

NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* first as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council or the Attorney General. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Register* after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 2. DEPARTMENT OF TRANSPORTATION

AERONAUTICS DIVISION

Editor's Note: The following Notice of Final Rulemaking was reviewed per Executive Order 2011-05 as issued by Governor Brewer. (See the text of the executive order on page 2175.) The Governor's Office authorized the notice to proceed through the rulemaking process on February 9, 2010.

[R11-158]

PREAMBLE

1. Sections Affected

R17-2-101
R17-2-201
Table 1
R17-2-206

Rulemaking Action

Amend
Amend
Amend
Amend

2. The statutory authority for the rulemaking, including both the authorizing statutes (general) and the statutes the rules are implementing (specific):

Authorizing statutes: A.R.S. §§ 28-366, 28-8204, and 28-8419

Implementing statutes: A.R.S. §§ 28-8202, 28-8204, 28-8241 through 28-8244, and 28-8419

3. The effective date of the rules:

The Arizona Department of Transportation is requesting an effective date of January 1, 2012, which is more than 60 days after the filing of the rule with the Secretary of State. The Department determined that good cause exists to request an effective date of January 1, 2012 in order to implement the fee changes at the beginning of 2012. In addition, the public will not be harmed by the later effective date, which allows airport tenants and the public additional notice of the fee and rule changes.

4. A list of all previous notices appearing in the Register addressing the final rules:

Notice of Rulemaking Docket Opening: 16 A.A.R. 1675, August 27, 2010

Notice of Proposed Rulemaking: 16 A.A.R. 1942, October 1, 2010

Notice of Supplemental Proposed Rulemaking: 17 A.A.R. 722, May 6, 2011

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

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Or

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Notices of Final Rulemaking

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Please visit the ADOT web site to track progress of this rule and any other agency rulemaking matters at <http://www.azdot.gov/mvd/mvdrules/index.asp>

6. An explanation of the rules, including the agency's reason for initiating the rules:

The Arizona Department of Transportation (ADOT) proposes to amend fees and charges for services and use of facilities and equipment at the Grand Canyon National Park Airport (GCNPA). This rulemaking ensures compliance with Federal Aviation Administration (FAA) Airport Improvement Program Grant Assurance 24, which states, "It (the airport sponsor, the state of Arizona) will maintain a fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport, taking into account such factors as the volume of traffic and economy of collection. No part of the Federal share of an airport development, airport planning or noise compatibility project for which a grant is made under Title 49, United States Code, the Airport and Airway Improvement Act of 1982, the Federal Airport Act, or the Airport and Airway Development Act of 1970 shall be included in the rate basis in establishing fees, rates, and charges for users of that airport."

The Arizona Department of Transportation is responsible for operation of the GCNPA in Tusayan, Arizona. The airport is located seven miles from the South Rim of the Grand Canyon and two miles from the entrance to Grand Canyon National Park. The airport is the only airport in Arizona owned by the state. The airport is the third busiest airport in the state. Three airlines, Vision Air, Grand Canyon Airlines, and Maverick Airlines, provide commercial air service to U.S. and international tourists from North Las Vegas and from several other cities in Nevada to Tusayan. Air tour operators also use the airport to provide helicopter tours of the area.

ADOT has maintained the same rate structure at GCNPA since 1995. These rates generally supported airport operations through FY 2007. During FY 2008 through FY 2010, GCNPA had operating deficits ranging from \$296,000 to \$406,000, requiring the Department to supplement airport-generated revenue with other funds. GCNPA applies for and generally receives \$50,000 annually from the state Aviation Fund grant program for airport building renewal projects. State Aviation Funds provide grants for aviation projects for other publicly-owned airports in the state. GCNPA also receives federal grants from the Federal Aviation Administration (FAA) for airport construction projects and maintenance expenses. Other ADOT funds have specific legislative and constitutional restrictions on their use. The fees in this rule package will raise the rates closer to a market-based level comparable to similar airports and initially generate 20 to 25 percent in additional revenue annually.

The Department approached this process with these considerations in mind: First, since the airport fees have not been increased since 1995, the Department wanted to engage the tenants and airport users in determining reasonable fee increases. Second, the Department wanted to avoid causing financial hardship during these difficult economic times on tenants and airport users. Third, the Department is planning to raise additional revenue from airport expansion as businesses at the airport continue to recover from the recession. Finally, the Department will increase monitoring of airport activities to ensure that all required fees are collected.

The revenue generated from these rules will decrease the gap between revenues and expenses at GCNPA. This rule-making is needed to meet the current operating expenses of the airport and to meet the FAA requirements to maintain a fee structure that makes the airport as financially self-supporting as possible. The Department worked extensively with the tenants and leaseholders of GCNPA to develop reasonable fee changes that tenants, leaseholders, and consumers could absorb without a significant impact. Although the fees will not completely close the gap between revenues and expenses at GCNPA immediately, the Department believes that continuation of the economic recovery, subsequent tourism increases, and pursuit of strategies to increase and expand airport use will generate additional revenue for the airport.

The fees were developed after informal discussions and staff review of fees charged at other commercial service airports in Arizona, airports within the National Park Service, and in bordering states. The airports included in this review were Flagstaff, Prescott, Phoenix-Mesa Gateway, and Tucson International, as well as Fresno, Yosemite International, St. George, Utah, servicing Zion National Park, and airports in Wyoming, servicing Yellowstone and Grand Teton National Parks.

7. A reference to any study relevant to the rules that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

The Department did not review or rely on any study.

8. A showing of good cause why the rules are necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

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9. The summary of the economic, small business, and consumer impact:

ADOT will incur minimal one-time costs estimated at \$8,000 to implement the fee changes, as well as rule writing resources to prepare the rules. The Department expects operational cost increases due to the rulemaking to be minimal. ADOT will not require any new full-time employees to enforce and implement the rules. These fees will make GCNPA more self-sustaining through an increase in user-paid revenue for the airport. These rules bring the fees charged at Grand Canyon National Park Airport up to a market-based level comparable to similar airports. On an annual basis, the fee changes are initially expected to generate about \$207,000. Future airport expansion, improvement in the economy, and an increase in tourism are expected to lead to further increases in airport revenue. In addition, this will ensure that the airport complies with Federal Aviation Administration grant assurances that require the airport to be as self-sustaining as possible in order to receive federal aviation grant funds.

