

106TH CONGRESS
1ST SESSION

H. R. 717

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 28, 1999

Received; read twice and referred to the Committee on Commerce, Science,
and Transportation

AN ACT

To amend title 49, United States Code, to regulate
overflights of national parks, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “National Parks Air
3 Tour Management Act of 1999”.

4 **SEC. 2. FINDINGS.**

5 Congress finds that—

6 (1) the Federal Aviation Administration has
7 sole authority to control airspace over the United
8 States;

9 (2) the Federal Aviation Administration has the
10 authority to preserve, protect, and enhance the envi-
11 ronment by minimizing, mitigating, or preventing
12 the adverse effects of aircraft overflights of public
13 and tribal lands;

14 (3) the National Park Service has the responsi-
15 bility of conserving the scenery and natural and his-
16 toric objects and wildlife in national parks and of
17 providing for the enjoyment of the national parks in
18 ways that leave the national parks unimpaired for
19 future generations;

20 (4) the protection of tribal lands from aircraft
21 overflights is consistent with protecting the public
22 health and welfare and is essential to the mainte-
23 nance of the natural and cultural resources of In-
24 dian tribes;

25 (5) the National Parks Overflights Working
26 Group, composed of general aviation, commercial air

1 tour, environmental, and Native American represent-
2 atives, recommended that the Congress enact legisla-
3 tion based on the Group’s consensus work product;
4 and

5 (6) this Act reflects the recommendations made
6 by that Group.

7 **SEC. 3. AIR TOUR MANAGEMENT PLANS FOR NATIONAL**
8 **PARKS.**

9 (a) IN GENERAL.—Chapter 401 of title 49, United
10 States Code, is amended by adding at the end the fol-
11 lowing:

12 **“§ 40125. Overflights of national parks**

13 “(a) IN GENERAL.—

14 “(1) GENERAL REQUIREMENTS.—A commercial
15 air tour operator may not conduct commercial air
16 tour operations over a national park (including tribal
17 lands) except—

18 “(A) in accordance with this section;

19 “(B) in accordance with conditions and
20 limitations prescribed for that operator by the
21 Administrator; and

22 “(C) in accordance with any applicable air
23 tour management plan for the park.

24 “(2) APPLICATION FOR OPERATING AUTHOR-
25 ITY.—

1 “(A) APPLICATION REQUIRED.—Before
2 commencing commercial air tour operations
3 over a national park (including tribal lands), a
4 commercial air tour operator shall apply to the
5 Administrator for authority to conduct the op-
6 erations over the park.

7 “(B) COMPETITIVE BIDDING FOR LIMITED
8 CAPACITY PARKS.—Whenever an air tour man-
9 agement plan limits the number of commercial
10 air tour operations over a national park during
11 a specified time frame, the Administrator, in
12 cooperation with the Director, shall issue oper-
13 ation specifications to commercial air tour oper-
14 ators that conduct such operations. The oper-
15 ation specifications shall include such terms and
16 conditions as the Administrator and the Direc-
17 tor find necessary for management of commer-
18 cial air tour operations over the park. The Ad-
19 ministrator, in cooperation with the Director,
20 shall develop an open competitive process for
21 evaluating proposals from persons interested in
22 providing commercial air tour operations over
23 the park. In making a selection from among
24 various proposals submitted, the Administrator,

1 in cooperation with the Director, shall consider
2 relevant factors, including—

3 “(i) the safety record of the person
4 submitting the proposal or pilots employed
5 by the person;

6 “(ii) any quiet aircraft technology pro-
7 posed to be used by the person submitting
8 the proposal;

9 “(iii) the experience of the person sub-
10 mitting the proposal with commercial air
11 tour operations over other national parks
12 or scenic areas;

13 “(iv) the financial capability of the
14 company;

15 “(v) any training programs for pilots
16 provided by the person submitting the pro-
17 posal; and

18 “(vi) responsiveness of the person
19 submitting the proposal to any relevant
20 criteria developed by the National Park
21 Service for the affected park.

