

Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-4687.

**SUPPLEMENTARY INFORMATION:** EDA published an interim final rule (“IFR”) in the *Federal Register* (73 FR 62858) on October 22, 2008. In March 2007, the Office of the Inspector General published a report titled *Aggressive EDA Leadership and Oversight Needed to Correct Persistent Problems in the RLF Program*. In the time since the publication of this report, EDA has made significant improvements in the management and oversight of its revolving loan fund (“RLF”) program, including the issuance of written guidance that provides EDA staff with reasonable steps to help better ensure grantee compliance with RLF requirements. EDA published the interim final rule to synchronize the RLF regulations with that guidance. Additionally, EDA published the IFR to make changes to certain definitions in the Trade Adjustment Assistance for Firms Program regulations set out in 13 CFR part 315. The IFR also provided notice of other substantive and non-substantive revisions made to the EDA regulations.

This document extends the deadline for submitting public comments on the entire interim final rule from 5 p.m. (EST) on December 22, 2008 until 5 p.m. (EST) on January 22, 2009. The procedure for submitting public comments is set forth in the interim final rule and is not changed by this document. The extension of the public comment period is necessary to provide additional time for the submission of public comments and to allow for EDA’s additional consideration of matters pertaining to the effective implementation of the interim final rule.

#### **Executive Order No. 12866**

It has been determined that this final rule is not significant for purposes of Executive Order 12866.

#### **Congressional Review Act**

This document is not “major” under the Congressional Review Act (5 U.S.C. 801 *et seq.*).

#### **Executive Order No. 13132**

Executive Order 13132 requires agencies to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in Executive Order 13132 to include regulations that have “substantial direct effects 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.” It has been determined that this document does not contain policies that have federalism implications.

Dated: December 10, 2008.

**Otto Barry Bird,**

*Chief Counsel, Economic Development Administration.*

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## **DEPARTMENT OF TRANSPORTATION**

### **Federal Aviation Administration**

#### **14 CFR Parts 1 and 93**

[Docket No. FAA-2004-17005; Amdt. Nos. 1-63 and 93-90]

RIN 2120-AI17

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

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

**ACTION:** Final rule.

**SUMMARY:** This action codifies special flight rules and airspace and flight restrictions for certain aircraft operations in the Washington, DC Metropolitan Area. The FAA takes this action in the interest of national security. This action is necessary to enable the Department of Homeland Security (DHS) and the Department of Defense (DOD) to effectively execute their respective constitutional and Congressionally-mandated duties to secure, protect, and defend the United States.

**DATES:** Effective February 17, 2009.

**FOR FURTHER INFORMATION CONTACT:** For technical questions concerning this final rule, contact Ellen Crum, Airspace and Rules Group, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267-8783.

For legal questions concerning this final rule, contact C.L. Hatrup, Office of the Chief Counsel, Federal Aviation Administration, Washington, DC 20591; telephone (202) 385-6124. Questions relating to national security determinations relevant to the enactment of this rule, or any matter falling under the purview of other U.S. government agencies, will be referred to the Department of Homeland Security, Department of Defense, Department of Justice, or other agency, as appropriate.

**SUPPLEMENTARY INFORMATION:**

#### **Authority for This Rulemaking**

The FAA Administrator has broad authority to regulate the safe and efficient use of the navigable airspace (Title 49 United States Code (U.S.C.) 40103). The Administrator is also obligated 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. The Administrator is likewise authorized and obligated to issue regulations or orders assigning the use of the airspace to ensure the safety of aircraft as well as the efficient use of the airspace. Additionally, the Administrator is authorized and obligated to prescribe air traffic regulations for the flight of aircraft, to include mandating safe altitudes, for navigating, protecting, and identifying aircraft; protecting individuals and property on the ground; using the navigable airspace efficiently; and preventing collision of aircraft with other airborne objects, land or water vehicles, or other aircraft.

The Administrator is authorized and obligated to establish security provisions governing use of and access to the navigable airspace by civil aircraft, balancing the needs of national security and national defense with the mandate to allow and encourage maximum use of the navigable airspace by civil aircraft. Pursuant to 49 U.S.C. 40103(b)(3)(A), the Administrator is authorized as well as obligated to establish areas in the airspace if the Administrator, after consulting with the Secretary of Defense, determines doing so is necessary in the interest of national security. Since the Department of Homeland Security was established in 2002 after the enactment of the statute referred to above, the Administrator’s need and responsibility to consult with the Secretary of Homeland Security in addition to the Secretary of Defense is consistent with the intent and purpose of the statute.

#### **List of Abbreviations and Terms Frequently Used in This Document**

ADIZ—Air Defense Identification Zone  
AOPA—Aircraft Owners and Pilots Association  
ATC—Air Traffic Control  
DASSP—DCA Access Standard Security Program  
DCA VOR/DME—Washington, DC VHF omni-directional range/distance measuring equipment  
DHS—Department of Homeland Security  
DOD—Department of Defense  
FRZ—Flight Restricted Zone  
HSAS—Homeland Security Advisory System  
IFR—Instrument flight rules

Maryland Three Airports—College Park Airport, Potomac Airfield, and Washington Executive/Hyde Field  
 NCR—National Capital Region  
 NCRCC—National Capital Region Coordination Center  
 NM—Nautical mile  
 NOTAM—Notice to Airmen  
 NPRM—Notice of Proposed Rulemaking  
 ODNI—Office of the Director of National Intelligence  
 PCT—Potomac Terminal Radar Approach Control (Potomac TRACON)  
 SFRA—Special Flight Rules Area  
 TFR—Temporary flight restriction  
 TSA—Transportation Security Administration  
 VFR—Visual flight rules

## Table of Contents

- I. Overview
- A. DC Area Airspace Operations Before September 11, 2001
  - B. DC Area Airspace Operations After September 11, 2001
  - C. National Security Initiatives
  - D. The FAA's Role
  - E. The 2003 NOTAM
  - F. The 2005 Proposed Rule
  - G. Public Comments In Response to the 2005 Proposed Rule
  - H. The 2007 NOTAM
  - I. Rationale for Adopting This Final Rule
  - J. Use of Force
- II. Management of Airspace for National Security Purposes
- III. Summary of the Final Rule
- A. Differences Between the Proposed Rule and the Final Rule
    1. Regulatory text proposed as subpart B adopted as subpart V, with modification
    2. Dimensions of the DC SFRA
    3. Fringe airports
    4. Opening/closing flight plans
    5. Part 91 Operations at Ronald Reagan Washington National Airport (DCA Access Standard Security Program (DASSP))
    6. Addition of definition of "national defense airspace" in 14 CFR part 1
    7. Change "aeromedical operations" references to "lifeguard or air ambulance operations under an FAA/TSA airspace authorization"
  - B. Differences Between the August 30, 2007 NOTAM and the Final Rule
  - C. Related Regulatory Activity
    1. 14 CFR parts 61 and 91
    2. 49 CFR part 1562
    3. 49 CFR parts 1520, 1540, and 1562
- IV. Discussion of Public Comments
- A. Security Issues
    1. Restrictions on freedom are not justified
    2. General aviation aircraft pose no threat
    3. General aviation pilots pose no threat
    4. Aviation, especially general aviation, is being unfairly regulated instead of other modes of transportation
    5. An SFRA was established for Washington, DC, but not for other cities
    6. The DC SFRA is not necessary now that other security measures are in place
    7. Factors determining the dimensions of the DC FRZ and the DC SFRA
    8. The FAA needs the flexibility to change these requirements in response to a verified threat

9. Alternatives considered prior to implementation of the DC SFRA
  10. Threat analysis for the Washington, DC area
  11. Treating unintentional airspace incursions as security threats
- B. Safety and Operational Issues
1. Frequencies are congested, and controllers are overburdened and distracted
  2. Too many aircraft congregate around the same fixes while awaiting assignment of a discrete transponder code
  3. The DC SFRA forces pilots to fly over water and mountainous areas
  4. Pilots are afraid to engage in training/proficiency flying activities around the DC SFRA
  5. Safety is compromised because the DC SFRA requires more complex skills
  6. Delays in obtaining authorization to re-enter the DC SFRA cause safety problems
  7. DC SFRA procedures are a distraction to pilots, who should be focused on scanning for other aircraft
  8. The configuration of the DC SFRA is difficult for pilots to navigate
  9. Reduced airport services reduce options available to pilots
- C. Administrative and Regulatory Issues
1. The FAA has not met statutory requirements to report to Congress the justification for keeping the DC SFRA
  2. The DC SFRA was intended to be temporary, and was put in place hastily, without public input
  3. Suggestions from commenters for alternatives to the DC SFRA
  4. The DC SFRA amounts to a "taking" (a seizure of private property without due process)
  5. The FAA allowed other Federal agencies to direct its decision making
- V. Paperwork Reduction Act
- VI. International Compatibility
- VII. Regulatory Impact Analysis, Regulatory Flexibility Determination and Analysis, International Trade Impact Assessment and Unfunded Mandates Assessment
- A. Regulatory Impact Analysis
  - B. Final Regulatory Flexibility Determination
  - C. Regulatory Flexibility Analysis
  - D. International Trade Impact Assessment
  - E. Unfunded Mandates Assessment
- VIII. Executive Order 13132, Federalism
- IX. Environmental Analysis
- X. Regulations That Significantly Affect Energy Supply, Distribution, or Use
- XI. Availability of Rulemaking Documents
- XII. Small Business Regulatory Enforcement Fairness Act

## I. Overview

### A. DC Area Airspace Operations Before September 11, 2001

Before the attacks of September 11, 2001, aircraft operators in the Washington, DC National Capital Region (NCR) were subject to the General Operating and Flight Rules contained in 14 CFR part 91, including rules for operations in Class B airspace. Additionally, aircraft operators were not

permitted to enter the prohibited areas already designated under 14 CFR part 73 for portions of the District of Columbia, including the White House, the U.S. Capitol building, and the U.S. Naval Observatory.

### B. DC Area Airspace Operations After September 11, 2001

In immediate response to the September 11, 2001 attacks, the FAA implemented numerous temporary flight restrictions (TFRs) across the United States in the interest of national security under 49 U.S.C. 40103(b)(3). Civilian airports in the NCR were closed to commercial and general aviation operations while defense and law enforcement agencies assessed the risk of further terrorist activity. In addition, a 25-nautical-mile-radius (NM) TFR area, extending from the surface to 18,000 feet around Washington, DC, was established. Eventually, commercial flight activities were allowed to resume in graduated stages, and in December 2001, the 25-NM-radius TFR around Washington, DC was reduced to an approximately 15-NM radius centered on the Washington, DC very high frequency omni-directional range/distance measuring equipment (DCA VOR/DME).

After 2001, as part of its homeland defense mission, the North American Aerospace Defense Command (NORAD) was directed to expand its air defense mission to include combat air patrols throughout the United States, focusing primarily on major cities and major airports. This expanded U.S.-Canada binational domestic defense mission is known as Operation Noble Eagle (ONE). In 2003, as part of the nation's preparation for the war in Iraq, DHS initiated an operation called Operation Liberty Shield to enhance homeland security. In support of that initiative, the FAA, in consultation with the Department of Homeland Security (DHS), the Department of Defense (DOD), and other Federal agencies, implemented TFRs around Washington, DC New York City, and Chicago. The restrictions around New York City and Chicago were later rescinded when Homeland Security Advisory System (HSAS) threat levels declined. Restrictions around Washington, DC, were retained for reasons of national security, as discussed in more detail below.

### C. National Security Initiatives

As part of a renewed focus on national security and national defense after September 11, 2001, the Federal government implemented numerous policy changes and initiatives as part of

a coordinated, layered effort to identify, prevent, eliminate or minimize the vulnerabilities exploited by terrorists. For example, on June 20, 2006, the President issued National Security Presidential Directive-47/Homeland Security Presidential Directive-16, Aviation Security Policy, which led to the National Strategy for Aviation Security (NSAS). The NSAS Supporting Plans, which were issued on March 26, 2007, include such things as aviation transportation system security, aviation transportation system recovery, aviation operational threat response, air domain surveillance and intelligence integration, domestic outreach, and international outreach. The NSAS links all agencies with responsibilities across the spectrum of protecting and securing the aviation domain. Primary agencies include DHS, DOD, the Departments of Transportation (DOT), Justice (DOJ), State (DOS), and Energy (DOE), and the Office of the Director of National Intelligence (ODNI).

Another initiative after September 11, 2001, was the creation of the Transportation Security Administration (TSA) under DOT for aviation security. In November 2002, DHS was created, and TSA was transferred to that Department. The FAA did not and does not have the responsibility, authority or ability to independently identify and assess threats to national security. These functions are performed by other Executive Branch departments and agencies with authority to do so.

#### D. The FAA's Role

The FAA Administrator has responsibility for the management of the nation's airspace and Air Traffic Control (ATC) system. Pursuant to 49 U.S.C. 40103(b)(1) and (b)(2), the FAA Administrator has broad authority to regulate and manage national airspace in the interest of safety and efficiency. The FAA Administrator also has separate statutory authority under 40103(b)(3) to regulate and manage airspace solely for reasons of national security. That paragraph states the FAA Administrator, "in consultation with the Secretary of Defense" shall—"(A) establish areas in the airspace the Administrator decides are necessary in the interest of national defense; and (B) by regulation or order, restrict or prohibit flight of civil aircraft that the Administrator cannot identify, locate, and control with available facilities in those areas." The FAA works closely with the Secretary of Defense as well as the U.S. Northern Command (NORTHCOM), NORAD, DHS, and DOJ to identify and evaluate aviation- or airport-related threats or incidents from

around the country, facilitate the appropriate level and scope of any response, and ensure that potentially significant information is elevated immediately under existing reporting or emergency notification procedures.

The FAA is responsible for acting as the liaison with the DHS Office of National Capital Region Coordination (ONCRC). In creating the ONCRC, Congress recognized the unique and complex challenges that exist in the National Capital Region that is home to 12 local jurisdictions, two states, the District of Columbia, and all three branches of the Federal government. Actions taken by DHS, DOJ, DOT, DOD, DOS, DOE, ODNI, and the Office of the Director of the National Counterterrorism Center (NCTC) to effectively discharge their complementary responsibilities include, but are not necessarily limited to—

- Creation of the Regional Incident Communication and Coordination System (RICCS), implemented through Memorandum of Understanding of NCR agencies;
- Improvement to the Domestic Emergency Management System; and
- Establishment of the National Capital Region Coordination Center (NCRCC), the Freedom Center, and the National Intelligence Center (NIC) to facilitate better real-time communication sharing among all the responsible agencies.