Political subdivisions in the vicinity of GCNPA may receive a positive, indirect economic benefit due to increased spending by GCNPA visitors and airport tenants. Other political subdivisions in the state will not have a negative economic impact as a result of the rulemaking. The rules will not have an economic impact on other state agencies.

These rules will have a moderate (\$10,000 to \$99,000) to substantial (\$100,000 or more) cost impact on commercial service aircraft companies that are tenants and users of Grand Canyon National Park Airport. The rules will impact the revenue and payroll of these affected commercial service aircraft companies and may have a negative impact on employment in these impacted commercial service aircraft companies. Although some airport-related fees may be absorbed by passengers and users of commercial service aircraft serving GCNPA, ADOT believes that these rules benefit the public, the business community, and the state by allowing the airport to be self-supporting through user fees.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

The following changes were made from the Notice of Proposed Rulemaking and published in a Notice of Supplemental Proposed Rulemaking:

The heading under Chapter 2 was changed to “DEPARTMENT OF TRANSPORTATION - ADMINISTRATIVE SERVICES DIVISION.”

The following changes were made to R17-2-101. Definitions:

Added the terms “airport operations area,” “airport terminal building,” and “commercial service aircraft,” for clarification purposes;

Modified the term “airport gate” to clarify that the term, as used in these rules, does not include an airport gate on leased property;

Modified the terms “commercial aircraft passenger” and “commercial use ramp” as conforming changes by adding the word “service” to correspond with the new term “commercial service aircraft”;

Modified the term “non-terminal ramp area” as a conforming change by adding the word “airport” to correspond with the new term “airport terminal building”;

Added the term “Transportation Security Administration” for clarification purposes; and

Modified the term “overnight parking” to clarify that the term, as used in these rules, does not include overnight parking on leased property.

The following changes were made to R17-2-201, Table 1, Grand Canyon National Park Airport Fees and Charges:

The Department expanded its multi-level fee structure approach in an effort to help reduce any potential fiscal burden and other economic impacts to the current tenants and users of the Grand Canyon National Park Airport. The supplemental proposed rulemaking, developed in partnership with current tenants and users of the airport, presents an approach to fee collection that:

Supports the Department’s mandate to maintain a fee and rental structure for the facilities and services at the airport at a more self-sustaining level;

Considers, to a greater degree, the circumstances existing at the airport;

Allows the Department to consider such factors as the volume of traffic and the economy of collection in reaching its goal to make the airport as self-sustaining as possible; and

Provides a fee structure that promotes equitable and efficient collection of fees and charges at the airport while ensuring that all categories of airport users, whether leaseholders, licensees, or commercial itinerant operators, are paying a fair share of the costs for operation of the airport, without subjecting current tenants and users of the airport to disproportionate amounts of any cost increase. Many of the current tenants and users of the airport have invested significant amounts over the years to help ensure that the Grand Canyon National Park Airport continues to remain the exceptional facility that supports Arizona’s number one tourist destination.

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Under the heading “Landing Fees”:

Clarified that the \$1.05 per 1,000 lbs of FAA-certified maximum landing weight charged by the Department for a single-engine fixed wing, multi-engine fixed wing, or rotorcraft applies when using the airport operations area; and

Provided a lower rate of \$0.30 per 1,000 lbs of FAA-certified maximum landing weight for rotorcraft not using the airport operations area.

Under the heading “Gate Fees”:

Clarified that gate fees apply when loading or unloading commercial service aircraft passengers through an unleased airport gate; and

Created a multi-tiered approach for collection of gate fees, to the benefit of airport leaseholders and the Department, to encourage new airport lease opportunities, and to ensure that smaller aircraft will not bear a disproportionate amount of the proposed fee increase.

Under the heading “Fuel Flowage Fees”:

Lowered the originally proposed \$0.12 per gallon fuel flowage fee for fuel delivered to the airport to \$0.03 per gallon and added an additional fee of \$0.07 per gallon of fuel sold at the airport.

Under the heading “Miscellaneous Fees”:

Clarified that the \$100.00 fee for use of airport personnel applies, whether requested or required by regulation, when the Federal Aviation Administration (FAA) air control tower is closed; and

Clarified that the \$25.00 fee for storage of crash debris begins to accrue 72 hours after release of the crash debris by the FAA or the National Transportation Safety Board.

Under the heading “Commercial Ground Transportation Fees”:

Added the word “commercial” to the heading for clarification purposes;

Corrected the word “monthly,” which was inadvertently stricken in the original Notice of Proposed Rulemaking;

Changed the originally proposed fee of \$0.60 per passenger transported each way, either to or from the airport, to \$7.00 per vehicle each time the vehicle is used on the airport for the purpose of loading or unloading passengers;

Lowered the originally proposed fees for an annual airport access permit from \$100.00 and \$250.00 per vehicle to \$20.00 per vehicle for an airport leaseholder and \$25.00 per vehicle for a non-airport leaseholder; and

Lowered the originally proposed fees for a terminal road parking permit from \$15.00 and \$25.00 per use to \$10.00 per use for an airport leaseholder and \$20.00 per use for a non-airport leaseholder.

Under the heading “Vehicle Parking Fees”:

Added the word “Daily commercial” to the term “Ground transportation use permit parking” for clarification purposes.

Under the heading “Retail Sales of Goods or Services”:

The word “Terminal” was deleted to reflect the changes made to this subsection;

Changed the originally proposed language of “Air tours using the airport” to “Air tour flights originating at the airport regardless of where the tour was sold” for clarification purposes;

Removed references to various types of terminal retail goods and services with a fee of 15%.

