



G A O

Accountability * Integrity * Reliability

United States Government Accountability Office
Washington, DC 20548

B-317640

January 8, 2009

The Honorable Daniel K. Inouye
Chairman
The Honorable Kay Bailey Hutchison
Ranking Minority Member
Committee on Commerce, Science, and Transportation
United States Senate

The Honorable James L. Oberstar
Chairman
The Honorable John L. Mica
Ranking Minority Member
Committee on Transportation and Infrastructure
House of Representatives

Subject: *Department of Transportation, Federal Aviation Administration:
Washington, DC Metropolitan Area Special Flight Rules Area*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of Transportation, Federal Aviation Administration (FAA), entitled "Washington, DC Metropolitan Area Special Flight Rules Area" (RIN: 2120-A117). We received the rule on December 24, 2008. It was published in the *Federal Register* as a final rule on December 16, 2008. 73 Fed. Reg. 76,195.

The final rule codifies special flight rules and airspace and flight restrictions for certain aircraft operations in the Washington, DC Metropolitan Area. The final rule establishes and defines the DC Special Flight Rules Area, and the dimensions, procedures, and required equipment for operating within that area. Additionally, the final rule provides for traffic pattern operations at towered and non-towered airports within the DC Special Flight Rules Area and provides relief from certain procedures for airports located near the boundary of the area.

The final rule has an announced effective date of February 17, 2009. The Congressional Review Act requires a 60-day delay in the effective date of a major rule from the date of publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). The rule was published in the *Federal Register* on December 16, 2008, and was not received by this office until

December 24, 2008. Therefore, the final rule does not have the required 60-day delay in its effective date.

Enclosed is our assessment of the FAA's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review indicates that, with the exception of the delay in the rule's effective date, FAA complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Associate General Counsel

Enclosure

cc: Nancy Molitor
Program Analyst
Department of Transportation

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF TRANSPORTATION,
FEDERAL AVIATION ADMINISTRATION
ENTITLED
"WASHINGTON, DC METROPOLITAN AREA
SPECIAL FLIGHT RULES AREA"
(RIN: 2120-AI17)

(i) Cost-benefit analysis

FAA prepared a cost-benefit analysis and determined that the final rule has benefits that justify its costs. FAA determined that the total private and public sector costs would total \$1.04 billion over 10 years. These costs include public sector costs for scrambling planes and helicopters from Andrews Air Force Base, additional radar facilities, additional controllers and flight service station specialists, as well as private sector costs related to operating restrictions, decrease in aviation activity at affected airports, and decrease in activity or increase in costs for aviation-related businesses. When FAA compared the costs to the consequences of five different scenarios, it found that in three of the five scenarios the required risk reduction could be less than 100 percent and the rule would be cost beneficial.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

FAA determined that the final rule will have a significant economic impact on a substantial number of small entities, and therefore prepared a regulatory flexibility analysis. FAA determined that the final rule will impact 34 small airports and 395 small aviation-related businesses. For small airports, FAA determined that 12 of the 34, or 35.29 percent, would have trouble affording the rule, meaning the airport would have a negative change in revenue that exceeds 10 percent of its annualized change in revenue as a percentage of non-Notice to Airmen revenue. For other aviation-related businesses, FAA determined by looking at estimated aggregate revenue impacts that businesses within the DC Special Flight Rule Area (SFRA) will have trouble affording the rule, while non-SFRA businesses will benefit from the rule.

FAA considered three alternatives in addition to the final rule, but determined that each of the other options would not provide adequate protection to the vital national assets located within the National Capital Region.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

FAA determined that the final rule does not contain a federal mandate that may result in the 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.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

FAA published a notice of proposed rulemaking (NPRM) in the *Federal Register* on August 4, 2005. 70 Fed. Reg. 45,250. The comment period on the NPRM closed on November 2, 2005. However, in response to requests from Members of Congress, industry associations, and individual comments, on November 7, 2005, it was reopened until February 6, 2006. 70 Fed. Reg. 67,388. In January 2006, the FAA held four public meetings in Columbia, Maryland, and Dulles, Virginia. FAA received over 21,000 written comments in response to the proposed rule, in addition to oral comments submitted during the public meetings. Effective August 30, 2007, FAA made changes through Notices to Airmen modifying the size and shape of the DC SFRA and adding three sectors at Potomac Terminal Radar Approach Control to track aircraft in the DC SFRA and taking steps to improve functions such as flight plan processing. FAA also responds to the comments in this final rule. 70 Fed. Reg. 76,195.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

FAA submitted a copy of the new information collection requirements in this rule to the Office of Management and Budget (OMB) for review, and OMB approved the collection of the information and assigned Control Number 2120-0706.

FAA estimates that the number of respondents will be approximately 17,097 respondents, with an annual cost of \$1,831,098 taking 49,223.07 hours annually.

Statutory authorization for the rule

The final rule is authorized by 49 U.S.C. § 40103(b)(3)(A).

Executive Order No. 12,866 (Regulatory Planning and Review)

FAA determined that the final rule is an economically significant regulatory action under the Order.

Executive Order No. 13,132 (Federalism)

FAA determined that the final rule does not have federalism implications.