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Department of Transportation

Federal Aviation Administration

14 CFR Parts 91 and 135

Department of the Interior

National Park Service

36 CFR Part 1, et al.

**Overflights of Units of the National Park
System; Proposed Rule**

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DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Parts 91 and 135****DEPARTMENT OF THE INTERIOR****National Park Service****36 CFR Parts 1, 2, 3, 4, 5, 6 and 7**

[Docket No. 27643; Notice No. 94-4]

Overflights of Units of the National Park System

AGENCY: National Park Service (NPS), DOI and Federal Aviation Administration (FAA), DOT.

ACTION: Advanced notice of proposed rulemaking (ANPRM).

SUMMARY: This notice seeks public comment on general policy and specific recommendations for voluntary and regulatory actions to address the effects of aircraft overflights on national parks.

On December 22, 1993,

Transportation Secretary Federico Peña and Interior Secretary Bruce Babbitt announced the formation of an interagency working group to explore ways to limit or reduce impacts from overflights on national parks. Secretary Babbitt and Secretary Peña concur that increased flight operations at the Grand Canyon and other national parks have significantly diminished the national park experience for park visitors, and that measures can and should be taken to preserve a quality park experience for visitors. The Secretaries see the formation of the working group, and the mutual commitment to addressing the impacts of park overflights, as the initial steps in a new spirit of cooperation between the two departments.

National parks are unique national resources that have been provided special protection by law. The National Park Service (NPS) and the Federal Aviation Administration (FAA) recognize that excessive noise from commercial air tours and other flights over units of the national parks system can interfere with NPS efforts to achieve a natural park experience for visitors and to preserve other park values. Through the interagency working group, the NPS and FAA will cooperate in developing measures to resolve current noise impacts and prevent potential future impacts from overflights at national parks. The purpose of this ANPRM is twofold. First, the ANPRM addresses overflights of Grand Canyon National Park and national parks in the State of Hawaii, with particular emphasis on overflights by commercial

tour operators. Second, the ANPRM solicits policy views and recommendations on more general issues as part of an effort to form a comprehensive policy on preventing, minimizing, or eliminating impacts of aircraft overflights.

This notice presents options that may be considered as means to minimize the adverse effects of commercial air tour operations and other overflights on units of the national park system, and seeks public comments and suggestions on voluntary and regulatory actions to deal with noise and other overflight issues that may affect national parks.

DATES: Comments on this ANPRM must be received on or before June 15, 1994.

ADDRESSES: Comments on this advance notice should be mailed, in triplicate, to: Federal Aviation Administration, Office of Chief Counsel, Attention: Rules Docket (AGC-200), Docket No. 27643, 800 Independence Avenue, SW., Washington, DC 20591. Comments delivered must be marked Docket No. 27643. Comments may be examined in room 915G weekdays between 8:30 a.m. and 5 p.m., except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: David L. Bennett, Office of Chief Counsel, AGC-600, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-3473, or Michael M. Tiernan, Office of the Solicitor, Department of Interior (DOI), 18th and C Streets, NW., Washington, DC 20240, telephone (202) 208-7597.

SUPPLEMENTARY INFORMATION:**Comments Invited**

Interested persons are invited to participate in this advance notice of proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments relating to the policy, environmental, energy, federalism, or economic impact that might result from considering the options in this advance notice are also invited. Comments should identify the regulatory docket number and should be submitted in triplicate to the Rules Docket address specified above. All comments received on or before the specified closing date for comments will be considered by NPS and FAA before taking action on this advanced notice of proposed rulemaking. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. Commenters wishing the FAA or NPS to acknowledge receipt of their comments submitted in response to this notice must include a preaddressed, stamped postcard on

which the following statement is made: "Comments to Docket No. 27643." The postcard will be date stamped and mailed to the commenter.

Availability of ANPRM

Any person may obtain a copy of this ANPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-200, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3485. Communications must identify the notice number of this ANPRM.