Under the heading “Security Fees”:

Increased the fee originally proposed for security screening from \$100.00 per flight to \$150.00 per flight.

Under the heading “Commercial Use Ramp Fees”:

Clarified that this subsection does not apply to any commercial service aircraft that provide air tours departing from and returning to the airport or to specifically identified air tour flights that use the airport for either departure or arrival; and

Lowered and restructured the originally proposed commercial use ramp fees for use of the terminal and non-terminal ramp areas.

Under the heading “Water Usage Fees”:

Changed the fees for water usage from a tiered “per gallon” pricing schedule to a more easily audited fee of direct costs plus 5% based on the airport’s previous fiscal year costs of water purchases and costs of operating the water system.

In R17-2-206, these changes were made:

In subsection 3(b), struck “Aeronautics” and inserted “Administrative Services”;

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In subsection 5, provided that hearing decisions are made by airport management, hearings are requested with the Director, and written requests for a hearing are taken by airport management.

The following changes were made in the Notice of Final Rulemaking:

The heading under Chapter 2 was changed to “AERONAUTICS” for clarification purposes.

These changes were made in R17-2-101:

Deleted the definition of “Airport trespass”;

Clarified the definitions of “Commercial service aircraft passenger,” “Direct costs,” “Overnight parking,” “Permit holder,” “Public use terminal,” and “Vehicle.”

Under the heading “Terminal Fees”:

Clarified that the “direct phone space” fee is per phone unit and clarified the reason for the “public address system” subscription.

Under the heading “Gate Fees”;

Clarified that gate fees are payable for aircraft 200,000 lbs. or greater.

Under the heading “Miscellaneous Fees”;

Provided that the fee for storage of crash debris applies to part of a month.

Added that the “Overnight parking” fee for parking is as specified in the license agreement as defined in R17-2-101;

Under the heading “Commercial Ground Transportation Fees”:

Provided that commercial ground transportation use permit holders pay fees and charges as appropriate;

Deleted the “Airport trespass” fee of \$1,000.00 per occurrence and substituted a “Daily airport access permit” charge of \$100.00 per day to any ground transportation company that has access to the airport and does not have an annual airport access permit. The Department does not have authority to impose a penalty, however, A. R. S. § 28-8419 gives the Department authority to adopt rules and establish charges for use of airport facilities. A commercial ground transportation company is required to have an annual airport access permit. If a company accesses the airport without this permit, they will be required to pay the daily airport access charge of \$100.00 per day. For this reason, the Department does not believe this is a substantial change.

Under the heading “Retail Sales of Goods or Services”:

Deleted reference to best bid and inserted that use permits must be in the best interest of the airport;

Changed reference “Retail sales of fuel” to “Vendor fuel sales” to clarify that this fee is 5% of the vendor’s fuel sales.

Under the heading “Security Fees”:

Added that the fees are “for badges and to meet security requirements”;

Clarified that an amount payable for a security violation is a “Security violation charge”;

Under the heading “Commercial Use Ramp Fees”:

Provided that the “Commercial use ramp fees” apply to “air tour flights that bring commercial service aircraft to the airport for this purpose”;

Modified language that “Terminal ramp area” and “Non-terminal ramp area” fees are “for any commercial service aircraft that does not qualify for the exclusion”;

Under the heading “Water Usage Fees”;

Clarified that “Water Usage Fees consist of the total direct cost of water paid by the Department for Airport usage, including all fees and taxes, the actual cost per gallon of all expenses for water for water testing, repair, and maintenance to the water delivery system for the Airport, and an administrative fee of 5%.”

These changes were made in R17-2-206:

In subsection 1, deleted “these rules” and inserted “this Article”;

In subsection 2, deleted “airport” and inserted “airport’s”;

Clarified language in subsection 2(b) regarding publishing a Notice of Impound;

In subsection 3(a), struck “company licensed by” and inserted “truck registered with”;

In subsection 3(b), struck “licensed by the ADOT Aeronautics Division” and inserted “that has complied with R17-2-203.”

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Changes were also made to ensure conformity with the rulemaking format and style requirements of the Arizona Administrative Procedure Act, the Office of the Secretary of State, and the Governor's Regulatory Review Council.

11. A summary of the comments made regarding the rules and the agency response to them:

The Notice of Proposed Rulemaking provided for an oral proceeding on November 17, 2010, with the close of record scheduled to occur on that date. Tenants and users of the Grand Canyon National Park Airport made comments about the rule and requested an extension of close of the rulemaking record. The Department held a follow-up proceeding on January 11, 2011, to gather additional comments on the proposed GCNPA fees and rates. All stakeholders who attended the first oral proceeding were notified of the follow-up proceeding by electronic mail on December 22, 2010, and other public notification was provided. The close of record was extended until January 18, 2011. In response to these comments, the Department made various changes to the rule language that modified the fee and rate structure and clarified definitions used in the rule. To allow additional opportunity for public comment and to comply with rulemaking requirements regarding rule changes from proposed rulemaking to final rulemaking, the Department filed a Notice of Supplemental Proposed Rulemaking.

In addition to verbal comments made at the oral proceedings, the Department also received some written comments on the rules.

The specific rule changes made in the supplemental proposed rulemaking are listed in item 10. In general, the changes made in the supplemental proposed rulemaking include the following:

Addition and modification of various definitions and rule language to make the rules more clear, concise, and understandable;

Expansion and modification of the multi-level aircraft and airport fee structure to further reduce fiscal impacts on current tenants and users of GCNPA, to ensure that all categories of airport users pay an equitable amount of the airport operating costs, and to make GCNPA more self-sustaining; and

Creation of an equitable and efficient fee structure for airport tenants and users of GCNPA.

The Department received these comments before the Notice of Proposed Rulemaking was filed. No additional comments have been received on the rules. The agency's response to them is as follows:

Comment: Commercial service aircraft operators, airport leaseholders, licensees, and air tour operators desire equitable and efficient rates and fees.