One of the primary goals of the NCRCC was to enable all agencies to effectively carry out their respective roles and responsibilities, which are fully outlined in the NSAS Aviation Operational Threat Response Plan. The Secretary of Transportation is responsible for coordinating and managing the national airspace system, which includes, but is not limited to, supporting AOTR by expediting and deconflicting clearance and routing of DOD and DHS interdiction assets and providing air contact information to enhance airborne AOTR. The FAA also supports AOTR efforts and steady-state defense, security and other airborne law enforcement and crisis response missions through the planning and execution of a broad spectrum of airport and air traffic management related measures. These actions, including establishment of the DC SFRA, are taken by the FAA as the United States' civil aviation authority.

#### E. The 2003 NOTAM

In February 2003, under 14 CFR 99.7, *Special Security Instructions*, the FAA established the Washington, DC Metropolitan Area Air Defense Identification Zone (DC ADIZ) through

the issuance of a Flight Data Center (FDC) NOTAM. The NOTAM also identified the previously established 15-NM restriction centered on the DCA VOR/DME as the Washington, DC Metropolitan Area Flight Restricted Zone (FRZ). The NOTAM prescribed radio communication, transponder, and flight plan requirements for pilots to follow while operating under visual flight rules (VFR) within the ADIZ. The DC ADIZ was put in place to provide a means for law enforcement and security communities to track aircraft operating in the vicinity of the nation's capital. Some types of operations, such as U.S. military, law enforcement, and lifeguard or air ambulance operations under an FAA/TSA airspace authorization, were excluded from the requirements. NOTAMs, however, are intended to be short-term measures to address temporary or unanticipated situations until the appropriate modifications can be made to procedures, publications, or regulations. Considering the continued significance of the NCR as a potential target, the FAA determined that it was necessary to issue permanent restrictions for operating in the Washington, DC Metropolitan Area.

#### F. The 2005 Proposed Rule

On August 4, 2005, the FAA published a Notice of Proposed Rulemaking (NPRM) proposing to codify flight restrictions that were implemented by various NOTAMs in effect at that time for certain aircraft operations in the Washington, DC Metropolitan Area (70 FR 45250; Aug. 4, 2005). The NPRM proposed to retain the two-way radio communication, transponder, and flight plan requirements found in the NOTAMs. In addition, although the Washington, DC airspace was referred to as an ADIZ in the NOTAMs, the NPRM proposed to rename the airspace as a Special Flight Rules Area (SFRA). Note that, except in contexts in which use of the term "DC ADIZ" or "ADIZ" is necessary, the term "DC SFRA" is used in the remainder of this document, even though most public comments and historical documents contain the term "ADIZ." The term "DC SFRA" includes both the airspace configuration in existence at the time of the NPRM and the re-configured airspace reflected in an August 30, 2007 NOTAM (discussed under "I.H. The 2007 NOTAM").

#### G. Public Comments in Response to the 2005 Proposed Rule

The comment period on the NPRM closed on November 2, 2005. However, in response to requests from Members of Congress, industry associations, and

individual commenters, it was reopened until February 6, 2006 by notice published on November 7, 2005 (70 FR 67388; Nov. 7, 2005). In addition, the FAA held 4 public meetings on January 12 and 18, 2006, in Columbia, MD, and Dulles, VA, respectively.

The FAA received over 21,000 written comments in addition to the oral comments submitted during the public meetings (contained in transcripts placed in the docket for this rulemaking). Commenters included individual pilots, airport owners, professional associations, aviation-related business owners, and search and rescue and aeromedical operators. The FAA notes that each comment was individually written, not a form letter or pre-printed postcard. Many comments contained a high level of detail. The FAA read all comments and meeting transcripts in the development of this final rule. The agency appreciates the input of each commenter. Due to the large number of comments, however, the FAA is not able to respond in detail to each issue raised. Rather, the FAA has identified overall themes for discussion under "IV. Discussion of Public Comments."

Many commenters acknowledged that some type of special security is necessary to protect the nation's capital; however, essentially all of the commenters objected to the proposed rule. Many asserted that the FAA was allowing other Federal agencies to force the FAA to make airspace decisions the FAA would not otherwise implement. The FAA disagrees. As discussed above, the FAA Administrator has a responsibility to consult with the Secretary of Defense in the interest of national security. In addition, the FAA participates in government-wide initiatives concerning the protection of the NCR. Many commenters also stated that the DC SFRA covered too large an area, and the specific measures implemented by NOTAM were unworkable. Commenters, therefore, were opposed to those measures being made permanent.

The NPRM proposed a larger DC SFRA with different operating procedures than currently exist. One of the many factors taken into account for establishing the original, larger, and more restrictive area, now known as the DC SFRA, was to enable sufficient time and space for NORAD, as well as other agencies or law enforcement officials with authority to use armed force to counter threats to national security or to protect national security assets, to interdict, or intercept an aircraft. With the benefit of experience gained since the September 11, 2001 attacks, the

FAA, in consultation with defense, security, and law enforcement agencies, evaluated the comments to the 2005 NPRM and determined that some of the objections and concerns raised by the public had merit. The FAA and those agencies then considered the overall operational impact of the NCR airspace restrictions, HSAS threat levels, as well as the positive effects of additional controller support, pilot awareness training, security-related initiatives, and better information sharing and response coordination among responsible agencies. Based upon the above considerations, the FAA and the other agencies determined that national security, safety of flight, and safety of people on the ground would not be compromised with a reduced DC SFRA perimeter.

#### *H. The 2007 NOTAM*

In response to public comments, the FAA modified the size and shape of the DC SFRA and its associated procedures through FDC NOTAMs 07/0206 and 07/0211, which became effective August 30, 2007. In addition, the FAA added 3 sectors at Potomac Terminal Radar Approach Control (Potomac TRACON) (PCT) to track aircraft in the DC SFRA and took steps to improve functions such as flight plan processing. These modifications are reflected in this final rule.

In the August 30, 2007 NOTAMs, the dimensions of the DC FRZ remained essentially the same, except that the western boundary was moved slightly eastward, while the size of the DC SFRA was reduced from the wide-ranging outer boundary of the Washington Tri-Area Class B Airspace Area to a much smaller 30-NM radius from the DCA VOR/DME. As a result, the number of airports affected by the restrictions was reduced, and more navigable airspace was made available to pilots conducting operations in the area. The requirement for pilots to establish two-way communication with ATC, be equipped with an operating transponder with altitude-reporting capability, and file a flight plan remained the same. However, the revised NOTAMs also added a "maneuvering area" for Leesburg Executive Airport, and imposed an indicated airspeed restriction of 180 knots or less (if capable) for all VFR operations within the DC SFRA/DC FRZ. For VFR aircraft operations conducted between 30- and 60-NM from the DCA VOR/DME, aircraft were restricted to an indicated airspeed of 230 knots or less (if capable).

#### *I. Rationale for Adopting This Final Rule*

The FAA is taking this final action to enhance security in Washington, DC, the nation's capital. As the nation's capital, it has a unique symbolic, historic, and political status. Washington, DC is the seat of all three branches of the United States government, and is the home of the President (who serves as the Commander in Chief of the Armed Forces) and the Vice President. Likewise, it is the home of the U.S. Congress and the U.S. Supreme Court, and thus is the residence and office location for the officials in the Constitutional order of succession. In addition, World Bank offices, foreign embassies, and the sovereign residences of foreign ambassadors credentialed to the United States are located in Washington, DC.

The FAA, in consultation with the Secretaries of Defense and Homeland Security, has determined that implementation of this rule is necessary to enable those officials in carrying out their responsibilities to lawfully identify, counter, prevent, deter, or, as a last resort, disable with non-lethal or lethal force, any airborne object that poses a threat to national security. The rule will assist air traffic controllers and NCRCC officials in monitoring air traffic by identifying, distinguishing, and, more importantly, responding appropriately when an aircraft is off course or is not complying with ATC instructions. In addition, the FAA is permanently codifying restrictions previously implemented via the NOTAM system. This action will reduce confusion regarding operations within the DC SFRA and DC FRZ.

#### *J. Use of Force*

The authority and obligation to use any type of armed force, deadly or otherwise, by the U.S. military is explained in Chairman of the Joint Chiefs of Staff Instruction (CJCSI), "Standing Rules of Engagement (SROE) for Armed Forces of the United States" 3121.01B, June 15, 2005. The introductory portion of the SROE is unclassified, and outlines the basic premise and basic guidance for any decision by the President or subordinate military commander or member of the armed forces to use force, deadly or otherwise, in individual self-defense or collective self-defense of the nation. The NSAS Aviation Operational Threat Response Plan further reinforces that conducting air defense of the United States and U.S. interests, including operations to interdict and, when

necessary, defeat airborne threats, as part of the active, layered defense of the United States is a responsibility of the Secretary of Defense. Through its Combatant Commands and NORAD, as appropriate, DOD directs the necessary supporting measures to implement Emergency Security Control of Air Traffic procedures in extreme circumstances. Through NORAD and the Combatant Commands, DOD is the only department authorized to direct engagement using deadly force against airborne civilian aircraft presenting an imminent threat to the United States or U.S. interests, unless the President directs otherwise. Rules for the Use of Force (RUF) for those engaged in law enforcement or security duties also exist for military or civilian law enforcement officers authorized to use force, deadly or otherwise, to protect certain high priority national security assets, and to otherwise perform their law enforcement or security related duties. The FAA is including information regarding the possible use of force in its mandatory online training course for pilots who fly within a 60 NM radius of the DCA VOR/DME so that pilots are aware of the potential risk.

**II. Management of Airspace for National Security Purposes**

This final rule does not create any new class, type, or category of airspace. However, the Washington, DC SFRA is considered "national defense airspace" as referenced in 49 U.S.C. 46307, which states that a person who knowingly or willfully violates regulations or orders issued under 49 U.S.C. 40103(b)(3) may be subject to criminal prosecution. The Department of Justice is responsible for determining if such action is warranted.

As discussed in the "Authority for This Rulemaking" section above, 49

U.S.C. 40103 grants the Administrator broad authority to regulate the nation's airspace to ensure its safe and efficient use. Certain regulations currently issued by the Administrator control, designate, or assign airspace for national security and/or national defense purposes. These regulations include, but are not limited to, part 73, subpart C *Prohibited Areas*, and part 99, *Security Control of Air Traffic*. Part 73, subpart C provides for the designation of prohibited areas for national security purposes wherein no person may operate an aircraft without authorization from the agency, organization or military command that established the requirements for the prohibited area. (See 14 CFR 73.85, *Using agency*.) Part 99 states in part that any airspace of the contiguous United States that is not an ADIZ, in which the control of aircraft is required for reasons of national security, is a "defense area." (See 14 CFR 99.3.) Part 99 further provides that each person operating an aircraft in a defense area or ADIZ must comply with special security instructions issued by the Administrator in the interest of national security. (See 14 CFR 99.7.)

**III. Summary of the Final Rule**

This final rule establishes and defines the DC SFRA, which includes the DC FRZ. It also defines dimensions, procedures and required equipment for operating in the DC SFRA. These procedures include establishing two-way radio communication, filing flight plans, and using discrete transponder codes. In addition, the rule provides for traffic pattern operations at towered and non-towered airports within the DC SFRA, and provides relief from certain procedures for airports located near the boundary of the DC SFRA.

*A. Differences Between the Proposed Rule and the Final Rule*

Since the proposed rule was published in 2005, the dimensions of the DC SFRA were reduced and procedures amended for aircraft operating within the DC SFRA. These modifications, largely relieving in nature, are reflected in this final rule. Consequently, there are some differences between the NPRM and this final rule. The significant differences are discussed below.

1. *Regulatory text proposed as subpart B adopted as subpart V, with modification:* At the time the 2005 proposed rule was published, the FAA intended to adopt the proposed regulatory text as 14 CFR part 93, subpart B, which was reserved at the time. In the intervening time, however, the agency adopted another rulemaking action as subpart B. In the final rule, therefore, regulations proposed as subpart B are adopted as subpart V, proposed sections designated as §§ 93.31 through 93.49 are redesignated as §§ 93.331 through 93.345 in the final rule, and proposed §§ 93.45 and 93.49 are removed from the final rule. Provisions proposed in those sections are removed from the final rule because they have become unnecessary due to modifications implemented since the publication date of the NPRM.

In addition, some proposed section headings are modified in the final rule. In the NPRM, certain section headings were in question format, while others were in caption format. In this final rule, section headings are in caption format. The following table provides a comparison between the NPRM and the final rule.

NPRM	Final rule
Subpart B—Washington, DC, Metropolitan Area Special Flight Rules Area.	Subpart V—Washington, DC, Metropolitan Area Special Flight Rules Area.
§ 93.31 What is the purpose of this subpart and who would be affected?	§ 93.331 Purpose and applicability of this subpart.
§ 93.33 What could happen if you fail to comply with the rules of this subpart?	§ 93.333 Failure to comply with this subpart.
§ 93.35 Definitions .....	§ 93.335 Definitions.
§ 93.37 General requirements for operating in the Washington, DC, Metropolitan Area SFRA.	§ 93.337 Requirements for operating in the DC SFRA.
§ 93.39 Specific requirements for operating in the Washington, DC, Metropolitan Area SFRA, including the FRZ.	§ 93.339 Requirements for operating in the DC SFRA, including the DC FRZ.
§ 93.41 Aircraft operations prohibited .....	§ 93.341 Aircraft operations in the DC FRZ.
§ 93.43 Requirements for aircraft operations to or from College Park; Potomac Airfield; or Washington Executive/Hyde Field Airports.	§ 93.343 Requirements for aircraft operations to or from College Park Airport; Potomac Airfield; or Washington Executive/Hyde Field Airport.
§ 93.45 Special ingress/egress procedures for Bay Bridge and Kentmorr Airports.	Withdrawn. Referenced airports are no longer fringe airports.
§ 93.47 Special egress procedures for fringe airports .....	§ 93.345 VFR outbound procedures for fringe airports.

