

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

[Docket No. FAA-2001-9218]

RIN 2120-AG74

**Modification of the Dimensions of the Grand Canyon National Park Special Flight Rules Area and Flight Free Zones****AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Final rule.

**SUMMARY:** On April 4, 2000, the FAA published two final rules regarding aircraft flight operations over Grand Canyon National Park (GCNP). The first rule, the Commercial Air Tour Limitations final rule, limiting the number of commercial air tour operations in the GCNP Special Flight Rules Area (SFRA), was effective on May 4, 2000. The second rule, the Airspace Modification final rule, modifying the airspace in the SFRA, was scheduled to become effective December 1, 2000. However, on November 20, 2000, the FAA published a final rule delaying the effective date of the Airspace Modification final rule until December 28, 2000, so that the FAA could adequately evaluate new safety issues raised by the air tour operators. On December 28, 2000, the FAA further delayed the airspace modifications final rule until April 1, 2001. The FAA has completed its evaluation and determined that it is necessary to delay implementing changes to the airspace, including two flight free zones in the east-end of GCNP, pending resolution of the safety issues. In a companion document in this **Federal Register** the FAA also makes available a map depicting commercial air tour routes in GCNP.

**DATES:** The amendment to SFAR 50-2 is effective April 1, 2001.

14 CFR 93.305 and 93.307 originally published at 61 FR 69330 on December 31, 1996 and most recently delayed until April 1, 2001 (see FR 1005, January 4, 2001) is further delayed. 14 CFR 93.305(c) and (d) and 93.307 are delayed until April 19, 2001. 14 CFR 93.305 (a) and (b) are delayed until December 1, 2001.

The amendments to 14 CFR 93.301, 93.305 (c) and (d), 93.307, and 93.309, originally published at 65 FR 17736 on April 4, 2000 and most recently delayed until April 1, 2001 (see 66 FR 1005, January 4, 2001) are further delayed until April 19, 2001. The amendments

to 14 CFR 93.305 (a) and (b) originally published and most recently delayed on the same dates as set forth above are further delayed until December 1, 2001.

**ADDRESSES:** You may view a copy of the final rule, Modification of the Dimensions of the Grand Canyon National Park Special Flight Rules Area and Flight Free Zones, through the Internet at: <http://dms.dot.gov>, by selecting docket numbers FAA-01- . You may also review the public dockets on these regulations in person in the Docket Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office is on the plaza level of the Nassif Building at the Department of Transportation, 400 7th St., SW., Room 401, Washington, DC 20590.

As an alternative, you may search the **Federal Register's** Internet site at [http://www.access.gpo.gov/su\\_docs\\_for\\_access\\_to\\_the\\_final\\_rules](http://www.access.gpo.gov/su_docs_for_access_to_the_final_rules).

You may also request a paper copy of the final rules from the Office of Rulemaking, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591, or by calling (202) 267-9680.

**FOR FURTHER INFORMATION CONTACT:** Howard Nesbitt, Flight Standards Service, (AFS-200), or Ken McElroy, Airspace and Rules Division, ATA-400, Federal Aviation Administration, Seventh and Maryland Streets, SW., Washington, DC 20591; Telephone: (202) 493-4981.

**SUPPLEMENTARY INFORMATION:****Background**

On April 4, 2000, the Federal Aviation Administration published two final rules, the Modification of the Dimensions of the Grand Canyon National Park Special Flight Rules Area and Flight Free Zones (Air Space Modification), and the Commercial Air Tour Limitation in the Grand Canyon National Park Special Flight Rules Area (Commercial Air Tour Limitation). See 65 FR 17736; 65 FR 17708; April 4, 2000. The FAA also published concurrently a notice of availability of Commercial Routes for the Grand Canyon National Park (Routes Notice). See 65 FR 17698, April 4, 2000. The Commercial Air Tour Limitations final rule was implemented effective on May 4, 2000. The Air Space Modification final rule and the routes set forth in the Notice of Availability were scheduled to become effective December 1, 2000. The Final Supplemental Environmental Assessment for Special Flight Rules in the Vicinity of Grand Canyon National Park (SEA) was completed on February 22, 2000, and the Finding of No

Significant Impact was issued on February 25, 2000.

During the course of litigation, the United States Air Tour Association and seven air tour operators raised new safety concerns. As a result, the FAA first delayed implementation of the routes until December 28, 2000 (November 20, 2000; 65 FR 69848). Following these actions, the FAA conducted an evaluation of the planned routes in the east-end of GCNP and determined that modifications could be made to the routes to enhance safety. The FAA published a second notice of availability of a map depicting proposed changes to routes in the east-end of GCNP on December 13, 2000 (65 FR 78071), with a comment period that closed on January 26, 2001. Subsequently, the FAA delayed until April 1, 2001 the implementation of the routes on January 4, 2001 (66 FR 2001). The FAA also stated that it may choose to implement the routes in the western portion of GCNP only while resolving routes in the east-end.

