

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Parts 91, 121, 127, and 135**

RIN 2120-AG11

[Docket No. 28577; Notice No. 96-4]

Special Flight Rules in the Vicinity of the Rocky Mountain National Park

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: The FAA is proposing to establish a Special Federal Aviation Regulation (SFAR) to preserve the natural quiet of Rocky Mountain National Park (RMNP) from any potential adverse impact from aircraft-based sightseeing overflights. This NPRM discusses alternative methods to achieve this goal, and commenters are invited to address the alternatives. The primary alternative would impose restrictions on commercial sightseeing flights operated in the airspace over RMNP. Other alternatives include restrictions on some flights or types of operations over RMNP and various forms of operating procedures based on the particular and specific requirements of the park.

DATE: Comments must be received on or before August 13, 1996.

ADDRESS: Comments on this NPRM should be mailed, in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-200), Docket No. 28577, 800 Independence Avenue SW., Washington, DC 20591. Comments may also be sent electronically to the Rules Docket by using the following Internet address: nprmcmts@mail.hq.faa.gov. Comments must be marked Docket No. 28577. Comments may be examined in the Rules Docket in Room 915G on weekdays between 8:30 a.m. and 5:00 p.m., except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Neil Saunders, Airspace and Rules Division, ATA-400, Airspace Management Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; Telephone: 202-267-8783.

SUPPLEMENTARY INFORMATION:**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or

economic impact that may result from adopting the proposals in this notice are also invited. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions. Communications should identify the regulatory docket number and be submitted in triplicate to the above specified address. All communications and a report summarizing any substantive public contact with FAA personnel on this rulemaking will be filed in the docket. The docket is available for public inspection both before and after the closing date for receiving comments.

Before taking any final action on this proposal, the Administrator will consider all comments made on or before the closing date for comments, and the proposal may be changed in light of the comments received. The FAA would particularly welcome comments from any operator that is planning or contemplating air tour operations over RMNP.

The FAA will acknowledge receipt of a comment if the commenter includes a self-addressed stamped postcard with the comment. The postcard should be marked "Comments to Docket No. 28577." When the comment is received by the FAA, the postcard will be dated, time stamped, and returned to the commenter.

Availability of the NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW., Washington, DC 20591, or by calling 202-267-9677. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future FAA NPRM's should request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes application procedures.

Background

National parks are unique natural 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 aircraft overflights can interfere with NPS efforts to achieve a natural park experience for visitors on the ground and to preserve other park values.

Ensuring access to national parks, while still maintaining the beauty and experience of the individual park, is one of the goals of the national park system.

To this end, the Departments of the Interior and Transportation formed an interagency working group (IWG) on December 22, 1993, to explore ways to limit or reduce the impacts from overflights on national parks, including RMNP, while still ensuring access to the parks. The IWG's tasks include reviewing the environmental and safety concerns resulting from park overflights and working toward resolution of specific park impacts where they are found to exist. The FAA's role in the IWG has been to promote aviation and aviation safety, and to provide for the safe and efficient use of airspace. At the same time, the FAA recognizes the importance of preserving, protecting, and enhancing the environment and minimizing adverse effects of aviation. The Department of Interior's role in the IWG has been to protect public land resources in national parks, preserve environmental values of those areas, including wilderness areas, and provide for public enjoyment of those areas.

The secretaries of the two Departments see the formation of the working group and the commitment to addressing the effects of park overflights as the initial stage in a spirit of cooperation between the two departments to promote an effective balance of missions. This cooperation is also necessary to integrate the roles of the two departments: the FAA's authority to control the nation's airspace to ensure aviation safety and efficiency, and the Department of the Interior's responsibility for managing the nation's parks, such as RMNP.

The FAA, with the cooperation of the Department of the Interior through the IWG, is developing national standards that can be applied to air traffic over all national parks, not just RMNP. The FAA expects that any SFAR adopted in this rulemaking may be superseded by any national standards. This Notice is not a part of the discussion on national standards; it presents options that will be considered as means to minimize the adverse effects of overflights on RMNP, and it seeks comments and suggestions on voluntary and regulatory actions to deal with the issue of aircraft noise within the Park.

