I am concerned with the definition of an air tour operation as a "flight conducted for compensation or hire in a powered aircraft where a purpose of the flight is sightseeing .... below" (5000 feet AGL) "or less than 1 mile laterally ...."

I operate a non-pressurized aircraft, and can easily envision a situation wherein I am flying myself and a salesman on a flight where the company in reimbursing travel expenses (a flight conducted for compensation in a powered aircraft). The route of our VFR flight happens to pass over a national park, and we decide for personal enjoyment reasons to cruise at less than 5000 feet AGL. I have just met all the criteria to be classed as a commercial air tour operator. I do not think that this is the intended result, and I do not think that this is a proper result.

It becomes even more difficult if, on this described flight, we had no specific intention of sightseeing but broke the trigger altitude while remaining beyond the 2000 feet AGL buffer over sensitive areas. I would now be in situation where I must prove that I had no intention at all of sightseeing to avoid being subject to all the regulations of a commercial air tour operator rather than an ordinary part 91 flight.

I would suggest that at least three factors distinguish the above scenario from an actual air tour flight. Air tours are repetitive and regular, as the operator will certainly fly more often than a transient. Air tours will be flying a large number of different passengers. Finally, an air tour operator will be promoting the sightseeing as a major element of the flight.

I would like to see the rule modified so that the specific example I gave is addressed. I do note that the only reason the question comes up at all is because the trigger altitude is so much greater than the clearance altitude normally required over sensitive regions.

Thank you for your attention.

David Jacobson