# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Parts 91 and 135

## DEPARTMENT OF INTERIOR

## National Park Service

## 36 CFR Parts 1, 2, 3, 4, 5, 6, and 7

**[Docket No. 27643; Notice No. 94–4]**

**RIN 2120–AF46**

## Overflights of Units of the National Park System

**AGENCY:** Federal Aviation Administration; National Park Service.

**ACTION:** Advanced notice of proposed rulemaking (ANPRM); Disposition of comments.

**SUMMARY:** This document disposes of comments received in response to an ANPRM published in the **Federal Register** on March 17, 1994. The ANPRM sought public comment on general policy options and specific recommendations for voluntary and regulatory actions to address the impacts of aircraft overflights on national parks. This document summarizes those comments and provides an update to the public on matters concerning air tours over units of the national park system.

**ADDRESSES:** The complete docket, No. 27643, including a copy of the ANPRM and comments on it, may be examined in the Rules Docket, Room 915G, Office of Chief Counsel, Federal Aviation Administration, 800 Independence Ave., SW, Washington, DC, 20591, weekdays (except Federal holidays), from 8 a.m. until 5 p.m.

**FOR FURTHER INFORMATION CONTACT:** Gary Davis, Air Transportation Division (AFS–200), Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591, telephone: (202) 267–4710.

**SUPPLEMENTARY INFORMATION:**

### Background

On March 17, 1994, the FAA and the National Park Service (NPS) jointly issued an ANPRM titled Overflights of Units of the National Park System (59 FR 12740). The ANPRM cited the commitment of both Secretary Babbitt and (then) Secretary Pena to address the issue that increased flights over the Grand Canyon and other national parks have diminished the park experience for park visitors and that measures should be taken to preserve the quality of the park experience. This ANPRM sought comments and suggestions that could minimize the adverse impacts (e.g., noise) of commercial air tour operations and other overflights affecting units of the national park system.

The FAA and the NPS sought public comment and recommendations on a number of options, including voluntary measures, the use of the Grand Canyon Model, a prohibition of flights during flight-free time periods, altitude restrictions, flight-free zones and flight corridors, restrictions on noise through allocation of aircraft noise equivalencies, and incentives to encourage use of quiet aircraft. In addition, the FAA and NPS asked specific questions, from both a technical and a policy perspective. For example, the agencies asked whether commercial flights should be banned from some parks, and what criteria should be used in making these determinations. In the ANPRM the FAA also asked the public to consider categories other than air tour/sightseeing operations, and the factors to be considered for addressing recommendations regarding overflights. The agencies sought comment on the use of quiet technology, and whether overflights should be conducted under the regulations of part 135. The use of special operations specifications was questioned, as well as the use of the Grand Canyon, with its extensive regulation of airspace, and Hawaii, which at the time was undergoing a public planning process, as models for other parks. The full range of questions is found at 52 FR 12745 (March 17, 1994).

The FAA received over 30,000 comments in response to the ANPRM, most of which were duplicate form letters (one form letter accounts for over 24,000 comments). Some of the comments included references to other studies and analyses of overflights issues, which the FAA considered in its review. Of the comments received, other than form letters, slightly more than half favor further regulation, and slightly less than half oppose further regulation. Of the form letters, most of which were collected and submitted by air tour operators, over 90% oppose further regulation.

Commenters included individual park users, air tour operators and their representatives, environmental organizations, state and local organizations, and congressional representatives.

### Summary of Comments

The following is a brief summary of the comments received. While space does not permit an in depth discussion of every comment, this summary presents an overview of the public positions on the most important issues related to overflights.

(1) *Voluntary measures.* Many commenters state that the voluntary measures already in place, such as the 2,000 foot minimum altitude guideline, are not working. Some of these commenters argue that such measures fail because aircraft operators do not recognize the inherent conflict between solitude and noise.

