

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Parts 91 and 136**

[Docket No. FAA-2001-8690]

RIN 2120-AF46

**National Parks Air Tour Management**

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

**SUMMARY:** The FAA is codifying the provisions of title VIII of the National Parks Air Tour Management Act of 2000 (the Act), as a new part of its regulations. This action finalizes, in cooperation with the National Park Service, a 5,000-ft. above ground level (AGL) altitude that completes the definition of "commercial air tour operation" as required by the Act. If an operator conducts an operation below 5,000 ft. AGL over a national park, and that operation otherwise meets the statutory definition of a commercial air tour operation, that operator is defined as a commercial air tour operator and is required to meet the requirements of the Act and the new regulations. This final rule also codifies the provisions of Special Federal Aviation Regulation 78, the prohibition against commercial air tour flights over the Rocky Mountain National Park, as part of the new regulations. This action completes the codification of the new regulations and presents it for public information.

**DATES:** This final rule is effective January 23, 2003. All operators seeking to conduct commercial air tour operations, as defined by the Act, must file an application for operating authority and have interim operating authority before January 23, 2003 in order to avoid a break in operations.

**FOR FURTHER INFORMATION CONTACT:** Kent Stephens, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone: (202) 267-7493.

**SUPPLEMENTARY INFORMATION:****Availability of Rulemaking Documents**

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management system (DMS) Web page (<http://dms.dot.gov/search>).

(2) On the search page, type in the last four digits of the Docket number shown

at the beginning of this document. Click on "search".

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the item you wish to view.

You can also get an electronic copy using the Internet through the FAA's web page at <http://www.faa.gov/avr/arm/nprm/nprm.htm> or the Government Printing Office's Web page at [http://www.access.gpo.gov/su\\_docs/aces/acrs140.htm](http://www.access.gpo.gov/su_docs/aces/acrs140.htm).

You can also get a copy of this final rule by mail by submitting a request to the Federal Aviation Administration, Office of Rulemaking, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-9680.

**Small Business Regulatory Enforcement Fairness Act**

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact its local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT**. You can find out more about SBREFA on the Internet at our site, <http://www.gov/avr/arm/sbreffa.htm>. For more information on SBREFA, e-mail us at 9-AWA-SBREFA@faa.gov.

**Background***The National Parks Air Tour Management Act of 2000*

The National Parks Air Tour Management Act of 2000 (the Act) was enacted on April 5, 2000, as Public Law 106-181. The Act applies to "commercial air tour operations" occurring over a unit of the national park system or tribal lands within or abutting a national park. A commercial air tour operation is defined in the Act as "any flight conducted for compensation or hire in a powered aircraft where a purpose of the flight is sightseeing over a national park, within ½ mile outside the boundary of any national park, or over tribal lands, during which the aircraft flies—(i) below a minimum altitude, determined by the Administrator in cooperation with the Director, above ground level (except solely for purposes of takeoff or landing, or necessary for safe operation of aircraft as determined under the rules and regulations of the Federal Aviation Administration requiring the pilot-in-command to take action to ensure the

safe operation of the aircraft), or (ii) less than 1 mile laterally from any geographic feature within the park (unless more than ½ mile outside the boundary)." See 49 U.S.C. Section 40128(f)(4)(A). In making the determination as to whether a flight is a commercial air tour operation, the Act lists eight factors that the Administrator may consider. Id. at 40128(f)(4)(B). The term "tribal lands" is defined in the Act as "Indian Country (as that term is defined in section 1151 of title 18) that is within or abutting a national park." The term "National Park" is defined in the Act as "any unit of the National Park System."<sup>1</sup> All commercial air tour operations must be conducted in accordance with the following: (1) Title 49 of the U.S. Code (U.S.C.) Section 40128; (2) conditions and limitations prescribed for that operator by the FAA; and (3) any applicable air tour management plans (ATMPs).

The Act states that "Before commencing commercial air tour operations over a national park or tribal lands, a commercial air tour operator shall apply to the Administrator for authority to conduct the operations over the park or tribal lands." See 49 U.S.C. Section 40128(a)(2)(A). This application then triggers the process for the FAA, in cooperation with the National Park Service (NPS), to develop an ATMP for that park or tribal lands. The objective of an ATMP is to "develop acceptable and effective measures to mitigate or prevent the significant adverse impacts, if any, of commercial air tour operations upon the natural and cultural resources, visitor experiences, and tribal lands." See 49 U.S.C. Section 40128(b)(1)(B).

