 110.2 of Title 14 of the Code of Federal Regulations (14 CFR). This proposed rule would also extend the applicability of certain operating rules to powered-lift, such as the rules that apply to large aircraft operations that are not common carrier operations and rules that apply to commercial air tours.

The FAA also proposes to update various provisions within 14 CFR part 119 (Certification: Air Carriers and Commercial Operators) to address air carriers' operations of powered-lift. This proposed rule would amend certain aircraft-specific provisions in § 119.1, which outline the applicability of and exceptions from part 119. This proposed rule would add sight-seeing flights in gliders to the exclusions from part 119. Furthermore, this proposed rule would amend the qualification requirements for personnel in certain management positions for air carriers, to ensure they have appropriate experience in powered-lift operations. This proposed rule would make various technical amendments to part 119 for clarity and revise reflect current FAA practice pertaining to the information included in operations specifications. In addition, the proposed rule will revise certain recordkeeping requirements.

II. Legal Authority

The FAA's authority to issue rules on aviation safety is codified throughout Title 49 of the United States Code. The FAA issues this proposed rule under the authority in section 106. Section 106(f) establishes that the Administrator may promulgate regulations and rules. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. Furthermore, section 44701(a)(5) requires the Administrator to promote safe flight of civil aircraft in air commerce by prescribing regulations and setting minimum standards for other practices, methods, and procedures necessary for safety in air commerce and national security. Section 44702 provides express authority to the Administrator to issue certificates under and oversee aviation safety. In addition, section 44701(d)(1)(A) specifically states the Administrator, when prescribing safety regulations, must consider ''the duty of an air carrier to provide service with the highest possible degree of safety in the public interest.'' Similarly, section 44705 requires the Administrator to prescribe regulations for the issuance of air carrier operating certificates when the Administrator finds, after investigation, that the holder of the

certificate is properly and adequately equipped and able to operate safely.

The FAA also proposes this rule in accordance with sections 44711 and 44713. Section 44711(a)(4) prohibits a person from operating as an air carrier without an air carrier operating certificate or in violation of a term of the certificate. Similarly, section 44711(a)(5) prohibits a person from operating aircraft in air commerce in violation of a regulation prescribed or a certificate that the FAA issues under section 44701(a) or (b) or under sections 44702–44716. In addition, section 44713 requires air carriers to hold and comply with air carrier operating certificates and make, or cause to be made, inspections, repairs, or maintenance used in air transportation. Such regulations apply to operators by the provisions of 14 CFR parts 110 and 119, which this proposed rule would amend.

III. Discussion of the Proposed Rule

This proposed rule would apply part 121 (Operating Requirements: Domestic, Flag, and Supplemental Operations), part 125 (Certification and Operations: Airplanes Having a Seating Capacity of 20 or More Passengers or a Maximum Payload Capacity of 6,000 Pounds or More; and Rules Governing Persons Onboard Such Aircraft), part 135 (Operating Requirements: Commuter and On Demand Operations and Rules Governing Persons Onboard Such Aircraft) and part 136 (Commercial Air Tours and National Parks Air Tour Management) to certain types of operations in powered-lift. This proposed rule would also amend § 91.146 (Passenger-carrying flights for the benefit of a charitable, nonprofit, or community event) and § 91.147 (Passenger carrying flights for compensation or hire) to enable powered-lift into these types of operations. To use consistent aircraft terms throughout parts 110 and 119, the FAA is also proposing to change the term helicopter to rotorcraft within §§ 91.146, 91.147 and part 136. Therefore, all applicability regulations used in commercial service will use the same aircraft terms.

The FAA is engaging in a multi-step process of updating the regulations that apply to aircraft that traditionally have not operated under these parts. Overall, the FAA maintains a risk-based approach to the integration of new entrant aircraft into the national airspace system. When operations present a higher level of risk, based on volume of passengers carried and frequency of operation, the FAA will subject such operations to a regulatory framework designed to mitigate those risks. In addition to this rulemaking, the FAA is proposing a Special Federal Aviation Regulation (SFAR), ''Integration of Powered-Lift: Pilot Certification and Operations'' (RIN 2120–AL72), to establish temporary operating and airman certification regulations for powered-lift. The SFAR will enable industry to begin operating powered-lift while FAA gathers data to develop permanent regulations through a future rulemaking. The FAA plans to use the information gathered in this interim process to update its regulations to address powered-lift operations broadly.

A. Powered-Lift in Air Carrier Operations

Title 14 CFR 1.1 defines powered-lift as ''a heavier-than-air aircraft capable of vertical takeoff, vertical landing, and low speed flight that depends principally on engine-driven lift devices or engine thrust for lift during these flight regimes and on nonrotating airfoil(s) for lift during horizontal flight.'' This low airspeed capability could result from aircraft configuration changes such as tilt-wing, tiltrotor, or tilt-propeller; thrust vectoring; direct-lift engines; or other means. In addition, the FAA has previously described powered-lift as being useful for civil applications, as these types of aircraft have ''vertical take-off and landing and hovering capability like helicopters,'' and are able to ''fly at higher airspeeds like airplanes.'' [1]

At present, various manufacturers are developing powered-lift for civilian use. These aircraft vary in size and passenger-seating configurations and employ both new and traditional kinds of propulsion systems. The operations conceptualized include vertical takeoff and landing capability, transition from low airspeed to high-speed horizontal flight, and sustained level forward flight.

Operations with powered-lift could offer many benefits over traditional rotorcraft. For example, some powered-lift may be capable of transporting heavier loads at higher altitudes and faster cruise speeds than a rotorcraft, while maintaining vertical takeoff and landing capability. Such capability may increase efficiency in transporting crew and material to remote locations such as offshore oil rigs. Operators may also seek to use powered-lift for transporting passenger's point-to-point; for example, such transportation could occur from a heliport and proceed at turboprop airspeeds and ranges. Other opportunities may also exist in concentrated urban environments, where short point-to-point distances coupled with vertical capability may allow for more efficient transportation of passengers or cargo than existing ground transportation methods. Application of the appropriate set of rules for powered-lift in a range of certificate holders' operations would serve as both a risk mitigation measure and a framework for FAA oversight, as necessary to achieve the requisite level of safety.

The requirements of part 119 apply both to air carriers and other commercial operators. Part 119 provides the process for obtaining and maintaining an operating certificate. This proposed rule would apply the appropriate requirements of part 119 to powered-lift operations.

1. Applicability of Operating Rules

This proposed rule would amend the following definitions in § 110.2 to include powered-lift: commuter operation, domestic operation, flag operation, on-demand operation, and supplemental operation. Therefore, the rules and applicability sections in 14 CFR chapter 1, subchapter G would include use of powered-lift in the kinds of operations. Amending these definitions along with other provisions of part 119 would enable powered-lift to engage in operations consistent with the applicable statutory framework that applies to air carrier and commercial operations.

i. Operations Under Parts 121 and 135

Part 121 applies to three distinct kinds of operations of air carriers: domestic, flag, and supplemental. Both domestic and flag operations under part 121 currently consist of any scheduled flight operation [2] using turbojet powered airplanes, or airplanes that have a passenger-seat configuration of more than 9 passenger seats,[3] or that have a payload capacity of more than 7,500

[1] *Pilot, Flight Instructor, Ground Instructor, and Pilot School Certificate Rules,* 60 FR 41160, 41165 (Aug. 11, 1995).

[2] For purposes of determining which types of operations are ''scheduled,'' the FAA uses its definition at § 110.2, which provides, ''*[s]cheduled operation* means any common carriage passenger-carrying operation for compensation or hire conducted by an air carrier or commercial operator for which the certificate holder or its representative offers in advance the departure location, departure time, and arrival location. It does not include any passenger-carrying operation that is conducted as a public charter operation under part 380 of this chapter.''

[3] Throughout this description of the kinds of operations, each use of the term ''passenger-seat configuration'' for numerical thresholds and limitations excludes the number of crewmember seats. This is consistent with the existing text of each definition.

pounds. Domestic operations occur between any points within the 48 contiguous states of the United States or the District of Columbia or solely within any state, territory, or possession of the United States. Unlike domestic operations, flag operations are those that occur between any point within the State of Alaska, the State of Hawaii, or any territory or possession of the United States, and any point outside the State of Alaska or the State of Hawaii or any territory or possession of the United States, respectively. Flag operations also include scheduled operations in airplanes that occur between any point within the 48 contiguous States of the United States or the District of Columbia and any point outside the 48 contiguous States of the United States and the District of Columbia, as well as those that occur between any point outside the United States and another point outside the United States.

Supplemental operations under part 121 include any common carriage operation for compensation or hire using airplanes that have a passenger-seat configuration of more than 30 seats or that have a payload capacity of more than 7,500 pounds. Supplemental operations also include those in which the airplane is also used in domestic or flag operations and is listed in the operations specifications for such operations when the airplane is either propeller-powered and has more than 9 and less than 31 passenger seats, or turbojet-powered and has 1 or more and less than 31 passenger seats. The definition of ''supplemental operation'' also specifies that the operations are either all-cargo operations, passenger-carrying public charter operations under part 380, or operations for which the departure time and location, as well as the arrival location, are specifically negotiated.

Part 135 applies to two kinds of operations: on-demand and commuter.

On-demand operations are those either conducted as a public charter under part 380 or any operations in which the departure time and location and arrival location are specifically negotiated with the customer and are: in rotorcraft; common carriage operations with airplanes (including turbojet-powered airplanes) that have a passenger-seat configuration of 30 seats or fewer and a payload capacity of 7,500 pounds or less; or noncommon or private carriage operations conducted with airplanes having a passenger-seat configuration of less than 20 seats and a payload capacity of less than 6,000 pounds. On-demand operations also include scheduled passenger-carrying operations that consist of less than five round-trips per week on at least one route between two or more points according to its published flight schedules in airplanes (other than turbojet-powered airplanes) that have a maximum passenger-seat configuration of 9 seats or less and a maximum payload capacity of 7,500 pounds or less, or in any rotorcraft. Finally, on-demand operations also include all-cargo operations conducted with airplanes having a payload capacity of 7,500 pounds or less, or with rotorcraft.[4]

Commuter operations are scheduled operations[5] conducted by any person operating airplanes (other than turbojet-powered airplanes) that have a maximum passenger-seat configuration[6] of 9 seats or less and a maximum payload capacity of 7,500 pounds or less, as well as all rotorcraft, when such operations conduct at least five round trips per week on at least one route between two or more points according to its published flight schedules.

Part 121 currently applies to any turbojet-powered airplane with one or more passenger seats used for scheduled operations. Scheduled operations under part 135 that are generally ''commuter'' operations are limited to 9 seats or fewer and cannot occur in turbojet airplanes. The FAA previously determined that the operations of small turbojets, which are used for operations such as transoceanic, long range and international, are like the operations of large air carriers.[7] To ensure safety of passengers carried in those kinds of operations, the provisions of part 121 apply to scheduled operations of turbojet airplanes. This proposed rule would include turbojet-powered powered-lift alongside the term ''turbojet powered airplane'' to ensure consistency in applying the appropriate risk mitigation measures for operations of turbojet-powered aircraft.

Under this proposed rule, part 121 would apply to operations that air carriers conduct with powered-lift when they fulfill the criteria of the definitions of domestic, flag, and supplemental operations, while part 135 would apply to operations that certificate holders conduct with powered-lift that meet the criteria of commuter and on-demand operations. Many of the requirements in part 121 are distinct from the requirements that apply to operations under part 135. In this regard, the aircraft passenger-seat configuration and payload capacity maximums that differentiate applicability of parts 121 and 135, are longstanding, regulatory distinctions with which certificate holders are familiar and are appropriate for applying to powered-lift.[8] The FAA has crafted operating rules designed to mitigate the risks of operations of aircraft operating under parts 121 and 135. As a result, the scaled approach of risk mitigations in both parts remains appropriate because powered-lift that are large and carry passengers in scheduled operations generally present a higher level of risk.

a. 121 Applicability

Section 121.1 establishes the applicability of part 121, which prescribes the rules governing air carrier operations conducted under domestic, flag, or supplemental operations. Section 121.1(g) currently states, ''This part also establishes requirements for operators to take actions to support the continued airworthiness of each airplane.'' Section 121.1(g) is the only paragraph in section 121.1 that currently uses the term ''airplane.'' The FAA proposes to revise paragraph (g) to apply to ''aircraft'' instead of ''airplane.'' This change in section 121.1 is necessary to correspond to the changes in parts 110 and 119 to extend the applicability of these parts to powered-lift.

The FAA also proposes to make a technical correction to section 121.1(c) by removing ''SFAR No. 58'' and replacing it with ''subpart Y'' which was codified on September 16, 2005.

b. Certain Flight Time Limitations and Rest Requirements Under Part 121

With regard to flight time limitations and rest requirements, this proposed rule would amend §§ 121.470, 121.480, and 121.500 to replace the word ''airplanes'' with the term ''aircraft.'' Section 121.470 applies the provisions of part 121, subpart Q to domestic all-cargo operations; § 121.480 applies the provisions of part 121, subpart R to flag all-cargo operations; and § 121.500 applies the provisions of part 121,

[4] As noted above, ''all-cargo air transportation'' means ''the transportation by aircraft in interstate air transportation of only property or only mail, or both.'' 49 U.S.C. 40102(a)(10).

[5] The definition of ''scheduled operation'' is codified at 14 CFR 110.2.

[6] Throughout this description of the kinds of operations, each use of the term ''passenger-seat configuration'' for numerical thresholds and limitations excludes crewmember seats. This is consistent with the existing text of each definition.

[7] *Commuter Operations and General Certification and Operations Requirements,* 60 FR 65832, 65838 (Dec. 20, 1995).

[8] In *Commuter Operations and General Certification and Operations Requirements,* the FAA cited its 1953 rulemaking in which the FAA set forth the requirement that airplanes with a maximum certificated takeoff weight of 12,500 pounds or less would be permitted to carry fewer than 10 passengers in on-demand air taxi service. 60 FR 65832, 65835 (Dec. 20, 1995).

subpart S to supplemental all-cargo operations. These sections all contain an exception that is available for certificate holders conducting operations with airplanes having a passenger-seat configuration of 30 seats or fewer (excluding each crewmember seat) and a payload capacity of 7,500 pounds or less: in such airplanes, certificate holders may opt to comply with the requirements of §§ 135.261 through 135.273, rather than the provisions in subparts Q, R, or S of part 121. Permitting this option for powered-lift that conduct operations in aircraft with a seat configuration of 30 seats or fewer (excluding each crewmember seat and a payload capacity of 7,500 pounds or less is appropriate because the FAA has previously determined that specific flight time limitations and rest requirements of §§ 135.261 through 135.273 adequately address the risk associated with lack of rest in such operations.[9]

In addition, § 121.470 contains an exception for operations conducted entirely within Alaska or Hawaii with airplanes having a passenger-seat configuration of more than 30 seats (excluding each crewmember seat) or a payload capacity of more than 7,500 pounds: these airplanes may comply with subpart R of part 121 instead (pertaining to flag all-cargo operations).[10] Permitting this option for powered-lift that conduct such operations entirely within the States of Alaska or Hawaii is appropriate for the same reasons the FAA permits this exception for similarly sized airplanes. Thus, for such operations, the specific flight time limitations and rest requirements of subpart R adequately address the risk associated with lack of rest.[11]

ii. Operations Under Part 125

As with the applicability of parts 121 and 135 to distinct types of air carrier operations, part 119 states that operators conducting noncommon carriage are subject to the rules of either part 125 or part 135.