22 “(C) NUMBER OF OPERATIONS AUTHOR-
23 IZED.—In determining the number of author-
24 izations to issue to provide commercial air tour
25 operations over a national park, the Adminis-

1 trator, in cooperation with the Director, shall
2 take into consideration the provisions of the air
3 tour management plan, the number of existing
4 commercial air tour operators and current level
5 of service and equipment provided by any such
6 operators, and the financial viability of each
7 commercial air tour operation.

8 “(D) COOPERATION WITH NPS.—Before
9 granting an application under this paragraph,
10 the Administrator, in cooperation with the Di-
11 rector, shall develop an air tour management
12 plan in accordance with subsection (b) and im-
13 plement such plan.

14 “(3) EXCEPTION.—

15 “(A) IN GENERAL.—If a commercial air
16 tour operator secures a letter of agreement
17 from the Administrator and the superintendent
18 for the national park that describes the condi-
19 tions under which the commercial air tour oper-
20 ation will be conducted, then notwithstanding
21 paragraph (1), the commercial air tour operator
22 may conduct such operations over the national
23 park under part 91 of title 14, Code of Federal
24 Regulations, if such activity is permitted under
25 part 119 of such title.

1 “(B) LIMIT ON EXCEPTIONS.—Not more
2 than 5 flights in any 30-day period over a sin-
3 gle national park may be conducted under this
4 paragraph.

5 “(4) SPECIAL RULE FOR SAFETY REQUIRE-
6 MENTS.—Notwithstanding subsection (c), an exist-
7 ing commercial air tour operator shall apply, not
8 later than 90 days after the date of the enactment
9 of this section, for operating authority under part
10 119, 121, or 135 of title 14, Code of Federal Regu-
11 lations. A new entrant commercial air tour operator
12 shall apply for such authority before conducting
13 commercial air tour operations over a national park
14 (including tribal lands). The Administrator shall act
15 on any such application for a new entrant and issue
16 a decision on the application not later than 24
17 months after it is received or amended.

18 “(b) AIR TOUR MANAGEMENT PLANS.—

19 “(1) ESTABLISHMENT.—

20 “(A) IN GENERAL.—The Administrator, in
21 cooperation with the Director, shall establish an
22 air tour management plan for any national park
23 (including tribal lands) for which such a plan is
24 not in effect whenever a person applies for au-
25 thority to conduct a commercial air tour oper-

1 ation over the park. The air tour management
2 plan shall be developed by means of a public
3 process in accordance with paragraph (4).

4 “(B) OBJECTIVE.—The objective of any
5 air tour management plan shall be to develop
6 acceptable and effective measures to mitigate or
7 prevent the significant adverse impacts, if any,
8 of commercial air tours upon the natural and
9 cultural resources, visitor experiences, and trib-
10 al lands.

11 “(2) ENVIRONMENTAL DETERMINATION.—In
12 establishing an air tour management plan under this
13 subsection, the Administrator and the Director shall
14 each sign the environmental decision document re-
15 quired by section 102 of the National Environmental
16 Policy Act of 1969 (42 U.S.C. 4332) (including a
17 finding of no significant impact, an environmental
18 assessment, and an environmental impact statement)
19 and the record of decision for the air tour manage-
20 ment plan.

21 “(3) CONTENTS.—An air tour management
22 plan for a national park—

23 “(A) may limit or prohibit commercial air
24 tour operations;

1 “(B) may establish conditions for the con-
2 duct of commercial air tour operations, includ-
3 ing commercial air tour operation routes, max-
4 imum or minimum altitudes, time-of-day re-
5 strictions, restrictions for particular events,
6 maximum number of flights per unit of time,
7 intrusions on privacy on tribal lands, and miti-
8 gation of adverse noise, visual, or other im-
9 pacts;

10 “(C) may apply to all commercial air tour
11 operations;

12 “(D) shall include incentives (such as pre-
13 ferred commercial air tour operation routes and
14 altitudes and relief from flight caps and cur-
15 fews) for the adoption of quiet aircraft tech-
16 nology by commercial air tour operators con-
17 ducting commercial air tour operations over the
18 park;

19 “(E) shall provide a system for allocating
20 opportunities to conduct commercial air tours if
21 the air tour management plan includes a limita-
22 tion on the number of commercial air tour oper-
23 ations for any time period; and

24 “(F) shall justify and document the need
25 for measures taken pursuant to subparagraphs

1 (A) through (E) and include such justifications
2 in the record of decision.