Response: The fee structure was modified in the supplemental proposed rulemaking in response to comments received. ADOT worked with all stakeholders and expanded its multi-level fee structure to help reduce the potential fiscal burden and economic impacts on current tenants and airport users by making the fees equitable among users. Under the supplemental proposed rule fee structure, GCNPA expects to receive about \$207,000 annually. The intent of the rulemaking is to reduce the operating deficit of GCNPA and make the airport as self-supporting as possible. Projected airport general operating revenue for FY 2010 was about \$850,000, leaving a shortfall of over \$400,000. ADOT does not want to harm businesses as a result of this rulemaking, but needs to make the airport self-supporting. Commercial service aircraft that provide air tours to and from the airport or use the airport for departure or arrival are excluded from commercial use ramp fees. Commercial service aircraft that do not qualify for the air tour exclusion will be charged per hour with maximum caps. Air tour operators using rotorcraft that do not use the airport operations area will also pay a much lower landing fee than fixed wing and rotorcraft that use the airport operations area. Gate fees were also modified to provide lower fees to airport leaseholders based on aircraft maximum landing weight.

Comment: The proposal is flawed by having a single landing fee of \$1.05 per 1,000 lbs. of FAA-certified maximum landing weight. ADOT needs to take a look at helicopter leaseholds that don't use the aircraft operations area because much of the cost of the airport is related to the aircraft operations area.

Response: The Department responded to this comment by filing supplemental proposed rulemaking to clarify that the \$1.05 per 1,000 lbs. of FAA-certified maximum landing weight charged for a single-engine fixed wing, multi-engine fixed wing, or rotorcraft applies when using the airport operations area. The fee for rotorcraft that do not use the airport operations area is \$0.30 per 1,000 lbs. of FAA-certified maximum landing weight.

Comment: Ramp and gate fees are highly inefficient. How will you determine how long an airplane is sitting on the ramp to set the fee? How will you audit this?

Response: Commercial service aircraft will provide information on airport use in their monthly report to GCNPA. GCNPA will verify the accuracy of monthly reports on ramp and gate fees. In the supplemental proposed rulemaking, the Department addressed possible inefficiencies by reducing commercial use ramp fees. Commercial service aircraft that provide air tours to and from the airport are excluded from the commercial use ramp fees. Gate fees apply only when loading or unloading commercial service aircraft passengers through an unleased airport gate providing access to or from the airport ramp area. Gate fees were modified in the supplemental proposed rulemaking to create a multi-tiered fee structure to encourage new leaseholders and lessen the economic impact on small commercial service aircraft companies.

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Comment: All classes of users, including leaseholders, licensees, or itinerants must pay their fair share of costs to operate the airport. Each class of airport user should pay their fair share of costs by using fees, such as percent of gross revenue and fuel flowage fees.

Response: The purpose of the fee increase is to make Grand Canyon National Park Airport as self-supporting as possible from airport-related fees as required by FAA grant assurances. For FY 2010, GCNPA had an operational loss of over \$400,000. ADOT has worked with stakeholders to make the fee increases equitable among the different classes of airport users. The supplemental proposed rulemaking reduced the fuel flowage fee from \$0.12 per gallon of fuel delivered to the airport to \$.03 per gallon and added a fee of \$.07 per gallon of fuel sold at the airport. The specific types of fees in the supplemental proposed rulemaking are the types of fees charged at other comparable airports in Arizona and other states. The proposed rates at GCNPA are at a similar or lower level to those airports.

Comment: Commercial aviation is defined in A.A.C. R17-2-101 to mean transportation for hire, so training and maintenance test flights are not subject to landing fees. In Table 1 in A.A.C. R17-2-201, under Commercial Use Ramp Fees, the term “commercial aircraft” is used rather than “commercial aviation.” “Commercial aircraft” is not defined.

Response: The Department addressed these issues in the supplemental proposed rulemaking. Training and maintenance test flights are not subject to landing fees. The commercial use ramp fee does not apply to commercial service aircraft that provide air tours to and from the airport, or to specifically identified air tour flights using the airport for either departure or arrival. The term “commercial service aircraft” is defined to mean any aircraft while being used for commercial aviation purposes.

Comment: Are commercial aircraft that load or unload passengers in front of the GCNPA terminal subject to the \$10 vehicle daily parking fee?

Response: The Department addressed this issue in the supplemental proposed rulemaking. This fee is only for any vehicle other than aircraft used for transporting persons or property.

Comment: Define the terms “passenger terminal,” “airport gate,” “commercial use ramp,” “terminal road,” and “terminal road parking permit.”

Response: The Department defined “airport terminal building,” “airport gate,” and “commercial use ramp” in the supplemental proposed rulemaking. “Terminal road” was defined in the proposed rule. ADOT believes that terminal road parking permit is common terminology, which does not need to be defined.

Comment: Air tour operators expressed concern about the fiscal impact of increased fuel flowage fees. They believed that fixed airport gate fees and commercial use ramp fees would disproportionately affect small aircraft over larger aircraft.

Response: ADOT addressed this concern in the supplemental proposed rulemaking by reducing the fuel flowage fee from \$0.12 per gallon of fuel delivered to the airport to \$0.03 and added a charge of \$0.07 per gallon of fuel sold at the airport. Only fuel delivered to, or sold at the airport is included in the fuel flowage fee. Gate fees are charged on an increasing sliding scale per flight by aircraft landing weight based on aircraft leaseholder or non-airport leaseholder status. Commercial use ramp fees exclude small commercial service aircraft providing air tours that depart to and from GCNPA, or to air tour flights that arrive at, or depart from GCNPA.

Comment: If GCNPA rates are set too high, GCNPA will lose business to neighboring, competing air tour venues. Several other air tour flights operate air tour companies over Grand Canyon National Park. This may also impact the commercial motor coach business and reduce airport use revenues paid to the State Aviation Fund.