The Act also provides that "upon application for operating authority, the Administrator shall grant interim operating authority under [49 U.S.C. Section 40128(c)] to a commercial air tour operator for commercial air tour operations over a national park or tribal lands for which the operator is an existing commercial air tour operator." See 49 U.S.C. Section 40128(c)(1). Such interim operating authority is subject to a number of requirements and limitations, including a limit on the number of commercial air tour operations that may be conducted on an interim basis pending issuance of the ATMP for that park.

In Section 802 of the Act, Congress found that the FAA has the authority "to preserve, protect and enhance the environment by minimizing, mitigating,

<sup>1</sup> There are currently 384 units of the National Park System in the United States. For a complete listing of all units of the National Park System see <http://www.nps.gov/legacy/nomenclature.html>.

or preventing the adverse effects of aircraft overflights, on public and tribal lands." Congress also found that the NPS has the responsibility of "conserving the scenery and natural and historic objects and wildlife in national parks and of providing for the enjoyment of the national parks in ways that leave the national parks unimpaired for future generations." *Id.* Further, the Act states that "the protection of tribal lands from aircraft overflights is consistent with protecting the public health and welfare and is essential to the maintenance of the natural and cultural resources of Indian tribes." *Id.*

*The FAA's and NPS' Proposed Altitude and Comments Received on That Altitude*

To meet the requirements of the Act, the FAA, in cooperation with the NPS, proposed an altitude of 5,000 ft. AGL that would complete the definition of a commercial air tour operation. (See 66 FR 21264; April 27, 2001.) The comment period on the proposal closed on June 11, 2001.

Approximately 2,400 comments were received on the proposal. The vast majority of these, however, are form letters making 4 major points: (1) They support the 5,000-ft. triggering altitude; (2) they believe that the FAA should recognize the NPS' expertise on natural quiet issues; (3) they urge immediate enforcement of the "no new entrant" clause of the Act and ask the FAA to ban those part 91 operators who did not register within 90 days of enactment of the Act; and (4) they ask the FAA to define the process by which ATMPs will be developed. Some of these points are also supported by environmental associations. National Parks Conservation Association (NPCA) encourages the FAA to adopt the proposed 5,000-ft. AGL altitude expeditiously so that the ATMP process may begin. NPCA is concerned that a lower altitude would allow some fixed-wing aircraft to conduct air tours without being subject to any rules or restrictions. NPCA also urges the FAA to clarify the ATMP process through guidance and to clarify the roles of the FAA and NPS in the process. Winter Wildlands Alliance supports the 5,000-ft. altitude because it will not interfere with general aviation traffic since operators must meet the rest of the definition of a commercial air tour operation to be defined as a commercial air tour operation under the Act. The Alliance also asks the FAA to begin immediate enforcement of the "no new entrant" clause. Jackson Hole Conservation Alliance comments that any altitude lower than 5,000 ft. would

be unacceptable because it would invite uncontrolled damage to wildlife.

*FAA Response:* The FAA recognizes the support of the 5,000-ft. triggering altitude submitted by the majority of commenters either through individual comments or a form letter. The FAA and NPS will work together to develop ATMPs that mitigate or prevent significant adverse impacts on the environment. This cooperative relationship is consistent with the findings of Congress enumerated in Section 802 as follows:

- The FAA has sole authority to control airspace over the United States and the authority to preserve, protect, and enhance the environment by minimizing, mitigating, or preventing the adverse effects of aircraft overflights on public and tribal lands;
- the NPS has the responsibility of conserving the scenery and natural and historical objects and wildlife in national parks and of providing for the enjoyment of the national parks in ways that leave the national parks unimpaired for future generations.

