

June 28, 2005

BY ELECTRONIC MAIL

Ms. 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> (Docket No. [FAA-2005-20245](#))

**Re: Comments on FAA's Proposed Revisions to Cockpit Voice Recorder and Digital Flight Recorder Regulations**

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 *Revisions to Cockpit Voice Recorder and Digital Flight Recorder Regulations*.<sup>1</sup> The proposed rule would require, among other things, retrofits and new equipment for aircraft with 10 or more seats, including: (1) increased recording time for cockpit voice recorders (CVRs) to two hours; (2) CVRs that retain information in accordance with technical standard TSO-123a; (3) a 10-minute independent backup power source for CVRs; (4) installation of CVRs and digital flight data recorders (DFDRs) so they receive their power from the bus that provides the maximum reliability for operation; (5) installation of the CVR and DFDR in separate containers; (6) increased data recording rates for DFDRs to 12 Mz; and (7) onboard recording of data-link communications (if they are installed).<sup>2</sup>

FAA's proposed revisions to its CVR/DFDR rules are based on recommendations by the National Transportation Safety Board (NTSB) and are intended to improve the amount and quality of information needed to speed aircraft accident investigations. FAA states that several accident investigations have been slowed by a lack of data, and that the proposed changes "may" help improve future accident investigations, generate new safety rules, and improve aircraft safety.<sup>3</sup> FAA has indicated that its proposed rule is expected to have "a significant economic impact on a substantial number of small entities" (e.g., small airlines) and has prepared an Initial Regulatory Flexibility Analysis

<sup>1</sup> 70 Fed. Reg. 9752 (February 28, 2005).

<sup>2</sup> Id. at 9755-9758.

<sup>3</sup> Id. at 9763.

(IRFA)<sup>4</sup> for the proposed rule in accordance with the Regulatory Flexibility Act (RFA).<sup>5</sup> Advocacy has reviewed FAA's regulatory analysis and IRFA and is pleased to offer the following comments on how FAA might improve its analysis before proceeding with this proposed rule. Advocacy's comments focus primarily on how FAA might better differentiate between large, scheduled airlines and other, small business segments of the aviation industry.

### **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 SBA or the Administration. The RFA, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA),<sup>6</sup> gives small entities a voice in the rulemaking process. For all rules which will 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>7</sup> which requires Federal agencies to give every appropriate consideration to any comments on a proposed or final rule submitted by Advocacy. 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.

### **FAA's Economic Analysis Appears to Miss Many Small Businesses**

FAA's proposed rule would apply to all aircraft with 10 or more seats. However, FAA's economic analysis appears to focus mostly on large, scheduled airlines (i.e., Part 121 carriers) while omitting other segments of the aviation industry, such as Part 91 and Part 135 operators (e.g., on-demand air charters, fractional aircraft programs, and scheduled, regional carriers). Since many of these companies are small businesses, Advocacy recommends that FAA revise its analysis to fully include them. Advocacy is concerned that FAA, using the data currently relied upon, cannot accurately count the number of Part 91 or Part 135 operators that would be affected by the proposed rule.

Given that many Part 91 and Part 135 certificate holders are small businesses, a full industry profile is essential to determining compliance costs for small businesses and developing feasible alternatives. As such, Advocacy recommends that FAA revise its analysis to include information such as: the number and type of aircraft operated by Part 91 and Part 135 operators; how many of these small carriers will be impacted by the proposed rule; what types of CVR/DFDR equipment these operators currently use; whether these operators will be able to obtain manufacturer upgrades of their current

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<sup>4</sup> Id., at 9764.

<sup>5</sup> 5 U.S.C. § 601 et seq.

<sup>6</sup> Pub. L. 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C. § 601 et seq.).

<sup>7</sup> 67 Fed. Reg. 53461 (August 16, 2002).

equipment (or have to purchase new equipment); and whether there will be a sufficient number of qualified aviation engineers to complete the proposed upgrades.

### **Small Regional Carriers May Be Unduly Burdened**

FAA's proposed rule would apply to small, regional carriers as well as large, scheduled airlines. However, these small businesses may be less able to absorb added regulatory costs than large airlines. Advocacy recommends that FAA carefully assess the impact of its proposed rule on small businesses and consider less burdensome alternatives. For example, FAA might consider whether a two-hour CVR recording is necessary for regional carriers since nearly all regional flights are less than one hour in duration. Since FAA's stated purpose in proposing this rule is to "speed aircraft accident investigations," a shorter recording period for smaller carriers (e.g., less than 60 seats) might be a feasible alternative. Similarly, since all of the accident investigations cited as justification for the proposed rule involved large, scheduled airlines, FAA might assess whether there have been similar accident investigations involving small, regional carriers that necessitate imposing additional regulations. If not, it may be feasible to eliminate the 10-minute independent power source requirements for small operators.

While Advocacy is mindful of FAA's desired "policy" of "one level of safety" for the entire aviation industry, this "policy" must be reconciled with FAA's statutory obligations (under the RFA) to consider the impact of the proposed rule on small business and develop less burdensome alternatives.

