

February 6, 2006

BY ELECTRONIC MAIL

The Honorable Marion Clifton Blakey  
Administrator, Federal Aviation Administration  
U.S. Department of Transportation  
400 Seventh Street, SW  
Washington, DC 20590  
Electronic Address: <http://www.dms.dot.gov> (RIN 2120-AI17; Docket No. [FAA-2003-17005](#))

**Re: Comments on FAA's Proposed Rule on Washington, DC Metropolitan Area Special Flight Rules Area**

Dear Administrator Blakey:

The U.S. Small Business Administration's (SBA) Office of Advocacy (Advocacy) is pleased to submit the following comments on the Federal Aviation Administration's (FAA) *Proposed Washington, DC Metropolitan Area Special Flight Rules Area Rule*.<sup>1</sup> The proposed rule would essentially codify current flight restrictions for certain aircraft operating in the Washington, DC Metropolitan Area that were adopted in the wake of the terrorist attacks of September 11, 2001.<sup>2</sup> The proposed rule would create a special flight rules area (SFRA) around Washington, DC and impose flight operation requirements on aircraft operations within that area.<sup>3</sup> These provisions would generally require aircraft operators to: 1) file and activate a flight plan before entering (or re-entering) the restricted area; 2) maintain radio communication with air traffic control; and 3) obtain and display a discrete transponder code while operating within the area.<sup>4</sup> The FAA has concluded that while these restrictions are likely to cause considerable burdens to both air traffic control and the aviation industry within the affected area, they are needed for security reasons.<sup>5</sup>

**Office of Advocacy**

Advocacy was established pursuant to Pub. L. 94-305 to represent the views of small entities before Federal agencies and Congress. Advocacy is an independent office within SBA, so the views expressed by Advocacy do not necessarily reflect the views of the

<sup>1</sup> 70 Fed. Reg. 45250 (August 4, 2005).

<sup>2</sup> Id.

<sup>3</sup> Corresponding procedures addressing airport security requirements within the flight restricted zone area were adopted by the Transportation Security Administration by Interim Final Rule on February 10, 2005 (See, 70 Fed. Reg. 7150).

<sup>4</sup> 70 Fed. Reg. 45260.

<sup>5</sup> 70 Fed. Reg. 45255.

SBA or the Administration. The Regulatory Flexibility Act (RFA),<sup>6</sup> as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA),<sup>7</sup> gives small entities a voice in the rulemaking process. For all rules that are expected to have a significant economic impact on a substantial number of small entities, FAA is required by the RFA to assess the impact of the proposed rule on small business and to consider less burdensome alternatives. Moreover, on August 13, 2002, President Bush signed Executive Order 13272,<sup>8</sup> which requires Federal agencies to notify Advocacy of any proposed rules that are expected to have a significant economic impact on a substantial number of small entities and to give every appropriate consideration to any comments on a proposed or final rule submitted by Advocacy. Further, the agency must include, in any explanation or discussion accompanying publication in the *Federal Register* of a final rule, the agency's response to any written comments submitted by Advocacy on the proposed rule.

## **Background**

FAA's proposed rule would create a special flight rules area (SFRA) around Washington, DC and impose flight operation requirements on aircraft operations within that area. The FAA held two public hearings on the proposed rule in January 2006, and received considerable input from small business and general aviation groups concerning the impact of the proposed rule on the aviation industry within the affected area. In addition, several of these groups attended Advocacy's regularly scheduled aviation safety roundtable in January 2006 and expressed serious concerns about the impact of the proposed rule on small aviation businesses operating within the area.

FAA has prepared a Draft Regulatory Evaluation and Initial Regulatory Flexibility Determination<sup>9</sup> for the proposed rule, and included the Regulatory Flexibility Determination in its notice of proposed rulemaking.<sup>10</sup> FAA concludes that the proposed rule may have a significant impact on a substantial number of small entities.<sup>11</sup> Further, FAA declares that data limitations have restricted its economic analysis and has requested additional data on the impact of the proposed rule on the aviation operations in the affected area.<sup>12</sup> Advocacy commends FAA for its existing analysis and for its acknowledgement that data limitations hampered its analysis. Advocacy is hopeful that the additional cost and impact data FAA receives through its public hearings and this comment process will allow it to consider other alternatives that might meet its regulatory objectives in a less burdensome manner. Accordingly, Advocacy is pleased to offer the following comments on FAA's Regulatory Flexibility Determination.

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<sup>6</sup> 5 U.S.C. § 601 et seq.

<sup>7</sup> Pub. L. 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C. § 601 et seq.).

<sup>8</sup> Executive Order 13272, Proper Consideration of Small Entities in Agency Rulemaking (67 Fed. Reg. 53461) (August 16, 2002).