The Act includes procedural requirements for establishing ATMPs, including holding at least one public meeting, publishing the proposed ATMP in the **Federal Register** for public comment, and soliciting the participation of Indian tribes whose tribal lands are, or may be, overflowed by aircraft involved in a commercial air tour operation. 49 U.S.C. Section 40128(b)(4). Additionally, the Act provides that in establishing ATMPs the FAA is the "lead agency" and the NPS is a "cooperating agency" for purposes of compliance with regulations of the Council on Environmental Quality implementing the National Environmental Policy Act (NEPA). 49 U.S.C. Section 40128(b)(4)(C). In accordance with these provisions, the FAA and the NPS are working cooperatively to implement the Act.

The definition of a commercial air tour operation is complete with the publication of this final rule. All operators wishing to conduct commercial air tour operations over a unit of the national park system or tribal lands now have 90 days to apply for operating authority, in accordance with the procedures outlined in an advisory circular (AC). This AC may be obtained from the public docket, by calling the person listed under **FOR FURTHER INFORMATION CONTACT**, or on the Internet site established for the ATMP process: <http://www.atmp.faa.gov>.

The FAA earlier informed air tour operators of the requirements of the Act in a **Federal Register** notice published

on May 26, 2000. However, in that notice, the FAA acknowledged that the definition of a commercial air tour operation was not yet complete. That definition is now complete and any operator defined as an air tour operator must obtain a part 135 or part 121 certificate, as appropriate, and operating authority if it operates over a national park.

In response to commenters' concerns about "new entrants", the Act authorizes the FAA, in cooperation with the NPS, to grant interim operating authority to new entrant air tour operators under certain circumstances and subject to certain limitations. See 49 U.S.C. Section 40128(c)(3). This provision of the Act is restated in Section 136.11(c) of this final rule.

*Comment:* Some individual commenters find the 5,000-ft. triggering altitude to be too restrictive and fear that it will capture flights other than commercial air tours, such as pilot training flights, while over a park. Another commenter is concerned that the altitude and related definitions of an air tour operator will allow some part 91 operators to slide through a loophole and not be governed by the regulations. One commenter expresses concern that, once in place, the restrictions on flying over parks would be extended to general aviation users, which in this instance would require burdensome deviations to fly over his State. Air Maui, a commercial operator, comments that there is no justification for the 5,000-ft. altitude and that a triggering altitude should be set by particular park or area.

Arizona Grand Canyon Chapter of the Sierra Club recommends careful scrutiny of point-to-point services that claim to not be air tour operators.

*FAA Response:* The law requires an altitude to be set by the Administrator to complete the definition of a commercial air tour operation. Once the definition is established, the operators covered by the definition can file for operating authority. The application for operating authority then triggers the ATMP process. Once established, an ATMP may, among other things, establish maximum or minimum trigger altitudes—below the 5,000 ft. trigger altitude—for commercial air tour operations over the national park unit. Neither the FAA nor the NPS has the authority to extend the provisions of the Act to flights other than commercial air tour operations. Only Congress could effect such a change. Training flights and part 91 flights that are not commercial air tour operations are not captured under the Act. Criteria to determine whether a flight meets the definition are spelled out in the Act and

codified in the regulations at 14 CFR Section 136.3(d)(2). The Administrator may consider additional criteria in any specific circumstance. See 14 CFR Section 136.3(d)(2)(viii).

*Comment:* Many individuals do not understand the 5,000-ft. proposal as a triggering altitude but assumed that this is a proposed minimum operating altitude for parks in general. Most of these individuals support a 5,000-ft. minimum operating altitude over parks. A few individuals urge a ban on overflights of national parks. In addition, one of these individuals specifically recommends no flights at all below 16,000-ft. AGL if a total ban on commercial air tours over parks is not implemented. Another person's preference is that aircraft fly at altitudes and distances to prevent any noise pollution to the parks. One person recommends including non-motorized aircraft as part of that park overflight ban.

*FAA response:* Again, the law requires that the Administrator set the altitude to complete the definition of a commercial air tour operation. The FAA believes it is clear that the triggering altitude is to be used only to determine which air tour flights will be subject to this specific regulation. The suggestion to set a 16,000-ft. altitude is beyond the scope of the NPRM. The Act does not attempt to impose a ban over all units of the national park system, though a specific ATMP may ban commercial air tour operations (below 5,000 ft. AGL) over some or all of a particular park. The FAA knows of no commercial air tour operation that uses non-motorized aircraft. In any event, one element of the statutory definition of a "commercial air tour operation" is that it is conducted in a "powered aircraft." See 49 U.S.C. Section 40128(f)(4)(A).

