



U.S. Department
of Transportation
**Federal Aviation
Administration**

Advisory Circular

Subject: COMMERCIAL AIR TOUR OPERATIONS **Date: 10/25/02** **AC No: 136-1**
CONDUCTED OVER NATIONAL PARKS **Initiated By: AFS-200** **Change:**
AND TRIBAL LANDS

1. PURPOSE. This Advisory Circular (AC) contains information, directions, and procedures for obtaining operating authority for commercial air tour operations over national parks and tribal lands. Because this AC covers several types of operating authority, operators should read the entire AC before beginning actions to obtain operating authority over a particular park.

2. EFFECTIVE DATE. October 25, 2002.

3. DEFINITIONS.

a. Administrator. The Federal Aviation Administrator or any person to whom the Administrator has delegated authority in the matter concerned.

b. Commercial Air Tour Operation. 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:

(1) Below 5,000 feet above ground level (except solely for the 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 (FAA) requiring the pilot in command (PIC) to take action to ensure the safe operation of the aircraft); or

(2) Less than 1 mile laterally from any geographic feature within the park (unless more than ½-mile outside the boundary).

(3) In making a determination of whether a flight is a commercial air tour operation for purposes of this section, the Administrator may consider:

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

(b) 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;

- (c) The area of operation;
- (d) The frequency of flights conducted by the person offering the flight;
- (e) The route of the flight;
- (f) The inclusion of sightseeing flights as part of any travel arrangement package offered by the person offering the flight;
- (g) Whether the flight would have been canceled based on poor visibility of the surface below the route of the flight; and
- (h) Any other factors that the Administrator and the Director of the National Park Service (NPS) consider appropriate.

c. Commercial Air Tour Operator. Any person who conducts a commercial air tour operation.

d. Director. The Director of the National Park Service.

e. Existing Commercial Air Tour Operator (existing operator). 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 the date of enactment of the National Parks Air Tour Management Act of 2000 (i.e., April 5, 2000).

f. New Entrant Commercial Air Tour Operator (new entrant). A commercial air tour operator that applies for operating authority (OA) as a commercial air tour operator for a national park or tribal lands and has not engaged in the business of providing commercial air tour operations over the national park or tribal lands in the 12-month period ending on the date of enactment of the National Parks Air Tour Management Act of 2000 (i.e., April 5, 2000).

g. National Park. Any unit of the National Park system.

h. Tribal Lands. That portion of Indian Country (as defined in Title 18 United States Code (USC) Section 1151) that is within or abutting a national park (see explanation of terms).

4. ACRONYMS AND EXPLANATION OF TERMS.

a. ATMP. Air Tour Management Plan.

b. Certificate Holding District Office (CHDO). The FAA Flight Standards District Office (FSDO) that has responsibility for administering the certificate and is charged with the overall inspection of the certificate holder's operations (14 CFR part 119, section 119.3).

c. FAA. The Federal Aviation Administration.

- d. IOA.** Interim Operating Authority issued by the FAA.
- e. LOA.** Letter of Agreement signed by the FAA and NPS.
- f. NPS.** The National Park Service.
- g. OA.** Operating Authority issued by the FAA.

5. GENERAL.

a. The National Parks Air Tour Management Act of 2000 (The Act) was signed into law on April 5, 2000. The Act applies to any person who conducts a commercial air tour operation over a unit of the National Park system, over tribal lands that are within or abutting a unit of the National Park system, or any area within ½-mile outside a unit of the National Park system. The Act specifically excludes the Grand Canyon National Park, tribal lands within or abutting Grand Canyon National Park, parks or tribal lands located in the state of Alaska, and flights conducted by a commercial air tour operator over or near the Lake Meade National Recreation Area solely as a transportation route to conduct an air tour over Grand Canyon National Park. The Act expressly prohibits commercial air tour operations over the Rocky Mountain National Park, regardless of altitude. The regulations codifying the National Parks Air Tour Management Act of 2000 may be found in 14 CFR part 136.

b. The Act requires all persons operating or intending to operate a commercial air tour operation to apply to the FAA for authority to conduct such activity. The Act further requires the FAA and NPS to develop an Air Tour Management Plan (ATMP) for each unit of the National Park system or tribal land that does not have a plan in effect at the time a person applies for authority to conduct such an operation. The ATMP will provide acceptable and effective measures to mitigate or prevent the significant adverse impacts, if any, of commercial air tour operations upon natural and cultural resources, visitor experiences, and tribal lands.

c. The Act provides a limited exception to the ATMP and OA requirements for operators. Under this exception, existing and new entrant operators may conduct commercial air tour operations under 14 CFR part 91 if (1) such activity is permitted under section 119.1 of 14 CFR and (2) the operator secures an LOA from the Administrator and the National Park Superintendent for that national park or tribal land describing the conditions under which the operations will be conducted. The number of operations permitted under this exception is limited to not more than a total of 5 flights in any 30-day period over a particular park for ALL LOA operators.

d. Commercial air tour operators conducting commercial air tour operations 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. For more information about the requirements for part 91 air tour operators, see the National Parks Air Tour Management Final Rule (67 FR 65662, October 25, 2002) at: www.atmp.faa.gov.

