

with this appendix for any airplane until August 13, 2008.

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

Subpart A—National Air Tour Safety Standards

Sec.

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

Subpart B—National Parks Air Tour Management

- 136.31 Applicability.
- 136.33 Definitions.
- 136.35 Prohibition of commercial air tour operations over the Rocky Mountain National Park.
- 136.37 Overflights of national parks and tribal lands.
- 136.39 Air tour management plans (ATMP).
- 136.41 Interim operating authority.
- 136.43-136.49 [Reserved]

Subpart C—Grand Canyon National Park

- 136.51-136.69 [Reserved]

APPENDIX A TO PART 136—SPECIAL OPERATING RULES FOR AIR TOUR OPERATORS IN THE STATE OF HAWAII

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

SOURCE: Docket No. FAA-2001-8690, 67 FR 65667, Oct. 25, 2002, unless otherwise noted.

Subpart A—National Air Tour Safety Standards

SOURCE: Docket No. FAA-1998-4521, 72 FR 6912, Feb. 13, 2007, unless otherwise noted.

§ 136.1 Applicability and definitions.

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

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

- (1) Part 121 or 135 operators conducting a commercial air tour and holding a part 119 certificate;
- (2) Part 91 operators conducting flights as described in § 119.1(e)(2); and
- (3) Part 91 operators conducting flights as described in 14 CFR 91.146

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

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

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

- (1) Whether there was a holding out to the public of willingness to conduct a sightseeing flight for compensation or hire;
- (2) Whether the person offering the flight provided a narrative that referred to areas or points of interest on the surface below the route of the flight;
- (3) The area of operation;
- (4) How often the person offering the flight conducts such flights;
- (5) The route of the flight;
- (6) The inclusion of sightseeing flights as part of any travel arrangement package;
- (7) Whether the flight in question would have been canceled based on poor visibility of the surface below the route of the flight; and
- (8) Any other factors that the FAA considers appropriate.

§ 136.3

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

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

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

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

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

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

§ 136.3 Letters of Authorization.

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

14 CFR Ch. I (1–1–20 Edition)

§ 136.5 Additional requirements for Hawaii.

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

§ 136.7 Passenger briefings.

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

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

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

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

§ 136.9 Life preservers for over water.

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

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

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

(3) The aircraft is a multi engine that can be operated with the critical engine inoperative at a weight that will allow it to climb, at least 50 feet a minute, at an altitude of 1,000 feet above the surface, as provided in the Airplane Flight Manual or the Rotorcraft Flight Manual, as appropriate.

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

§ 136.11 Helicopter floats for over water.

(a) A helicopter used in commercial air tours over water beyond the shoreline must be equipped with fixed floats or an inflatable flotation system adequate to accomplish a safe emergency ditching, if—

- (1) It is a single-engine helicopter; or
- (2) It is a multi-engine helicopter that cannot be operated with the critical engine inoperative at a weight that will allow it to climb, at least 50 feet a minute, at an altitude of 1,000 feet above the surface, as provided in the Rotorcraft Flight Manual (RFM).

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

- (1) The activation switch for the flotation system on one of the primary flight controls, and
- (2) The flotation system armed when the helicopter is over water and is flying at a speed that does not exceed the maximum speed prescribed in the Rotorcraft Flight Manual for flying with the flotation system armed.

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

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

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

§ 136.13 Helicopter performance plan and operations.

(a) Each operator must complete a performance plan before each helicopter commercial air tour, or flight operated under 14 CFR 91.146 or 91.147. The pilot in command must review for accuracy and comply with the performance plan on the day the flight is flown. The performance plan must be based on the information in the Rotorcraft Flight Manual (RFM) for that helicopter, taking into consideration

the maximum density altitude for which the operation is planned, in order to determine:

- (1) Maximum gross weight and center of gravity (CG) limitations for hovering in ground effect;
- (2) Maximum gross weight and CG limitations for hovering out of ground effect; and
- (3) Maximum combination of weight, altitude, and temperature for which height/velocity information in the RFM is valid.

