

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

[Docket No. FAA-1999-5926]

RIN 2120-AG74

**Modifications 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 commercial air tour operations over Grand Canyon National Park (GCNP). The first rule, Commercial Air Tour Limitation in Grand Canyon National Park Special Flight Rules Area, limited the number of commercial air tour operations that may be flown in the GCNP Special Flight Rules Area (SFRA) on an annual basis. This rule became effective on May 4, 2000. The second rule, Modifications of the Dimensions of the Grand Canyon National Park Special Flight Rules Area and Flight Free Zones, modified the airspace in the SFRA to accommodate a new route system for commercial air tour operations and to expand the amount of airspace overall protected by flight free zones. This rule initially was scheduled to become effective December 1, 2000. After several delays, the new routes and airspace were adopted for the west end of the GCNP SFRA on April 19, 2001. The routes and airspace on the east end of the GCNP SFRA were stayed several times after adoption of the final rule. The east end routes and airspace are scheduled to be implemented December 1, 2001. This rule extends the implementation of the Airspace Modification Final Rule until February 20, 2003.

**DATES:** The effective date of 14 CFR 93.305(a) and (b), delayed until December 1, 2001 (66 FR 16582, March 26, 2001), is further delayed until February 20, 2003. This rule was originally published at 61 FR 69330 on December 31, 1996, April 4, 2000 (65 FR 17736).

The amendments to 14 CFR 93.305(a) and (b) originally published April 4, 2000 (65 FR 17736) and most recently delayed until December 1, 2001 (66 FR 16582, March 26, 2001) are further delayed until February 20, 2003.

**ADDRESSES:** You may view a copy of this 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-01-9218. You may also review the public dockets on this regulation in person in the Docket Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Friday 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](http://www.access.gpo.gov/su_docs) for access to this final rule.

You may also request a paper copy of this final rule 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 Hesbitt, 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:****Small Business Regulatory Enforcement Fairness Act**

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT**. You can find out more about SBREFA on the Internet at our site, <http://www.gov/avr/arm/sbreffa.htm>. For more information on SBREFA, e-mail us 9-AWA-SBREFA@faa.gov.

**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 (Airspace 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 May 4, 2000. The Airspace 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.

Following the publication of the final rules, the United States Air Tour Association and seven air tour operators petitioned the United States District Court of Appeals for the District of Columbia to review the rules. See *USATA v. FAA*, et al. (Docket No. 001201). During the course of litigation, the USATA raised new safety concerns regarding the new routes in the east end of the GCNP SFRA. As a result, the FAA first delayed implementation of the routes until December 28, 2000 (November 20, 2000; 65 FR 69848) so that it could evaluate the new issues. During this evaluation, the FAA determined that modifications could be made to the routes to enhance safety. On December 13, 2000, the FAA published a second Notice of Availability seeking comment on proposed changes to routes in the east-end of the GCNP SFRA (65 FR 78071). Subsequently, the FAA delayed the implementation of the routes until April 1, 2001. (66 FR 2001, January 4, 2001).

During the comment period for the second Notice of Availability, additional safety concerns were raised regarding the proposed revisions to the east end routes. Consequently, the FAA decided to implement the modifications to the route structure of the GCNP SFRA in two phases. First, on April 19, 2001, the FAA implemented the routes and airspace in the west-end (defined as all areas of the SFRA west of the Dragon corridor) of the GCNP SFRA that originally were published on April 4, 2000. Also, on April 19, 2001, the SFRA boundary in the eastern part of the GCNP SFRA over the Navajo Nation lands was extended five miles to the east. Second, the route structure on the east-end (Dragon Corridor and all airspace east of that Corridor) in the GCNP SFRA was stayed until December 1, 2001 to enable the FAA and NPS to determine what changes should be made in the east end of GCNP. Accordingly, the routes now flown remain almost exactly as that shown under Special Federal Aviation Regulation (SFAR) 50-2, with only

slight modification to certain entry and exit points.