NPRM	Final rule
§ 93.49 Airport security procedures .....	Withdrawn. Section no longer necessary subsequent to issuance of TSA final rule implementing ground security requirements and procedures at College Park Airport, Potomac Airfield and Washington Executive/Hyde Field (70 FR 7150; Feb. 10, 2005).

2. *Dimensions of the DC SFRA:* In the final rule, the dimensions of the DC SFRA are reduced to a 30-NM radius around the DCA VOR/DME. The NPRM proposed that the dimensions of the DC SFRA mirror those designated in the NOTAM in effect at that time. Those dimensions, with some exceptions, were based on the outer boundary of the Washington Tri-Area Class B Airspace Area, and included an area of 4,029 square miles. Since the NPRM was published, the FAA, along with other Federal agencies, has determined that the NCR can be protected with a reduced restricted airspace area of 2,837 square miles.

3. *Fringe airports:* Fringe airports are those airports located within just a few miles of the DC SFRA boundary established in this final rule. The FAA grants relief from certain DC SFRA procedures to pilots operating at fringe airports because departing aircraft penetrate the DC SFRA airspace for only a brief time. At the time of the NPRM, fringe airports included Airlie, VA, Albrecht, MD, Harris, VA, Martin, MD, Martin State, MD, Meadows, VA, and Mylander, MD, Stewart, MD, St. John, MD, Tilghman Whipp, MD, Upperville, VA, and Wolf, MD. With the reduction in the dimensions of the DC SFRA, those fringe airports are no longer within the DC SFRA; therefore, relief from DC SFRA procedures at those airports is no longer necessary. However, since implementation of the August 30, 2007 NOTAM, different airports (specifically, Barnes (MD47), Flying M Farms (MD77), Mountain Road (MD43), Robinson (MD14), and Skyview (51VA)) are now located just inside the boundary of the DC SFRA. These airports are defined as “fringe airports” in the final rule.

4. *Opening/closing flight plans:* In the NPRM, the FAA proposed that pilots open and close their flight plans by contacting an Automated Flight Service Station (AFSS). In response to public comments, the August 30, 2007 NOTAM modified this procedure. As reflected in this final rule, the flight plan is now opened when a pilot receives a discrete transponder code, and closed upon landing or exiting the DC SFRA.

5. *Part 91 Operations at Ronald Reagan Washington National Airport (DCA Access Standard Security Program (DASSP)):* On July 19, 2005, TSA issued

an interim final rule to restore access to Ronald Reagan Washington National Airport for certain operations under the DCA Access Standard Security Program (DASSP). In this final rule, § 93.341 (proposed as § 93.41) is modified to permit aircraft operations under the DASSP.

6. *Addition of definition of “national defense airspace” in 14 CFR part 1:* In the preamble to the NPRM, the FAA stated that the DC SFRA would be classified as “national defense airspace” (NDA). It further stated that persons who knowingly or willfully violate the rules concerning operations in national defense airspace would be subject to criminal penalties as described in 49 U.S.C. 46307.

National defense airspace is any airspace established by regulation or order issued under 49 U.S.C. 40103(b)(3). An order or regulation issued under 49 U.S.C. 40103(b)(3) is appropriate when the Administrator, in consultation with the Secretary of Defense, has determined that it is necessary in the interest of national defense to restrict or prohibit flight of civil aircraft that cannot be identified, located, or controlled. The FAA realizes that most pilots consult FAA manuals and regulations for definitions of airspace terms, rather than Title 49 of the United States Code. In the final rule, therefore, the FAA is adding a definition of “national defense airspace” to § 1.1 General Definitions.

The FAA notes that, by adding this definition to 14 CFR part 1, the agency is not creating a new category of airspace, nor is it creating any new procedures or requirements. The FAA is simply clarifying that national defense airspace exists in those cases where it was designated under a regulation or order issued pursuant to 49 U.S.C. 40103(b)(3).

7. *Change “aeromedical operations” references to “lifeguard or air ambulance operations under an FAA/TSA airspace authorization:”* References to “aeromedical flight operations” and “aeromedical services” are changed to “lifeguard or air ambulance operations under an FAA/TSA airspace authorization.” This language is consistent with current terminology, and is used in the FAA’s “Aeronautical Information Manual.” An air ambulance flight is performed by an

operator that has been issued operations specifications to perform air ambulance operations in either an airplane or a helicopter. “Lifeguard” is the call sign used by air ambulance operators whose mission is of an urgent medical nature. A lifeguard call sign is used only for that portion of the flight requiring expeditious handling.

#### B. Differences Between the August 30, 2007 NOTAM and the Final Rule

The August 30, 2007, NOTAM contains information that is not included in this final rule. Information likely to change (such as telephone numbers and individuals’ names) is not included in this rule. Other pertinent information for DC SFRA operations will continue to apply through NOTAM, including warnings concerning potential consequences of violations. This information includes, but is not limited to—

- Requirement for any pilot flying under VFR within a 60-NM radius of the DCA VOR/DME to complete free online training provided by the FAA;
- The requirement for aircraft to operate at altitudes that ensure acceptable radar coverage;
  - Waiver procedures;
  - Action in the event of a transponder failure;
  - Speed restrictions;
  - Resource information;
  - The definition and requirement for operations within the Leesburg Maneuvering Area; and
  - Explanation of DC SFRA transponder and flight plan requirements.

#### C. Related Regulatory Activity

1. *14 CFR parts 61 and 91:* On August 12, 2008, the FAA issued a final rule entitled “Special Awareness Training for the Washington, DC Metropolitan Area” (73 FR 46797; Aug. 12, 2008). The final rule, intended to reduce the number of unauthorized flights into the Washington, DC SFRA and DC FRZ through education of the pilot community, focuses primarily on training pilots on the procedures for flying in and around the DC SFRA and DC FRZ. It requires any pilot who flies under VFR within a 60-NM radius of the DCA VOR/DME to complete free online training provided by the FAA on its <http://www.FAASafety.gov> Web site

and retain a completion certificate. This training will also inform pilots of potential adverse consequences arising from violation of the airspace. More than 7,000 pilots have completed the online training course.

2. *49 CFR part 1562*: On February 10, 2005, the TSA issued an interim final rule implementing ground security requirements and procedures at three Maryland airports (the “Maryland Three Airports”—College Park Airport, Potomac Airfield and Washington Executive/Hyde Field) located within the Washington, DC Metropolitan Area Flight Restricted Zone (70 FR 7150; Feb. 10, 2005). That interim final rule established security rules for all pilots operating aircraft to or from any of the Maryland Three Airports as regulated by 49 CFR Part 1562, Subpart A. The interim final rule replaced the Special Federal Aviation Regulation (SFAR) No. 94 previously issued by the FAA (67 FR 7538; Feb. 19, 2002).

3. *49 CFR parts 1520, 1540, and 1562*: On July 19, 2005, TSA issued an interim final rule establishing the DASSP to restore access to Ronald Reagan Washington National Airport for certain aircraft operations while maintaining the security of critical Federal government and other assets in the Washington, DC Metropolitan Area (70 FR 41586; July 19, 2005). The interim final rule applies to all passenger aircraft operations into or out of DCA, except U.S. air carrier operations operating under a full security program required by 49 CFR part 1544 and foreign air carrier operations operating under 49 CFR 1546.101(a) or (b). The interim final rule establishes security procedures for aircraft operators and gateway airport and fixed-base operators, and security requirements relating to crewmembers, passengers, and armed security officers onboard aircraft operating into or out of DCA as regulated by 49 CFR part 1562, subpart B.

#### IV. Discussion of Public Comments

The vast majority of commenters, while acknowledging that the FAA implemented the DC SFRA to enhance security in the Washington, DC Metropolitan Area, believed that the measures were overly burdensome to the aviation community and unnecessary. In addition, commenters repeatedly stated that the FAA had not adequately justified the airspace restrictions and procedures. As discussed in “I. Overview,” in response to these comments, the FAA modified, via NOTAM, the airspace restrictions and procedures that were proposed in

the NPRM and made them less restrictive.

Commenters raised security, safety and operational, administrative, and regulatory concerns in response to the NPRM. These comments and the FAA’s responses are discussed below. (Comments raised regarding the FAA’s economic analysis are discussed in the full regulatory evaluation in the docket for this rulemaking.)

##### A. Security Issues

1. *Restrictions on freedom are not justified*: Numerous commenters said that the FAA did not provide sufficient justification for the existence of the DC SFRA itself. They felt that the government had, in effect, “let the terrorists win” as citizens’ freedoms had been taken away in the name of security.

The FAA acknowledges that actions taken immediately following September 11, 2001, imposed new and significant limits on access to the Washington, DC airspace. Initially airspace restrictions were greater than those that currently exist. The FAA has since reduced restrictions for the Maryland Three Airports, has worked with DHS to provide waivers to the NOTAM for aircraft operators, and has amended procedures and reduced the size of the DC SFRA. Though there are more procedures and restrictions in place for operating in the DC SFRA than there are for the Washington Tri-Area Class B Airspace Area, access to the airspace is available to pilots who comply with appropriate procedures. The FAA believes it has provided a balance between security needs and the public’s right of transit through the navigable airspace as provided in 49 U.S.C. 40103.

As discussed elsewhere in this preamble, the FAA took this action in consideration of the fact that Washington, DC is unique as a symbolic military and political target. Historically, in times of war, a nation’s seat of government provides an inviting target for enemy attacks because of its great political, economic and psychological value.

Washington, DC is the seat of all three branches of the United States Government. The White House, the U.S. Capitol, the Supreme Court and other Federal court buildings are located in Washington, DC, as well other Executive-Legislative-, and Judicial-Branch buildings and the headquarters and operations facilities for the nation’s domestic and international security apparatus. The nation’s leaders (the President, the Vice President, Members of Congress, Cabinet members, and Supreme Court justices) are located in

the NCR. In addition, American symbolic and historical sites (such as monuments and museums) are located in the NCR. World Bank offices, all foreign embassies, and the residences of foreign ambassadors to the United States are also located in the vicinity. The FAA notes that the United States has an obligation to protect other nations’ sovereign spaces.

Establishing the DC SFRA was one of many steps that were taken to ensure the security of the nation’s capital. The FAA acknowledges that no single procedure or requirement is fail-safe; however, the FAA believes that this rule adds a layer of additional security to minimize actual threats that may require a graduated response by other U.S. government agencies.

2. *General aviation aircraft pose no threat*: Many commenters said that general aviation aircraft do not pose a threat because their kinetic energy is low, their speeds are slow, and their cargo capacity is small.

The FAA understands the commenters’ concerns; however, the Federal government is concerned that an aircraft, regardless of size, could be used to transport individuals with criminal intentions or dangerous materials that could do significant harm to the NCR.

An example of an incident that could have been avoided under this rule is that of the stolen Cessna 150, which on September 12, 1994, was deliberately crashed into the White House by a suicidal pilot. The plane had relatively little fuel on board and no explosive, radiological, biological, or chemical agents. Some commenters pointed to this 1994 incident as evidence that general aviation aircraft pose no real threat. However, had the aircraft been larger, or the pilot been carrying an explosive device or chemical/radiological/biological agent, the impact could have resulted in the loss of life on the ground, or long term denial of access to the affected area.

Intelligence information gathered after September 11, 2001, while not specifying an imminent threat of attack in the NCR, suggests that some extremists have considered using small aircraft for terrorist activities. The FAA estimates that there are approximately 200,000 airplanes based at over 19,000 landing facilities within the United States. These facilities include both public- and private-use facilities, and, unlike air carrier operators, most are not subject to Federal security regulations. The government, therefore, remains concerned that terrorists launching attacks using stolen or hijacked planes remains a viable option.

3. *General aviation pilots pose no threat:* Commenters asked why the government believes that general aviation pilots are a threat when no DC SFRA or DC FRZ incursion to date had been terrorism-related. The commenters pointed out that the attacks of September 11, 2001, were carried out by individuals flying large aircraft.

The FAA notes that there is concern that terrorists may turn to general aviation as an alternative method for conducting operations, especially since the implementation of security enhancements for commercial aircraft and airports.

In addition, the Federal government considers it an unacceptable risk to allow aircraft in the vicinity of Washington, DC without knowing the pilot's intentions. The requirements to file a flight plan before operating in the DC SFRA and squawk a discrete transponder code provide the FAA and other Federal agencies with critical information (i.e., direction of flight, type and color of aircraft, and airspeed) regarding aircraft operating within the DC SFRA.

Commenters also stated that the requirements for operating in the DC SFRA, such as filing a flight plan, squawking a discrete transponder code, and maintaining two-way communications with ATC do nothing to ensure that a pilot entering the DC SFRA is not a terrorist.

The FAA acknowledges that these measures do not ensure that a pilot or a passenger is not a terrorist. However, the measures provide ATC and law enforcement/security officials with additional information that may be useful in identifying a compliant pilot versus a non-compliant pilot. A flight plan provides ATC with pilot information and the pilot's intended route of flight. Further, the use of a discrete transponder code enables ATC to observe and monitor the aircraft while in the airspace. In addition, maintaining two-way radio communication allows officials to communicate with the pilot, and when necessary, determine whether the pilot is experiencing an emergency or aircraft equipment failure, or whether the pilot has simply committed a navigation error. Should there be any aircraft operator in the DC SFRA who has not filed a flight plan or has deviated from the intended route of flight, steps can be taken to get the aircraft back on course and enable those with response or security duties to determine if a threat exists and the appropriate course of action (including use of deadly force).

4. *Aviation, especially general aviation, is unfairly being regulated*

*instead of other modes of transportation:* Commenters believed the airspace restrictions were unfairly directed at aviation operations (most notably general aviation) while motor vehicles and rail traffic can still pass close to government buildings without much restriction.