<sup>9</sup> *Draft Regulatory Evaluation and Initial Regulatory Flexibility Determination, Trade Impact Assessment, and Unfunded Mandates Determination*, Office of Aviation Policy and Plans Operations, Regulatory Analysis Branch, APO-310, June 2005.

<sup>10</sup> 70 Fed. Reg. 45257.

<sup>11</sup> 70 Fed. Reg. 45255.

<sup>12</sup> 70 Fed. Reg. 45257.

## **FAA's Regulatory Flexibility Analysis Should Include Additional Small Entities**

FAA's Regulatory Flexibility Determination only encompasses Airport Operations and Terminal Services (NAICS 488119) and details the cost impacts for two airports in the affected area.<sup>13</sup> However, FAA states that there are approximately 150 airports within the SFRA and that the rule will impact every general aviation pilot operating within the area.<sup>14</sup> Accordingly, the Regulatory Flexibility Determination appears to significantly understate the cost and impact of the proposed rule on small business. Advocacy recognizes that FAA's analysis was hampered by a lack of cost and impact data for the other airports as well as the general aviation businesses operating out of them (e.g., aerial survey firms, flight schools, air charter operations, air tour operators, air taxis, crop dusters, and others).<sup>15</sup> Advocacy understands that more data is needed to fully comprehend the number and nature of these businesses, and hopes that once FAA receives more data on these businesses it will publish additional alternatives for public comment.

## **FAA Should Consider Additional Alternatives**

FAA has considered four alternatives in the Regulatory Flexibility Determination,<sup>16</sup> and selected the second option: codify the existing flight restrictions over Washington, DC.<sup>17</sup> However, Advocacy is hopeful that through its public hearings and this comment process, FAA is able to develop other alternatives that might meet its regulatory objectives in a less burdensome manner. During Advocacy's recent roundtable, several small business aviation groups suggested various alternatives that may merit FAA's consideration. These included reduced regulatory requirements for lighter and slower airplanes (since they theoretically provide fewer security concerns), the establishment of designated flight corridors (or hallways) where less burdensome procedures would apply (as long as the operator remained in these corridors), and a series of airspace rings (or zones) (e.g., 7 miles, 30 miles, etc.) where increasingly rigorous security procedures would apply as one gets closer to the capital. Advocacy notes that all of the attendees at the Roundtable favored a system where emergency procedures to tighten security (or close the airspace entirely) could be rapidly imposed by executive action in the event of a security threat. Advocacy hopes that FAA will be able to develop additional alternatives and publish them for public comment on an expedited basis before finalizing the rule.

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<sup>13</sup> 70 Fed. Reg. 45258 (These airports include two of the so-called Maryland-3 airports, Washington Executive/Hyde Field Airport and Potomac Airfield. With respect to these airports, FAA concludes that "the rule would impact the viability of these affected airports.")

<sup>14</sup> 70 Fed. Reg. 45257.

<sup>15</sup> These firms would be directly subject to the regulation. In addition, there are other commercial tenants at these airports (e.g., repair stations, avionics shops, fueling stations, retail shops, restaurants, etc.) that could also be forced to close as a result of this rule.

<sup>16</sup> 70 Fed. Reg. 45259 (The four regulatory alternatives include: 1) rescind current flight restrictions immediately; 2) codify existing flight restrictions; 3) close all airports within the proposed DC SFRA; and, 4) retain the flight restricted zone and eliminate the air defense identification zone.)

<sup>17</sup> Id.

Advocacy has no expertise to assess the security implications of these alternatives and fully defers to the judgment of FAA and others to assess threat risks and the benefits that will accrue from FAA's final rule. Advocacy is hopeful that FAA will use data it obtains through this rulemaking process to consider additional alternatives that will better minimize the impact on small business while maximizing security benefits.

### **Conclusion**

Advocacy appreciates the opportunity to comment on FAA's *Proposed Washington, DC Metropolitan Area Special Flight Rules Area Rule* and recommends that FAA consider additional alternatives based on data it receives during this comment process. Advocacy suggests that FAA publish new alternatives, complete with small business impact data, for public comment on an expedited basis. Advocacy would welcome the opportunity to work with FAA as the agency proceeds to a final rule.

Please feel free to contact me or Bruce Lundegren at (202) 205-6144 (or [bruce.lundegren@sba.gov](mailto:bruce.lundegren@sba.gov)) if you have any questions or require additional information.

Sincerely,

//signed//

Thomas M. Sullivan  
Chief Counsel for Advocacy

//signed//

Bruce E. Lundegren  
Assistant Chief Counsel for Advocacy

cc: Donald R. Arbuckle  
Acting Administrator, Office of Information and Regulatory Affairs  
Office of Management and Budget