

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 93**

[Docket No. FAA-2003-17005; Notice No. 05-07]

RIN 2120-A117

**Washington, DC Metropolitan Area  
Special Flight Rules Area**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to codify current flight restrictions for certain aircraft operations in the Washington, DC Metropolitan Area. This action is necessary because of the ongoing threat of terrorist attacks. The FAA intends by this action to help the Department of Homeland Security and the Department of Defense protect national assets in the National Capital region.

**DATES:** Send your comments on or before November 2, 2005.

**ADDRESSES:** You may send comments that do not include national security or sensitive security information identified by Docket Number FAA-2003-17005 using any of the following methods:

- **DOT Docket Web Site:** Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- **Government-wide Rulemaking Web Site:** Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- **Mail:** Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-001.

- **Fax:** 1-202-493-2251.

- **Hand Delivery:** Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For more information on the rulemaking process or instructions on submitting comments that include national security or sensitive security information, see the **SUPPLEMENTARY INFORMATION** section of this document.

**Privacy:** Subject to review for national security or sensitive security information, we will post all comments we receive, without change, to <http://dms.dot.gov>, including any personal information you provide. For more information, see the Privacy Act discussion in the **SUPPLEMENTARY INFORMATION** section of this document.

**Docket:** To read background documents or comments received, go to <http://dms.dot.gov> at any time or to Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:**

Ellen Crum, Airspace and Rules, Office of System Operations and Safety, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8783.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. (See also "Sensitive Security Information" below.) We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, subject to review for national security or sensitive security information as indicated above, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the Web address in the **ADDRESSES** section.

**Privacy Act:** Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78) or you may visit <http://dms.dot.gov>.

Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We

may change this proposal in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

**Sensitive Security Information**

Do not file in the docket information that you consider to be sensitive security information. Send or deliver this information (identified as docket number FAA-2003-17005) directly to Edith V. Parish, Acting Manager, Airspace and Rules, Office of System Operations and Safety, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-8783. You must mark information that you consider security-sensitive.

Under 14 CFR 11.35 (a), we will review comments as we receive them, before they are placed in the docket. If a comment contains sensitive security information, we remove it before placing the comment in the general docket.

**Availability of This Action**

You can get an electronic copy using the Internet by:

- (1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (<http://dms.dot.gov/search>);

- (2) Visiting the FAA's Web page at <http://www.faa.gov>; or

- (3) Accessing the Government Printing Office's Web page at <http://www.gpoaccess.gov/fr/index/html>.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-9680. Be sure to identify the docket number, notice number, or amendment number of this rulemaking.

**Statutory Authority**

The FAA Administrator has broad authority to regulate the safe and efficient use of the navigable airspace (49 U.S.C. 40103). The Administrator is also authorized to issue air traffic rules and regulations to govern the flight of aircraft, the navigation, protection, and identification of aircraft for the protection of persons and property on the ground, and for the efficient use of the navigable airspace. Additionally, pursuant to 49 U.S.C. 40103(b)(3) the Administrator has the authority, in consultation with the Secretary of

Defense, to “establish security provisions that will encourage and allow maximum use of the navigable airspace by civil aircraft consistent with national security.” Such provisions may include establishing airspace areas the Administrator decides are necessary in the interest of national defense; and by regulation or order, restricting or prohibiting flight of civil aircraft that the Administrator cannot identify, locate and control with available facilities in those areas. See 49 U.S.C. 40103(b). The Administrator also has broad statutory authority to issue regulations to promote safe flight of civil aircraft in air commerce, when the Administrator finds that such regulations are necessary for safety in air commerce and national security. See 49 U.S.C. 44701(a)(5). The FAA must consider, as a matter of policy, maintaining and enhancing safety and security in air commerce as its highest priorities (49 U.S.C. 40101(d)).

#### Background

After the September 11, 2001 terrorist attacks, which resulted in the loss of human life at the World Trade Center, the Pentagon, and in southwestern Pennsylvania, the FAA immediately curtailed all aircraft operations within the National Airspace System (NAS), except certain military, law enforcement, and emergency related aircraft operations.

On September 13, 2001, the FAA took action to allow additional aircraft operations in some areas of the NAS. However, the FAA maintained flight restrictions over certain cities and sensitive sites. Even after specific temporary flight restrictions over a particular city or site were rescinded, some flight restrictions were occasionally reinstated in response to specific and general intelligence information regarding terrorist threats. Most of these flight restrictions were issued pursuant to the Code of Federal Regulations in 14 CFR 91.139, Emergency Air Traffic Rules; 14 CFR 91.137, Temporary Flight Restrictions in the Vicinity of Disaster/Hazard Areas; or 14 CFR part 99, Security Control of Air Traffic. These flight restrictions were issued via the U.S. Notice to Airmen (NOTAM) System.

While many aspects of the initial flight restrictions were cancelled, in the Washington, DC Metropolitan Area the FAA continued to impose several temporary flight restrictions at the request of the Departments of Homeland Security (DHS) and Defense (DoD) to assist them in their newly assigned counter-terrorism mission.

On February 19, 2002, the FAA issued Special Federal Aviation Regulation (SFAR) No. 94, Enhanced Security Procedures for Operations at Certain Airports in the Washington, DC Metropolitan Area Special Flight Rules Area (67 FR 7538; Feb. 19, 2002). SFAR 94, which expired on February 13, 2005, required any person operating an aircraft to or from College Park Airport, Potomac Airfield, or Washington Executive/Hyde Field to conduct those operations in accordance with security procedures approved by the Administrator. The SFAR was a general operating rule containing both flight communication requirements and airport security requirements. It applied to any person operating an aircraft to or from one of the specified airports and affected all aircraft operations at these airports, including those conducted under 14 CFR part 91, those for which an air carrier or an operating certificate may be issued under 14 CFR part 119 (for operations conducted under 14 CFR part 121 or 135), and those which may be conducted under part 125, 129, 133, or 137.

Procedures addressing airport security previously contained in SFAR 94 are now included in a regulation promulgated on February 10, 2005 by the Transportation Security Administration (TSA), which is now responsible for airport security procedures (70 FR 7150; Feb. 10, 2005). The flight communication requirements are included in this NPRM. They include flight plan filing, two-way radio communication, and transponder requirements.

#### Request To Permanently Codify Temporary Flight Restrictions Over the Washington, DC, Metropolitan Area

Because of its status as home to all three branches of the Federal government, as well as numerous Federal buildings, foreign embassies, multi-national institutions, and national monuments, the Washington, DC Metropolitan Area continues to be an obvious high value target for terrorists.

Despite recent successes in the war on terrorism, the DHS believes that the threat of extremists launching an attack using aircraft remains high. Although there is no information suggesting an imminent plan by terrorists to use airplanes to attack targets in the Washington, DC Metropolitan Area, the success of the September 11, 2001 attack on the Pentagon and reports demonstrating terrorist groups' enduring interest in aviation-related attacks indicate the need for continued vigilance in aviation security.

For example, the April 2003 arrest of Waleed bin Attash and the subsequent discovery of a plot to crash an explosive-laden small aircraft into the U.S. Consulate in Karachi, Pakistan illustrates terrorist groups' continued interest in using aircraft to attack U.S. interests. Other information—such as documents found in Zacarias Moussaoui's possession, which outlined crop duster operations—suggests that terrorist groups may have been considering other domestic aviation attack plans in addition to the September 11, 2001 attacks. As of mid-June 2003, Islamic extremists may have been planning suicide hijackings against government, military, and/or economic targets along the east coast of the United States.

In addition, press reports on the debriefings of detained terrorist leader Khalid Shaykh Muhammad not only hint at the complexity of planning involved in the September 11, 2001 attacks, but also suggest the group was likely planning follow-on operations inside the United States, possibly including inside the Washington, DC Metropolitan Area.

While the DHS has no specific information that terrorist groups are currently planning to use general aviation (GA) aircraft to perpetrate attacks against the U.S., it remains concerned that (in light of completed and ongoing security enhancements for commercial aircraft and airports) terrorists may turn to GA as an alternative method for conducting operations.

