

105TH CONGRESS  
2D SESSION

# H. R. 4268

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

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## IN THE HOUSE OF REPRESENTATIVES

JULY 17, 1998

Mr. DUNCAN (for himself, Mr. SHUSTER, Mr. YOUNG of Alaska, Mr. SMITH of Oregon, Mr. HANSEN, Mr. OBERSTAR, Mr. LIPINSKI, Mr. ENSIGN, and Mr. GIBBONS) 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

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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 1998”.

6       **SEC. 2. FINDINGS.**

7       The 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 or tribal lands  
13 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  
19 commercial air tour management plan for the  
20 park or the tribal lands.

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

23           “(A) APPLICATION REQUIRED.—Before  
24 commencing commercial air tour operations  
25 over a national park or tribal lands, a commer-

1           cial air tour operator shall apply to the Admin-  
2           istrator for authority to conduct the operations  
3           over the park or the tribal lands.

4           “(B) COMPETITIVE BIDDING FOR LIMITED  
5           CAPACITY PARKS.—Whenever a commercial air  
6           tour management plan limits the number of  
7           commercial air tour operations over a national  
8           park during a specified time frame, the Admin-  
9           istrator, in cooperation with the Director, shall  
10          issue operation specifications to commercial air  
11          tour operators that conduct such operations.  
12          The operation specifications shall include such  
13          terms and conditions as the Administrator and  
14          the Director find necessary for management of  
15          commercial air tour operations over the national  
16          park. The Administrator, in cooperation with  
17          the Director, shall develop an open competitive  
18          process for evaluating proposals from persons  
19          interested in providing commercial air tour op-  
20          erations over the national park. In making a se-  
21          lection from among various proposals submit-  
22          ted, the Administrator, in cooperation with the  
23          Director, shall consider relevant factors, includ-  
24          ing—

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

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

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

11          “(iv) the financial capability of the  
12          company;

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

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

20          “(C) NUMBER OF OPERATIONS AUTHOR-  
21          IZED.—In determining the number of author-  
22          izations to issue to provide commercial air tour  
23          operations over a national park, the Adminis-  
24          trator, in cooperation with the Director, shall  
25          take into consideration the provisions of the

1 commercial air tour management plan, the  
2 number of existing commercial air tour opera-  
3 tors and current level of service and equipment  
4 provided by any such operators, and the finan-  
5 cial viability of each commercial air tour oper-  
6 ation.

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

13 “(3) EXCEPTION.—

14 “(A) IN GENERAL.—If a commercial air  
15 tour operator secures a letter of agreement  
16 from the Administrator and the national park  
17 superintendent for the national park which de-  
18 scribes the conditions under which the commer-  
19 cial air tour operation will be conducted, then  
20 notwithstanding paragraph (1), the commercial  
21 air tour operator may conduct such operations  
22 over the national park under part 91 of the  
23 Federal Aviation Regulations (14 CFR 91.1 et  
24 seq.) if such activity is permitted under part

1           119 of the Federal Aviation Regulations (14  
2           CFR 119.1(e)(2)).

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

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

21          “(b) AIR TOUR MANAGEMENT PLANS.—

22                  “(1) ESTABLISHMENT OF ATMPS.—

23                          “(A) IN GENERAL.—The Administrator  
24                          shall establish, in cooperation with the Director,  
25                          an air tour management plan for any national

1 park or tribal land for which such a plan is not  
2 already in effect whenever a person applies for  
3 authority to conduct a commercial air tour op-  
4 eration over the park. The air tour management  
5 plan shall be developed by means of a public  
6 process, and the agencies shall provide informa-  
7 tion that explains the conclusions that the agen-  
8 cies make in the application of the respective  
9 criteria. Such explanations shall be included in  
10 the Record of Decision and may be subject to  
11 judicial review.

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

19 “(2) ENVIRONMENTAL DETERMINATION.—In  
20 establishing a commercial air tour management plan  
21 under this subsection, the Administrator and the Di-  
22 rector shall each sign the environmental decision  
23 document required by section 102 of the National  
24 Environmental Policy Act of 1969 (42 U.S.C. 4332)  
25 (including a finding of no significant impact, an en-



1 vironmental assessment, and an environmental im-  
2 pact statement) and the record of decision for the  
3 commercial air tour management plan.