When noncommon carriage occurs in an airplane having a passenger seat configuration of less than 20 seats, excluding crewmember seats, and a payload capacity of less than 6,000 pounds, § 119.23(b) requires those operations to be conducted under part 135 as on-demand operations. When noncommon carriage occurs in an airplane having a seating configuration of 20 or more passengers or a maximum payload capacity of 6,000 pounds or more, part 125 applies. This proposed rule would amend the applicability provisions relevant to noncommon or private carriage operations such that those provisions would include powered-lift. This proposed rule would amend paragraphs (a), (b), (c), and (e) of § 125.1, to add the term ''powered-lift'' or, where appropriate, ''aircraft.'' These amendments incorporate powered-lift into the statements regarding applicability of part 125 requirements.

Large powered-lift, due to their size, weight, and passenger capacity, present a level of risk that part 125 mitigates. Requiring large powered-lift conducting noncommon carriage operations to comply with part 125 would ensure an appropriate level of safety. These requirements and standards mitigate safety risks of large aircraft operating under part 125; extending them to noncommon carriage operations of large powered-lift is consistent with the FAA's strategy for mitigating risks. The FAA's proposed amendments to §§ 119.23 and 125.1 would clarify that operators that conduct noncommon carriage operations in powered-lift would do so under the rules of part 125, provided they fall within the scope outlined in § 119.23(a). This proposed rule would also change the term from ''airplane'' to ''aircraft'' in the title of part 125 and amend § 125.23 to change the word ''airplane'' to ''aircraft,'' as § 125.23 generally addresses applicability of certain rules and standards concerning operations.

2. Requirements and Applicability of Part 119

Part 119 contains basic requirements that apply to each person that operates or intends to operate a civil aircraft as an air carrier or commercial operator, or both, in air commerce. These requirements, which include the obligation to maintain current operations specifications and employ management personnel who are sufficiently qualified to oversee certain aspects of the certificate holder's operation, are a critical means by which the FAA oversees air carrier and commercial operations. This proposed rule would amend provisions concerning the applicability of other rules, management personnel qualifications, and exceptions from the applicability of part 119. The incorporation of powered-lift into such provisions would provide consistency in FAA oversight of air carrier and commercial operations.

The FAA also proposes to revise § 119.1(a) to apply part 119 to airplanes and powered lift conducting noncommon carriage or private carriage operations for compensation or hire with a passenger-seat configuration of less than 20 seats and a payload capacity of less than 6,000 pounds. This proposed amendment is consistent with the existing § 119.23, which requires airplanes meeting those specifications to comply with certain certification, operations, and operations specifications requirements.

Similarly, the FAA also proposes to amend § 119.5(c) to include powered-lift operations in the description of which persons will be issued an Operating Certificate for operations when common carriage is not involved. The FAA also proposes to amend §§ 119.21 and 119.23 to apply appropriate requirements to powered-lift operations of commercial operators engaged in intrastate common carriage or operations when common carriage is not involved, respectively.

The existing types of operations excluded from part 119 are: student instruction; aerial work operations; nonstop commercial air tours that fulfill certain criteria; ferry or training flights; sightseeing flights in hot air balloons; nonstop flights conducted within 25 statute miles of the airport of takeoff that are for the purpose of intentional parachute operations; helicopter flights conducted within a 25 statute-mile-radius of the airport of takeoff that fulfill certain limiting criteria; operations that occur under part 133 (Rotorcraft External-Load Operations) or part 375 (Navigation of Foreign Civil Aircraft Within the United States); emergency mail service operations; operations conducted under § 91.321 (Carriage of candidates in elections); and small unmanned aircraft systems operations conducted under part 107 (Small unmanned aircraft systems).

Many operations subject to exclusion do not specify the type of aircraft eligible for the exclusion; however, some exclusions apply only to helicopters or only to airplanes and helicopters. Specifically, a subset of the exclusion for operations used in construction or repair work currently

[9] The FAA states in the preamble to the 2012 final rule, *Flightcrew Member Duty and Rest Requirements,* that it attempted to impose the least possible burden on air carriers, consistent with the need to improve safety. Consequently, the rule imposes stringent limits in safety-critical areas and less stringent limits in other areas. For example, the FAA recognizes that the costs for all-cargo operations to comply with more stringent duty and rest requirements would ''significantly exceed the quantified societal benefits.'' *See Flightcrew Member Duty and Rest Requirements,* 77 FR 330, 332 (Jan. 4, 2012).

[10] The FAA allows all-cargo operations conducted entirely within the States of Alaska or Hawaii to comply with the flight time limitations under subpart R—pertaining to flag operations—because those operations are included under the definition of ''flag operation'' in 14 CFR 110.2.

[11] *Flightcrew Member Duty and Rest Requirements,* 77 FR 330, 331 (Jan. 4, 2012); 78 FR 69287 (Nov. 19, 2013).

applies only to helicopter flights. In addition, the exclusion that covers nonstop commercial air tours is specific to operations in either airplanes or helicopters. An exclusion also exists for helicopter flights conducted within a 25-statute-mile radius of the airport of takeoff that meet certain, specific criteria. This proposed rule would broaden each of these exclusions to cover operations conducted in both powered-lift and rotorcraft.

The proposed use of the term ''rotorcraft'' [12] throughout § 119.1 will ensure consistency with other applicability provisions of part 119. For example, § 119.25 states that each person that conducts rotorcraft operations for compensation or hire must do so in accordance with the applicable rules of part 135. In addition, the definitions of ''commuter'' and ''on-demand'' codified in § 110.2 use only the term ''rotorcraft.'' Accordingly, using the term ''rotorcraft,'' as defined in § 1.1, consistently throughout part 119, rather than the term ''helicopter,'' is appropriate.

The proposed rule would replace ''helicopter'' with ''rotorcraft'' and add ''powered-lift'' to the exclusion described at § 119.1(e)(4)(v). Section 119.1(e)(4) lists six specific types of aerial work operations to which part 119 does not apply. These operations include crop dusting, banner towing, aerial photography or surveying, firefighting, construction and repair work, and powerline and pipeline patrol. The existing regulatory text that excludes operations for construction and repair work under § 119.1(e)(4)(v) specifically applies only when the operator uses helicopters. Examples of aerial work operations that fulfill the exception criteria of § 119.1(e)(4)(v) include replacing air conditioners in large buildings; work on photovoltaic cells, cellular towers, and other types of towers; and performing construction in buildings in which the movement of heavy construction loads up several levels via rotorcraft saves energy and time. The FAA anticipates powered-lift would perform functions in aerial work in much the same manner as rotorcraft currently do. Moreover, the vertical takeoff and landing options powered-lift offer, their ability to hover, and the capability of some powered-lift to carry heavier loads than many rotorcraft may prompt operators to use them for construction or repair work. Allowing powered-lift to operate under this exception poses low risk to the general public. Typically, operators conduct aerial work operations in limited areas with low exposure to the public, or, if conducted in metropolitan areas, in areas that are appropriately cordoned off. Moreover, the risk to the general public remains low due to the limitation of the work; its infrequent nature; and the containment practices operators use to limit such risk.

The FAA also proposes to broaden the exclusion in § 119.1(e)(7) to permit those flights to occur using powered-lift or rotorcraft, rather than only helicopters. Section 119.1(e)(7) excludes from the applicability of part 119 helicopter flights conducted within a 25-statute-mile radius of the airport of takeoff if no more than two passengers are carried; each flight occurs under day visual flight rules (VFR) conditions; the helicopter used is certificated with a standard airworthiness certificate and complies with certain inspection requirements; the operator notifies a certain FAA office prior to the operation; the total number of flights does not exceed six per year; the Administrator has approved each flight; and the flight does not carry any cargo. The FAA historically excluded the helicopter flights described in § 119.1(e)(7) based on the conclusion that such operations do not warrant the level of oversight that part 119 requires.

In addition, this proposed rule would add operations conducted in gliders to the exception that applies to sightseeing flights. Currently, the text of § 119.1(e)(5) only excludes from the applicability of part 119 sightseeing flights conducted in hot air balloons. The proposed addition of gliders to this exception will ensure the regulatory text of § 119.1(e)(5) reflects the FAA's current practices of permitting glider operations under this exception from part 119 and is consistent with the level of risk mitigation necessary for such operations.

Lastly, this proposed rule will add powered-lift to § 119.1(e)(2), which currently excludes certain nonstop commercial air tour flights conducted in either an airplane or helicopter from the applicability of part 119.

i. Records Regarding Operations

Each certificate holder subject to part 119 must maintain operations specifications. The FAA approves all operations specifications, which must include a variety of information, such as the types of aircraft, routes, and airports the certificate holder uses, among other items.

This proposed rule would narrow the current requirement in § 119.49. The existing text of § 119.49(a)(12), (b)(12), and (c)(11) requires operations specifications to contain ''[a]ny authorized deviation and exemption'' issued under 14 CFR chapter 1. By its plain language, the aforementioned paragraphs broadly require operations specifications to contain copies of all deviations and exemptions granted from any requirement under chapter 1.

The FAA has determined this requirement is too broad, as it obligates certificate holders to ensure their operations specifications contain exemptions and deviations that also apply to the aircraft the certificate holder uses. Such a requirement is unnecessary because information concerning design standards and other airworthiness aspects that apply to an aircraft are available in other records. Operators of the aircraft are aware of deviations and exemptions from design standards because the paperwork that accompanies the aircraft contains adequate information. For example, the aircraft's type certificate data sheet refers to applicable exemptions.[13] In such cases, it is unnecessary for the certificate holder's operations specifications to contain deviations or exemptions if those deviations or exemptions apply to the aircraft and do not have a corresponding operating rule.

The FAA is mindful of the fact that many rules that address aircraft equipage and functionality, however, include both an aircraft and operating component. To obtain relief from such a rule, the operator would need to receive exemption or permission to deviate from aircraft-specific requirements, and operations specifications would need to contain records of such exemptions or deviations from such rules. For example, § 91.203(d) prohibits any person from operating a civil airplane (domestic or foreign) into or out of an airport in the United States unless it complies with the fuel venting and exhaust emissions requirements of 14 CFR part 34. As a result, while under this proposed rule operations specifications would not need to contain any exemption from a requirement of part 34 as this exemption would be identified in the aircraft records; however, they would need to

[12] With respect to aircraft certification, rotorcraft are a ''class'' of aircraft as defined in § 1.1, while helicopters are a kind of rotorcraft. Section 1.1 defines ''class'' as ''a broad grouping of aircraft having similar characteristics of propulsion, flight, or landing. Examples include: airplane, rotorcraft, glider . . . .'' Section 1.1 defines ''helicopter'' as ''a rotorcraft that, for its horizontal motion, depends principally on its engine-driven rotors.''

[13] See 14 CFR 21.41 (''Type certificate''), which states each type certificate includes the type design, operating limitations, certificate data sheet, the applicable regulations with which the FAA records compliance, and any other conditions or limitations prescribed for the product in part 21, subpart B.

note the existence of an exemption from § 91.203(d) because this relief would not otherwise be noted in any record associated with the operation itself. Similar rules exist throughout subpart C of part 91, as well as subparts J and K of part 121 and subpart C of part 135. This proposed rule would require that operations specifications contain only exemptions and deviations the FAA has granted that apply to the certificate holder.

Similar to this proposed rule's amendments to § 119.49(a)(12), (b)(12), and (c)(11), this proposed rule would also revise § 91.1015(a)(9) in a similar manner. Section 91.1015(a)(9) applies to management specifications that persons who participate in a fractional ownership program under part 91, subpart K, maintain. Currently, § 91.1015(a)(9) requires each set of management specifications to contain each deviation or exemption that the participant receives for any requirement of 14 CFR chapter 1. Requiring a listing or copies of exemptions that apply to the aircraft rather than the operator is unnecessary for the FAA's oversight of participants' operations under part 91, subpart K.

ii. Management of Operation

This proposed rule would amend the qualification and experience requirements by changing the term airplane to aircraft as appropriate. For certificate holders that conduct operations under part 121, this rule would also require at least one Chief Pilot for each category of aircraft that each certificate holder uses, when the certificate holder uses both airplanes and powered-lift.

Sections 119.65 through 119.71 set forth management personnel requirements that certificate holders must fulfill to ensure the highest degree of safety in their operations. In requiring qualified personnel hold certain management positions, the FAA emphasized that certificate holders' employment of management personnel who are experienced and committed to ensuring safety is an important means of ensuring compliance with the rules that apply to the operations.[14]

Section 119.69 contains requirements for certificate holders who conduct operations under part 135. Section 119.69(a) states certificate holders must have a Director of Operations, Chief Pilot, and Director of Maintenance. Section 119.71 sets forth the specific qualification standards that each person who holds any of these positions must meet. This proposed rule would not amend the qualification standards listed at § 119.71 because they are not specific to any particular type of aircraft. As a result, they need not change to ensure management personnel have adequate experience when managing regulatory compliance with certificate holders' operations about airplanes, rotorcraft, or powered-lift.

Under § 119.65(a), which lists management positions that certificate holders conducting operations under part 121 must maintain, each certificate holder must have a Director of Safety, Director of Operations, Chief Pilot, Director of Maintenance, and Chief Inspector. With the exception of the Director of Safety position, each person who holds any of the positions identified in § 119.65 must meet specific qualification standards set forth in § 119.67.

In some cases, candidates who seek to hold a management personnel position listed at § 119.65 might not fulfill the experience requirements but could be qualified in another manner. In such cases, § 119.67(e) provides the FAA's Flight Standards Service the discretion to issue a deviation. Such deviations are based on Flight Standards finding that the candidate can fulfill the duties of the position that he or she seeks to hold.

This proposed rule would also remove the routing codes from the regulatory text of § 119.67(e), as the FAA no longer uses such codes in its regulations.

Furthermore, § 119.65(b) provides the FAA with discretion to approve positions or numbers of positions other than those listed in § 119.65(a) if the certificate holder shows it can perform the operation with the highest degree of safety under the direction of fewer or different categories of management personnel. In making such a determination, the FAA considers the kind of operation involved, the number and types of airplanes used, and the area of operations.

This proposed rule would amend the qualification and experience requirements applicable to Directors of Operations, Chief Pilots, Directors of Maintenance, and Chief Inspectors for certificate holders that conduct operations under part 121 because these qualification standards are currently specific to airplanes. Incorporating certain powered-lift operations into the requirements of part 121 requires amending these qualification requirements applicable to management personnel who supervise a certificate holder's operations.

a. Director of Operations

Currently, § 119.67(a)(2) (Management personnel: Qualifications for operations conducted under part 121 of this chapter) specifically requires Directors of Operations to have experience in ''airplanes.'' To broaden this section to cover Directors of Operations for certificate holders that use powered-lift, this proposed rule would use the general term ''aircraft'' in that paragraph. Therefore, for certificate holders that conduct operations under part 121, this proposed rule would require the Director of Operations to have at least 3 years of supervisory or managerial experience within the last 6 years in a position that exercised operational control over any operations conducted with large aircraft under part 121 or part 135. In the alternative, if the certificate holder uses only small aircraft in its operations, then the Director of Operations may obtain this experience in large or small aircraft. The proposed references to ''large aircraft'' and ''small aircraft'' would have the same meanings as defined in § 1.1: ''Large aircraft means aircraft of more than 12,500 pounds, maximum certificated takeoff weight,'' and ''Small aircraft means aircraft of 12,500 pounds or less, maximum certificated takeoff weight.''