Other commenters argue that voluntary measures work, stating that the few operators who refuse to comply with the voluntary programs are at fault, not the industry as a whole. Several of the commenters note that pilots who make the effort to comply with existing voluntary guidelines are not recognized and are often criticized along with pilots who are not following voluntary guidelines.

(2) *National rule versus park-specific rules.* Although the ANPRM did not specifically address a national rule versus park-specific rules, there were some who commented on this issue. Generally, those persons do not think that a general rule could cover all park situations because of the variations among parks in such areas as ambient sound levels. For example, Air Line Pilots Association (ALPA) points to the amount of air traffic and unusual terrain at the Grand Canyon, which require specific regulations for that park.

Several commenters, including the Alaska Regional Office of the National Parks and Conservation Association, recommend separate regulations for national parks in Alaska because, in

some instances, air travel may be the only way to access these parks.

Some commenters suggest flexible regulations that could adjust to the varying considerations of parks (e.g., rules that could vary the spacing of flight-free times).

(3) *Regulation of sightseeing versus regulation of all commercial overflights.* Several commenters recommend extending overflight regulation to other types of aircraft that create noise over national parks, including military aircraft, NPS aircraft used for administrative and park maintenance flights, and commercial jets. Several commenters suggest distinguishing between private and commercial flight operations over parkland zones.

(4) *Grand Canyon and Hawaii as models.* Some commenters support applying the same limits used at the Grand Canyon and Hawaii to other parks, while other commenters oppose such measures.

(a) *Flight-free zones and corridors.* Several commenters oppose the imposition of flight-free zones because they would create higher traffic density and therefore increase the possibility of accidents, as well as produce greater noise impacts. Some of these commenters point to the experience at the Grand Canyon stating that SFAR 50–2 has created more compressed air traffic resulting in less safety and increased noise problems. Others say that 84 percent of the Grand Canyon is already traffic-free, and therefore additional flight-free zones and corridors are unnecessary.

Other commenters support the establishment of such corridors over certain sections of national parks. For example, several commenters support a two mile wide no-fly buffer zone around the entire perimeter of Hawaii's national parkland.

(b) *Flight-free times.* Some commenters are against establishing flight-free time periods and say that they would do little to mitigate the negative impacts of overflights. Some air tour operators say that these restrictions would also have substantial economic consequences on their operations.

Other commenters support the establishment of flight-free times or days, some of whom recommend capping the total number of flights allowed per day over national park. For example, the Grand Canyon Chapter of the Sierra Club recommends restricting the total number of flights at Grand Canyon National Park to pre-1975 levels in order to reduce crowding in flight corridors, thereby lessening noise impacts and increasing safety.

(c) *Altitude restrictions.* Many commenters suggest imposing specific minimum flight altitudes, for example, the Grand Canyon Chapter of the Sierra Club recommends that altitude restrictions not allow flights below 14,500 feet mean sea level.

Some commenters, such as the Grand Canyon Air Tourism Association, oppose blanket altitude restrictions that do not take geographic structures into account. Other commenters argue that altitude restrictions could be dangerous in weather that necessitates IFR operations.

(5) *Use of noise budgets and incentives for quiet aircraft technology.* Most commenters oppose the adoption of noise budgets because they are difficult to administer and are not cost effective. For example, the Grand Canyon Air Tourism Association says that noise budgets would be difficult to apply to the Grand Canyon because they would require expensive noise monitoring to ensure equal implementation by operators. Others argue that noise budgets would not substantially relieve the overall noise problem.

Several commenters support the adoption of noise budgets because they would provide operators with an incentive to operate quiet aircraft. A number of commenters recommend that if noise budgets are adopted, they should be grandfathered to the current noise level.

Regarding the use of quiet aircraft technology, some commenters support governmental incentives to encourage operators to use quiet aircraft. Such incentives could include tax benefits, fee abatements, loan programs, and increased allocations on the number of flights allowed. Several air tour operators point out that without such incentives, air tour operators could not afford to use quiet aircraft technologies.