Response: GCNPA competes for air service to the Grand Canyon with other airports in the area. ADOT has worked with airport stakeholders to ensure that the fees do not drive business away from GCNPA by reducing and modifying some fees. GCNPA recognizes that the level of airport fees may impact commercial travel to GCNPA, however, the fees are intended to close the current operating deficit at the airport.

Comment: If GCNPA passenger traffic improves in the future and revenues increase, will the proposed air tour operator fees be reduced? If ADOT goes ahead with airport development plans, will the Department look at a passenger facility charge in the future?

Response: The Department will review airport fees on a regular basis and adjust the fees to ensure that each fee meets market prices and benefits the airport. The Department will not necessarily reduce the proposed fees when passenger traffic increases, but will make determinations regarding the level of fees at the appropriate time. A passenger facility charge is not included in this rule.

Comment: The profit margins of air tour operators are small. Any increased fees at GCNPA must be passed on to the consumer. Tour prices are already negotiated and contracted for 2011. Tour operators cannot pass these costs on for 2011. Air tour service to the Grand Canyon is competitive with different companies in the market. Price increases may impact customer choice.

Response: To reduce the airport operating deficit, the state is using resources to fund the airport that were intended for use at other public airports. These airport fees will be used to fund current airport operation, not future development. For FY 2010, projected airport revenues were about \$850,000 while the general operating cost of the airport

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was about \$1.25 million. ADOT has limited options to close the operating loss and wants to establish a rate structure that complies with FAA federal grant assurances. Those air tour operators that depart and arrive at GCNPA are excluded from paying commercial use ramp fees. Other fees were also reduced. ADOT does not wish to harm businesses as a result of this rulemaking, but needs to make the airport as self-supporting as possible. ADOT has reduced and modified fees to lessen the impact on air tour operators and asked for a delayed effective date of January 1, 2012.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable

13. Incorporations by reference and their location in the rules:

None

14. Were these rules previously made as emergency rules?

No

15. The full text of the rules follows:

TITLE 17. TRANSPORTATION

**CHAPTER 2. DEPARTMENT OF TRANSPORTATION
AERONAUTICS DIVISION**

(Authority: A.R.S. §§ 28-1707 and 28-1722)

ARTICLE 1. GENERAL PROVISIONS

Section

R17-2-101. Definitions

ARTICLE 2. GRAND CANYON NATIONAL PARK AIRPORT - OPERATION AND MANAGEMENT

Section

R17-2-201. Fees and Charges for Services and Use of Facilities and Equipment at the Airport

Table 1. Grand Canyon National Park Airport Fees and Charges

R17-2-206. Airport Impoundment Procedures; Notice of Impound

ARTICLE 1. GENERAL PROVISIONS

R17-2-101. Definitions

In this Chapter, the following definitions shall apply:

“ADOT” means the Arizona Department of Transportation.

“After-hours” means hours beyond those determined by airport management as appropriate to meet the seasonal demand.

“Aircraft ramp area” means an artificially surfaced section of airport ground designed and used for aircraft parking with access to a taxiway.

“Airport” means the geographical boundaries of the property owned by the Arizona Department of Transportation, ~~Aeronautics Division~~, and known as the Grand Canyon National Park Airport.

“Airport business” means any business venture operating inside the boundaries of the Grand Canyon National Park Airport or relying on business generated as a result of the presence of the airport, its customers, or employees.

“Airport gate” means an entryway onto an apron, not on leased property, whether through a fence or a building.

“Airport leaseholder” means a user of the airport under a lease agreement with the Department.

“Airport management” means one or more persons designated by the ~~ADOT Aeronautics Division Assistant~~ Director as responsible for the management of the airport and its operations.

“Airport operations area” means an area of the airport, within a fenced perimeter, including a runway, taxiway, apron, or other FAA-mandated safety areas that are used or intended to be used for landing, takeoff, or the surface maneuvering of aircraft.

“Airport terminal building” means a building owned by the airport that is used for accommodating the enplaning and deplaning of passengers and other associated activities.

“Apron” means an artificially surfaced area of ground designed and used for the parking and storage of aircraft at an airport.

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“Commercial aviation” means the scheduled or non-scheduled transportation by air of persons or property for compensation or hire under FAA regulations.

“Commercial fuel handling” means the sale, storage, transportation, or distribution of fuels for compensation.

“Commercial ground transportation” means the ~~scheduled or non-scheduled transportation, exclusive of by air, non-air transportation~~ of persons or property to or from the airport for compensation ~~or hire to and from the airport.~~

“Commercial service aircraft” means any aircraft while being used for commercial aviation purposes.

“Commercial service aircraft passenger” means a person, other than aircraft flight crew, who enplanes, deplanes, or who is onboard a commercial service aircraft.

“Commercial use ramp” means an apron designated by airport management for the parking of commercial service aircraft and the enplaning or deplaning of commercial service aircraft passengers.

“Direct costs” means labor, materials, and variable overhead expenses ~~which are directly dependent on the operation.~~ that are directly associated with a specific service.

“Direct phone” means telephone service directly to hotels, motels, or other ~~firms.~~ businesses.

“Director” means the Director of the Arizona Department of Transportation or the Director’s designee.

~~“Director of Aeronautics” means the ADOT Assistant Director of Aeronautics.~~

“Disabled aircraft” means ~~any~~ an aircraft that requires assistance to move from any position on ~~the~~ a runway, taxiway, or apron ~~areas~~ area of the airport.

“Disabled aircraft support equipment” means any equipment used to assist aircraft movement from any position on ~~the~~ a runway, taxiway, or apron ~~areas~~ area of the airport.

~~“Division” means the Arizona Department of Transportation’s Aeronautics Division.~~

“Electronic access security badge” means a credential issued by airport management to a person for identification as an employee of the airport, an airport tenant, or an airport contractor authorized to open electronically controlled gates.

“FAA” means the Federal Aviation Administration of the United States Department of Transportation.