*Comment:* One individual supports the 5,000-ft. triggering altitude, but raises the issue of how to deal with air carriers who must fly below that altitude for landing and takeoff when there is an airport within a park, such as Jackson Hole Airport in Wyoming. A few people propose exclusion for air tours operating out of Jackson Hole Airport since it is in Grand Teton National Park.

*FAA response:* The Act specifically states that aircraft may descend below the altitude set by the FAA, in cooperation with NPS, for purposes of take-off and landing. See 49 U.S.C. Section 40128(f)(4)(A)(i). Thus, for example, if an air carrier flight is operating below 5,000 ft. AGL above a unit of the National Park System, but that operation is strictly for purposes of takeoff and landing at an airport in or

near the park, then such a flight is not a "commercial air tour operation." A Jackson Hole airport exclusion is not part of this rulemaking.

*Comment:* Another individual is concerned about how the number of operations performed by interim operators is counted. This commenter encourages the use of financial records to document actual flights conducted to protect the honest operator.

*FAA response:* The method that the Principal Operations Inspector for each operator will use in determining the number of actual flights that the operator conducted will be spelled out in a procedures manual being developed by the FAA. Financial records will certainly be one of the sources used, along with aircraft log books, flight plans, maintenance records, etc., in the determination of interim operating authorizations.

*Comment:* Nevada Commercial Aviation Council for Tourism supports the 5,000-ft. altitude and the exclusion of flying over the Lake Mead area as a transportation route from the ATMP process.

*FAA response:* Lake Mead is a unit of the national park system and is thus included in the ATMP process by the terms of the Act. The Act excludes flights over or near the Lake Mead Recreational Area that are solely for transportation to conduct a commercial air tour over the Grand Canyon. The Act states the factors to be used in determining whether a flight is a commercial air tour operation.

*Comment:* Helicopter Association International expresses no opinion on the 5,000-ft. triggering altitude, but notes that since most helicopter operations are conducted below 5,000 feet, this will not serve as an effective way of distinguishing helicopter air tour operations from other helicopter operations. One individual opposes unregulated helicopter tours due to noise impacts to visitors, fire danger, and negative impacts to wildlife.

*FAA response:* The ATMP process will take into consideration all effects of commercial air tour operations, whether fixed wing or rotary wing. The Act specifies additional criteria, other than altitude, for determining whether or not an operation is a commercial air tour operation.

*Comment:* National Air Transportation Association (NATA) and Aircraft Owners and Pilots Association (AOPA) recommend a triggering altitude of 3,000 ft. AGL. AOPA remarks that 3,000 ft. AGL is the start altitude for visual flight rules (VFR) cruising altitudes and this lower trigger altitude will better separate the commercial air

tour aircraft from general aviation, avoiding an intermix with other higher altitude aircraft. AOPA notes that the National Parks Overflights Working Group (NPOWG) recommended 5,000-ft. AGL altitude only as a "place holder" that would be identified in association with other triggering altitudes that they considered. AOPA expresses concern that this altitude may be used to justify future restrictions on aircraft overflights. AOPA also commends the FAA for including the limited exemption for part 91 operators codified in the Act. Other commenters state that the 5,000-ft. AGL altitude is too restrictive, unnecessary and unreasonable and recommend alternative altitudes such as 2,000, 2,500 and 3,000 ft. AGL.

*FAA response:* A trigger altitude of 3,000 ft. AGL will not separate air tour traffic from general aviation. Nothing in the Act or this final rule requires general aviation operations to fly above the triggering altitude, regardless of whether that trigger altitude is 3,000 ft. AGL or 5,000 ft. AGL as proposed and adopted here. The FAA believes the 5,000-ft. trigger altitude reasonably captures any viable air tour traffic over a unit of the National Park System. The FAA agrees with the National Parks Conservation Association that the 5,000-ft. altitude is reasonable in that some fixed wing aircraft could possibly conduct a viable air tour above 3,000 ft. and not be "captured" in the definition, whereas a 3,000 ft. altitude would capture virtually all rotor wing aircraft. The Act does not authorize the FAA or NPS to evaluate significant adverse impacts of non commercial air tour operations.

