

Union Calendar No. 163

106<sup>TH</sup> CONGRESS  
1<sup>ST</sup> Session

**H. R. 717**

[Report No. 106-273, Part I]

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**A BILL**

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

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JULY 29, 1999

Reported from the Committee on Transportation and Infrastructure

JULY 29, 1999

Referral to the Committee on Resources extended for a period ending not later than July 29, 1999

JULY 29, 1999

Committee on Resources discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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## 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

JULY 29, 1999

Reported from the Committee on Transportation and Infrastructure

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## 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 1. 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—

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

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

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

22           (4) the protection of tribal lands from aircraft  
23       overflights is consistent with protecting the public  
24       health and welfare and is essential to the mainte-

1 nance of the natural and cultural resources of In-  
2 dian tribes;

3 (5) the National Parks Overflights Working  
4 Group, composed of general aviation, commercial air  
5 tour, environmental, and Native American represent-  
6 atives, recommended that the Congress enact legisla-  
7 tion based on the Group’s consensus work product;  
8 and

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

11 **SEC. 3. AIR TOUR MANAGEMENT PLANS FOR NATIONAL**  
12 **PARKS.**

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

16 **“§ 40125. Overflights of national parks**

17 “(a) IN GENERAL.—

18 “(1) GENERAL REQUIREMENTS.—A commercial  
19 air tour operator may not conduct commercial air  
20 tour operations over a national park (including tribal  
21 lands) except—

22 “(A) in accordance with this section;

23 “(B) in accordance with conditions and  
24 limitations prescribed for that operator by the  
25 Administrator; and

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

3           “(2) APPLICATION FOR OPERATING AUTHOR-  
4           ITY.—

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

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

1 providing commercial air tour operations over  
2 the park. In making a selection from among  
3 various proposals submitted, the Administrator,  
4 in cooperation with the Director, shall consider  
5 relevant factors, including—

6 “(i) the safety record of the person  
7 submitting the proposal or pilots employed  
8 by the person;

9 “(ii) any quiet aircraft technology pro-  
10 posed to be used by the person submitting  
11 the proposal;

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

16 “(iv) the financial capability of the  
17 company;

18 “(v) any training programs for pilots  
19 provided by the person submitting the pro-  
20 posal; and

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

1           “(C) NUMBER OF OPERATIONS AUTHOR-  
2           IZED.—In determining the number of author-  
3           izations to issue to provide commercial air tour  
4           operations over a national park, the Adminis-  
5           trator, in cooperation with the Director, shall  
6           take into consideration the provisions of the air  
7           tour management plan, the number of existing  
8           commercial air tour operators and current level  
9           of service and equipment provided by any such  
10          operators, and the financial viability of each  
11          commercial air tour operation.

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

18          “(3) EXCEPTION.—

19          “(A) IN GENERAL.—If a commercial air  
20          tour operator secures a letter of agreement  
21          from the Administrator and the superintendent  
22          for the national park that describes the condi-  
23          tions under which the commercial air tour oper-  
24          ation will be conducted, then notwithstanding  
25          paragraph (1), the commercial air tour operator

1           may conduct such operations over the national  
2           park under part 91 of title 14, Code of Federal  
3           Regulations, if such activity is permitted under  
4           part 119 of such title.

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

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

22          “(b) AIR TOUR MANAGEMENT PLANS.—

23                  “(1) ESTABLISHMENT.—

24                          “(A) IN GENERAL.—The Administrator, in  
25                          cooperation with the Director, shall establish an

1 air tour management plan for any national park  
2 (including tribal lands) for which such a plan is  
3 not in effect whenever a person applies for au-  
4 thority to conduct a commercial air tour oper-  
5 ation over the park. The air tour management  
6 plan shall be developed by means of a public  
7 process in accordance with paragraph (4).

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

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

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

3           “(A) may limit or prohibit commercial air  
4 tour operations;

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

14           “(C) may apply to all commercial air tour  
15 operations;

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

23           “(E) shall provide a system for allocating  
24 opportunities to conduct commercial air tours if  
25 the air tour management plan includes a limita-

1           tion on the number of commercial air tour oper-  
2           ations for any time period; and

3           “(F) shall justify and document the need  
4           for measures taken pursuant to subparagraphs  
5           (A) through (E) and include such justifications  
6           in the record of decision.