3 “(4) PROCEDURE.—In establishing an air tour
4 management plan for a national park (including
5 tribal lands), the Administrator and the Director
6 shall—

7 “(A) hold at least one public meeting with
8 interested parties to develop the air tour man-
9 agement plan;

10 “(B) publish the proposed plan in the Fed-
11 eral Register for notice and comment and make
12 copies of the proposed plan available to the
13 public;

14 “(C) comply with the regulations set forth
15 in sections 1501.3 and 1501.5 through 1501.8
16 of title 40, Code of Federal Regulations (for
17 purposes of complying with the regulations, the
18 Federal Aviation Administration shall be the
19 lead agency and the National Park Service is a
20 cooperating agency); and

21 “(D) solicit the participation of any Indian
22 tribe whose tribal lands are, or may be,
23 overflown by aircraft involved in a commercial
24 air tour operation over the park, as a cooper-

1 ating agency under the regulations referred to
2 in subparagraph (C).

3 “(5) JUDICIAL REVIEW.—An air tour manage-
4 ment plan developed under this subsection shall be
5 subject to judicial review.

6 “(6) AMENDMENTS.—The Administrator, in co-
7 operation with the Director, may make amendments
8 to an air tour management plan. Any such amend-
9 ments shall be published in the Federal Register for
10 notice and comment. A request for amendment of an
11 air tour management plan shall be made in such
12 form and manner as the Administrator may pre-
13 scribe.

14 “(c) DETERMINATION OF COMMERCIAL AIR TOUR
15 OPERATION STATUS.—In making a determination of
16 whether a flight is a commercial air tour operation, the
17 Administrator may consider—

18 “(1) whether there was a holding out to the
19 public of willingness to conduct a sightseeing flight
20 for compensation or hire;

21 “(2) whether a narrative that referred to areas
22 or points of interest on the surface below the route
23 of the flight was provided by the person offering the
24 flight;

25 “(3) the area of operation;

1 “(4) the frequency of flights conducted by the
2 person offering the flight;

3 “(5) the route of flight;

4 “(6) the inclusion of sightseeing flights as part
5 of any travel arrangement package offered by the
6 person offering the flight;

7 “(7) whether the flight would have been can-
8 celed based on poor visibility of the surface below
9 the route of the flight; and

10 “(8) any other factors that the Administrator
11 considers appropriate.

12 “(d) INTERIM OPERATING AUTHORITY.—

13 “(1) IN GENERAL.—Upon application for oper-
14 ating authority, the Administrator shall grant in-
15 terim operating authority under this subsection to a
16 commercial air tour operator for commercial air tour
17 operations over a national park (including tribal
18 lands) for which the operator is an existing commer-
19 cial air tour operator.

20 “(2) REQUIREMENTS AND LIMITATIONS.—In-
21 terim operating authority granted under this
22 subsection—

23 “(A) shall provide annual authorization
24 only for the greater of—

1 “(i) the number of flights used by the
2 operator to provide such tours within the
3 12-month period prior to the date of the
4 enactment of this section; or

5 “(ii) the average number of flights per
6 12-month period used by the operator to
7 provide such tours within the 36-month pe-
8 riod prior to such date of the enactment,
9 and, for seasonal operations, the number
10 of flights so used during the season or sea-
11 sons covered by that 12-month period;

12 “(B) may not provide for an increase in
13 the number of commercial air tour operations
14 conducted during any time period by the com-
15 mercial air tour operator above the number that
16 the air tour operator was originally granted un-
17 less such an increase is agreed to by the Ad-
18 ministrator and the Director;

19 “(C) shall be published in the Federal Reg-
20 ister to provide notice and opportunity for com-
21 ment;

22 “(D) may be revoked by the Administrator
23 for cause;

1 “(E) shall terminate 180 days after the
2 date on which an air tour management plan is
3 established for the park or the tribal lands;

4 “(F) shall promote protection of national
5 park resources, visitor experiences, and tribal
6 lands;

7 “(G) shall promote safe operations of the
8 commercial air tour;

9 “(H) shall promote the adoption of quiet
10 technology, as appropriate; and

11 “(I) shall allow for modifications of the op-
12 eration based on experience if the modification
13 improves protection of national park resources
14 and values and of tribal lands.