The FAA does not have jurisdiction over modes of transportation other than aviation. The agency points out, however, that the modes of transportation mentioned above are in fact restricted in some manner from getting too close to the White House and the U.S. Capitol. For example, at the White House, barriers such as fences, checkpoints, gates, bollards, and other screening systems are designed so that if a detonation does occur, the blast will not result in the destruction of the building or serious harm to protected persons. Vehicular traffic is prohibited on Pennsylvania Ave and E Street between 15th and 17th Streets. Additionally, trucks are not allowed on 17th Street, NW., between Constitution Ave and Pennsylvania Ave. Likewise, there are vehicular restrictions near and around the U.S. Capitol. While motor vehicles must follow roads, and trains must stay on tracks, airplanes can maneuver without such restraints and are not constrained by ground-based barriers and restrictions.

In addition, though many general aviation operators are impacted by these airspace restrictions, the rule itself is not specifically directed at general aviation operations. General aviation operators can and do operate under IFR, and IFR requirements have not been changed. Rather, the rule requires additional procedures for VFR operators, who would otherwise not be required to make their intentions known to ATC.

5. *An SFRA was established for Washington, DC, but not for other cities:* Many commenters asked why only Washington, DC has permanent airspace restrictions. In addition, they pointed out that airspace restrictions around other places, such as New York City, have been discontinued since September 11, 2001, and said that those around Washington, DC also should be discontinued. Many commenters who lived outside the Washington, DC vicinity expressed concern that SFRAs would be put in place over their locales.

The FAA has received requests from various officials to impose SFRA-type restrictions or prohibitions at locations including New York City and Chicago. The FAA has evaluated these requests, in consultation with other agencies, and concluded that restrictions were not required. Federal agencies that share

responsibility for security of the National Airspace System closely monitor the threat to the nation's cities, including the unique security environments of cities such as Washington, DC, New York City, Chicago, and others. When developing risk mitigation plans, TSA considers threats, vulnerabilities, the criticality of a location or transportation system, and the potential consequence of an attack on that location or system. Risk mitigation plans are intended to ensure the security of the location or transportation system while allowing the nation's transportation system to continue operating. Sustainability is a primary concern when developing and implementing a risk mitigation plan.

As previously discussed, Washington, DC is a high-value symbolic military and political target. The requirements of the DC SFRA allow ATC and law enforcement agencies to identify and track aircraft operating in the Washington, DC area and to focus on those targets of interest that may pose a hazard to the Washington, DC area.

The Transportation Security Administration continually reviews and refines risk assessments and mitigation plans in order to address the threat from terrorist groups. The FAA maintains a continuous dialogue with appropriate agencies regarding threat and security issues that may pertain to aircraft operations. In consultation with these agencies, the FAA may implement additional measures, not only in the Washington, DC area, but in other locations, as needed, based on specific, credible intelligence. For example, on March 17, 2003, the national HSAS threat level was raised to Orange (high). In response, the FAA took a number of actions including the issuance of flight restrictions over New York City and Chicago, and cancelled all waivers for operations at the Maryland Three Airports and for sporting events. On April 17, 2003, the HSAS threat level was lowered to Yellow (elevated), and the above-mentioned restrictions were cancelled. It should be noted that the HSAS threat level for the airline sector in the United States is currently at Orange (high).

6. *The DC SFRA is not necessary now that other security measures are in place:* Several commenters agreed that the DC FRZ is necessary, but objected to the existence of the DC SFRA. They believed that, with the introduction of new security measures since 2003 (such as ground-based missiles, better air interdiction capability, new technology to identify aircraft, laser warning systems, regulations that make it less likely that terrorists can go undetected,

and improved security around general aviation airports), the DC SFRA was no longer necessary.

Commenters are correct that there are layers of security for aviation operations in addition to the DC SFRA. Other measures include vetting the FAA Airmen Certification Database, the joint TSA/industry Airport Watch Program, general aviation airport security guidelines, and mandatory flight school security awareness training, as well as regulatory programs for certain types of general aviation aircraft operators. These measures, when implemented together, provide improved protection of the airspace. In addition, the agency notes that heightened security measures for all aviation operations, not just general aviation, have been implemented.

The FAA acknowledges that new aircraft tracking technology, Automatic Detection and Processing Terminal (ADAPT), has been developed since 2005; however, that system supplies information only regarding the aircraft, not the pilot operating it. The protection of this airspace requires the FAA and other government personnel to identify and track those operating in the DC SFRA. Requiring pilots to file flight plans is the least intrusive method of identifying who is operating an aircraft, and enables the FAA and law enforcement and security agencies to more quickly identify anomalous flight behavior, which may indicate a potential threat to the NCR.

Some commenters asserted that there are better air defense capabilities, such as air interception and use of ground-based missiles, than restricting the airspace. The FAA notes that these measures are intended to be used only as a last resort. The airspace from 15- to 30-NM from the DCA VOR/DME provides a buffer area, which allows ATC and law enforcement/security officials to be aware of a non-compliant aircraft before it penetrates the boundary of the DC FRZ. By the time an aircraft is at the edge of the DC FRZ, it is only minutes away from targets in the nation's capital. Relying solely on air defense capabilities could lead to air interception or use of lethal measures that could result in the loss of innocent lives in instances where pilots made inadvertent navigation errors or experienced equipment failures. Also, the buffer provided by the DC SFRA provides additional warning time for law enforcement officials to take appropriate emergency actions on the ground.

Some pilots who operate in the Washington, DC Metropolitan Area, such as those who operate out of the

Maryland Three Airports, those who apply for waivers to operate within the DC FRZ, and crewmembers with an approved DCA Access Standard Security Program are vetted through various databases; however, this is a small percentage of pilots who fly in and through the DC SFRA.

The FAA also acknowledges and appreciates the improved security programs in effect at some general aviation airports. For example, in 2003, the Aircraft Owners and Pilots Association (AOPA) partnered with TSA to deploy a national security enhancement program called "The Airport Watch Program." That program is patterned after the "Neighborhood Watch" anti-crime program, and calls on members of the general aviation community to observe and report any suspicious activities at airports. The Aircraft Owners and Pilots Association has funded and distributed a wide range of educational materials, while TSA has provided a national, toll-free hotline (1-866-GA-SECURE). Programs like these add value to overall security efforts. However, they are voluntary and have not been implemented at all airports.

*7. Factors determining the dimensions of the DC FRZ and the DC SFRA:* Some commenters stated that they did not understand what factors were considered when determining the radii of the DC FRZ and the DC SFRA.

The purpose of the DC SFRA is to identify and track aircraft that may pose a threat to the NCR. Security agencies need enough time to take appropriate action if it is determined that a pilot may have harmful intentions. The FAA, DHS, and DOD determined the lateral limits based on a number of factors, such as launch response time and speed of intercept aircraft, and geographic dispersion of airfields, in addition to the locations of other critical infrastructure within the NCR.

The FAA notes that the agency, in consultation with military and law enforcement agencies, has made every effort to keep the dimensions of the DC FRZ and the DC SFRA as small as possible to reduce the impact on the aviation community while meeting security and safety requirements.

*8. The FAA needs the flexibility to change these requirements in response to a verified threat:* Many commenters expressed concern that, by codifying the substance of NOTAMs, the FAA would not be able to relax or tighten the Washington, DC Metropolitan Area airspace restrictions in response to changing HSAS threat levels.

The FAA understands the commenters' concerns and assures the public that the agency retains the

capability to adjust the restrictions as necessary. The DC SFRA was instituted in 2003 by NOTAM, in lieu of rulemaking, because of the urgent need to implement security measures in the NCR. A NOTAM can be issued quickly, while issuing a codified regulation can take years. However, as stated in 49 U.S.C. 40103(b)(3), " \* \* \* the Administrator, in consultation with the Secretary of Defense, shall \* \* \* by regulation or order, restrict or prohibit flight of civil aircraft that the Administrator cannot identify, locate, and control with available facilities in those areas." Therefore, the appropriate method to implement permanent airspace restrictions is through the rulemaking process. When it became apparent that this airspace designation would be in effect indefinitely, the FAA initiated rulemaking action.

The FAA notes that only certain elements of the 2007 NOTAM are being adopted as regulations. Some procedural details for SFRA operations, as well as warnings concerning potential consequences of violations, will continue to be addressed through NOTAM. The agency also retains the ability to issue additional special security instructions by NOTAM action under 14 CFR part 99 if security or threat conditions warrant. Airspace restrictions or control measures can be adjusted in accordance with HSAS threat levels and specific intelligence. The Department of Homeland Security will continue to coordinate with other Federal agencies to establish appropriate measures in response to specific threats.

*9. Alternatives considered prior to implementation of the DC SFRA:* Numerous commenters wanted to know if the government considered any alternatives to the restrictions prior to establishing the SFRA in 2003.

Because of the need to protect the airspace around the Washington, DC Metropolitan Area quickly, the FAA did not publish alternatives for public notice and comment. However, the FAA and military and law enforcement agencies did discuss several alternatives before deciding on the requirements implemented in 2003. Those alternatives included establishing a 55-NM outer ring with a 15-NM inner ring, expanding the P-56 prohibited area above parts of Washington, DC to a radius of 30-NM, and establishing outer rings as large as 75 NM or 110 NM. In each case, factors such as numbers of airports impacted and air traffic procedures were considered. The FAA and Federal law enforcement and security agencies have determined that the DC SFRA provides the minimal

spatial buffer consistent with the requirement to respond to aviation threats in the NCR.

In addition, prior to the August 2007 modifications, the FAA, in consultation with the law enforcement and security agencies, did consider several alternatives, which were discussed in detail in the "Regulatory Flexibility" section in the preamble to the NPRM.

*10. Threat analysis for the Washington, DC area:* Several commenters inquired whether a threat analysis had been done for the Washington, DC area, and whether such analysis was available to the public.

The Department of Homeland Security, in coordination with ODNI, has analyzed the threat, vulnerabilities, and consequences of an airborne attack against the NCR. They have concluded that the DC SFRA is a critical layer in the security and defense of the NCR. These analyses are classified and not available to the public.

*11. Treating unintentional airspace incursions as security threats:*

Numerous commenters objected to the FAA's "zero tolerance" approach to unintentional incursions. Many said that they had no violations on their records until they accidentally violated the DC SFRA or DC FRZ. Some asked for an "amnesty" program to allow pilots to clear their names of inadvertent or minor violations.

The purpose of this rule is to provide security to the Washington, DC Metropolitan Area. Incursions into this airspace, whether intentional or not, or violations of any other procedures or rules applicable to this airspace, are taken very seriously, and may be enforced in accordance with the FAA's enforcement authority. The focus, emphasis, or level of penalties imposed by the FAA may vary, depending on the threat posture or HSAS threat levels in effect. The FAA's enforcement action does not mean that violations or violators will be categorized as "national security threats." The FAA does not have authority to make such a determination or impose such a label on any violator.

Because airspace established under 49 U.S.C. 40103(b)(3) is, however, "national defense airspace," that term will be used in connection with FAA enforcement actions, regardless of whether an incursion or violation was inadvertent or willful. No additional penalty imposed by the FAA will result from the status of the DC SFRA as "national defense airspace." The status as "national defense airspace," however, is important and relevant to the extent a pilot knowingly or willfully enters the DC SFRA in violation of the

DC SFRA rules, procedures, or instructions of an air traffic controller or official while in flight. Unlike a willful violation of other airspace, knowing or willful violations of national defense airspace may subject the pilot to criminal liability under Federal criminal law. See 49 U.S.C. 46307. The exercise of any prosecutorial decision to file criminal charges for a knowing or willful violation is a decision that will be made by appropriate Federal prosecutors or law enforcement officials.

In addition, commenters expressed concern about the use of force by military or law enforcement personnel. The fact that a pilot is flying without permission into airspace designated for national security or without following the proper procedures may be one factor those officials take into account in determining the nature of the threat and what to do about it. As with any breach of a security perimeter, military or law enforcement officials with authority to defend the country may use lawful and appropriate force to do so. In the case of an aircraft incursion, interception, diversion, or other necessary means, force, up to and including deadly force, could be employed if an aircraft or airborne object is deemed to be an imminent or actual threat to national security. That determination will be made by appropriate military or command authority only on a case-by-case basis, specific to the situation. An incursion or violation of the DC SFRA, or any other airspace regulation, regardless of whether the airspace in question is "national defense airspace," does not by itself authorize the use of force. It is however, one of the factors that should and will be considered along with all other relevant facts in existence at the time, in determining whether an aircraft or airborne object poses an imminent threat to national security.

#### *B. Safety and Operational Issues*

Many commenters expressed concern that operating within the DC SFRA and the DC FRZ was unsafe for a number of reasons, which are discussed below. With the modifications adopted in the 2007 NOTAMs, the FAA has addressed a number of these concerns. In addition, however, the FAA notes that in accordance with 14 CFR 91.3, *Responsibility and Authority of the Pilot in Command*, the pilot in command is directly responsible for, and is the final authority on operation of the aircraft. Additionally, 14 CFR 91.103, *Preflight action*, requires that the pilot in command, before beginning a flight, become familiar with all available

information concerning that flight. When operating under VFR, the pilot in command selects a destination, and makes a personal choice as to the course that will be flown. If the pilot desires to fly through the DC SFRA, he or she should always be prepared with an alternate flight plan in the event that ATC cannot accommodate his or her request, much as he or she would do in order to fly through other controlled airspace areas.

To enhance safety, the FAA has taken numerous actions to disseminate information about the DC SFRA dimensions and operating requirements. These include the development of a free online course entitled "Navigating the New DC ADIZ" (available at <http://www.FAASafety.gov>), which includes several downloadable procedures guides. Since July 2007, over 7,000 pilots have completed this course.

Additionally, the FAA has depicted DC SFRA dimensions and communications frequencies on VFR sectional charts. The agency has also worked closely with pilot and aviation associations to inform the flying community. Since 2004, the Potomac Terminal Radar Approach Control (TRACON) (PCT) has hosted a DC SFRA seminar and Operation Raincheck briefings twice a year, with nearly 250 pilots attending each time. PCT personnel go out into the general aviation community to provide pilot briefings, typically conducting about 6 briefings a year with approximately 50 pilots attending each briefing. PCT personnel have staffed booths and conducted DC SFRA seminars at the AOPA annual open house at the Frederick Airport, MD with approximately 150 pilots in attendance.