The DHS believes that Al-Qa'ida is the group most likely to use GA to attack targets in the U.S. Several of its operatives—including some of the September 11 hijackers—have trained on small aircraft. Indeed, according to the testimony before Congress of the then-Director of Central Intelligence, George Tenet, September 11 mastermind Khalid Shaykh Muhammad originally proposed using multiple small aircraft packed with explosives to conduct the attacks. Usama Bin Laden reportedly suggested the use of larger aircraft instead. Even earlier, Muhammad and Ramzi Yousef—both involved in the 1995 Manila Air plot—considered the notion of crashing an airplane into CIA Headquarters.

- Based on this and other information, the DHS believes that GA aircraft may be vulnerable to targeting by terrorists for misuse.

In February 2003, FAA, in consultation with DHS and other Federal agencies, implemented a system of airspace control measures to protect against a potential threat to the

Washington, DC Metropolitan Area. The dimensions of this protected airspace were determined after considering such factors as the speed of likely suspect aircraft, minimum launch time and the speed of intercept aircraft. After extensive coordination among Federal agencies, two airspace areas were implemented. The outer area, which closely mimics the current Washington Tri-area Class B airspace, is called an Air Defense Identification Zone (ADIZ) and requires identification of all flight operations within the airspace in order to ensure the security of protected ground assets. The inner area, called a Flight Restricted Zone (FRZ), is approximately a 15 NM radius around the Washington VHF omni-directional range/distance measuring equipment (DCA VOR/DME) where more stringent access procedures are applied. Most kinds of flight operations are prohibited in this area, and under this proposal such operations would continue to be prohibited in this area. Part 121 operations are presently permitted in this airspace and, under this proposal, would continue to be permitted in the FRZ airspace. DoD, law enforcement and aeromedical flights are permitted in this airspace and would continue to be permitted in this airspace as long as the flight crew remains in contact with air traffic control (ATC) and operates the aircraft transponder on an air traffic control-assigned beacon code. If adopted, the airspace presently known as the DC "ADIZ" would be redesignated as the Washington, DC Metropolitan Area Special Flight Rules Area (DC SFRA). The DC SFRA would encompass the same airspace as the ADIZ and include the area known as the FRZ.

This airspace structure and associated procedures associated with the ADIZ and FRZ have been in place for about 2 years. The agencies responsible for intercepting intruders within the Washington, DC Metropolitan Area (the DoD and agencies of the DHS) believe that the existing airspace dimensions and procedures are the minimum acceptable to successfully accomplish their missions and should be retained on a permanent basis.

This airspace structure is also an essential component of the DoD and DHS air security plan. The DoD and DHS believe that by establishing a National Defense airspace area over the Washington, DC Metropolitan Area, they would have sufficient time to successfully conduct countermeasures to ensure the safety of protectees in the event that a potentially hostile aircraft enters the airspace area.

It is with this in mind that the Departments of Defense and Homeland Security requested that the FAA Administrator take action to codify permanently current aviation flight restrictions over the Washington, DC Metropolitan Area to support their continuing mission to protect national assets in the National Capital Region.

#### **General Discussion of the Proposal**

After the events of September 11, 2001, Congress and the President tasked government agencies to increase the protection of the United States and its interests. Congress established the TSA and tasked it with protecting the security of our nation's transportation infrastructure. Additionally, Congress established the Department of Homeland Security, in order to centralize the administration of the country's security efforts.

For the past two years, the FAA has been working closely with the DoD and DHS to draft security contingency plans to protect the American public, national assets, and operations in the National Airspace System. Some of the measures taken by the FAA include additional cockpit security for certain air carrier aircraft and temporary flight restrictions over special events (often at stadiums) that attract large numbers of people and may be seen as potential targets by terrorists.

Since the seat of our nation's government is in Washington, DC, flight restrictions were established immediately after September 11, 2001, and most remain in place. Establishing specific airspace for security reasons in the Washington, DC area is not a new practice. In 1938, by Executive Order 7910, the President reserved and set apart airspace for national defense, the public safety and other governmental purposes. Those airspace reservations were subsequently codified in 14 CFR part 73 as "prohibited areas." Over the years, the size and dimensions of one of these areas, Prohibited Area 56 (P-56), which is the airspace over and near the White House, has changed in response to world events. In accordance with 14 CFR 73.83, no person may operate an aircraft within a prohibited area unless authorization has been granted by the using agency. The action proposed in this notice does not modify P-56.

The FAA is aware that the flight restrictions imposed over the Washington DC Metropolitan Area have impacted, and will continue to impact some pilots in the area. However, government security officials believe that the proposed DC SFRA would enhance and strengthen the ability of DoD and DHS to protect the President,

Cabinet members, the Congress and other assets in the capital region.

According to the Federal Bureau of Investigation (FBI), the threat of extremists launching an attack using aircraft still exists. Numerous reports continue to be received that demonstrate Al-Qa'ida's enduring interest in aviation-related attacks. Thus, there is a continued need for aviation security vigilance. Intelligence reports indicate that terrorists continue to be interested in using general aviation aircraft as part of another attack on the U.S. or facilitation of activities since general aviation aircraft are readily available and relatively inexpensive. Also, though security measures at general aviation airports have improved, they are less stringent than those in place at many commercial airports. Overall and even though general aviation aircraft are generally smaller than those used in the 9/11 attack, the destructive potential of a small aircraft loaded with explosives may be significant. It should be noted that almost 70% of U.S. general aviation is comprised of aircraft that are relatively small. Aircraft in this segment of the industry range from homebuilt craft to large airliners. In addition, there are thousands of general aviation airports in the United States with varying degrees of security procedures implemented.

We believe that as part of ensuring the security of the people, property and institutions in the Nation's capital, and surrounding area, it is essential to know the intended route of flight of the aircraft, to have the aircraft squawk a discrete transponder code, and to have automatic altitude reporting equipment on board the aircraft that transmits to ATC. Government officials believe that some types of aircraft operations (*i.e.*, those conducted under parts 91, 101, 103, 105, 125, 133, 135 and 137) should continue to be prohibited within 15 miles of the DCA VOR/DME, unless specifically authorized by the FAA in consultation with the DoD and DHS. Generally speaking, pre-departure security procedures and onboard security equipment for such operations are substantially less demanding than those security procedures and safeguards currently in place for part 121 aircraft operations. Therefore, the FAA is proposing the following action which, in part, restricts flight in certain areas and requires pilots operating in designated areas to file flight plans, communicate with appropriate air traffic control facilities, and display an ATC-assigned transponder code. This proposed action is one of many being undertaken by government agencies that

are intended to enhance security in the Washington DC Metropolitan area.

By this proposed action the Federal Government would more explicitly classify the airspace over the Washington DC Metropolitan Area (the DC SFRA) as "National Defense Airspace." Any person who knowingly or willfully violates the rules concerning operations in National Defense Airspace is subject to certain criminal penalties. See 49 U.S.C. 46307. It is hoped that codification of these airspace restrictions and the classification of this airspace as "National Defense Airspace" will reduce, through pilot education, the number of careless and inadvertent encroachments of the airspace by some pilots. Reducing the number of unauthorized airspace penetrations will reduce the number of times that the U.S. Government aircraft have to intercept unauthorized aircraft. The government also believes this rule will reduce the risks that the Government might have to fire on an aircraft that proceeds dangerously close to certain locations in the Washington DC Metropolitan Area.

In addition, in response to Congressional mandate, the Transportation Security Administration issued an interim final rule on July 19, 2005 to restore access to Reagan National Airport for certain aircraft operations (70 FR 41586; July 19, 2005). The rule will become effective on August 18, 2005. The final rule will reflect changes to the airspace restrictions based on that rule, as well as other changes that might result from other unforeseen security concerns.

#### **Section-by-Section Discussion of the Proposed 14 CFR Part 93 Subpart B**

##### *Section 93.31—What Is the Purpose of This Subpart and Who Would Be Affected?*

This section, if adopted, would inform the public that this subpart was issued to enhance security efforts in the Washington, DC Metropolitan Area and deter anyone who might use an aircraft for terrorist activity. It would further inform readers that it establishes a National Defense Airspace Area over the Washington, DC, Metropolitan Area. This area would be known as the Washington DC Metropolitan Area Special Flight Rules Area, which would be defined in proposed § 93.35. This would include flights in the Washington, DC, Metropolitan Area Flight Restricted Zone (FRZ), which is also defined in proposed § 93.35. This subpart would affect anyone who operates an aircraft in the DC SFRA.