Section 119.67(a)(3) also currently requires anyone who serves in a Director of Operations role for a certificate holder that conducts operations under part 121 to have at least three years of experience as pilot-in-command of a large airplane, if the certificate holder uses large airplanes. If the certificate holder uses small airplanes, then experience in either large or small airplanes will satisfy this requirement. If the person is serving as a Director of Operations for the first time ever, then this experience must have occurred within the prior six years. Under this proposed rule, a person who would serve as Director of Operations would need to have experience as pilot-in-command in at least one of the categories of ''aircraft'' the certificate holder uses in its operations. In using the term ''category'' in this context, this proposed rule would mean the broad classification of aircraft regarding the certification, ratings, privileges, and limitations of airmen. Such categories include airplane, rotorcraft, and powered-lift, among others, as listed at § 61.5(b)(1). In addition, the term ''uses'' refers to the types of aircraft that are listed on the certificate holder's operations specifications, pursuant to § 119.49(a)(4), (b)(4), and (c)(5).

[14] *Commuter Operations and General Certification and Operations Requirements,* 60 FR 65832, 65885–86 (Dec. 20, 1995).

b. Chief Pilot

This proposed rule would amend the existing regulatory text that contains Chief Pilot qualification requirements such that the text would include the term ''aircraft,'' where appropriate. In addition, the FAA proposes amendments to the Chief Pilot requirements that will ensure the Chief Pilot's qualifications are commensurate to the aircraft category the certificate holder is operating. In proposing these amendments, the FAA intends to ensure the management personnel team remains adequately prepared and qualified to address risks that operations of each category of aircraft may present.

To be qualified to serve as a Chief Pilot, a person must meet the qualifications of § 119.67(b). These qualifications include holding an airline transport pilot (ATP) certificate with appropriate ratings for at least one of the airplanes the certificate holder uses. The term ''appropriate ratings'' means the ratings a pilot must hold to serve as a pilot-in-command of an airplane in the certificate holder's operations.

This proposed rule would require the Chief Pilot for powered-lift to hold an ATP certificate and be appropriately rated in at least one of the powered-lift the certificate holder uses. This requirement is important because the Chief Pilot must maintain a detailed level of understanding of the particular aircraft the certificate holder operates to communicate effectively with the pilots who serve in a certificate holder's operations while performing his or her oversight duties.

The FAA is aware that such ''appropriate ratings'' may vary considerably. For example, pilot type ratings or class ratings for certain powered-lift might not yet exist. In such cases, the requirement for the Chief Pilot to have an ATP certificate with appropriate ratings means the Chief Pilot would need to hold an ATP certificate in the appropriate category of aircraft, as well as the appropriate class or type rating for the aircraft the certificate holder uses in conducting operations under part 121. If both a class and type rating exist for the aircraft, then the Chief Pilot must have both ratings.

This proposed rule would also clarify that the ATP certificate with appropriate ratings must be for an aircraft the certificate holder uses in operations ''under part 121.'' This clarification would ensure certificate holders who may hold authority to conduct operations under both part 121 and part 135 know that they must have a Chief Pilot who holds an ATP certificate with appropriate ratings for an aircraft used in part 121 operations. In the interest of ensuring clarity, this proposed rule would add the phrase ''under part 121'' to § 119.67(b).

Currently, a candidate who seeks to become a Chief Pilot must have a minimum of three years' experience as pilot-in-command of a large airplane operated under either part 121 or part 135, if the certificate holder operates large airplanes. If the certificate holder uses only small airplanes, then the Chief Pilot's experience as pilot-in-command may be in either small or large airplanes. As with the Director of Operations qualifications discussed previously, this proposed rule would amend ''large airplane[s]'' and ''small airplane[s]'' to ''large aircraft'' and ''small aircraft.'' These terms are defined at 14 CFR 1.1.

This proposed rule would require the Chief Pilot to have pilot-in-command experience in the category of aircraft for which he or she will exercise responsibility. In addition, the three years of experience as pilot-in-command must have occurred under either part 121 or part 135 and must have occurred within the past six years if the Chief Pilot candidate has not previously served as a Chief Pilot.

The FAA proposes to amend § 119.65(a)(3) to require one Chief Pilot for each category of aircraft because the Chief Pilot must have a detailed understanding of the particular aircraft the certificate holder operates. This level of expertise is a key component of the FAA's rationale for proposing one Chief Pilot for each category of aircraft the certificate holder uses; in this regard, the Chief Pilot's duties and responsibilities generally arise from the specific kind of aircraft with which the certificate holder provides air transportation services. The agency has long emphasized that it adopted the Chief Pilot experience requirements to ensure familiarity with operations of a certificate holder, and that such familiarity is critical to attain prior to assuming the responsibilities of Chief Pilot.[15]

Chief Pilots often oversee the development of policy in addition to holding individual pilots accountable for adherence to the certificate holder's manual and procedures. Operations of airplanes and powered-lift will likely be subject to provisions in the manuals that are distinct. For example, provisions in manuals concerning dispatch and flight release, flight operations, ground services and loading of the aircraft, fueling, deicing, ramp procedures, and various other critical aspects of operation within the manuals will require the Chief Pilot to have specialized knowledge relevant to the category of aircraft. Chief Pilots must also be able to communicate effectively with the pilots they supervise, especially concerning the certificate holder's training program for pilots. In this regard, training for powered-lift proficiency will be distinct from training for airplanes. Furthermore, Chief Pilots are involved in planning future routes and contracts for new aircraft, as well as overseeing compliance with flight and duty limitations that apply to the certificate holder. In addition, risk mitigation measures that certificate holders implement are distinct between categories of aircraft: A Chief Pilot who only has experience in airplanes may not have the skills to evaluate risk mitigation strategies necessary for powered-lift to operate safely.

In summary, having a Chief Pilot who is specifically qualified in the category of aircraft the certificate holder uses would ensure the certificate holder fulfills the standard of providing air transportation with the highest possible degree of safety. In proposing to amend part 119 to apply to operations of powered-lift, the FAA has also remained mindful of the discretion that § 119.65(b) provides, which allows the FAA to approve positions or numbers of positions other than those listed in § 119.65(a).

c. Director of Maintenance

Section 119.65 requires each certificate holder that conducts operations under part 121 to have a Director of Maintenance and § 119.67(c) provides the qualifications to serve as Director of Maintenance. This proposed rule would replace the term ''airplane'' in § 119.67(c) with ''aircraft.''

Under § 119.67(c) each Director of Maintenance must hold a mechanic certificate with airframe and powerplant ratings, have one year of experience in a position responsible for returning airplanes to service, have at least one year of supervisory experience of a certain type in a role of maintaining the same category and class of airplane as the certificate holder uses, and have three years' experience within the preceding six years in maintaining or repairing airplanes. These requirements further specify that the experience with ''maintaining large airplanes'' must occur for large airplanes with 10 or more passenger seats in the same category and class of airplane the

[15] See *Provision for Deviations from Qualifications Requirements for Chief Pilots,* 34 FR 7175 (Apr. 30, 1969).

certificate holder uses. As an alternative to maintaining large airplanes, the Director of Maintenance may have experience repairing airplanes in a certificated airframe repair station that is rated to maintain airplanes in the same category and class of airplane that the certificate holder uses.

This proposed change, therefore, would require the minimum one year of supervisory experience with either maintaining or repairing at least one of the aircraft in the same category and class of aircraft the certificate holder uses. Under this proposed rule, the Director of Maintenance would need to have accumulated three years of experience within the past six years in maintaining or repairing aircraft in the same category and class of aircraft the certificate holder uses. The term ''category'' in this context (*i.e.,* qualifications for Directors of Maintenance), would mean the grouping of aircraft based upon intended use or operating limitations.[16] The definition in 14 CFR 1.1 cites as examples: f transport, normal, utility, acrobatic, limited, restricted, and provisional. Similarly, the use of the term ''class'' in the context of § 119.67(c), means a broad grouping of aircraft having similar characteristics of propulsion, flight, or landing.[17] The definition cites the following as examples of class: balloon, glider, landplane, rotorcraft, and seaplane.

These experience and qualification requirements within 119.67(c) are key components of ensuring the Director of Maintenance is adequately qualified to serve in the role of overseeing other mechanics and personnel performing maintenance. Aircraft that are configured with 10 or more passenger seats generally must comply with additional maintenance requirements.[18] Familiarity with these specific maintenance requirements, in addition to the generally applicable maintenance regulations and the certificate holder's operations, as required by § 119.65(d), is important in ensuring safety. In addition, experience maintaining or repairing aircraft in the same category and class will ensure the Director of Maintenance is knowledgeable about aspects of the specific aircraft that the certificate holder uses such as airworthiness standards, provisions in manuals, and general manufacturing practices. Directors of Maintenance generally oversee activities that involve such aircraft-specific aspects. The FAA believes experience with aircraft of the same category and class of aircraft the certificate holder uses would achieve the FAA's objective of ensuring the Director of Maintenance has appropriate experience with adhering to procedures and ensuring compliance with rules and programs relevant to maintenance.

d. Chief Inspector

Currently, a person who serves as a Chief Inspector must hold a mechanic certificate with both airframe and powerplant ratings, which he or she has held for at least 3 years. Chief Inspectors must also have at least three years of experience with maintenance on different types of large airplanes with 10 or more passenger seats with a certificate holder or certificated repair station, one year of which must have been as a maintenance inspector and have at least one year of experience in a supervisory capacity maintaining the same category and class of aircraft as the certificate holder uses. Chief Inspectors have direct authority and responsibility over people performing the requisite inspections for the certificate holder.

This proposed rule would amend the section that sets forth qualifications for Chief Inspectors for certificate holders that conduct operations under part 121. The proposed amendment would permit the three years of maintenance experience to occur on different types of large aircraft with 10 or more passenger seats, rather than only large airplanes. This proposed amendment would be consistent with the other proposed changes of this rule that assist in incorporating powered-lift into the framework of part 121. As with the Director of Maintenance qualifications, this retention of the 10-seat threshold ensures the Chief Inspector will have experience with a maintenance program the certificate holder has developed and with which the certificate holder complies.[19] In addition, the use of the term ''large aircraft'' in this requirement refers to those aircraft that are more than 12,500 pounds at their maximum certificated takeoff weight.[20]

B. Commercial Air Tours and Flights for the Benefit of Charitable, Nonprofit, or Community Events

Commercial air tours are flights conducted for compensation or hire in an airplane or helicopter in which the purpose of the flight is sightseeing.[21] Passenger-carrying flights may also be conducted without compensation or hire for certain charitable, nonprofit, and community events. The FAA intends to incorporate powered-lift for commercial air tours and flights for the benefit of charitable, nonprofit or community events, and to revise the necessary provisions to address ''rotorcraft'' instead of ''helicopter''. This will ensure consistency with the changes made to the definition of commercial air tour in part 110, as well as the change made to nonstop commercial air tours within § 119.1.

1. Regulatory Framework for Commercial Air Tours

The FAA regulates commercial air tours under part 136 and § 91.147. Part 136, subpart A, ''National Air Tour Safety Standards,'' currently applies to ''each person operating or intending to operate a commercial air tour in an airplane or helicopter'' as well as all occupants of the airplane or helicopter engaged in the air tour.[22] Part 136, subpart A, applies to part 121 or 135 operators conducting commercial air tours and holding a part 119 certificate. Section 91.147 applies to commercial air tour operators that do not hold a certificate under part 119.

Only operators certificated under part 119 may conduct commercial air tours that: occur beyond 25 miles of the departure airport; start and end at different airports; occur in airplanes or helicopters configured to have more than 30 seats or payload capacity in excess of 7,500 pounds; or, subject to a limited exception, commercial air tours that occur over a unit of the national park system.[23] As a result, such 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. As summarized above in section III.A.1 of this preamble, parts 121 and 135 contain various provisions applicable to certificate holders'

[16] 14 CFR 1.1.

[17] 14 CFR 1.1.

[18] 14 CFR 135.411(a)(2); see also § 121.367.

[19] 14 CFR 135.411(a)(2); see also § 121.367.

[20] See 14 CFR 1.1 (definition of ''large aircraft'').

[21] 14 CFR 110.2 and 136.1(d). Some flights that are commercial air tours under part 136 or § 91.147 may also be subject to other requirements. For example, the requirements of 49 U.S.C. 40128 (''Overflights of national parks'') or 14 CFR part 93, subpart U (''Special Flight Rules in the Vicinity of Grand Canyon National Park, AZ'') refer to certain types of commercial air tours in ''powered aircraft.'' This proposed rule would not affect the applicability of any such requirements.

[22] Id. Section 136.1(a).

[23] Section 136.37(g) permits commercial air tour operations over a national park to occur under the general operating rules of part 91 if (1) the air tour activity is permitted under part 119; (2) the operator secures a letter of agreement from the Administrator and the Superintendent for that park describing the conditions under which the operations will be conducted; and (3) the number of flights that occur under this exception does not exceed a total of 5 by all operators in a 30-day period over a particular park.

operations, such as requirements and restrictions relevant to operations, safety, and training.

Section 91.147, Passenger Carrying Flights for Compensation or Hire, applies to air tour operators that take off and land at the same airport and stay within 25 miles of that airport.[24] Section 91.147(a) defines ''operator'' for purposes of § 91.147 and for purposes of drug and alcohol testing [25] as any person who conducts non-stop 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) when flights begin and end at the same airport and are conducted within a 25-statute mile radius of that airport. Under § 119.1(e)(2), nonstop commercial air tours are exempt from the applicability of part 119 as long as they are conducted 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 and meet the operational criteria described previously.

2. Incorporation of New Types of Aircraft

Section 91.147 and the requirements of part 136, subpart A, are currently limited in applicability to airplanes and helicopters. The FAA has determined this scope is too narrow, as manufacturers may design and produce other rotorcraft and powered-lift that operators could use for commercial air tours. Consequently, the FAA is proposing to expand the applicability of part 136 by changing the term ''helicopter'' to ''rotorcraft'' and adding ''powered-lift'' to the applicability in § 136.1. Additionally, this proposed rule would replace ''helicopter'' with the term ''rotorcraft'' and add ''powered-lift'' to the relevant applicability provisions of § 91.147 to ensure the appropriate safety risk mitigations apply to all commercial air tours.

The FAA is proposing to change the term ''helicopter'' to ''rotorcraft'' throughout part 136 in order to ensure these safety standards of part 136 apply to other rotorcraft and not only helicopters.[26] Part 136 was promulgated to help prevent accidents and incidents that occur during commercial air tour operations and should therefore apply to more than just airplanes and helicopters.[27] In fact, these safety risk mitigations found within part 136 have proven to reduce incidents and accidents.[28] If the FAA does not expand part 136 to include ''rotorcraft'', then the more stringent safety risk mitigations afforded in that part would not apply to the rotorcraft that currently conduct air tours under part 135. Applying the requirements of part 136 to airplanes, powered-lift, and rotorcraft that conduct commercial air tours is an appropriate step in ensuring safe integration of new types of aircraft.

