

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Parts 91, 93, 121, and 135**

[Docket No. 28537; Amendment Nos. 91-253, 93-73, 121-262, 135-66]

RIN 2120-AF93

Special Flight Rules in the Vicinity of Grand Canyon National Park

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: On December 31, 1996, the FAA published a final rule that codifies the provisions of Special Federal Aviation Regulation (SFAR) No. 50-2, Special Flight Rules in the Vicinity of Grand Canyon National Park (GCNP); modifies the dimensions of the GCNP Special Flight Rules Area; establishes new and modifies existing flight-free zones; establishes new and modifies existing flight corridors; establishes reporting requirements for commercial sightseeing companies operating in the Special Flight Rules Area; prohibits commercial sightseeing operations during certain time periods; and limits the number of aircraft that can be used for commercial sightseeing operations in the GCNP Special Flight Rules Area. This action delays the effective date for 14 CFR Sections 93.301, 93.305, and 93.307 of the final rule and reinstates portions of and amends the expiration date of SFAR No. 50-2. This action does not affect or delay the implementation of the curfew, aircraft restrictions, reporting requirements or the other portions of the rule.

DATES: Effective date: The effective date of May 1, 1997, for 14 CFR Sections 93.301, 93.305, and 93.307, is delayed until 0901 UTC January 31, 1998. SFAR No. 560-2 is reinstated and amended effective 0901 UTC May 1, 1997. SFAR No. 50-2, Sections 2, 3, 6, 6, 7 and 8 are removed effective 0901 UTC May 1, 1997.

Comments must be received on or before March 24, 1997.

ADDRESSES: Comments should be mailed, in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-200), Docket No. 28537, 800 Independence Avenue, SW., Washington, DC 20591. Comments may be sent electronically to the Rules Docket by using the following Internet address nprmcmts@mail.faa.dot.gov. Comments must be marked Docket No. 28537. 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: Mr. Neil Saunders, Airspace and Rules Division, ATA-400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone: (202) 267-8783.

SUPPLEMENTARY INFORMATION:**Request for Comments on the Rule**

Although this action is a final rule, and was not preceded by notice and public procedure, comments are invited on the rule. This rule will become effective on the date specified in the **DATES** section. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule, and in determining whether additional rulemaking is required.

History

On December 31, 1996, the FAA published three concurrent actions (a final rule, a Notice of Proposed Rulemaking [NPRM], and a Notice of Availability of Proposed Commercial Air Tour Routes) in the Federal Register (62 FR 69301) as part of an overall strategy to reduce further the impact of aircraft noise on the park environment and to assist the National Park Service (NPS) in achieving its statutory mandate imposed by Public Law 100-91. The final rule amends part 93 of the Federal Aviation Regulations and adds a new subpart to codify the provisions of SFAR No. 50-2, modifies the dimensions of the GCNP Special Flight Rules Area; establishes new and modifies existing flight-free zones; reestablishes new and modifies existing flight corridors; and establishes reporting requirements for commercial sightseeing companies operating in the Special Flight Rules Area. In addition, to provide further protection for park resources, the final rule prohibits commercial sightseeing operations in the Zuni and Dragon corridors during certain time periods, and places a temporary limit on the number of aircraft that can be used for commercial sightseeing operations in the GCNP Special Flight Rules Area. These provisions become effective on May 1, 1997.

An NPRM, Notice No. 96-15, proposing to establish noise limitations for certain aircraft operating in the vicinity of GCNP was also published with a comment period that closes on March 31, 1997.

Finally, a Notice of Availability of proposed Commercial Air Tour Routes for the GCNP was published with a 30-day comment period that closed on January 31, 1997. This Notice requested comment on the proposed new or modified existing air tour routes, which complement the final rule affecting the Special Flight Rules in the Vicinity of GCNP.

Petitions

By petition dated January 15, 1997, the Aircraft Owners and Pilots Association requested that the FAA reconsider the rule because of its perceived negative impact on the general aviation community and the fact that general aviation traffic does not contribute to the issues addressed by the final rule.

On January 30, 1997, the Clark County Department of Aviation, et al., filed a petition seeking reconsideration and/or a stay of effectiveness of the implementation of the Toroweap/Shinumo Flight-Free Zone that will bar the use of the current "Blue 1" commercial air tour route until the FAA has taken adequate steps to assure the availability of an adequate alternative for Las Vegas based air tour operators.

