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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. FAA-2002-11580; SFAR 94]

RIN 2120-AH62

Enhanced Security Procedures for Operations at Certain Airports in the Washington, DC Metropolitan Area Special Flight Rules Area; SFAR 94

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action extends, for 2 years, the expiration date for SFAR 94, which requires any person operating an aircraft to or from College Park Airport, Potomac Airfield, and Washington Executive/Hyde Field to conduct those operations in accordance with security procedures approved by the Administrator. This extension will allow the FAA, along with other Federal agencies, sufficient time to review current security threats and associated contingency plans and procedures and to determine future rulemaking efforts, if any.

DATE: This final rule is effective ~~upon publication, and~~ February 12, 2003 (~~E~~insert date of filing) and SFAR 94 published at 67 FR 7538 (Feb 19, 2002) as amended in this rule shall remain in effect until February 13, 2005.

FOR FURTHER INFORMATION CONTACT: Reginald C. Matthews , Federal Aviation Administration, 800 Independence Ave., SW, Washington, DC 20591, telephone (202) 267-8783; e-mail reginald.matthews@faa.gov.

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2-12-03

SUPPLEMENTARY INFORMATION:

Availability of This Action

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to search function of the Department of Transportation's electronic Docket Management System (DMS) Web page (http://dms.dot.gov/search).

(2) On the search page type in the last five digits of the docket number shown at the beginning of this document. Click on "search."

(3) On the next page, which contains the docket summary information for the Docket you selected, click on the final rule.

You can also get an electronic copy using the Internet through FAA's web page at http://www.faa.gov/avr/armhome.htm or the Government Printing Office's web page at http://www.access.gpo.gov/su_docs/aces/aces140html.

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 amendment number or docket number of this final rule.

Privacy Act Statement: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment(or signing the comment, if submitted 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 (Volume 65, Number 70; Pages 19477-78) or you may visit http://dms.dot.gov.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within the FAA's jurisdiction. Therefore, any small entity that has a question regarding this document may contact its local FAA official. Internet users can find additional information on SBREFA on the FAA's web page at http:www.faa.gov/avr/arm/sbrefa.htm and send electronic inquiries to the following Internet address: 9-AWA-SBREFA@faa.gov.

Background

In the aftermath of the September 11, 2001, terrorist attacks which resulted in the tragic loss of human life at the World Trade Center, the Pentagon, and in southwest Pennsylvania, the FAA prohibited all aircraft operations within the National Airspace System, with the exception of certain military, law enforcement, and emergency related aircraft operations. This general prohibition was lifted in part on September 13, 2001. In the Washington, DC Metropolitan area, however, aircraft operations remained prohibited at all civil airports within a 25-nautical mile radius of the Washington (DCA) Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME). This action was accomplished via the United States Notice to airmen (NOTAM) system.

Specifically, several NOTAMs were issued according to title 14 Code of Federal Regulations (14 CFR) 91.139, Emergency Air Traffic Rules, and the implementation of temporary flight restrictions (TFRs) issued according to 14 CFR 91.137, Temporary Flight Restrictions in the Vicinity of Disaster/Hazard Areas.

On October 4, 2001, limited air carrier operations were permitted to resume at Ronald Reagan Washington National Airport.

On October 5, 2001, the FAA issued NOTAM 1/0989, which authorized instrument flight rules (IFR) operations and limited visual flight rules (VFR) operations within an 18 to 25 nautical mile radius from the DCA VOR/DME in accordance with emergency air traffic rules issued under 14 CFR 91.139. Exceptions to the restrictions affecting part 91 operations in the Washington, DC area issued since September 11th were made to permit the repositioning of aircraft from airports within the area of the TFR and to permit certain operations conducted under waivers issued by the FAA.