The proposed use of the term ''rotorcraft'' will also ensure consistency with other applicability provisions found within some sections of parts 110, 119 and 135. Consistent with the approach described previously, the FAA will address operational requirements for powered-lift in the SFAR: Integration of Powered-Lift.

i. Suitable Landing Area for Emergencies

This proposed rule would amend the definition of the term ''suitable landing area for helicopters,'' codified at § 136.1. The current definition states such an area is one that provides the operator reasonable capability to land without damage to equipment or injury to persons. It further provides that such areas must be site-specific, designated by the operator, and accepted by the FAA. The definition states that the purpose of the area is to 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. While no regulation within part 136 uses the term, operators may include the practice of designating suitable landing areas in their manuals.

As previously stated, the FAA believes manufacturers may design and produce other rotorcraft that could be used in commercial air tour operations. Therefore, this proposed rule would broaden the applicability to incorporate rotorcraft to ensure they are subject to the safety standards of part 136.

The FAA's purpose in providing the definition is to ensure operators designate potential landing areas in advance of an operation, as such designation reduces the risk of a major accident because the pilot-in-command is aware of potential sites for emergency landings. Given this focus on emergencies, the FAA has determined reference to ''damage to equipment'' in the current text of the definition is neither practical nor appropriate. The use of the term in the definition is not consistent with the purpose of the definition, which is to apply to the occurrence of emergency situations. The FAA expects operators to be able to designate a site-specific landing area that, when used, would not cause serious injury to persons, irrespective of aircraft damage. Accordingly, the FAA proposes to remove the phrase ''damage to equipment'' from the definition of ''suitable landing area,'' and add ''serious'' before ''injury.'' It is impracticable to expect that an emergency landing will never result in some degree of injury, even minor, should the aircraft have to land in a suitable landing area. Therefore, the FAA intends that suitable landing areas are appropriate for rotorcraft to land without causing *serious* injury to persons.

The FAA further proposes to remove the last sentence of the definition that states the purpose of the definition is to provide an emergency landing area for helicopters that would not have the capability to reach a safe landing area after an engine power loss. The FAA has determined this sentence is too narrow. Removing this sentence allows operators to identify landing areas that could be used in *any* emergency not only in the case of an engine power loss. The new definition would include the phrase ''in an emergency'' to describe the context for which the FAA would

[24] Section 119.1(e)(2) also states part 119 applies to commercial air tours that an operator conducts in accordance with part 136, subpart B, *National Parks Air Tour Management,* unless § 136.37(g)(2) excludes the operation from applicability. Section 119.1(e)(2) further provides separate applicability provisions for commercial air tours conducted in the vicinity of the Grand Canyon National Park, Arizona. None of these additional applicability provisions specify that they are limited to airplanes, helicopters, or any other specific type of aircraft. The FAA does not propose amendments to § 136.37(g)(2).

[25] 14 CFR 120.1(a) states, in part, that the requirements of part 120, *Drug and Alcohol Testing Program,* apply to all operators as defined in § 91.147.

[26] Rotorcraft means ''a heavier-than-air aircraft that depends principally for its support in flight on the lift generated by one or more rotors.'' With respect to aircraft certification, rotorcraft are a ''class'' of aircraft as defined in § 1.1, while helicopters are a kind of rotorcraft. Section 1.1 defines ''class'' as ''a broad grouping of aircraft having similar characteristics of propulsion, flight, or landing. Examples include: airplane, rotorcraft, glider, balloons, land plane, and seaplane.'' Section 1.1 defines ''helicopter'' as ''a rotorcraft that, for its horizontal motion, depends principally on its engine-driven rotors.'' Helicopters and rotorcraft both depend principally on the rotors to provide lift to stay airborne.

[27] The FAA acknowledges that gyroplanes are a kind of rotorcraft. This proposed rule would retain the language of § 136.1(c) that excludes gyroplanes from the applicability of part 136. Historically, gyroplanes have not been issued a standard airworthiness certificate, so the FAA still believes excluding those types of rotorcraft would be appropriate.

[28] In the preamble to part 136, the FAA explained that the commercial air tour regulations had a positive impact on safety for these operations. ''We believe there is a relationship between the imposition of a minimum, mandatory safety standard and the decrease in accidents.'' 72 FR 6884, 6889 (Feb. 13, 2007).

accept site-specific, designated landing areas for rotorcraft.

ii. Rotorcraft Floats for Over Water

Section 136.11 currently permits single-engine helicopters in commercial air tours to operate over water beyond the shoreline only when they are equipped with fixed floats or an inflatable flotation system adequate to accomplish a safe emergency ditching. Similarly, multiengine helicopters 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 with the critical engine inoperative as provided in the Rotorcraft Flight Manual (RFM) also must be equipped with fixed floats or an inflatable flotation system. Those helicopters that are equipped with flotation systems must have an activation switch for the flotation system on one of the primary flight controls and the system must be armed when the helicopter is over water and flying at a speed that does not exceed the maximum speed prescribed in the RFM. These requirements, however, do not apply to operations over water only during the takeoff and landing portions of flight or to operations within the power-off gliding distance to the shoreline for the duration of the flight and when each occupant is wearing a life preserver from before takeoff until the aircraft is no longer over water.

Extending the aforementioned requirements to rotorcraft operations that occur under part 136 would mitigate the risks associated with emergency water landings as the risks that are present in commercial air tours that occur in helicopters are the same as other rotorcraft in such scenarios. The FAA identified this mitigation when promulgating § 135.168. The overwater safety equipment requirements of § 135.168 apply to rotorcraft when they are operated beyond the autorotational distance from the shoreline. Therefore, the FAA proposes to broaden the applicability of § 136.11 to include rotorcraft.

Additionally, § 136.11(b)(2), does not include a reference to ''beyond the shoreline''. The FAA proposes to add this reference to clarify the requirement to have the flotation system armed when the aircraft is over water beyond the shoreline. Part 136 already contains a definition of ''shoreline,'' codified at § 136.1; the use of this term in § 136.11 is appropriate because it broadly includes any area of land adjacent to water of an ocean, sea, lake, pond, river, or tidal basin that is above the high-water mark. The definition excludes land areas unsuitable for landing, such as vertical cliffs or land intermittently under water during flight. When a commercial air tour proceeds over water beyond the shoreline, flotation systems must be armed because flotation systems increase the chance of survival if a rotorcraft must ditch in the water and keeping a flotation system armed ensures an appropriate level of preparedness. Requiring that the flotation system is armed and that the activation switch is located on one of the primary flight controls is in response to a National Transportation Safety Board report that investigated the air tour industry.[29] The NTSB stated that the opportunity for a successful ditching is reduced if the pilot must interrupt maneuvering of the helicopter during the critical final phase of an emergency water landing.[30] ''The problem can be resolved by requiring that helicopters operated over water with flotation equipment installed be equipped with activation systems located on primary flight controls.'' [31] For the foregoing reasons, the FAA's proposed updates to this section would apply these requirements to rotorcraft to require flotation systems remain armed at the appropriate time.

iii. Performance Plans

This proposed rule would amend § 136.13(a) by changing the term helicopter to rotorcraft for the reasons already cited. This proposed rule would amend the text in § 136.13(a) to require operators to base performance plans on information derived from the ''approved aircraft flight manual for that aircraft''. Using this term is consistent with the reference to aircraft flight manual in § 135.81.

Section 136.13(a) currently requires commercial air tour operators to complete helicopter performance plans before each operation that will occur under part 136.[32] The pilot-in-command of the operation must review the plan for accuracy and comply with it for each flight. Such performance plans are a key component of mitigating the risk of commercial air tour operations, as they require the pilot-in-command to be prepared to respond to unforeseen events.

iv. Commercial Air Tours in Hawaii

Appendix A to part 136 applies to airplane and helicopter tours in Hawaii. The safety standards in part 136 are specific to commercial air tours and provide additional risk mitigations for those operations. As stated in the *National Air Tour Safety Standards* final rule, FAA believes that minimum, mandatory safety standards directly relate to a decrease in the occurrence of accidents.[33] Therefore, subjecting powered-lift and rotorcraft to these safety standards is appropriate, to ensure air tour operations would not pose additional safety risks.

Appendix A previously existed as Special Federal Aviation Regulation (SFAR) No. 71.[34] As explained in the part 136 discussion above, in 2007, when the FAA last amended part 136, the FAA explained that many air tour operations occur in Hawaii and the Grand Canyon, and that the rules of SFAR No. 71 had improved safety.[35] The FAA explained more restrictive altitude standards apply to air tours in Hawaii because a large number of commercial air tour flights occur ''in a relatively small amount of airspace'' and other demonstrated hazards exist.[36] As one commenter noted, many Hawaiian operations occur over large bodies of water and water conditions in Hawaii are ''rough, unlike the conditions in other parts of the country'' in which operators conduct air tours.[37] The appendix A requirements are equally important for air tour operations in aircraft other than helicopters. The FAA's rationale for extending the requirements and provisions of appendix A to aircraft other than helicopters remains consistent with the rationale the FAA expressed in its 2007 rule.

Section 1 of appendix A (''Applicability'') currently states, ''[t]his 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.'' [38] The appendix also defines ''air tour'' as ''any sightseeing flight conducted under visual flight

[29] *See* NTSB, *Safety of the Air Tour Industry in the United States,* NTSB/SIR/–95/01 (Jun. 1, 1995).

[30] *Id.* at 3.

[31] *Id.*

[32] This requirement also applies to operations that occur under § 91.146 (''Passenger-carrying flights for the benefit of a charitable, non-profit, or community event'') and § 91.147 (''Passenger carrying flights for compensation or hire'').

[33] 72 FR 6883, at 6889.

[34] *Air Tour Operators in the State of Hawaii,* 59 FR 49138 (1994).

[35] 72 FR at 6889 (acknowledging that while multiple reasons existed for the accident rate improvement in Hawaii and other parts of the country, the provisions of SFAR No. 71 had a positive impact on safety).

[36] Id. at 6891.

[37] Id. at 6903.

[38] The section includes a paragraph that specifically excludes from its applicability ''[f]lights conducted in gliders or hot air balloons.'' 14 CFR part 136, App. A. at § 1(b).

rules in an airplane or helicopter for compensation or hire.'' [39] Based on the uses of the specific terms ''airplane'' and ''helicopter,'' the appendix does not apply to other types of aircraft, such as powered-lift and rotorcraft that are not helicopters.

Amending the applicability of appendix A to incorporate powered-lift and rotorcraft would apply the minimum flight altitude limitations to other categories of aircraft seeking to conduct air tours in Hawaii. As with the applicability of part 136, subpart A, and § 91.147, the FAA has determined the existing criteria and requirements for helicopters of appendix A, section 1(a) remain appropriate for powered-lift and rotorcraft. In this regard, the FAA has determined it is reasonable to continue to exclude any aircraft that has a passenger-seat configuration of more than 30 seats or a payload capacity that exceeds 7,500 pounds, as part 121 would govern such operations. As described previously, the SFAR: Integration of Powered-Lift will include proposals for applying specific operating rules to powered-lift in accordance with this appendix.

This proposed rule would also amend the references to RFMs currently within section 4 of the subpart. As with the amendment to § 136.13, described above in section III.B.2.iii of this preamble, using this term is consistent with the reference to Aircraft Flight Manual in § 135.81. Accordingly, the FAA proposes to include the term ''aircraft flight manual'' in the regulatory text.

Finally, the FAA proposes to amend part 136 by re-codifying appendix A as a new subpart and applying the requirements to operations of powered-lift and rotorcraft.

3. Flights for the Benefit of Charitable, Nonprofit, or Community Events

Operators that conduct passenger-carrying flights for certain charitable, nonprofit, and community events are conducted in accordance with § 91.146. Similar to § 91.147, the terms of § 91.146 require flights conducted under § 91.146 be nonstop and begin and end at the same airport, not proceed further than a 25-statute-mile radius of that airport, utilize only a public airport adequate for the aircraft used in the operation, have no more than 30 seats (excluding crewmember seats) and a maximum payload capacity of 7,500 pounds, not be an aerobatic or formation flight, hold a standard airworthiness certificate, occur only in day visual flight rules conditions, and fulfill other criteria. Section 91.146 excludes these flights from the applicability of part 119 and requires each flight conducted under § 91.146 occur in accordance with the safety provisions of part 136, subpart A. Moreover, passenger-carrying flights or series of flights cannot exceed four charitable events or non-profit events per year.

The FAA proposes amending § 91.146 in a manner similar to the amendments the FAA proposes to make to § 91.147. The FAA's oversight of such flights is generally consistent with the level of oversight the FAA applies to commercial air tour flights under § 91.147. As with the proposed amendment to § 91.147, the FAA expects that expanding the scope of § 91.146 to allow for powered-lift and rotorcraft flights in furtherance of charitable, nonprofit, and community events will enable innovative, efficient options while ensuring safety.

IV. Regulatory Notices and Analyses

Federal agencies consider impacts of regulatory actions under a variety of executive orders and other requirements. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall 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 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 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 that may 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 with base year of 1995). The current threshold after adjustment for inflation is $165 million using the most current (2021) Implicit Price Deflator for the Gross Domestic Product. This portion of the preamble summarizes the FAA's analysis of the economic impacts of this proposed rule.

In conducting these analyses, the FAA has determined that this proposed rule (1) will have benefits that justify its costs, (2) will not be an economically ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, (3) will not be ''significant'' as defined in DOT's Regulatory Policies and Procedures; (4) will not have a significant economic impact on a substantial number of small entities; (5) will not create unnecessary obstacles to the foreign commerce of the United States; and (6) will not impose an unfunded mandate on State, local, or tribal governments, or on the private sector by exceeding the threshold identified above.

A. Regulatory Evaluation

This proposed rule would enable operations of powered-lift to occur in accordance with 49 U.S.C. 44701(d), 44705, and 44711. Currently, the FAA's rules governing certificate holders' operations only apply to airplanes and rotorcraft, and do not mention powered-lift. The proposed rule would amend the definitions for the five kinds of operations codified at § 110.2—commuter, domestic, flag, on-demand, and supplemental—to ensure the operations occur in accordance with the statutory mandates, and to apply the appropriate set of operating rules to operations in powered-lift. The proposed rule would also amend the appropriate applicability of sections within part 119 to enable powered-lift, subject to applicable exemptions, to conduct air carrier and certain other commercial operations, commercial air tours, and noncommon carriage operations.

The proposed rule would also amend certain aircraft-specific exceptions from the applicability of part 119. Furthermore, this proposed rule would alter the requirements for management personnel in certain certificate holder management positions to ensure personnel have appropriate experience. This proposed rule would extend the applicability of certain operating rules that apply to commercial air tours such that they would apply to operators that conduct flights in powered-lift and rotorcraft. Finally, this proposed rule would make various additional amendments in the interest of ensuring clarity. By including powered-lift in the existing operational framework, the proposed rule would not result in a reduction in safety because it maintains the risk-based approach to safety. When operations present a higher level of risk, based on volume and frequency, the FAA subjects such operations to a regulatory framework that mitigates those risks.

The current parameters for determining whether a certificate holder is conducting operations under parts 121, 125, or 135 would be identical for certificate holders using powered-lift in their operations under this proposed

[39] Id. § 2.

rule. These parameters are shown below.