*Comment:* Finally, one person recommends the NPS work with the FAA to implement relevant provisions of the Glacier National Park General Management Plan that would ban commercial air tours over the park.

*FAA response:* The General Management Plan will be a consideration in the development of any ATMP at Glacier National Park.

### The Final Rule

In this rulemaking, the FAA establishes 5,000 feet AGL as the altitude that completes the definition of the term "commercial air tour operation." Therefore, any flight conducted for compensation or hire in a powered aircraft where a purpose of the flight is sightseeing over a national park, within ½ mile outside the boundary of any national park, or over tribal lands during which the aircraft flies below 5,000 feet above ground level (except solely for purposes of takeoff or landing, or necessary for safe operation of an aircraft as determined

under the rules and regulations of the Federal Aviation Administration requiring the pilot-in-command to take action to ensure the safe operation of the aircraft), or less than 1 mile laterally from any geographic feature within the park (unless more than ½ mile outside the boundary) would be subject to the provisions of the Act and the new part 136.

The 5,000-ft. AGL altitude addresses the great majority of current and potential commercial air tour operations over national park units. In addition, the NPOWG, which met from May 1997 through December 1997, considered a number of possible minimum altitudes and recommended that the minimum altitude be set at 5,000 ft. AGL. The Act acknowledged their efforts stating; “this title reflects the recommendations made by that Group.” See Section 802 of the Act.

The FAA reminds readers that the 5,000-ft. altitude completes the definition of commercial air tour operation. This final rule notifies operators conducting commercial air tour operations, as defined in the Act, that such operations are subject to the provisions of the Act. Because this definition is now complete, Section 136.7 requires commercial air tour operators to apply for operating authority. Application by a person to conduct a commercial air tour operation over a unit of the National Park System triggers the ATMP process. It does not mean that all air tour operations will be required to be conducted above 5,000 ft. AGL or that they will be limited to that minimum altitude. Rather the air tour management plan for any given national park unit will define the altitudes (below 5,000 ft. AGL) at which operations may be conducted.

#### Environmental Review

The Act provides that the objective of an ATMP is to “mitigate or prevent the significant adverse impacts, if any, of commercial air tour operations upon the natural and cultural resources, visitor experiences, and tribal lands.” See 49 U.S.C. Section 40128(b)(a)(B). Accordingly, this final rule supports this statutory objective and promotes the goal of avoiding any significant adverse environmental impacts from commercial air tour operations.

In accordance with FAA Order 1050.1D, the FAA has determined that this final rule is categorically excluded from environmental review under section 102(2)(C) of the National Environmental Policy Act (NEPA). In particular, this determination is based on FAA Order 1050.1D, Appendix 4, paragraph 4.i, which applies to

“[r]egulatory documents which cover administrative or procedural requirements,” and paragraph 4.j, which covers “[r]egulations, standards, and exemptions (excluding those which if implemented may cause a significant impact on the human environment).”

NEPA compliance will be performed as part of the development of each ATMP prepared in accordance with this rule.

#### Economic Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Trade Agreement Act of 1979 directs agencies to assess the effect of regulatory changes on international trade. Fourth, Public Law 104-4 requires federal agencies to assess the impact of any federal mandates on state, local, tribal governments, and the private sector. The FAA has determined that this rule is not a “significant regulatory action” under section 3(f) of Executive Order 12866 and Department of Transportation policies and procedures (44FR11034, February 26, 1979). This final rule would not have a significant impact on a substantial number of small entities. In addition, this rule would not constitute a barrier to international trade. Finally, the FAA has determined that the rule would not impose a federal mandate on state, local, or tribal governments, or the private sector of \$100 million per year.