On January 31, 1997, the Grand Canyon Air Tour Coalition (Coalition) requested a stay of the effective date arguing that the necessary pilot training and certification could not be reasonably and safely completed prior to the May 1, 1997, effective date. The petition also alleged that discontinuing and limiting existing tour routes as of May 1, 1997, would disrupt the travel plans of a substantial portion of GCNP visitors, and air tour operators would be forced to dishonor contractual obligations based on material printed prior to August 1996. (This administrative action is separate from but interrelated to a Petition for Review filed by the Coalition in the Court of Appeals for the District of Columbia Circuit, *Grand Canyon Air Tour Coalition v. FAA*, (Case No. 97-1003)).

On February 18, 1997, the Grand Canyon Trust, et. al., (Trust) filed a request with the FAA opposing the Coalition's request for stay of the final rule and urged the FAA to deny the Coalition's request. The Trust argued that the Coalition has not presented valid grounds to support its stay request.

Even though the specific Petitions filed with the FAA focus on different aspects of the operating environment within the Park, the underlying concepts of the three Petitions are similar in nature. All three administrative Petitions are concerned

with the air tour route structure or its implementation.

In support of the requests for a stay of the effective date, the Petitions have alleged several economic and safety concerns. The economic concerns are inextricably tied with the implementation of the new routes in the Park. As will be discussed below, if the implementation of the new routes is delayed, the economic concerns are, at a minimum, also delayed. In essence, the safety concerns stem from the Petitioners' position that there is not enough time to train and certify all operators and pilots for operations on the new Grand Canyon routes that are scheduled to be in place on May 1, 1997, and that this would create an inherently unsafe situation in the Grand Canyon. The FAA strongly disagrees with this assertion that implementing the new routes effective May 1, 1997, would be unsafe. Even though the FAA is committed to achieving the substantial restoration of natural quiet in the Park as soon as possible, safety is, and always will be, paramount. To that end, the FAA has been preparing to take dramatic steps to alleviate any potential problems that could adversely affect the safety in the Park on May 1, 1997, by arranging for additional inspectors to be available for the operators to complete the training on the new routes prior to the May 1, 1997, effective date. The FAA would never permit an unsafe situation to take place at the Grand Canyon.

While the FAA has been diligently working toward a May 1, 1997, implementation date for the entire rule, the Agency has also been reviewing comments concerning proposed routes and working toward the establishment of these routes. During the process of establishing the new routes in response to the final rule, the FAA has met with aviation users, Park users, and Native Americans. Several new and innovative ideas were offered by those groups. Many of these creative ideas suggest alternatives to both the existing environment at the Park and the proposed environment that could significantly improve the operating situation in both the environmental and operational arenas. These new suggestions have not yet been adequately explored, but are deserving of further investigation and analysis. Additional time would afford the FAA and the Department of the Interior (DOI) an opportunity to review these new ideas. In addition, the FAA is committed to a continued working relationship with the affected Native American tribal units, and the FAA intends to complete consultation with

the affected Native American tribes concerning these new route suggestions pursuant to Section 106 of the National Historic Preservation Act. Although the FAA is fully prepared to implement the new route structure on May 1, 1997, as originally proposed, it would be extremely difficult to accommodate the new proposals now being discussed by that date.

The FAA has consulted with the DOI concerning the new suggestions received by the FAA and the need for further consultation. The DOI reexamined the situation at the Park and concluded that the implementation of the curfew as required by the final rule on May 1, 1997, will, on its own, be a significant step to achieving the substantial restoration of natural quiet in the Park. The subsequent implementation of the new air tour route structure, together with the proposal of quiet technology, will form the basis for the next step towards the substantial restoration of natural quiet. The DOI and the FAA have determined that additional time would be beneficial to permit the further exploration of these new ideas submitted by the affected and interested parties, and that a delay in the effective date of the implementation of the new routes in the Park is warranted. Therefore, to permit continued discussions on, and possible changes to, the proposed new routes and to permit further consultation with the Native American tribes, the FAA has determined to delay the effective date of the expansion of the flight-free zones and minimum altitudes as stated in 14 CFR Sections 93.301, 93.305 and 93.307 to January 31, 1998. The effective date of May 1, 1997, for all the other aspects of the rule, i.e., the curfew, aircraft limitations, and reporting requirements, will remain unchanged.