“Fixed base operator” means an airport business that provides airport user services, including but not limited to, commercial fuel handling within the boundaries of the airport.

“Fuel” means all flammable fluids composed of a mixture of selected hydrocarbons manufactured and blended for the purpose of aircraft, railroad, or motor vehicle propulsion.

“Fuel supplier” means ~~any~~ an airport business that dispenses fuel to retail customers or into vehicles owned or operated by that business.

“Lease” means a contract granting use or occupation of property during a specified period in exchange for ~~a~~ specified compensation.

“License agreement” means a contract granting use or occupation of a portion of the terminal or other state-owned building in exchange for ~~a~~ specified compensation.

“Maximum landing weight” means the maximum weight at which an aircraft may normally be landed as determined by the manufacturer.

“NFPA” means the National Fire Protection Association.

“Non-terminal ramp area” means the portion of aircraft ramp area designated by airport management for the parking of aircraft when use of a terminal building is not required.

“Overnight parking” means the act of leaving a motor vehicle unoccupied between the hours of sunset and sunrise on airport property that is not leased.

“Permit holder” means ~~any~~ a person, partnership, association, firm, or corporation ~~owning or operating~~ that owns or operates a business at the airport under a use permit.

“Public use terminal” means ~~any~~ a structure designated for use by the general public ~~and~~ that is not specifically restricted or dedicated to any one airport business.

“Retail sales” means all sales activities at the airport not directly related to the transportation of persons or property. Sales include but are not limited to food, beverages, souvenirs, sundries, books, newspapers, and magazines.

“Rotorcraft” means a heavier-than-air aircraft that depends principally for its support in flight on the lift generated by one or more rotors.

“Security badge” means a credential issued by airport management to a person for identification as an employee of the airport, an airport tenant, or an airport contractor.

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“Self-fuel dispensing or handling” means non-commercial fuel delivery to an aircraft, provided by the owner or operator.

“State” means the ~~State~~ state of Arizona or its agents.

“Sunset” and “sunrise” have the same meaning and daily calculation as prescribed by the United States Naval Observatory (USNO), which is available on the internet at <http://aa.usno.navy.mil> or in hardcopy format from airport management.

“Taxiway” means an artificially surfaced strip of ground designed and used ~~at an airport~~ for the ground movement of aircraft at an airport.

“Terminal ramp area” means the portion of aircraft ramp area designated by airport management for the parking of aircraft when use of a terminal building is required.

“Terminal road” means an artificially surfaced strip of ground positioned in front of an airport terminal building, which is designated by airport management for the parking of vehicles and the loading or unloading of passengers.

“Terminal space” means any area within a structure designated as a terminal and used by the public for transitioning between aircraft and ground transportation.

“TSA” means the Transportation Security Administration of the United States Department of Homeland Security.

“Use permit” means a contract granting the privilege to conduct commercial operations at the airport in exchange for a specific compensation.

“Vehicle” means any equipment, other than aircraft, that is used for transporting persons or property ~~other than aircraft~~.

ARTICLE 2. GRAND CANYON NATIONAL PARK AIRPORT - OPERATION AND MANAGEMENT

R17-2-201. Fees and Charges for Services and Use of Facilities and Equipment at the Airport

~~A. Except as provided in subsection (B), the~~ The fees and charges in Table 1 apply to all tenants and users of the airport and its facilities.

~~B. The fees and charges established in subsection (A) do not apply to:~~

- ~~1. The use of leased facilities under an airport ground lease.~~
- ~~2. The use of airport facilities, equipment, or services included in an airport ground lease in effect on July 1, 1993~~

Table 1. Grand Canyon National Park Airport Fees and Charges

Landing Fees	
For commercial flight operations landing at the airport including, but not limited to, air carrier, air taxi, air tour, and air freight:	
Single-engine fixed wing, multi-engine fixed wing, and or <u>using the airport operations area</u>	\$1.00 <u>\$1.05</u> per 1,000 lbs., or part of 1,000 lbs., of FAA-certified maximum landing weight
Rotorcraft not using the airport operations area	\$0.30 <u>\$0.30</u> per 1,000 lbs., or part of 1,000 lbs., of FAA-certified <u>maximum landing weight</u>
Aircraft Parking Fees	
For restricted <u>non-commercial service</u> aircraft parking areas within airport boundaries designated by airport management:	
Single-engine fixed wing and or <u>Multi-engine fixed wing</u> rotorcraft	\$30.00 <u>\$50.00</u> per month, if parked in designated public tie-down areas \$40.00 <u>\$40.00</u> per month, if parked in designated public tie down areas <u>The daily rate shall be 1/10 of the applicable monthly rate</u> <u>Daily rate is one-tenth of the monthly rate</u>
<u>Multi-engine fixed wing or rotorcraft</u>	\$100.00 <u>\$100.00</u> per month, if parked in designated public tie-down areas <u>Daily rate is one-tenth of the monthly rate</u>
Terminal Fees	
Advertising space	\$5.00 <u>\$5.00</u> per sq. ft. (sign size), per month, for terminal and <u>counter areas</u> \$8.00 <u>\$8.00</u> per sq. ft. (sign size), per month, for outdoor sign space
After-hours terminal use	\$200.00 <u>\$200.00</u> per hour, or part of an hour, in excess of 10 minutes <u>after scheduled terminal closure</u>