(b) Except for the approach to and transition from a hover for the purpose of takeoff and landing, or during takeoff and landing, the pilot in command must make a reasonable plan to operate the helicopter outside of the caution/warning/avoid area of the limiting height/velocity diagram.

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

§§ 136.15–136.29 [Reserved]**Subpart B—National Parks Air Tour Management**

SOURCE: Docket No. FAA-1998-4521, 72 FR 6912, Feb. 13, 2007, unless otherwise noted.

§ 136.31 Applicability.

(a) This part restates and paraphrases several sections of the National Parks Air Tour Management Act of 2000, including section 803 (codified at 49 U.S.C. 40128) and sections 806 and 809. This subpart clarifies the requirements for the development of an air tour management plan for each park in the national park system where commercial air tour operations are flown.

(b) Except as provided in paragraph (c) of this section, this subpart applies to each commercial air tour operator who conducts a commercial air tour operation over—

- (1) A unit of the national park system;
- (2) Tribal lands as defined in this subpart; or

§ 136.33

14 CFR Ch. I (1–1–20 Edition)

(3) Any area within one-half mile outside the boundary of any unit of the national park system.

(c) This subpart does not apply to a commercial air tour operator conducting a commercial air tour operation—

(1) Over the Grand Canyon National Park;

(2) Over that portion of tribal lands within or abutting the Grand Canyon National Park;

(3) Over any land or waters located in the State of Alaska; or

(4) While flying over or near the Lake Mead Recreation Area, solely as a transportation route, to conduct a commercial air tour over the Grand Canyon National Park.

[Doc. No. FAA–2001–8690, 67 FR 65667, Oct. 25, 2002. Redesignated and amended by Amdt. 136–1, 72 FR 6912, Feb. 13, 2007]

§ 136.33 Definitions.

For purposes of this subpart—

(a) *Commercial air tour operator* means any person who conducts a commercial air tour operation.

(b) *Existing commercial air tour operator* means a commercial air tour operator that was actively engaged in the business of providing commercial air tour operations over a national park at any time during the 12-month period ending on April 5, 2000.

(c) *New entrant commercial air tour operator* means a commercial air tour operator that—

(1) Applies for operating authority as a commercial air tour operator for a national park or tribal lands; and

(2) Has not engaged in the business of providing commercial air tour operations over the national park or tribal lands for the 12-month period preceding enactment.

(d) *Commercial air tour operation*—

(1) Means any flight, conducted for compensation or hire in a powered aircraft where a purpose of the flight is sightseeing over a national park, within ½ mile outside the boundary of any national park, or over tribal lands, during which the aircraft flies—

(i) Below 5,000 feet above ground level (except for the purpose of takeoff or landing, or as necessary for the safe operation of an aircraft as determined under the rules and regulations of the

Federal Aviation Administration requiring the pilot-in-command to take action to ensure the safe operation of the aircraft);

(ii) Less than 1 mile laterally from any geographic feature within the park (unless more than ½ mile outside the boundary); or

(iii) Except as provided in § 136.35.

(2) The Administrator may consider the following factors in determining whether a flight is a commercial air tour operation for purposes of this subpart—

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

(ii) Whether a narrative that referred to areas or points of interest on the surface below the route of the flight was provided by the person offering the flight;

(iii) The area of operation;

(iv) The frequency of flights conducted by the person offering the flight;

(v) The route of flight;

(vi) The inclusion of sightseeing flights as part of any travel arrangement package offered by the person offering the flight;

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

(viii) Any other factors that the Administrator and Director consider appropriate.

(3) For purposes of § 136.35, means any flight conducted for compensation or hire in a powered aircraft where a purpose of the flight is sightseeing over a national park.

