[4910-13]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 93, 121, and 135

[Docket No. 28537; SFAR 50-2; Amendment 93-76]

Special Flight Rules in the Vicinity of Grand Canyon National Park

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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 amendment will 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 rule

will amend the expiration date of those portions of SFAR No. 50-2 that were reinstated in the December 17, 1997, final rule.

EFFECTIVE DATE: January 29, 1999.

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 (FFZ's); 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 implementation 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 sections 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 address concerns about the 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).

By Notice No. 98-18 (63 FR 67544; December 7, 1998) the FAA proposed to further extend the effective date for certain portions of the final rule until January 31, 2000.

Discussion of comments

The FAA received four comments on the proposed extension. The Grand Canyon Air Tour Council (GCATC) comments that the rulemaking effort would require operators to undertake extensive aerial investigation and operational and environmental familiarization, by January 31, 2000, on routes that have not yet been announced. For a typical fixed wing operator this would require 60 plus training flights. Operators would

also have to develop and disseminate new marketing information, programs, and promotion with little advance notice. GCATC describes the FAA's record of rulemaking in GCNP as a "four year environment of regulatory uncertainty and exclusion." GCATC recommends that FAA reschedule the implementation of the final rule to January 31, 2001, and that the FAA undertake a stakeholders' negotiated rulemaking for 60-90 days.

United States Air Tour Association (USATA) supports GCATC's comments and argues that the FAA and NPS have expended far more resources in its patchwork of rulemaking than it would on a 60-90 day negotiated rulemaking effort. USATA notes that impending, yet unannounced additional rulemaking efforts will force small business entities with the choice of meeting impossible time frames for readiness and compliance or simply not being able to prepare and face serious economic harm to their businesses. USATA recommends that the FAA hold in abeyance the implementation of the final rules on the air tour routes, flight free zones, and flight corridors, and instead undertake a formal Aviation Rulemaking Advisory Committee process with a limit of 60-90 days.

Clark County Department of Aviation and the Las Vegas Convention and Visitors Authority (Clark County) comment that a stay of the effective date is necessary to ensure that the new flight-free zones are implemented without serious risks to aviation safety and the many direct and indirect jobs that impact GCNP air tour opportunities. This commenter notes that without other proposed routes, the implementation of the FFZ's would leave operators only with a choice between the unscenic Blue Direct route and the Blue 2 route that will quickly become oversaturated. Without a replacement route, Clark County argues that the ability of air tour operators to market a product that brings millions of dollars to the Las Vegas economy will be seriously reduced.

Clark County also questions the FAA's ability to validate or predict noise levels in the Grand Canyon, saying that the noise modeling may do a poor job of reflecting actual conditions. This places an uncertainty around the actual need for additional control measures. The commenter sees, as essential, the need to possess validated noise models prior to promulgating extensive new regulations; otherwise, the regulations are at risk for being deemed arbitrary and capricious by the courts. Clark County urges that the FAA initiate a stakeholder-based negotiated rulemaking, and comments that the FAA's excuses for not doing so are neither compelling nor with substance.

Eagle Jet Charter, Inc. (EJC) supports the 1-year delay in the effective date of the final rule. EJC asks that the FAA incorporate its comments filed January 23, 1998, that an amendment for operations conducted under IFR above 15,000 feet MSL be proposed and adopted concurrently with other modifications to the GCNP airspace.

FAA response

As stated in the notice, the FAA continues to believe that substantial progress has been made in restoring natural quiet to the GCNP. This has been accomplished through the curfew and a limit on the number of aircraft that can be operated in the SFRA. In addition, the reporting requirement has given the FAA and NPS valuable data on the actual number of operations that currently exist in GCNP.

Although commenters suggest that a 60-90 day negotiated rulemaking effort would bring about a successful conclusion to the many issues and competing interests, it has been the FAA's experience that controversial negotiated rulemaking efforts may take years rather than months to reach conclusion. Both the FAA and NPS are unwilling to incur this type of additional delay for GCNP. However, if all affected parties agree to a

proposal, then the proposal should be forwarded to FAA and NPS. Although commenters are correct in pointing out that the regulatory process for GCNP has been time consuming, the lessons learned in the process are not inconsiderable, and should make future work more efficient.

It is reasonable for air tour operators to expect that the FAA must propose an air tour route system for the west end of GCNP that safely replaces the Blue 1 route, and that this must be done in a timely manner for purposes of training and marketing. A route proposal and corresponding rulemaking effort is underway.

In response to Clark County's comment on the need for validated noise models, the Integrated Noise Model (INM), as refined by FAA to reflect the terrain and expanded to reflect the size of the area surrounding the Grand Canyon, produces reasonably accurate predictions of the aircraft noise exposure in the GCNP. The INM, as refined and applied, complies with all recommended practices for the prediction of aircraft noise. The FAA verified the reasonableness of the predicted noise levels using data obtained from actual measurements in the Grand Canyon. See, December 1996 Final Environmental Assessment at p. 4-5 and Appendix C. Actual measured data correlated closely with the results predicted using the INM.

NPS, however, uses a newer, different computer model for analyzing audibility of aircraft in park environments, called the National Park Service Overflight Decision Support System. To address NPS concerns about the differences between the two models, both agencies have agreed to jointly conduct a noise model validation study. A group of experts will be convened to develop a plan for evaluating and validating models to be followed by field verification.

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. Currently, the effective date for the Grand Canyon final rule (62 FR 69301; December 31, 1996) is extended until January 31, 1999. If this final rule had not been issued, and made effective, by that date, the new flight-free zones and flight corridors would go into effect, resulting in considerable chaos, as some air tour routes would disappear. This would not only be burdensome to air tour operators and the traveling public, but it could also impose possible safety problems in GCNP. To preclude these conflicts, this amendment is effective upon issuance.

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 of 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 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 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

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.

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 Amendment

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

PARTS 91, 121 AND 135

1. The authority citation for part 91 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. The authority citation for part 121 continues to read as follows:

Authority: 49 USC 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 USC 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 USC 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 1, is delayed until 0901 UTC, January 31, 2000.

Issued in Washington, DC, on January 29, 1999

/s/

Jane F. Garvey

Administrator