Background

The management of the national park system is guided by the Constitution, public laws (Pub. L.), proclamations, executive orders, rules and regulations, and directives of the Secretary of the Interior and the Assistant Secretary for Fish and Wildlife and Parks. The Act of August 25, 1916, otherwise known as the NPS Organic Act, established the NPS and serves as the touchstone for national park system management philosophy and policy. The Act created the NPS to promote and regulate national parks, monuments, and reservations in accordance with the fundamental purpose of said parks, monuments, and reservations, which is "to conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." (16 U.S.C. 1). Subsequent legislation further states that any authorized activity "shall not be exercised in derogation of the values and purposes" of a park area or the national park system, except as may have been or shall be directly and specifically provided by Congress. (16 U.S.C. 1a-1).

Thus, "unimpairment" is joined by a responsibility to avoid derogation not only of the purposes of a park area but also the values for which the national park system and its individual units have been established.

In 1987, the Congress enacted the NPS Overflights Act because it recognized that aircraft overflights can adversely affect national parks. The Act specifically found that noise associated with aircraft overflight at the Grand Canyon National Park was causing "a significant adverse effect on the natural quiet and experience of the park and current operations at the Grand Canyon National Park have raised serious concerns regarding safety of park users." (Pub. L. 100-91, section 3(a)). The Act

mandated a number of studies related to the effects of overflights on parks. The studies have taken longer than was originally anticipated because many of the issues with which they deal are on the cutting edge of technical and scientific capability. Measuring degrees of quiet and perception of quiet is very different from measuring amounts of noise. Since the Overflights Act was passed, the adverse effects associated with the numbers and extent of commercial air sightseeing tours have continued to expand.

The general and over-arching responsibilities for park management by NPS may be modified by specific direction in individual enabling legislation and proclamations. The individual statutes and proclamations for some units of the national park system make it clear that the units were established to provide visitors with natural quiet, an opportunity for solitude, and other attributes that are not necessarily compatible with the noise of commercial air tour sightseeing flights. Some people simply find commercial sightseeing tours over parks inappropriate and incompatible with protection of certain park values and resources. On the other hand, a commercial air tour may provide an opportunity for people to see some park resources in ways not otherwise attainable.

As is pointed out in the Management Policies (NPS 1988):

Over the years, legislative and administrative actions have been taking place that have brought some measure of change to these components of our national parks. Such actions impact park resources, yet they are not necessarily deemed to have impaired resources for the enjoyment of future generations. Whether an individual action is or is not an "impairment" is a management determination based on NPS policy. In reaching it, the manager should consider such factors as the spatial and temporal extent of the impacts, the resources being impacted and their ability to adjust to those impacts, the relation of the impacted resources to other park resources, and the cumulative as well as the individual effects.

Both physical resources, such as wildlife or geologic features, or cultural resources, and intangible values, such as natural quiet solitude, and the experience of wilderness, can be impaired.

Impacts to Parks

In the case of commercial air tour sightseeing flights operating over and near units of the national park system, the NPS believes that significant park resources are being impaired in some units. Managers of almost one-third of national park system units perceive a

problem with some aspect of already existing aircraft overflights. The sound of aircraft is regarded as the primary impact. A survey of park managers confirmed that mechanical noise is among the more serious problems in parks and aircraft noise is the most prominent among these. The perception of noise and adverse effects in units of the national park system may be related to the fact that parks tend to be quieter places in general and that typical sources of noise found in urban and suburban settings are absent in most parks. The potential exists for impairment of park resources and values by the noise and visual intrusion associated with commercial air tour/sightseeing operations in other units where the air tour sightseeing industry is not yet established or developed.

Given the changes in our population distribution, patterns of use of our national parks, and other factors related to transportation, it is no longer sufficient for park managers to consider strategies and actions solely within park boundaries to protect parks and their resources. Overflights are a case in point. Most overflights of units of the national park system begin and end at airports outside parks; the attractions the overflights offer are the resources of the parks themselves. Technically, the park overflight passenger is not a park visitor even though there may be significant adverse effects from noise on the park. In recognition of this fact, the FAA and the NPS are working more closely to use the FAA's plenary authority for regulation of aviation in support of NPS management objectives.