The FAA works closely with AOPA to disseminate the latest NOTAM information to its members. AOPA includes information pertaining to flight operations in the DC SFRA on its Web site. In addition, AOPA sent out posters that warn of the DC SFRA airspace, as well as distributed hundreds of letters to pilots advising of the DC SFRA and recommending they familiarize themselves with the procedures and airspace dimensions. The FAA continues to meet with AOPA on a regular basis to discuss operations within the DC SFRA.

*1. Frequencies are congested, and controllers are overburdened and distracted:* Because a greater number of pilots must now establish two-way radio communications with ATC, some commenters said that frequencies were congested and that controllers were overburdened and distracted from their primary air traffic separation duties. In

response to commenters' concerns about frequency congestion and air traffic controller workload, the FAA established several new procedures in connection with the August 30, 2007 NOTAM. First, the agency established three sectors (called "ADIZ West," "ADIZ South," and "ADIZ East" in the NOTAM) at PCT. Second, the FAA established a communications frequency dedicated to DC SFRA communications for each of PCT's three DC SFRA sectors. During periods of high workload, including weekends and other times when general aviation pilots are likely to be conducting VFR operations in and around the DC SFRA, PCT can staff the three DC SFRA sectors with PCT personnel whose sole responsibility is to handle DC SFRA traffic. These steps have served to—(1) Mitigate PCT controller workload associated with DC SFRA traffic; (2) separate DC SFRA security identification and tracking functions from air traffic control separation duties, and (3) reduce delays for pilots seeking to operate to, from, or through this airspace area.

The FAA also notes that the reduced dimensions of the DC SFRA, as defined in the August 30, 2007 NOTAM, along with establishment of a Leesburg Maneuvering Area with streamlined communications procedures, have served to reduce air traffic controller workload, frequency congestion, and delays for pilots. In addition, the FAA has further worked to reduce workload and frequency congestion by clarifying to both pilots and controllers that, unless specifically requested by a pilot and approved by ATC, radar services (e.g., traffic advisories, flight following) are not provided in association with DC SFRA security-related identification and tracking.

*2. Too many aircraft congregate around the same fixes while awaiting assignment of a discrete transponder code:* Numerous commenters expressed concerns about the potential safety hazard created when large numbers of aircraft operate in the vicinity of the same fixes while awaiting assignment of a discrete transponder code to enter the DC SFRA. Commenters noted that when filing a DC SFRA flight plan, pilots had to state a fix (exit or entry point) on their flight plans. Even though there is no requirement for pilots to operate directly to, from, or over these fixes while establishing two-way radio communications with ATC and obtaining a discrete transponder code, commenters stated that many pilots are nevertheless congregating in the vicinity of these fixes.

In response to these concerns, and in connection with the DC SFRA dimensional changes implemented in the August 30, 2007 NOTAM, the FAA made changes to the DC SFRA entry/exit points for flight plan filing purposes. Specifically, the agency established eight "gates" around the circumference of the DC SFRA. Pilots list the appropriate gate name on the DC SFRA flight plan, and enter or exit the DC SFRA at any point within the boundaries of that gate. The gate names and boundaries are now depicted on appropriate VFR charts. The FAA has also provided the online DC SFRA training course and its associated guidance materials and works with industry associations to educate pilots about these gates and boundaries.

While the FAA recognizes that any navigational fix tends to be a high-traffic area, the agency reminds pilots that when operating under VFR, the pilot in command is responsible to see and avoid other aircraft. Before the implementation of the DC SFRA, the Washington Tri-Area Class B Airspace Area was among the most congested in the nation, and extreme vigilance for other aircraft has been required. The DC SFRA has increased the number of pilots using air traffic services; however, the actual number of VFR aircraft operations has not changed significantly. What has changed is more awareness of aircraft in the area, which prior to the DC SFRA did not use ATC services; thus most pilots were not aware of the large number of VFR operations conducted.

*3. The DC SFRA forces pilots to fly over water and mountainous areas:* Commenters noted that the DC SFRA restricts available airspace. Therefore, when pilots were unable to obtain an authorization to fly in the DC SFRA, they were forced to fly over mountainous areas to the west or over water of the Chesapeake Bay to the east. Commenters claimed that flight over mountains and water was unsafe.

Flight over water or mountainous terrain is not inherently unsafe. The FAA acknowledges that when over mountains or water certain precautions should be taken in the event of an emergency, such as an engine failure. Carrying more fuel, identifying emergency landing locations, maintaining a higher altitude or carrying flotation devices are some steps a prudent pilot may take to mitigate any flight risk.

When flying VFR, a pilot must consider the class of airspace and special use airspace along the route, and the associated procedures or requirements that must be met to transit

the airspace. For example, most of the DC SFRA is contained within the Washington Tri-Area Class B Airspace Area. In accordance with 14 CFR 91.131, *Operations in Class B Airspace*, no person may operate an aircraft within Class B airspace without a clearance from ATC, and the aircraft must be equipped with a two-way radio and an altitude-reporting transponder. In addition, student pilots must meet specific training provisions of 14 CFR part 61 prior to operating in a Class B airspace area. If a pilot intends to transit Class B airspace, the pilot must be able to meet the above conditions. In addition, a pilot must be prepared to circumnavigate the airspace if ATC is unable to provide a clearance into the airspace. In this area, this may mean a pilot would need to over fly the Blue Ridge Mountains or the Chesapeake Bay, and should always be prepared to do so. Implementation of the DC SFRA did not change this fact.

The FAA believes that the August 30, 2007 reduction in DC SFRA dimensions, along with the establishment of associated new frequencies, gates, and procedures, has created more navigable airspace, thus providing more routes for pilots to transit the area. That action reduces the likelihood of pilots having to fly over mountainous terrain or water.

*4. Pilots are afraid to engage in training/proficiency flying activities around the DC SFRA:* Many commenters stated that flight training and routine proficiency flying was reduced because of the fear of enforcement actions, thereby making it difficult to maintain the skills necessary to fly safely.

The FAA is aware that there have been some cases in which pilots have not complied with the DC SFRA requirements, and consequently have been escorted by military aircraft and/or been met by law enforcement personnel on the ground. The agency understands that such events can be intimidating and that some pilots may opt to cease or reduce their flying activities rather than risk making an error. The FAA acknowledges that the existence of the DC SFRA may create more of a challenging environment for pilots not accustomed to communicating with ATC and regrets that some pilots may choose not to fly. However, the agency encourages pilots to use the many resources available to learn about DC SFRA operations, including completing the FAA's mandatory Special Awareness Training.

*5. Safety is compromised because the DC SFRA requires more complex skills:* Commenters asserted that because more complex skills are required to operate within the DC SFRA, pilots have been

challenged beyond their capabilities, which has placed them in an unsafe situation.

The airspace in which an aircraft operates dictates the equipment and communication requirements for those who operate within the designated airspace. Most of the DC SFRA lies within the boundaries of the Washington, DC Tri-Area Class B Airspace Area and as such, pilots have always been required to possess appropriate communication and navigation skills (see 14 CFR 91.131). If a pilot chooses to operate in the DC SFRA, it is imperative that he or she comply with § 91.103, *Preflight action*, which, in part, requires that each pilot in command become familiar with all available information concerning that flight. As stated previously, information pertaining to the DC SFRA is readily available, and should be reviewed by all pilots who operate in the area.

*6. Delays in obtaining authorization to re-enter the DC SFRA cause safety problems:* Commenters stated that they often encountered delays in obtaining authorization to re-enter the DC SFRA and noted that one pilot actually ran out of fuel while waiting.

When the DC SFRA was initially implemented, both pilots and controllers had to adapt to the new requirements and develop workable DC SFRA operational procedures that could be clearly understood by all concerned. The FAA acknowledges and regrets that many pilots encountered delays when entering and exiting the DC SFRA during that time. Since then, pilots and controllers have become more familiar with the DC SFRA and its operating requirements, and ATC has developed procedures to accommodate the increase in operations. The agency believes that the reduced DC SFRA dimensions and new procedures, dedicated frequencies, and gates have significantly reduced the kind of delays pilots may have encountered when the DC SFRA was initially established.

*7. DC SFRA procedures are a distraction to pilots, who should be focused on scanning for other aircraft:* AOPA expressed concern that DC SFRA procedures were a distraction to pilots engaged in other important operational activities, such as scanning for other aircraft.

Although flight operations to, from, and within the DC SFRA may increase a pilot's workload by requiring additional attention to communication and navigation, the FAA does not believe that this in itself is a significant distraction to pilots. Well before any pilot who opts to operate within or adjacent to the DC SFRA departs, he or

she must obtain a thorough pre-flight briefing in accordance with 14 CFR 91.103. During the pre-flight briefing process, the pilot should resolve any questions or concerns so that when airborne, that pilot can concentrate on flying the aircraft, and scanning for other aircraft. The FAA also notes that in most cases, ATC radio transmissions to aircraft operating within the DC SFRA are minimal.

*8. The configuration of the DC SFRA is difficult for pilots to navigate:* AOPA asserted that the configuration of the DC SFRA, which includes many irregular boundaries, makes it difficult for pilots to navigate.

The FAA acknowledges that the initial boundaries of the DC SFRA, which were also proposed in the NPRM as dimensions for the DC SFRA, were not ideal. In response to these comments, in August 2007 the FAA reduced and reconfigured the DC SFRA to a 30-NM circle centered on the DCA VOR/DME. The FAA has also depicted these new boundaries on appropriate navigational charts. The agency believes that these steps have made it significantly easier for pilots to navigate in the NCR.

*9. Reduced airport services reduce options available to pilots:* Some commenters asserted that a DC SFRA-related reduction in general aviation flights resulted in reduced airport services (e.g., maintenance and repair, avionics services, flight instruction, etc.). They alleged that this development had led to even greater reductions in general aviation flights as well as potential compromise of safety because pilots do not have as many options if they need emergency services.

The FAA acknowledges that the existence and operating requirements of the DC SFRA have in some cases resulted in less traffic to some local airports, thus reducing revenue and services. The FAA has analyzed the impacts on local airports and businesses; this analysis is discussed in section "VII. Regulatory Impact Analysis." The reduced size of the DC SFRA impacts fewer airports, so the FAA expects operations at those airports now located outside the DC SFRA to increase. The FAA has also established a maneuvering area to ease traffic flow in and out of the Leesburg Airport. In addition, three airports within the DC FRZ were provided some financial assistance from the Department of Transportation.

### C. Administrative and Regulatory Issues

*1. The FAA has not met statutory requirements to report to Congress the justification for keeping the DC SFRA:*

AOPA and some individual commenters said the FAA had not been sending regular reports to Congress, as mandated by the Vision 100—Century of Aviation Reauthorization Act (section 602).

Paragraph (a) of that legislation stated that every 60 days the Administrator must transmit to the Committee on Transportation and Infrastructure of the House of Representatives and to the Committee on Commerce, Science, and Transportation of the Senate, a report (in classified form) containing an explanation of the need for the DC ADIZ (now called the "DC SFRA").

The commenters are correct that the FAA did not submit reports to Congress explaining the need for the DC SFRA. During the reorganization of agency functions after September 11, 2001, aviation intelligence responsibilities shifted from the FAA to DHS. The Secretary of DHS, therefore, briefed Congress on the need for the DC SFRA. In addition, in 2007, the Congressional Research Service performed its own research on the aviation security needs in the Washington, DC Metropolitan Area.

Paragraph (c) of the Vision 100 legislation called upon the FAA to transmit a report to Congress every 60 days describing changes in procedures or requirements that could improve operational efficiency or minimize operational impacts on pilots and controllers. The FAA has met this requirement and submits reports describing the changes to improve the operational efficiency or minimize operational impacts to the Committee on Transportation and Infrastructure of the House of Representatives and to the Committee on Commerce, Science, and Transportation of the Senate.

*2. The DC SFRA was intended to be temporary and was put in place hastily, without public input:* When the DC SFRA was established via the NOTAM system, it was not known how long the flight restrictions would be in place. In the first few months of its implementation, the DC SFRA and its procedures were changed several times in response to changes in the HSAS threat levels. For example, a cut-out was made around Freeway Airport, Mitchellville, MD; certain airports (known as gateway airports) were identified and used as locations where aircraft and crew could be vetted through various databases prior to entering the DC SFRA; and ingress/egress procedures were instituted for Bay Bridge and Kentmorr Airports, Kent Island, MD. Security, law enforcement and FAA officials have met regularly to discuss and assess the security needs of the Washington, DC Metropolitan Area.

In August 2007, the dimensions of the DC SFRA were reduced, and procedures were amended, which has opened up more airspace to the aviation community and simplified procedures for pilots operating within the DC SFRA. The need to protect the nation's capital continues, and the FAA has determined that the most appropriate way to implement this special flight rules area is through the rulemaking process. The FAA also notes that prior to making this DC SFRA permanent, the agency published an NPRM requesting comments from the public. In response, the agency received over 21,000 comments, in addition to comments received at four public meetings.

3. *Suggestions from commenters for alternatives to the DC SFRA:* The Aircraft Owners and Pilots Association submitted alternatives to the proposal, and recommended retaining the FRZ but only for larger, faster aircraft. AOPA's plan would have excepted aircraft that weigh 6,000 pounds or less and that limit their speed to 160 knots or less from the DC SFRA requirements.

The Experimental Aircraft Association (EAA) also submitted numerous recommendations, including but not limited to reducing the FRZ from a 15-NM radius to a 10-NM radius from the DCA VOR/DME and reducing the DC SFRA to a 20-NM radius of the DCA VOR/DME. In addition, EAA suggested using a larger TFR when HSAS threat levels are elevated.

Many individual commenters suggested retaining the FRZ and eliminating the SFRA. The FAA appreciates these and other suggestions. The agency considered the recommendations but, in consultation with the Interagency Airspace Protection Working Group, determined that reducing the sizes of the FRZ and the SFRA to the degree the commenters suggested would not provide adequate warning time for law enforcement officials to take appropriate emergency actions on the ground. The FAA notes, however, that the size of the DC SFRA was reduced in August 2007.

As to the suggestion that smaller aircraft flying at slower speeds be exempted from meeting DC SFRA requirements, the FAA believes that such a measure would not allow the FAA to meet its objective of tracking all aircraft in the National Capital Region.