(6 ) *Factors for evaluating recommendations.* One commenter, the Sierra Club Legal Defense Fund, says that the FAA and NPS, in evaluating recommendations, should ask: Will the measures be effective in eliminating aircraft noise in noise sensitive areas? Are fundamental park values, including natural quiet and protection of wildlife habitats, fully preserved by the rulemaking? Can the FAA and NPS implement effective management and enforcement strategies?

Another commenter, Helicopter Association International, recommends the creation of a Federal Advisory Committee to conduct studies, analyze information, and recommend regulatory actions on the issue of overflights over national parks.

(7) *The need for special operations specifications for conducting sightseeing flights.* Some commenters say that special operations specifications for air tour operators are unnecessary, while others support referencing the operation as part of operator specifications.

Some commenters, addressing air tour operations in Hawaii, recommend that air tour operators conducting operations over water or mountains be required to have special safety equipment and appropriate pilot training. These commenters also recommend that low-altitude aircraft operators in Hawaii adhere to instrument flight rules and minimum flight regulations.

(8) *Certificate under Part 121 or Part 135.* Most commenters agree that tour operation flights should be conducted under part 135. Commenters do not support conducting these flights under part 121, and several commenters argue that the safety record would not improve if the requirements of part 121 were imposed. These commenters also argue that operating under part 121 would not be cost effective.

(9) *Specific parks that should be regulated.* Some commenters mention specific parks or areas that should be regulated. These areas include: Polipoli State Park in Maui, Guadalupe Mountains National Park in west Texas, Chiricahua National Monument in southeastern Arizona, Catskill Park, Adirondak Park, the Shawangunk Ridge, Allegany State Park, Glacier National Park, the Great Smoky Mountains National Park, Fort Vancouver National Historic Site, the Jamaica Bay wildlife preserve, Grand Teton National Park, Jedediah Smith Wilderness Area, and the Grand Canyon National Park.

(10) *Justification.* Some commenters object to the justification for rulemaking presented in the ANPRM. Several commenters state that NPS has not conducted a study that would show that the park experience has been derogated by air tour operations. Others commented that noise studies being prepared for the NPS are biased against aircraft operations and should not be used in their present form for any of the future decisions regarding the use of airspace over NPS land.

As to the authority to regulate, commenters were divided: some state that the FAA should continue to regulate airspace, others suggest that NPS should have authority so that it can regulate all visitors to a park. Certain commenters question whether the FAAct gives the agency the authority to ''protect'' the population on the ground from aircraft noise.

## FAA Response

The FAA appreciates the time and effort that persons expended to respond to this ANPRM. Although comments concerning overflights of the national parks, and specifically how those flights should be regulated, are somewhat polarized, many commenters gave the FAA specific advice that will be helpful in future rulemaking. Commenters have indicated, for example, that different parks have different needs, and that even within parks, some areas may have different priorities for restoring 'natural quiet'. We understand that while quiet technology aircraft can make a difference in noise levels, there must be some incentive for operators to obtain expensive equipment. Overall, both the FAA and NPS have gained a better understanding of the various positions on these issues, both from those representing air tour operators and those interested in preserving the beauty and quiet in our national parks.

## Subsequent Rulemaking Efforts

On April 22, 1996, President Clinton issued a Memorandum to address the significant impacts on visitor experience in national parks. In this memorandum the President set out three goals: to place appropriate limits on sightseeing aircraft at the GCNP; to address the potential impact of noise at Rocky Mountain National Park; and, for the national park system as a whole, to establish a framework for managing aircraft operations over those park units identified in the NPS 1994 study as priorities for maintaining or restoring the natural quiet.

In response to this memorandum, the FAA and NPS established, under the authority of the Aviation Rulemaking Advisory Committee (ARAC) and the National Park Service Advisory Board, a National Parks Overflights Working Group (NPOWG). The NPOWG members were selected to represent balanced interests that included the air tour operators, general aviation users, other commercial interests, environmental and conservation organizations, and Native Americans. The NPOWG was given the task of reaching consensus on a recommended NPRM which would establish a process for reducing or preventing the adverse effects of commercial air tour operations over units of the National Park System.