On December 19, 2001, the FAA canceled NOTAM 1/0989 and issued NOTAM 1/3354 that, in part, set forth special security instructions under 14 CFR 99.7 and created a new TFR for the Washington, DC area. The NOTAM also created TFRs in the Boston and New York City areas. That action significantly decreased the size of the area subject to the earlier prohibitions on part 91 operations in the Washington, DC area and permitted operations at Freeway (W00), Maryland (2W5), and Suburban (W18) airports. At the same time, the FAA eliminated all "enhanced Class B airspace flight restrictions." The Enhanced Class B airspace area consisted of that airspace underlying and overlying Class B airspace from the surface to flight level 180.

As security concerns were resolved, most general aviation operations resumed with varying degrees of restriction. However, due to their proximity to important national Capitol area assets, three airports in Maryland (College Park Airport, Potomac Airfield, and Washington Executive/Hyde field) remained closed for a sustained period following the September 11 attacks because of the restrictions on aircraft operations in the airspace that overlies those airports.

Although many of the restrictions on operations in the Washington, DC area were eliminated, NOTAM 1/3354 continued to prohibit aircraft operations under part 91 in airspace that overlies College Park Airport, Potomac Airfield, and Washington Executive/Hyde Field. On February 19, 2002, the FAA cancelled NOTAM 1/3354 and issued NOTAM 2/1369. NOTAM 2/1369 (updated and reissued as 2/2263, on November 27, 2002) contained the description of the Washington Metropolitan Area Special Flight Rules Area, as published in SFAR 94, and prohibited flight by part 91 and certain other aircraft within the Special Flight Rules Area.

On February 14, 2002, the FAA issued NOTAM 2/1257 which provided flight plan filing procedures and ATC arrival and departure procedures for pilots operating from the three airports in accordance with SFAR 94. The FAA updated and reissued NOTAM 2/1257 as 2/2720 on December 10, 2002. NOTAM 2/2720 permits pilots vetted at any one of the three Maryland airports to fly into any of the three airports.

Discussion of Comments

As previously stated, on February 19, 2002, the FAA published SFAR 94 as a final rule (67 FR 7538), and requested public comments regarding this action. The SFAR

defined the Washington, DC Metropolitan Area Special Flight Rules Area and allowed operations over, to, and from the three Maryland airports that were closed for security reasons after September 11, 2001. However, the SFAR imposed new security procedures for pilots and aircraft operations at these airports.

In response to the SFAR, the FAA received 30 comments. Among the commenters were pilots and business operators based at these airports, transient pilots who regularly used these airports prior to September11, and the Aircraft Owners and Pilots Association (AOPA).

Since this action merely extends the expiration date of the SFAR in order to give concerned government agencies enough time to assess security requirements and determine appropriate regulatory action, the FAA is unable to fully address all of the comments received at this time. However, all comments will be considered prior to taking any permanent action regarding these airports. With this in mind, the FAA offers the following responses regarding the comments received.

Comment: Many commenters stated that they did not see a compelling reason for this SFAR, as it is their opinion that general aviation aircraft, and general aviation pilots operating at these airports do not pose a threat to the nation. Commenters cited incidents in Miami, FL, and Washington, DC as evidence of the inability of general aviation aircraft to cause significant damage.

FAA Response: The incidents identified above all involved very small aircraft and were all determined not to be associated with terrorism. These incidents are not representative of the potential threat posed by general aviation aircraft. FAA and TSA understand that

the enhanced security measures implemented at these airports impact operations at these airports. However, based on information provided by Federal security and intelligence agencies, the measures addressed by this SFAR are necessary to ensure the protection of key assets and critical infrastructure in the Washington area from airborne attack.

Initially, the restrictions included six local general aviation airports. The FAA and TSA, in coordination with other government agencies, reevaluated the threat and diminished the size of the TFR. Three airports were completely removed from the TFR restrictions. The other three airports remain under varying levels of restrictions because of the ongoing security threats to the government.

The Federal Government does not currently regulate security at general aviation airports. With over 19,000 airports, heliports, and landing strips across the United States, the FAA is exploring alternate methods to enhance the security of general aviation airports. In the meantime, however, the Federal Government has determined that the three specific airports require additional security measures due to their proximity to the Washington, DC Metropolitan area.