6. OVERVIEW OF THE FIVE-PHASE OPERATING AUTHORITY APPROVAL PROCESS. Before commencing commercial air tour operations over a national park or tribal lands, a commercial air tour operator must apply to the Administrator for OA to conduct those operations. After submission of a statutorily complete application, the FAA will issue IOA to existing operators to allow them to continue commercial air tour operations while the ATMP for the affected park unit is developed. The submission of an application triggers the FAA and the NPS to initiate development of the ATMP. The OA process consists of the five-phase FAA certification process resulting in the approval, modification, or rejection of an operator's application for OA.

a. Phase I: Notification. The OA process begins with the publication of part 136 or when an existing or potential operator inquires about authority to conduct commercial air tour operations over a national park unit or tribal land in accordance with the Act and part 136. During this phase, operators are informed of the steps that they need to take in order to apply for OA. This AC is part of Phase I.

b. Phase II: Application. The second phase typically begins when an operator submits a statutorily complete OA application to the FAA. The submission of an OA application by an operator triggers the next two phases: IOA and the development of an ATMP.

c. Phase III: Interim Operating Authority (IOA). The FAA will issue IOA, in accordance with the Act, to existing operators that apply for OA using the information contained in the OA application. Under the Act, an existing operator is limited to the greater of the number of commercial air tour operations conducted by that operator within the 12-month period preceding enactment of the Act (April 5, 2000) or the average number of commercial air tour operations conducted by that operator per 12-month period for the 36 months preceding April 5, 2000. For seasonal operations, the authorization is equal to the number of commercial air tour operations conducted by that operator during the season or seasons covered by the 12-month period preceding enactment. Operators may use the period April 1, 1999, through March 31, 2000, as a practical matter to ease the recordkeeping burden. In general, IOA is only for existing operators; new entrants may receive IOA only if certain conditions are satisfied, as described in paragraph 8. IOA is detailed in paragraph 12.

d. Phase IV: ATMP Development. Once an OA application is filed, the FAA, in cooperation with the NPS, initiates the process of developing an ATMP for a national park unit or abutting tribal land. The ATMP development phase includes a detailed analysis, review, and evaluation of all OA application(s) received and the performance of an environmental analysis under the National Environmental Policy Act of 1969 (NEPA). The ATMP process is a public process that involves at least one public meeting with interested parties, and requires that the proposed plan be published in the Federal Register with an opportunity for public comment. The process ends with the publication of the final ATMP and the signing of the ATMP environmental decision document and record of decision by the FAA and the NPS.

e. Phase V: Operating Authority. The fifth phase involves the creation of the administrative documents or procedures necessary to implement the rules developed in the ATMP. These documents and procedures potentially include flight procedures, weather,

altitudes, training, entry and exit locations, routes, and sightseeing locations. This phase is completed when the FAA issues OA, including operation specifications, to conduct commercial air tour operations over a national park or abutting tribal land.

7. OPERATING AUTHORITY APPLICATIONS. Operators are responsible for submitting their OA applications by the effective date of part 136. An OA application must contain the following information:

- a. Name, mailing addresses, and phone numbers of the company.
- b. Address of principal base where operations will be conducted.
- c. The proposed start-up date (for new entrants).
- d. Company certificate number if the applicant is a certificated operator.
- e. Management personnel names, titles, and telephone numbers.
- f. Part 91 status; 14 CFR part 135 single pilot, basic, full, or commuter operator status; or 14 CFR part 121 operator status.
- g. Type and number of aircraft to be used for the commercial air tour operations.
- h. The national park(s) and/or tribal land(s) over which the operator will conduct commercial air tour operations.
- i. 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.).
- j. The safety history of the operator.
- k. For existing operators, the greater of:
 - (1) The number of commercial air tour operations conducted by that operator within the 12-month period preceding April 5, 2000, or from April 1, 1999, through March 31, 2000;
 - (2) The average number of commercial air tour operations conducted by that operator per 12-month period for the 36 months preceding April 5, 2000, or from April 1, 1997, through March 31, 2000; or
 - (3) For seasonal operations, the number of commercial air tour operations conducted by that operator during the season or seasons covered by the 12-month period preceding April 5, 2000, or from April 1, 1999, through March 31, 2000.

l. Optional Data To Support ATMP Development. Existing operators and new entrants are encouraged to provide the following information in their OA application as it may aid in the ATMP development process. Operators may elect to submit this data as a group in order to reduce duplication of effort. The optional data consists of the following:

(1) The economic benefits of the operator's commercial air tour operations to the park and community.

