

106TH CONGRESS
1ST SESSION

S. 81

To authorize the Federal Aviation Administration to establish rules governing
park overflights.

IN THE SENATE OF THE UNITED STATES

JANUARY 19, 1999

Mr. MCCAIN (for himself, Mr. FRIST, Mr. ALLARD, and Mr. AKAKA) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To authorize the Federal Aviation Administration to establish
rules governing park overflights.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “National Parks Over-
5 flights Act”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds that—

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

1 (2) the Federal Aviation Administration has the
2 authority to preserve, protect, and enhance the envi-
3 ronment by minimizing, mitigating, or preventing
4 the adverse effects of aircraft overflights on the pub-
5 lic and tribal lands;

6 (3) the National Park Service has the respon-
7 sibility of conserving the scenery and natural and
8 historic objects and wildlife in national parks and of
9 providing for the enjoyment of the national parks in
10 ways that leave the national parks unimpaired for
11 future generations;

12 (4) the protection of tribal lands from aircraft
13 overflights is consistent with protecting the public
14 health and welfare and is essential to the mainte-
15 nance of the natural and cultural resources of In-
16 dian tribes;

17 (5) the National Parks Overflights Working
18 Group, composed of general aviation, air tour, envi-
19 ronmental, and Native American representatives,
20 recommended that the Congress enact legislation
21 based on its consensus work product; and

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

1 **SEC. 3. AIR TOUR MANAGEMENT PLANS FOR NATIONAL**
 2 **PARKS.**

3 (a) IN GENERAL.—Chapter 401 of title 49, United
 4 States Code, is amended by adding at the end the follow-
 5 ing:

6 **“§ 40125. Overflights of national parks**

7 “(a) IN GENERAL.—

8 “(1) GENERAL REQUIREMENTS.—A commercial
 9 air tour operator may not conduct commercial air
 10 tour operations over a national park or tribal lands
 11 except—

12 “(A) in accordance with this section;

13 “(B) in accordance with conditions and
 14 limitations prescribed for that operator by the
 15 Administrator; and

16 “(C) in accordance with any effective air
 17 tour management plan for that park or those
 18 tribal lands.

19 “(2) APPLICATION FOR OPERATING AUTHOR-
 20 ITY.—

21 “(A) APPLICATION REQUIRED.—Before
 22 commencing commercial air tour operations
 23 over a national park or tribal lands, a commer-
 24 cial air tour operator shall apply to the Admin-
 25 istrator for authority to conduct the operations
 26 over that park or those tribal lands.

1 “(B) COMPETITIVE BIDDING FOR LIMITED
2 CAPACITY PARKS.—Whenever a commercial air
3 tour management plan limits the number of
4 commercial air tour flights over a national park
5 area during a specified time frame, the Admin-
6 istrator, in cooperation with the Director, shall
7 authorize commercial air tour operators to pro-
8 vide such service. The authorization shall speci-
9 fy such terms and conditions as the Adminis-
10 trator and the Director find necessary for man-
11 agement of commercial air tour operations over
12 the national park. The Administrator, in co-
13 operation with the Director, shall develop an
14 open competitive process for evaluating propos-
15 als from persons interested in providing com-
16 mercial air tour services over the national park.
17 In making a selection from among various pro-
18 posals submitted, the Administrator, in co-
19 operation with the Director, shall consider rel-
20 evant factors, including—

21 “(i) the safety record of the company
22 or pilots;

23 “(ii) any quiet aircraft technology pro-
24 posed for use;

1 “(iii) the experience in commercial air
2 tour operations over other national parks
3 or scenic areas;

4 “(iv) the financial capability of the
5 company;

6 “(v) any training programs for pilots;
7 and

8 “(vi) responsiveness to any criteria de-
9 veloped by the National Park Service or
10 the affected national park.