### **Retrofit Cost Projection May Be Understated**

While the large, scheduled airline industry has a high rate of standardization of aircraft models, smaller carriers (such as Part 91 and Part 135 operators) have tremendous variability in their fleets. This means that large, scheduled carriers will likely achieve economies of scale on equipment upgrades that will be unavailable to small carriers. Advocacy recommends that FAA consider these differences in its economic analysis. For example, while FAA estimates that costs for retrofitting CVRs are approximately \$20,000 per aircraft, industry representatives have indicated that the actual costs for small carriers may be closer to \$70,000.<sup>8</sup> This is attributable to the fact that small carriers cannot purchase equipment in volume and that FAA's cost estimates envision installations with a high level of fleet uniformity. Further, small carriers may be unable to purchase upgrades for their older equipment or hire qualified aviation engineers to install them (since these engineers may be fully employed upgrading the large carrier fleets). FAA might also consider whether some small carriers will be forced to ground their planes while waiting for retrofits to be completed. Since such "down time" periods could represent large potential costs for small operators, Advocacy recommends that FAA consider this possibility in its analysis.

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<sup>8</sup> Letter from National Air Transportation Association to FAA, dated May 9, 2005, page 3 (included in the docket).

Advocacy also recommends that FAA's economic analysis consider that small businesses that are required to make retrofits will incur far greater costs than large airlines because they must amortize the costs of the upgrades over a significantly smaller seat revenue base. Further, requiring retrofits of older aircraft may mean that costs cannot be fully recouped during their useful life. Finally, since there are many more aircraft models being flown by small, regional and commuter carriers and the fleet sizes are smaller, they will incur significantly higher certification and other upfront costs.

### **Small Business Size Standard**

FAA's economic analysis defines small businesses as "airlines operating 20 or fewer airplanes." However, the published SBA size standard for scheduled passenger and nonscheduled charter airlines is 1,500 employees.<sup>9</sup> FAA is required by the RFA to use the small business size standard promulgated by SBA,<sup>10</sup> unless it develops an alternate size standard in consultation with Advocacy.<sup>11</sup> Advocacy would be happy to work with FAA to consider the appropriate small business size standard for this proposed regulation. Otherwise, Advocacy recommends that FAA revise the IRFA using the published SBA size standard and publish it for additional public comment before proceeding with this rule.

### **Alternatives Considered**

FAA has considered three alternatives, each of which is a minor variation of the basic NTSB recommendations. However, in order to fully explore less burdensome alternatives for small businesses, Advocacy recommends that FAA explore other options, such as a "no new regulation" option, small carrier exemptions, older aircraft exemptions, and delayed compliance dates for small business. Also, Advocacy notes that in the "Description of Alternatives" section of the IRFA (Section IX.B.1.11), FAA states that it considered "accelerating" the compliance date for small businesses. However, since this option would actually increase the burden on small businesses, it should not be considered as an alternative under the RFA.

Since the stated goal of FAA's proposal is to "speed aircraft accident investigations," FAA might consider whether the proposed regulation is necessary for small carriers. For example, if aircraft accident investigations involving small, regional carriers have not been hindered in a similar fashion as those involving large, scheduled carriers, FAA might consider exempting small operators from the proposed regulation altogether. Similarly, if FAA determines that the parts or labor shortages could disproportionately impact small businesses, FAA might consider extending the compliance dates for small

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<sup>9</sup> See, 13 C.F.R. § 121.201

<sup>10</sup> 5 U.S.C. § 601(3)

<sup>11</sup> The issue of proper size standards has been discussed between Advocacy and FAA before. As a result of these discussions, a Letter of Agreement was signed between Advocacy and FAA in 1997. This letter states that FAA will "consult with the Administrator of SBA for size standards, and to consult with the Chief Counsel for Advocacy concerning size determinations for RFA analyses—both of which are currently required by law."

operators or exempting certain types of aircraft. Finally, since FAA substantially strengthened its CVR/DFDR rules in 1997, Advocacy recommends that the agency carefully assess the impact of the 1997 revisions on small business before extending these rules further.

### **Conclusion**

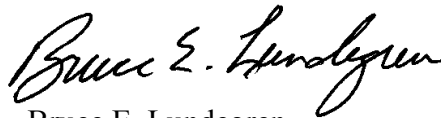
Advocacy appreciates the opportunity to comment FAA's proposed *Revisions to Cockpit Voice Recorder and Digital Flight Recorder Regulations*. After reviewing FAA's economic analysis and IRFA, Advocacy recommends that FAA revise and republish the IRFA for additional public comment before proceeding with this rule. Advocacy would welcome the opportunity to work with FAA in any way we can to help improve its analysis.

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

Sincerely,



Thomas M. Sullivan  
Chief Counsel for Advocacy



Bruce E. Lundegren  
Assistant Chief Counsel for Advocacy

cc: The Honorable John Graham  
Administrator, Office of Information and Regulatory Affairs  
Office of Management and Budget