FAA Authorities

The FAA has broad authority and responsibility to regulate the operation of aircraft and the use of the navigable airspace, and to establish safety standards for and regulate the certification of airmen, aircraft, and air carriers. (Federal Aviation Act of 1958, as amended (FAAct), Section 307(a) and (c); Title VI.) The FAAct provides guidance to the Administrator in carrying out this responsibility. Section 102 of the FAAct states that the Administrator will consider the public interest to include among other things, regulation for safety and efficiency of both civil and military operations, promotion of the development of civil aviation, fulfillment of the requirements of national defense, and operation of a common system of air traffic control for civil and military aircraft. Section 104 provides to each citizen of the United States a public right of transit through the navigable airspace of the United States. Section 305 directs and

authorizes the Administrator to encourage and foster the development of civil aeronautics and air commerce. Section 306 requires the Administrator in exercising his authority, to give full consideration to the requirements of national defense, commercial and general aviation, and to the public right of freedom of transit through the navigable airspace.

The FAA's authority is not limited to regulation for aviation safety, efficiency, and development. Subsection 307(c) of the FAAct provides that FAA air traffic rules and flight regulations may be adopted "for the protection of persons and property on the ground." The FAA considers this protection to extend to environmental values on the surface as well as to the safety of persons and property. Section 611 of the FAAct, "in order to afford present and future relief to the public health and welfare from aircraft noise," directs the Administrator to adopt regulations "as the FAA may find necessary for the control and abatement of aircraft noise," including application of such regulations to any of the various certificates issued under Title VI. Finally, it is the general policy of the Federal government that the FAA, like other agencies, will exercise its authority in a manner that will enhance the environment, and that the FAA will make a special effort to preserve the natural beauty of public park and recreation lands, wilderness areas, and wildlife refuges. Section 101 of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321; Section 4(f) of the Department of Transportation Act, 49 U.S.C. 303; and Executive Order 11514, as amended by Executive Order 11991. In addition, the DOT has further authority to regulate services by commercial operators.

Fees

The Budget Reconciliation Act of 1993 (Pub. L. 103-66, August 10, 1993) amended Section 4 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-6a) requiring the NPS to impose a commercial tour use fee on each vehicle entering a unit of the national park system, that presently charges an entrance fee, for the purpose of providing commercial tour services.

In addition to surface transportation, this commercial use fee applies to aircraft entering "the airspace of units of the National Park System" identified in sections 2(b) and 3 of Public Law 100-91 (Grand Canyon National Park and Haleakala National Park) as well as any other park areas where the level of commercial aircraft services are equal to

or greater than these two identified areas.

The actual fees established by the legislation are as follows:

- \$25 per vehicle with a capacity of 25 people or less, and
- \$50 per vehicle with a capacity greater than 25 people. The legislation also gives the Secretary the authority to make reasonable adjustments to these recommended commercial tour fees. Currently, there are no additional NPS areas that charge entrance fees, and also have a level of commercial aircraft services equal or greater to Grand Canyon or Haleakala National Parks. As a result of the legislation, the NPS will need to monitor the number of air tour operations over the affected parks.

Grand Canyon National Park

At Grand Canyon, 42 companies offer aerial tours operating from five states (Arizona, California, Nevada, Utah, and New Mexico). These companies provide air tours of the Grand Canyon to about 750,000 people and generate revenues in excess of \$100 million. During peak summer months, the number of tours exceeds 10,000 each month. On June 5, 1987, the FAA issued Special Federal Aviation Regulation (SFAR) No. 50-1 (52 FR 22734, June 15, 1987) which provided rules to enhance safety of overflight operations in the vicinity of the Grand Canyon National Park. Section 3 of Public Law 100-91 required the Secretary of the Department of the Interior (DOI) to submit to the FAA Administrator recommendations for the protection of resources in the Grand Canyon from adverse impacts associated with aircraft overflights. The recommendations were to provide for substantial restoration of the natural quiet and experience of the Grand Canyon. With limited exceptions, the recommendations were to prohibit the flight of aircraft below the rim of the Canyon and to designate zones that were flight free except for purposes of administration of underlying lands and emergency operations.