Comment: Several commenters believe that the SFAR should be rescinded and airports allowed to return to pre-September 11, 2001, operations.

FAA Response: We do not agree with these commenters. The FAA has met with Federal security and intelligence officials, and has been advised that, at this time, the threat level is such that the FAA cannot rescind the SFAR. This extension is temporary and expires on February 13, 2005. The FAA is keeping the action temporary, because it is working with the agencies that will make up the Homeland Security Department to

determine whether the SFAR and the airspace restrictions in the current Washington, DC, NOTAM should be adopted as a permanent rule.

Aviation is still viewed as a target and potential weapon by terrorist organizations. After the events of September 11, 2001, security at commercial airports has been enhanced. Thus, terrorists may be looking to alternative methods to conduct terrorist acts. Consistent with this concern, the Federal Bureau of Investigation (FBI) issued alerts indicating that, based on threat reporting, the use of "small aircraft" and charters may be of interest to terrorists seeking to carry out suicide attacks.

Comment: Numerous commenters would like to see the TFR boundaries adjusted, or minimized, and others stated that security, as well as air traffic procedures at these airports should be revised. Specifically, AOPA commented that the northeast boundary of the SFAR area overlaps a charted VFR waypoint used by VFR pilots in navigating along a charted VFR flyway through the Baltimore-Washington Class B airspace area. This conflict could result in pilots unintentionally violating the SFAR airspace. In addition, some commenters suggested that the TFR airspace be defined by the DCA VOR, in lieu of the Washington Monument.

FAA Response: The TFR of concern to this commenter (NOTAM 1/3354) is not a part of the SFAR. The TFR issued through NOTAM 2/2263 imposes restrictions for security purposes. The TFR boundaries coincide with the Washington, DC Metropolitan Area Special Flight Rules Area that is described in SFAR 94. The current TFR over the Washington, DC metropolitan area serves to protect an area containing key assets and critical government infrastructure. The size of the TFR around Washington has been

agreed to by all the Federal agencies that have responsibility for ensuring the security of key assets and critical infrastructure in the area. No changes are being made to the NOTAM at this time.

However, the FAA notes that the VFR waypoint that was located on the northeast boundary of the TFR has been relocated so that it is no longer within the TFR boundary. In addition, the FAA issued a special edition of the Baltimore-Washington VFR Terminal Area chart, which depicts both the relocated waypoint, and the boundaries of the Washington DC, Metropolitan Area Special Flight Rules Area. Regarding the definition of the TFR area, originally, NOTAM 1/3354 described the area with reference to the Washington Monument. However, that NOTAM also included a detailed description of the TFR area using a combination of radials and DME from the DCA VOR/DME and latitude/longitude coordinates for each point. SFAR 94 did not describe the area with reference to the Monument. Any reference to the Washington Monument has been deleted from subsequent NOTAMs.

Comment: Several commenters submitted alternative proposals to the TFR, such as placing all of the airports under enhanced Class B airspace, developing an elevated response level that is commensurate with the National Security level as determined by Homeland Security, or upgrading Hyde Field as DCA alternative.

FAA Response: The FAA finds that under existing circumstances, SFAR 94 continues to provide adequate security for the National Capitol Area. These comments will be addressed as part of any final decision regarding the three Maryland airports in question.

Petition For Rulemaking

On October 16, 2002, the FAA received a petition for rulemaking from the Aircraft Owners and Pilots Association (AOPA). The petition seeks relief from the security requirement for pilots at the three affected airports. Specifically, the petition requests that the FAA amend SFAR 94 to allow security vetted pilots at the three airports to conduct flights to any of the other three airports (College Park Airport, Washington Executive/Hyde Field, Potomac Airport), allow traffic pattern work at these three airports, and allow transient pilots to operate at these airports, subject to the security provisions of this rule. On December 23, 2002, the FAA notified AOPA that the petition would be considered a comment and placed in the docket for this SFAR.