11 “(C) NUMBER OF OPERATIONS AUTHOR-
12 IZED.—In determining the number of author-
13 izations to issue to provide commercial air tour
14 service over a national park, the Administrator,
15 in cooperation with the Director, shall take into
16 consideration the provisions of the air tour
17 management plan, the number of existing com-
18 mercial air tour operators and current level of
19 service and equipment provided by any such
20 companies, and the financial viability of each
21 commercial air tour operation.

22 “(D) COOPERATION WITH NPS.—Before
23 granting an application under this paragraph,
24 the Administrator shall, in cooperation with the
25 Director, develop an air tour management plan

1 in accordance with subsection (b) and imple-
 2 ment such plan.

3 “(E) TIME LIMIT ON RESPONSE TO ATMP
 4 APPLICATIONS.—The Administrator shall act on
 5 any such application and issue a decision on the
 6 application not later than 24 months after it is
 7 received or amended.

8 “(3) EXCEPTION.—Notwithstanding paragraph
 9 (1), commercial air tour operators may conduct com-
 10 mercial air tour operations over a national park
 11 under part 91 of the Federal Aviation Regulations
 12 (14 CFR 91.1 et seq.) if—

13 “(A) such activity is permitted under part
 14 119 (14 CFR 119.1(e)(2));

15 “(B) the operator secures a letter of agree-
 16 ment from the Administrator and the national
 17 park superintendent for that national park de-
 18 scribing the conditions under which the flight
 19 operations will be conducted; and

20 “(C) the total number of operations under
 21 this exception is limited to not more than 5
 22 flights in any 30-day period over a particular
 23 park.

24 “(4) SPECIAL RULE FOR SAFETY REQUIRE-
 25 MENTS.—Notwithstanding subsection (c), an exist-

ing commercial air tour operator shall, not later than 90 days after the date of enactment of the National Parks Overflights Act, apply for operating authority under part 119, 121, or 135 of the Federal Aviation Regulations (14 CFR Pt. 119, 121, or 135). 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.

“(b) AIR TOUR MANAGEMENT PLANS.—

“(1) ESTABLISHMENT OF ATMPS.—

“(A) IN GENERAL.—The Administrator shall, in cooperation with the Director, establish an air tour management plan for any national park or tribal land for which such a plan is not already in effect whenever a person applies for authority to operate a commercial air tour over the park. The development of the air tour management plan is to be a cooperative undertaking between the Federal Aviation Administration and the National Park Service. The air tour management plan shall be developed by means of a public process, and the agencies shall develop information and analysis that explains the conclusions that the agencies make in the appli-

1 cation of the respective criteria. Such expla-
2 nations shall be included in the Record of Deci-
3 sion and may be subject to judicial review.

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 and visitor experiences and
10 tribal 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) which may in-
17 clude a finding of no significant impact, an environ-
18 mental assessment, or an environmental impact
19 statement, and the Record of Decision for the air
20 tour management plan.

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

23 “(A) may prohibit commercial air tour op-
24 erations in whole or in part;

1 “(B) may establish conditions for the con-
2 duct of commercial air tour operations, includ-
3 ing commercial air tour routes, maximum or
4 minimum altitudes, time-of-day restrictions, re-
5 strictions for particular events, maximum num-
6 ber of flights per unit of time, intrusions on pri-
7 vacy on tribal lands, and mitigation of noise,
8 visual, or other impacts;

9 “(C) shall apply to all commercial air tours
10 within ½ mile outside the boundary of a na-
11 tional park;

12 “(D) shall include incentives (such as pre-
13 ferred commercial air tour routes and altitudes,
14 relief from caps and curfews) for the adoption
15 of quiet aircraft technology by commercial air
16 tour operators conducting commercial air tour
17 operations at the park;

18 “(E) shall provide for the initial allocation
19 of opportunities to conduct commercial air
20 tours if the plan includes a limitation on the
21 number of commercial air tour flights for any
22 time period; and

23 “(F) shall justify and document the need
24 for measures taken pursuant to subparagraphs
25 (A) through (E).