(e) *National park* means any unit of the national park system. (See title 16 of the U.S. Code, section 1, *et seq.*)

(f) *Tribal lands* means that portion of Indian country (as that term is defined in section 1151 of title 18 of the U.S. Code) that is within or abutting a national park.

(g) *Administrator* means the Administrator of the Federal Aviation Administration.

(h) *Director* means the Director of the National Park Service.

(i) *Superintendent* means the duly appointed representative of the National

Park Service for a particular unit of the national park system.

[Doc. No. FAA-2001-8690, 67 FR 65667, Oct. 25, 2002. Redesignated and amended by Amdt. 136-1, 72 FR 6912, Feb. 13, 2007; Amdt. 136-1, 72 FR 31450, June 7, 2007]

§ 136.35 Prohibition of commercial air tour operations over the Rocky Mountain National Park.

All commercial air tour operations in the airspace over the Rocky Mountain National Park are prohibited regardless of altitude.

[Doc. No. FAA-2001-8690, 67 FR 65667, Oct. 25, 2002. Redesignated by Amdt. 136-1, 72 FR 6912, Feb. 13, 2007]

§ 136.37 Overflights of national parks and tribal lands.

(a) *General.* A commercial air tour operator may not conduct commercial air tour operations over a national park or tribal land except—

- (1) In accordance with this section;
- (2) In accordance with conditions and limitations prescribed for that operator by the Administrator; and
- (3) In accordance with any applicable air tour management plan for the park or tribal lands.

(b) *Application for operating authority.* Before commencing commercial air tour operations over a national park or tribal lands, a commercial air tour operator shall apply to the Administrator for authority to conduct the operations over the park or tribal lands.

(c) *Number of operations authorized.* In determining the number of authorizations to issue to provide commercial air tour operations over a national park, the Administrator, in cooperation with the Director, shall take into consideration the provisions of the air tour management plan, the number of existing commercial air tour operators and current level of service and equipment provided by any such operators, and the financial viability of each commercial air tour operation.

(d) *Cooperation with National Park Service.* Before granting an application under this subpart, the Administrator, in cooperation with the Director, shall develop an air tour management plan in accordance with § 136.39 and implement such a plan.

(e) *Time limit on response to applications.* Every effort will be made to act on any application under this subpart and issue a decision on the application not later than 24 months after it is received or amended.

(f) *Priority.* In acting on applications under this paragraph to provide commercial air tour operations over a national park, the Administrator shall give priority to an application under this paragraph in any case where a new entrant commercial air tour operator is seeking operating authority with respect to that national park.

(g) *Exception.* Notwithstanding this section, commercial air tour operators may conduct commercial air tour operations over a national park under part 91 of this chapter if—

- (1) Such activity is permitted under part 119 of this chapter;
- (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 operations under this exception is limited to not more than a total of 5 flights by all operators in any 30-day period over a particular park.

(h) *Special rule for safety requirement.* Notwithstanding § 136.41, an existing commercial air tour operator shall apply, not later than January 23, 2003 for operating authority under part 119 of this chapter, for certification under part 121 or part 135 of this chapter. A new entrant commercial air tour operator shall apply for such authority before conducting commercial air tour operations over a national park or tribal lands that are within or abut a national park. The Administrator shall make every effort to act on such application for a new entrant and issue a decision on the application not later than 24 months after it is received or amended.

[Doc. No. FAA-2001-8690, 67 FR 65667, Oct. 25, 2002. Redesignated and amended by Amdt. 136-1, 72 FR 6912, Feb. 13, 2007; Amdt. 136-1, 72 FR 31450, June 7, 2007]

§ 136.39 Air tour management plans (ATMP).

(a) *Establishment.* The Administrator, in cooperation with the Director, shall

establish an air tour management plan for any national park or tribal land for which such a plan is not in effect whenever a person applies for authority to conduct a commercial air tour operation over the park. The air tour management plan shall be developed by means of a public process in accordance with paragraph (d) of this section. The objective of any air tour management plan is to develop acceptable and effective measures to mitigate or prevent the significant adverse impacts, if any, of commercial air tour operations upon the natural and cultural resources, visitor experiences, and tribal lands.