#### Benefit—Cost Analysis

This final rule codifies in new part 136 the applicable provisions of the Act concerning commercial air tour operations over national parks or within ½ mile of the boundary of a national park, over tribal lands within or abutting national parks, or less than 1 mile laterally from any geographic feature within the park. The Act and the rule specifically exclude the Grand Canyon National Park and tribal lands within or abutting it, air transportation routes over the Lake Mead area, and land or waters located in Alaska. Congress directed the FAA, in cooperation with the NPS, to determine the minimum altitude under which commercial air tour operations would be subject to the provisions of the statute. An altitude of 5,000 ft. AGL completes the definition of a

commercial air tour operation to determine who will be subject to part 136. The 5,000-ft. AGL altitude addresses the great majority of current and potential commercial air tour operations over national park units. In addition, the NPOWG, which met from May 1997 through December 1997, considered a number of possible minimum altitudes and recommended that the minimum altitude be set at 5,000 ft. AGL.

These new regulations simply codify statutory provisions from Public Law 106-181, and finalize Congress’ directive that the Administrator determine an altitude to complete the definition set forth in 49 U.S.C. Section 40128 (f)(4)(A). The primary benefit of the regulations will be to enable the FAA and the NPS to develop acceptable and effective measures to mitigate or prevent the significant adverse effects, if any, of commercial air tour operations upon the natural and cultural resources, visitor experiences, and tribal lands.

The costs and benefits of this rule cannot be evaluated effectively without taking into account specific noise mitigation measures that would be incorporated in an ATMP for a specific park. The NPS and FAA thus intend to prepare such evaluations when specific plans specified in § 136.9 (Air Tour Management Plans) are proposed.

#### Regulatory Flexibility Determination and Assessment

The Regulatory Flexibility Act (RFA) of 1980 establishes “as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organization, and government jurisdictions subject to regulation.” To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency

may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA has determined that this final rule by itself imposes no costs on small commercial air tour operators. The actual effect on small entities of implementing this rule will be determined by individual ATMPs. This final rule is limited to only what has been authorized by this Act. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration certifies that this rule will not have a significant impact on a substantial number of small entities. The FAA solicits comments on this determination.

#### International Trade Impact Assessment

The Trade Agreement Act (TAA) of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The TAA also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards.

In accordance with the above Act, the FAA has assessed the potential effect of this final rule and has determined that it will have only a domestic impact and therefore no effect on any trade-sensitive activity.

#### Unfunded Mandates Reform Act Assessment

The Unfunded Mandates Reform Act of 1995 (UMRA), enacted as Public Law 104-4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments.

Title II of the UMRA requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a \$100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action."

This final rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

#### Paperwork Reduction Act

The FAA finds that no paperwork burden is imposed by the adoption of this final rule, which essentially adopts an altitude that completes the definition of commercial air tour operation. The paperwork burden imposed is the product of a Congressional mandate pursuant to the National Park Air Tour Management Act.

The FAA and NPS acknowledge, however, that the Air Tour Management Process will impose paperwork requirements on the public as individual management plans for parks are developed and interim operating authority is approved. This process is delineated in an advisory circular. A request for approval of the paperwork requirements has been submitted to OMB for approval. The description below is provided so that interested individuals may comment on the paperwork submission requirements.

*Title:* National Parks Air Tour Management.

*Summary:* Section 40128(a)(2)(A) of the Act requires that "Before commencing commercial air tour operations over a national park or tribal lands, a commercial air tour operator shall apply to the Administrator for authority to conduct the operations over the park or tribal lands." The FAA codified this section as 14 CFR 136.7(b). An advisory circular assists the operator in complying with this application process by listing the requirements:

- Name, mailing address, phone numbers of the company.
  - Address of principal base where operations will be conducted.
  - Proposed start up date for operations (for new entrants).
  - Company certificate number if a certificated operator.
  - Management personnel names, titles, phone numbers.
  - Part 91 status; Part 135 single pilot, basic, full, or commuter operator status; or Part 121 status.
  - Type and number of aircraft to be used in commercial air tour operations.
  - National park or tribal lands over which commercial air tour operations will be conducted.
  - The safety history of the operator.
  - Any additional information that might provide the FAA with a better understanding of the proposed operation (e.g., proposed or actual routes, altitudes, frequency of flights, time of flights, etc.).
  - For existing operators, the greater of—
- The number of commercial air tour operations within the 12-month period preceding April 5, 2000, or

from April 1, 1999, through March 31, 2000, or

- The average number of commercial air tour operations per 12-month period for the 36 months preceding April 5, 2000, or from April 1, 1997 through March 31, 2000, and
- For seasonal operations, the number of commercial air tour operations that occurred during the season or seasons covered by the 12-month period preceding April 5, 2000, or from April 1, 1999, through March 31, 2000.