Public Law 100-91 further required the Secretary of the Interior to prepare and issue a final plan for the management of air traffic above the Grand Canyon. In December 1987, the DOI submitted recommendations to the FAA for an aircraft management plan at the Grand Canyon. The recommendations included both rulemaking and non-rulemaking actions. On May 27, 1988, the FAA issued SFAR No. 50-2 (53 FR 20264, June 2, 1988) which revises the procedures for operation of aircraft in the airspace above the Grand Canyon. The rule implements the preliminary

recommendations of the Secretary of the Interior for an aircraft management plan at the Grand Canyon with some modifications that the FAA initiated in the interest of aviation safety. SFAR No. 50-2 establishes a Special Flight Rules Area from the surface to 14,500 feet above mean seal level (MSL) in the area of the Grand Canyon. The SFAR prohibits flight below a certain altitude in each of five sectors of this area with some exceptions. The SFAR also establishes flight free zones from the surface to 14,500 feet msl above large areas of the park. The "flight free zones" cover virtually all of the visitors to the North and South Rims and about 90 percent of backcountry users. The SFAR also provided special routes for commercial tour operators and transient operators through the canyon area. Commercial air tour operations are required to be conducted as air taxi and commercial operations under part 135 with stringent requirements including special operations specifications for Grand Canyon. The NPS believes the SFAR has been successful in limiting some noise-associated adverse impacts to the park but most, if not all, of the gain has been, or may be, lost as a result of the exponential growth in numbers of flights over the canyon.

Virtually every class of visitor activity at Grand Canyon National Park is limited or controlled in some way by the NPS to insure that there will be no derogation or impairment of resources and values. Each raft trip on the Colorado River through Grand Canyon National Park must have a permit and the number of permits is limited for both commercial and private rafters. For some private raft trips, a permit may take 4 or 5 years to obtain. Each overnight visitor in the backcountry must have a backcountry permit; the demand for such permits far exceeds the supply. The waiting list for trips by mule into the inner canyon runs into years for some times of the year. There are a limited number of hotel rooms in the park and there are a limited number of parking spaces. In contrast, the commercial air tour sector has experienced unlimited growth at Grand Canyon National Park in the last 10 years. This is so even though Congress found noise associated with overflights to be significantly and adversely affecting the park in the 1987 Overflights Act. In addition, the NPS believes there is ample evidence that the uncontrolled and unregulated growth in this sector is in derogation of the resources and values of the park. NPS studies to that effect will be published later this year.

Grand Canyon—Actions to Date

Public Law 100-91 directed the DOI to substantially restore "natural quiet" to the Grand Canyon National Park. Public Law 100-91 also required a study of aircraft noise impacts at a number of national parks and imposed flight restrictions at three parks: Grand Canyon National Park, Yosemite National Park in California, and Haleakala National Park in Hawaii. Public Law 100-91 also required the DOI to conduct a study, with the technical assistance of the Secretary of Transportation, to determine the proper minimum altitude to be maintained by aircraft when flying over units of the national park system. The research was to include an evaluation of the noise levels associated with overflights. Before submission to Congress, the DOI is to provide a draft report (containing the results of its studies) and recommendations for legislative and regulatory action to the FAA for review. The FAA is to notify the DOI of any adverse effects these recommendations would have on the safety of aircraft operations. The FAA is to consult with the DOI to resolve these issues. The final report must include a finding by the FAA that implementation of the DOI recommendations will not have adverse effects on the safety of aircraft operations, or, in the alternative, a statement of the reasons why the recommendations will have an adverse effect. The DOI expects to complete the report by early summer, 1994.