(b) *Environmental determination.* In establishing an air tour management plan under this section, the Administrator and the Director shall each sign the environmental decision document required by section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) which may include a finding of no significant impact, an environmental assessment, or an environmental impact statement and the record of decision for the air tour management plan.

(c) *Contents.* An air tour management plan for a park—

(1) May prohibit commercial air tour operations in whole or in part;

(2) May establish conditions for the conduct of commercial air tour operations, including, but not limited to, commercial air tour routes, maximum number of flights per unit of time, maximum and minimum altitudes, time of day restrictions, restrictions for particular events, intrusions on privacy on tribal lands, and mitigation of noise, visual, or other impacts;

(3) Shall apply to all commercial air tour operations within ½ mile outside the boundary of a national park;

(4) Shall include incentives (such as preferred commercial air tour routes and altitudes, and relief from caps and curfews) for the adoption of quiet technology aircraft by commercial air tour operators conducting commercial air tour operations at the park;

(5) Shall provide for the initial allocation of opportunities to conduct commercial air tour operations if the plan includes a limitation on the num-

ber of commercial air tour operations for any time period; and

(6) Shall justify and document the need for measures taken pursuant to paragraphs (c)(1) through (c)(5) of this section and include such justification in the record of decision.

(d) *Procedure.* In establishing an ATMP for a national park or tribal lands, the Administrator and Director shall—

(1) Hold at least one public meeting with interested parties to develop the air tour management plan;

(2) Publish the proposed plan in the FEDERAL REGISTER for notice and comment and make copies of the proposed plan available to the public;

(3) Comply with the regulations set forth in 40 CFR 1501.3 and 1501.5 through 1501.8 (for the purposes of complying with 40 CFR 1501.3 and 1501.5 through 1501.8, the Federal Aviation Administration is the lead agency and the National Park Service is a cooperating agency); and

(4) Solicit the participation of any Indian tribe whose tribal lands are, or may be, overflowed by aircraft involved in a commercial air tour operation over the park or tribal lands to which the plan applies, as a cooperating agency under the regulations referred to in paragraph (d)(3) of this section.

(e) *Amendments.* The Administrator, in cooperation with the Director, may make amendments to an air tour management plan. Any such amendments will be published in the FEDERAL REGISTER for notice and comment. A request for amendment of an ATMP will be made in accordance with § 11.25 of this chapter as a petition for rule-making.

[Doc. No. FAA-2001-8690, 67 FR 65667, Oct. 25, 2002. Redesignated by Amdt. 136-1, 72 FR 6912, Feb. 13, 2007]

§ 136.41 Interim operating authority.

(a) *General.* Upon application for operating authority, the Administrator shall grant interim operating authority under this section to a commercial air tour operator for commercial air tour operations over a national park or tribal land for which the operator is an existing commercial air tour operator.

(b) *Requirements and limitations.* Interim operating authority granted under this section—

(1) Shall provide annual authorization only for the greater of—

(i) The number of flights used by the operator to provide the commercial air tour operations within the 12-month period prior to April 5, 2000; or

(ii) The average number of flights per 12-month period used by the operator to provide such operations within the 36-month period prior to April 5, 2000, and for seasonal operations, the number of flights so used during the season or seasons covered by that 12-month period;

(2) May not provide for an increase in the number of commercial air tour operations conducted during any time period by the commercial air tour operator above the number the air tour operator was originally granted unless such an increase is agreed to by the Administrator and the Director;

(3) Shall be published in the FEDERAL REGISTER to provide notice and opportunity for comment;

(4) May be revoked by the Administrator for cause;

(5) Shall terminate 180 days after the date on which an air tour management plan is established for the park and tribal lands;

(6) Shall promote protection of national park resources, visitor experiences, and tribal lands;

(7) Shall promote safe commercial air tour operations;

(8) Shall promote the adoption of quiet technology, as appropriate, and

(9) Shall allow for modifications of the interim operating authority based on experience if the modification improves protection of national park resources and values and of tribal lands.