##### *Section 93.33—What Could Happen if You Fail To Comply With the Rules of This Subpart?*

This proposed section informs readers that if they do not comply with this rule or any special security instruction announced by a Notice to Airmen (NOTAM) that affects this rule, then the government may do any or all of the following:

(1) *Direct deadly force toward their aircraft.* This could happen if it is determined that the aircraft poses an imminent security threat.

(2) *Pursue criminal charges.* Criminal prosecutions could be pursued, in the right case with the appropriate evidence, because this airspace is being established, in part, pursuant to 49 U.S.C. 40103(b) as National Defense Airspace.<sup>1</sup> This would not be the first time that the Administrator, in consultation with the Secretary of Defense, has acted pursuant to the authority under 49 U.S.C. 40103(b). For example, the FAA considers certain Prohibited Areas to be National Defense Airspace and certain temporary flight restrictions (TFRs) sites in the same vein, because those prohibited areas and those TFRs were established, in part, pursuant to 49 U.S.C. 40103 in consultation with the Secretary of Defense.

(3) *Take administrative action, including imposing civil penalties and suspend or revoke airmen certificates.* Paragraph (c) simply summarizes the FAA's long-standing and long-recognized statutory authority to take administrative enforcement action against those who violate FAA regulations (See, e.g., 49 U.S.C. 44709 and 49 U.S.C. Chapter 463 (Penalties)).

##### *Section 93.35—Definitions*

This proposed section contains definitions applicable to this rule. Specifically, this section provides the definition for the proposed airspace known as the Washington, DC, Metropolitan Area Special Flight Rules Area (SFRA) and the airspace contained within the Washington DC Metropolitan Area Flight Restricted Zone (FRZ). The SFRA is currently defined by a NOTAM, and known as the Washington DC ADIZ. Both the SFRA airspace and the FRZ airspace (which is part of SFRA airspace) are categorized as "National Defense Airspace." This proposed section also defines the term "fringe

<sup>1</sup> Section 46307. Violation of national defense airspace. A person that knowingly or willfully violates section 40103(b)(3) of this title or a regulation prescribed or order issued under section 40103(b)(3) shall be fined under title 18, imprisoned for not more than one year, or both.

airports" to identify certain airports located near the outer boundary of the SFRA where specific egress-only procedures may be applied.

##### *Section 93.37—General Requirements for Operating in the Washington, DC, Metropolitan Area SFRA*

This proposed section establishes that if you conduct any type of flight in the Washington, DC, SFRA, you will be subject to:

(1) All of the requirements in this part;

(2) All special instructions issued by the FAA in the interest of national security; and

(3) All other FAA requirements in 14 CFR.

Generally, any special instructions would be issued as NOTAMs pursuant to § 99.7 and would be temporary, but could be issued in any manner the FAA considers appropriate.

##### *Section 93.39—Specific Requirements for Operating in the Washington, DC, Metropolitan Area SFRA, Including the FRZ*

On February 10, 2003, the FAA issued NOTAM 3/2126 that established the Washington DC Metropolitan Area ADIZ. NOTAM 3/2126 contains flight restrictions and procedures for aircraft operations within the area, including transponder equipment, two-way radio communication and filing a flight plan. In this action we propose to establish an area (Washington DC SFRA) with specific procedures and pilot and equipment requirements. The proposed procedures reflect those currently in place via NOTAM for that airspace currently known as the Washington DC Metropolitan Area Air Defense Identification Zone (ADIZ).

##### *Section 93.41—Aircraft Operations Prohibited in the Washington, DC, Metropolitan Area Flight Restricted Zone (FRZ)*

This section proposes to codify prohibitions on certain kinds of aircraft operations in the Washington DC Metropolitan Area FRZ. The FRZ evolved from flight restrictions originally imposed by NOTAM on December 19, 2001. On February 10, 2003, the FRZ (which covers approximately a 15 nautical mile radius of the Washington DC VOR/DME) was introduced to describe an area wherein all flight operations conducted under parts 91, 101, 103, 105, 125, 133, 135, and 137 are prohibited unless specifically authorized by the FAA, in consultation with DHS.

*Section 93.43—Requirements for Aircraft Operations to or From College Park Airport; Potomac Airfield; or Washington Executive/Hyde Field Airports*

This proposed section contains portions of the procedures previously found in SFAR No. 94, and it also contains air traffic procedures that are in place via NOTAM.

SFAR 94 contained both flight communication requirements and airport security requirements. The flight communication requirements are included in this NPRM. They include flight plan filing, two-way radio communication, and transponder requirements. Procedures addressing airport security previously contained in SFAR 94 are now regulated by the TSA. See "Background" above.

*Section 93.45—Special Ingress/Egress Procedures for Bay Bridge and Kentmorr Airports*

This section proposes to permanently codify ingress/egress procedures for certain airports within the Washington, DC Metropolitan Area Special Flight Rules Area but not in the FRZ. This proposed section details ingress/egress procedures for pilots operating to/from the Bay Bridge and Kentmorr Airports. Specifically, the procedures would allow aircraft arriving at or departing from either of these airports to operate directly to or from the airport, along a specified route, at a specified altitude, without filing a flight plan or contacting air traffic control, provided they are displaying the appropriate ATC-assigned transponder code (1227 for Bay Bridge Airport and 1233 for Kentmorr Airport).

*Section 93.47—Special Egress Procedures for Fringe Airports*

This section proposes egress-only procedures for those pilots departing the Airlie, Albrecht, Harris, Martin, Martin State, Meadows, Mylander, Stewart, St. John, Tilghman Whipp, Upperville, and Wolf airports. Pilots departing from these airports would display ATC transponder code 1205 and monitor the appropriate ATC frequency for the area. They would be expected to exit the SFRA by the most direct route. Also, these pilots would not have to establish two-way communications with ATC unless requested, and would not have to file a flight plan.

It should be noted that these procedures are being proposed to provide relief to certain pilot operations in the SFRA. Any pilot deviating from these procedures will trigger a U.S. government response.

*Section 93.49—Airport Security Procedures*

This section proposes to prohibit any person from operating an aircraft at the three subject Maryland airports unless those airports have a TSA-approved airport security program.

**Paperwork Reduction Act**

This proposal contains the following new information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted the information requirements associated with this proposal to the Office of Management and Budget for its review. This information is currently being collected under the NOTAM issued pursuant to 14 CFR 99.7.

*Estimated Burden:* The FAA expects that this proposed rule would impose additional reporting and recordkeeping requirements on airports and pilots. It would have the following impacts:

- For the airports impacted by SFAR 94, the FAA estimates that it would take 1,497.50 hours to process flight plans, costing \$47,111 annually.

- For the other airports affected by this rulemaking, the FAA estimates that it would take 6,466.28 hours to process the additional flight plans, costing \$203,429 annually. The total impact to file these flight plans averages \$250,540, taking 7,963.78 hours annually.

The regulation would increase paperwork for the Federal government, as there would be an additional air traffic burden dealing with pilot deviations, tracks of interest, and litigation, taking an average of 129,197.33 hours, costing \$10,913,253 annually. In addition, FAA employees would have to process the additional flight plans; for the airports impacted by SFAR 94, this would take 1,497.50 hours, costing \$70,847, and for all other airports in the SFRA, this would take 6,466.28 hours, costing \$203,429 annually. The total impact on the Federal government would be 137,161.10 hours, costing \$11,187,529 annually.

The agency is soliciting comments to—

- (1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

- (2) Evaluate the accuracy of the agency's estimate of the burden;

- (3) Enhance the quality, utility, and clarity of the information to be collected; and

- (4) Minimize the burden of the collection of information on those who

are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Individuals and organizations may submit comments on the information collection requirement by October 3, 2005, and should direct them to the address listed in the **ADDRESSES** section of this document. Comments also should be submitted to the Office of Information and Regulatory Affairs, OMB, New Executive Building, Room 10202, 725 17th Street, NW., Washington, DC 20053, Attention: Desk Officer for FAA.

According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid OMB control number. The OMB control number for this information collection will be published in the **Federal Register**, after the Office of Management and Budget approves it.

**International Compatibility**

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

**Regulatory Evaluation Summary**

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, to be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a

Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$120.7 million or more annually (adjusted for inflation).