FAA Response: Since SFAR 94 was published, the FAA has issued NOTAM 2/2720 under the Administrator's authority in SFAR 94 to permit operators based at one of the three Maryland airports to fly into, out of or between any of the three airports, provided they do the following:

1. File an IFR or VFR flight plan with Leesburg Automated Flight Service Station;
2. Obtain an Air Traffic Control clearance with a discrete transponder code; and
3. Follow arrival/departure procedures contained in the NOTAM.

Justification for Immediate Adoption

Because the circumstances described herein warrant immediate action, the Administrator finds that notice and public comment under 5 U.S.C. 553(b) is impracticable and contrary to the public interest. Further, the Administrator finds that

good cause exists under 5 U.S.C. 553(d) for making this rule effective less than 30 days after publication in the Federal Register. The Washington, DC area has a number of critical governmental and national assets. The U.S. government believes that terrorists still are looking to use general aviation aircraft to conduct terrorist activity. General aviation is an attractive means for terrorism because the training period for learning to fly many of the smaller aircraft is shorter, and security at most general aviation airports is not as tight as security at commercial airports. In fact, the FBI issued terrorist alerts in May and July of 2002 regarding small airports. By extending the effective period of this SFAR, critical national assets will continue to be protected against an airborne threat while permitting operations at these airports.

This action is taken in accordance with the Administrator's statutory mandate found in section 44701(a)(5) of Title 49, United States Code (49 U.S.C.) to promote the safe flight of civil aircraft in air commerce by proscribing regulations and minimum standards necessary for safety in air commerce and national security. This action is necessary to permit aircraft operations to resume at the affected airports while preventing possible hazardous actions directed against aircraft, persons, and property within the United States. This action is also being taken pursuant to the statutory authority in 49 U.S.C. section 40103(b)(3).

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 determined that there are no ICAO Standards and Recommended Practices that correspond to this SFAR.

Paperwork Reduction Act

This final rule contains information collection activities subject to the Paperwork Reduction Act (44 U.S.C. 3507(d)). In accordance with the Paperwork Reduction Act, documentation describing the information collection activities was submitted to the Office of Management and Budget (OMB) for review and approval, and assigned control number 2120-0677.

This rule constitutes a recordkeeping and third party disclosure burden on persons conducting operations at specific airports in the Washington, DC area. The respondents are three airports, the State of Maryland, and persons flying to or from these airports.

A protection provided by the Paperwork Reduction Act states that an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. As stated above, the OMB control number is 2120-0677.

Economic Analyses

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. sections 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 $100 million or more annually (adjusted for inflation.)

In conducting these analyses, FAA has determined this rule: (1) has 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) will have a significant economic impact on a substantial number of small entities; (3) will 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.

Costs

The FAA has performed an analysis of the expected costs and benefits of this SFAR; specific parts of the SFAR resulted in costs only during its first year, and this analysis will mention them in the course of discussing the different cost elements. The TSA performed the analysis for the SFAR's first year; a copy of their final regulatory

evaluation of the economic impacts has been placed in Docket No. FAA-2002-11580; SFAR 94.

The FAA was able to obtain limited historical financial and operational data for College Park and Potomac Field Airports and was also able to obtain this data 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, as will be seen below, FAA was required to make additional assumptions in doing the analysis for this airport.

In 2000, approximately 89,000 part 91 operations were conducted from these airports. The 2001-2002 flight restrictions have caused significant economic hardship for these airport operators, aircraft owners and operators based at the airports, and businesses located on, or dependent upon, the continued operation of the airports.

To provide a basis for comparison, the operational and financial data provided by the three airports has been adjusted to reflect full years of operation. The projected cost of compliance for all three airports is estimated to be $12.51 million ($11.22 million, discounted) over the 2 years that the SFAR is in effect. In addition, the cost to the Federal and state governments sums to approximately $245,800 ($220,500, discounted), so that the total cost of this final rule is $12.76 million ($11.44 million, discounted).