**Agency Action**

During the comment period for the second Notice of Availability of air tour routes, additional safety concerns were raised regarding the proposed revisions to the routes on the east-end of the Grand Canyon National Park (GCNP) Special Flight Rules Area (SFRA). Consequently, the FAA is implementing the modifications to the route structure of the GCNP SFRA in two phases.

The first phase will implement the routes and airspace made final in April 2000 on the west-end (defined as all areas of the SFRA west of the Dragon corridor) of the GCNP SFRA. On the east-end (defined as the Dragon corridor east), the first phase will implement the modification to the SFRA boundary, as contained in the April 2000 final rule, by extending the SFRA boundary over the Navajo Nation lands five miles to the east. However, during this phase, the route structure on the east-end will remain almost exactly as that currently flown in the SFAR under Special Federal Aviation Regulation (SFAR) 50-2, with only slight modification to certain entry and exit points. To accomplish the dual goals of achieving substantial restoration of natural quiet in GCNP and maintaining a safe operating environment for commercial air tour operators, the FAA finds that this combination of commercial air tour routes is the most reasonable proposal for the Spring 2001 air tour season (May through November). This route configuration will go into effect on April 19, 2001. (See companion Notice of

Availability of Commercial Air Tour routes.)

This airspace modification extends from April 1 to April 19, 2001, the airspace configuration of SFAR 50-2. Because the prior agency stay ends on April 1, 2001, it is necessary to further delay the airspace until April 19, 2001. This additional extension is necessary to correlate the routes and airspace for the west-end of GCNP. On the east-end, the final rule will maintain the stay of the effective date of the Bright Angel and Desert View FFZs until December 1, 2001. This will give the FAA adequate time to determine what, if any, changes need to be made in the route structure in the east-end of GCNP for the 2002 air tour season.

The second phase of the commercial air tour route structure in GCNP would implement a potentially revised route and airspace structure on the east-end of the GCNP SFRA. It is anticipated that all revisions of the east-end would be based upon the route structure adopted in the April 2000 final rule. Implementation of the second phase will be determined after the FAA has evaluated and addressed all outstanding safety concerns. Interested persons will be afforded the opportunity to comment on final revisions to the route structure in the east-end of GCNP. The FAA anticipates that phase two modifications will be finalized in the winter 2001-2002 timeframe to be in place for the 2002 commercial air tour season.

The two phase implementation process will allow the FAA to move towards the mandate for the substantial restoration of natural quiet in GCNP by implementing the routes and airspace structure in the west-end of the GCNP. This will accomplish some goals of the April 2000 rulemaking, in that it will eliminate the Blue 1 and Blue 1A routes. In addition, the phased approach will allow the FAA to adequately evaluate and address the new safety concerns related to the routes in the east-end of GCNP while allowing commercial air tour operators adequate time to train on the revised east-end routes during the off-peak season. At the same time, the phased process will provide for the elimination of overflights of some of the traditional cultural properties identified by Native American Tribes during the National Historic Preservation Act (NHPA) Section 106 consultation process.

#### **Immediate Effective Date**

The FAA finds that good cause exists under 5 U.S.C. 553(d) for this final rule to become final rule upon issuance. The FAA and NPS must implement new air tour routes requiring the modification of

the airspace in GCNP to transition to a new operating environment in GCNP. The FAA has determined that because new safety concerns have been raised, which warrant further evaluation, it is necessary to implement the airspace codified in April 2000 in a phased approach.

#### **Environmental Review**

The FAA has completed a written reevaluation (WR) of the February 22, 2000 Final Supplemental Environmental Assessment (FSEA) for Special flight rules in the Vicinity of Grand Canyon National Park (GCNP). The WR examines the potential environmental impacts associated with the phased implementation of the Airspace rule and the Commercial Air Tour Route Modifications described in the FSEA. This phased approach will involve implementation of the "preferred" alternative airspace and air tour route structure as described in the FSEA for the GCNP SFRA west of Dragon Corridor. No changes to this portion of the GCNP SFRA as described in the FSEA will occur. Thus, the impact evaluation for the "preferred" alternative contained in the FSEA remains valid for the stage-one airspace and routes implementation at the west-end of the GCNP SFRA. The FAA also reviewed the planned implementation of the stage-one airspace, routes, and route modifications on the east-end and has determined that they are not significant changes from the plans analyzed under the "no action" alternative in the FSEA. Therefore, the FAA has determined that the proposed route revisions to the SFAR 50-2 route structure conform with the "no action" alternative analyzed in the FSEA. The FAA has determined that the data and analyses contained in the FSEA are still substantially valid and all pertinent conditions and requirements of the prior approval have or will be met in the current action.

While the delayed implementation of the east-end route and airspace structure will lessen the percentage of the GCNP substantially restored to natural quiet, it is only a temporary delay. The routes and airspace at the east-end of the GCNP SFRA are stayed, however, as soon as the safety concerns are addressed and the operators are given the opportunity to train in the off-peak season, new routes and airspace will be implemented in the east-end. In addition, given that the majority of the revised routes and airspace for GCNP will be implemented, during stage-one, the staged implementation process will result in a gain of substantial restoration

of natural quiet for GCNP as described in the FSEA.