In conducting these analyses, the FAA has determined this proposed rule: (1) Would have benefits that justify its costs, is a "significant regulatory action" as defined in section 3(f) of Executive Order 12866, and is "significant" as defined in DOT's Regulatory Policies and Procedures; (2) may have a significant economic impact on a substantial number of small entities; (3) would have no effect on international trade; and does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector. These analyses, available in the docket, are summarized below.

#### *Who Is Potentially Affected by This Rulemaking*

##### *Private Sector*

All aircraft would have to be transponder equipped when entering the proposed DC SFRA and maintain two-way communications while flying in the proposed area. Pilots operating in accordance with visual flight rules (VFR) would have to file flight plans to fly within the proposed DC SFRA.

There are approximately 150 airports in the proposed DC ADIZ. Given the additional requirements that general aviation pilots face, the FAA is concerned that many of these airports would have fewer operations. In some cases, some of these pilots may elect to use alternate nearby airports outside of the proposed DC SFRA.

##### *Government*

The FAA has experienced additional burdens in maintaining the requested security requirements within the DC ADIZ/FRZ since September 11, 2001. In particular, this includes additional work for the air traffic control facilities of Potomac Consolidated Terminal Radar Approach Control (TRACON) and Leesburg Automated Flight Service Station (AFSS) as well as adjacent air traffic control towers and AFSS's.

One of the airports affected by the flight restrictions imposed since September 11, 2001 is the College Park Airport. This airport is owned and partially funded by two Maryland Counties, Montgomery and Prince George's.

#### *Our Cost Assumptions and Sources of Information*

In this analysis, the FAA estimated future costs for a 10-year period, from 2004 through 2013. As required by the

Office of Management and Budget, the present value of this stream of costs was calculated using a discount factor of 7 percent. All costs in this analysis are in 2002 dollars.

The analysis examined costs associated with the proposed DC SFRA. Impact to Air Traffic

The FAA calculated the number of additional air traffic staff by looking at air traffic controller availability during the average workweek and during the year. Staffing demands in the future are calculated by using annual growth rates of 1.2% for the TRACONs and 0.5% for the AFSSs. In addition, personnel compensation and benefits for a certified professional controller are estimated at \$140,000 and for an automated flight service station specialist are estimated at \$90,000.

Airports Impacted by the Former SFAR 94—College Park, Potomac, and Washington Executive/Hyde

For the three airports impacted by the former SFAR 94, the FAA also used the following assumptions:

- The cost of either a pilot's or an aircraft occupant's time is \$31.46 per hour.
- The per hour cost of operating a piston driven, four seat aircraft is \$64.75.
- The average load factor for a four seat aircraft is 43.7 percent or 1.75 occupants.
- An airport manager's hourly wage, based on each airport's actual cost and revenue streams, is \$45 per hour at College Park, \$42 per hour at Potomac, and \$40 per hour at Washington Executive/Hyde.
- To account for financial losses not explicitly captured by the analysis, twenty percent of lost revenue is added to the estimated cost of operational restrictions for all three airports.
- To compensate for the lack of financial data for Washington Executive Airport/Hyde Field, the average estimated cost of certain operational restrictions for the two other airports (College Park and Potomac) is used to estimate the revenue losses.
- The data for the days that each airport was open and operating in 2002 was annualized to help estimate total operations and revenues. This data summed to about 6½ months for the College Park and Potomac airports and 4 months for Washington Executive Airport/Hyde Field.
- Hourly costs to the Federal Government include airport inspector (FG-14, \$56.48) and flight service station specialist (\$47.37) and to the

state government law enforcement agency employee (\$47.80).

- Revenue is used as the financial indicator of economic costs in lieu of unavailable data on lost profits.
- Local purchases include procurements made by the airport and its tenants and airport sales to tenants, visitors, and local organizations.
- For ground delays, the hourly value of passenger time per operation is \$55.06. The average ground delay varied per airport.
- For in-flight delays, the hourly cost of an in-flight delay is \$119.81. The average flight delay varied per airport.

In addition, the FAA made the following assumptions concerning the number of operations and revenue at these three airports:

- The number of operations, which was annualized from 2002 data, would remain constant at all three airports for the ten years examined by this analysis. In a recent Interim Final Rule, the TSA has allowed transient operations into these airports. However, FAA does not know how many additional aircraft will fly into or out of these airports. Unless a pilot plans on using one of these airports on a regular basis, they probably would not want to go through the vetting process. Thus, the FAA believes that the number of additional new operations would be minimal.
- Given the additional security vetting required by TSA, the FAA believes that these pilots who fly into any of these three airports would do so only if they believe that it is to their advantage to do so. In other words, the FAA recognizes that these pilots would enjoy an unquantifiable benefit.
- The FAA does not believe that the recent TSA rule would increase the total number of flights within the SFRA. So while the actual number of flights to the Maryland-3 and to the other airports within the SFRA may change, the total number of flights within the SFRA would not. While the costs estimated and projected for the Maryland-3 and the other airports may change, the total costs related to these operations within the SFRA (in-flight delays, on-the-ground delays, and flight plan processing) would not change.
- Annual revenue, which was also annualized from 2002 data, would remain constant at all three airports for the ten years examined by this analysis. The FAA recognizes that additional transient flights have the potential to boost revenue to each airport, but believes that any potential increase would be small.

### Other Costs Associated With the Proposed DC SFRA

- The FAA assumes that the additional number of flight plans filed in 2004 would be 123,800, growing to 135,000 in 2013; these numbers are net of those needed to be filed for the three airports impacted by the former SFAR 94.

- As above, for ground delays, the hourly value of passenger time per operation is \$55.06, while for in-flight delays; the hourly cost per operation is \$119.81.

### Benefits of This Rulemaking

This proposed rule is intended to enhance DoD/DHS security measures to deter airborne terrorist attacks. The primary benefit of the proposal would be enhanced protection for a significant number of government assets and infrastructure in the National Capital Region. The security provisions and flight restrictions contained in this rule are an integral part of the effort to identify and defeat the threat posed by terrorists.

Given the myriad of possible scenarios, the cost of an act of terrorism against a nationally prominent target or critical government infrastructure is extremely difficult to quantify. They can include areas such as the direct and indirect costs of the September 11 attacks as well as a reduction in D.C. tourism. Due to the sensitive nature of this information, many of the specifics of these effects will not be discussed in this document. However, the FAA acknowledges that these costs would be very high.

The FAA acknowledges that there would be non-quantifiable benefits. The separation of air traffic is predicated on knowing the intentions of aircraft operating within the controller's airspace. The proposed DC SFRA would require two way communication, flight plans and operable transponders for pilots to operate in the area. This would allow the government to know the pilots' intentions, to monitor the aircraft altitude, and to communicate with each pilot. Knowing this information would enhance safety and security.

In addition, the FAA believes that this rule will reduce the number of times that the U.S. Government might have to intercept unauthorized aircraft. The current restrictions are contained in NOTAMs, which are not as widely disseminated or understood as Federal regulations. As the public becomes more aware of these airspace restrictions, the FAA believes the number of careless and inadvertent encroachments of the airspace will be reduced. The FAA does

not have any data on the possible reduction in the number of times that the U.S. Government might have to intercept unauthorized aircraft, but believes that a better educated flying public would make fewer critical flying errors.

### Costs of This Rulemaking

The analysis examined costs associated with the proposed DC SFRA.

### The Impact to Air Traffic

The FAA has borne additional burdens in maintaining the requested airspace restrictions within the existing Washington, DC ADIZ/FRZ. To calculate the costs associated with the proposed DC SFRA, the FAA made a comparison using the baseline months of July 2001, 2002, and 2003. Based on the additional workload for 2003, controller staffing has been increased; total increased staffing costs, over ten years, sum to \$62.12 million (\$43.83 million, discounted). The total number of controllers would increase from 39 in 2004 to 43 in 2013.

There are other costs due to additional activities, all centered at the Potomac TRACON. These other costs include additional pilot deviations, additional tracks of interest, increased litigation, and costs associated with creating and operating a National Security Special Operations Unit. This increased workload sums to \$122.15 million (\$71.28 million, discounted) over ten years.

Total ten-year costs, to handle the additional air traffic burden, sum to \$184.27 million (\$128.70 million, discounted).