College Park Airport

The College Park Airport was 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 a combination of private pilots and fliers who use their aircraft to conduct business. This annualized revenue loss was increased by a

factor of 20% to account for revenues losses not included in the analysis. Thus, the estimate of losses to College Park Airport associated with complying with the operational restrictions in SFAR 94 is $1.62 million for each of the 2 years examined by this analysis. In doing these analyses, the FAA assumes no change in annual revenue per year.

The cost to the College Park Airport and its pilots of complying with the security provisions of this rule will be approximately $347,700 per year. Security costs, which include airport security program maintenance, airport security program modification, and airport physical security provision, sum to $181,500. Security costs for pilots sum to $166,200 and are based on the ground and in-flight delays.

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 for the 2 years examined by this analysis, the FAA estimates annual revenue loss to be $1.36 million. This annualized revenue loss was increased by a factor of 20% to account for revenue losses not included in the analysis. Thus the FAA estimates losses of $1.63 million for each of the 2 years examined by this analysis.

The estimated cost to Potomac Airfield Airport and its pilots of complying with the security provisions of this rule will be approximately $411,000 over each year that SFAR 94 is in effect. Security costs, which include airport security program maintenance, airport security program modification, and airport physical security provision, sum to $63,100. Security costs for pilots sum to $347,900 and are based on the ground and in-flight delays.

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 fliers and 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. For costing purposes, the FAA assumes that this airport will remain open for the 2 years of the SFAR 94 extension.

Because the airport had been closed for much of 2002, revenue data is very sketchy. The FAA was able to obtain information on some components, such as fuel sales, aircraft storage fees, landing fees, and miscellaneous sales, but was unable to obtain information on other components, such as aircraft maintenance, aircraft rental, and avionic services. Accordingly, the cost of compliance for the Washington Executive Airport has been adjusted to compensate for the lack of financial data. To offset this shortcoming, the average of the estimated costs of the operational restrictions incurred by the two other airports has been added to the cost of compliance for the Washington Executive Airport. The similarities in size, operations, and geographic location of these airports add credibility to the extrapolation of financial losses. This resulted in the estimate of losses associated with complying with the operational restrictions of SFAR 94 for this airport to be $1.52 million for each of the 2 years examined by this analysis. The FAA does not have historical data on revenue growth at this airport. Accordingly, the FAA will assume no annual change in revenue from either the base period or the contrast period.

The estimated cost to this airport and its pilots of complying with the security provisions of this rule will be approximately $641,900 over each year that SFAR 94 is in effect. Security costs, which include airport security program maintenance, airport security program modification, and airport physical security provision, sum to $78,600 annually. Security costs for pilots sum to $563,300 annually and are based on the ground and in-flight delays.

Other Costs

This rule will impose costs on both Federal and state governmental agencies, totaling $122,900 per year, which is made up of:

- A security specialist at TSA will mandate periodic modifications to each airport's security procedures as well as check each airport's compliance with these mandates.
- Flight service station specialists will need to file the flight plans.
- An airport inspector at TSA will inspect each airport on a monthly basis. This inspector will need to liaison with the state government law enforcement agency involved in the program and will need to fill out airport inspection forms for each airport inspection.

Benefits

This final rule is intended to provide an increased level of safety and security against the threat of airborne terrorist attacks. The primary benefit of the rule will be enhanced protection for the vulnerability of a significant number of vital government assets in the National Capital Region. The temporary 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.

For the past two decades, the major goal of aviation security has been the prevention of in-flight bombings and acts of sabotage. Thus, the major line of defense against an aviation-related criminal or terrorist act has been the prevention of an explosive or incendiary device from getting on board an airplane. The February 1993 attack on the World Trade Center (WTC) raised public awareness that the scope of the foreign terrorist threat in the U.S. was more serious and technically more sophisticated than previously thought. The ensuing investigation revealed that foreign terrorists operating in the U.S. are capable of building sophisticated explosive devices and covertly carrying out their plans. The attacks of September 11, 2001, introduced the specter of terrorists using civil aviation aircraft as a missile against civilian targets, government control centers, political targets, and economic, and/or socially prominent assets. This raises concern regarding the vulnerability of critical government and military facilities to the threat of terrorism. National security demands that a terrorist strike within the National Capital Region must be taken into consideration.