15 “(e) EXEMPTIONS.—

16 “(1) IN GENERAL.—Except as provided by
17 paragraph (2), this section shall not apply to—

18 “(A) the Grand Canyon National Park;

19 “(B) tribal lands within or abutting the
20 Grand Canyon National Park; or

21 “(C) any unit of the National Park System
22 located in Alaska or any other land or water lo-
23 cated in Alaska.

24 “(2) EXCEPTION.—This section shall apply to
25 the Grand Canyon National Park if section 3 of

1 Public Law 100–91 (16 U.S.C. 1a–1 note; 101 Stat.
2 674–678) is no longer in effect.

3 “(3) LAKE MEAD.—This section shall not apply
4 to any air tour operator while flying over or near the
5 Lake Mead National Recreation Area solely, as a
6 transportation route, to conduct an air tour over the
7 Grand Canyon National Park.

8 “(f) DEFINITIONS.—In this section, the following
9 definitions apply:

10 “(1) COMMERCIAL AIR TOUR OPERATOR.—The
11 term ‘commercial air tour operator’ means any per-
12 son who conducts a commercial air tour operation.

13 “(2) EXISTING COMMERCIAL AIR TOUR OPER-
14 ATOR.—The term ‘existing commercial air tour oper-
15 ator’ means a commercial air tour operator that was
16 actively engaged in the business of providing com-
17 mercial air tour operations over a national park at
18 any time during the 12-month period ending on the
19 date of the enactment of this section.

20 “(3) NEW ENTRANT COMMERCIAL AIR TOUR
21 OPERATOR.—The term ‘new entrant commercial air
22 tour operator’ means a commercial air tour operator
23 that—

1 “(A) applies for operating authority as a
2 commercial air tour operator for a national
3 park; and

4 “(B) has not engaged in the business of
5 providing commercial air tour operations over
6 the national park (including tribal lands) in the
7 12-month period preceding the application.

8 “(4) COMMERCIAL AIR TOUR OPERATION.—The
9 term ‘commercial air tour operation’ means any
10 flight, conducted for compensation or hire in a pow-
11 ered aircraft where a purpose of the flight is sight-
12 seeing over a national park, within one-half mile out-
13 side the boundary of any national park, or over trib-
14 al lands, during which the aircraft flies—

15 “(A) below a minimum altitude, deter-
16 mined by the Administrator in cooperation with
17 the Director, above ground level (except solely
18 for purposes of takeoff or landing, or necessary
19 for safe operation of an aircraft as determined
20 under the rules and regulations of the Federal
21 Aviation Administration requiring the pilot-in-
22 command to take action to ensure the safe op-
23 eration of the aircraft); or

1 “(B) less than 1 mile laterally from any
2 geographic feature within the park (unless more
3 than one-half mile outside the boundary).

4 “(5) NATIONAL PARK.—The term ‘national
5 park’ means any unit of the National Park System.

6 “(6) TRIBAL LANDS.—The term ‘tribal lands’
7 means Indian country (as that term is defined in
8 section 1151 of title 18, United States Code) that is
9 within or abutting a national park.

10 “(7) ADMINISTRATOR.—The term ‘Adminis-
11 trator’ means the Administrator of the Federal Avia-
12 tion Administration.

13 “(8) DIRECTOR.—The term ‘Director’ means
14 the Director of the National Park Service.”.

15 (b) CLERICAL AMENDMENT.—The table of sections
16 for chapter 401 of title 49, United States Code, is amend-
17 ed by adding at the end the following:

“40125. Overflights of national parks.”.

18 **SEC. 4. ADVISORY GROUP.**

19 (a) ESTABLISHMENT.—Not later than 1 year after
20 the date of the enactment of this Act, the Administrator
21 and the Director shall jointly establish an advisory group
22 to provide continuing advice and counsel with respect to
23 commercial air tour operations over and near national
24 parks.