Parameter	Passenger		Cargo	Non-common carriage
	Scheduled	Nonscheduled	Scheduled/ nonscheduled	
Part 135 Operating Rules *				
Passenger Seating	<= 9 seats	<= 30 seats	NA	< 20 seats.
Maximum Payload	<= 7,500 lbs.		<= 7,500 lbs	< 6,000 lbs.
Kind of Operation	Pt 135 Commuter if 5 or more roundtrips/week; otherwise, Pt 135 On Demand.	Pt 135 On Demand	Pt 135 On Demand	Pt 135 On Demand.
Aircraft Type	NonTurbojet	Includes Turbojet	Includes Turbojet	Includes Turbojet.
Part 121 Operating Rules				**Part 125**
Passenger Seating	> 9 seats	> 30 seats	NA	>= 20 seats.
Maximum Payload	> 7,500 lbs.		> 7,500 lbs	>= 6,000 lbs.
Kind of Operation	Part 121 Domestic if flown within the 48 contiguous United States or DC; otherwise, Part 121 Flag.	Part 121 Supplemental	Part 121 Supplemental	Part 125.
Aircraft Type	Includes Turbojet		Includes Turbojet	Includes Turbojet.

* All Rotorcraft Operations are conducted under Part 135.
NA= Not applicable.

The table below lists the proposed amendments. The first column identifies the part and section the FAA proposes to amend while the second column describes the change from the current state. The third column briefly describes the proposed change as either enabling, relieving, constraining, or as a technical amendment.

Section	Proposed change	Impact
PART 91—GENERAL OPERATING AND FLIGHT RULES Subpart B—Flight Rules		
§ 91.146 Passenger-carrying flights for the benefit of a charitable, nonprofit, or community event.	The proposed regulatory text would be revised to allow passenger-carrying flights for the benefit of a charitable, nonprofit, or community event to be conducted with powered-lift. The section would also be amended to replace the term ''helicopters'' with ''rotorcraft''.	Enabling.
§ 91.147 Passenger-carrying flights for compensation or hire.	The proposed regulatory text would be revised to allow passenger-carrying flights for compensation or hire to be conducted with powered-lift. The section would also be amended to replace the term ''helicopters'' with ''rotorcraft''.	Enabling.
PART 91—GENERAL OPERATING AND FLIGHT RULES Subpart K—Fractional Ownership Operation		
§ 91.1015 Management specifications	The proposed regulatory text would replace the requirement for operations specifications to contain copies of *all* deviations and exemptions (including those applicable to a specific aircraft) with a requirement to include deviations and exemptions applicable only to the operator or *airmen*.	Relieving.
PART 110—GENERAL REQUIREMENTS		
§ 110.2 Definitions	Certain definitions in this section would be revised to enable powered lift to conduct the kinds of air carrier operations.	Enabling.

Section	Proposed change	Impact
PART 119—CERTIFICATION: AIR CARRIERS AND COMMERCIAL OPERATORS Subpart A—General		
§ 119.1 Applicability	Section 119.1(a) would be revised to incorporate powered-lift with seating for 20 or more passengers or a maximum payload capacity of 6,000 pounds or more, of certificate holders when common carriage is not involved. Section 119.1(e) would include powered-lift and rotorcraft in the list of certain, specific types of operations that are excluded from the applicability of part 119. Section § 119.1(a) would be corrected to include certain airplanes and powered-lift with a passenger-seat configuration of less than 20 seats and a payload capacity of less than 6,000 pounds to be consistent with the existing § 119.23.	Enabling. Technical amendment.
§ 119.5 Certifications, authorizations, and prohibitions.	Section 119.5 would be revised to incorporate powered-lift with seating for 20 or more passengers or a maximum payload capacity of 6,000 pounds or more, into the aircraft types authorized by the Administrator to be issued an operating certificate for conducting operations when common carriage is not involved.	Enabling.
PART 119—CERTIFICATION: AIR CARRIERS AND COMMERCIAL OPERATORS Subpart B—Applicability of Operating Requirements to Different Kinds of Operations Under Part 121, 125, and 135 of This Chapter		
§ 119.21 Commercial operators engaged in intrastate common carriage and direct air carriers.	Section 119.21(a) would be revised to require commercial operators of powered-lift that are engaged in intrastate common carriage of persons or property for compensation or hire, or as a direct air carrier, to comply with either part 121 or part 135 depending on the kind of operation they conduct. Domestic, flag, and supplemental operations are to be conducted under part 121. Commuter and on-demand operations are to be conducted under part 135.	Imposes requirements on certain operators of powered-lift that are equivalent to the requirements currently imposed on similar operators. No additional regulatory cost.
§ 119.23 Operators engaged in passenger-carrying operations, cargo operations, or both with airplanes when common carriage is not involved.	Section 119.23(a) would be revised to require commercial operators of powered-lift when common carriage is not involved to comply in accordance with requirements in either part 125 or part 135. Aircraft size in terms of number of seats and payload capacity determines which part is applicable to the operator.	Imposes requirements on certain operators of powered-lift that are equivalent to the requirements currently imposed on similar operators. No additional regulatory cost.
§ 119.49 Contents of operations specifications.	The proposed regulatory text would replace the requirement for a certificate holder's operations specifications to contain copies of *all* deviations and exemptions (including those applicable to a specific aircraft) with a requirement to include deviations and exemptions applicable only to the operator or airmen.	Relieving.
§ 119.65 Management personnel required for operations conducted under part 121 of this chapter.	The proposed rule would require certificate holders have a Chief Pilot, as qualified under § 119.67, for *each* category of aircraft the certificate holder uses. The proposed rule would continue to permit the Administrator to approve positions or numbers of positions other than those described in the regulation, based in part on the number and type of *aircraft* used.	Potential cost only if a certificate holder uses both powered-lift and airplanes. Amendment requires a part 121 certificate holder to have a Chief Pilot for each category of aircraft in the certificate holder's fleet. The proposed rule's reference to ''category'' would mean a broad classification of aircraft such as airplane and powered-lift.

Section	Proposed change	Impact
§ 119.67 Management personnel: Qualifications for operations conducted under part 121 of this chapter.	*Director of Operations:* The proposed regulatory text for the Part 121 certificate holder Director of Operations management position is restructured for clarity. It also replaces the term ''airplane'' with ''aircraft''. *Chief Pilot:* The proposed regulatory text is restructured for clarity and replaces ''airplanes'' with ''aircraft,'' which could encompass airplanes and powered-lift. The amendment also requires the holder(s) of the Chief Pilot position for a Part 121 certificate holder to have an airline transport pilot (ATP) certificate, with appropriate ratings, for at least one of the aircraft within each category of the certificate holder's fleet. Similarly, the Chief Pilot will need the Pilot in Command time as the current regulation states. *Director of Maintenance:* The proposed regulatory text replaces ''airplanes'' with ''aircraft,'' which could encompass airplanes and powered-lift. *Chief Inspector:* The proposed regulatory text is restructured for clarity and replaces ''airplanes'' with ''aircraft,'' which could encompass airplanes and powered-lift.	Imposes requirements on operators of powered-lift that are equivalent to the requirements currently imposed on certificate holders that use airplanes. No additional regulatory cost.
PART 121—OPERATING REQUIREMENTS; DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS Subpart A—General		
§ 121.1 Applicability	The proposed regulatory text replaces ''airplanes'' with ''aircraft'' that certificate holders would take actions to support continued airworthiness of each aircraft, which includes powered-lift used in domestic, flag, or supplemental operations as defined in § 110.2.	Imposes requirements on operators of powered-lift that are equivalent to the requirements currently imposed on certificate holders that use airplanes. No additional regulatory cost.
§ 121.1(c) Applicability	The proposed regulatory text makes a technical correction to section 121.1(c) by removing ''SFAR No. 58'' and replacing it with ''subpart Y'' which was codified on September 16, 2005.	No impact—technical amendment.
PART 121—OPERATING REQUIREMENTS; DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS Subpart Q—Flight Time Limitations and Rest Requirements: Domestic Operations		
§ 121.470 Applicability	The proposed regulatory text of paragraph (a) would replace ''airplanes'' with ''aircraft'' to permit certificate holders using powered-lift in domestic, all-cargo operations of a certain size, to adhere to the requirements of §§ 135.261 through 135.272. These requirements set forth flight time limitations and rest requirements. In addition, paragraph (b) would permit certificate holders that conduct scheduled operations entirely within Alaska or Hawaii using specific size aircraft to have the option of complying with subpart R of part 121 for those operations.	Provides options to certificate holders using powered-lift in operations under part 121 that are equivalent to the options currently allowed. No additional regulatory cost.
PART 121—OPERATING REQUIREMENTS; DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS Subpart R—Flight Time Limitations and Rest Requirements: Flag Operations		
§ 121.480 Applicability	The proposed regulatory text would replace ''airplanes'' with ''aircraft'' to permit certificate holders using powered-lift in flag, all-cargo operations, and operations of a certain size to adhere to the requirements of §§ 135.261 through 135.273. These requirements set forth flight time limitations and rest requirements.	Provides options to certificate holders using powered-lift in operations under part 121 that are equivalent to the options currently allowed. No additional regulatory cost.
PART 121—OPERATING REQUIREMENTS; DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS Subpart S—Flight Time Limitations and Rest Requirements: Supplemental Operations		
§ 121.500 Applicability	The proposed regulatory text would replace ''airplanes'' with ''aircraft'' to permit certificate holders using powered-lift in supplemental, all-cargo operations, of a certain size, to adhere to the requirements of §§ 135.261 through 135.273. These requirements set forth flight time limitations and rest requirements.	Provides options to certificate holders using powered-lift in operations under part 121 that are equivalent to the options currently allowed. No additional regulatory cost.

Section	Proposed change	Impact
PART 125—CERTIFICATION AND OPERATIONS: *AIRCRAFT* HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE; AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT		
§ 125.1 Applicability	Part 125 applies only to noncommon carriage operations conducted with airplanes that have a seating configuration of 20 or more passengers or a maximum payload capacity of 6,000 pounds or more. Noncommon carriage operations are those that occur for compensation or hire ''that does not involve a holding out to others.'' Operators that conduct noncommon carriage do not exhibit a willingness to transport people or property indiscriminately. As a result, they do not advertise, sell seats on a planned flight, or negotiate trip details. The proposed rule would amend § 125.1 to incorporate powered lift into the statements regarding applicability of part 125.	Imposes requirements on operators of powered-lift that are equivalent to the requirements currently imposed on certificate holders that use airplanes. No additional regulatory cost.
§ 125.23 Rules applicable to operations subject to this part.	This proposed rule would also amend § 125.23 to change the word ''airplane'' to ''aircraft,'' as § 125.23 generally addresses applicability of certain rules and standards concerning operations.	Imposes requirements on operators of powered-lift that are equivalent to the requirements currently imposed on certificate holders that use airplanes. No additional regulatory cost.
PART 136—COMMERCIAL AIR TOURS AND NATIONAL PARKS AIR TOUR MANAGEMENT Subpart A—National Air Tour Safety Standards		
§ 136.1 Applicability and definitions	The proposed change incorporates powered-lift and rotorcraft alongside airplanes for applicability of Part 136—Commercial Air Tours and National Parks Air Tour Management—Subpart A.	Enabling.
§ 136.3 Letters of Authorization	The proposed change would be a technical amendment that changes the phrase ''14 CFR 119.51'' to ''§ 119.51 of this chapter''.	No impact—technical amendment.
§ 136.5 Additional requirements for Hawaii.	The proposed amendment would be updated to reflect the recodification of Appendix A as Subpart D.	No impact—technical amendment.
§ 136.9 Life preservers for operations over water.	The proposed amendment to § 136.9 ensures the safety of each occupant for operations over water by requiring a multi-engine aircraft to be operated at a weight as provided in the approved aircraft flight manual for that aircraft.	Enabling—no impact over and above current requirements.
§ 136.11 Rotorcraft floats for over water.	The section title and this section would be revised to extend to other rotorcraft, the requirements for helicopter floats for operations that occur overwater beyond the shoreline.	Enabling—no impact over and above current requirements.
§ 136.13 Performance plan and operations.	The section title and this section would be revised to extend requirements for helicopter performance plans to rotorcraft. The performance plan must be based on information in the approved Aircraft Flight Manual for that aircraft.	Enabling—no impact over and above current requirements.
Subpart D—Special Operating Rules for Air Tour Operators in the State of Hawaii.	This amendment recodifies ''Appendix A'' as ''Subpart D'' and extends the applicability of operating rules for Air Tour Operators in the State of Hawaii to include operations conducted with powered-lift and rotorcraft.	Enabling—no impact over and above current requirements.

1. Benefits

This proposed rule would enable air carrier and other commercial operations of powered-lift to occur by extending the applicability of the appropriate set of operating rules that would apply both risk mitigation measures and a framework for FAA oversight, as necessary to ensure safety.

Operations that occur with powered-lift could offer many benefits. For example, some powered-lift may be capable of transporting heavier loads at higher altitudes and faster cruise speeds than helicopters, yet they maintain the capability of taking off and landing vertically. The faster cruise speeds and range could also improve response times by as much as 50 percent for search and rescue operations and allow a higher level of life-saving care during transport because of a smoother flight profile compared to helicopters.[40] In addition powered-lift operations could increase the efficiency of crew transport to oil rigs as they move further from land, or other offshore locations with smaller landing areas. Certificate holders may also seek to use powered-lift for transporting passengers point-to-point; for example, transportation could occur from a heliport and proceed at turbo-prop airspeeds and ranges. Using powered-lift for transport of passengers could increase the capacity of the NAS and reduce delays without requiring additional infrastructure.[41]

Powered-lift projects exist that are either in certification, design, proof of concept, or prototype phases of design refinement. One project underway is a 9-passenger tilt-rotor turboshaft design. This manufacturer is also in the conceptual design phase of a 20-

[40] *Military, GLOBALSECURITY.ORG* (last visited August 22, 2022), *available at https://www.globalsecurity.org/military/world/europe/aw609.htm.*

[41] Costa, Guillermo J., *Conceptual Design of a 150-Passenger Civil Tiltrotor,* NASA Ames Research Center—Aeromechanics Branch (Aug. 2012), (last visited August 22, 2022) *available at https://rotorcraft.arc.nasa.gov/Publications/files/Guillermo_Costa_TR150_Paper.pdf.*

passenger powered-lift. Another powered-lift project underway is seeking to become the first certificated electric Vertical Takeoff and Landing (eVTOL) operator under part 119 to carry passengers in the United States.

2. Costs and Costs Savings

Cost Savings—Operations Specifications

The FAA proposes to amend provisions in §§ 119.49(a)(12), (b)(12), (c)(11) and 91.1015(b)(9) as the FAA has determined they are broad and unduly burdensome. Currently, these provisions require a certificate holder's operations specifications to contain a list of exemptions and deviations issued under 14 CFR chapter 1 that are applicable to the aircraft, the operator, and airmen. The proposed rule would require *only* exemptions and deviations that apply to the certificate holder (rather than to the aircraft) to be retained in operations specifications. Although the amendment to these provisions is relieving, the costs savings are minimal because the operations specifications are maintained electronically.

Costs—Part 121 Certificate Holder Chief Pilot Management Position

As a result of applying the rules of part 121 to certificate holders that operate powered-lift and fulfill the terms of either domestic, flag, or supplemental operations, this proposed rulemaking expands the part 119 certificate holder requirements for the part 121 management position of Chief Pilot (§ 119.65). As amended, the certificate holder would be required to have a Chief Pilot for each category of aircraft used by the certificate holder to conduct operations. Currently, the Chief Pilot is only required to have an ATP certificate, with appropriate ratings, for at least one of the airplanes used in the certificate holder's operations. One person may be able to meet the requirements of the Chief Pilot. This person would have to be dual qualified in both airplanes and powered-lift. A certificate holder's cost may increase if more than one Chief Pilot is hired to meet the qualification requirements.