7           “(4) PROCEDURE.—In establishing an air tour  
8           management plan for a national park (including  
9           tribal lands), the Administrator and the Director  
10          shall—

11           “(A) hold at least one public meeting with  
12           interested parties to develop the air tour man-  
13           agement plan;

14           “(B) publish the proposed plan in the Fed-  
15           eral Register for notice and comment and make  
16           copies of the proposed plan available to the  
17           public;

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

1           “(D) solicit the participation of any Indian  
2           tribe whose tribal lands are, or may be,  
3           overflowed by aircraft involved in a commercial  
4           air tour operation over the park, as a cooper-  
5           ating agency under the regulations referred to  
6           in subparagraph (C).

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

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

18           “(c) DETERMINATION OF COMMERCIAL AIR TOUR  
19           OPERATION STATUS.—In making a determination of  
20           whether a flight is a commercial air tour operation, the  
21           Administrator may consider—

22           “(1) whether there was a holding out to the  
23           public of willingness to conduct a sightseeing flight  
24           for compensation or hire;

1           “(2) whether a narrative that referred to areas  
2 or points of interest on the surface below the route  
3 of the flight was provided by the person offering the  
4 flight;

5           “(3) the area of operation;

6           “(4) the frequency of flights conducted by the  
7 person offering the flight;

8           “(5) the route of flight;

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

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

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

17           “(d) INTERIM OPERATING AUTHORITY.—

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

1           “(2) REQUIREMENTS AND LIMITATIONS.—In-  
2           terim operating authority granted under this  
3           subsection—

4                   “(A) shall provide annual authorization  
5                   only for the greater of—

6                           “(i) the number of flights used by the  
7                           operator to provide such tours within the  
8                           12-month period prior to the date of enact-  
9                           ment of this section; or

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

17                           “(B) may not provide for an increase in  
18                           the number of commercial air tour operations  
19                           conducted during any time period by the com-  
20                           mercial air tour operator above the number that  
21                           the air tour operator was originally granted un-  
22                           less such an increase is agreed to by the Ad-  
23                           ministrators and the Director;

1           “(C) shall be published in the Federal Reg-  
2           ister to provide notice and opportunity for com-  
3           ment;

4           “(D) may be revoked by the Administrator  
5           for cause;

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

9           “(F) shall promote protection of national  
10          park resources, visitor experiences, and tribal  
11          lands;

12          “(G) shall promote safe operations of the  
13          commercial air tour;

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

16          “(I) shall allow for modifications of the op-  
17          eration based on experience if the modification  
18          improves protection of national park resources  
19          and values and of tribal lands.

20          “(e) EXEMPTIONS.—

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

23                         “(A) the Grand Canyon National Park;

24                         “(B) tribal lands within or abutting the  
25          Grand Canyon National Park; or

1           “(C) any unit of the National Park System  
2           located in Alaska or any other land or water lo-  
3           cated in Alaska.

4           “(2) EXCEPTION.—This section shall apply to  
5           the Grand Canyon National Park if section 3 of  
6           Public Law 100–91 (16 U.S.C. 1a–1 note; 101 Stat.  
7           674–678) is no longer in effect.

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 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 ½ mile outside  
13          the boundary of any national park, or over tribal  
14          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 1/2 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 enactment of this Act, the Administrator and  
21          the Director shall jointly establish an advisory group to  
22          provide continuing advice and counsel with respect to com-  
23          mercial air tour operations over and near national parks.

24          (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 enactment of this Act, the Adminis-  
14 trator shall transmit to Congress a report on the effects  
15 overflight fees are likely to have on the commercial air  
16 tour operation industry. The report shall include, but shall  
17 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 enactment of this Act,  
3 the Administrator and the Director shall jointly transmit  
4 a report to Congress on the effectiveness of this Act in  
5 providing incentives for the development and use of quiet  
6 aircraft technology.

7 **SEC. 6. EXEMPTIONS.**

8           This Act shall not apply to—

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

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

12 **SEC. 7. DEFINITIONS.**

13           In this Act, the following definitions apply:

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

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