

106TH CONGRESS
1ST SESSION

H. R. 717

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

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 11, 1999

Mr. DUNCAN (for himself, Mr. LIPINSKI, and Mr. OBERSTAR) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure, and in addition to the Committee on Resources, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

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,*

3 **SECTION SHORT TITLE.**

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

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

1 (1) the Federal Aviation Administration has
2 sole authority to control airspace over the United
3 States;

4 (2) the Federal Aviation Administration has the
5 authority to preserve, protect, and enhance the envi-
6 ronment by minimizing, mitigating, or preventing
7 the adverse effects of aircraft overflights of public
8 and tribal lands;

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

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

20 (5) the National Parks Overflights Working
21 Group, composed of general aviation, commercial air
22 tour, environmental, and Native American represent-
23 atives, recommended that the Congress enact legisla-
24 tion based on the Group's consensus work product;
25 and

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

3 **SEC. 3. AIR TOUR MANAGEMENT PLANS FOR NATIONAL**
4 **PARKS.**

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

8 **“§ 40125. Overflights of national parks**

9 “(a) IN GENERAL.—

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

14 “(A) in accordance with this section;

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

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

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

22 “(A) APPLICATION REQUIRED.—Before
23 commencing commercial air tour operations
24 over a national park (including tribal lands), a
25 commercial air tour operator shall apply to the

1 Administrator for authority to conduct the op-
2 erations over the park.

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

23 “(i) the safety record of the person
24 submitting the proposal or pilots employed
25 by the person;

1 “(ii) any quiet aircraft technology pro-
2 posed to be used by the person submitting
3 the proposal;

4 “(iii) the experience of the person sub-
5 mitting the proposal with commercial air
6 tour operations over other national parks
7 or scenic areas;

8 “(iv) the financial capability of the
9 company;

10 “(v) any training programs for pilots
11 provided by the person submitting the pro-
12 posal; and

13 “(vi) responsiveness of the person
14 submitting the proposal to any relevant
15 criteria developed by the National Park
16 Service for the affected park.

17 “(C) NUMBER OF OPERATIONS AUTHOR-
18 IZED.—In determining the number of author-
19 izations to issue to provide commercial air tour
20 operations over a national park, the Adminis-
21 trator, in cooperation with the Director, shall
22 take into consideration the provisions of the air
23 tour management plan, the number of existing
24 commercial air tour operators and current level
25 of service and equipment provided by any such

1 operators, and the financial viability of each
2 commercial air tour operation.

3 “(D) COOPERATION WITH NPS.—Before
4 granting an application under this paragraph,
5 the Administrator, in cooperation with the Di-
6 rector, shall develop an air tour management
7 plan in accordance with subsection (b) and im-
8 plement such plan.

9 “(3) EXCEPTION.—

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

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

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

14 “(b) AIR TOUR MANAGEMENT PLANS.—

15 “(1) ESTABLISHMENT.—

16 “(A) IN GENERAL.—The Administrator, in
17 cooperation with the Director, shall establish an
18 air tour management plan for any national park
19 (including tribal lands) for which such a plan is
20 not in effect whenever a person applies for au-
21 thority to conduct a commercial air tour oper-
22 ation over the park. The air tour management
23 plan shall be developed by means of a public
24 process in accordance with paragraph (4).

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

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

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

20 “(A) may limit or prohibit commercial air
21 tour operations;

22 “(B) may establish conditions for the con-
23 duct of commercial air tour operations, includ-
24 ing commercial air tour operation routes, maxi-
25 mum or minimum altitudes, time-of-day restric-

1 tions, restrictions for particular events, maxi-
2 mum number of flights per unit of time, intru-
3 sions on privacy on tribal lands, and mitigation
4 of adverse noise, visual, or other impacts;

5 “(C) may apply to all commercial air tour
6 operations;

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

14 “(E) shall provide a system for allocating
15 opportunities to conduct commercial air tours if
16 the air tour management plan includes a limita-
17 tion on the number of commercial air tour oper-
18 ations for any time period; and

19 “(F) shall justify and document the need
20 for measures taken pursuant to subparagraphs
21 (A) through (E) and include such justifications
22 in the record of decision.