1 “(4) PROCEDURE.—In establishing a commer-
2 cial air tour management plan for a national park,
3 the Administrator and the Director shall—

4 “(A) initiate at least one public meeting
5 with interested parties to develop a commercial
6 air tour management plan for the park;

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

11 “(C) comply with the regulations set forth
12 in sections 1501.3 and 1501.5 through 1501.8
13 of title 40, Code of Federal Regulations (for
14 purposes of complying with those regulations,
15 the Federal Aviation Administration is the lead
16 agency and the National Park Service is a co-
17 operating agency); and

18 “(D) solicit the participation of any Indian
19 tribe whose tribal lands are, or may be,
20 overflowed by aircraft involved in commercial air
21 tour operations over a national park or tribal
22 lands, as a cooperating agency under the regu-
23 lations referred to in paragraph (4)(C).

24 “(5) AMENDMENTS.—Any amendment of an air
25 tour management plan shall be published in the

1 Federal Register for notice and comment. A request
2 for amendment of an air tour management plan
3 shall be made in such form and manner as the Ad-
4 ministrator may prescribe.

5 “(c) INTERIM OPERATING AUTHORITY.—

6 “(1) IN GENERAL.—Upon application for oper-
7 ating authority, the Administrator shall grant in-
8 terim operating authority under this paragraph to a
9 commercial air tour operator for a national park or
10 tribal lands for which the operator is an existing
11 commercial air tour operator.

12 “(2) REQUIREMENTS AND LIMITATIONS.—In-
13 terim operating authority granted under this
14 subsection—

15 “(A) shall provide annual authorization
16 only for the greater of—

17 “(i) the number of flights used by the
18 operator to provide such tours within the
19 12-month period prior to the date of enact-
20 ment of the National Parks Overflights
21 Act; or

22 “(ii) the average number of flights per
23 12-month period used by the operator to
24 provide such tours within the 36-month pe-
25 riod prior to such date of enactment, and,

1 for seasonal operations, the number of
2 flights so used during the season or sea-
3 sons covered by that 12-month period;

4 “(B) may not provide for an increase in
5 the number of operations conducted during any
6 time period by the commercial air tour operator
7 to which it is granted unless the increase is
8 agreed to by the Administrator and the Direc-
9 tor;

10 “(C) shall be published in the Federal Reg-
11 ister to provide notice and opportunity for com-
12 ment;

13 “(D) may be revoked by the Administrator
14 for cause;

15 “(E) shall terminate 180 days after the
16 date on which an air tour management plan is
17 established for that park or those tribal lands;
18 and

19 “(F) shall—

20 “(i) promote protection of national
21 park resources, visitor experiences, and
22 tribal lands;

23 “(ii) promote safe operations of the
24 commercial air tour;

1 “(iii) promote the adoption of quiet
2 technology, as appropriate; and

3 “(iv) allow for modifications of the op-
4 eration based on experience if the modi-
5 fication improves protection of national
6 park resources and values and of tribal
7 lands.

8 “(3) NEW ENTRANT AIR TOUR OPERATORS.—

9 “(A) IN GENERAL.—The Administrator, in
10 cooperation with the Director, may grant in-
11 terim operating authority under this paragraph
12 to an air tour operator for a national park for
13 which that operator is a new entrant air tour
14 operator if the Administrator determines the
15 authority is necessary to ensure competition in
16 the provision of commercial air tours over that
17 national park or those tribal lands.

18 “(B) SAFETY LIMITATION.—The Adminis-
19 trator may not grant interim operating author-
20 ity under subparagraph (A) if the Adminis-
21 trator determines that it would create a safety
22 problem at that park or on tribal lands, or the
23 Director determines that it would create a noise
24 problem at that park or on tribal lands.