Rocky Mountain National Park

Rocky Mountain National Park receives approximately three million visitors a year, making it the sixth most visited national park in the United States, despite its relatively small size (for a major Western national park) of 265,727 acres. RMNP is located approximately 40 miles outside the city limits of Denver and approximately 50 miles from the Denver International

Airport. The topography of the park is characterized by steep mountains, narrow valleys, and high elevations (8,000 to 14,250 ft). Seventy percent of park terrain is above 10,000 feet.

As with other similar mountainous areas, RMNP presents pilots with a challenging flying environment. It has high winds, often in excess of 100 mph. The park's high altitudes diminish engine output and propeller efficiency, making it more difficult for an aircraft to perform in high winds. The rugged terrain limits maneuverability, and rapidly changing weather can envelop an aircraft. Perhaps in part for these reasons, the use of the airspace over RMNP has so far not been extensive. Unlike many other national parks, there are currently no air tour operators overflying the park or operating in the surrounding airspace. Other aviation users do operate in the airspace above RMNP. Non-commercial, general aviation aircraft overfly the park following the routes established for safe passage through the topography. In addition, due to the Park's proximity to the Denver International Airport, aircraft operating to or from the airport overfly RMNP. Arrival and departure routes above the Park are necessary to ensure the safe and efficient handling of air traffic into the airport. Traffic into the airport operates at approximately 19,000 feet above mean sea level (MSL) for jets and 16,000 feet above MSL for turboprop aircraft.

The Park enjoys an extensive road system within its boundaries, which provides numerous opportunities for viewing the park's vistas. Park officials estimate that 54 percent of the park can be seen from one or more of the 149 miles of roads.

Ninety-two percent of the park is proposed for conclusion in the National Wilderness Preservation System and is required by law to be managed as a de facto wilderness until action is taken by Congress. This means that, among other things, most motorized vehicles must be contained within specific narrow corridors on the existing roadway system, and no future development is permitted. The natural quiet provided by the wilderness environment is valued by park users. In a survey of RMNP users conducted for the NPS, 93 percent of the respondents listed tranquillity as an "extremely" or "very" important value found in the park. And approximately 90 percent stated that the noise from helicopter tours would affect their enjoyment of the park. A copy of the study has been placed in the rulemaking docket.

Recently, the Department of Transportation has been requested by

the Governor of Colorado, members of the Colorado Congressional delegation, and other officials to place a preemptive ban on air tour operations at RMNP. Even though there are no air tour operations at the Park currently, some operators apparently have expressed an interest in starting such tours to officials of Estes Park, Colorado. The government officials who have requested regulatory action are concerned that an influx of air tour operations at RMNP would undermine enjoyment of the Park by visitors on the ground.

The FAA wishes to be responsive to concerns about the effects of overflights on the national park system. Although, as noted, the FAA is still developing nationwide standards for overflights of national parks, a relatively unusual set of circumstances has occurred at RMNP. Judging from the requests received by the FAA, there is apparently broad support for limitations on overflights among local leaders, even in the absence of current overflights. There is also value in being able to take the initiative now, before any overflights occur. At this point, there has been no environmental loss from overflights and no economic loss to any incumbent operator. Accordingly, the Department is exploring the options and alternatives available. The IWG has examined both traditional regulatory solutions and alternatives to regulation during its review of the national overflight issue.

Following a review of the comments submitted in response to this Notice, the FAA could proceed immediately to implement a final rule that best balances the competing needs of different users of the park. Therefore, comment is requested on each alternative listed in the Proposal Section, as the FAA could adopt none, one, or a combination of the listed alternatives. Comments are also invited to recommend an approach different from those discussed here. Any such recommendation should fully discuss the associated costs and benefits of the recommended approach.