Costs to the Airports Impacted by the Former SFAR 94—College Park, Potomac, and Washington Executive/Hyde

SFAR 94, enacted February 13, 2002, authorized general aviation operations at College Park Airport, Potomac Airfield, and Washington Hyde Field, provided that stringent requirements were met. In February 2003, the FAA, in concert with TSA, extended the SFAR 94 for an additional two years. In February 2005, TSA extended the security aspects of these procedures under 49 CFR part 1562; the airspace restrictions and communications provisions in NOTAM 3/0853 remain under FAA authority. This rulemaking would codify these airspace restrictions and communications provisions.

The FAA was able to obtain limited historical financial and operational data for College Park and Potomac Field Airports for part of their first year under the SFAR. Additional data restrictions,

however, limited the analysis of the rule's impact on the Washington Executive Airport/Hyde Field. Thus, the FAA was required to make additional assumptions in doing the analysis for this airport.

### College Park Airport

The College Park Airport opened in 1909 and is the oldest continuously operating airport in the world. With the exception of about 100 annual air taxi operations, the College Park Airport serves private pilots who use their aircraft for pleasure and business. The estimate of annual losses to College Park Airport associated with complying with the current DC ADIZ/FRZ operational restrictions is \$1.62 million. This annualized revenue loss has been increased by a factor of 20% to account for revenue losses not included in the analysis. The annual airspace restriction costs to the pilots using the College Park Airport sum to \$171,900 and are based on the ground and in-flight delays as well as the time to file flight plans. Complying with the airspace and communication requirements in the proposed DC SFRA would cost the College Park Airport an estimated \$1.80 million annually.

### Potomac Airfield

The Potomac Airfield is a small privately owned airport located in Fort Washington, Maryland. Based on information from the first 8 months of 2002, and assuming that these revenues derived during the period stay the same, the FAA estimates the revenue loss to be \$1.36 million. This annualized revenue loss has been increased by a factor of 20% to account for revenue losses not included in the analysis. Thus the FAA estimates annual losses of \$1.63 million for the time examined by this analysis. The annual airspace restriction costs to the pilots using the Potomac Airfield Airport sum to \$368,500 and are based on the ground and in-flight delays as well as the time to file flight plans. Complying with the requirements in the proposed DC SFRA would cost the Potomac Airfield Airport an estimated \$2.00 million annually.

### Washington Executive/Hyde Field Airport

Washington Executive/Hyde Field Airport is a small privately owned airport located in Clinton, Maryland. The airport largely serves the needs of private pilots who occasionally fly for business reasons. This airport was closed longer than the other two; operations resumed at Hyde Field on March 2, 2002. However, on May 17, 2002, the airport was closed again



because of a security violation. The airport reopened on September 28, 2002. This annualized revenue loss has been increased by a factor of 20% to account for revenue losses not included in the analysis. This resulted in the estimate of annual losses associated with complying with the operational restrictions in the former SFAR 94 for this airport to be \$1.60 million.

The annual airspace restriction costs to the pilots using the Washington Executive Airport/Hyde Field sum to \$596,500 and are based on the ground and in-flight delays as well as the time to file flight plans. Complying with the requirements in the proposed DC SFRA would cost the Washington Executive/Hyde Field Airport an estimated \$2.19 million annually.

#### Other Costs Related to the Above Three Airports

Flight service station specialists would need to process the flight plans; annual costs sum to approximately \$70,800. Annual costs for the ten-year extension of the provisions of the proposed DC SFRA sum to \$6.06 million. Over ten years, these costs sum to \$60.64 million (\$42.59, discounted).

#### Other Costs Related to the Proposed DC SFRA

There are approximately 150 airports/heliports within the proposed DC SFRA. The costs for three of these airports (College Park, Potomac, and Washington Executive/Hyde) have already been discussed above. However, there are additional costs, both for pilots and airports within the proposed DC SFRA.

**Costs for pilots**—The proposal would implement new requirements for all pilots. The proposal would require all operators to file flight plans. Pilots operating VFR would have to file flight plans to operate within the proposed DC SFRA; these are new costs. The FAA estimates an additional 123,800 flight plans would need to be filed annually in 2004, growing to 135,000 in 2013. Ten year costs due to flight delays and the time to file flight plans sum to \$48.63 million. In addition, flight service station specialists would need to process the flight plans; ten-year costs sum to approximately \$3.06 million. Total costs for these additional flight plans sum to \$51.70 million (\$36.12 million, discounted) over ten years. The FAA invites comments on:

- The total number of additional flight plans,
- The filing time due to ground and in-flight delays and related costs, and
- The net results of pilots circumventing the DC SFRA.

The FAA requests that all comments be accompanied by documentation.

**Costs for small airports**—There are approximately 150 airports/heliports in the proposed DC SFRA, most of which do not keep operations records. Given the additional requirements that general aviation pilots face, the FAA notes that many of these airports would have fewer operations, resulting in a loss of revenue. In some cases, some of these pilots would fly to alternate airports outside the proposed DC SFRA, resulting in an increase in operations and revenue for these alternate airports. The FAA does not have data as to the change in operations and revenue in the airports both within and just outside the proposed DC SFRA since February 2001. Accordingly, the FAA invites comments from both small airports and general aviation pilots on the effect of the DC SFRA on these airports. The FAA requests that all comments be accompanied by documentation.

#### Total Costs

Total quantifiable costs sum to \$296.60 million (\$207.41 million, discounted) over ten years.

#### Regulatory Flexibility Determination

For this proposed rule, the small entity group is considered to be small general aviation airports (North American Industry Classification System [NAICS] 488119—Airport Operations and Terminal Services). The small entity size standards criteria involving airports defines a small airport as one that is independently owned with annual revenues of less than \$5 million or owned by a small governmental jurisdiction with a population less than 50,000. In addition, all privately owned, public-use airports are considered small. All the small airports, both public-use and private-use, in the proposed Washington, DC SFRA need to be examined in this regulatory flexibility analysis.

The FAA only has revenue (both pre- and post-DC ADIZ) and compliance cost data for the three airports within the FRZ, and so can only do a regulatory flexibility analysis on these airports, based on the effects of the SFRA. Because the proposal would have a significant impact on two of the three airports impacted by the former SFAR 94 that would trigger the need for a regulatory flexibility analysis if the proposed rule were only dealing with the former SFAR 94 and the current combination of TSA's 49 CFR part 1562 and FAA's NOTAM 3/0853. However, there are approximately 150 airports within the SFRA that are affected by other provisions of the proposed rule,

and the FAA does not know if these other provisions would have a significant impact on a substantial number of all those airports. Accordingly, the FAA prepared a regulatory flexibility analysis, as it believes it important to show the potential impact on these entities for the sake of completeness and to engender comments.

Hence, the focus of the following analysis will not be the proposed rule, but rather, a subsection of the proposed rule—the impact of the former SFAR 94. The FAA requests comments containing revenue (both pre- and post-DC ADIZ) and compliance cost data for these other airports within the existing Washington, DC SFRA/FRZ as well as any other pertinent information of the potential burden of this proposal on small airports. The FAA requests that such data be accompanied with full documentation.

As discussed above, three airports are directly affected. The College Park Airport is owned and partially funded by two Maryland Counties, Montgomery and Prince George's. The 2000 census discloses that the combined population of the two counties is approximately 1.7 million. As such, the College Park Airport is not a small entity. Both the Potomac Airfield Airport and Washington Executive Airport/Hyde Field are privately owned and considered small in this analysis.

Small general aviation airports are not required to have security programs; only those airports that have scheduled service are required to have such a program. Air carrier airports are funded from tax revenues and generally have greater aviation traffic activity than general aviation airports and airports without scheduled service. By and large, Potomac Airfield and Hyde Field are not supported from tax revenues, as the revenues that sustain the two airports are derived solely from the pilots who use the airports; however, these airports received Airport Improvement Project (AIP) funds for the costs of operating and for security enhancements due to the special provisions in the Aviation and Transportation Security Act (ATSA). The provision lasted for one year, in 2002. Potomac Airfield Airport received about \$150,100, while Washington Executive Airport/Hyde Field received \$342,300. Neither airport can count on these AIP funds to sustain them in the future.