Although the definitional changes to § 110.2 would enable part 121 certificate holders to have a fleet mix of more than one category of aircraft, the FAA is unaware of whether such certificate holders would choose to do so. However, if a part 121 certificate holder chooses to conduct operations with aircraft other than airplanes, the certificate holder's cost of retaining a Chief Pilot would be minimal because the individual filling this position could be acting in the position of Chief Pilot while also serving as a line pilot. Should Part 121 certificate holders choose to conduct operations with a mixed aircraft fleet, it is expected that they would do so only if the expected benefits exceeded its costs. Subsequently, the economic impact of the proposed amendments for the qualifications of Chief Pilot will be minimal. The FAA seeks comment on whether the proposed change that would require a part 121 certificate holder to have a Chief Pilot for each category of aircraft used to conduct operations would be minimal cost to the certificate holder.

B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) established the purpose of the RFA was to ensure agencies, in issuing regulations, ''endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation.'' [42] The RFA further directs agencies as follows: ''[t]o achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.'' [43]

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 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 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 proposed rule may impact small entities but would have a minimal economic impact as the proposed rule is enabling while imposing minimal costs. First and foremost, the proposed rule changes definitions contained in § 110.2 and the appropriate applicability of sections within part 119 to enable powered-lift to conduct air carrier and other certain commercial operations, commercial air tours and noncommon carriage operations. Absent the proposed rule, an air carrier desiring to conduct operations using powered-lift would not be able to comply with the requirements of 49 U.S.C. 44701(d) or 44705. Such operations, therefore, would be prohibited in the absence of this proposed rule.

Secondly, the proposed rule would remove the requirement for a certificate holder to maintain a list of exemptions and deviations related to aircraft in its fleet as required by §§ 119.49(a)(12), (b)(12), (c)(11) and 91.1015(a)(9). The impact could provide minimal relief for certificate holders by reducing the volume of records certificate holders must retain in their operations specifications.

Lastly, due to a change in the definitions contained in 14 CFR 110.2, this proposed rule would enable part 121 certificate holders to conduct operations using powered-lift. As a result, the proposed rule would revise part 121 certificate holder management qualifications for the Chief Pilot. Current regulations require Chief Pilots to have an ATP certificate for at least one of the airplanes used in a certificate holder's operations. As proposed, the regulations would require the certificate holder to have a Chief Pilot qualified for each category of aircraft that the certificate holder uses.

The FAA determines that the expansion of the qualifications for the position of Chief Pilot resulting from enabling additional aircraft categories to conduct part 121 operations would impose a minimal economic impact for part 121 certificate holders. Considering that this rulemaking is enabling, a part 121 certificate holder will voluntarily choose to operate a fleet of more than one aircraft category only if the expected benefits of doing so exceed the costs. The FAA seeks comment on whether the proposed change that requires a part 121 certificate holder to have a Chief Pilot for each category of aircraft used to conduct operations would be minimal cost to the operator.

The Small Business Administration (SBA) defines small businesses that operate a scheduled or nonscheduled airline to be 1,500 employees or less.[44] At the end of calendar year 2021, employment data was available for each of the 59 carriers reporting employment

[42] Public Law 96–354 sec. 2(b), 94 Stat. 1164 (Sept. 19, 1980).

[43] Id.

[44] *U.S. Small Business Administration Table of Small Business Size Standards Matched to North American Industry Classification System Codes* U.S. Small Business Admin., *available at https://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.*

data to the U.S. Department of Transportation.[45] This data reveals that 23 of the 59 reporting carriers are large entities and 36 are small entities. This proposed rule would also affect over 2,600 additional entities for which employment data is sparse.[46] While some of these entities may be large, a majority are anticipated to be small.

If an agency determines that a rulemaking would not result in a significant economic impact on a substantial number of small entities, the head of the agency may so certify under section 605(b) of the RFA. Therefore, as provided in section 605(b), the head of the FAA certifies that this rulemaking would not result in a significant economic impact on a substantial number of small entities. The FAA requests comments on this determination.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

The FAA has analyzed this proposed rule in conjunction with the requirements of the Trade Agreements Act of 1979, as amended by the Uruguay Round Agreements Act. The FAA has determined the proposed rule would not present any obstacle to foreign commerce of the United States. In addition, the proposed rule is not contrary to international standards.

D. Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal government having first provided the funds to pay those costs. The FAA determined that the proposed rule will not result in the expenditure of $165 million or more by State, local, or tribal governments, in the aggregate, or the private sector, in any one year.

This rule does not contain such a mandate. Therefore, the requirements of Title II of the Act do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires the FAA consider the impact of paperwork and other information collection burdens imposed on the public. According to the regulations that implement the Act, codified at 5 CFR 1320.8(b)(2)(vi), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement, unless it displays a currently valid Office of Management and Budget (OMB) control number.

This action contains the following proposed revisions to existing information collection requests. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted these proposed information collection request revisions to OMB for its review.

None of the information collection instruments would change for this proposed rule; the FAA would continue to collect the necessary information in the same manner that the FAA described in its prior notices concerning the information collections. The Office of Management and Budget has approved the FAA's collection of information for purposes of such compliance.[47] However, this NPRM proposes to increase the potential number of respondents to whom the information collection requirements apply.

Each section below identifies the information collections affected by this NPRM. The FAA has estimated the increase in the existing burden based on four-part 119 certificate holders beginning part 135 operations with powered-lift by the end of the third year following publication of the final rule.[48]

While this NPRM would permit part 119 certificate holders to conduct operations under part 121, the FAA does not believe that any such certificate holders would do so in the first three years following finalization of this NPRM. Therefore, the FAA has not estimated any burden increase for existing information collection 2120–0008, Part 121 Operating Requirements: Domestic, Flag, and Supplemental Operations, at this time. Further, the FAA does not believe that any such certificate holders would conduct operations under part 125 in the first three years following finalization of this NPRM. Therefore, the FAA has not estimated any burden increase for existing information collection 2120–0085. The FAA seeks comment regarding these assumptions.

1. Revision of Existing Information Collection 2120–0593: Federal Aviation Regulation Part 119—Certification: Air Carriers and Commercial Operators[49]

This proposed rule would extend the requirements of part 119 to certificate holders that conduct operations with powered-lift.

Abstract: Organizations that desire to become or remain certified as air carriers or commercial operators are mandated to report information to the FAA. The information collected reflects requirements necessary under parts 135, 121, and 125 to conform to 14 CFR part 119—Certification: Air Carriers and Commercial Operators. The FAA will use the information it collects and reviews to ensure compliance and adherence to regulations and, if applicable, to take enforcement action on violators of the regulations.

The FAA has estimated the increase in the existing burden based on four certificate holders beginning powered-lift operations by the end of the third

[45] *Airline Employment Data by Month,* Bureau of Transp. Statistics, *available at https://www.transtats.bts.gov/Employment/.* Information reported is from filings for December 2021.

[46] FAA Internal Data as of July 2022 shows the approximate number of certificate holders to be as follows: part 121—58; part 135—1,877; part 121 and 135—6; § 91.147 Air Tour Operators—957 (252 of § 91.147 operators also hold a part 135 certificate); part 125—38; part 91K Fractional Ownerships—10.

[47] *Certification: Air Carriers and Commercial Operators,* Supporting Statement: Information Collection Request Reference No. 2120–0593 (April 19, 2021), *available at https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202011-2120-001.*

[48] Official FAA forecasts related to the operation of powered-lift in the National Airspace System (NAS) have yet to be developed. As of July 2022, approximately 10 applicants were undergoing type certification at FAA for powered-lift projects. Two of these projects have progressed further through the approval process and could be issued a type certificate as early as 2024. For purposes of estimating the increase in the existing information collection, it is determined four part 119 certificate holders will begin part 135 operations with powered-lift by the end of the third year following finalization of this proposed rule. Publicly available data was used to forecast the powered-lift fleet. Forecasts for airmen and departures were developed based on utilization of the fleet (*i.e.,* hours flown).

[49] Ibid.

year following finalization of this NPRM.[50] Note that not all information collection requirements are proposed to have a burden increase because of the proposed revision to this information collection.

TABLE 3—THREE-YEAR BURDEN ESTIMATE FOR INFORMATION COLLECTION 2120–0593 CERTIFICATION: AIR CARRIERS AND COMMERCIAL OPERATORS

Section	Section title	Number of respondents	Number of responses	Total responses	Time per response—technical ($32.21/hr)	Time per response—admin. asst. ($24.51/hr)	Total burden (hours)	Total burden (cost)
119.33c	Proving Test Plan	4	1	4	2.0	1.0	12	$356
119.35	Certificate Application Reqts—all Operators.	4	1	4	80.0	16.0	384	11,876
119.36	Certificate Application Reqts for Commercial Operators.	4	1	4	2.0	4.0	24	650
119.41c	Amending a Certificate	1	1	1	0.5	0.1	0.6	19
119.69e3	Management Personnel Required, Pt 135.	4	1	4	1.0	0.5	6	178
119.71f	Management Personnel Qualifications, Pt 135.	4	1	4	1.0	0.5	6	178
		.....	.....	.....	.....	.....	433	13,256

Note: Column and row totals may not sum due to rounding.

2. Revision of Existing Information Collection 2120–0607: Pilot Records Improvement Act of 1996/Pilot Records Database [51]

Abstract: With the exception of Form 8060–14 and –15, an operator utilizes the various 8060 forms to report a request for the applicable records of all applicants for the position of pilot with their company as needed under PRIA. The information collected on these forms will be used only to facilitate search and retrieval of the requested records, and submission is mandatory until PRIA sunsets. Operators then ''may use such records only to assess the qualification of the individual in deciding whether or not to hire the individual as a pilot.'' (49 U.S.C. 44703(h)(11)). For purposes of this incremental information collection the FAA expects pilots to access the pilot records database web-based application to release records to operators for review and to update employment history. In turn, the hiring operator uses the information to help them perform a comprehensive assessment of the pilot prior to making a hiring decision, as required by the Act.

The FAA has estimated the increase in the existing burden for this collection based on four-part 119 certificate holders employing 129 commercial pilots holding an airmen's certificate in the powered-lift category by the end of the third year following finalization of this proposed rule. Note that not all information collection requirements are proposed to have a burden increase as a result of the proposed revision to this information collection.

TABLE 6—THREE-YEAR BURDEN ESTIMATE FOR INFORMATION COLLECTION 2120–0607 [52] PILOT RECORDS DATABASE

	Year 1	Year 2	Year 3	Total
New Pilots	0	44	85	129
Cumulative Pilots	0	44	129	.....

[50] This burden is based on work performed by technical specialists and/or administrative assistants. The fully-burdened hourly wage used to estimate costs includes the base hourly wage for each job category plus an increase to account for fringe benefits and overhead. The base hourly wage for the technical specialist and administrative assistant is estimated to be $20.95 and $15.95, respectively (source: *https://www.payscale.com/research/US/Job=Technical_Specialist/Salary; https://www.payscale.com/research/US/Job=Administrative_Assistant/Hourly_Rate*). The base wage is increased by a multiplier of 34.1 percent for fringe benefits (source: *https://www.bls.gov/news.release/ecec.nr0.htm*) and 17.0 percent for overhead (source) Cody Rice, U.S. Environmental Protection Agency, ''Wage Rates for Economic Analyses of the Toxics Release Inventory Program'' June 10, 2002, *https://www.regulations.gov/document?D=EPA-HQ-OPPT-2014-0650-0005*). Summing together the base hourly wage, fringe benefits, and overhead results in a fully-loaded hourly wage of $32.21 for a technical specialist and $24.51 for an administrative assistant.

[51] Official FAA forecasts related to the operation of powered-lift in the National Airspace System (NAS) have yet to be developed. Thus, forecasts for operators of part 135 aircraft and fleet were prepared solely for the purpose of estimating the cost of the information collections affiliated with this proposed rule, and developed using publicly available data related to orders and options for powered-lift. FAA notes that none of the orders for the multitude of powered-lift aircraft models being developed are firm as of the time of this writing, with the exception of one model. Using the fleet forecast and an assumption for fleet utilization (*i.e.* hours flown), forecasts for airmen and departures were also developed to estimate costs of the paperwork burden.

[52] Occupational Employment and Wages, May 2019, 11–3121 Human Resources Managers, Bureau of Labor Statistics, Mean Hourly Wage Rate ($62.29). *https://www.bls.gov/oes/2019/may/oes113121.htm.* The fully-burdened wage rate is $91.33 and includes employee compensation that is related to fringe benefits and is estimated to be 31.8 percent of the fully-burdened wage. Source: Bureau of Labor Statistics, Employer Costs for Employee Compensation (*https://www.bls.gov/news.release/pdf/ecec.pdf*; data provided in news release vary slightly by month). The FAA used a ground instructor base hourly wage rate ($31.56) as a proxy for the pilot non-flying base hourly wage rate (source: Bureau of Labor Statistics (BLS) Occupational Employment Statistics for Air Transportation Industry. *https://www.bls.gov/oes/2019/may/oes131151.htm:* Training and Development Specialists (13–1151). The fully-burdened wage rate is $46.28 and includes employee compensation related to benefits that is estimated to be 31.8 percent of the fully-burdened wage. (Source: Bureau of Labor Statistics, Employer Costs for Employee Compensation.)

Pilot activity—by event	Events per year	Hrs per event	Year 1 (hrs)	Year 2 (hrs)	Year 3 (hrs)	Total (hrs)
Database Registration—New Pilots	1.0	0.33	0	14.5	28.1	42.6
Input Employment History—New Pilots	1.0	0.03	0	1.3	2.6	3.9
Total Time (Hours)			0.0	15.8	30.7	46.5
Pilot activity—by cost		Cost per hr	Year 1	Year 2	Year 3	Total
Database Registration—New Pilots		$46.28	$0	$671	$1,301	$1,972
Input Employment History—New Pilots		46.28	0	60	120	181
Total Cost			0	731	1,421	2,152
Operator activity—by event	Events per year	Hrs per event	Year 1 (hrs)	Year 2 (hrs)	Year 3 (hrs)	Total (hrs)
Training/checking events—Cumul. Pilots	2.7	0.07	0	8.3	24.4	32.7
Ground training events—Cumul. Pilots	1.0	0.07	0	3.1	9.0	12.1
Verification of NDR * Search—New Pilots	0.5	0.01	0	0.2	0.4	0.6
Initial train/check—New Pilots	1.0	0.07	0	3.1	6.0	9.1
Total Time (Hours)			0	14.7	39.8	54.5
Operator events—by cost		Cost per hr	Year 1	Year 2	Year 3	Total
Training/checking events—Cumul. Pilots		$91.33	$0	$758	$2,228	$2,986
Ground training events—Cumul. Pilots		91.33	0	283	822	1,105
Verification of NDR * Search—New Pilots		91.33	0	18	37	55
Initial train/check—New Pilots		91.33	0	283	548	4,146
Total Cost			0	1,343	3,635	8,293

Note: Row and column totals may not sum due to rounding.

