

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

[Docket No. 28537; SFAR 50-2; Notice No. 98-18]

**Special Flight Rules in the Vicinity of Grand Canyon National Park**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** On December 31, 1996, the FAA published a final rule that codified the provisions of Special Federal Aviation Regulation (SFAR) No. 50-2, Special Flight Rules in the Vicinity of Grand Canyon National Park (GCNP); modified the dimensions of GCNP Special Flight Rules Area (SFRA); established new and modified existing flight-free zones; established new and modified existing flight corridors; established reporting requirements for commercial sightseeing companies operating in the SFRA; prohibited commercial sightseeing operations during certain time periods; and limited the number of aircraft that can be used for commercial sightseeing operations in the GCNP SFRA. On February 21, 1997, the FAA delayed the implementation of certain portions of that final rule. Specifically, that action delayed the effective date for 14 CFR Sections 93.301, 93.305, and 93.307 of the final rule and reinstated portions of and amended the expiration date of SFAR No. 50-2. However, that action did not affect or delay the implementation of the curfew, aircraft restrictions, reporting requirements or the other portions of the rule. This proposal would delay the effective date for 14 CFR Sections 93.301, 93.305, and 93.307 of the December 31, 1996 final rule until January 31, 2000. Additionally, this proposal would amend the expiration date of those portions of SFAR No. 50-2 that were reinstated in the February 21, 1997 final rule and extended in the rule published on December 17, 1997.

**DATES:** Comments must be received on or before January 6, 1999.

**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 Ave., SW., Washington, DC 20591. Comments may be sent electronically to the Rules Docket by using the following Internet address [nprmcmts@mail.faa.dot.gov](mailto: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:** Ellen Crum, 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:****Background**

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 further reduce the impact of aircraft noise on the GCNP environment and to assist the National Park Service (NPS) in achieving its statutory mandate imposed by Public Law 100-91. The final rule amended part 93 of the Federal Aviation Regulations and added a new subpart to codify the provisions of SFAR No. 50-2, modified the dimensions of the GCNP Special Flight Rules Area; established new and modifies existing flight-free zones; established new and modifies existing flight corridors; and established 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 prohibited commercial sightseeing operations in the Zuni and Dragon corridors during certain time periods, and placed 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 originally were to become effective on May 1, 1997.

On February 21, 1997, the FAA issued a final rule and request for comments that delayed the implementation of certain sections of the final rule (62 FR 8862; February 26, 1997). Specifically, that action delayed the effective date, until January 31, 1998, of those sections of the rule that address the Special Flight Rules Area, flight-free zones, and flight corridors, respectively §§ 93.301, 93.305, and 93.307. In addition, certain portions of SFAR No. 50-2 were reinstated and the expiration date was extended. With the goal to produce the best air tour routes possible, implementation was delayed to allow the FAA and the Department of Interior (DOI) to consider comments and suggestions to improve the proposed route structure. This latter action did

not affect or delay the implementation of the curfew, aircraft cap, or reporting requirements of the rule. This delay was subsequently extended until January 31, 1999 (62 FR 66248; December 17, 1997).

**Discussion of Comments**

Eleven comments were submitted in response to the December 17, 1997, final rule that extended the implementation date of certain provisions of the final rule issued on December 31, 1996.

The Hualapai nation applauded the delay, saying that the FAA should reconsider what the Tribe considers the double standard used for measuring noise in the GCNP versus the Hualapai reservation. The Hualapai urged the FAA to develop an appropriate noise measurement standard for its religious sites and ceremonies. The nation also repeated its admonition to the FAA to be considered as a sovereign nation with incumbent rights therein.

The Sierra Club generally criticized the FAA and NPS for not making greater progress in the overall reduction of noise in GCNP. It also urged that the Zuni and Dragon corridors be closed to air tour traffic.