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<u>Direct phone space</u>	<u>\$35.00 per phone unit, per month</u>
<u>Public address system</u>	<u>\$35.00 per monthly subscription to use the public address system</u>
<u>Retail sales space</u>	<u>\$26.00 per sq. ft., per year</u>
<u>Terminal counter space</u>	<u>\$20.00 \$26.00 per sq. ft., per year</u>
<u>Terminal office space</u>	<u>\$15.00 per sq. ft., per year</u>
<u>Advertising space</u>	<u>\$2.00 per sq. ft. (sign size), per month, for terminal and counter areas</u>
<u>Direct phone space</u>	<u>\$5.00 per sq. ft. (sign size), per month, for outdoor sign space</u>
<u>Retail sales space</u>	<u>\$20.00 per unit, per month</u>
<u>Public address system</u>	<u>\$20.00 per sq. ft., per year</u>
<u>After-hours terminal use</u>	<u>\$25.00 per monthly subscription</u> <u>\$150.00 per hour, or part of an hour, in excess of ten minutes after scheduled terminal closure</u>
<u>Terminal office space</u>	<u>\$26.00 per sq. ft., per year</u>
Gate Fees	
<u>For loading or unloading commercial service aircraft passengers through an unleased airport gate that provides access to or from the aircraft ramp area:</u>	
<u>Airport leaseholder using an aircraft with a maximum landing weight of:</u>	
<u>Less than 12,500 lbs.</u>	<u>\$1.00 per flight</u>
<u>12,500 lbs. to 44,999 lbs.</u>	<u>\$5.00 per flight</u>
<u>45,000 lbs. to 99,999 lbs.</u>	<u>\$10.00 per flight</u>
<u>100,000 lbs. to 199,999 lbs.</u>	<u>\$50.00 per flight</u>
<u>200,000 lbs. or greater</u>	<u>\$75.00 per flight</u>
<u>Non-airport leaseholder using an aircraft with a maximum landing weight of:</u>	
<u>Less than 12,500 lbs.</u>	<u>\$1.50 per flight</u>
<u>12,500 lbs. to 44,999 lbs.</u>	<u>\$7.50 per flight</u>
<u>45,000 lbs. to 99,999 lbs.</u>	<u>\$15.00 per flight</u>
<u>10,000 lbs. to 199,999 lbs.</u>	<u>\$100.00 per flight</u>
<u>200,000 lbs. or greater</u>	<u>\$150.00 per flight</u>
Fuel Flowage Fees	
<u>Fuel flowage</u>	<u>\$0.03 per gallon of fuel delivered to the airport; and</u> <u>\$0.07 per gallon of fuel sold at the airport</u>
Equipment Use Fees	
<u>Aircraft tug</u>	<u>\$100.00 per use</u>
<u>Auxiliary power unit</u>	<u>\$10.00 \$100.00 per use</u>
<u>Aircraft tug</u>	<u>\$20.00 per use</u>
<u>Portable heater</u>	<u>\$10.00 per use</u>
<u>Passenger stairs</u>	<u>\$10.00 per use</u>
<u>Non-aviation equipment</u>	<u>As negotiated</u>
<u>Non-aviation equipment</u>	<u>As negotiated</u>
<u>Passenger stairs</u>	<u>\$100.00 per use</u>
<u>Portable heater</u>	<u>\$50.00 per use</u>
Miscellaneous Fees	
<u>Clean up of hazardous materials</u>	<u>Direct costs</u>
<u>Disabled aircraft assistance</u>	<u>Direct costs</u>
<u>Disabled aircraft support equipment</u>	<u>Direct costs</u>
<u>Repairs of damage to airport property</u>	<u>Direct costs</u>
<u>Storage of crash debris</u>	<u>\$25.00 per sq. ft., per month, or part of a month beyond 72 hours after release of the crash debris by the FAA or National Transportation Safety Board</u>

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After hours runway inspection for commercial use permit holder Use of airport personnel, whether requested or required by regulation, when the FAA Air Control Tower is closed	\$50.00 \$100.00 per landing, take-off, or if on standby, for each 30-minute increment
Storage of crash debris	\$5.00 per sq. ft., per month, or increment of a month beyond 72 hours
Clean up of hazardous materials	Direct costs
Repairs of damage to airport property	Direct costs
Disabled aircraft assistance	Direct costs
Disabled aircraft support equipment	Direct costs
Commercial Ground Transportation Fees	
All commercial ground transportation use permit holders shall <u>appropriate</u> :	report and pay monthly the following fee fees and charges as
<u>Daily airport access charge</u>	<u>\$100.00 per day charged to any commercial ground transportation company that accesses the airport without an annual airport access permit</u>
<u>Annual airport access permit</u>	<u>\$20.00 per vehicle for an airport leaseholder \$25.00 per vehicle for a non-airport leaseholder</u>
<u>Ground Commercial ground transportation</u>	<u>\$0.30 per passenger transported each way; either to or from the airport \$7.00 per vehicle each time the vehicle is used on the airport for the purpose of loading or unloading passengers</u>
<u>Terminal road parking permit</u>	<u>\$10.00 per use for an airport leaseholder \$20.00 per use for a non-airport leaseholder</u>
Vehicle Parking Fees	
For restricted parking areas <u>located</u> within the <u>airport</u> boundaries and <u>designated</u> by airport management for <u>restricted parking</u> :	
Ground Daily commercial ground transportation use permit parking	<u>\$5.00 \$10.00 per vehicle, per day, or any portion of any a 24-hour period for an airport leaseholder</u> <u>\$15.00 per vehicle, per day, or any portion of a 24-hour period for a non-airport leaseholder</u> <u>\$50.00 per vehicle, per month, in designated areas</u>
Rental car parking	<u>Auto storage, in a designated area, as established by use permit terms</u>
Overnight parking, commercial vehicles in excess of designated number as specified by license agreement or use permit, and private vehicles	<u>\$5.00 per vehicle, per 24-hour period; or</u> <u>\$50.00 per vehicle, per month, in designated area</u>
<u>Monthly commercial ground transportation use permit parking</u>	<u>\$100.00 per vehicle, per month, for an airport leaseholder \$150.00 per vehicle, per month, for a non-airport leaseholder</u>
<u>Overnight parking, commercial vehicles in excess of designated number as specified by license agreement as defined in R17-2-101, or use permit, and private vehicles</u>	<u>\$10.00 per vehicle, per 24-hour period \$100.00 per vehicle, per month, in designated area</u>
<u>Rental car parking</u>	<u>Auto storage, in a designated area, as established by use permit terms</u>
Terminal Retail Sales of Goods or Services	
Fees shall be <u>are</u> a percentage of gross receipts, as defined in <u>under</u> A.R.S. § 42-5001, of all retail sales after federal, state, and local taxes, except as negotiated in each use permit. Use permits shall be based upon <u>on</u> highest and best bids but shall <u>that are in the best interest of the airport and shall</u> contain provisions for not less than the percentage in this schedule:	
Air tours <u>tour flights</u> originating at the airport <u>regardless of where the tour was sold</u>	7% <u>1.5%</u>
Food and beverage	15%
Rental of personal property, including but not limited to car rentals	15%
Retail sales of merchandise	15%
Personal services businesses, including but not limited to shoe shine, beauty and barber shops and others	As negotiated
Other	As negotiated
<u>Vendor fuel sales</u>	<u>5%</u>

