

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 91****National Parks Air Tour Management**

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of statutory requirement.

SUMMARY: The FAA publishes this document to inform commercial air tour operators of recent legislation that affects them. The National Parks Air Tour Management act of 2000, part of Public Law 106–181, was signed into law on April 5, 2000. The Act requires operators who conduct commercial air tours under Part 92 over national parks, tribal lands within such parks, or tribal lands abutting such parks to apply to the FAA to obtain a certificate under Part 119, Part 121, or Part 135 to continue these commercial air tour operators. Excluded from this law are parks in Alaska and Grand Canyon National Park and Rocky Mountain National Park. The FAA publishes this document to assist commercial air tour operators, who conduct some air tours under Part 91, in meeting the requirements of the public law.

DATES: By July 5, 2000, commercial air tour operators conducting air tours over national parks or tribal lands under Part 91 must apply to the FAA for certification as an air carrier or commercial operator under Part 119 unless excepted.

ADDRESSES: Part 92 operators conducting commercial air tours must apply for certification to the Flight Standards District Office (FSD) which is located in the geographic area of the operator's principal business office.

FOR FURTHER INFORMATION CONTACT: Howard Nesbitt, Flight Standards Service (AFS–200), Federal Aviation Administration, Seventh and Maryland Streets, SW, Washington, DC 20591; Telephone: (202) 493–4981. Readers who wish more information on national park unit should visit the National Park Service's web at <http://nps.gov/> or call Howie Thompson, National Park Service at (303) 969–2461.

SUPPLEMENTARY INFORMATION:**Background**

There are currently 379 units of the National Park System in the United

States. The National Park System is defined as any area of land and water administered by the Secretary of the Interior through the National Park Service for park, monument, historic, parkway, recreational, or other purposes. For purposes of the National Parks Air Tour Management Act of 2000, the term “national park” includes all of these types, but does not include other lands under National Park Service control that are not specifically designated as units of the National Park System.

In May 1997 the Secretaries of Interior and Transportation established the National Parks Overflights Working Group (NPOWG) to “define the process to reduce or prevent the adverse effects of commercial sightseeing flight over units of the national park system.” The NPOWG met from May 1997 until November 1997 and produced a recommendation for rulemaking for the FAA and National Park Service (NPS) to use in drafting a proposed regulation.

Subsequently, the Congress accepted the recommendation that it enact legislation based on the NPOWG's consensus product. The legislation requires that the two agencies work in a cooperative effort to protect the parks.

Operators Conducting Commercial Air Tour Operation Under Part 91

Public Law 106–181, commonly known as the FAA Reauthorization Act, was signed into law on April 5, 2000. Section 803(a) of the FAA Reauthorization Act added Section 40128 to Title 49 of the United States Code. Section 40128(a)(4) of Title 49 of the U.S. Code requires that air tour operators conducting air tour operations under Part 91 (14 CFR Part 91) apply for operating authority under Parts 119, 121, or 135 (14 CFR Parts 119, 121, 135) within 90 days after date of enactment. However, paragraph (a)(3) allows commercial air tour operators to continue operating over parks under Part 91 if such activity is permitted under Part 119, the operator secures a letter of agreement from the Administrator and the national park superintendent for that particular park, and the total number of operations under this exception is limited to not more than 5 flights in any 30-day period. Note that this exception limits the “total number of operations * * * to not more than 5 flights in any 30-day

period over a particular park”. Since § 119.1(e)(2) of Title 14 of the Code of Federal Regulations, which allows sightseeing flights within a 25-mile radius of an airport to be conducted under Part 91, is still in effect, it would apply to these operators. Operators will be allowed to continue to operate over parks and tribal lands if the conditions of 49 U.S.C. Section 40128(a)(3) are met. Commercial air tour operators who conduct air tour flights under Part 91 must apply for certification under Part 119, 121, or 135 unless they wish to continue to operate in compliance with requirements of (a)(3).

The FAA understands that an operator will not be able to obtain a certificate in 90 days. Operators should contact their local FSDO for information on certification as an air carrier or commercial operator, in addition to applying for a letter of agreement to operate in the interim. Application may be initiated by phone or facsimile.

Next Actions

The FAA realizes that additional regulations will be needed to establish the altitude by which a commercial air tour operation will be defined. (See 49 U.S.C. 40128(f)(4)(A).) Additional rulemaking will be necessary to establish the competitive bidding process for limited capacity parks. (See 49 U.S.C. § 40128(a)(1)(B).) Congress required the Administrator, in cooperation with the Director of the NPS, to consider several factors in making selections under a competitive bidding process, including quiet technology issues.

Additional rulemaking will also address interim operating authority for commercial air tour operators conducting air tour operations under Part 121 or Part 135.

Because Public Law 106–181 is now in effect, the FAA intends to issue a notice of proposed rulemaking to propose the minimum altitude which would complete the statutory definition of a “commercial air tour operation.” See 49 U.S.C. Section 40128(f)(4)(A)(i).

Issued in Washington, DC on May 11, 2000.

L. Nicholas Lacey,

Director, Flight Standards Service.

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