The Grand Canyon Air Tour Council (GCATC) was critical of the FAA for issuing a final rule with comment instead of a proposal, stating that there is no incentive for FAA to respond to comments after the fact and that such action without notice created 'discriminatory uncertainty'. GCATC also urged the FAA to delay implementation of the December 1996 final rule until the Air Tour Management Plan is completed.

Likewise, the Wilderness Society was critical of the FAA for not seeking comment on a proposal rather than publishing a final rule extension. The Society also commented that the delay was not warranted, that there has been little progress since the legislation 10 years ago, and that the FAA should cap operations now. National Parks and Conservation Society filed a similar comment, objecting to the delay and calling for a cap on operations.

The Grand Canyon Trust's comment incorporated its comments from previously filed comments on the July 1, 1996, notice.

A number of comments were submitted by individuals; the majority of these persons regretted the delay as being a setback for enjoyment of the park.

**FAA's Response**

The FAA agrees that the proper procedure for the delay in implementation of a final rule is

through notice and comment. The FAA and NPS have expended substantial resources on trying to determine the most appropriate air tour route through the SFRA in GCNP. These expenditures include noise modeling, interagency discussions, consultations with Native Americans, clarification of comments made on the various rulemakings, and preliminary development of the Comprehensive Noise Management Plan. To the extent that time permitted, the agencies would have sought comment prior to issuing a final decision to extend the effective date for the 1996 final rule. However, the FAA is responding to previously filed comments and now seeks comments from affected parties before further delaying those portions of the 1996 final rule pertaining to FFZs and flight corridors.

In response to those comments that nothing has been accomplished since the Overflights Act was enacted, the FAA and NPS disagree. The number of air tour operations in the GCNP have decreased in the past year. There is a cap on the number of aircraft permitted to operate in the Park, which prevents the addition of new aircraft into the SFRA. The curfew has been effective in removing both very early morning and late afternoon noise during peak tourist seasons for covered areas. The reporting requirement has provided the agencies with valuable information on how many operations there are, where they are occurring, and definitive noise footprints for most areas of the GCNP. In addition, valuable information has been gained through public meetings with the interested parties, through open forums exploring additional routes, and through consultations with the Native Americans.

#### Recent Actions

On May 15, 1997, the FAA published a Notice of Availability of Proposed Routes and a companion NPRM, Notice No. 97-6, that proposed two quiet technology corridors in GCNP. The first corridor, through the Bright Angel flight-free zone, would be used for quiet technology aircraft only. The second corridor, through National Canyon, would be for quiet technology aircraft for westbound traffic after December 21, 2001. The FAA, in consultation with the National Park Service (NPS), has determined to not proceed with the proposals set forth in Notice No. 97-6. The two agencies are considering alternatives to the National canyon area for air tour routes. Consequently, the FAA withdrew Notice No. 97-6 and amended the proposed rule, Notice No. 96-15, to remove the two sections that

first proposed a National Canyon corridor through the Toroweap/Shinumo Flight-free Zone (FR 63 38232; July 15, 1998).

In addition, on April 28, 1998, the FAA convened interested parties for a public meeting in Flagstaff, Arizona to discuss yet another possible air tour route that is being considered by the FAA and NPS.

Most recently, by petition dated September 22, the Clark County Department of Aviation (Clark County) requests that the FAA delay the current January 31, 1999, effective date for the airspace portions of the final rule to January 31, 2001, to avoid unnecessary impacts to aviation safety and the Grand Canyon air tour industry. Petitioner also asks that the FAA initiate a stakeholder-based cooperative process to complete the Grand Canyon overflight regulatory structure in a coherent and timely fashion. Specific to this proposal, Clark County points out that it is too late for the FAA to promulgate a safe and defensible set of air tour routes prior to the January 31, 1999, effective date. The petitioner notes that the closing of the current tour route, Blue 1, by making the FFZ's effective, would divert an immense quantity of traffic onto other routes, such as Blue 2 and Blue Direct. Clark County cites the significant economic impact that the lack of safe and viable air tour routes would effect; not only would air tour operators be affected, but there would be impacts on the ability of the region to attract both American and foreign tourists and on the ability of the Clark County airport system to support Southern Nevada aviation needs. Petitioner states that it does not seek an extension for the sake of delay; rather the uncertainty of the regulatory environment is harmful to air tour operators, local governments operating airports, Native Americans, and investors. For this reason, Clark County encourages a concerted effort whereby all stakeholders will negotiate long-term workable rules.