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

6 “(A) may limit or prohibit commercial air  
7 tour operations;

8 “(B) may establish conditions for the con-  
9 duct of commercial air tour operations, includ-  
10 ing commercial air tour operation routes, maxi-  
11 mum or minimum altitudes, time-of-day restric-  
12 tions, restrictions for particular events, maxi-  
13 mum number of flights per unit of time, intru-  
14 sions on privacy on tribal lands, and mitigation  
15 of adverse noise, visual, or other impacts;

16 “(C) may apply to all commercial air tour  
17 operations;

18 “(D) shall include incentives (such as pre-  
19 ferred commercial air tour operation routes and  
20 altitudes and relief from caps and curfews) for  
21 the adoption of quiet aircraft technology by  
22 commercial air tour operators conducting com-  
23 mercial air tour operations at the national park;

24 “(E) shall provide a system for allocating  
25 opportunities to conduct commercial air tours if

1 the air tour management plan includes a limita-  
2 tion on the number of commercial air tour oper-  
3 ations for any time period; and

4 “(F) shall justify and document the need  
5 for measures taken pursuant to subparagraphs  
6 (A) through (E).

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

10 “(A) hold at least one public meeting with  
11 interested parties to develop the commercial air  
12 tour management plan;

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

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

24 “(D) solicit the participation of any Indian  
25 tribe whose tribal lands are, or may be,

1 overflowed by aircraft involved in a commercial  
2 air tour operation over the national park or  
3 tribal lands, as a cooperating agency under the  
4 regulations referred to in subparagraph (C).

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

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

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

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

24 “(3) the area of operation;

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

3           “(5) the route of flight;

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

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

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

12           “(d) INTERIM OPERATING AUTHORITY.—

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

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

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

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

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

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

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

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

24          “(E) shall terminate 180 days after the  
25          date on which a commercial air tour manage-

1           ment plan is established for the park or the  
2           tribal lands;

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

6           “(G) promote safe operations of the com-  
7           mercial air tour;

8           “(H) promote the adoption of quiet tech-  
9           nology, as appropriate; and

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

14           “(e) EXEMPTIONS.—This section shall not apply to—

15           “(1) the Grand Canyon National Park;

16           “(2) tribal lands within or abutting the Grand  
17           Canyon National Park; or

18           “(3) any unit of the National Park System lo-  
19           cated in Alaska or any other land or water located  
20           in Alaska.

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

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

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

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

12                 “(A) applies for operating authority as a  
13                 commercial air tour operator for a national  
14                 park; and

15                 “(B) has not engaged in the business of  
16                 providing commercial air tour operations over  
17                 the national park or the tribal lands in the 12-  
18                 month period preceding the application.

19          “(4) COMMERCIAL AIR TOUR OPERATION.—The  
20          term ‘commercial air tour operation’ means any  
21          flight, conducted for compensation or hire in a pow-  
22          ered aircraft where a purpose of the flight is sight-  
23          seeing over a national park, within  $\frac{1}{2}$  mile outside  
24          the boundary of any national park, or over tribal  
25          lands, during which the aircraft flies—

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

10           “(B) less than 1 mile laterally from any  
11           geographic feature within the park (unless more  
12           than 1/2 mile outside the boundary).

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

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

19           “(7) ADMINISTRATOR.—The term ‘Adminis-  
20           trator’ means the Administrator of the Federal Avia-  
21           tion Administration.

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



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

“40125. Overflights of national parks.”.

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

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

11 (b) MEMBERSHIP.—

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

14 (A) a balanced group of —

15 (i) representatives of general aviation;

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

18 (iii) representatives of environmental  
19 concerns; and

20 (iv) representatives of Indian tribes;

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

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

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

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

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

14                 (1) on the implementation of this Act and the  
15                 amendment made by this Act;

16                 (2) on commonly accepted quiet aircraft tech-  
17                 nology for use in commercial air tours of national  
18                 parks or tribal lands, which will receive preferential  
19                 treatment in a given air tour management plan;

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

23                 (4) at request of the Administrator and the Di-  
24                 rector, safety, environmental, and other issues relat-

1 ed to commercial air tours over a national park or  
2 tribal lands.

3 (d) COMPENSATION; SUPPORT; FACA.—

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

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

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

21 **SEC. 5. REPORTS.**

22 (a) OVERFLIGHT FEE REPORT.—Not later than 180  
23 days after the date of enactment of this Act, the Adminis-  
24 trator of the Federal Aviation Administration shall trans-  
25 mit to Congress a report on the effects proposed overflight

1 fees are likely to have on the commercial air tour operation  
2 industry. The report shall include, but shall not be limited  
3 to—

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

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

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

17 **SEC. 6. EXEMPTIONS.**

18       This Act shall not apply to—

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

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

22 **SEC. 7. DEFINITIONS.**

23       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.

○