Haleakala and Hawaii Volcanoes National Parks

The national parks in Hawaii—Hawaii Volcanoes and Haleakala—have similar problems with commercial air sightseeing tours, principally noise associated with helicopters. The FAA held a series of public hearings in January 1994 to elicit public comments and recommendations for regulatory or policy action related to overflights, including their effects on parks. There are 9 tour operators on the island of Hawaii, and there are approximately 60 commercial air tours a day over Hawaii Volcanoes National Park. At Haleakala, which was established to preserve resources in "natural condition," (39 Stat. 432, section 4), seven companies based on the island of Maui offer helicopter tours. On clear days, helicopters fly over the park during all hours of daylight so that helicopter noise is audible over 30 minutes of every daylight hour (personal communication, Haleakala National Park). Interpretive talks, wildlife observations and censuses, ceremonies,

and other normal activities are interrupted by air tour overflights. The NPS recognizes that the commercial air tour industry is important to the economy of Hawaii but also believes that the tourism industry benefits from the continued NPS protection of the superlative resources of its national parks, unimpaired.

Hawaii—Actions to Date

The majority of flights conducted by helicopter companies in Hawaii are commercial air tour/sightseeing operations. Both the NPS and FAA have received numerous complaints of commercial air sightseeing tour flights over residential communities, national parks, wildlife refuge areas, State natural reserve areas, sanctuaries and areas of significant historic or cultural value. Issues raised by the growth of air tour sightseeing activity and the associated increase in the number of flights conducted over a given area include aircraft noise, flight noise, flight safety, and airport site constraints near scenic areas. It may be necessary to determine if there are thresholds of adverse effects that have been met in terms of impacts to the parks.

The FAA has taken several steps to address the overflight issues in Hawaii. In 1986, the FAA conducted a study of helicopter sightseeing operations in Hawaii. As a result of that study, recommendations were made to the State and to operators in Hawaii to improve safety and community relations. Also in 1986, the FAA conducted a joint study with the State on heliport and airport access. A result of that study was a helicopter operating plan for Hawaii. Numerous meetings have since been held with NPS personnel, industry, and local communities, including four public meetings conducted in January 1994.

Impacts to Parks and Their Resources

At some parks, including Grand Canyon National Park, Hawaii Volcanoes National Park, and Haleakala National Park, the temporal and spatial extent of commercial air tours are, in the judgment of NPS managers, impairing park resources and visitor experience. While the NPS and FAA are interested in evaluating potential solutions to the problems at these parks, they are also seeking solutions that will make it possible to avert problems in the future throughout the national park system as have developed at these parks.

Cultural Resources

Very limited information is available on the response of structures to subsonic aircraft and helicopters. The

greatest potential risk to historic structures and cultural resources in units of the national park system is from helicopters. The noise characteristics of helicopters are such that they tend to excite nearby structural elements at their resonance frequency, causing low frequency vibrations, rattle, and in some cases, damage. The sound pressure is greatest at structures in the plane of the main rotor, such as could be the case for a helicopter approaching cliff dwellings. When representative cultural resources were reviewed for probability of damage, most were found to be at some risk from commercial air sightseeing tours. Mesa Verde (Colorado) and Canyonlands National Parks (Utah), among others, protect fragile prehistoric stone and adobe structures, including granaries and cliff dwellings, as well as associated cultural materials that are susceptible to damage from helicopter-induced noise and rotor wash. The cultural and spiritual values commemorated in units of the national park system like San Antonio Missions National Historical Parks and the battlefields of the Civil War can be wholly lost by frequent and intrusive commercial air sightseeing tour overflights.

As further examples of areas impacted by aircraft overflights, Mount Rushmore National Memorial and the Statue of Liberty National Monument are cultural icons that can be adversely affected in significant ways by commercial air tour overflights. At the Statue of Liberty, an impending aircraft service would take off and land helicopters from a floating raft less than one-half mile from the statue. This service would be added to two existing commercial sightseeing helicopter operators that account for 115 flights per day and a service that operates four fixed-wing aircraft on air tours. Similarly, the experience of Mount Rushmore National Memorial for the visitors on the ground can be irretrievably lost as a consequence of the aircraft flights close to memorial.