• Other appropriate information as may be requested by the Administrator—

- Operators may submit the following optional data to support ATMP development—
- The economic benefits of the operator's commercial air tour operations to the park and community
- Impact of any potential restrictions on an operator's commercial air tour operations
- The advantages of the operator's air tours for its customers and the national parks and/or tribal lands they visit
- The number of air tour visitors the operator serves on an annual or seasonal basis

Except for the optional information, these are routine items that any company would maintain as a matter of business practice, and this information should not require more than an hour to collect. Operators are encouraged to submit the optional information, as it may aid in the ATMP development process. Operators may elect to submit this optional data as a group to reduce duplication of effort.

*Use of the information:* This information collection supports the final rule, which was mandated by the Act.

*Respondents:* We estimate that there would be about 174 respondents.

*Frequency:* This is a one-time collection.

*Annual Burden Estimate:* The estimate for the collection of routine company data is 1 hour; the collection of the optional information is 2 hours. We estimate that a clerical assistant should be able to produce the application package in 4 hours.

The hourly wage for a chief pilot/company president to produce the information is estimated as equivalent to a GS-14, Step 10, or \$101,742 divided by 2080 hours = \$49. per hour. Clerical assistance is estimated as equivalent to a GS-6, Step 1, or \$28,253 divided by 2080 = \$13.58 per hour.

174 operators × 3 hours × \$49. = \$25,578.

174 clerical assistants × 4 hours × \$13.58 = \$9,451.78.

\$25,578 + \$9,451.78 = \$35,029.78 (total cost of 174 operators completing operating authority applications).

The total reporting hour burden is 1218 hours.

The agency is soliciting comments on this information collection to—

(1) Evaluate the accuracy of the agency's estimate of the burden;

(2) Enhance the quality, utility and clarity of the information to be collected; and

(3) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Individuals and organizations may submit comments on the information collection requirements by December 24, 2002 and should direct them to Docket No. FAA-2001-8609, U.S. DOT Dockets, Room PL-401, 400 7th Street, SW., Washington, DC 20590-0001. Comments should also be submitted to the Office of Information and Regulatory Affairs, OMB, New Executive Building, Room 10202, 725 17th Street, NW., Washington, DC 20053, Attention: Desk Officer for FAA.

According to the regulations implementing the Paperwork Reduction Act of 1995 (5 CFR 1320.8(b)(2)(vi)), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this information collection will be published in the **Federal Register** after the Office of Management and Budget approves it.

#### List of Subjects

##### 14 CFR Part 91

Afghanistan, Agriculture, Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Canada, Cuba, Ethiopia, Freight, Mexico, Noise control, Political candidates, Reporting and recordkeeping requirements, Yugoslavia.

##### 14 CFR Part 136

Air transportation, Aircraft, Aviation safety, National parks, Recreation and recreation areas, Reporting and recordkeeping requirements.

#### Adoption of Amendments

For the reasons set forth above, the Federal Aviation Administration amends chapter I of title 14 of the Code of Federal Regulations as follows:

### PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 stat. 1180).

2. Special Federal Aviation Regulation No. 78 is removed.

3. 14 CFR part 136 is added to read as follows:

### PART 136—NATIONAL PARKS AIR TOUR MANAGEMENT

Sec.

136.1 Applicability.

136.3 Definitions.

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

136.7 Overflights of national parks and tribal lands.

136.9 Air tour management plans (ATMP).

136.11 Interim operating authority.

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

#### § 136.1 Applicability.

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

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

(1) A unit of the national park system;

(2) Tribal lands as defined in this part;

or

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

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

(1) Over the Grand Canyon National Park;

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

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

(4) While flying over or near the Lake Mead Recreation Area, solely as a transportation route, to conduct a

commercial air tour over the Grand Canyon National Park.