Therefore for the above reasons and pursuant to FAA Order 1050.1D, Paragraph 92, the FAA has determined that the contents of the Final Supplemental Environmental Assessment and its conclusions issued on February 22, 2000 are still valid. Additionally, the FAA has found that the previous Section 106 Determination of No Adverse Effect to TCPs identified by Native Americans issued for the FSEA is also still valid. Copies of the written reevaluation have been placed in the public docket for this rulemaking, have been circulated to interested parties, and may be inspected at the same time and location as this final rule.

#### **Economic Analysis**

The economic analysis completed for the final rule published April 4, 2000 evaluates the east-end and west-end operations separately since these are distinct markets. This action implements the west-end airspace structure and the economic analysis from the April 4, 2000 final rule remains valid. At this time the FAA is delaying implementation of the east-end routes, it is not taking a final action. If the agency takes a final action that is different than that published on April 4, 2000, then it may be necessary to complete a revised economic evaluation.

#### **Initial Regulatory Flexibility Determination and Assessment**

The Regulatory Flexibility Act (RFA) of 1980 establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organization, and government jurisdictions subject to regulation." To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA. However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that

the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This final rule will have only a de minimus cost impact on the certificate holders for whom costs have been estimated. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration certifies that this rule will not have a significant impact on a substantial number of small entities.

#### International Trade Impact Assessment

The Trade Agreement Act (TAA) of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The TAA also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. In addition, consistent with the Administration's belief in the general superiority and desirability of free trade, it is the policy of the Administration to remove or diminish to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries and barriers affecting the import of foreign goods and services into the United States.

In accordance with the above Act and policy, the FAA has assessed the potential effect of this final rule and has determined that it will have only a domestic impact and therefore no effect on any trade-sensitive activity.

#### Federalism Implications

This amendment will not have substantial direct 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. Therefore, in accordance with Executive Order 12612, it is determined that this amendment would not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

#### Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104-4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final

agency rule that may result in the expenditure of \$100 million or more (when adjusted annually for inflation) in any one year by State, local, and tribal governments in the aggregate, or by the private sector. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments in the aggregate of \$100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that, before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan, which, among other things, must provide for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity for these small governments to provide input in the development of regulatory proposals. The FAA has determined that this rule will not impose any unfunded mandates.

#### List of Subjects

14 CFR Part 91, 121, 135

Aircraft, Airmen, Aviation Safety

14 CFR Part 93

Air traffic control, Airports, Navigation (Air)

#### Adoption of Amendments

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

#### PART 91—GENERAL OPERATING AND FLIGHT RULES

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

**Authority:** 49 U.S.C. 106(g), 40103, 40106, 40109, 40113, 44502, 44514, 44701, 44719, 46301.

#### PART 121—[AMENDED]

1. The authority cite for part 121 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701-44702, 44705, 44709-44711, 44713, 44716-44717, 44722, 44901, 44903-44904, 44912, 46105.

#### PART 135—[AMENDED]

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

**Authority:** 49 U.S.C. 106(g), 40113, 44701-44702, 44705, 44709, 44711-44713, 44915-44717, 44722.

2. In parts 91, 121, and 135, section 9 of SFAR 50-2 is revised.

#### Special Federal Aviation Regulations

SFAR No. 50-2—Special Flight Rules in the Vicinity of the Grand Canyon National Park, AZ.

\* \* \* \* \*

*Section 9. Termination date.* Section 1. Applicability, Section 4. Flight-free zones, and Section 5. Minimum flight altitudes, expire on April 19, 2001.

#### PART 93—SPECIAL AIR TRAFFIC RULES AND AIRPORT TRAFFIC PATTERNS

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

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46502, 46504, 46506-46507, 47122, 47508, 47528-47531.

4. Sections 93.305 and 93.307 were published on December 31, 1996 (61 FR 69330), corrected at 62 FR 2445 (January 16, 1997), and delayed at 65 FR 5397 (February 3, 2000); made effective December 1, 2000 in a rule published on April 4, 2000 (65 FR 17736), delayed until December 28, 2000 (65 FR 69846, November 20, 2000), and delayed until April 1, 2001 at 66 FR 1005 (January 4, 2001). Section 93.305(c) and (d) and 93.307 are further delayed until April 19, 2001, and § 93.305 (a) and (b) are further delayed until December 1, 2001.

5. The amendments to §§ 93.301, 93.305, 93.307 and 93.309 published on April 4, 2000 (65 FR 17736), delayed until December 28, 2000 (65 FR 69846, November 20, 2000), were further delayed until April 1, 2001 (66 FR 1005, January 4, 2001). The amendments to §§ 93.301, 93.305 (c) and (d), 93.307 and 93.309 are further delayed until April 19, 2001, and the amendments to § 93.305 (a) and (b) are delayed until December 1, 2001.

Issued in Washington, DC on March 21, 2001.

**Jane F. Garvey,**

*Administrator.*

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