

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 93**

[Docket No. FAA-1999-5926]

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:** Delay of effective date.

SUMMARY: On April 4, 2000, the FAA published two final rules for Grand Canyon National Park (GCNP). One rule limited the number of commercial air tour operations in the GCNP Special Flight Rules Area (SFRA); the other modified the airspace of the SFRA. The Commercial Air Tour Limitations final rule was effective on May 4, 2000. The airspace modifications were scheduled to become effective December 1, 2000. On July 31, 2000, the United States Air Tour Association and seven air tour operators in GCNP requested a stay of the compliance date for the rules from the FAA. On October 11, 2000, the FAA published a denial of the stay request. On October 25, 2000, the Air Tour Providers filed with the D.C. Circuit Court of Appeals a Motion for Stay and Emergency Relief Pending Review of an Agency Order. On November 2, 2000, the FAA filed with the D.C. Circuit Court of Appeals its Opposition to Petitioners' Motion for Stay Pending Review and Notification of Administrative Stay of Route and Airspace Rules. This document delays the effective date of the Airspace Modification Final Rule so that the FAA may investigate further some new safety issues raised by the Air Tour Providers.

DATES: The final rule Modification of the Dimensions of the Grand Canyon National Park Special Flight Rules Area and Flight Free Zones, was issued on March 28, 2000, and published in the *Federal Register* on April 4, 2000 (65 FR 17735). It was scheduled to become effective on December 1, 2000. The FAA is delaying the effective date of the final rule until December 28, 2000. This action does not affect the Commercial Air Tour Limitations final rule that became effective May 4, 2000.

ADDRESSES: You may view a copy of the final rules, Commercial Air Tour Limitations in the Grand Canyon National Park Special Flight Rules Area and 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-99-5926 and FAA-99-5927. 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, 7th Ave., 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.

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:

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SUPPLEMENTARY INFORMATION:**Background**

On April 4, 2000, the Federal Aviation Administration published two final 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 17763; 65 FR 17708; April 4, 2000. The FAA also simultaneously published a notice of availability of Commercial Routes for the Grand Canyon National Park (Routes Notice). See 65 FR 17689, April 4, 2000. The Commercial Air Tour Limitations final rule became effective on May 4, 2000. The Air Space Modification final rule and the routes set forth in the Routes Notice were scheduled to become effective December 1, 2000. The effective date of the Air Space Modification final rule and the new routes was delayed to provide the air tour operators ample opportunity to train on the new route system during the non-tour season. 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.

On May 8, 2000, The United States Air Tour Association and seven air tour operators (hereinafter collectively referred to as the Air Tour Providers)

file a petition for review of the two final rules before the United States Court of Appeals for the District of Columbia Circuit. The FAA, The Department of Transportation, the Department of Interior, the National Park Service and various federal officials were named as respondents in this action. On May 30, 2000, the Air Tour Providers filed a motion for stay pending review before the Court of Appeals. The Federal respondents in this case filed a motion for summary denial on grounds that petitioners had not exhausted their administrative remedies. The Court granted the federal respondents summary denial on July 19, 2000. The Grand Canyon Trust, the National Parks and Conservation Association, the Sierra Club, the Wilderness Society, Friends of the Grand Canyon and Grand Canyon River Guides, Inc. (The Trust) filed a petition for review of the same rules on May 22, 2000. The Court, by motion of the federal respondents, consolidated that case with that of the Air Tour Providers. The Hualapai Indian Tribe of Arizona filed a motion to intervene in the Air Tour Providers petition for review on June 23, 2000. The Court granted that motion on July 19, 2000.

On July 31, 2000, the Air Tour Providers filed a motion for stay before the FAA. Both the Hualapai Indian Tribe and the Trust filed oppositions to the Air Tour Providers' stay motion. On October 11, 2000, (65 FR 60352) the FAA published a disposition of the stay request, denying the stay. On October 25, 2000, the Air Tour Providers filed a Motion for Stay and Emergency Relief Pending Review of an Agency Order with the Court of Appeals. The federal respondents filed their Opposition to Petitioner's Motion for Stay Pending Review and Notification of Administrative Stay of Route and Airspace Rules on November 2, 2000.

Agency Action

The Air Tour Providers have raised some specific safety allegations about the routes in the Dragon Corridor (Green Route 2 and 2R), Zuni Point Corridor (Green 1; Black 1) and east of the Desert View Flight Free Zone (Black 2 and Green 3). These safety issues were not previously raised to the FAA and thus the FAA has not had the opportunity to investigate the merit of these allegations. The FAA takes these allegations very seriously and thus has sent out a group of FAA safety inspectors to verify the significance of these allegations. Based on the information obtained from these investigators, the FAA will determine how to best resolve any safety issues of

merit. The FAA will report its findings to the Court by November 28, 2000. Because of the interrelationship between the new routes and the airspace changes adopted in the final rule, the FAA is delaying the effective date of the Airspace Modification until December 28, 2000. If the FAA determines that any of the safety issues raised by Petitioners have merit, then it will take the necessary steps to resolve them before making any of the routes effective and thus necessitating the implementation of the airspace modification final rule.

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, flight-free zones, and flight corridors at the same time in order to transition to a new operating environment in GCNP. The FAA has determined that because new safety concerns have been raised that need to be investigated further, it is paramount that their rule become effective immediately.

Economic Evaluation

In issuing the final rule for the Modification of the Dimensions of the Grand Canyon National Park Special Flight Rules Area and Flight Free Zone, the FAA prepared a cost benefit analysis of the rule. A copy of the regulatory evaluation is located in docket Number 99-5926, Amendment No. 93-80. This delay of the effective date for the final rule will not affect that evaluation, although the delay in the implementation of the EFZs may be temporarily 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 extended delay of the effective date will not affect that supplemental analysis.

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 in 14 CFR Part 93

Air traffic control, Airports, Navigation (Air).

Adoption of Amendments

Accordingly, the Federal Aviation Administration (FAA) amends 14 CFR part 93 as follows:

PART 93—SPECIAL AIR TRAFFIC RULES AND AIRPORT TRAFFIC PATTERNS

1. 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.

§§ 93.305 and 93.307 [Amended]

2. Sections 93.305 and 93.307 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) and made effective December 1, 2000 in a rule published on April 4, 2000 (65 FR 17736) because effective December 28, 2000.

§§ 93.301, 93.305, 93.307, 93.309 [Amended]

3. The amendments to Section 93.301, 93.305, 93.307 and 93.309 published on April 4, 2000 (65 FR 17736) now become effective on December 28, 2000.

Dated: Issued in Washington D.C. on November 14, 2000.

Jane F. Garvey,

Administrator, Federal Aviation Administration.

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