Several commenters suggested that aircraft operating in the DC SFRA be equipped with new technology, such as Automatic Dependent Surveillance-Broadcast technology (ADS-B), for monitoring. Use of such technology was not proposed and is therefore outside the scope of this rulemaking. However,

the FAA notes that ADS-B has been selected as the preferred next generation technology for surveillance and broadcast services. It has been successfully deployed in Alaska and several other locations. On October 5, 2007, the FAA published in the **Federal Register** an NPRM, which proposed in part, requirements for aircraft operating in Class B and C airspace areas to be equipped with ADS-B technology (72 FR 56947; Oct. 5, 2007). As part of that rulemaking effort, the FAA established an Aviation Rulemaking Committee (ARC) under Order 1110.147. That committee was chartered to deliver a report on how to optimize operational benefits of the ADS-B system and to provide recommendations to the FAA on the development of a final rule.

4. *The DC SFRA amounts to a "taking" (a seizure of private property without due process):* Some commenters believed that the government is, in effect, practicing condemnation/seizure of private property without due process. Commenters alleged that the airspace restrictions have triggered a regulatory taking and, therefore, they deserve compensation. The commenters bolstered their argument by asserting that the decision to prohibit or restrict airspace indirectly results in a loss of business to airports or aviation-related businesses on the ground.

Airspace is not private property; therefore, it is not property that can be owned by any person, as the term "private property" is used within the meaning of the U.S. Constitution's Fifth Amendment. While the FAA's regulations or restriction imposed on any navigable, public airspace may interfere with, limit, or even prohibit the right of an individual to use that airspace, the restrictions do not constitute a taking of private property without due process or just compensation. The FAA acknowledges that establishing the DC SFRA will have an indirect impact on aviation-related businesses that may have an adverse economic effect due to a reduction of access to, or need for, their services. However, that indirect economic cost and personal inconvenience is not an impact unique to the general aviation community or the Washington, DC area. Rather, it is an impact experienced by many individuals and businesses in all areas of commerce as a result of the variety and scope of new security measures imposed by various levels of government after the September 11, 2001 attacks.

5. *The FAA allowed other Federal agencies to direct its decision making:* Numerous commenters asserted that the FAA "abdicated" its rulemaking

authority to other Federal entities. The commenters believed that the FAA had allowed security and law enforcement agencies to direct civilian airspace policy.

As discussed in "I. Overview," the FAA Administrator has statutory authority to manage the nation's airspace in the interest of national security. In carrying out this responsibility, the FAA consults with the Secretary of Defense and works closely with other Federal agencies to ensure the safety of civil aviation and to protect persons and property on the ground.

#### V. Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA submitted a copy of the new information collection requirement(s) in this final rule to the Office of Management and Budget for its review. OMB approved the collection of this information and assigned OMB Control Number 2120-0706.

In the preamble to the 2005 NPRM, in the "Paperwork Reduction Act" discussion, the FAA solicited comments on the information collection requirement for pilots operating under VFR to file flight plans. The FAA received numerous comments opposing the requirement. These comments, and the FAA's responses, are discussed elsewhere in this preamble.

*Number of respondents:* The FAA does not know exactly how many pilots will file flight plans to access the DC SFRA and DC FRZ on an annual basis. To calculate the number of respondents, the FAA has divided 256,461 estimated annual number of operations by 15 operations per pilot annually, which equals 17,097.

*Cost:* The FAA estimates the annual cost to comply with the information collection requirement of this final rule to be \$1,831,098 (\$477,017 cost to activate a flight plan plus \$1,354,081 cost to file a flight plan). The ten-year cost will be \$18,310,980.

The cost to activate a flight plan (\$477,017) was calculated as follows.  
17,097—Respondents.

15—Number of flight plans filed by each respondent annually.

256,461—Annual number of flight plans.

0.05 hour—Time needed to activate a flight plan.

\$37.20/hour—Value of pilot's time.

The cost to file a flight plan (\$1,354,081) was calculated as follows.  
17,097—Respondents.

256,461—Annual number of flight plans.

0.137 hour—Time (including wait time) needed to file a flight plan.

\$37.20/hour—Value of pilot's time.  
3.6%—Percent of pilots needing to refuel a DC SFRA flight plan.

*Hours:* The FAA estimates the rule will require 49,223.07 hours (12,823.5 hours to activate a flight plan plus 36,400.02 hours to file a flight plan). The number of hours over 10 years will be 492,230.70.

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 Office of Management and Budget (OMB) control number.

## VI. 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 regulations.

## VII. Regulatory Impact Analysis, Regulatory Flexibility Determination and Analysis, International Trade Impact Assessment, and Unfunded Mandates Assessment

### A. Regulatory Impact Analysis

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 (Pub. L. 96-354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96-39) 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, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 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 with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule. We

suggest readers seeking greater detail read the full regulatory impact analysis, a copy of which we have placed in the docket for this rulemaking.

In conducting these analyses, the FAA has determined that this final rule: (1) Has benefits that justify its costs; (2) is an economically "significant regulatory action" as defined in section 3(f) of Executive Order 12866; (3) is "significant" as defined in DOT's Regulatory Policies and Procedures; (4) will have a significant economic impact on a substantial number of small entities; (5) will not create unnecessary obstacles to the foreign commerce of the United States; and (6) will not impose an unfunded mandate on state, local, or tribal governments, or on the private sector by exceeding the threshold identified above. These analyses are summarized below.

The FAA has analyzed the expected costs of this regulation for a 10-year period, from 2009 through 2018. As required by the Office of Management and Budget (OMB), the present value of this cost stream was calculated using discount factors of 7 and 3 percent. All costs in this analysis are expressed in 2007 dollars.

The FAA costed out four alternatives for this evaluation:

- Alternative 1 is what was contained in the NPRM, which mirrors the Washington Tri-Area Class B airspace area, with certain minor modifications. It also has a 15-NM FRZ. Its cost is \$1.34 billion over ten years (\$1.15 billion, discounted at 3 percent, and \$942.26 million discounted at 7 percent).

- Alternative 2 is the final rule, with a 30-NM DC SFRA, 15-NM DC FRZ. Its cost is \$1.04 billion over ten years (\$886.34 million, discounted at 3 percent, and \$756.98 million, discounted at 7 percent).

- Alternative 3 is the NPRM with enhanced procedures, such as ADS-B-equipped aircraft being exempt from the flight plan requirement and establishing two-way communication requirement, given certain conditions. Its cost is \$1.30 billion over ten years (\$1.11 billion, discounted at 3 percent, and \$919.31 million, discounted at 7 percent).

- Alternative 4 contains a 15-NM DC FRZ, with the DC SFRA being determined by threat and air defense requirements, and established by NOTAM. For costing purposes, this alternative examined two scenarios, a 55-NM DC SFRA and a 20-NM DC SFRA. Its costs range from \$3.29 billion over ten years (\$2.80 billion, discounted at 3 percent, and \$2.13 billion, discounted at 7 percent) to \$4.47 billion

(\$3.82 billion, discounted at 3 percent, and \$2.85 billion, discounted at 7 percent).

### 1. Costs

There are two major sets of cost components—public sector and private sector.

a. Public Sector: (1) A key component in defending the DC SFRA against attackers is the airplanes based at Andrews Air Force Base. Under most of the alternatives, given a 30-NM DC SFRA, the program depends on F-15s, F-16s, and helicopters to be ready to scramble to defend the DC SFRA; a scramble can range from pilots proceeding to battle stations, runway alerts, sending a helicopter to alert the errant aircraft, or sending out military aircraft to intercept the aircraft. The total cost of scrambles, including both F-15/F-16 and helicopter, is \$324.64 million over ten years. Given a 20-NM DC SFRA, the program would depend on a fighter combat air patrol, 24 hours a day, 7 days a week (24/7 fighter CAP) instead; this CAP uses F-15s and F-16s as well as KC-135 tankers to refuel these aircraft; these costs sum to \$356 million annually. When DOD assets are deployed, air traffic control suspends operations and there is a delay cost. The total cost of suspending operations is \$1.93 million over ten years. This estimate only takes local delays into consideration, and does not account for secondary delays and ripple effects that may be imposed on the aviation system.

(2) The FAA installed additional radar facilities for support of the DC SFRA at Washington Dulles International Airport (IAD), Ronald Reagan Washington National Airport (DCA), Baltimore/Washington International Thurgood Marshall Airport (BWI), and PTC. Since these costs are "sunk", they are not considered to be an incremental cost of the rule. However, there are recurring annual costs summing to \$375,000.

(3) This rule requires additional controllers and flight service station specialists, as well as the cost of filing and activating DC SFRA-related flight plans. The FAA has dedicated 6 additional controller positions for 3 specific regions of the DC SFRA as a result of this rule. Over a ten-year period, the total cost of the additional controllers is \$15.50 million. On average, about 4 full time equivalent positions are dedicated to filing flight plans at flight service stations; over a ten-year period, the total cost of the additional FSS specialists will be \$6.45 million. The additional cost of filing and activating flight plans, over 10 years, sums to \$59.33 million.

Total public-sector costs, over the 10-year period, sum to \$411.60 million.

*b. Private Sector:* The DC SFRA impacts aircraft operators, airports, and aviation-related businesses in the Washington, DC region. DC SFRA requirements have created delays and other costs to operators and have caused some operators to reduce the number of flights they take, shift operations to airspace and airports outside of the DC SFRA, and even to cease operations altogether. DC SFRA-related delays impose costs on operators and aviation-related businesses. The reduced number of operations has reduced revenue at airports and aviation-related businesses.

(1) Operating Restrictions—The DC SFRA has created many delays to operators, including ground, flight, circumnavigation, and re-routing delays. VFR operators in the DC SFRA are required to file a DC SFRA flight plan and communicate with ATC, creating flight, ground, and re-routing delays. In an effort to avoid these delays, some pilots circumnavigate the DC SFRA, although this also imposes an additional cost. Over ten years, the cost of operating restrictions is \$355.80 million.

(2) Airports—The DC SFRA impacts many airports in the Washington, DC region, including airports located outside of the DC SFRA boundaries. The DC SFRA affects the behavior of aircraft operators in the region and results in decreased levels of aviation activity at some airports. However, the DC SFRA will also cause aviation activity at some airports in the region to increase. Much of the negative economic impact at some airports will be offset by gains at other airports. Over ten years, the affected airports have net revenue losses of \$25.35 million.

(3) Aviation-related business—The DC SFRA impacts aviation-related businesses in the Washington, DC region because it causes some aircraft operators to alter their behavior.

Aviation-related businesses include fixed-base operators (FBOs), passenger or freight charter operators, aerial photography and mapmaking businesses, aircraft maintenance and repair facilities, flight schools, restaurants and transportation services located at airports, and other businesses dependent on aviation activity. A decrease in the number of operations and active aircraft directly results in a decrease in revenue at these businesses. Other aviation-related businesses incur additional costs as a consequence of DC SFRA requirements. Over ten years, the affected businesses have revenue losses of \$246.86 million.

Total private sector costs, over ten years, sum to \$628.00 million. Total public and private sector costs combined, over ten years, sum to \$1.04 billion.

2. Benefits and Cost-Benefit Comparison

The FAA looked at five scenarios, and computed the estimated mean consequence resulting if each scenario were to occur once in a 10-year period. The estimated means ranged from \$0.12 billion (\$0.09 billion, discounted) to \$9.81 billion (\$6.89 billion, discounted). These were compared to the cost of the rule, which is \$1.04 billion (\$756.98 million, discounted). For three of these five scenarios, the required risk reduction could be less than 100 percent, and the rule would be cost beneficial.

*B. Final 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 determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA. 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 act 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 gathered data for airports and other aviation-related businesses that are located 60NM from the DCA VOR/DME. The U.S. Small Business Administration (SBA) classifies businesses as small based on size standards, typically expressed as annual revenue or number of employees. SBA publishes a table of small business size standards matched to North American Industry Classification System (NAICS) codes. The SBA defines privately owned airports as a small entity if annual revenue is less than \$6.5 million. Publicly owned airports are defined as a small entity if annual revenue is less than \$5 million. As Table 1 shows, all impacted airports (with the exception of BWI, DCA and IAD) are well below these annual revenue thresholds. Revenue data is for 2007.

TABLE 1—AIRPORT REVENUE

Facility	2007 Revenue	Facility	2007 Revenue
Essex Skypark .....	\$47,440	Lee .....	\$347,758
Freeway .....	103,000	Harford County .....	378,192
Shoestring Aviation Airfield .....	110,482	Winchester Regional .....	386,365
Hanover .....	116,019	Hagerstown Regional .....	439,083
Maryland .....	119,100	Ridgely Airpark .....	493,240
College Park .....	122,590	Stafford Regional .....	500,000
Davis .....	140,188	Bay Bridge .....	501,740
Potomac Airfield .....	142,000	St. Mary's County Regional .....	510,932
Front Royal-Warren County .....	151,280	Culpeper Regional .....	536,485
Fallston .....	172,171	Warrenton-Fauquier .....	802,200
Clearview Airpark .....	219,968	Leesburg Executive .....	805,068
Tipton .....	250,000	Frederick Municipal .....	867,082
Suburban .....	259,859	Montgomery County Airpark .....	920,103
Orange County .....	272,530	Manassas Regional .....	1,192,389
Shannon .....	297,402	Martin State .....	1,260,000

TABLE 1—AIRPORT REVENUE—Continued

Facility	2007 Revenue	Facility	2007 Revenue
Washington Executive/Hyde Field .....	300,670	Carroll County Regional .....	1,302,400
Cambridge-Dorchester .....	301,297	Easton/Newnam Field .....	1,621,671

The SBA size standards for aviation-related businesses at airports are listed in Table 2. The size standard for flight schools is annual revenue less than \$23.5 million, for aircraft sales businesses it is annual revenue less than \$9 million, and for other business types it is generally annual revenue less than \$6.5 million. The SBA threshold for charter operators is less than 1,500 employees.