23 “(4) PROCEDURE.—In establishing an air tour
24 management plan for a national park (including

1 tribal lands), the Administrator and the Director
2 shall—

3 “(A) hold at least one public meeting with
4 interested parties to develop the air tour man-
5 agement plan;

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

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

17 “(D) solicit the participation of any Indian
18 tribe whose tribal lands are, or may be,
19 overflowed by aircraft involved in a commercial
20 air tour operation over the park, as a cooperat-
21 ing agency under the regulations referred to in
22 subparagraph (C).

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

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

9 “(c) DETERMINATION OF COMMERCIAL AIR TOUR
10 OPERATION STATUS.—In making a determination of
11 whether a flight is a commercial air tour operation, the
12 Administrator may consider—

13 “(1) whether there was a holding out to the
14 public of willingness to conduct a sightseeing flight
15 for compensation or hire;

16 “(2) whether a narrative that referred to areas
17 or points of interest on the surface below the route
18 of the flight was provided by the person offering the
19 flight;

20 “(3) the area of operation;

21 “(4) the frequency of flights conducted by the
22 person offering the flight;

23 “(5) the route of flight;

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

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

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

9 “(d) INTERIM OPERATING AUTHORITY.—

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

17 “(2) REQUIREMENTS AND LIMITATIONS.—In-
18 terim operating authority granted under this
19 subsection—

20 “(A) shall provide annual authorization
21 only for the greater of—

22 “(i) the number of flights used by the
23 operator to provide such tours within the
24 12-month period prior to the date of enact-
25 ment of this section; or

1 “(ii) the average number of flights per
2 12-month period used by the operator to
3 provide such tours within the 36-month pe-
4 riod prior to such date of enactment, and,
5 for seasonal operations, the number of
6 flights so used during the season or sea-
7 sons covered by that 12-month period;

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

15 “(C) shall be published in the Federal Reg-
16 ister to provide notice and opportunity for com-
17 ment;

18 “(D) may be revoked by the Administrator
19 for cause;

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

23 “(F) shall promote protection of national
24 park resources, visitor experiences, and tribal
25 lands;

1 “(G) shall promote safe operations of the
2 commercial air tour;

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

5 “(I) shall allow for modifications of the op-
6 eration based on experience if the modification
7 improves protection of national park resources
8 and values and of tribal lands.

9 “(e) EXEMPTIONS.—

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

12 “(A) the Grand Canyon National Park;

13 “(B) tribal lands within or abutting the
14 Grand Canyon National Park; or

15 “(C) any unit of the National Park System
16 located in Alaska or any other land or water lo-
17 cated in Alaska.

18 “(2) EXCEPTION.—This section shall apply to
19 the Grand Canyon National Park if section 3 of
20 Public Law 100–91 (16 U.S.C. 1a–1 note; 101 Stat.
21 674–678) is no longer in effect.

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

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

4 “(2) EXISTING COMMERCIAL AIR TOUR OPERA-
5 TOR.—The term ‘existing commercial air tour opera-
6 tor’ means a commercial air tour operator that was
7 actively engaged in the business of providing com-
8 mercial air tour operations over a national park at
9 any time during the 12-month period ending on the
10 date of enactment of this section.

11 “(3) NEW ENTRANT COMMERCIAL AIR TOUR
12 OPERATOR.—The term ‘new entrant commercial air
13 tour operator’ means a commercial air tour operator
14 that—

15 “(A) applies for operating authority as a
16 commercial air tour operator for a national
17 park; and

18 “(B) has not engaged in the business of
19 providing commercial air tour operations over
20 the national park (including tribal lands) in the
21 12-month period preceding the application.