The estimated annual cost of compliance, based on known costs and revenues for the Washington Executive Airport is \$291,600 and the burden on the Potomac Airfield Airport is \$221,400; they increase to \$334,000 and



\$252,900 when the anticipated airport revenue losses are increased by 20%, as discussed above. These costs are considered burdensome because they are well in excess of one percent of the median annual revenue of small airport operators (one percent of the annual median revenue for small operators is \$28,000). If these were the only small airports within the proposed DC SFRA, the FAA would determine that the rule would have a significant economic impact on a substantial number of small entities. Without similar information from the other small airports, the FAA is unable to make such a determination, but, as mentioned above, the FAA believes it is important to show the potential impact on these entities for the sake of completeness. Accordingly, it conducted a regulatory flexibility analysis only on a subsection of the proposed rule—those airports impacted by the former SFAR 94.

#### *Regulatory Flexibility Analysis*

Under section 603 (b) of the RFA (as amended), each regulatory flexibility analysis is required to address the following points: (1) Reasons the FAA considered the rule, (2) the objectives and legal basis of the rule, (3) the kind and number of small entities to which the rule will apply, (4) the reporting, record keeping, and other compliance requirements of the rule, and (5) all Federal rules that may duplicate, overlap, or conflict with the rule. The FAA will perform an analysis for the two small airports impacted by this rule, because the rule will make SFAR 94 permanent.

*Reasons the FAA considered the rule:* The catastrophic events of September 11, 2001 introduced the awareness that terrorists will use civil aviation aircraft as a missile or, potentially, as carriers of biological, chemical, radioactive and/or conventional weaponry against civilian targets. This proposed rule recognizes that the terrorist threat is changing and growing and that extraordinary steps must be taken to safeguard the Washington, DC Metropolitan Area.

*The objectives and legal basis for the rule:* The objective of the rule is to combine all the airspace restrictions within the Washington, DC Metropolitan Area into one regulation. This effort is to assist DHS and DoD in their efforts to enhance security protection of vital national assets located within the National Capital Region. The statutory authority for these rules can be found in 49 U.S.C. 40103 and 44701(a)(5). The FAA must consider, as a matter of policy, maintaining and enhancing safety and

security in air commerce as its highest priorities (49 U.S.C. 40101 (d)).

*The kind and number of small entities to which the rule will apply:* As noted above, the FAA only has enough data on two small airports, Potomac and Washington Executive/Hyde to perform this analysis; however, the proposed rule potentially applies to all pilots, regardless of where they are based, if they operate within the proposed DC SFRA. Private pilots operate their aircraft for business and pleasure at these airports.

*All Federal rules that may duplicate, overlap, or conflict with the rule:* The FAA is unaware of any Federal rules that duplicate, overlap, or conflict with this rule.

#### *Other Considerations*

*Affordability analysis:* The extent to which a small airport can “afford” the cost of compliance is directly related to the availability of income and earnings. The small airports subject to this rule generate income to sustain their operations from landing fees, tie-down charges, rent and other compensation paid by airport tenants, fuel sales, flight school instruction, sightseeing rides, aircraft rentals, and miscellaneous local sales. All of these sources of income are influenced directly by the number of operations at the airport. The reduction in operations experienced by the airports as a consequence of the flight restrictions in place before and after the former SFAR 94 became effective is significant. Even if there is an increase in operations as a result of the recent TSA rule, the FAA believes that this increase would be minimal, leading to the same conclusion that the overall reduction in operations is significant.

The decrease in operations corresponds directly to the decline in working capital at the airports. Working capital is defined as the excess of current assets over current liabilities. The financial strength and viability of a business entity is substantially influenced by its working capital position and its ability to meet its short-term liabilities. As fixed-base operators and pilots have relocated to other airfields, revenues have continued to decline. Besides laying off staff, without other sources of revenue, the airports are unable to implement offsetting cost-saving efficiencies that could ameliorate the loss of income.

At this time, there is no comprehensive source of information available that would account for a total financial picture of these airports. There is also no information about the airports’ ability to obtain credit. The only evidence is limited to the fact that

the airport and its tenants generated revenues in previous years and were able to pay their taxes. As such, it can be assumed that these small entities were generating sufficient revenues to meet tax and other obligations; however, the costs of complying with the former SFAR 94 are very high relative to the current revenues reported by the airports. As discussed for both airports, the security costs alone are more than 20% of the projected revenues, \$63,800 out of total airport revenue of \$259,000 at Potomac and \$79,500 out of total airport revenue of \$291,300 at Washington Executive Airport/Hyde Field.

The financial impact of the flight restrictions in place before the effective date of the former SFAR 94 is significant relative to the size of these airports. The reopening of the airports has not improved the financial posture of the airports. The May 17, 2002, temporary closing again of Washington Executive Airport/Hyde Field imperiled the survival of this airport. The complex and burdensome flight restrictions now in place have caused private pilots to relocate to other airports. On the basis of the above, the FAA considers that the rule impacts the viability of the affected airports. Even with the potential for an increase in revenue as a result of transient operations, the FAA still considers that the rule would impact the viability of the affected airports.

*Competitiveness analysis:* Airports located farther away from the DCA VOR/DME are not subject to the security provisions and air traffic restrictions now in effect for Potomac Airfield Airport and Washington Executive Airport/Hyde Field. These airports offer a convenient alternative location for pilots seeking to avoid costly operational restrictions and security requirements. The availability of these airports has contributed to reducing the competitiveness of the affected airports. Pilots flying into the airports covered by this proposed action face additional costs in filing flight plans which they would not have at alternative airport; these costs sum to \$368,500 annually at Potomac and \$596,500 annually at Washington Executive Airport/Hyde Field, both averaging \$35.10 per operation. The advent of transient flights has the potential to increase these total costs to pilots.

*Business Closure:* The FAA is unable to determine with certainty whether the two small airports significantly impacted by this rule would remain open. On the basis of the Affordability Analysis provided above, the FAA considers that the rule would impact the viability of these affected airports. Even

with the addition of transient operations, the FAA still reaches the same conclusion.

#### Alternatives

The objective of the rule is to combine all the airspace restrictions within the Washington, DC Metropolitan Area into one regulation. This effort is to assist DHS and DoD in their efforts to enhance security protection of vital national assets located within the National Capital Region. The fact that the provisions of former SFAR 94 are still in effect (in TSA's interim final rule and the FAA's NOTAM 3/0853), and that the existing Washington, DC Metropolitan Area ADIZ/FRZ is also in effect, reduces the number of options to be examined in this analysis. The government believes that substantial changes to the security requirements or air traffic restrictions would be the equivalent of revoking the rule and increasing the vulnerability of the National Capital Region. Thus, the FAA has examined the following three alternatives.

*Alternative 1: Rescind the TSA's 49 CFR part 1562, FAA's NOTAM 3/0853, and the DC ADIZ/FRZ immediately—* This alternative would provide immediate relief to these airports by removing security provisions and restoring former air traffic control procedures and air space configurations. Implementation of this alternative would facilitate the return of pilots who, for the sake of operating simplicity and reduced flying costs, relocated to other airports. This would be the least costly option. The FAA believes that the threat of terrorists using aircraft as missiles must be guarded against, and this option would not adequately achieve that goal.

*Conclusion:* Rescinding these actions would increase the vulnerability and diminish the level of protection now in place to safeguard vital national assets located within the National Capital Region. This alternative is rejected because it would compromise the security of vital national assets and increase their vulnerability.

*Alternative 2: Codify existing flight restrictions over the Washington, DC Metropolitan Area—* Under this alternative, the government would maintain the present security and air traffic operational restrictions. The annual cost of compliance for the affected airports totals \$513,000; they increase to \$585,400 when the anticipated airport revenue losses are increased by 20%. These costs could change marginally with the advent of transient operations. The proposed rule enhances security measures in place that would require any aircraft operating to and from the affected airports and

transiting the proposed SFRA to be properly identified and cleared.

*Conclusion:* This alternative is preferred because it balances the government's security concerns about a terrorist attack in this area against the costs that would be imposed by more draconian measures.

*Alternative 3—Close all airports within the proposed DC SFRA permanently—* Under this alternative, the government would completely close these airports to all aviation operations. This would effectively close all aviation-related businesses in the area. They would be forced to move to other airports or close their businesses permanently. All pilots who have aircraft permanently based at the airports would also be forced to move their aircraft to other locations, thereby imposing moving costs, including new hangar, tie-down, storage fees, etc. Workers at the airports would be forced to seek employment at one of the other general aviation airports in the Washington Metro area. This is the most costly option.