(c) *New entrant operators.* The Administrator, in cooperation with the Director, may grant interim operating authority under this paragraph (c) to an air tour operator for a national park or tribal lands for which that operator is a new entrant air tour operator if the Administrator determines the authority is necessary to ensure competition in the provision of commercial air tour operations over the park or tribal lands.

(1) *Limitation.* The Administrator may not grant interim operating authority under this paragraph (c) if the Administrator determines that it would create a safety problem at the park or on the tribal lands, or if the Director determines that it would create a noise problem at the park or on the tribal lands.

(2) *ATMP limitation.* The Administrator may grant interim operating authority under this paragraph (c) only if the ATMP for the park or tribal lands to which the application relates has not been developed within 24 months after April 5, 2000.

[Doc. No. FAA-2001-8690, 67 FR 65667, Oct. 25, 2002. Redesignated by Amdt. 136-1, 72 FR 6912, Feb. 13, 2007]

§§ 136.43–136.49 [Reserved]

Subpart C—Grand Canyon National Park

§§ 136.51–136.69 [Reserved]

APPENDIX A TO PART 136—SPECIAL OPERATING RULES FOR AIR TOUR OPERATORS IN THE STATE OF HAWAII

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 5. Helicopter Operating Limitations. Except for approach to and transition from a hover, and except for the purpose of takeoff and landing, the PIC shall operate the helicopter at a combination of height and forward speed (including hover) that would permit a safe landing in event of engine power loss, in accordance with the height-speed envelope for that helicopter under current weight and aircraft altitude.

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

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

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

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

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

(a) Water ditching procedures;

(b) Use of required flotation equipment; and

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

[Doc. No. FAA–1998–4521, 72 FR 6914, Feb. 13, 2007]

PART 137—AGRICULTURAL AIRCRAFT OPERATIONS

Subpart A—General

Sec.

137.1 Applicability.

137.3 Definition of terms.

Subpart B—Certification Rules

137.11 Certificate required.

137.15 Application for certificate.

137.17 Amendment of certificate.

137.19 Certification requirements.

137.21 Duration of certificate.

137.23 Carriage of narcotic drugs, marijuana, and depressant or stimulant drugs or substances.

Subpart C—Operating Rules

137.29 General.

137.31 Aircraft requirements.

137.33 Carrying of certificate.

137.35 Limitations on private agricultural aircraft operator.

137.37 Manner of dispensing.

137.39 Economic poison dispensing.

137.40 Employment of former FAA employees.

137.41 Personnel.

137.42 Fastening of safety belts and shoulder harnesses.

137.43 Operations in controlled airspace designated for an airport.

137.45 Nonobservance of airport traffic pattern.

137.47 Operation without position lights.

137.49 Operations over other than congested areas.

137.51 Operation over congested areas: General.

137.53 Operation over congested areas: Pilots and aircraft.

137.55 Business name: Commercial agricultural aircraft operator.

137.57 Availability of certificate.

137.59 Inspection authority.

Subpart D—Records and Reports

137.71 Records: Commercial agricultural aircraft operator.

137.75 Change of address.

137.77 Termination of operations.

AUTHORITY: 49 U.S.C. 106(g), 40103, 40113, 44701–44702.

SOURCE: Docket No. 1464, 30 FR 8106, June 24, 1965, unless otherwise noted.

Subpart A—General

§ 137.1 Applicability.

(a) This part prescribes rules governing—

(1) Agricultural aircraft operations within the United States; and

(2) The issue of commercial and private agricultural aircraft operator certificates for those operations.