(2) Impact of any potential restrictions on an operator's commercial air tour operations.

(3) The advantages of the operator's air tours for its customers and the national parks and/or tribal lands they visit.

(4) The number of air tour visitors the operator serves on an annual or seasonal basis.

(5) Any other data that supports commercial air tour operations over the national park and/or tribal lands.

m. Other Appropriate Information. Other appropriate information as may be requested by the FAA.

n. Evidence of Previous Air Tour Activity. The FSDO may request additional evidence verifying that the existing operator conducted commercial air tour operations at a national park unit or tribal land within the specified time period. The information in the application should be sufficient evidence, assuming the following:

(1) The average number of commercial air tour operations indicated is consistent with the size of the operation (i.e., the number of aircraft and pilots identified by the operator supports the stated number of air tour flights).

(2) Any other records, such as the record of overflight or fees paid, are consistent with the stated number of commercial air tour operations (applicable only where such fees are collected).

8. NEW ENTRANT IOA EXCEPTION. After application for OA, a new entrant may receive IOA only if all of the following are true:

a. The Administrator determines that IOA is necessary to ensure competition in the provision of commercial air tour operations over the park or tribal lands.

b. No ATMP has been developed for the park involved by April 5, 2002.

c. The Administrator has not determined that granting IOA would create a safety problem at the park or on tribal lands.

d. The Director has not determined that granting IOA would create a noise problem at the park or tribal lands.

9. APPLICATION PROCEDURE FOR OPERATING AUTHORITY.

a. **Contents.** The application package must include an original and two copies of the complete OA application, if applying by mail, courier, or fax (only an original will need to be submitted if applying by e-mail).

b. **Where To Submit.** Certificated operators must submit applications for OA to the operator's CHDO if conducting commercial air tour operations within the District Office boundaries; otherwise, submit applications to the FSDO in which the park or tribal lands is located. Part 91 operators must submit applications to the District Office in which the park or tribal lands are located.

c. **Review Of Application.** The applicant should remain in contact with the FSDO during the entire review process to expedite clarification of issues and amendment of the application, as necessary. Existing operators that do not submit a statutorily complete application prior to the effective date of the final rule must cease commercial air tour operations over national park units and tribal lands when the final rule becomes effective.

d. **Commercial Air Tour Operations During Application.** Existing operators who submit statutorily complete applications prior to the effective date of the final rule may continue conducting commercial air tour operations while the FSDO processes IOA, unless otherwise directed by the FAA to cease operations.

10. INCOMPLETE APPLICATIONS. If an application is not statutorily complete, the reasons will be described to the applicant by letter. The OA application will be returned to the operator with a copy retained by the FAA for future reference should the operator reapply. An application is statutorily complete if all mandatory information is present. Information is mandatory if it is required by law.

11. FAILURE TO APPLY. After the effective date of the final rule, existing operators who did not apply for OA are prohibited by the Act from conducting commercial air tour operations.

12. INTERIM OPERATING AUTHORITY. After an existing operator submits a statutorily complete application for OA, the Administrator will grant IOA to that operator to conduct commercial air tour operations over a national park or tribal lands. The commercial air tour operator will be limited to the number of commercial air tour operations conducted by that operator in the 12 months preceding enactment (April 5, 2000) or between April 1, 1999, and March 31, 2000, or the average number of commercial air tour operations conducted by that operator per 12-month period preceding April 5, 2000, within the period April 1, 1997, through March 31, 2000. For seasonal operations the commercial air tour operator will be limited to the number of commercial air tour operations conducted by that operator during the season or

seasons between the 12-month period preceding April 5, 2000, or April 1, 1999, and March 31, 2000.¹ Under the Act, IOA:

- a. May not provide for an increase in the number of commercial air tour operations conducted during any of the time periods above the number that the air tour operator was originally granted unless such an increase is agreed to by the Administrator and the Director;
- b. Will be published in the Federal Register to provide notice and opportunity for comment;
- c. May be revoked by the Administrator for cause;
- d. Will terminate 180 days after the date on which an air tour management plan is established for the park or tribal lands;
- e. Will promote protection of national park resources, visitor experiences, and tribal lands;
- f. Will promote safe commercial air tour operations;
- g. Will promote the adoption of quiet technology, as appropriate, and
- h. Will allow for modifications of the IOA based on experience if the modification improves protection of national park resources and values of tribal lands.
- i. Will be documented in an IOA approval letter and, where applicable, in IOA operation specifications.