3. Revision of Existing Information Collection 2120–0535: Anti-Drug Program for Personnel Engaged in Specified Aviation Activities [53]

Abstract: Part 119 certificate holders with the authority to operate under part 121 and 135, air tour operators as defined in 14 CFR 91.147, non-FAA or Military Air Traffic Control Facilities, contractors, or repair stations under 14 CFR part 145 that conduct drug and alcohol testing programs are mandated to report information to this collection. The FAA uses this information for determining program compliance or non-compliance of regulated aviation employers, oversight planning, determining who must provide a mandatory annual Management Information System (MIS) testing information, and communicating with entities subject to the program regulations. In addition, the information is used to ensure that appropriate action is taken regarding crewmembers and other safety-sensitive employees who have tested positive for drugs or alcohol or have refused to submit to testing. The collection includes reporting, recordkeeping, and disclosure information. Using the information reported on the annual MIS allows the FAA Administrator to determine the random testing rates for the following year, which is published in the **Federal Register**.

The FAA has estimated the incremental increase in the existing burden for this collection based on four powered-lift operators entering service by the end of the third year following finalization of this proposed rule. Below are the reporting requirements for this information collection. Note that not all information collection requirements are proposed to have a burden increase because of the proposed revision to this information collection.

TABLE 8—THREE-YEAR BURDEN ESTIMATE FOR INFORMATION COLLECTION 2120–0535 ANTI-DRUG PROGRAM FOR PERSONNEL ENGAGED IN SPECIFIED AVIATION ACTIVITIES

PRA task item	Responses (three years)	Time per response (hours)	Total 3-yr burden (hours)	Fully-burdened hourly wage ($25.33)	Total 3-yr burden ($)
Promulgate Policy	4	16.00	64.0	$25.33	$1,621
Registration (New or Amended)	4	1.00	4.0	25.33	101
Supervisory Drug and Alcohol Training	6	0.25	1.6	25.33	41
Employee Training Documentation	129	0.25	32.3	25.33	817
Reasonable Cause/Suspicion Documentation	1.5	2.00	3.0	25.33	76
Voluntary Disclosure	1.0	40.00	40.0	25.33	1,013
Emergency Maintenance	1	1.25	1.3	25.33	32

[53] Official FAA forecasts related to the operation of powered-lift in the National Airspace System (NAS) have yet to be developed. Thus, forecasts for operators of part 135 aircraft and fleet were prepared solely for the purpose of estimating the cost of the information collections affiliated with this proposed rule, and developed using publicly available data related to orders and options for powered-lift. FAA notes that none of the orders for the multitude of powered-lift aircraft models being developed are firm as of the time of this writing, with the exception of one model. Using the fleet forecast and an assumption for fleet utilization (*i.e.* hours flown), forecasts for airmen and departures were also developed to estimate costs of the paperwork burden.

TABLE 8—THREE-YEAR BURDEN ESTIMATE FOR INFORMATION COLLECTION 2120–0535 ANTI-DRUG PROGRAM FOR PERSONNEL ENGAGED IN SPECIFIED AVIATION ACTIVITIES—Continued

PRA task item	Responses (three years)	Time per response (hours)	Total 3-yr burden (hours)	Fully-burdened hourly wage ($25.33)	Total 3-yr burden ($)
Scientifically Valid Random Testing Process	83	1.00	82.8	25.33	2,097
Medical Review Officer Recordkeeping Provision	4	0.25	1.0	25.33	25
Total Incremental Change for OMB 2120–0535	234		229.9		5,823

Note: Row and column totals may not sum due to rounding.

The FAA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the FAA, including whether the information will have practical utility;

(2) Evaluate the accuracy of the FAA's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of collecting information on those who are to respond, including by using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted these updated estimates to OMB for its review. Individuals and organizations may send comments on the information collection requirement to the address listed in the **ADDRESSES** section at the beginning of this preamble by February 6, 2023. Comments also should be submitted to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for FAA, New Executive Office Building, Room 10202, 725 17th Street NW, Washington, DC 20053.

F. International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these standards and recommended practices.

G. Environmental Analysis

FAA Order 1050.1F identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 5–6.6f for regulations and involves no extraordinary circumstances.

V. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism (Aug. 4, 1999). The agency has determined this action would not have a substantial, direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, this proposed rule would not have federalism implications.

B. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. The agency has determined that it would not be a ''significant energy action'' under the executive order and would not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

C. Executive Order 13609, Promoting International Regulatory Cooperation

Executive Order 13609, Promoting International Regulatory Cooperation promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609, and has determined that this action would have no effect on international regulatory cooperation.

VI. Additional Information

A. Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The agency also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The agency may change this proposal in light of the comments it receives.

B. Confidential Business Information

Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this

NPRM. Submissions containing CBI should be sent to the person in the **FOR FURTHER INFORMATION CONTACT** section of this document. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

C. Electronic Access and Filing

A copy of this NPRM, all comments received, any final rule, and all background material may be viewed online at *https://www.regulations.gov* using the docket number listed above. A copy of this proposed rule will be placed in the docket. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded from the Office of the Federal Register's website at *https://www.federalregister.gov* and the Government Publishing Office's website at *https://www.govinfo.gov.* A copy may also be found at the FAA's Regulations and Policies website at *https://www.faa.gov/regulations_policies.*

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267–9677. Commenters must identify the docket or notice number of this rulemaking.

All documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, may be accessed in the electronic docket for this rulemaking.

List of Subjects

14 CFR Part 91

Air carrier, Air taxis, Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Charter flights, Reporting and recordkeeping requirements, Transportation.

14 CFR Part 110

Administrative practice and procedure, Air carriers, Aircraft, Aviation safety, Charter flights, Reporting and recordkeeping requirements.

14 CFR Part 119

Administrative practice and procedure, Air carriers, Aircraft, Aviation safety, Charter flights, Reporting and recordkeeping requirements.

14 CFR Part 121

Air carriers, Aircraft, Airmen, Aviation safety, Charter flights, Reporting and recordkeeping requirements, Safety, Transportation.

14 CFR Part 125

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

14 CFR Part 136

Air transportation, Aircraft, Aviation safety, National parks, Recreation and recreation areas, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Federal Aviation Administration proposes to amend chapter I of title 14, Code of Federal Regulations as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

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

Authority: 49 U.S.C. 106(f), 106(g), 40101, 40103, 40105, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, 47534, Pub. L. 114–190, 130 Stat. 615 (49 U.S.C. 44703 note); articles 12 and 29 of the Convention on International Aviation (61 Stat. 1180), (126 Stat. 11).

■ 2. Amend § 91.146 by revising the introductory text of paragraph (b) and paragraphs (b)(2), (b)(3), (b)(5), and (b)(7) to read as follows:

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

* * * * *

(b) Passenger-carrying flights in airplanes, powered-lift, or rotorcraft 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 120 of this chapter, provided the following conditions are satisfied and the limitations in paragraphs (c) and (d) of this section are not exceeded:

* * * * *

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

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

* * * * *

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

* * * * *

(7) Reimbursement of the operator of the aircraft 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;

* * * * *

■ 3. Amend § 91.147 by revising paragraph (a) to read as follows:

§ 91.147 Passenger-carrying flights for compensation or hire.

* * * * *

(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, powered-lift, or rotorcraft 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.

* * * * *

■ 4. Amend § 91.1015 by revising paragraph (a)(9) to read as follows:

§ 91.1015 Management specifications.

(a) * * *

(9) Any authorized deviation and exemption that applies to the person conducting operations under this subpart; and

* * * * *

PART 110—GENERAL REQUIREMENTS

■ 5. The authority citation for part 110 is revised to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40101, 40102, 40103, 40113, 44105, 44106, 44111, 44701–44717, 44722, 44901, 44903, 44904, 44906, 44912, 44914, 44936, 44938, 46103, 46105.

■ 6. Amend § 110.2 by revising the introductory text of the definition of ''commercial air tour'', the definitions of ''commuter operation'', ''domestic operation'', ''flag operation'', ''on-demand operation'', and ''supplemental operation'' to read as follows:

§ 110.2 Definitions.

* * * * *

Commercial air tour means a flight conducted for compensation or hire in an airplane, powered-lift, or rotorcraft 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:

* * * * *

Commuter operation means any scheduled operation conducted by any

person operating one of the following types of aircraft with a frequency of operations of at least five round trips per week on at least one route between two or more points according to the published flight schedules:

(1) Rotorcraft; or

(2) Airplanes or powered-lift that:

(i) Are not turbojet-powered;

(ii) Have a maximum passenger-seat configuration of 9 seats or less, excluding each crewmember seat; and

(iii) Have a maximum payload capacity of 7,500 pounds or less.

* * * * *

Domestic operation means any scheduled operation conducted by any person operating any aircraft described in paragraph (1) of this definition at locations described in paragraph (2) of this definition:

(1) Airplanes or powered-lift that:

(i) Are turbojet-powered;

(ii) Have a passenger-seat configuration of more than 9 passenger seats, excluding each crewmember seat; or

(iii) Have a payload capacity of more than 7,500 pounds.

(2) Locations:

(i) Between any points within the 48 contiguous States of the United States or the District of Columbia; or

(ii) Operations solely within the 48 contiguous States of the United States or the District of Columbia; or

(iii) Operations entirely within any State, territory, or possession of the United States; or

(iv) When specifically authorized by the Administrator, operations between any point within the 48 contiguous States of the United States or the District of Columbia and any specifically authorized point located outside the 48 contiguous States of the United States or the District of Columbia.

* * * * *

Flag operation means any scheduled operation conducted by any person operating any aircraft described in paragraph (1) of this definition at locations described in paragraph (2) of this definition:

(1) Airplanes or powered-lift that:

(i) Are turbojet-powered;

(ii) Have a passenger-seat configuration of more than 9 passenger seats, excluding each crewmember seat; or

(iii) Have a payload capacity of more than 7,500 pounds.

(2) Locations:

(i) Between any point within the State of Alaska or the State of Hawaii or any territory or possession of the United States and any point outside the State of Alaska or the State of Hawaii or any territory or possession of the United States, respectively; or

(ii) Between any point within the 48 contiguous States of the United States or the District of Columbia and any point outside the 48 contiguous States of the United States and the District of Columbia; or

(iii) Between any point outside the U.S. and another point outside the U.S.

* * * * *

On-demand operation means any operation for compensation or hire that is one of the following:

(1) Passenger-carrying operations conducted as a public charter under part 380 of this chapter or any operations in which the departure time, departure location, and arrival location are specifically negotiated with the customer or the customer's representative that are any of the following types of operations:

(i) Common carriage operations conducted with airplanes or powered-lift, including any that are turbojet-powered, having a passenger-seat configuration of 30 seats or fewer, excluding each crewmember seat, and a payload capacity of 7,500 pounds or less. The operations described in this paragraph do not include operations using a specific airplane or powered-lift that is also used in domestic or flag operations and that is so listed in the operations specifications as required by § 119.49(a)(4) of this chapter, for those operations are considered supplemental operations;

(ii) Noncommon or private carriage operations conducted with airplanes or powered-lift having a passenger-seat configuration of less than 20 seats, excluding each crewmember seat, and a payload capacity of less than 6,000 pounds; or

(iii) Any rotorcraft operation.

(2) Scheduled passenger-carrying operations conducted with one of the following types of aircraft, other than turbojet-powered aircraft, with a frequency of operations of less than five round trips per week on at least one route between two or more points according to the published flight schedules:

(i) Airplanes or powered-lift having a maximum passenger-seat configuration of 9 seats or less, excluding each crewmember seat, and a maximum payload capacity of 7,500 pounds or less; or

(ii) Rotorcraft.

(3) All-cargo operations conducted with airplanes or powered-lift having a payload capacity of 7,500 pounds or less, or with rotorcraft.

* * * * *

Supplemental operation means any common carriage operation for compensation or hire conducted with any aircraft described in paragraph (1) of this definition that is a type of operation described in paragraph (2) of this definition:

(1) Airplanes or powered-lift that:

(i) Have a passenger-seat configuration of more than 30 seats, excluding each crewmember seat.

(ii) Have a payload capacity of more than 7,500 pounds.

(iii) Are propeller-powered and:

(A) Have a passenger-seat configuration of more than 9 seats and less than 31 seats, excluding each crewmember seat; and

(B) Are used in domestic or flag operations but are so listed in the operations specifications as required by § 119.49(a)(4) of this chapter for such operations.

(iv) Are turbojet-powered and:

(A) Have a passenger seat configuration of 1 or more but less than 31 seats, excluding each crewmember seat; and

(B) Are used in domestic or flag operations and are so listed in the operations specifications as required by § 119.49(a)(4) of this chapter for such operations.

(2) Types of operation:

(i) Operations for which the departure time, departure location, and arrival location are specifically negotiated with the customer or the customer's representative.

(ii) All-cargo operations.

(iii) Passenger-carrying public charter operations conducted under part 380 of this chapter.

* * * * *

PART 119—CERTIFICATION: AIR CARRIERS AND COMMERCIAL OPERATORS

■ 7. The authority citation for part 119 is revised to read as follows:

Authority: Pub. L. 111–216, sec. 215 (August 1, 2010); 49 U.S.C. 106(f), 106(g), 40101, 40102, 40103, 40113, 44105, 44106, 44111, 44701–44717, 44722, 44901, 44903, 44904, 44906, 44912, 44914, 44936, 44938, 46103, 46105.

■ 8. Amend § 119.1 by revising paragraph (a)(2), adding paragraph (a)(3), and revising the introductory text of paragraph (e), paragraphs (e)(2), (e)(4)(v), (e)(5), the introductory text of paragraph (e)(7), paragraphs (e)(7)(i), (e)(7)(iii), and (e)(7)(vii), to read as follows:

§ 119.1 Applicability.

(a) * * *

(2) When common carriage is not involved, in operations of any U.S.-

registered civil airplane or powered-lift with a seat configuration of 20 or more passengers, or a maximum payload capacity of 6,000 pounds or more; or

(3) When noncommon carriage is involved, except as provided in § 91.501(b) of this chapter, or in private carriage for compensation or hire, in operations of any U.S.-registered civil airplane or powered-lift with a passenger-seat configuration of less than 20 seats and a payload capacity of less than 6,000 pounds.

* * * * *

(e) Except for operations when common carriage is not involved conducted with any airplane or powered-lift having a passenger-seat configuration of 20 seats or more, excluding any required crewmember seat, or a payload capacity of 6,000 pounds or more, this part does not apply to—

* * * * *

(2) Nonstop Commercial Air Tours that occur in an airplane, powered-lift, or rotorcraft 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 this part 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 this part, as applicable, apply.

* * * * *

(4) * * *

(v) Powered-lift or rotorcraft operations in construction or repair work (but this exception does apply to transportation to and from the site of operations); and

* * * * *

(5) Sightseeing flights conducted in hot air balloons or gliders;

* * * * *

(7) Powered-lift or rotorcraft flights conducted within a 25 statute mile radius of the airport of takeoff if—

(i) Not more than two passengers are carried in the aircraft in addition to the required flightcrew;

* * * * *

(iii) The aircraft used is certificated in the standard category and complies with the 100-hour inspection requirements of part 91 of this chapter;

* * * * *

(vii) Cargo is not carried in or on the aircraft;

* * * * *

■ 9. Amend § 119.5 by revising paragraphs (b) and (c) to read as follows:

§ 119.5 Certifications, authorizations, and prohibitions.

* * * * *

(b) A person not authorized to conduct direct air carrier operations, but authorized by the Administrator to conduct operations as a U.S. commercial operator, will be issued an Operating Certificate.

(c) A person not authorized to conduct direct air carrier operations, but authorized by the Administrator to conduct operations when common carriage is not involved as an operator of any U.S.-registered civil airplane or powered-lift with a seat configuration of 20 or more passengers, or a maximum payload capacity of 6,000 pounds or more, will be issued an Operating Certificate.