Environmental Documentation

This notice proposes a number of alternatives for addressing potential aviation noise issues over Rocky Mountain National Park. The FAA will select viable alternatives based on comments received and other pertinent information, identify a proposed alternative for final rulemaking, and if rulemaking is selected, publish a draft environmental assessment for comment. The draft assessment will evaluate all selected alternatives, at minimum assessing the current condition, the preferred alternative, and the worst case scenario. Comments on the draft

environmental assessment will be evaluated and a final assessment prepared prior to issuing a final rule.

Regulatory Evaluation

Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effects of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this proposed rule is "a significant regulatory action" as defined in the Executive Order and the Department of Transportation Regulatory Policies and Procedures. This rule would not have a significant impact on a substantial number of small entities and would not constitute a barrier to international trade. Due to the minimal economic impact of this proposed rulemaking, further economic analysis is not necessary under the Department's Regulatory Policies and Procedures.

Some of the proposed alternative rules would not impose any costs on society. However, Alternative One would prevent air tour operators from overflying the RMNP for sightseeing purposes for the limited duration of the SFAR. Currently, there are no sightseeing air tour operators overflying RMNP, and no operator has taken formal action to begin such operations. However, some operators may be considering starting these types of operations over the park in the future. Alternative One would prevent these possible sightseeing air tour overflights, for a period to be specified, in order to give the FAA and the NPS time to study the situation and to develop a plan for controlling these overflights to minimize or eliminate their effect on park visitors on the ground.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily burdened by government regulations. The RFA requires agencies to review rules that may have a "significant economic impact on a substantial number of small entities."

There are no operators currently performing sightseeing air tour operations over RMNP. Therefore, the expected impact of this regulatory

action is negligible, and the Agency determines that this proposed amendment would not have a significant impact on a substantial number of small entities. However, we have asked elsewhere for comment on whether any person intends to institute commercial sightseeing operations at RMNP. Any such person is also invited to discuss the impact of the proposed rule.

International Trade Impact Analysis

This action is not expected to have an adverse impact either on the trade opportunities for U.S. firms doing business abroad or on foreign firms doing business in the United States. This assessment is based on the fact that the segment of the aviation industry that may be affected by this Notice and subsequent rule do not compete with similar operators abroad. That is, their competitive environment would be limited to RMNP.

Federalism Implications

This action would not have substantial effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Indeed, State and local government representatives has been among the advocates for FAA regulatory action to protect RMNP from the noise created by overflights. Therefore, in accordance with Executive Order 12612, it is determined that this action will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

International Civil Aviation Organization and Joint Aviation Regulations

In keeping with United States obligations under the convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization Standards and Recommended Practices (SARP) to the maximum extent practicable. For this action, the FAA has reviewed the SARP of Annex 10. The FAA has determined that the proposals in this Notice, if promulgated, will not present any differences.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13), there are no requirements for information collection associated with the proposed regulation.

Conclusion

For the reasons set forth above, the FAA has determined that this NPRM is a significant regulatory action under Executive Order 12866. The FAA certifies that this NPRM will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This NPRM is considered significant under DOT Regulatory Policies and Procedures.

The Proposal

As previously stated, the FAA wishes to be responsive to concerns about the effects of overflights on the national park system. For that reason, the FAA is considering the following alternatives in response to RMNP and the overflights issue. The FAA may proceed immediately to a final rule based on this proposal that would implement the best alternative or alternatives. Therefore, comment is required on each of these proposals. The FAA may adopt one or a combination of several of the listed proposals.

The following alternatives are listed in descending order of restrictiveness. Each alternative lists the specific implementing, regulatory language followed by an explanation of the alternative and possible variations on the alternative.

Alternative One: Ban on commercial Aviation Sightseeing Tours

"No person may operate an aircraft within the lateral boundaries of RMNP if the purpose of that operation is to carry passengers for hire for the purpose of sightseeing or air tours."