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Other	As negotiated
Use of Other Facilities Outside the Terminal	
Use of other facilities outside the terminal	As negotiated
Security Fees	
<u>For airport employees, airport tenant employees, and airport users for badges and to meet security requirements of the FAA and TSA</u>	
<u>Security badge</u>	<u>\$25.00 per year</u>
<u>Replacement security badge</u>	<u>\$50.00 for first lost security badge occurrence</u> <u>\$100.00 for second lost security badge occurrence</u> <u>\$150.00 for third lost security badge occurrence</u>
<u>Unreturned security badge</u>	<u>\$200.00 for failure to return security badge at termination of employment (charged to airport tenant)</u>
<u>Electronic access security badge</u>	<u>\$30.00 per year for a badge providing access to the airfield and other secured areas</u>
<u>Replacement electronic access security badge</u>	<u>\$60.00 for first lost electronic access security badge occurrence</u> <u>\$120.00 for second lost electronic access security badge occurrence</u> <u>\$180.00 for third lost electronic access security badge occurrence</u>
<u>Unreturned electronic access security badge</u>	<u>\$250.00 for failure to return electronic access security badge at termination of employment (charged to airport tenant)</u>
<u>Security screening</u>	<u>\$150.00 per flight for use of airport security screening facilities</u>
<u>Security violation charge</u>	<u>\$100.00 per violation of airport, FAA, or TSA security regulations</u> <u>\$250.00 for each additional violation in a 30-day period</u>
Commercial Use Ramp Fees	
<u>Exclusion. This fee does not apply to any commercial service aircraft that provides air tours departing from and returning to the airport or to air tour flights that bring commercial service aircraft to the airport for this purpose.</u>	
<u>Terminal ramp area</u>	<u>\$15.00 per hour for any commercial service aircraft that does not qualify for the exclusion to a maximum of \$60.00 per use</u>
<u>Non-terminal ramp area</u>	<u>\$10.00 per hour for any commercial service aircraft that does not qualify for the exclusion to a maximum of \$40.00 per use</u>
Water Usage Fees	
<u>Water usage</u>	<u>Water usage fees consist of the total direct cost of water paid by the Department for Airport usage, including all fees and taxes, the actual cost per gallon of all expenses for water testing, repair and maintenance to the water delivery system for the Airport, and an administrative fee of 5%</u>

R17-2-206. Airport Impoundment Procedures; Notice of Impound

This Section applies to all persons or entities using the airport and its facilities:

1. Airport management may remove and impound any aircraft or other vehicle found on state property ~~where~~ if an owner has:
 - a. Parked the aircraft or vehicle in an area designated and posted as a restricted area;
 - b. Parked the aircraft or vehicle in violation of ~~these rules~~ this Article;
 - c. Abandoned the aircraft or vehicle on airport property for more than 14 days without prior notification and permission of airport management;
 - d. Failed to pay parking fees for 15 days after the date a parking statement is attached to the aircraft or vehicle, indicating that a parking fee is due; or
 - e. Parked the aircraft or vehicle in a manner or location that constitutes a hazard or impediment to the general public or to the movement and operation of aircraft or emergency equipment.
2. Notice of Impound.
 - a. An authorized agent of the ~~airport~~ airport's management, at the time of removal for impound, shall post a Notice

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- of Impound as near to the location from which the aircraft or vehicle was removed as is practical, and a copy of the notice shall be mailed to the address listed on the:
- i. Aircraft or vehicle;
 - ii. Vehicle registration in the aircraft or vehicle; or
 - iii. Airport records.
- b. ~~Airport management, within a period of 10 business days from the date of impoundment, shall twice publish the Notice of Impound in a daily newspaper with a general circulation in Coconino County, if no address is known. If no address is available under subsection (2)(a), airport management, within a period of 10 business days from the date of impoundment, shall twice publish the Notice of Impound in a daily newspaper with a general circulation in Coconino County.~~ The notice shall describe the:
- i. Aircraft or vehicle;
 - ii. Parking violation that necessitated the impoundment;
 - iii. Location to which the aircraft or vehicle was impounded;
 - iv. Name and address of the person to contact regarding the impoundment; and
 - v. Owner's right to file a request for a hearing under subsection (5).
3. Airport management shall ensure that:
- a. A vehicle is removed by a tow ~~company licensed by~~ truck registered with the Department of Public Safety; and
 - b. An aircraft is removed by a fixed base operator ~~licensed by the ADOT Aeronautics Division that has complied with R17-2-203.~~
4. Costs to owner. The owner of an aircraft or vehicle is responsible for all costs involved in the removal, impoundment, and storage of the aircraft or vehicle, plus any costs incurred by publication of the Notice of Impound.
5. Hearing requests. Any person subject to a decision made ~~within the Aeronautics Division~~ by airport management under this Chapter may request a hearing ~~before~~ with the Director. The person shall submit a written request for the hearing to the Department not more than 30 days after the action ~~of the Aeronautics Division~~ taken by airport management. The hearing shall be held in accordance with A.R.S. Title 41, Chapter 6, Article 6.