Since the FAA is delaying certain portions of the final rule, as stated above, SFAR 50-2 must be reinstated, and certain portions of the SFAR be extended. The continuation of the SFAR is vital to maintain the existing environmental and safety benefits. Specifically, the FAA finds it necessary to amend Section 9 of the reinstated SFAR 50-2 to extend the provisions of Sections 1, 4, and 5, (i.e., the Special Flight Rules Area, the flight-free zones and the minimum flight altitudes) until January 31, 1998. The termination of SFAR 50-2 Sections 1, 4, and 5 will coincide with the delayed effective date of 14 CFR Sections 93.301, 93.305, and 93.307.

On May 1, 1997, the provisions of the final rule that are unaffected by the pending route structure will go into effect. These provisions consist of the

curfew, aircraft limitations, and reporting requirements, and are continued in 14 CFR Sections 93.303, 93.309, 93.311, 93.313, 93.315, 93.316, and 93.317. To avoid redundancy and confusion the FAA also finds it necessary to remove certain sections of SFAR 50-2 effective May 1, 1997. Sections 2, 3, 6, 7, and 8 will be removed on May 1, 1997 to coincide with the implementation of the above referenced sections of the final rule contained in part 93.

Further Consultation and Review

As mentioned above, during the comment period on the new routes, the FAA received many insightful and cogent comments on the proposed route structure. Consultation with the Native American representatives also produced several useful and valid alternate operational schemes. Many of these ideas received from the comments and through the consultations are innovative and may prove to be quite beneficial for both the safety and the environmental arenas. A good example of this concerns the direction of air tour traffic in the eastern side of the Park, e.g. in the Dragon Corridor. The FAA's preliminary view that traffic should operate in a clockwise direction is being revisited, based on comments from the air tour operators as well as from NPS. With new considerations given by the operators, the existing direction of traffic operations, i.e., counterclockwise, may be the more safe and environmentally sound decision.

The FAA has determined that the responses to the proposed routes should be further analyzed prior to implementation of airspace changes. Therefore, in light of the comments and additional information received, the FAA will reexamine the proposed route structure in relation to the operating environment in the Park. The FAA expects to revisit the proposed route structure and incorporate several of the above mentioned ideas. Involvement of the interested and affected parties will be crucial in this process.

Notice and Comment

As is explained below, this final rule is being issued without prior notice and comment because of the time constraints. The FAA spent the month of January and most of February receiving and reviewing comments on the proposed routes and consulting with the various affected parties. Had the FAA not received the valuable information on the route structure that it did, the FAA would have been able to transmit the data on the proposed routes to the proper charting authorities

(the National Ocean Service [NOS]), and an aeronautical chart would have been available by at least April 1, 1997, that would have been used by the operators for training and navigational purposes. To have the appropriate chart produced by April 1, the FAA would have had to forward the charting data to NOS by February 21, 1997. However, once the FAA started to receive the relevant information from the commenters, the Agency had to make a determination as to whether to proceed with the proposed routes so as to have the routes and the complete Grand Canyon final rule effective and implemented on May 1, or whether to take additional time to analyze the comments and possibly develop a better and more comprehensive route structure that would not go into effect until after the busy summer tourist season.

Further, officials of the Park and NPS had suggested alterations and refinements in the route structure that have the potential to produce noise reduction benefits. They have requested the opportunity to explore these new options with the FAA. Both the FAA and the DOI believe that all these suggested changes could produce a significantly better rule for both the Park users and the aviation operators. Additional time is needed, however, to review, analyze, and implement these route changes, which, again, would preclude a May 1, 1997, effective date.

To permit what the FAA and the DOI believe will culminate in a better overall route structure, the FAA has decided not to send the originally proposed routes to NOS for charting, but to analyze the new ideas with the expectation of creating better routes. Due to the specific and strict requirements of NOS for the charting preparation time, any further alteration to the route structure, such as the ones suggested by DOI and interested parties, make it impossible to meet the charting date necessary for a May 1 effective date. A delay in the charting data to NOS would mean that NOS would not have been able to produce the charts by April 1 and, consequently, operators would not have been able to train their pilots by May 1. Essentially, therefore, any delay in sending the data to NOS results in an equivalent delay of the effective date. With the goal to produce the best routes possible, the FAA determined that it would be contrary to the public interest to implement the originally proposed routes when better alternatives might be available as a result of the comments received and the consultations with DOI and others.

