

October 3, 2011

BY ELECTRONIC MAIL

The Honorable J. Randolph Babbitt
Administrator, Federal Aviation Administration
U.S. Department of Transportation
800 Independence Avenue, SW
Washington, DC 20591
Electronic Address: <http://www.regulations.gov> (Docket No. FAA-2011-0972)

Re: Comments on FAA's Draft Standard Operating Procedures (SOP) of the Aircraft Certification Service (AIR) Process for the Sequencing of Certification and Validations Projects

Dear Administrator Babbitt:

The U.S. Small Business Administration's (SBA) Office of Advocacy (Advocacy) submits the following comments on the Federal Aviation Administration's (FAA's) *Draft Standard Operating Procedures (SOP) of the Aircraft Certification Service (AIR) Process for the Sequencing of Certification and Validations Projects (Project Sequencing SOPs)*.¹ FAA's draft *Project Sequencing SOPs* would formalize the process that FAA's Aircraft Certification Service uses for prioritizing the certification and validation of projects.² In the past, this process was carried out by the order in which projects were received. However, since 2005, FAA has used project sequencing to prioritize and manage the approval process based on the agency's resources and operational safety priorities.

Office of Advocacy

Advocacy was established pursuant to Pub. L. 94-305 to represent the views of small entities before federal agencies and Congress. Advocacy is an independent office within SBA, so the views expressed by Advocacy do not necessarily reflect the views of SBA or the Administration. The Regulatory Flexibility Act (RFA),³ as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA),⁴ gives small entities a voice in the rulemaking process. For all rules that are expected to have a significant economic impact on a substantial number of small entities, federal agencies are required by the RFA to assess the impact of the proposed rule

¹ 76 Fed. Reg. 54528 (September 1, 2011).

² A copy of FAA's Draft Project Sequencing SOPs can be found on FAA's website at http://www.faa.gov/aircraft/draft_docs/policy/.

³ 5 U.S.C. § 601 et seq.

⁴ Pub. L. 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C. §601 et seq.).

on small business and to consider less burdensome alternatives. Moreover, Executive Order 13272⁵ requires federal agencies to notify Advocacy of any proposed rules that are expected to have a significant economic impact on a substantial number of small entities and to give every appropriate consideration to any comments on a proposed or final rule submitted by Advocacy. Further, both Executive Order 13272 and a recent amendment to the RFA, codified at 5 U.S.C. 604(a)(3), require the agency to include in any final rule the response of the agency to any comments filed by Advocacy, and a detailed statement of any change made to the proposed rule as a result of the comments.

Small Entities Have Expressed Concerns with the FAA's Project Sequencing Process

Advocacy has heard from a number of small businesses from the aviation sector who have complained that the current project sequencing process is not working well and has resulted in numerous delays for small businesses seeking FAA certifications and approvals. These small businesses have also expressed concern that the procedures outlined in the draft document could place them at a disadvantage in the approval process because they lack the resources and expertise of their larger competitors. Advocacy is concerned that these delays are harming small business and impeding the introduction of potential aviation safety innovations in the marketplace. As such, Advocacy recommends that FAA consider extending the comment period for the draft SOPs by at least 30 days, commit to a targeted outreach effort for small business (such as hosting listening sessions, teleconferences, or roundtable discussions), and that any final SOPs be adopted through a formal notice and comment rulemaking process, including a small business impact analysis in accordance with the RFA.

On January 20, 2011, President Obama issued Executive Order 13563, *Improving Regulation and Regulatory Review*.⁶ That Executive Order provides that each agency shall, to the extent feasible and permitted by law, afford the public a meaningful opportunity to participate in the rulemaking process, including a comment period that should generally be at least 60 days. Further, the Executive Order states that each agency, where feasible and appropriate, shall seek the views of those who are likely to be affected, including those who are likely to benefit from and those who are potentially subject to such rulemaking. A Presidential memorandum on small business issued along with Executive Order 13563 clearly calls upon federal agencies to minimize the cost and cumulative impact of their regulations and to give special consideration to small business concerns.⁷

Advocacy understands that while FAA has been relying on project sequencing since 2005, no formal agency policies or procedures for this process have ever been made publicly available until now. For that reason, Advocacy believes that an extended comment period and targeted outreach to small business is particularly appropriate in this instance. Advocacy would welcome

⁵ Executive Order 13272, *Proper Consideration of Small Entities in Agency Rulemaking* (67 Fed. Reg. 53461) (August 16, 2002).

⁶ See, Executive Order 13563, *Improving Regulations and Regulatory Review*, 76 Fed. Reg. 3821.

⁷ See, *Presidential Memoranda – Regulatory Flexibility, Small Business, and Job Creation* available at <http://www.whitehouse.gov/the-press-office/2011/01/18/presidential-memoranda-regulatory-flexibility-small-business-and-job-cre>.

the opportunity to work with FAA to reach out to small business to ensure that their particular needs and concerns are heard as part of this public outreach process.

Conclusion

Thank you for the opportunity to comment on FAA's *Draft Project Sequencing SOPs*. One of the primary functions of the Office of Advocacy is to assist federal agencies in understanding the impact of their regulatory programs on small entities. In this regard, Advocacy believes that FAA would benefit by providing an extended comment period, a targeted outreach effort for small business, and a formal notice and comment rulemaking process. Please feel free contact me or Bruce Lundegren (at (202) 205-6144 or bruce.lundegren@sba.gov) if you have any questions or require additional information.

Sincerely,

/s/

Winslow Sargeant, Ph.D.
Chief Counsel for Advocacy

/s/

Bruce E. Lundegren
Assistant Chief Counsel for Advocacy

Copy to: The Honorable Cass R. Sunstein, Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget