

## Grand Canyon Overflights Statutory, Regulatory and Litigation Background

### History

DATE	EVENT
January 1975	The <b><i>Grand Canyon National Park Enlargement Act</i></b> required the National Park Service (NPS) to determine whether aircraft overflights were causing a “significant adverse effect on the natural quiet and experience of the park.” A public review process of overflights related research convinced NPS that overflights activity was causing a significant adverse effect on natural quiet and was likely to cause injury to the health, welfare, or safety of park visitors.
June 1986	A mid-air collision between two air tour aircraft resulted in 25 fatalities and focused widespread attention on the issue.
March 1987	FAA established Special Federal Aviation Regulation 50 (SFAR 50) for the Grand Canyon airspace.
June 1987	FAA modified SFAR 50 by raising the ceiling to 9,000 feet MSL in SFAR 50-1.
August 1987	Research findings combined with the mid-air collision led, in part, to passage of the <b><i>National Parks Overflights Act</i></b> .
May 27, 1988	FAA established <b><i>SFAR 50-2</i></b> , pursuant to Section 3 of the Overflights Act and Dept of the Interior (DOI) recommendations. SFAR 50-2 created flight-free zones and specific flight corridors to accommodate air tour routes and general aviation flights. It also established minimum altitude restrictions on all types of flights including air tours, general aviation, high altitude commercial and military aircraft.
March 1994	FAA and NPS jointly issue advanced notice of proposed rulemaking on quiet technology and incentives.
Sept. 12, 1994	NPS submitted a “Report on Effects of Aircraft Overflights on the National Park System” to Congress. The report was required by the Overflights Act to discuss whether initial measures under the Act had succeeded in substantially restoring the natural quiet in Grand Canyon National Park and, if not, possible revisions. The report recommend many revisions to SFAR 50-2.
June 15, 1995	FAA published a Final Rule that extended the provisions of SFAR 50-2 to June 15, 1997, pending implementation of the Final Rule adopting NPS recommendations for overflights at Grand Canyon.

Apr. 22, 1996	President Clinton issued a <i>Presidential Memorandum</i> directing the Secretary of Transportation, in consultation with the Secretary of Interior and Director of NPS, to issue proposed regulations within 90 days to place appropriate limits on sightseeing aircraft over GCNP to reduce noise immediately and make further substantial progress toward restoration of natural quiet. This memo also required the development of a plan to complete the restoration and maintenance of natural quiet if the final rule did not accomplish the goal.
Dec. 31, 1996	FAA published a Final Rule ( <i>'96 Rule</i> ) that 1) modified the dimensions of the GCNP Special flight rules area (SFRA); 2) established new and modified existing flight corridors; 3) established reporting requirements for operators; 4) established flight free periods (curfews) for air tour operations in the eastern Canyon; 5) and capped the number of air tour aircraft operating in the SFRA. The Final Rule was to become effective May 1, 1997.
Dec. 31, 1996	FAA also published a proposed rule on Quiet Technology.
January 1997	Four groups (the Air Tour Coalition, the Quiet Canyon Coalition, the Hualapai Tribe and Clark County Dept. of Aviation) challenged the '96 Rule in the Court of Appeals for the D.C. Circuit.
January 1997	The Air Tour Coalition, AOPA, and Clark County filed petitions for reconsideration of the '96 Rule with the FAA raising safety concerns.
Feb. 21, 1997	FAA delayed the effective date for the majority of provisions in the '96 Rule due to safety concerns raised by the operators. This action did not delay the implementation of the curfew, aircraft cap, or the reporting requirements. SFAR 50-2 airspace structure and routes remained in effect until future action.
May 15, 1997	FAA published a proposed rule to amend two of the flight free zones to establish two quiet technology incentive corridors (Bright Angel FFZ and National Canyon).
Oct. 31, 1997	FAA published a Notice of Clarification and reevaluation of the final Environmental Assessment regarding the '96 Rule aircraft cap. The environmental assessment accompanying the '96 Rule used an incorrect number of 136 aircraft in the analysis. Later data showed that 260 aircraft was the correct number that should have been analyzed.
Jul. 15, 1998	After reviewing public comments and consulting with NPS, the FAA decided not to proceed with the quiet technology incentive corridors and withdrew the proposed rule.

Sept. 4, 1998	The D.C. Circuit denied the petitioners' challenges to the '96 Rule and upheld the portions of the rule in effect, as well as NPS's definition of "substantial restoration of natural quiet."
Jan. 26, 1999	NPS publishes a notice of agency policy, "Evaluation Methodology for Air Tour Operations Over Grand Canyon National Park," proposing a two-zone acoustic system for evaluating achievement of the natural quiet standard.
Apr. 4, 2000	FAA published a final rule ( <i>Air Tour Limitation Rule</i> ) to replace the aircraft cap provision of the '96 rule with a provision limiting the number of commercial air tour operations that may be conducted in the GCNP SFRA. The total number of allocations was set at 90,000, the number of air tour operations reported by operators for the base year period May 1, 1997 to April 31, 1998. The effective date of this rule was May 4, 2000.
Apr. 4, 2000	FAA also published a final rule modifying the SFRA and flight free zones ( <i>2000 Rule</i> ). The rule was to become effective Dec. 1, 2000.
May 2000	The U.S. Air Tour Association, other air tour operators, the Grand Canyon Trust and other environmental groups challenged the Air Tour Limitation Rule.
Mar. 12, 2001	FAA and NPS jointly issue a notice establishing the National Parks Overflights Advisory Group (NPOAG) pursuant to the National Parks Air Tour Management Act of 2000.
Aug. 16, 2002	The D.C. Circuit denied the U.S. Air Tour Association's challenge to the Air Tour Limitation Rule. The court granted the Grand Canyon's petition and ruled that FAA's use of an annual average day for measuring substantial restoration of natural quiet appeared inconsistent with NPS's definition. The court also held that FAA must account for noise from aircraft other than air tours when analyzing environmental impacts.
Nov. 20, 2000	FAA delayed the effective date of the 2000 Rule.
Apr. 19, 2001	New routes and airspace were adopted for the west end of the GCNP SFRA. The SFAR 50-2 route structure is retained on the east end.
Feb. 27, 2003	FAA delayed the remaining portions of the 2000 Rule to Feb. 2006.
Mar. 29, 2005	FAA published the Noise Limitations for Aircraft Operations in the Vicinity of Grand Canyon National Park Final Rule.
Mar. 30, 2005	FAA and NPS issue notice for Membership in the Grand Canyon Working Group of the National Parks Overflights Advisory Group Aviation Rulemaking Committee.

## Statutes

- Grand Canyon National Park Enlargement Act, Pub. L. No. 93-620 (1975) (codified at 16 U.S.C. § 228g (2000)).
- National Parks Overflights Act, Pub. L. No. 100-91 (1987) (set out at 16 U.S.C. § 1a-1 note (2000)).

## Regulations

**1996 Grand Canyon Rulemaking** - On Dec. 31, 1996, the FAA published three concurrent actions in the Fed. Register (61 FR 69301) as part of an overall strategy to reduce further the impact of aircraft noise on the Grand Canyon National Park environment and to assist the NPS achieve its statutory mandate imposed by Public Law 100-91.

1. **Final Rule, Grand Canyon Special Flight Rules**, 61 FR 69302 (**Status = partially implemented**)
  - 12/31/96 Published in Fed. Register - Modifies Grand Canyon Special Flight Rules Area; establishes new and modifies existing flight corridors; establishes reporting requirements, curfews and caps for commercial air tour operations. Effective date of May 1, 1997.
  - 2/26/97 Amendment published, 62 FR 8862 - Delayed effective date of new route and airspace implementation to permit further discussions with DOI on proposed new routes and further consultation with Native American tribes bordering the Park.
  - 5/1/97 Implementation of caps, curfews, reporting requirements.
2. **NPRM, Grand Canyon Noise Limitations**, 61 FR 69334 (**Status = implemented**)
  - 12/31/96 Published in Fed. Register - Establishes noise limitations for certain aircraft operating in vicinity of Grand Canyon.
  - 3/31/97 Comment period closed.
  - 12/14/01 Draft Supplemental NPRM published, 66 FR 64778
  - 3/24/03 Supplemental NPRM published, 68 FR 14276
  - 3/29/05 Final Rule published, 70 FR 16084
3. **NPRM, National Canyon and Bright Angel Routes**, 62 FR 26902 (**Status = Withdrawn on 7/15/98**)
  - 5/15/97 Proposed publication in Fed. Register - Revised routes in flight free zones based on comments by and consultations with interested parties.
  - 6/16/97 Comment period ends.
  - 1/31/98 Proposed implementation of routes to coincide with implementation of Final Rule routes.

**2000 Rulemaking** - On April 4, 2000, the FAA published a new set of regulations. The final rules limited commercial air tour operations, and modified the flight free zones and routes.

1. **Final Rule, Commercial Air Tour Limitation in the GCN**, 65 FR 17708 (**Status = Implemented**)
  - 4/4/00 Limits the number of commercial air tours that may be conducted in the GCNP SFRA.
  - 5/4/00 Effective date
2. **Final Rule, Modification of the Dimensions of the Grand Canyon SFRA and FFZs**, 65 FR 17736
  - 4/4/00 Amends special operating rules and airspace. (**Status = partially implemented**)
  - 12/1/00 Proposed effective date

11/20/00	Effective date delayed to 12/28/00
12/28/00	Effective date delayed to 4/1/01
3/26/01	Partial implementation of West End routes effective 4/19/01
12/01	East end airspace modification delayed to 2/03
2/27/03	East end airspace modification delayed to 2/06

## **Litigation**

### **Judicial Challenges to '96 Final Rule**

Four petitioners brought challenges to the '96 Final Rule. The cases were consolidated and the opinion is at Grand Canyon Air Tour Coalition v. FAA, 154 F.3d 455 (D.C. Cir. 1998).

1. Air Tour Coalition v. FAA (DC Cir No. 97-1003) Filed 1/3/97.

Issues:

- FAA and NPS improperly interpreted the statutory phrase “substantial restoration of natural quiet.”
- FAA failed to rationally justify the rule, and refused to respond to comments in violation of the Administrative Procedures Act (APA).

2. Grand Canyon Trust, et al. v. FAA (DC Cir No. 97-1014) Filed 1/9/97.

Issues:

- Agencies failed to substantially restore natural quiet within a reasonable time frame.

3. Hualapai Tribe v. FAA (DC Cir No. 97-1112) Filed 2/27/97.

Issues:

- FAA violated trust obligations by placing unfair burden of flights on tribal lands.
- FAA violated intent of Overflights Act and GC Enlargement Act.
- FAA violated the National Environmental Policy Act (NEPA).
- FAA failed to consult in a government-to-government relationship.
- FAA violated the National Historic Preservation Act and the Religious Freedom Restoration Act.

4. Clark County Dept. of Aviation v. FAA (DC Cir No. 97-1104) Filed 2/24/97.

Issues:

- FAA violated the APA and NEPA by failing to consider reasonable alternatives.

Outcome: The DC Circuit court denied all of petitioners' challenges. However, several challenges were deemed unripe for review since the interrelationship of the Final Rule's flight free zones, flight corridors and routes were not certain due to the

delay of their full implementation. Those challenges may be raised again when the corridors and routes are finally promulgated.

The court specifically upheld the agencies' interpretation of the statutory phrase "substantial restoration of natural quiet."

### **Judicial Challenges to the Air Tour Limitations Rule**

Two petitioners brought challenges to the Air Tour Limitations Rule. The cases were consolidated and the opinion is at United States Air Tour Coalition v. FAA, 298 F.3d 997 (D.C. Cir. 2002).

1. United States Air Tour Association, et al., v. FAA, et al., (DC Cir No. 00-1201).

Issues:

- Agencies acted arbitrarily and capriciously, in violation of the APA.
- Agencies violated the Regulatory Flexibility Act.
- The exemption for the Hualapai tribe violated the Fifth Amendment of the U.S. Constitution.

2. Grand Canyon Trust, et al. v. FAA, et al., (DC Cir No. 00-1212).

Issues:

- FAA unlawfully altered NPS's definition of substantial restoration of natural quiet.
- FAA's noise methodology was flawed because it only accounts for noise from commercial air tours and ignores noise from other types of aircraft.

Outcome: The court rejected the Air Tour Association challenge that a change in the definition of "natural quiet" was unlawful and the acoustic methodology used by NPS was flawed. The court noted that the Park Service's explanation for its change in methodology was reasonable and that the agencies' experts presented a satisfactory analytic defense of their model.

The court determined that FAA should not have used "average annual day" and remanded the issues raised by the Grand Canyon Trust involving FAA's interpretation of NPS's meaning of "the day" in the definition of substantial restoration of natural quiet. The court also held that FAA's methodology should be revisited to account for additional types of aircraft noise.