1 “(C) ATMP LIMITATION.—The Adminis-
 2 trator may grant interim operating authority
 3 under subparagraph (A) of this paragraph only
 4 if the air tour management plan for the park or
 5 tribal lands to which the application relates has
 6 not been developed within 24 months after the
 7 date of enactment of the National Parks Over-
 8 flights Act.

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

11 “(1) COMMERCIAL AIR TOUR.—The term ‘com-
 12 mercial air tour’ means any flight conducted for
 13 compensation or hire in a powered aircraft where a
 14 purpose of the flight is sightseeing. If the operator
 15 of a flight asserts that the flight is not a commercial
 16 air tour, factors that can be considered by the Ad-
 17 ministrator in making a determination of whether
 18 the flight is a commercial air tour, include, but are
 19 not limited to—

20 “(A) whether there was a holding out to
 21 the public of willingness to conduct a sightsee-
 22 ing flight for compensation or hire;

23 “(B) whether a narrative was provided
 24 that referred to areas or points of interest on
 25 the surface;

1 “(C) the area of operation;

2 “(D) the frequency of flights;

3 “(E) the route of flight;

4 “(F) the inclusion of sightseeing flights as
5 part of any travel arrangement package; or

6 “(G) whether the flight or flights in ques-
7 tion would or would not have been canceled
8 based on poor visibility of the surface.

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

12 “(3) EXISTING COMMERCIAL AIR TOUR OPERA-
13 TOR.—The term ‘existing commercial air tour opera-
14 tor’ means a commercial air tour operator that was
15 actively engaged in the business of providing com-
16 mercial air tours over a national park at any time
17 during the 12-month period ending on the date of
18 enactment of the National Parks Overflights Act.

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

23 “(A) applies for operating authority as a
24 commercial air tour operator for a national
25 park; and

1 “(B) has not engaged in the business of
 2 providing commercial air tours over that na-
 3 tional park or those tribal lands in the 12-
 4 month period preceding the application.

5 “(5) COMMERCIAL AIR TOUR OPERATIONS.—
 6 The term ‘commercial air tour operations’ means
 7 commercial air tour flight operations conducted—

8 “(A) over a national park or within ½ mile
 9 outside the boundary of any national park;

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

19 “(C) less than 1 mile laterally from any
 20 geographic feature within the park (unless more
 21 than ½ mile outside the boundary).

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

24 “(7) TRIBAL LANDS.—The term ‘tribal lands’
 25 means ‘Indian country’, as defined by section 1151

1 of title 18, United States Code, that is within or
2 abutting a national park.

3 “(8) ADMINISTRATOR.—The term ‘Adminis-
4 trator’ means the Administrator of the Federal Avia-
5 tion Administration.

6 “(9) DIRECTOR.—The term ‘Director’ means
7 the Director of the National Park Service.”.

8 (b) EXEMPTIONS.—

9 (1) GRAND CANYON.—Section 40125 of title
10 49, United States Code, as added by subsection (a),
11 does not apply to—

12 (A) the Grand Canyon National Park; or

13 (B) Indian country within or abutting the
14 Grand Canyon National Park.

15 (2) ALASKA.—The provisions of this Act and
16 section 40125 of title 49, United States Code, as
17 added by subsection (a), do not apply to any land
18 or waters located in Alaska.

19 (3) COMPLIANCE WITH OTHER REGULATIONS.—
20 For purposes of section 40125 of title 49, United
21 States Code—

22 (A) regulations issued by the Secretary of
23 Transportation and the Administrator of the
24 Federal Aviation Administration under section

1 3 of Public Law 100–91 (16 U.S.C. 1a–1,
2 note); and

3 (B) commercial air tour operations carried
4 out in compliance with the requirements of
5 those regulations,

6 shall be deemed to meet the requirements of such
7 section 40125.

8 (c) CLERICAL AMENDMENT.—The table of sections
9 for chapter 401 of title 49, United States Code, is amend-
10 ed by adding at the end thereof the following:

 “40125. Overflights of national parks.”.

