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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

Docket No. FAA-2001-8690

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 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, Modification 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 overall airspace 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 have been delayed several times since the adoption of the final rule. In December 2001, the FAA delayed the east

end routes and airspace until February 20, 2003. This rule stays 14 CFR 93.305 (a) and (b) of the Airspace Modification Final Rule for the east end of the GCNP until February 20, 2006.

DATES: Effective February 20, 2003, 14 CFR 93.305 (a) and (b), are stayed until February 20, 2006. This rule was originally published at 61 FR 69330 on December 31, 1996, and amended April 4, 2000. (65FR 17736)

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. You may also review the public dockets on this regulation in person in the Docket Office between 9:00 a.m. and 5:00p.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.

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As an alternative, you may search the Federal Register's Internet site at 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: Kent Stephens, Flight Standards Service, (AFS-200) Federal Aviation Administration, Seventh and Maryland Streets, SW, Washington, DC 20591; Telephone: (202) 267-7493.

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 SBRFA on the Internet at our site, http://www.gov/avr/arm/sbrefa.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 Court of Appeals for the District of Columbia to review the rules. See USATA v. FAA, et. al. (Docket No. 00-1201). During the

course of this 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. In December 2001, the east end route structure was again stayed until February 20, 2003. (66 FR 63293, December 5, 2001). 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.

In a case decided on August 16, 2002, (U.S. Air Tour Association, et al. v. Federal Aviation Administration, 298 F.3d 997), the U.S. Court of Appeals for the District of Columbia

concluded that the FAA's use of an "average annual day" in lieu of "any given day," in measuring substantial restoration of natural quiet at Grand Canyon National Park "appears inconsistent with both the [National] Park Service's definition of the term and the premise on which that definition was based." The Court also determined that the FAA's explanation for excluding non-tour aircraft in its noise modeling was inadequate and that the FAA had not provided sufficient evidence to conclude that noise from non-tour aircraft did not impact the calculations of substantial restoration of natural quiet achieved in GCNP. The court remanded the matter to the FAA for further proceedings consistent with its opinion.

Once the FAA obtains guidance from the NPS concerning the appropriate way to measure noise in the park and determines how to address non-air tour aircraft noise, the FAA and NPS will conduct the necessary environmental analysis and review process. FAA and NPS may initiate supplemental rulemaking to consider further modifications to the east-end routes and the west-end routes to achieve substantial restoration of natural quiet in the GCNP. The GCNP Noise Model Validation project has begun to yield data that suggests there may be a need to recalibrate the Integrated Noise Model (INM) for use in the GCNP. Recalibration of the INM would affect the determination of how much natural quiet has already been restored and the benefits of pursing the alternative of quiet technology and may warrant public notice and an opportunity for review and comment.

Following a recent congressional hearing on Grand Canyon overflights, the FAA and NPS are also considering a dispute resolution process to assist in developing measures to fulfill the mandate under the National Park Overflights Act. Because this process is not complete, and, based on prior experience, we believe it could take several years to resolve all of the issues and complete the necessary environmental review and any additional rulemaking process, it is

necessary to stay 14 CFR 93.305 (a) and (b) as they apply to the east end of GCNP until February 20, 2006. The FAA and the NPS will work to resolve the issues remanded by the court together with the issues surrounding the routes.

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.

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Immediate Effective Date

The FAA finds that good cause exists under 5 U.S.C. 553(d) for this final rule to become a final rule upon issuance. The FAA notes that the stay 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. This phased approach involved implementation of the agency's "preferred" alternative for airspace and air tour route structures 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 occurred, the impact evaluation for the "preferred" alternative contained in the FSEA remained valid for the

stage-one airspace and routes implementation at the west-end of the GCNP SFRA. The WR also analyzed 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 stay of the east-end route and airspace structure lessens the percentage of the GCNP substantially restored to natural quiet, it is 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 staying the provisions of 14 CFR 93.305 (a) and (b).

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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 staying the implementation of the east-end routes. The FAA does not consider that this rulemaking effort imposes any costs on the public since it merely stays the provisions for the east end of GCNP. Commercial air tour operators will continue to use established air tour routes. Benefits from reduced aircraft noise in the east end of GCNP, however, will be delayed. This rulemaking is not 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.

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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 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 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 USC 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. Section 93.305 is amended by staying paragraphs (a) and (b) published on December 31, 1996 (61 FR 69330), and amended on April 4, 2000 (65 FR 17736) until February 20, 2006.

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/s/
Marion Blakey
Administrator

most recently delayed until February 20, 2003 (see 66 FR 63293, December 5, 2001) are further delayed until February 20, 2008. 2006

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Marion Blakey

Marion Blakey

Administrator

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Bonnie Fritts
Bonnie Fritts