Moreover, past experience has demonstrated that the training of pilots

on new routes during a peak tourist season could be unsafe. At the Park, the peak season extends approximately from May through October. To eliminate the potential for unsafe operations within the Park, the FAA further determined that the training should take place in the Park when the volume of air traffic traditionally decreases, i.e., after the summer tourist season. For that reason, the FAA is delaying the effective date of the new airspace and route structure until January 31, 1998, to give the operators sufficient time to train their pilots adequately and safely after the close of the busy summer season. Therefore, the FAA finds that there is sufficient justification under 5 U.S.C. 553(b) to issue this rule without notice and an opportunity for comment. However, while there is not sufficient time to allow prior notice and comments concerning the FAA decision to delay the May 1 effective date, we invite comments concerning any other aspect of this notice, including the new implementation date of January 31, 1998.

Economic Evaluation

In promulgating the final rule for Special Flight Rules in the Vicinity of the GCNP, the FAA prepared a cost-benefit analysis of the rule. The delay in the implementation of 14 CFR Sections 93.301 and 93.307 will not affect that assessment. The delay in the implementation of Section 93.305 will be cost-relieving.

Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended, FAA completed a final regulatory flexibility analysis of the final rule. The delay in the implementation of 14 CFR Sections 93.301, 93.305, and 93.307 will not have an effect on that analysis.

Federalism Implications

The amendment set forth herein will not have substantial direct effects on the States, or the relationship between the national Government and the State, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this amendment does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects

14 CFR Part 93

Aircraft, Airmen, Air traffic control, Aviation safety, Noise control, Reporting and recordkeeping requirements.

14 CFR Part 93

Air traffic control, Airports, Navigation (Air), Reporting and recordkeeping requirements.

14 CFR Part 121

Aircraft, Airmen, Aviation safety, Charter flights, Safety, Transportation.

14 CFR Part 135

Air taxis, Aircraft, Airmen, Aviation safety.

Adoption of Amendments

Accordingly, the Federal Aviation Administration (FAA) amends 14 CFR parts 91, 93, 121, and 135 as follows:

PARTS 91, 121 AND 135 [AMENDED]

1. The authority citation for part 91 continues to read as follows:

Authority: 49 USC 106(g), 40103, 40113, 40120, 44701–44711, 44701, 44709–44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46502, 46504, 46506–46507, 47122, 47508, 47528–47531.

2. The authority citation for part 121 continues to read as follows:

Authority: 49 USC 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

3. The authority citation for part 135 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

SFAR No. 50–2 [Reinstated]

4. In parts 91, 121, and 135, Special Federal Aviation Regulation No. 50–2 is reinstated.

5. In parts 91, 121, and 135, Special Federal Aviation Regulation No. 50–2, Section 2, 3, 6, 7, and 8 are removed.

6. In parts 91, 121, and 135, Special Federal Aviation Regulation No. 50–2, Section 9 is revised to read as follows:

SFAR 50–2—Special Flight Rules in the Vicinity of the Grand Canyon National Park, AZ

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Section 9. *Termination date.* Sections 1. Applicability, Section 4, Flight-free zones, and Section 5. Minimum flight altitudes, expire on 0901 UTC, January 31, 1998.

PART 93—SPECIAL AIR TRAFFIC RULES AND AIRPORT TRAFFIC PATTERNS

7. The authority citation for part 93 continues to read as follows:

Authority: 49 USC 106(g), 40103, 40106, 40109, 40113, 44502, 44514, 44701, 44719, 46301.

The effective date of May 1, 1997, for new §§ 93.301, 93.305, and 93.307 to be

added to 14 CFR Chapter I is delayed
until 0901 UTC, January 31, 1998.

Issued in Washington, DC, on February 21,
1997.

Barry L. Valentine,
Acting Administrator.

[FR Doc. 97-4824 Filed 2-21-97; 3:49 pm]

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