11 **SEC. 4. ADVISORY GROUP.**

12 (a) ESTABLISHMENT.—Not later than 1 year after
13 the date of enactment of this Act, the Administrator of
14 the Federal Aviation Administration and the Director of
15 the National Park Service shall jointly establish an advi-
16 sory group to provide continuing advice and counsel with
17 respect to the operation of commercial air tours over and
18 near national parks.

19 (b) MEMBERSHIP.—

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

22 (A) a balanced group of —

23 (i) representatives of general aviation;

24 (ii) representatives of commercial air
25 tour operators;

1 (iii) representatives of environmental
2 concerns; and

3 (iv) representatives of Indian tribes;

4 (B) a representative of the Federal Avia-
5 tion Administration; and

6 (C) a representative of the National Park
7 Service.

8 (2) EX-OFFICIO MEMBERS.—The Administrator
9 and the Director shall serve as ex-officio members.

10 (3) CHAIRPERSON.—The representative of the
11 Federal Aviation Administration and the representa-
12 tive of the National Park Service shall serve alter-
13 nating 1-year terms as chairman of the advisory
14 group, with the representative of the Federal Avia-
15 tion Administration serving initially until the end of
16 the calendar year following the year in which the ad-
17 visory group is first appointed.

18 (c) DUTIES.—The advisory group shall provide ad-
19 vice, information, and recommendations to the Adminis-
20 trator and the Director—

21 (1) on the implementation of this Act;

22 (2) on the designation of appropriate and fea-
23 sible quiet aircraft technology standards for quiet
24 aircraft technologies under development for commer-

1 cial purposes, which will receive preferential treat-
 2 ment in a given air tour management plan;

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

6 (4) on such other national park or tribal lands-
 7 related safety, environmental, and air touring issues
 8 as the Administrator and the Director may request.

9 (d) COMPENSATION; SUPPORT; FACA.—

10 (1) COMPENSATION AND TRAVEL.—Members of
 11 the advisory group who are not officers or employees
 12 of the United States, while attending conferences or
 13 meetings of the group or otherwise engaged in its
 14 business, or while serving away from their homes or
 15 regular places of business, each member may be al-
 16 lowed travel expenses, including per diem in lieu of
 17 subsistence, as authorized by section 5703 of title 5,
 18 United States Code, for persons in the Government
 19 service employed intermittently.

20 (2) ADMINISTRATIVE SUPPORT.—The Federal
 21 Aviation Administration and the National Park
 22 Service shall jointly furnish to the advisory group
 23 clerical and other assistance.

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

4 (e) REPORT.—The Administrator and the Director
5 shall jointly report to the Congress within 24 months after
6 the date of enactment of this Act on the success of this
7 Act in providing incentives for quiet aircraft technology.

8 **SEC. 5. OVERFLIGHT FEE REPORT.**

9 Not later than 180 days after the date of enactment
10 of this Act, the Administrator of the Federal Aviation Ad-
11 ministration shall transmit to Congress a report on the
12 effects proposed overflight fees are likely to have on the
13 commercial air tour industry. The report shall include, but
14 shall not be limited to—

15 (1) the viability of a tax credit for the commer-
16 cial air tour operators equal to the amount of the
17 proposed fee charged by the National Park Service;
18 and

19 (2) the financial effects proposed offsets are
20 likely to have on Federal Aviation Administration
21 budgets and appropriations.

22 **SEC. 6. PROHIBITION OF COMMERCIAL AIR TOURS OVER**
23 **THE ROCKY MOUNTAIN NATIONAL PARK.**

24 Effective beginning on the date of enactment of this
25 Act, no commercial air tour may be operated in the air-

1 space over the Rocky Mountain National Park notwith-
2 standing any other provision of this Act or section 40125
3 of title 49, United States Code, as added by this Act.

○