25 (b) MEMBERSHIP.—

1 (1) IN GENERAL.—The advisory group shall be
2 composed of—

3 (A) a balanced group of—

4 (i) representatives of general aviation;

5 (ii) representatives of commercial air
6 tour operators;

7 (iii) representatives of environmental
8 concerns; and

9 (iv) representatives of Indian tribes;

10 (B) a representative of the Federal Avia-
11 tion Administration; and

12 (C) a representative of the National Park
13 Service.

14 (2) EX-OFFICIO MEMBERS.—The Administrator
15 (or the designee of the Administrator) and the Di-
16 rector (or the designee of the Director) shall serve
17 as ex-officio members.

18 (3) CHAIRPERSON.—The representative of the
19 Federal Aviation Administration and the representa-
20 tive of the National Park Service shall serve alter-
21 nating 1-year terms as chairman of the advisory
22 group, with the representative of the Federal Avia-
23 tion Administration serving initially until the end of
24 the calendar year following the year in which the ad-
25 visory group is first appointed.

1 (c) DUTIES.—The advisory group shall provide ad-
2 vice, information, and recommendations to the Adminis-
3 trator and the Director—

4 (1) on the implementation of this Act and the
5 amendments made by this Act;

6 (2) on commonly accepted quiet aircraft tech-
7 nology for use in commercial air tour operations over
8 national parks (including tribal lands), which will re-
9 ceive preferential treatment in a given air tour man-
10 agement plan;

11 (3) on other measures that might be taken to
12 accommodate the interests of visitors to national
13 parks; and

14 (4) at request of the Administrator and the Di-
15 rector, safety, environmental, and other issues re-
16 lated to commercial air tour operations over a na-
17 tional park (including tribal lands).

18 (d) COMPENSATION; SUPPORT; FACA.—

19 (1) COMPENSATION AND TRAVEL.—Members of
20 the advisory group who are not officers or employees
21 of the United States, while attending conferences or
22 meetings of the group or otherwise engaged in its
23 business, or while serving away from their homes or
24 regular places of business, may be allowed travel ex-
25 penses, including per diem in lieu of subsistence, as

1 authorized by section 5703 of title 5, United States
2 Code, for persons in the Government service em-
3 ployed intermittently.

4 (2) ADMINISTRATIVE SUPPORT.—The Federal
5 Aviation Administration and the National Park
6 Service shall jointly furnish to the advisory group
7 clerical and other assistance.

8 (3) NONAPPLICATION OF FACA.—Section 14 of
9 the Federal Advisory Committee Act (5 U.S.C.
10 App.) does not apply to the advisory group.

11 **SEC. 5. REPORTS.**

12 (a) OVERFLIGHT FEE REPORT.—Not later than 180
13 days after the date of the enactment of this Act, the Ad-
14 ministrator shall transmit to Congress a report on the ef-
15 fects overflight fees are likely to have on the commercial
16 air tour operation industry. The report shall include, but
17 shall not be limited to—

18 (1) the viability of a tax credit for the commer-
19 cial air tour operators equal to the amount of any
20 overflight fees charged by the National Park Service;
21 and

22 (2) the financial effects proposed offsets are
23 likely to have on Federal Aviation Administration
24 budgets and appropriations.

1 (b) QUIET AIRCRAFT TECHNOLOGY REPORT.—Not
 2 later than 2 years after the date of the enactment of this
 3 Act, the Administrator and the Director shall jointly
 4 transmit a report to Congress on the effectiveness of this
 5 Act in providing incentives for the development and use
 6 of quiet aircraft technology.

7 **SEC. 6. METHODOLOGIES USED TO ASSESS AIR TOUR**
 8 **NOISE.**

9 Any methodology adopted by a Federal agency to as-
 10 sess air tour noise in any unit of the national park system
 11 (including the Grand Canyon and Alaska) shall be based
 12 on reasonable scientific methods.

13 **SEC. 7. DEFINITIONS.**

14 In this Act, the following definitions apply:

15 (1) ADMINISTRATOR.—The term “Adminis-
 16 trator” means the Administrator of the Federal
 17 Aviation Administration.

18 (2) DIRECTOR.—The term “Director” means
 19 the Director of the National Park Service.

Passed the House of Representatives September 27,
 1999.

Attest:

JEFF TRANDAHL,
Clerk.