RULES and REGULATIONS

DEPARTMENT OF TRANSPORTATION

Federal **Aviation Administration**

14 CFR Parts 93 and 159

[Docket No. 21955; Amdt. Nos. 93-44 and 159-27]

Metropolitan Washington Airports

Friday, November 27, 1981

***58036** AGENCY: Federal **Aviation Administration** (FAA), Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is adopting rules to implement the DOT/FAA policy to guide the future operation and development of Washington National and Dulles International Airports and to improve the quality of the environment in the Washington metropolitan area. These rules relate to the number and type of aircraft operations, the hours of operation and scheduling, a limit on the total number of passengers using National Airport, noise levels for nighttime operations, the perimeter for nonstop service, aircraft equipment restrictions, and the hourly allocation of operations among different classes of users at National. This amendment revokes the rules issued September 15, 1980, which were scheduled to become effective on November 30, 1981.

EFFECTIVE DATE: December 6, 1981, except that § 159.40 (**Nighttime Noise Limitations**) is effective on March 1, 1982. The revocation of Amendments 93.37 and 159.20 (§§ 93.123(a), (b)(3), (c), 159.40, 159.59, 159.60) is effective on November 23, 1981.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Environmental Impact Statement

A supplement to the Final Environmental Impact Statement of August 1980 has been prepared by the FAA Office of Environment and Energy. This final statement was transmitted to the Environmental Protection Agency and the formal notice of its availability was published in the Federal Register on September 25, 1981 (46 FR 47297). It is available for public review at the FAA Docket. Also, the statement will be distributed to area public libraries. Copies of the impact statement may be obtained from: John E. Wesler, Director of Environment and Energy, Federal **Aviation Administration**, 800 Independence Avenue SW., Washington, D.C. 20591; telephone: (202) 426-8406.

Regulatory Evaluation

A final Regulatory Evaluation was prepared and has been placed in the public docket. At DOT's request, the Director of OMB, in accordance with the Executive Order, waived the requirement for a preliminary evaluation. However, a preliminary evaluation was prepared and placed in the docket in order to maximize the amount of information available to those commenting on the proposal.

Some commenters have criticized the amount of time for which the preliminary analysis was made available prior to the close of the comment period. FAA recognizes that this period of time was relatively short; however, since its preparation and release were voluntary, FAA does not consider the criticism to be warranted. The alternative was not to release the document at all, which would not have been in the public interest. It must be noted that under 14 CFR 11.47, comments submitted after the close of the comment period would have been considered so far as possible without incurring expense or delay. The preliminary Regulatory Evaluation remained available for review after the formal comment period closed. Therefore, those commenters wishing to submit comments on the evaluation did have additional time to do so.

Some commenters claimed that the FAA has not complied with the Regulatory Flexibility Act (5 U.S.C. 603) in this rulemaking. However, the FAA has fully complied with the Act. The FAA's certification required under the Act (5 U.S.C. 605(b)) was contained in the notice of proposed rulemaking on this subject. A supplementary evaluation supporting that certification was placed in the docket at the beginning of the comment period.

Background

Interested persons were invited to participate in the making of the policy and these rules by a Notice of Proposed Rulemaking (NPRM) published July 13, 1981 (Notice No. 81-8; 46 FR 36068). Written comments were received from citizens residing near the airport, local municipal and county governments, cities served or desiring service into National, and the air carrier and general **aviation** industries. In addition, FAA heard the views of more than 50 speakers at

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public hearings held July 28-29. Many of the speakers represented large organizations of citizens or airport users.

The United States, acting through the Federal **Aviation Administration** (FAA) of the Department of Transportation (DOT) owns, operates and maintains the Metropolitan Washington Airports—Washington National and Dulles International, the two air carrier airports serving the Washington, D.C. area. Baltimore-Washington International Airport (BWI) also provides service to metropolitan Washington, and is owned and operated by the State of Maryland acting through the Maryland Department of Transportation (MDOT).