13. OPERATOR REQUESTS FOR A COMMERCIAL AIR TOUR OPERATIONS INCREASE. Operators granted IOA may apply for an increase in commercial air tour operations.

- a. Factors that will be considered for an increase in operations are:
 - (1) Company safety record.
 - (2) Company compliance with its IOA.
 - (3) Safety implications of any increase.
 - (4) Company aircraft with quiet technology, when defined.
 - (5) Impact on the park resources, visitor experiences, and tribal lands.
 - (6) Indication that any required overflight payments to a park are made in an accurate and timely manner.

¹ For practical purposes, operators may use the period April 1, 1999 – March 31, 2000, as the 12-month period preceding enactment.

b. Approval. An increase in commercial air tour operations may be approved only if agreed to by the Administrator and the Director.

14. EXCEPTION TO OBTAINING OPERATING AUTHORITY. As an alternative to obtaining OA, part 91 operators may seek an LOA to conduct commercial air tour operations over national park units or tribal lands.

a. Authorization. The FAA may grant LOA authorization to part 91 existing operators and part 91 new entrants excepting such operators from obtaining OA and from obtaining part 135 or 121 certification, provided the conditions in section 119.1 and part 136 are satisfied.

b. Where To Submit. Part 91 operators should submit requests for an LOA to the local FSDO where the commercial air tour operations are to be conducted.

c. Effective Date Limitation. A part 91 existing operator must apply for an LOA or OA prior to the effective date of the regulations or must cease commercial air tour operations once the final rule adopting part 136 is effective.

d. Application Contents. The LOA application should include at least all of the following:

- (1) Company name, mailing address, and phone numbers.
- (2) Address of the principal base where operations will be conducted.
- (3) If a new operator, the proposed startup date.
- (4) Management personnel names, titles, and telephone numbers, if applicable.
- (5) Type and number of aircraft to be used and number of flights proposed each 30-day period.
- (6) The national parks, tribal lands, or geographic areas of intended operations.
- (7) Any additional information that provides a better understanding of the proposed operations.

e. The Letter of Agreement. After coordination with the Park Superintendent, the FSDO may issue an LOA to the operator.

(1) **Contents.** The LOA contains the following provisions, as applicable:

- (a) A list of all operators covered by the LOA.

(b) A limitation on the total number of flights over the park for all operations conducted by all operators covered by LOAs, including that of the subject operator, to 5 flights in any 30-day period.

(c) A list of sites and routes authorized.

(d) Any altitude limitations.

(e) Any time-of-day limitations.

(f) Any weekly, monthly, or seasonal limitations.

(g) A requirement that a signed log of all commercial air tour operations, with the date of each flight, is to be received by the appropriate FSDO on October 1 of each year.

(h) Notice that the LOA is not a property interest but rather an operating privilege that can be modified or revoked by the FAA.

(i) Notice that flight allocations not being used by the operator are subject to reallocation, and that the operator cannot transfer allocations.

(2) **Signature.** The FSDO Manager and Park Superintendent sign the LOA.

(3) **Issuance.** LOAs may be issued upon application. LOAs may also be amended.

15. GRANTING OF OPERATING AUTHORITY BY A FSDO.

a. Termination of IOA. After the implementation of an ATMP, the CHDO will send a letter to all commercial air tour operators with IOA notifying them that their IOA will terminate 180 days after the start date of the final ATMP.

b. Operating Authority. The CHDO will issue OA with an effective date of not later than 180 days after completion of the ATMP. For operators conducting commercial air tour operations outside their CHDO boundaries, the CHDO will issue OA through the geographic FSDO. OA will include:

(1) Part 135 ATMP operations specifications (OpSpecs).

(2) Other documents that the FAA and the ATMP require for the park.

c. Limitation. Part 91 existing operators or part 91 new entrants cannot be issued OA until their part 135 certification has been completed and OpSpecs based on that certification have been issued.

16. CONTACT WITH THE LOCAL FSDO. The new rules represent a significant change in the way commercial air tour operators at national parks and abutting tribal lands will be expected

to do business. It is essential that commercial air tour operators have a clear understanding of the documents required for application. Operators should ask their local FSDO for a copy of the “ATMP Procedures Manual for Operations Inspectors” to assist them in providing the necessary documentation. The manual contains specific details on application and processing procedures and sample letters and documentation. If a potential applicant is not a certificated operator, the operator should schedule a time at the FSDO to begin inquiry into acquiring either a part 135 or part 121 certificate, as appropriate.

/s/ Louis C. Cusimano
James J. Ballough
Director, Flight Standards Service