Wildlife Effects

A comprehensive study of the adverse effects of commercial air sightseeing tours on wildlife in parks has yet to be concluded. Studies to date indicate that aircraft can be associated with stress responses on a number of animals, including migratory birds. Endangered species, like the grizzly bear in Glacier National Park, can be harassed by commercial air tour operators unaware of the potential adverse effects of flying too close to them. Other mammals like desert bighorn sheep, deer, and elk that have found refuge in parks can be panicked and stressed by low-flying

aircraft, as well. No studies that evaluate long-term effects on wildlife, including population level impacts of commercial air sightseeing tours, have been conducted. As with any potential impact associated with activities in parks, the NPS policy is to err on the side of resource protection until conclusive information is available that would indicate otherwise.

Assessing Noise Impacts

The FAA is working with the NPS to define acceptable noise levels as the basis for any proposed limitations on aircraft overflights. This process involves identifying areas with the highest levels of noise sensitivity. Highly sensitive areas potentially would be subject to lower noise limits than would apply to other areas with higher ambient noise levels, based on resource values, types of use, or other factors. Depending on local conditions, alternative approaches may be employed in different areas to achieve the same noise goal.

Current FAA policy and guidelines designate the yearly day-night average sound level (DNL) as the single noise metric for measuring aviation impacts on people in and around airports. This traditional metric alone may not be appropriate for assessing aviation noise impacts in parks and wilderness areas. Three supplemental metrics other than DNL are proven and appear particularly suitable for site-specific assessments. These are Equivalent Sound Level (L_{eq}), Sound Exposure Level (SEL) and Time Above a dBA Threshold (TA). Additionally, defining a change of 5 dB as significant at any initial DNL level may be appropriate for specifying further noise analysis in parks and wilderness areas.

The ongoing NPS studies have identified two potential (dose-response relationships that also may be appropriate for assessing aircraft noise impacts. These are "Annoyance vs. Percent Time Heard" and "Interference with Quiet vs. Percent Time Heard." These relationships are preliminary and must be subjected to rigorous analysis for further determination of their potential application.

Policy Considerations

In reviewing potential alternatives for achieving NPS and FAA purposes, the FAA has considered a number of measures within its authority under the FEA that would have the potential to address the problems identified by the NPS. In determining whether a particular action would be beneficial for this purpose and otherwise feasible, the FAA and NPS must take into account a

number of legal and policy considerations.

The action, if regulatory, must be consistent with Administration rulemaking principles as set forth in Executive Order 12866. These principles include requirements that regulations be drafted in the most cost-effective manner to achieve the objective; that regulations be based on the best reasonably obtainable scientific, technical, economic, and other information concerning the need for and consequences of the action to be taken; and that regulations be tailored to impose the least burden on society, including individuals, businesses, and communities, consistent with obtaining the regulatory objective.

The action must have no adverse effect on aviation safety. The action should have the minimum possible adverse effect on the efficiency of air navigation, consistent with the regulatory objective, and should not unduly burden interstate commerce. It must also meet NPS requirements for protecting resources, assuring that there is no impairment, and that there is no derogation, to park resources and values.

The action should focus directly on the problem rather than indirectly. For example, if the issue is the adverse impacts of overflights of a unit of the national park system, then the agency action will address those overflights directly, rather than seek to influence them through regulation of takeoffs and landings at a nearby airport.

Options for Evaluation

The FAA and NPS believe that each of the following measures may have some utility, in certain circumstances, as a measure to mitigate the adverse effects of commercial air sightseeing tour overflights of units of the national park system. Inasmuch as some of the measures have not been used before, neither the FAA nor NPS has concluded that such actions would meet the legal and policy considerations summarized above, and specific comment is requested on the benefits, costs, and impacts of each.