The experience of the past 30 years combating acts of air piracy confirms that the losses associated with aircraft bombings and hijackings are identifiable, measurable, and confined. The cost of a catastrophic terrorist act against a civilian aircraft can be estimated in terms of lives lost, property damage, decreased public utilization of air transportation, etc. A terrorist attack using a weapon of mass destruction on an urban area would inflict casualties and property damage on a far greater scale than any act perpetrated against a commercial aircraft. If successful, the economic impact would be enormous and in many ways incalculable as demonstrated by the September 11, 2001, attacks, for which the economic costs will not be fully realized for several years.

However, even if such an attack failed, there would be a direct economic cost of reduced travel and tourism due to individuals' perceptions of safety and security.

The rule's objective is to reduce the risk that an airborne terrorist attack initiated from an airport moments away from vital national assets will occur. The cost of a major act of terrorism against a nationally prominent target or critical government infrastructure is extremely difficult to quantify. Dependent upon the target and extent of damages, etc., this type of terrorist act would have far reaching economic consequences and long lasting social and/or political implications. As such, losses associated with such an act are virtually impossible to estimate.

The following analysis describes an attempt at quantifying some of the elements involved with the impact of a small general aviation aircraft within the National Capital Region. This is intended to allow the reader to judge the likelihood of benefits of the rule equaling or exceeding its cost. The FAA recognizes that such an impact may not cause substantial damage to property or a large structure; however, it could potentially result in an undetermined number of fatalities and injuries and reduced tourism.

The FAA is unable to predict which target or location such an aircraft would crash into. In a worst-case scenario, a general aviation aircraft could be flown into the dome of the Capitol Building. While the destruction of the aircraft is almost certain, it is not known to what extent the dome or the building would be damaged. Fatalities and casualties could number into the thousands in the case of a direct attack. According to the Capitol Visitor Center website, as many as 18,000 individuals visited the Capitol Building each day during peak season, and this does not take into account those who work or do business in the Capitol Building on a daily basis when Congress is in session.

Due to the number of unknowns involved in a terrorist attack in the National Capital Region, the economic cost due to fatalities, casualties and property damage are inestimable.

In addition to casualties and property damage, which are difficult to quantify, there would be the potential loss of revenue from a decrease in travel and tourism resulting from a terrorist incident in the nation's capital. This negative impact that a terrorist attack, successful or not, would have on tourism is quantifiable. The heightened state of alert that follows a terrorist strike is typified by halted public tours, obstructed streets, off limits public buildings, closed down landmarks, and increased public apprehension. After the September 11th attacks, tours at the Capitol Building were curtailed and tourism as a whole declined. A terrorist attack specifically against the nation's capital would draw significant national and international media attention. The adverse publicity would weaken consumer confidence and further discourage travel and tourism to the Washington, D.C. Metropolitan area. The U.S. National Park Service and the District of Columbia Government's Office of Planning and Economic Development cite that tourism is the number one private sector Industry in the region. An estimated 22 million visitors come to the Washington Region each year, and spent, on average, about $116.00 per person.

Assuming that each person spends $116 per visit, multiplying this times 22,000,000 tourist yields $2.552 billion as the annual contribution visitors make to the Washington, DC economy. Based on the experience of September 11, 2001, the FAA believes that a decline of three percent is a conservative estimation as to the decline in overall tourism. Three percent of the $2.552 billion would result in a $76.56 million

decline in revenues to the District of Columbia economy. The FAA believes that the casualty and property loss added to the estimated $76.56 million revenue decline from reduced tourism could easily be in the hundreds of millions of dollars.