#### § 136.3 Definitions.

For purposes of this part—

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

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

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

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

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

(d) *Commercial air tour operation*—

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

(i) Below 5,000 feet above ground level (except for the purpose of takeoff or landing, or as necessary for the safe operation of an aircraft as determined under the rules and regulations of the Federal Aviation Administration requiring the pilot-in-command to take action to ensure the safe operation of the aircraft);

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

(iii) Except as provided in § 136.5.

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

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

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

(iii) The area of operation;

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

(v) The route of flight;

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

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

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

(3) For purposes of § 136.5, means any flight conducted for compensation or hire in a powered aircraft where a purpose of the flight is sightseeing over a national park.

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

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

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

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

(i) *Superintendent* means the duly appointed representative of the National Park Service for a particular unit of the national park system.

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

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

**§ 136.7 Overflights of national parks and tribal lands.**

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

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

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

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

equipment provided by any such operators, and the financial viability of each commercial air tour operation.

(d) *Cooperation with National Park Service.* Before granting an application under this part, the Administrator, in cooperation with the Director, shall develop an air tour management plan in accordance with § 136.9 and implement such a plan.

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

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

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

- (1) Such activity is permitted under part 119 of this chapter;
- (2) The operator secures a letter of agreement from the Administrator and the Superintendent for that park describing the conditions under which the operations will be conducted; and
- (3) The number of operations under this exception is limited to not more than a total of 5 flights by all operators in any 30-day period over a particular park.

(h) *Special rule for safety requirement.* Notwithstanding § 136.11, an existing commercial air tour operator shall apply, not later than January 23, 2003 for operating authority under part 119 of this chapter, for certification under part 121 or part 135 of this chapter. A new entrant commercial air tour operator shall apply for such authority before conducting commercial air tour operations over a national park or tribal lands that are within or abut a national park. The Administrator shall make every effort to act on such application for a new entrant and issue a decision on the application not later than 24 months after it is received or amended.

**§ 136.9 Air tour management plans (ATMP).**

(a) *Establishment.* The Administrator, in cooperation with the Director, shall establish an air tour management plan for any national park or tribal land for which such a plan is not in effect whenever a person applies for authority

to conduct a commercial air tour operation over the park. The air tour management plan shall be developed by means of a public process in accordance with paragraph (d) of this section. The objective of any air tour management plan is to develop acceptable and effective measures to mitigate or prevent the significant adverse impacts, if any, of commercial air tour operations upon the natural and cultural resources, visitor experiences, and tribal lands.

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

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

- (1) May prohibit commercial air tour operations in whole or in part;
- (2) May establish conditions for the conduct of commercial air tour operations, including, but not limited to, commercial air tour routes, maximum number of flights per unit of time, maximum and minimum altitudes, time of day restrictions, restrictions for particular events, intrusions on privacy on tribal lands, and mitigation of noise, visual, or other impacts;
- (3) Shall apply to all commercial air tour operations within ½ mile outside the boundary of a national park;
- (4) Shall include incentives (such as preferred commercial air tour routes and altitudes, and relief from caps and curfews) for the adoption of quiet technology aircraft by commercial air tour operators conducting commercial air tour operations at the park;
- (5) Shall provide for the initial allocation of opportunities to conduct commercial air tour operations if the plan includes a limitation on the number of commercial air tour operations for any time period; and
- (6) Shall justify and document the need for measures taken pursuant to paragraphs (c)(1) through (c)(5) of this section and include such justification in the record of decision.

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

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

(5) Shall provide for the initial allocation of opportunities to conduct commercial air tour operations if the plan includes a limitation on the number of commercial air tour operations for any time period; and

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

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

- (1) Hold at least one public meeting with interested parties to develop the air tour management plan;
- (2) Publish the proposed plan in the **Federal Register** for notice and

comment and make copies of the proposed plan available to the public;

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

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

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

#### § 136.11 Interim operating authority.

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

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

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

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

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

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

(3) Shall be published in the **Federal Register** to provide notice and opportunity for comment;

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

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

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

(7) Shall promote safe commercial air tour operations;

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

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

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

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

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

Issued in Washington, DC on October 17, 2002.

**Marion C. Blakey,**  
*Administrator.*

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