

agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

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

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

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

As a basis for comparison among small airports, the FAA examined the revenue base for all Part 139 small airports. Small general aviation airports are not required to have security programs; only those airports that have scheduled service are required to have such a program. Air carrier airports are funded from tax revenues and generally have greater aviation traffic activity than general aviation airports and airports without scheduled service. The two small airports subject to SFAR 94 are not supported from tax revenues, as the revenues that sustain the two airports are derived solely from the pilots who use the airports. The estimated annual cost of compliance, based on known costs and revenues for the Washington Executive Airport is \$290,700 and the burden on the Potomac Airfield Airport is \$220,700; they increase to \$333,100

and \$252,200 when the anticipated airport revenue losses are increased by 20%, as discussed above. These costs are considered burdensome because they are well in excess of one percent of the median annual revenue of small airport operators (one percent of the annual median revenue for small operators is \$28,000). Therefore, the FAA has determined that the rule will have a significant economic impact on a substantial number of small entities.

Regulatory Flexibility Analysis

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

Reasons why the FAA considered the rule—The catastrophic events of September 11, 2001, introduced the awareness that terrorists will use civil aviation aircraft as a missile or possible carriers of biological, chemical, radioactive and/or conventional weaponry against civilian targets. The airports affected by this rule are located within a few minutes flight from vital civilian and military control centers. This final rule recognizes that the terrorist threat is changing and growing and that extraordinary steps must be taken to safeguard vulnerable critical national assets and counter the increased threat level.

The objectives and legal basis for the rule—The objective of the rule is to restore operations at the affected airports while attempting to counter the threat of a possible terrorist airborne attack carried out against vital national assets located within the National Capital Region. The Legal basis for the rule is found in 49 U.S.C. 44901 *et seq.* Both the FAA and the TSA must consider, as a matter of policy, maintaining and enhancing safety and security in air commerce as its highest priorities (49 U.S.C. 40101(d)).

The kind and number of small entities to which the rule will apply—The rule applies to two small general aviation airports subject to SFAR 94. Private fliers and some pilots who occasionally operate their aircraft for business reasons use the two airports.

The reporting, record keeping, and other compliance requirements of the

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

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

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

Other Considerations

Affordability analysis—The extent to which a small airport can "afford" the cost of compliance is directly related on the availability of income and earnings. The small airports subject to this rule generate income to sustain their operations from landing fees, tie-down charges, rent and other compensation paid by airport tenants, fuel sales, flight school instruction, sightseeing rides, aircraft rentals, and miscellaneous local sales. All of these sources of income are influenced directly by the number of operations at the airport. The reduction in operations experienced by the airports as a consequence of the flight restrictions in place before and after this rule became effective is significant.

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

At this time, there is no comprehensive source of information available that would account for a total financial picture of these airports. There is also no information about the airports' ability to obtain credit. The only evidence is limited to the fact that the airport and its tenants generated revenues in previous years and were able to pay their taxes. As such, it can