This SFAR was promulgated on February 13, 2002 and will last for 3 years. Accordingly, these benefits need to be applied over this 3-year period. This analysis looks at the costs and benefits of the SFAR extension, for the final 2 years of this SFAR, so the benefits calculations need to be examined for this 2-year period, meaning that only two-thirds of the $76.56 million can be applied to this rule; benefits sum to $51.04 million ($45.78 million, discounted); these benefits assume an equally likely chance that this incident will be avoided during any time over the 3-year period. The TSA regulatory evaluation will analyze the benefits for the first year of the SFAR.

The cost of this rule is estimated to be $12.76 million ($11.44 million, discounted). This cost needs to be compared to the possible unfortunate consequences that could occur if a terrorist attack using a small general aviation aircraft is carried out against a public facility or congested public assembly area located within National Capital Region. Using conservative assumptions, the FAA estimates that the costs of an airborne attack could equal $76.56 million in terms of fatalities, injuries, the destruction of the airplane, and reduced tourism. Two-thirds of these costs can be counted as the benefits for this SFAR extension, and they need to be contrasted with the cost of implementing SFAR 94 for all three airports. The FAA concludes that the benefits vastly outweigh the costs.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the Act. However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA is not required to provide a regulatory flexibility analysis for this rulemaking action, because there was not a previous Notice of Proposed Rulemaking (NPRM). (See "Justification for Immediate Adoption," above.) The FAA has provided one, however, because it believes that it is important to show the potential impact on these entities for completeness.

For this SFAR, the small entity group is considered to be small general aviation airports (Standard Industrial Classification Code [SIC] 4581 - Airports, Flying Fields, and Airport Terminal Services). The small entity size standards criteria used by the FAA in past analyses involving airports defines a small airport as one with annual revenues of less than $5 million. In addition, all privately owned, public-use airports are considered small.

Three airports are affected by this rule. The College Park Airport is owned and partially funded by two Maryland Counties, Montgomery and Prince Georges. 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.

As a basis for comparison among small airports, the FAA examined the revenue base for all Part 139 small airports. 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. The two small airports subject to SFAR 94 are not supported from tax revenues, as the revenues that sustain the two airports are derived solely from the pilots who use the airports. The estimated annual cost of compliance, based on known costs and revenues for the Washington Executive Airport is $290,70000 and the burden on the Potomac Airfield Airport is $220,700; they increase to $333,100 and $252,200 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). Therefore, the FAA has determined that the rule will have a significant economic impact on a substantial number of small entities.

Regulatory Flexibility Analysis

Under section 603 (b) of the RFA (as amended), each final regulatory flexibility analysis is required to address the following points: (1) reasons why 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 FAAA will perform an analysis for the two small airports impacted by this rule.

Reasons why 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 possible carriers of biological, chemical, radioactive and/or conventional weaponry against civilian targets. The airports affected by this rule are located within a few minutes flight from vital civilian and military control centers. This final rule recognizes that the terrorist threat is changing and growing and that extraordinary steps must be taken to safeguard vulnerable critical national assets and counter the increased threat level.

The objectives and legal basis for the rule—The objective of the rule is to restore operations at the affected airports while attempting to counter the threat of a possible terrorist airborne attack carried out against vital national assets located within the National Capital Region. The Legal basis for the rule is found in 49 U.S.C. 44901 et seq. Both the FAA and the TSA 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—The rule applies to two small general aviation airports subject to SFAR 94. Private fliers and some pilots who occasionally operate their aircraft for business reasons use the two airports.

The reporting, record keeping, and other compliance requirements of the rule—As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review:

-- Paragraph 4. Airport Security procedures, Subparagraph (a) requires the two airports to modify or submit the security procedures program at the request of the TSA as well as maintain their security program. The cost and time required for these activities is estimated to be $672 at Potomac, taking 16 hours, and $600 at Washington Executive/Hyde, taking 15 hours for a total of $1,272, taking 31 hours.

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 on 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 this rule became effective 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's financial strength is substantially influenced by its working capital position and its ability to meet its short-term liabilities. As fixed-base operator and pilots have relocated to other airfield, 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 SFAR

94 are very high relative to the current revenues reported by the airports. As discussed in more detail in the full analysis, the security costs alone are more than 20 percent of the projected revenues, $63,100 out of total airport revenue of $259,000 at Potomac and $78,600 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 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 are intimidating and have caused many private pilots to relocate to other airports. On the basis of the above, the FAA considers that the rule will threaten the viability of the impacted airports.