In response to Clark County's petition, the FAA finds that, because of the need to meet the legislative mandate to work toward the substantial restoration of natural quiet in GCNP, it cannot extend the effective date of the final rule as it relates to flight corridors and flight-free zones beyond January 31, 2000. Based on a substantial dedication of resources, in cooperation with NPS, the FAA believes that an acceptable route structure may be established by January 2000. In addition, while the FAA commends Clark County for its interest in a negotiated rulemaking effort to meet the needs of all stakeholders, it lacks the resources to direct this effort.

Accordingly, the FAA must deny Clark County's petition. However, if the stakeholders can negotiate GCNP issues successfully, the FAA would be willing to accept a recommendation that it then could publish for comment.

#### Proposal

As of this date, the FAA is still working with the NPS to determine a route through the western portions of the Park that will provide air tour operators with a safe, viable air tour route while at the same time moving toward the legislatively mandated goal of the substantial restoration of natural quiet in Grand Canyon National Park. Because the air tour routes, flight free zones, and flight corridors are intrinsically related and thus must be implemented at the same time, the FAA proposes to extend the effective date of these portions of the December 1996 final rule until January 31, 2000. Although Clark County Department of Aviation requests that this date be extended to January 31, 2001, the FAA and NPS are optimistic that prior work done on proposed routes in the western portion of the GCNP will assist them in making a final determination in order to accommodate a January 31, 2000, effective date.

#### Economic Evaluation

In issuing the final rule for Special Flight Rules in the Vicinity of the GCNP, the FAA prepared a cost benefit analysis of the rule. A copy of the regulatory evaluation is located in docket Number 28537. That economic evaluation was later revised based on new information received on the number aircraft being operated in the SFRA. The reevaluation of the economic data, including alternatives considered, was published in the Notice of Clarification (62 FR 58898). In the notice, the FAA concluded that the rule is still cost beneficial. This extension of the effective date for the final rule will not affect that reevaluation, although the delay in the implementation of the FFZs will be cost relieving for air tour operators.

#### Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended, the FAA completed a final regulatory flexibility analysis of the final rule. This analysis was also reevaluated and revised findings were published in the Notice of Clarification referenced above, as a Supplemental Regulatory Flexibility Analysis. This extended delay of the compliance date will not affect that supplemental analysis.

**Federalism Implications**

The regulation proposed herein would 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 proposed regulation would not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

**List of Subjects***14 CFR Part 91*

Aircraft, Airmen, Air traffic control, Aviation safety, Noise control.

*14 CFR Part 93*

Air traffic control, Airports, Navigation (Air).

*14 CFR Part 121*

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

*14 CFR Part 135*

Air taxis, Aircraft, Airmen, Aviation safety.

**The Proposal**

Accordingly, the Federal Aviation Administration (FAA) proposes to amend 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 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.

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

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

4. 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**

\* \* \* \* \*

Sec 9. *Termination date.* Sections 1. Applicability, Section 4. Flight-free zones, and Section 5. Minimum flight altitudes, expire on 0901 UTC, January 31, 2000.

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

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

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

The effective date of May 1, 1997, for new Sections 93.301, 93.305, and 93.307 to be added to 14 CFR Chapter I, is delayed until 0901 UTC, January 31, 2000.

Issued in Washington, DC, on December 1, 1998.

**William J. Marx,**

*Acting Program Director, Air Traffic Airspace Management Program.*

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