*Conclusion:* This alternative is not preferred because it causes the greatest financial burden on the airports, their tenants and aviation-related businesses, and individuals who work or store aircraft at those airports.

*Alternative 4—Retain the FRZ, eliminate the ADIZ—* Under this proposal, airspace in the Washington DC Metropolitan area with flight restrictions would be reduced considerably. The only flight restrictions remaining would be within approximately 15 miles of the DCA VOR, restricting all aircraft operations except part 121 operators, DOD operations, law enforcement operations and authorized Emergency Medical Services operations. This removes the requirement for filing flight plans for aircraft operators in airspace outside the FRZ, resulting in reduced pilot and controller workload. This alternative would provide relief to some general aviation operators that would operate in the ADIZ area and not into the FRZ. It would restore former air traffic control procedures and air space configurations for some of the area. Implementation of this alternative may reduce costs for some general aviation operators in that they would not have to comply with many of the current ADIZ restrictions.

*Conclusion:* This alternative is not preferred because it does not meet the requirements of those security agencies responsible for the safety of the Washington DC Metropolitan area.

#### Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this NPRM and has determined that it would have only a domestic impact and therefore no effect on any trade-sensitive activity.

#### Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency, to the extent permitted by law, to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector. Such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of \$120.7 million in lieu of \$100 million.

This proposed rule does not contain such a mandate. Therefore, the requirements of Title II do not apply.

#### Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We have determined that this action would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore would not have federalism implications.

#### Plain Language

Executive Order 12866 (58 FR 51735, Oct. 4, 1993) requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?

- Do the proposed regulations contain unnecessary technical language or jargon that interferes with their clarity?
- Would the regulations be easier to understand if they were divided into more (but shorter) sections?
- Is the description in the preamble helpful in understanding the proposed regulations?

Please send your comments to the address specified in the **ADDRESSES** section.

### Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined that this proposed rulemaking action qualifies for the categorical exclusion identified in paragraph 312f and involves no extraordinary circumstances.

### Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this NPRM under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a "significant energy action" under the executive order because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

### List of Subjects in 14 CFR Part 93

Aircraft flight, Airspace, Aviation safety, Air traffic control, Aircraft, Airmen, Airports.

### The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 93 of title 14 Code of Federal Regulations (14 CFR part 93) as follows:

### PART 93—SPECIAL AIR TRAFFIC RULES

1. The authority citation for 14 CFR part 93 continues to read as follows;

**Authority:** 49 U.S.C. 106(g), 40103, 40106, 40109, 40113, 44502, 44514, 44701, 44719, 46301, 46307.

2. Amend part 93 by adding subpart B, consisting of §§ 93.31 through 93.49, to read as follows:

### Subpart B—Washington, DC, Metropolitan Area Special Flight Rules Area

Sec.

- 93.31 What is the purpose of this subpart and who would be affected?
- 93.33 What could happen if you fail to comply with the rules of this subpart?
- 93.35 Definitions.
- 93.37 General requirements for operating in the Washington, DC, Metropolitan Area SFRA.
- 93.39 Specific requirements for operating in the Washington, DC, Metropolitan Area SFRA, including the FRZ.
- 93.41 Aircraft operations prohibited in the Washington, DC, Metropolitan Area Flight Restricted Zone (FRZ).
- 93.43 Requirements for aircraft operations to or from College Park; Potomac Airfield; or Washington Executive/Hyde Field Airports.
- 93.45 Special ingress/egress procedures for Bay Bridge and Kentmorr airports.
- 93.47 Special egress procedures for fringe airports.
- 93.49 Airport security procedures.

#### § 93.31 What is the purpose of this subpart and who would be affected?

The purpose for this subpart is to enhance security efforts in the Washington, DC, Metropolitan Area by creating national defense airspace to deter persons who would use an aircraft as a weapon, or as the means of delivering weapons, to conduct an attack on persons, property, or an institution in the area. This subpart applies to you if you conduct any type of flight operations in the airspace designated as the Washington, DC, Metropolitan Area Special Flight Rules Area (as defined in § 93.35), which includes the airspace designated as the Washington, DC, Metropolitan Area Flight Restricted Zone (as defined in § 93.35).

#### § 93.33 What could happen if you fail to comply with the rules of this subpart?

If you do not comply with any rule in this subpart or any special security instruction announced by NOTAM that modifies, amends or adds to any rule of this subpart, it could result in any of the following:

- (a) The United States Government directing deadly force against the airborne aircraft you are operating, if it is determined that the aircraft poses an imminent security threat;
- (b) The United States Government pursuing criminal charges against you, including charges under Title 49 of the United States Code, section 46307; and
- (c) The FAA taking administrative action against you, including imposing civil penalties and the suspension or revocation of airmen certificates.

#### § 93.35 Definitions.

*Fringe Airports.* For the purposes of this subpart, the following airports located near the outer boundary of the Washington, DC, Metropolitan Area

Special Flight Rules Area are considered to be Fringe airports: Airlie, VA; Albrecht, MD; Harris, VA; Martin, MD; Martin State, MD; Meadows, VA; Mylander, MD; Stewart, MD; St. John, MD; Tilghman Whipp, MD; Upperville, VA; and Wolf, MD, Airports.

*Washington, DC, Metropolitan Area Flight Restricted Zone (FRZ)* is National Defense Airspace. It is within the SFRA airspace and consists of that airspace within an area from the surface up to, but not including, FL180 bounded by a line beginning at the Washington (DCA) VOR/DME 311° radial at 15 nautical miles (nm) (lat. 38°59'31" N., long. 77°18'30" W.); then clockwise along the DCA 15 nautical mile arc to the DCA 022° radial at 15 nm (lat. 39°06'11" N., long. 76°57'51" W.); then southeast along a line drawn to the DCA 049° radial at 14 nm (lat. 39°02'18" N., long. 76°50'38" W.); then south along a line drawn to the DCA 064° radial at 13 nm (lat. 38°59'01" N., long. 76°48'32" W.); then clockwise along the DCA 13 nm arc to the DCA 276° radial at 13 nm (lat. 38°50'53" N., long. 77°18'48" W.); then north along a line to the point of beginning. The FRZ does not include the airspace within a one nautical mile radius of the Freeway Airport, Mitchellville, MD Airport Reference Point.

Washington, DC, Metropolitan Area Special Flight Rules Area (SFRA) is National Defense Airspace. It consists of that airspace, from the surface up to, but not including, Flight Level (FL) 180, within the outer boundary of the Washington, DC, Tri-Area Class B Airspace Area; and that additional airspace bounded by a line beginning at lat. 38°37'12" N., long. 77°36'00" W.; then counterclockwise along the 30-mile arc of the DCA VOR/DME to lat. 38°41'24" N., long. 76°25'48" W.; then west along the southern boundary of the Washington, DC, Tri-Area Class B Airspace Area to the point of beginning. The SFRA airspace includes the Washington, DC, Metropolitan Area Flight Restricted Zone (FRZ).

#### § 93.37 General requirements for operating in the Washington, DC, Metropolitan Area SFRA.

If you conduct any type of flight operation in the Washington, DC, SFRA, in addition to the restrictions listed in this subpart, you must comply with all special instructions issued by the FAA in the interest of national security. Those special instructions may be issued in any manner the FAA considers appropriate, including a NOTAM. Additionally, complying with the rules of this subpart does not relieve

you from complying with the other FAA requirements listed in 14 CFR.

**§ 93.39 Specific requirements for operating in the Washington, DC, Metropolitan Area SFRA, including the FRZ.**

(a) Except as provided in paragraphs (b) and (c) of this section and in §§ 93.45 and 93.47, or unless authorized by Air Traffic Control, no person may operate an aircraft, including an ultralight or any civil aircraft or public aircraft, in the Washington, DC, Metropolitan Area SFRA, including the FRZ, unless:

(1) The aircraft is equipped with an operable two-way radio capable of communicating with Air Traffic Control on appropriate radio frequencies;

(2) Before operating the aircraft in the SFRA airspace, including the FRZ airspace, the flight crew establishes two-way radio communications with the appropriate Air Traffic Control facility and maintains such communications while operating the aircraft in the SFRA airspace, including the FRZ airspace;

(3) The aircraft is equipped with an operating automatic altitude reporting transponder;

(4) Before operating an aircraft in the SFRA airspace, including the FRZ airspace, the flight crew obtains and displays a discrete transponder code from ATC, and the aircraft's transponder continues to transmit the assigned code while operating within the SFRA airspace;

(5) The flight crew files and activates a flight plan with an AFSS before entering the SFRA and closes the flight plan upon landing or departing the SFRA;

(6) Before operating the aircraft into, out of, or through the Washington, DC Tri-Area Class B airspace area, the flight crew receives a specific ATC clearance to operate in the Class B airspace area; and

(7) Before operating the aircraft into, out of, or through Class C or D airspace area that is within the SFRA airspace, the flight crew complies with § 91.130 or § 91.129 of this chapter, respectively.