Competitiveness analysis—Airports located further away from the DCA VOR/DME are not subject to the security provisions and air traffic restrictions now in effect for College Park Airport, 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 SFAR face additional costs in filing flight plans which they would not have at alternative airport; these costs sum to $347,900 annually ($33.13 per operation) at Potomac and $563,300 annually ($33.14 per operation) at Washington Executive Airport/Hyde Field.

Business Closure—The FAA is unable to determine with certainty whether the two small airports significantly impacted by this rule will remain open. On the basis of the Affordability Analysis provided above, the FAA considers that the rule will threaten the viability of the impacted airports.

ALTERNATIVES

This rule was brought about by the need to restore operations at the affected airports while providing increased protection against the threat of a terrorist strike to the Nation's capital. The FAA found that the urgent need to provide relief made the use of advance notice impractical and contrary to public interests. The fact that the rule is in effect reduces the number of options to be examined in this analysis; meanwhile, the FAA and the TSA are considering all comments and reviewing other alternatives. Moreover, both agencies believe that any change 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 rule immediately—This alternative would provide immediate relief to the 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. This makes this regulation necessary until such time that this threat is neutralized.

Conclusion: Rescinding the rule 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 - Status Quo—Under this alternative, the FAA and TSA would maintain the present security and air traffic operational restrictions. The annual cost of compliance for the affected airports totals $511,400; they increase to $585,400 when the anticipated airport revenue losses are increased by 20% The rule ensures that any aircraft operating to and from the affected airports and transiting the restricted area specified in the SFAR has been properly identified and cleared.

Conclusion: This alternative is preferred because it balances the security concerns against the impact on the three airports and related businesses.

Alternative 3 – Close Airports Permanently – Under this alternative, the FAA would completely close the three airports to all aviation operations. This would effectively close all aviation-related businesses at or near the affected airports. 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 hanger, 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 the three affected airports.

International Trade Impact Statement

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or 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. In addition, consistent with the Administration's belief in the general superiority and desirability of free trade, it is the policy of the Administration to remove or diminish to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries and barriers affecting the import of foreign goods and services into the United States.

In accordance with the above statute and policy, the FAA has assessed the potential effect of this final rule and has determined that it will have only a domestic impact and therefore no affect on any trade-sensitive activity.

Executive Order 13132, Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104-4 on March 22, 1995 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 prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (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."

This rule does not contain such a mandate. Additionally, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply when no notice of proposed rulemaking has first been published. Accordingly, the FAA has not prepared a statement under the Act.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j) this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of this SFAR has been assessed in accordance with the Energy Policy and Conservation Act (EPCA), Pub. L. 94-163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. It has been determined that this SFAR is not a major regulatory action under the provisions of the EPCA.

List of Subjects

14 CFR Part 91

Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Security.

The Amendment

For the reasons stated in the preamble, the Federal Aviation Administration amends 14 CFR chapter I as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 40101, 44111, 44701, 44709, 44711; 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506 -46507, 47122, 47508, 47528-47531, articles 12 and 29 of the Convention on International Civil Aviation (61 stat. 1180).

2. Amend Special Federal Aviation Regulation (SFAR) No. 94 by revising section 7 to read as follows:

SFAR NO. 94 - ENHANCED SECURITY PROCEDURES FOR OPERATIONS AT CERTAIN AIRPORTS IN THE WASHINGTON, DC METROPOLITAN AREA SPECIAL FLIGHT RULES AREA

* * * * *

7. Expiration. This Special Federal Aviation Regulation shall remain in effect until February 13, 2005.

BF 2-12-03

Issued in Washington, DC on February 11, 2003

Marion Blakey

Marion C. Blakey
Administrator

Certified to be a True Copy
Bonnie Fritts
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