TABLE 2—SBA SIZE STANDARDS

Business type	Annual revenue or employee threshold for small business
Aerial Photography ...	<\$6.5 million.
Aircraft Rental .....	<\$6.5 million.
Aircraft Sales .....	<\$9 million.
Charter, sightseeing, courier.	<1,500 employees.
Fixed Base Operator	<\$6.5 million.
Flight School .....	<\$23.5 million.
Other .....	<\$6.5 million.
Repair Station .....	<\$6.5 million.
Working (agriculture, helicopter lift, etc.).	<\$6.5 million.

The FAA matched each DC SFRA-impacted aviation-related business to its appropriate NAICS code and compared it to the SBA size standard for that NAICS code. The FAA estimates that the majority of impacted businesses are considered small under the SBA size standards.

The FAA found that the impact of the DC SFRA on some of these businesses was positive, while for others, it was negative. “Congress considered the term ‘significant’ to be neutral with respect to whether the impact is beneficial or harmful to small businesses. Therefore, agencies need to consider both beneficial and adverse impacts in an analysis.”<sup>1</sup> The FAA estimated the annualized revenue impact of the rule on each of the small entities, and determined that the rule will have a significant economic impact on a substantial number of small entities. Except for two small entities which happen to be airports, the actual or estimated ratio of annualized revenue impacts to annual revenue was greater than 1 percent. Accordingly, the FAA

prepared a regulatory flexibility analysis, as described below.

C. 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 the agency considered the rule, (2) the objectives and legal basis for the rule, (3) the kind and number of small entities to which the rule will apply, (4) the reporting, recordkeeping, and other compliance requirements of the rule, and (5) all Federal rules that may duplicate, overlap, or conflict with the rule.

1. *Reasons the FAA considered the rule*—The FAA is taking this final action to enhance security in Washington, DC, the Nation’s capital. As the Nation’s capital, it has a unique symbolic, historic, and political status. Washington, DC is the seat of all three branches of the United States government, and is the home of the President and the Vice President. Likewise, it is the home of the U.S. Congress and the U.S. Supreme Court, and thus is the residence and office location for the officials in the Constitutional order of succession.

The FAA, in consultation with the Secretaries of Defense and Homeland Security, has determined that implementation of this rule is necessary to enable those officials in carrying out their responsibilities to lawfully identify, counter, prevent, deter, or, as a last resort, disable with non-lethal or lethal force, any airborne object that poses a threat to national security. The rule will assist air traffic controllers and National Capital Region Communications Center officials in monitoring air traffic by identifying, distinguishing, and, more importantly, responding appropriately when an aircraft is off course or is not complying with ATC instructions.

2. *The objectives and legal basis for the rule*—The objective of the rule is to codify the airspace restrictions within the Washington, DC Metropolitan Area. 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 legal basis for the rule is found in 49 U.S.C. 40103, *et seq.* The FAA and DHS 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)).

3. *The kind and number of small entities to which the rule will apply*—The FAA identified 34 small airports and 395 small aviation-related businesses that the rule will impact. Of the 34 small airports, 12 are in the DC SFRA. Of the 395 small aviation-related businesses, 274 are in the DC SFRA. Table 1 above lists the 34 small airports and Table 3 below shows the different types and number of small aviation-related businesses to which this rule will apply.

TABLE 3—TYPE AND NUMBER OF SMALL AVIATION-RELATED BUSINESS IMPACTED

Business type	Count
Aerial Photography .....	16
Aircraft Rental .....	18
Aircraft Sales .....	121
Charter Operators .....	21
Fixed Base Operators .....	61
Flight School .....	127
Repair Stations .....	9
Working .....	7
Other .....	15
<b>Total .....</b>	<b>395</b>

4. *The reporting, recordkeeping, and other compliance requirements of the rule*—As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA submitted a copy of these sections to OMB for its review. However, there are no sections of the paperwork package that apply to the airports and aviation-related businesses. All of the economic impact discussed below deals with business gained or lost due to the requirements of the DC SFRA.

5. *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 the rule.

6. *Other considerations*—Affordability analysis—For the purpose of this analysis, the degree to which small entities can afford the reduction in revenue resulting from the final rule is predicated on the availability of financial resources. Costs can be paid from existing assets such as cash, by

<sup>1</sup> Small Business Administration, “A Guide for Government Agencies—How To Comply With the Regulatory Flexibility Act”, May 2003, page 21.

borrowing, through the provision of additional equity capital, by accepting reduced profits, by raising prices, or by finding other ways of offsetting costs.

One means of assessing the affordability is the ability of each of the small entities to meet its short-term obligations, such as looking at net income, working capital and financial strength ratios. According to financial literature, a company's short-run financial strength is substantially influenced by its working capital position and its ability to pay short-term liabilities, among other things. However, the FAA was unable to find sufficient financial information for the majority of affected entities, and so used an alternative way of analyzing affordability. The approach used by the FAA was to compare the rule's impact on entity revenues with estimated revenues in the absence of the rule.

The FAA was able to estimate the annual change in revenue and 2007 revenue for the airports. However, the FAA was unable to locate revenue data for the aviation-related businesses. This analysis first discusses the airports and then the aviation-related businesses.

(a) Airports—Table 38 in the full regulatory impact analysis lists the public use airports within the DC SFRA and between the DC SFRA and 60 nautical miles from the DCA VOR/DME that are small entities. Column A lists each airport's estimated annual revenue in the absence of the rule and 2007 NOTAM.<sup>2</sup> Column B lists each airport's estimated revenue in 2007 (with the NOTAM). Column C lists each airport's estimated change in revenue as a result of the DC SFRA, and was computed by subtracting Column A from Column B. A negative change in revenue implies that the airport is worse off because of

this rule. Column D is the quotient of Column C and column A, or the ratio of annualized revenue change associated with the rule to the estimated non-NOTAM annualized revenue.

This information was used to assess the significance and affordability of this rule. Column E shows the airports for which the FAA expects this rule would have a significant impact, as described previously. Column F examines affordability using the alternative approach described above. The FAA considers that an airport would have trouble affording the rule if the change in its revenue is negative and exceeds 10 percent of its annualized change in revenue as a percentage of non-NOTAM revenue. The idea is that if a business has such a high loss in revenue, percentage-wise, it would likely have trouble affording the rule.

Table 4 summarizes Table 38 in the full regulatory impact analysis by showing the number of airports, the number of those airports that might have trouble affording this rule, and the resultant percentage.

TABLE 4—AFFORDABILITY OF SMALL BUSINESS AIRPORTS

Total number of small airports impacted .....	34
Number of small airports for which the rule might be non-affordable .....	12
Percentage .....	35.29%

(b) Other Aviation-Related Businesses—Aviation-related businesses less than 60nm from DCA were identified from Dun & Bradstreet reports, comments to the 2005 DC SFRA NPRM, airport Web sites, AOPA Pilot Guide, World Aerospace Directory, FAA Operating Specification Sub System (OPSS), FAA Vital Information System

(VIS), and FAA Form 5010 database. Although there was not enough data for the FAA to estimate business-by-business revenue impacts, the agency was able to estimate aggregate revenue impacts for business within and outside of the DC SFRA. The aggregate data show that as a group, DC SFRA businesses will have trouble affording this rule, as shown in Table 22 in the full regulatory impact analysis, whereas non-SFRA businesses will benefit from this rule, as shown in Table 23 in the full regulatory impact analysis. Thus, from the perspective of affordability, the FAA expects that a number of aviation-related businesses based at airports inside the DC SFRA will have trouble affording this rule. (See Table D-1 in Appendix D in the full regulatory impact analysis for a list of SFRA and non-SFRA businesses.)

7. *Liquidity analysis/profitability analysis*—As explained earlier, except for aggregate revenue data, the FAA was unable to find enough financial data for the impacted small businesses both inside and outside the DC SFRA to perform a liquidity analysis or a profitability analysis.

8. *Disproportionality analysis*—The FAA considered whether small entities will be disadvantaged relative to large entities due to disproportionate impacts. There was no need for the FAA to conduct a disproportionality analysis for the airports because all airports affected by this rule are small businesses, so none would be advantaged over any other. For the aviation-related businesses, as can be seen in Table 5, the estimated revenue impact per aircraft operation is larger for the large businesses than for the small businesses; thus, there will be no disproportionate impact.

TABLE 5—DISPROPORTIONALITY ANALYSIS FOR AVIATION-RELATED BUSINESSES

	Total revenue	Total operations	Revenue impact per aircraft operation
Large .....	\$8,581,818	237,643	\$36.11
Small .....	531,751	148,519	3.58

9. *Competitiveness analysis*—For the airports outside the DC SFRA, the average net increase in revenue as a percentage of estimated non-NOTAM revenue was 4.9 percent. For those airports inside the DC SFRA, the average net decrease in revenue as a percentage of non-NOTAM revenue was 44.9 percent. Much of this decrease

comes from the three airports within the DC FRZ—College Park, Potomac Airfield, and Washington Executive/Hyde Field; without these three airports, the average net decrease in revenue as a percentage of revenue resulting from the rule would be about 19.7 percent. The FAA expects that based on the results of this analysis, this rule will

improve the competitiveness of small businesses outside the DC SFRA vis-à-vis those inside the DC SFRA, since the revenue of most aviation-related businesses is dependent on the number of aircraft operations taking place at that airport.

10. *Business closure analysis*—It is difficult for the FAA to determine the

<sup>2</sup> This value is used to ensure that the analysis examines the rule in accordance with the pre-9/11

baseline established in the full regulatory impact analysis.

extent to which airports significantly impacted by this rule might have to cease operations. There are too many variables and some of the airports within the DC SFRA are already in serious financial difficulty; the information shown in the affordability analysis can be indicators of airport business closures. The FAA has no comparable financial information on the aviation-related businesses. To what extent the final rule makes the difference in whether these entities remain in business is difficult to answer. The FAA believes that there is a likelihood of business closure for some of these businesses as a result of this rule.

#### Alternatives

The FAA considered alternatives to the rule for both airports and aviation-related businesses. A discussion of these alternatives follows. The third alternative is the final rule. For each alternative, the FAA first states the alternative, followed by a discussion, and why the FAA believes that the alternative would not enhance security.

*Alternative 1—Retain the DC FRZ, eliminate the rest of the DC SFRA*—Under this alternative, airspace in the Washington DC Metropolitan area with flight restrictions would be reduced considerably. The only flight restrictions remaining would be within approximately 15 NM of the DCA VOR/DME, 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 DC FRZ, resulting in reduced pilot and controller workload. This alternative would provide relief to those VFR operators that will operate in the DC SFRA area but not into the DC FRZ. It would restore former air traffic control procedures and air space configurations for some of the area. The FAA estimates that implementation of this alternative would have a positive effect for all of the impacted airports except for College Park, Washington Executive/Hyde Field, and Potomac.

Conclusion: This alternative is not preferred because it does not meet the safety and security requirements of those security agencies responsible for the safety of the Washington DC Metropolitan area. Thus, the FAA does not consider this to be a significant alternative in accordance with 5 U.S.C. 603(d).

*Alternative 2—Rescind the FAA's NOTAM and the DC SFRA/DC FRZ immediately*—This alternative would

provide immediate relief to these airports and aviation-related businesses by removing security provisions and restoring former air traffic control procedures and airspace 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 option with the least impact.

Conclusion: The FAA believes that the threat of terrorists must be guarded against, and this option would not adequately achieve that goal. Rescinding these actions would increase the vulnerability and diminish the level of protection now in place to safeguard vital national assets located within the NCR. This alternative is rejected because it would compromise the security of vital national assets and increase their vulnerability. Thus, the FAA does not consider this to be a significant alternative in accordance with 5 U.S.C. 603(d).

*Alternative 3—Codify existing flight restrictions over the Washington, DC Metropolitan Area (Final Rule)*—Under this alternative, the government would maintain the present security and air traffic operational restrictions. The rule enhances security measures in that it requires any aircraft operating to and from the affected airports and transiting the DC SFRA to be properly identified and cleared. This alternative would affect all airports and aviation-related businesses.

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

*Alternative 4—Exempt small, slow aircraft*—This alternative would exempt small, piston-driven aircraft. The rationale behind this alternative is that these aircraft are slower than turbine-driven aircraft and are much less likely to be a threat. Most general aviation aircraft fall into this category, and so most aircraft operators would not be subject to this rule. However, the FAA's air traffic controllers cannot distinguish between piston-drive and turbine-drive aircraft from radar or from transponder codes, making this alternative difficult to enforce, thus having the potential to compromise security.

Conclusion: This alternative would increase the vulnerability of 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. Thus, the

FAA does not consider this to be a significant alternative in accordance with 5 U.S.C. 603(d).

#### D. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96-39) 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 final rule and determined that it will have only a domestic impact and therefore no effect on international trade.

#### E. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) 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 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 \$136.1 million in lieu of \$100 million.

This final rule does not contain such a mandate. The requirements of Title II do not apply.

#### VIII. Executive Order 13132, Federalism

The FAA has analyzed this final 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, and, therefore, does not have federalism implications.

#### IX. 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 this rulemaking action qualifies for the

categorical exclusion identified in paragraph 312f and involves no extraordinary circumstances.

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

The FAA has analyzed this final rule 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, while it is a "significant regulatory action" under Executive Order 12866, it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

#### XI. Availability of Rulemaking Documents

You can get an electronic copy of rulemaking documents using the Internet by—

1. Searching the Federal eRulemaking Portal (<http://www.regulations.gov>);
2. Visiting the FAA's Regulations and Policies Web page at [http://www.faa.gov/regulations\\_policies/](http://www.faa.gov/regulations_policies/); 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 sending 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. Make sure to identify the amendment number or docket number of this rulemaking.

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 or you may visit <http://DocketsInfo.dot.gov>.

#### XII. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. If you are a small entity and you have a question regarding this document, you may contact your local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. You can find

out more about SBREFA on the Internet at [http://www.faa.gov/regulations\\_policies/rulemaking/sbre\\_act/](http://www.faa.gov/regulations_policies/rulemaking/sbre_act/).

#### List of Subjects

##### 14 CFR Part 1

Air transportation.