Voluntary Measures

Voluntary, non-regulatory measures that mitigate noise impacts would impose the minimum burden on operators and can be effective. An example is the recommended minimum altitude of 2,000 feet above ground level described in FAA Advisory Circular 91-36C, which is honored by most transient operators. Another option would be expansion of the existing Interagency Agreement among the FAA, the NPS,

the Fish and Wildlife Service, and the Bureau of Land Management. Through that agreement the proponents agree to assess severe situations where impact of aircraft operations upon human, cultural, or natural resources are sufficiently serious to warrant consideration of site-specific action by the FAA to minimize or eliminate the causes of such problems. Expansion of the Interagency Agreement could provide for additional non-regulatory actions by the agencies to mitigate overflight impacts. The agencies seek comments on the relative merits of voluntary measures generally, and specific suggestions for other voluntary measures not currently used by the FAA or NPS.

Grand Canyon Model

One option is to follow a model similar to that in use at Grand Canyon, with extensive regulation of airspace, routes, and minimum altitudes as discussed separately below. Such an approach may not adequately consider the fact that the total number and frequency of flights, and the steady growth in numbers of flights, are not currently addressed under that regulatory framework.

Prohibition of Flights During Flight-Free Time Periods

A prohibition could be established on use of some or all of the airspace above parks at certain times; e.g., 1 hour per day, 1 day per week, or 2-4 weeks per year. The "quiet times" would be published well in advance both for air tour operator scheduling and for planning by park visitors. In terms of noise mitigation, non-flying quiet periods would present an unusual approach to the balance between air access and the interest in restoring some degree of the natural quiet in Grand Canyon National Park. At some cost in inconvenience and lost business for air tour operators and temporarily reduced access to air tours for their passengers, the park would enjoy a virtual absence of aircraft noise in sensitive areas for specific periods. The agencies specifically request comment on the potential efficacy of these approaches in meeting FAA and NPS goals.

Altitude Restrictions

SFAR No. 50-2 at Grand Canyon currently specifies a minimum altitude for flight over the different areas of the park as high as 14,500 feet msl. It also specifies minimum altitudes for operation in the flight corridors between the flight-free zones. Different altitudes are specified for transient general aviation operations and for air tour

operators, to separate high-frequency tour flights from one-time transient flights. Different altitudes are also specified for fixed-wing aircraft and helicopter tour flights, for safety and efficiency reasons. The tour operation altitudes are at canyon rim level or above (although some are slightly below the minimum altitude requested by NPS as "rim level" in 1987). A relatively high minimum altitude in a particular area limits access to the airspace over that area by many general aviation aircraft because of performance limitations. Generally, noise mitigation is achieved through higher minimum altitudes because the greater the slant-range distance from an aircraft to a point on the surface, the lower the sound level on the surface from aircraft noise. However, this mitigation can be offset or reversed based on attenuation factors such as hills, heavily wooded areas, and "soft ground" terrain.

Flight Free Zones/Flight Corridors

SFAR No. 50-2 at Grand Canyon now describes specific "flight-free" zones to an altitude of 14,500 feet msl above the park. The remaining airspace is defined as corridors for operations over the park by both general aviation and commercial air tour operators. Impact mitigation is achieved through specifying corridors for flight over the park that assure there are no overflights of large areas of the park below the current minimum altitude of 14,500 feet msl. The current corridors and flight-free zones could be amended to address concerns about effects on particular areas of the park.

Restrictions on Noise Through Allocation of Aircraft Noise Equivalencies

A noise budget is a mechanism for limiting total aircraft noise impact on the park by assigning each air tour operator an individual limit on noise impact. This would allow individual air tour operators the flexibility to decide what combination of equipment and flight frequency they will use to attain the target noise level. The noise budget would apply only to air tour sightseeing operators and not to transient general aviation operations. The noise budget concept assumes that the FAA and NPS could determine (1) the acceptable amount of aircraft noise exposure on the park surface, and (2) the number of aircraft operations under various mixes of aircraft types that could operate within the total noise budget.