The FAA is working on proposed changes to the route structure and airspace modification in the east end of GCNP. This process involves printing maps depicting those changes, performing an environmental assessment of the proposed routes, publishing a proposal and notice of availability of the map in the **Federal Register**, and reviewing comments on the proposed changes. Because this process is not complete, it is necessary to gain extend the effective date of the April 2000 final rule airspace modifications. That date now is extended until February 20, 2003. Part of this delay results from the increased workload since the events of September 11, 2001. Additionally, the FAA has determined that any new routes should be implemented in the winter when tour activity is limited and operators are conducting new pilot training. Given all of these constraints, the FAA has found that it is necessary to delay the implementation of the east end airspace until February 20, 2003. In the meantime, the FAA and NPS will continue to move forward on a revised east end route structure.

The FAA notes that the changes to the routes and airspace in the West end of GCNP finalized in the April 2000 rule have been in effect since April 19, 2001. Those changes were implemented to further the goal of substantial restoration of natural quiet in GCNP.

#### **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 propose and receive comments on new air tour routes in the east end of GCNP requiring the modification of the airspace in GCNP. Therefore, the FAA has determined that to address the safety concerns of operators, it is necessary to further delay the implementation date of the airspace changes codified in April 2000. The FAA notes that the delay only affects the east end of the GCNP SFRA; changes to the west end have been in effect since April 19, 2001.

#### **Environmental Review**

In March 2001, the FAA 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 examined the potential environmental impacts associated with a phased implementation of the Airspace rule and the Commercial Air

Tour Route Modifications described in the February 2000 FSEA. The phased approach involved implementation of the "preferred" alternative airspace and air tour route structure as described in the February 2000 FSEA for the GCNP SFRA west of Dragon Corridor. Since no changes to the western portion of the GCNP SFRA as described in the FSEA remained 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 determined that they were not significant changes from the plans analyzed under the "no action" alternative in the February 2000 FSEA. Therefore, the FAA determined that the proposed route revisions to the SFAR 50-2 route structure conformed to the "no action" alternative analyzed in the FSEA. The FAA determined that the data and analyses contained in the February 2000 FSEA were still substantially valid and all pertinent conditions and requirements of the prior approval have or would be met in the April 2001 action.

While the delayed implementation of the east-end route and airspace structure lessened the percentage of the GCNP substantially restored to natural quiet, it was only a temporary delay. In addition, given that the majority of the revised routes and airspace for GCNP were implemented during phase one, the phased implementation process resulted in a gain of substantial restoration of natural quiet for GCNP as described in the February 2000 FSEA.

Therefore for the above reasons and pursuant to FAA Order 1050.1D, Paragraph 92, the FAA determined that the contents of the final Supplemental Environmental Assessment and its conclusions issued on February 22, 2000 were still valid. Additionally, the FAA found that the previous Section 106 Determination of No Adverse Effect to Traditional Cultural Properties identified by Native Americans issued for the FSEA was also still valid. Copies of the written reevaluation were placed in the public docket for the April 2001 rulemaking, were circulated to interested parties, and were available for inspection at the same time and location as the April 2001 final rule. The findings of the March 2001 WR remain valid for this final rule extending the April 2001 Airspace Rule.

#### **Economic Analysis**

The economic analysis completed for the final rule published April 4, 2000 evaluates the east-end and the west-end

operations separately since these are distinct markets. This action does not affect the April 19, 2001 implementation of 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 further the implementation of the east-end routes; however, 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. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration certifies that this final 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 standard 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 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 the 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, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46502, 46504, 46506-46507, 47122, 47508, 47528-47531.

#### **§ 93.305 [Amended]**

2. Section 93.305 (a) and (b) published on December 31, 1996 (61 FR 69330), and most recently delayed until December 1, 2001 (see 66 FR 16582, March 26, 2001) are further delayed until February 20, 2003.

3. The amendments to Section 93.305 published on April 4, 2000 (65 FR 17736), and most recently delayed until December 1, 2001 (see 66 FR 16582, March 26, 2001) are further delayed until February 20, 2003.

Issued in Washington, DC on November 29, 2001.

**Jane F. Garvey,**

*Administrator.*

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