##### 14 CFR Part 93

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

#### The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends parts 1 and 93 of title 14 Code of Federal Regulations (14 CFR parts 1 and 93) as follows:

#### PART 1—DEFINITIONS AND ABBREVIATIONS

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

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

■ 2. Amend § 1.1 by adding the definition of "National defense airspace" in alphabetical order to read as follows:

##### § 1.1 General definitions.

\* \* \* \* \*  
*National defense airspace* means airspace established by a regulation prescribed, or an order issued under, 49 U.S.C. 40103(b)(3).  
 \* \* \* \* \*

#### PART 93—SPECIAL AIR TRAFFIC RULES

■ 3. The authority citation for part 93 continues to read as follows:

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

■ 4. Add subpart V, consisting of §§ 93.331 through 93.345, to read as follows:

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

Sec.

- 93.331 Purpose and applicability of this subpart.  
 93.333 Failure to comply with this subpart.  
 93.335 Definitions.  
 93.337 Requirements for operating in the DC SFRA.  
 93.339 Requirements for operating in the DC SFRA, including the DC FRZ.  
 93.341 Aircraft operations in the DC FRZ.  
 93.343 Requirements for aircraft operations to or from College Park Airport, Potomac Airfield, or Washington Executive/Hyde Field Airport.  
 93.345 VFR outbound procedures for fringe airports.

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

##### § 93.331 Purpose and applicability of this subpart.

This subpart prescribes special air traffic rules for aircraft operating in the Washington, DC Metropolitan Area. Because identification and control of aircraft is required for reasons of national security, the areas described in this subpart constitute national defense airspace. The purpose of establishing this area is to facilitate the tracking of, and communication with, aircraft to deter persons who would use an aircraft as a weapon, or as a means of delivering weapons, to conduct an attack on persons, property, or buildings in the area. This subpart applies to pilots conducting any type of flight operations in the airspace designated as the Washington, DC Metropolitan Area Special Flight Rules Area (DC SFRA) (as defined in § 93.335), which includes the airspace designated as the Washington, DC Metropolitan Area Flight Restricted Zone (DC FRZ) (as defined in § 93.335).

##### § 93.333 Failure to comply with this subpart.

(a) *Any violation.* The FAA may take civil enforcement action against a pilot for violations, whether inadvertent or intentional, including imposition of civil penalties and suspension or revocation of airmen's certificates.

(b) *Knowing or willful violations.* The DC FRZ and DC SFRA were established for reasons of national security under the provisions of 49 U.S.C. 40103(b)(3). Areas established by the FAA under that authority constitute "national defense airspace" as that term is used in 49 U.S.C. 46307. In addition to being subject to the provisions of paragraph (a) of this section, persons who knowingly or willfully violate national defense airspace established pursuant to 49 U.S.C. 40103(b)(3) may be subject to criminal prosecution.

##### § 93.335 Definitions.

For purposes of this subpart—

*DC FRZ flight plan* is a flight plan filed for the sole purpose of complying with the requirements for VFR operations into, out of, and through the DC FRZ. This flight plan is separate and distinct from a standard VFR flight plan, and does not include search and rescue services.

*DC SFRA flight plan* is a flight plan filed for the sole purpose of complying with the requirements for VFR operations into, out of, and through the DC SFRA. This flight plan is separate and distinct from a standard VFR flight

plan, and does not include search and rescue services.

*Fringe airports* are the following airports located near the outer boundary of the Washington, DC Metropolitan Area Special Flight Rules Area: Barnes (MD47), Flying M Farms (MD77), Mountain Road (MD43), Robinson (MD14), and Skyview (51VA).

*Washington, DC Metropolitan Area Flight Restricted Zone (DC FRZ)* is an area bounded by a line beginning at the Washington VOR/DME (DCA) 311° radial at 15 nautical miles (NM) (Lat. 38°59'31" N., Long. 077°18'30" W.); then clockwise along the DCA 15 nautical mile arc to the DCA 002° radial at 15 NM (Lat. 39°06'28" N., Long. 077°04'32" W.); then southeast via a line drawn to the DCA 049° radial at 14 NM (Lat. 39°02'18" N., Long. 076°50'38" W.); thence south via a line drawn to the DCA 064° radial at 13 NM (Lat. 38°59'01" N., Long. 076°48'32" W.); thence clockwise along the 13 NM arc to the DCA 276° radial at 13 NM (Lat. 38°50'53" N., Long. 077°18'48" W.); thence north to the point of beginning, excluding the airspace within a one nautical mile radius of the Freeway Airport, W00, Mitchellville, MD from the surface up to but not including flight level (FL) 180. The DC FRZ is within and part of the Washington, DC Metropolitan Area SFRA.

*Washington, DC Metropolitan Area Special Flight Rules Area (DC SFRA)* is an area of airspace over the surface of the earth where the ready identification, location, and control of aircraft is required in the interests of national security. Specifically, the DC SFRA is that airspace, from the surface to, but not including, FL 180, within a 30-mile radial of Lat. 38°51'34" N., Long. 077°02'11" W., or the DCA VOR/DME. The DC SFRA includes the DC FRZ.

**§ 93.337 Requirements for operating in the DC SFRA.**

A pilot conducting any type of flight operation in the DC SFRA must comply with the restrictions listed in this subpart and 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, a pilot must comply with all of the applicable requirements of this chapter.

**§ 93.339 Requirements for operating in the DC SFRA, including the DC FRZ.**

(a) Except as provided in paragraphs (b) and (c) of this section and in § 93.345, or unless authorized by Air Traffic Control, no pilot may operate an aircraft, including an ultralight vehicle

or any civil aircraft or public aircraft, in the DC SFRA, including the DC 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 an aircraft in the DC SFRA, including the DC FRZ, the pilot establishes two-way radio communications with the appropriate Air Traffic Control facility and maintains such communications while operating the aircraft in the DC SFRA, including the DC FRZ;

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

(4) Before operating an aircraft in the DC SFRA, including the DC FRZ, the pilot obtains and transmits a discrete transponder code from Air Traffic Control, and the aircraft's transponder continues to transmit the assigned code while operating within the DC SFRA;

(5) For VFR operations, the pilot must file and activate a DC FRZ or DC SFRA flight plan by obtaining a discrete transponder code. The flight plan is closed upon landing at an airport within the DC SFRA or when the aircraft exits the DC SFRA;

(6) Before operating the aircraft into, out of, or through the Washington, DC Tri-Area Class B Airspace Area, the pilot receives a specific Air Traffic Control clearance to operate in the Class B airspace area; and

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

(b) Paragraph (a)(5) of this section does not apply to operators of Department of Defense aircraft, law enforcement operations, or lifeguard or air ambulance operations under an FAA/TSA airspace authorization, if the flight crew is in contact with Air Traffic Control and is transmitting an Air Traffic Control-assigned discrete transponder code.

(c) When operating an aircraft in the VFR traffic pattern at an airport within the DC SFRA (but not within the DC FRZ) that does not have an airport traffic control tower, a pilot must—

(1) File a DC SFRA flight plan for traffic pattern work;

(2) Communicate traffic pattern position via the published Common Traffic Advisory Frequency (CTAF);

(3) Monitor VHF frequency 121.5 or UHF frequency 243.0, if the aircraft is suitably equipped;

(4) Obtain and transmit the Air Traffic Control-assigned discrete transponder code; and

(5) When exiting the VFR traffic pattern, comply with paragraphs (a)(1) through (a)(7) of this section.

(d) When operating an aircraft in the VFR traffic pattern at an airport within the DC SFRA (but not within the DC FRZ) that has an operating airport traffic control tower, a pilot must—

(1) Before departure or before entering the traffic pattern, request to remain in the traffic pattern;

(2) Remain in two-way radio communications with the tower. If the aircraft is suitably equipped, the pilot must also monitor VHF frequency 121.5 or UHF frequency 243.0;

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

(4) Before exiting the traffic pattern, comply with paragraphs (a)(1) through (a)(7) of this section.

(e) Pilots must transmit the assigned transponder code. No pilot may use transponder code 1200 while in the DC SFRA.

**§ 93.341 Aircraft operations in the DC FRZ.**

(a) Except as provided in paragraph (b) of this section, no pilot may conduct any flight operation under part 91, 101, 103, 105, 125, 133, 135, or 137 of this chapter in the DC FRZ, unless the specific flight is operating under an FAA/TSA authorization.

(b) Department of Defense (DOD) operations, law enforcement operations, and lifeguard or air ambulance operations under an FAA/TSA airspace authorization are excepted from the prohibition in paragraph (a) of this section if the pilot is in contact with Air Traffic Control and operates the aircraft transponder on an Air Traffic Control-assigned beacon code.

(c) The following aircraft operations are permitted in the DC FRZ:

(1) Aircraft operations under the DCA Access Standard Security Program (DASSP) (49 CFR part 1562) with a Transportation Security Administration (TSA) flight authorization.

(2) Law enforcement and other U.S. Federal aircraft operations with prior FAA approval.

(3) Foreign-operated military and state aircraft operations with a State Department-authorized diplomatic clearance, with State Department notification to the FAA and TSA.

(4) Federal, State, Federal DOD contract, local government agency aircraft operations and part 121, 129 or 135 air carrier flights with TSA-approved full aircraft operator standard security programs/procedures, if operating with DOD permission and notification to the FAA and the National

Capital Regional Coordination Center (NCRCC). These flights may land and depart Andrews Air Force Base, MD, with prior permission, if required.

(5) Aircraft operations maintaining radio contact with Air Traffic Control and continuously transmitting an Air Traffic Control-assigned discrete transponder code. The pilot must monitor VHF frequency 121.5 or UHF frequency 243.0.

(d) Before departing from an airport within the DC FRZ, or before entering the DC FRZ, all aircraft, except DOD, law enforcement, and lifeguard or air ambulance aircraft operating under an FAA/TSA airspace authorization must file and activate an IFR or a DC FRZ or a DC SFRA flight plan and transmit a discrete transponder code assigned by an Air Traffic Control facility. Aircraft must transmit the discrete transponder code at all times while in the DC FRZ or DC SFRA.

**§ 93.343 Requirements for aircraft operations to or from College Park Airport, Potomac Airfield, or Washington Executive/Hyde Field Airport.**

(a) A pilot may not operate an aircraft to or from College Park Airport, MD, Potomac Airfield, MD, or Washington Executive/Hyde Field Airport, MD unless—

(1) The aircraft and its crew and passengers comply with security rules issued by the TSA in 49 CFR part 1562, subpart A;

(2) Before departing, the pilot files an IFR or DC FRZ or DC SFRA flight plan with the Washington Hub Flight Service Station (FSS) for each departure and arrival from/to College Park, Potomac Airfield, and Washington Executive/Hyde Field airports, whether or not the aircraft makes an intermediate stop;

(3) When filing a flight plan with the Washington Hub FSS, the pilot identifies himself or herself by providing the assigned pilot identification code. The Washington Hub FSS will accept the flight plan only after verifying the code; and

(4) The pilot complies with the applicable IFR or VFR egress procedures in paragraph (b), (c) or (d) of this section.

(b) If using IFR procedures, a pilot must—

(1) Obtain an Air Traffic Control clearance from the Potomac TRACON; and

(2) Comply with Air Traffic Control departure instructions from Washington Executive/Hyde Field, Potomac Airport, or College Park Airport. The pilot must then proceed on the Air Traffic Control-assigned course and remain clear of the DC FRZ.

(c) If using VFR egress procedures, a pilot must—

(1) Depart as instructed by Air Traffic Control and expect a heading directly out of the DC FRZ until the pilot establishes two-way radio communication with Potomac Approach; and

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

(d) If using VFR ingress procedures, the aircraft must remain outside the DC SFRA until the pilot establishes communications with Air Traffic Control and receives authorization for the aircraft to enter the DC SFRA.

(e) VFR arrivals:

(1) If landing at College Park Airport a pilot may receive routing via the vicinity of Freeway Airport; or

(2) If landing at Washington Executive/Hyde Field or Potomac Airport, the pilot may receive routing via the vicinity of Maryland Airport or the Nottingham VORTAC.

**§ 93.345 VFR outbound procedures for fringe airports.**

(a) A pilot may depart from a fringe airport as defined in § 93.335 without filing a flight plan or communicating with Air Traffic Control, unless requested, provided:

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

(2) The pilot exits the DC SFRA by the most direct route before proceeding on course; and

(3) The pilot monitors VHF frequency 121.5 or UHF frequency 243.0.

(b) No pilot may operate an aircraft arriving at a fringe airport or transit the DC SFRA unless that pilot complies with the DC SFRA operating procedures in this subpart.

Issued in Washington, DC, on December 9, 2008.

**Robert A. Sturgell,**

*Acting Administrator.*

[FR Doc. E8-29711 Filed 12-15-08; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 73**

[Docket No. FAA-2008-1252; Airspace Docket No. 08-AWP-12]

**RIN 2120-AA66**

**Revision of Restricted Areas 4806W, 4807A&B, and 4809; Nevada**

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

**ACTION:** Final rule.

**SUMMARY:** This action changes the using agency of Restricted Area 4806W (R-4806W), Las Vegas; 4807 (R-4807 A & B), Tonopah; and 4809 (R-4809) Tonopah, NV, from "U.S. Air Force, Commander, Tactical Fighter Weapons Center, Nellis AFB, NV" to "USAF Warfare Center, Nellis AFB, NV". The FAA is taking this action in response to a request from the United States Air Force to reflect an administrative change of responsibility for the restricted area. This action does not change any boundaries, times of designation, or activities conducted in the restricted airspace area.

**DATES:** *Effective Date:* 0901 UTC, March 12, 2009.

**FOR FURTHER INFORMATION CONTACT:** Ken McElroy, Airspace and Rules Group, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; *telephone:* (202) 267-8783.

**SUPPLEMENTARY INFORMATION:**

**The Rule**

This action amends Title 14 Code of Federal Regulations (14 CFR) part 73 by changing the using agency for R-4806W, R-4807A & B, and R-4809 currently shown as, "U.S. Air Force, Commander, Tactical Fighter Weapons Center, Nellis AFB, NV" to "USAF Warfare Center, Nellis AFB, NV". This is an administrative change and does not affect the boundaries, designated altitudes, or activities conducted within the restricted areas. Therefore, notice and public procedures under 5 U.S.C. 553(b) is unnecessary.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in