This alternative would prohibit flights within RMNP by commercial air tour operators. In the opinion of RMNP officials, air tours are the kind of operations that pose the greatest potential danger of creating adverse effects on the Park. The FAA's preliminary view is that air tour operations generally differ from other operations; e.g., in frequency and altitude above ground level. In addition, of course, air tour operations tend to visit points of interest within the park, where ground-based visitors are also likely to concentrate. General aviation would continue to operate over the Park under this variation. In discussions with the FAA, NPS officials have indicated that other forms of aviation activities within RMNP have not, to date, caused any serious noise problem. The FAA specifically seeks comment on whether the nature of air tour operations justify banning them while continuing to permit other commercial and private operations.

Alternative Two: Limits on Operations

"Any person operating an aircraft below 2,000 ft AGL for the purpose of carrying passengers for hire for sightseeing or air tours within the lateral boundaries of RMNP must operate along the following prescribed routes: [designate routes that follow the existing Park road system]"

This alternative would require aircraft that fly below 2,000 feet above ground level (AGL) within the Park to follow the road system. The purpose of this proposal would be to concentrate the noise of aircraft in the areas of the Park that are already exposed to a high concentration of noise from automobiles, buses, etc. On the other hand, the greatest percentage of ground-based visitors are also on or near the Park road system.

Variant A: "No person may operate an aircraft below 2,000 feet AGL for the purpose of carrying passengers for hire for sightseeing or air tours while within the lateral boundaries of RMNP."

Variant B: "No person may operate an aircraft below 2,000 feet AGL for the purpose of carrying passengers for hire for sightseeing or air tours within the lateral boundaries of RMNP before 10:00 a.m. or after 4:00 p.m."

Variant C: "No person may operate an aircraft below 2,000 ft AGL for the purpose of carrying passengers for hire for sightseeing or air tours within the lateral boundaries of RMNP from June through September."

These three variations on Alternative Two are examples of the types of restrictions that could be utilized to minimize the effect of overflights on the Park. Comments would be appreciated on these as well as other types of restrictions that could be possible, including different operating altitudes and times of day and season. Commenters are requested to pay particular attention to the following questions:

- Would limiting air operations to road corridors concentrate too much noise in high visitor use areas? Conversely, would limiting overflights to such areas further the goal of maximizing the areas within the Park where visitors can enjoy the Park's natural quiet?
- Would limiting operations by time of day or season of the year be economically feasible for potential tour operators?

Alternative Three: Voluntary Agreement

Voluntary agreements are non-regulatory but, due to their unique nature, are treated as binding by the

signatories and are strictly self-policed, with monitoring by the NPS. Voluntary agreements have proven successful in a number of cases. For instance, a voluntary agreement between the NPS and the operators of air tours around the Statute of Liberty established air tour routes around the Statute and Ellis Island and stand-off distances for the air tour aircraft. This in turn created a safer environment and a more enjoyable experience for the visitors to the Statute. A similar arrangement can be found in the voluntary agreement concerning the Arch National Park in St. Louis, Missouri. Of course, voluntary agreements are easier to achieve when there is an identifiable base of air tour operators with which the NPS can enter into agreement.

This alternative would provide a non-regulatory approach to the situation at RMNP. Under this alternative, present and potential future commercial air tour

operators (before they start operating) would voluntarily enter into an agreement that would prohibit or restrict operations within the boundaries of RMNP. Comments are requested on the following matters, among others:

- Areas that would be covered by a voluntary agreement, including the nature of the possible restrictions and the identities of the participants;
- How such an agreement would be enforced;
- How an agreement could be implemented within the necessary time frame for action to protect the Park;
- Suggestions with respect to penalties for violations;
- The circumstances under which an agreement could be terminated; and
- Whether a regulatory system should be imposed now to serve as a contingency back-up in the event that a voluntary agreement is not reached or is

terminated. Perhaps most of all, the FAA is interested in comments from potential air tour operators on the circumstances under which they would be willing to enter into a voluntary agreement to prohibit or limit operations.

Of course, as with all the listed alternatives, the FAA could combine a voluntary agreement with any of the other alternatives. For example, the FAA could choose to seek a voluntary ban on operations during the summer, combined with route or time-of-day restrictions during other months. Other combinations could be considered, and the above examples are intended merely as illustrations.

Issued in Washington on May 9, 1996.

David R. Hinson,

Administrator.

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