The NPOWG met from May through November 1997. In December 1997, members presented a concept paper to both the ARAC and the NPS Advisory Board. Both advisory groups accepted the proposed concept, which provides a mechanism, a process, whereby each unit of the National Park System will determine the necessary restrictions for that unit based on a park management plan that will be developed by the FAA with guidance from the NPS and with input from all interested parties.

Following the acceptance of the concept by the ARAC and NPS Advisory Board, the FAA and NPS are assisting the NPOWG in developing an NPRM. The FAA anticipates that when the NPRM is ready for publication, it would also plan public meetings to gain additional comment on how the concept would work for individual parks.

Issued in Washington, DC on April 5, 1999.

**David Traynham,**

*Assistant Administrator for Policy, Planning, and International Aviation.*

**Jacqueline Lowey,**

*Deputy Director, National Park Service.*

[FR Doc. 99–8920 Filed 4–8–99; 8:45 am]

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

## 21 CFR Part 101

**[Docket No. 98P–0968]**

## Food Labeling: Declaration of Ingredients

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Proposed rule.

**SUMMARY:** The Food and Drug Administration (FDA) is proposing to amend its ingredient labeling regulations to permit the use of ''and/or'' labeling for the various fish species used in the production of processed seafood products, i.e., surimi and surimi-containing foods. This action responds to a petition submitted by the National Fisheries Institute (NFI) requesting more flexible ingredient labeling for the fish ingredients used in the production of surimi products. This proposed rule would permit manufacturers of surimi and surimi-containing products to maintain a single label inventory identifying all of the fish species that may be used in the manufacture of the surimi product.

**DATES:** Comments by June 23, 1999. See section VIII of this document for the proposed effective date of a final rule based on this document.

**ADDRESSES:** Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Felicia B. Satchell, Center for Food Safety and Applied Nutrition (HFS–158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5099.

**SUPPLEMENTARY INFORMATION:**

## I. Background

''Surimi'' is a fish protein product made from minced fish meat that has been washed to remove fat, blood, pigments, odorous and other undesirable substances and that has been mixed with cryoprotectants such as sugar or sorbitol to prevent freezer burn (Ref. 1). The fish species used in surimi and surimi-containing products are primarily Alaskan pollock, Pacific whiting/hake, cod, and arrowtooth flounder. As an intermediate processed seafood product, surimi is then used in the formulation of a variety of finished seafood products, such as imitation crab and lobster meat.

Section 403(i)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 343(i)(2)) provides that the label of a food like surimi that is fabricated from two or more ingredients must bear the common or usual name of each ingredient. Section 403(i)(2) of the act further provides that when compliance with this requirement is impracticable, or results in deception or unfair competition, FDA can establish exemptions by regulation. FDA's regulations implementing section 403(i)(2) of the act generally require that ingredients used to fabricate a food must be declared on the label by their common or usual name in descending order of predominance by weight (§ 101.4(a)(1) and (b)(2) (21 CFR 101.4(a)(1) and (b)(2))). However, under section 403(i)(2) of the act, FDA has, through rulemaking, issued exceptions to the requirement in § 101.4(a)(1) and (b)(2) when the agency has concluded that compliance with these provisions is impracticable or may result in deception or unfair competition. For example, FDA allows ''and/or'' ingredient labeling when the agency believes it is impracticable for manufacturers to adhere to a fixed ingredient profile. The most recent rulemaking where FDA has provided for the use of ''and/or'' labeling is in the declaration of wax and resin coatings on fresh fruits and vegetables (58 FR 2850 at 2875, January 6, 1993).

With respect to the general requirements for compliance with section 403(i)(2) of the act, the agency has specifically outlined in guidance documents how ingredients in certain foods should be declared. For processed and/or blended seafood products that