22 “(4) COMMERCIAL AIR TOUR OPERATION.—The
23 term ‘commercial air tour operation’ means any
24 flight, conducted for compensation or hire in a pow-
25 ered aircraft where a purpose of the flight is sight-

1 seeing over a national park, within 1/2 mile outside
2 the boundary of any national park, or over tribal
3 lands, during which the aircraft flies—

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

13 “(B) less than 1 mile laterally from any
14 geographic feature within the park (unless more
15 than 1/2 mile outside the boundary).

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

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

22 “(7) ADMINISTRATOR.—The term ‘Adminis-
23 trator’ means the Administrator of the Federal Avia-
24 tion Administration.

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

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

 “40125. Overflights of national parks.”.

6 **SEC. 4. ADVISORY GROUP.**

7 (a) ESTABLISHMENT.—Not later than 1 year after
8 the date of enactment of this Act, the Administrator and
9 the Director shall jointly establish an advisory group to
10 provide continuing advice and counsel with respect to com-
11 mercial air tour operations over and near national parks.

12 (b) MEMBERSHIP.—

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

15 (A) a balanced group of—

16 (i) representatives of general aviation;

17 (ii) representatives of commercial air
18 tour operators;

19 (iii) representatives of environmental
20 concerns; and

21 (iv) representatives of Indian tribes;

22 (B) a representative of the Federal Avia-
23 tion Administration; and

24 (C) a representative of the National Park
25 Service.

1 (2) EX-OFFICIO MEMBERS.—The Administrator
2 (or the designee of the Administrator) and the Di-
3 rector (or the designee of the Director) shall serve
4 as ex-officio members.

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

13 (c) DUTIES.—The advisory group shall provide ad-
14 vice, information, and recommendations to the Adminis-
15 trator and the Director—

16 (1) on the implementation of this Act and the
17 amendments made by this Act;

18 (2) on commonly accepted quiet aircraft tech-
19 nology for use in commercial air tour operations over
20 national parks (including tribal lands), which will re-
21 ceive preferential treatment in a given air tour man-
22 agement plan;

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

1 (4) at request of the Administrator and the Di-
2 rector, safety, environmental, and other issues relat-
3 ed to commercial air tour operations over a national
4 park (including tribal lands).

5 (d) COMPENSATION; SUPPORT; FACA.—

6 (1) COMPENSATION AND TRAVEL.—Members of
7 the advisory group who are not officers or employees
8 of the United States, while attending conferences or
9 meetings of the group or otherwise engaged in its
10 business, or while serving away from their homes or
11 regular places of business, may be allowed travel ex-
12 penses, including per diem in lieu of subsistence, as
13 authorized by section 5703 of title 5, United States
14 Code, for persons in the Government service em-
15 ployed intermittently.

16 (2) ADMINISTRATIVE SUPPORT.—The Federal
17 Aviation Administration and the National Park
18 Service shall jointly furnish to the advisory group
19 clerical and other assistance.

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

23 **SEC. 5. REPORTS.**

24 (a) OVERFLIGHT FEE REPORT.—Not later than 180
25 days after the date of enactment of this Act, the Adminis-

1 trator shall transmit to Congress a report on the effects
2 overflight fees are likely to have on the commercial air
3 tour operation industry. The report shall include, but shall
4 not be limited to—

5 (1) the viability of a tax credit for the commer-
6 cial air tour operators equal to the amount of any
7 overflight fees charged by the National Park Service;
8 and

9 (2) the financial effects proposed offsets are
10 likely to have on Federal Aviation Administration
11 budgets and appropriations.

12 (b) QUIET AIRCRAFT TECHNOLOGY REPORT.—Not
13 later than 2 years after the date of enactment of this Act,
14 the Administrator and the Director shall jointly transmit
15 a report to Congress on the effectiveness of this Act in
16 providing incentives for the development and use of quiet
17 aircraft technology.

18 **SEC. 6. EXEMPTIONS.**

19 This Act shall not apply to—

20 (1) any unit of the National Park System lo-
21 cated in Alaska; or

22 (2) any other land or water located in Alaska.

23 **SEC. 7. DEFINITIONS.**

24 In this Act, the following definitions apply:

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

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

○