* * * * *

■ 10. Amend § 119.21 by revising the introductory text of paragraph (a) to read as follows:

§ 119.21 Commercial operators engaged in intrastate common carriage and direct air carriers.

(a) Each person who conducts airplane or powered-lift operations as a commercial operator engaged in intrastate common carriage of persons or property for compensation or hire in air commerce, or as a direct air carrier, shall comply with the certification and operations specifications requirements in subpart C of this part, and shall conduct its:

* * * * *

■ 11. Amend § 119.23 by revising the section heading, paragraphs (a) introductory text, (a)(2), and the introductory text of paragraph (b) to read as follows:

§ 119.23 Operators engaged in passenger-carrying operations, cargo operations, or both with airplanes or powered-lift when common carriage is not involved.

(a) Each person who conducts operations when common carriage is not involved with any airplane or powered-lift having a passenger-seat configuration of 20 seats or more, excluding each crewmember seat, or a payload capacity of 6,000 pounds or more, must, unless deviation authority is issued—

* * * * *

(2) Conduct its operations in accordance with the requirements of part 125 of this chapter; and

* * * * *

(b) Each person who conducts noncommon carriage (except as provided in § 91.501(b) of this chapter) or private carriage operations for compensation or hire with any airplane or powered-lift having a passenger-seat configuration of less than 20 seats, excluding each crewmember seat, and a payload capacity of less than 6,000 pounds, must—

* * * * *

■ 12. Amend § 119.49 by revising paragraphs (a)(12), (b)(12), and (c)(11) to read as follows:

§ 119.49 Contents of operations specifications.

(a) * * *

(12) Any authorized deviation or exemption from any requirement of this chapter that applies to the certificate holder.

* * * * *

(b) * * *

(12) Any authorized deviation or exemption from any requirement of this chapter that applies to the certificate holder.

* * * * *

(c) * * *

(11) Any authorized deviation or exemption from any requirement of this chapter that applies to the certificate holder.

* * * * *

■ 13. Amend § 119.65 by revising paragraphs (a)(3) and (b)(2) to read as follows:

§ 119.65 Management personnel required for operations conducted under part 121 of this chapter.

(a) * * *

(3) Chief Pilot for each category of aircraft the certificate holder uses, as listed in § 61.5(b)(1) of this chapter.

* * * * *

(b) * * *

(2) The number and type of aircraft used; and

* * * * *

■ 14. Revise § 119.67 to read as follows:

§ 119.67 Management personnel: Qualifications for operations conducted under part 121 of this chapter.

(a) *Director of Operations.* To serve as Director of Operations under § 119.65(a), a person must hold an airline transport pilot certificate and—

(1) If the certificate holder uses large aircraft, at least 3 years of supervisory or managerial experience within the last 6 years in large aircraft, in a position

that exercised operational control over any operations conducted under parts 121 or 135 of this chapter.

(2) If the certificate holder uses large aircraft, at least 3 years of experience as pilot in command under parts 121 or 135 of this chapter in large aircraft in at least one of the categories of aircraft the certificate holder uses, as listed in § 61.5(b)(1) of this chapter. In the case of a person becoming Director of Operations for the first time, he or she must have accumulated this experience as pilot in command within the past 6 years.

(3) If the certificate holder uses only small aircraft in its operations, the experience required in paragraphs (a)(1) and (2) of this section may be obtained in either large or small aircraft.

(b) *Chief Pilot.* To serve as Chief Pilot under § 119.65(a), a person must:

(1) Hold an airline transport pilot certificate with appropriate ratings in the category of aircraft that the certificate holder uses in its operations under part 121 and over which the Chief Pilot exercises responsibility; and

(2) Have at least 3 years of experience as pilot in command in the same category of aircraft that the certificate holder uses, as listed in § 61.5(b). The experience as pilot in command described in this paragraph (b)(2) must:

(i) Have occurred within the past 6 years, in the case of a person becoming a Chief Pilot for the first time.

(ii) Have occurred in large aircraft operated under parts 121 or 135 of this chapter. If the certificate holder uses only small aircraft in its operation, this experience may be obtained in either large or small aircraft.

(iii) Be in the same category of aircraft over which the Chief Pilot exercises responsibility.

(c) *Director of Maintenance.* To serve as Director of Maintenance under § 119.65(a), a person must:

(1) Hold a mechanic certificate with airframe and powerplant ratings;

(2) Have 1 year of experience in a position responsible for returning aircraft to service;

(3) Have at least 1 year of experience in a supervisory capacity under either paragraph (c)(4)(i) or (ii) of this section maintaining the same category and class of aircraft as the certificate holder uses; and

(4) Have 3 years of experience within the past 6 years in one or a combination of the following—

(i) Maintaining large aircraft with 10 or more passenger seats, including, at the time of appointment as Director of Maintenance, experience in maintaining the same category and class of aircraft as the certificate holder uses; or

(ii) Repairing aircraft in a certificated airframe repair station that is rated to maintain aircraft in the same category and class of aircraft as the certificate holder uses.

(d) *Chief Inspector.* To serve as Chief Inspector under § 119.65(a), a person must:

(1) Hold a mechanic certificate with both airframe and powerplant ratings, and have held these ratings for at least 3 years;

(2) Have at least 3 years of maintenance experience on different types of large aircraft with 10 or more passenger seats with an air carrier or certificated repair station, 1 year of which must have been as maintenance inspector; and

(3) Have at least 1 year of experience in a supervisory capacity maintaining the same category and class of aircraft as the certificate holder uses.

(e) *Deviation.* A certificate holder may request a deviation to employ a person who does not meet the appropriate airman experience, managerial experience, or supervisory experience requirements of this section if the Manager of the Air Transportation Division or the Manager of the Aircraft Maintenance Division, as appropriate, finds that the person has comparable experience and can effectively perform the functions associated with the position in accordance with the requirements of this chapter and the procedures outlined in the certificate holder's manual. Deviations under this paragraph may be granted after consideration of the size and scope of the operation and the qualifications of the intended personnel. The Administrator may, at any time, terminate any grant of deviation authority issued under this paragraph (e).

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

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

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40113, 40119, 41706, 42301 preceding note added by Pub. L. 112–95, sec. 412, 126 Stat. 89, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44729, 44732; 46105; Pub. L. 111–216, 124 Stat. 2348 (49 U.S.C. 44701 note); Pub. L. 112–95 126 Stat 62 (49 U.S.C. 44732 note).

■ 16. Amend § 121.1 by revising paragraphs (c) and (g) to read as follows:

§ 121.1 Applicability.

* * * * *

(c) Each person who applies for provisional approval of an Advanced Qualification Program curriculum, curriculum segment, or portion of a curriculum segment under subpart Y of this part, and each person employed or used by an air carrier or commercial operator under this part to perform training, qualification, or evaluation functions under an Advanced Qualification Program under subpart Y of this part.

* * * * *

(g) This part also establishes requirements for operators to take actions to support the continued airworthiness of each aircraft.

§ 121.470 [Amended]

■ 18. Amend § 121.470 in paragraphs (a) and (b) by removing the word ''airplanes'' and adding, in its place, the word ''aircraft''.

§ 121.480 [Amended]

■ 19. Amend § 121.480 in paragraph (a) by removing the word ''airplanes'' and adding, in its place, the word ''aircraft''.

§ 121.500 [Amended]

■ 20. Amend § 121.500 in paragraph (a) by removing the word ''airplanes'' and adding, in its place, the word ''aircraft''.

PART 125—[Amended]

PART 125—CERTIFICATION AND OPERATIONS: AIRCRAFT HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE; AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

■ 21. The authority citation for part 125 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701–44702, 44705, 44710–44711, 44713, 44716–44717, 44722.

■ 22. The heading for part 125 is revised as set forth above.

■ 23. Amend § 125.1 by revising paragraph (a), the introductory text of paragraph (b), paragraphs (b)(4), (c), and (e) to read as follows:

§ 125.1 Applicability.

(a) Except as provided in paragraphs (b) through (d) of this section, this part prescribes rules governing the operations of U.S.-registered civil airplanes and powered-lift, when those aircraft have a seating configuration of 20 or more passengers or a maximum payload capacity of 6,000 pounds or more when common carriage is not involved.

(b) The rules of this part do not apply to the operations of aircraft specified in paragraph (a) of this section, when—

* * * * *

(4) They are being operated under part 91 by an operator certificated to operate those aircraft under the rules of parts 121, 135, or 137 of this chapter, they are being operated under the applicable rules of part 121 or 135 of this chapter by an applicant for a certificate under part 119 of this chapter, or they are being operated by a foreign air carrier or a foreign person engaged in common carriage solely outside the United States under part 91 of this chapter;

* * * * *

(c) This part, except § 125.247, does not apply to the operation of aircraft specified in paragraph (a) of this section when they are operated outside the United States by a person who is not a citizen of the United States.

* * * * *

(e) This part also establishes requirements for operators to take actions to support the continued airworthiness of each aircraft.

■ 24. Revise the introductory text of § 125.23 to read as follows:

§ 125.23 Rules applicable to operations subject to this part.

Each person operating an aircraft in operations under this part shall—

* * * * *

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

■ 25. The authority citation for part 136 is revised to read as follows:

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

■ 26. Amend § 136.1:

■ a. By revising paragraph (a), the introductory text of paragraph (b), and paragraph (c); and

■ b. In paragraph (d):

■ i. By revising the introductory text of the definition of ''commercial air tour'';

■ ii. By removing the definition of ''suitable landing area for helicopters''; and

■ iii. By adding the definition of ''suitable landing area for rotorcraft''

The revisions and addition read as follows:

§ 136.1 Applicability and definitions.

(a) This subpart applies to each person operating or intending to operate a commercial air tour in an airplane, powered-lift, or rotorcraft and, when applicable, to all occupants of those aircraft 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) This subpart applies to:

* * * * *

(c) This subpart does not apply to operations conducted in balloons, gliders (powered and un-powered), parachutes (powered and un-powered), gyroplanes, or airships.

(d) * * *

Commercial Air Tour means a flight conducted for compensation or hire in an airplane, powered-lift, or rotorcraft 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:

* * * * *

Suitable landing area for rotorcraft means an area that provides the operator reasonable capability to land in an emergency without causing serious injury to persons. This suitable landing area must be site-specific, designated by the operator, and accepted by the FAA.

* * * * *

■ 27. Revise § 136.3 to read as follows:

§ 136.3 Letters of Authorization.

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

■ 28. Revise § 136.5 to read as follows:

§ 136.5 Additional requirements for Hawaii.

Any operator subject to this subpart who meets the criteria of § 136.71 must comply with the additional requirements and restrictions in subpart D of this part.

■ 29. In § 136.9, revise the section heading and paragraphs (b)(1) through (b)(3) to read as follows:

§ 136.9 Life preservers for operations over water.

* * * * *

(b) * * *

(1) The aircraft is equipped with floats;

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

(3) The aircraft is a multiengine 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 approved aircraft flight manual for that aircraft.

* * * * *

■ 30. Revise § 136.11 to read as follows:

§ 136.11 Rotorcraft floats for over water.

(a) A rotorcraft 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 rotorcraft; or

(2) It is a multi-engine rotorcraft 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 approved aircraft flight manual for that aircraft.

(b) Each rotorcraft that is required to be equipped with an inflatable flotation system under this section 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 rotorcraft is over water beyond the shoreline and is flying at a speed that does not exceed the maximum speed prescribed in the approved aircraft flight manual for flying with the flotation system armed.

(c) Neither fixed floats nor an inflatable flotation system is required for a rotorcraft under this section when that rotorcraft is:

(1) Over water only during the takeoff or landing portion of the flight; or

(2) 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.

■ 31. Revise § 136.13 to read as follows:

§ 136.13 Performance plan.

(a) Each operator that uses a rotorcraft must complete a performance plan before each commercial air tour or flight operated under §§ 91.146 or 91.147 of this chapter. The pilot in command must review for accuracy and comply with the performance plan on the day the flight occurs. The performance plan must be based on information in the approved aircraft flight manual for that aircraft 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 approved aircraft flight manual 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 rotorcraft 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 rotorcraft in compliance with the plan described in paragraph (b) of this section.

Appendix A to Part 136—[Removed]

■ 32. Remove Appendix A to part 136.

■ 33. Add new subpart D to part 136 to read as follows:

Subpart D—Special Operating Rules for Air Tour Operators in the State of Hawaii

Sec.
136.71 Applicability.
136.73 Definitions.
136.75 Equipment and requirements.

Subpart D—Special Operating Rules for Air Tour Operators in the State of Hawaii

§ 136.71 Applicability.

(a) Except as provided in paragraph (b) of this section, this subpart prescribes operating rules for air tour flights conducted in airplanes, powered-lift, or rotorcraft under visual flight rules in the State of Hawaii pursuant to parts 91, 121, and 135 of this chapter.

(b) This subpart does not apply to:

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

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

§ 136.73 Definitions.

For the purposes of this subpart:

Air tour means any sightseeing flight conducted under visual flight rules in an airplane, powered-lift, or rotorcraft for compensation or hire.

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

§ 136.75 Equipment and requirements.

(a) *Flotation equipment.* No person may conduct an air tour in Hawaii in a rotorcraft beyond the shore of any island, regardless of whether the rotorcraft is within gliding distance of the shore, unless:

(1) The rotorcraft 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

(2) Each person on board the rotorcraft is wearing approved flotation gear.

(b) *Performance plan.* Each operator must complete a performance plan that meets the requirements of this paragraph (b) before each air tour flight conducted in a rotorcraft.

(1) The performance plan must be based on information from the current approved aircraft flight manual for that aircraft, considering the maximum density altitude for which the operation is planned to determine the following:

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

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

(iii) Maximum combination of weight, altitude, and temperature for which height-velocity information from the performance data is valid.

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

(c) *Operating limitations.* Except for approach to and transition from a hover, and except for the purpose of takeoff and landing, the PIC of a rotorcraft may only operate such aircraft 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 rotorcraft under current weight and aircraft altitude.

(d) *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:

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

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

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

(e) *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 §§ 91.107, 121.571, or 135.117 of this chapter:

(1) Water ditching procedures;

(2) Use of required flotation equipment; and

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

Issued in Washington, DC, under the authority of 49 U.S.C. 106(f) and 44701(a), on November 21, 2022.

Jodi L. Baker,

Deputy Associate Administrator, Aviation Safety.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R03–RCRA–2022–0280; FRL–9951–01–R3]

Delaware: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The State of Delaware has applied to Environmental Protection Agency (EPA) for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). By this action, EPA proposes to grant final authorization to Delaware. In the ''Rules and Regulations'' section of this **Federal Register**, EPA is authorizing the revisions by a direct final rule. EPA did not make a proposal prior to the direct final rule because EPA believes this action is not controversial and does not expect comments that oppose it. EPA has explained the reasons for this authorization in the preamble to the direct final rule. Unless EPA receives written adverse comments pertaining to this State revision during the comment period, the direct final rule will become effective on the date it establishes, and EPA will not take further action on this proposed rulemaking. However, if EPA receives adverse comments pertaining to this State revision, EPA will publish a timely withdrawal in the **Federal Register**, and this direct final rule will not take effect. EPA will then respond to public comments in a later final rule based on this proposed rulemaking. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

DATES: Send written comments by January 6, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–RCRA–2022–0351, at *www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from