(b) Paragraphs (a)(1) through (a)(5) of this section do not apply to Department of Defense, law enforcement, or aeromedical flight operations if the flight crew is in contact with Air Traffic Control and is displaying an Air Traffic Control assigned discrete transponder code.

(c) You may, without filing a flight plan, operate an aircraft in the VFR traffic pattern at an airport that is within the SFRA airspace (but not in FRZ airspace) if:

(1) At an airport that does not have an Airport Traffic Control tower:

(i) Before moving the aircraft to taxi or take off, you notify Air Traffic

Control of the time and location of the VFR traffic pattern operation you will conduct;

(ii) You monitor the airport's Common Traffic Advisory Frequency continuously while operating the aircraft;

(iii) The aircraft's transponder continuously transmits Code 1234 (Department of Defense aircraft, operating in a VFR traffic pattern at a military airport may be assigned a beacon code other than 1234); and

(iv) When exiting the VFR traffic pattern, you comply with paragraphs (a)(1) through (a)(5) of this section.

(2) At an airport that has an operating Airport Traffic Control Tower you must:

(i) Request to remain in the traffic pattern before taxiing, or before entering the traffic pattern;

(ii) Remain in two-way radio communications with the tower;

(iii) Continuously operate the aircraft transponder on code 1234 unless Air Traffic Control assigns you a different code; and

(iv) Before exiting the traffic pattern, comply with paragraphs (a)(1) through (a)(5) of this section.

**§ 93.41 Aircraft operations prohibited in the Washington, DC, Metropolitan Area Flight Restricted Zone (FRZ).**

(a) Except as provided in paragraph (b) of this section, no person may conduct any flight operation under part 91, 101, 103, 105, 125, 133, 135, or 137 of this chapter in the Washington DC, Metropolitan Area FRZ, unless the specific flight is authorized by the FAA, in consultation with the United States Secret Service and the Transportation Security Administration.

(b) Department of Defense, law enforcement, and aeromedical flight operations are excepted from the prohibition in paragraph (a) of this section if the flight crew is in contact with Air Traffic Control and operates the aircraft transponder on an Air Traffic Control assigned beacon code.

**§ 93.43 Requirements for aircraft operations to or from College Park; Potomac Airfield; or Washington Executive/Hyde Field Airports.**

(a) You may not operate an aircraft to or from College Park, MD Airport; Potomac, MD Airfield; or Washington Executive/Hyde Field, MD Airport unless the following requirements are met:

(1) The aircraft and its crew and passengers comply with security rules issued by the Transportation Security Administration in 49 U.S.C. 1562 subpart A;

(2) Before departing, the pilot files an IFR or VFR flight plan with Leesburg

AFSS for each departure and arrival at College Park, Potomac Airfield, and Washington Executive/Hyde Field airports, whether or not the aircraft makes an intermediate stop;

(3) When you file a flight plan with Leesburg AFSS, you identify yourself using the pilot identification code assigned to you. Leesburg AFSS will accept the flight plan only after verifying the code;

(4) You do not close a VFR flight plan with Leesburg AFSS until the aircraft is on the ground. You may request ATC to cancel an IFR flight plan while airborne; however, if you are landing at the College Park, Potomac Airfield, and Washington Executive/Hyde Field airports you must remain on your assigned beacon code until on the ground and close your flight plan with Leesburg AFSS after you are on the ground; and

(5) You must comply with the applicable IFR or VFR departure procedures in paragraph (c), (d) or (e) of this section.

(b) You may operate a Department of Defense, law enforcement, or aeromedical services aircraft if you comply with paragraph (a) of this section and any additional procedures specified by the FAA.

(c) If using IFR departure procedures, you must comply with the following:

(1) You must obtain an Air Traffic Control clearance from Potomac Approach by calling 540-349-7597; and

(2) Departures from Washington Executive/Hyde Field or Potomac Airport, receive eastbound radar vectors from Air Traffic Control to exit the FRZ. You must then proceed on course and remain clear of the FRZ; or

(3) Departures from College Park Airport may receive radar vectors eastbound or northbound from Air Traffic Control to exit the FRZ. You must then proceed on the Air Traffic Control assigned course and remain clear of the FRZ.

(d) If using VFR departure procedures, you must comply with the following:

(1) Depart as instructed by Air Traffic Control, and expect a heading directly away from the FRZ airspace until you establish two-way radio communication with Potomac Approach; and

(2) Operate as assigned by Air Traffic Control until clear of the FRZ and Class B airspace area.

(e) If using VFR arrival procedures, the aircraft must remain outside the SFRA until you establish communications with Air Traffic Control and receive authorization for the aircraft to enter the SFRA.

(f) VFR arrivals:

(1) If arriving College Park Airport you may expect routing via the vicinity of Freeway Airport; or

(2) If arriving Washington Executive/Hyde Field and Potomac Airport you may expect routing via the vicinity of Maryland Airport or the Nottingham VORTAC.

**§ 93.45 Special ingress/egress procedures for Bay Bridge and Kentmorr Airports.**

(a) *Ingress/egress procedures area for Bay Bridge and Kentmorr Airports.* The Bay Bridge/Kentmorr airports ingress/egress procedures area consists of that airspace inside an area beginning at 39°03'27" N., 076°22'23" W., or the BAL 128015.1, to 39°00'45" N., 076°24'16" W., or the BAL 139015.3, to 38°50'12" N., 076°25'48" W., or the BAL 163022.7, to 38°50'10" N., 076°14'20" W., or the BAL 146028.2, to 39°00'49" N., 076°11'03" W., or the BAL 124024.2, thence to the point of beginning.

(b) You may operate an aircraft to or from the Bay Bridge Airport or Kentmorr Airport without filing a flight plan or communicating with ATC, as long as you comply with the following:

(1) You ensure that the aircraft remains in the ingress/egress area described in paragraph (a) of this section, proceeding no further west than

the western-most point of the Chesapeake Bay Bridge;

(2) You ensure that the aircraft remains below the floor of Class B airspace; and

(3) If you are operating arriving aircraft, you must fly the aircraft along the shortest and most direct route from the eastern SFRA boundary to the Bay Bridge or Kentmorr airports.

(4) If you are operating departing aircraft, you must fly the aircraft along the shortest and most direct route from Bay Bridge Airport or Kentmorr Airport to the eastern SFRA boundary.

(5) If you are operating an arriving or departing aircraft from or to Bay Bridge Airport, the aircraft's transponder must transmit code 1227.

(6) If you are operating an arriving or departing aircraft from or to Kentmorr Airport, the aircraft's transponder must transmit code 1233.

(7) If your planned flight will not conform to the procedures in paragraphs (b) (1) through (b)(6) of this section, you must follow the DC SFRA procedures in § 93.39.

**§ 93.47 Special egress procedures for fringe airports.**

(a) *SFRA egress-only procedures for fringe airports.* You may depart from a

fringe airport as defined in § 93.35 without filing a flight plan or communicating with Air Traffic Control, unless requested, as long as:

(1) The aircraft's transponder transmits code 1205;

(2) You monitor CTAF frequency until leaving traffic pattern altitude, then monitor the appropriate Potomac TRACON frequency until clear of the DC SFRA;

(3) You exit the SFRA by the shortest route before proceeding on course.

(b) You do not operate an aircraft arriving at a fringe airport or transit the SFRA unless you comply with the SFRA procedures in § 93.39.

**§ 93.49 Airport security procedures.**

You may not operate an aircraft from College Park, Potomac Airfield, or Washington Executive/Hyde Field Airports unless the airport has an established airport security program approved by the TSA.

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Nancy B. Kalinowski,

Director, System Operations and Safety.

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