While complex to develop and administer, the noise budget could achieve noise mitigation through directly addressing the issue of noise

impact but would not address the impacts other than noise. Once the "budget" is established based on target noise levels in various areas of the park, air tour operators would have substantial flexibility to adjust their business operations without exceeding those levels. The noise budget could act as a practical limit on the amount of aviation activity, but would not impose limits on the number of operations. A noise budget would also represent an incentive for operators to acquire relatively quiet aircraft to avoid a penalty on the number of operations that could be conducted within each operator's target noise level.

Individual allocations under a noise budget could be established by designating maximum noise levels for each operator. This could be done by "grandfathering" the current noise contribution by each air tour operator, or by some other administrative means.

Incentives To Encourage Use of Quiet Aircraft

Air tour operators could be encouraged to use relatively quiet aircraft on park overflights. For example, a flight corridor with a good scenic view of the canyon could be limited to aircraft meeting certain noise emission standards. An air tour operator could find it advantageous to convert its entire fleet to such quiet aircraft to incorporate that corridor in its tours. While there is no Federal requirement for aircraft to be manufactured to produce less noise than Stage 3 standards, some aircraft appropriate for air tour operations are quieter than Stage 3. Increased use of such aircraft in air tours would achieve noise mitigation through reducing noise levels on the surface of the park, although this option does not address issues other than noise.

Questions

The NPS and FAA also solicit comments on several questions related to air tour sightseeing operations in and adjacent to units of the national park system.

Policy

1. Should commercial sightseeing flights be prohibited over certain national parks? If so, what criteria should be used in determining which parks should not have such tours?

2. Should action pertaining to aircraft overflights in national parks be considered only for air tour/sightseeing operations? What circumstances would include other categories of overflights?

3. What factors should be considered by NPS and FAA in evaluating recommendations for addressing aircraft overflight issues?

Technical

1. Is the use of quiet technology aircraft a viable alternative for reducing noise from commercial air tour/sightseeing operations in national parks?

2. Should all commercial air tour/sightseeing operations be conducted under air carrier rules of FAR part 135 and/or 121?

3. Should air carrier operators be required to have special operations specifications for conducting sightseeing flights?

4. Should there be special airspace rules for identified units of the national park system?

5. Should the measures developed for Grand Canyon and Hawaii become models for more general use at parks with actual or potential overflight impacts?

Request for Comments

The FAA and NPS solicit comments and information from all segments of the public interested in aviation and national parks and their relationship. The primary focus of this advance notice is commercial air sightseeing tours, rather than military or general aviation operations. It is anticipated that any regulations eventually developed would be general in nature and applicable to the entire national park system. It is not the intent of the NPS or FAA to develop regulations specific to any one park at this time. However, examples of aviation activities observed in one park may be used to support an opinion on overall aviation management issues.

All comments received by FAA and NPS at the addresses and by the dates listed above will be reviewed and utilized in any development of proposed regulations. Comments received pursuant to this Advance Notice of Proposed Rulemaking will be analyzed and discussed in the preamble to the Proposed Rule. Any proposed

rulemaking will also be made available for public review and comment.

Regulatory Process Matters

Economic Impact

The FAA and NPS are unable to determine at this point the likely costs of imposing regulations affecting overflights of national parks or the annual effect on the economy. Following a review of the comments submitted to this ANPRM, the FAA and NPS will determine what regulatory requirements will be proposed, if any, and will review the potential costs and benefits, as required by Executive Order 12866.

Significance

This anticipated rulemaking is not a "significant regulatory action" as defined in Executive Order 12866. The FAA has determined that the ANPRM is not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034, February 2, 1979).

Other Regulatory Matters

At this preliminary stage it is not yet possible to determine whether there will be a significant economic impact on a number of small entities or what the paperwork burden might be. These regulatory matters will be addressed at the time of publication of any NPRM on this subject.

List of Subjects

36 CFR Parts 1 through 7

Grand Canyon National Park, Haleakala National Park, Hawaii Volcanoes National Park.

14 CFR Parts 91 and 135

Aircraft, Airmen, Airports, Air taxis, Air traffic control, Aviation safety, Noise control.

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George T. Frampton, Jr.,

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