For approximately 10 years, the U.S. Department of Transportation has been seeking to establish an appropriate policy to guide the management and operation of Washington National and Dulles International Airports. Once a role for each airport in meeting the Washington metropolitan area's air transportation needs is clearly defined, it will be possible for DOT to move ahead with decisions pertaining to the facilities at Washington National while continuing to make timely improvements to Dulles. An understanding of the role of each airport is necessary to assure that the investment in improvements and management of present facilities are consistent with the area's needs. While the U.S. DOT does not establish policy for BWI, it recognizes that actions taken at National and Dulles Airports may influence operations at BWI. Therefore, BWI's role was considered in the development of this policy for the federally owned airports. The respective roles of these three airports have been the subject of several studies by the U.S. DOT, the State of Maryland DOT, and the Metropolitan Washington Council of Governments (COG).

In March 1978, the FAA issued a Notice of Proposed Metropolitan Washington Airports Policy (43 FR 12141; March 23, 1978). At that time, FAA proposed that Dulles Airport would continue to provide all types of air service to the Washington area. At National it was proposed to formally adopt the existing 650-mile nonstop perimeter, to retain the existing limit on air carrier activity at 40 scheduled operations per hour, to end scheduled air carrier activity at 9:30 p.m. daily, to place nighttime noise level restrictions on aircraft, to permit two- and three-engine wide-body aircraft to operate, and to constrain growth to no more than 16 million annual passengers in 1985 and 18 million in 1990. The FAA proposal ***58037** was accompanied by a Draft Environmental Impact Statement. Following the proposal, FAA conducted several public hearings and solicited comments from the public. Many comments on the policy proposal were received from other Federal agencies, state, local and municipal agencies, organizations, individuals, and members of Congress. Officials of several cities currently served or seeking to receive air service to Washington via National Airport also commented on the proposal.

On January 15, 1980, the Secretary proposed a new policy based upon the 1978 Notice, with new proposals with respect to nighttime operations, the number of operations allocated to different classes of users, the annual passenger limitation, and the nonstop service restriction at National. Also, on January 15, 1980, the FAA's Administrator issued an NPRM (Notice No. 80-2; 45 FR 4314; January 21, 1980) in which rules to implement the proposed policy were presented for public review and comment. The FAA also issued a supplement to the FAA Draft Environmental Impact Statement that had been issued in March 1978. As part of this rulemaking effort, the FAA held three public hearings which supplemented the hundreds of comments submitted during the comment period.

A Metropolitan Washington Airports Policy was announced on August 15, 1980, by the Secretary of Transportation. The FAA filed its Final Impact Statement with the Environmental Protection Agency on that same date. On September 15, 1980, the Administrator issued final rules implementing the Metropolitan Washington Airports Policy issued by

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the Secretary (45 FR 62398; September 18, 1980). The policy and regulations were as follows:

1. Growth Limitation at National. Washington National Airport would be permitted to accommodate no more than 17 million total passengers per year. That level would be maintained by periodically adjusting the number of operations allocated to air carriers operating aircraft with 56 passenger seats or more.

2. Operating Hours. The hours of operation at Washington National Airport were to be modified to provide that no air carrier, air taxi or commuter would be permitted to schedule operations between the hours of 9:30 p.m. and 7:00 a.m. Additionally, a curfew would be in force on all aircraft departures between the hours of 10:30 p.m. and 7:00 a.m. Similarly, there would be a curfew on aircraft arrivals between the hours of 11:00 p.m. and 7:00 a.m. FAA was to determine if a noise level limitation in lieu of an absolute curfew could be adopted consistent with the objective of maintaining a quiet nighttime environment.

3. Slot Availability to Various User Classes. The total number of operating slots at Washington National would remain at 60 per hour, as provided in the existing High Density Rule (14 CFR 93.121, et. seq.). The portion of that total which would be available to scheduled certificated air carriers was reduced to 36 per hour, a reduction of 4 per hour from the current allocation of 40 per hour. The commuter allowance was increased from 8 per hour to a level of 12 per hour with additional slots contemplated if air carrier slots were reduced over time.

4. Use of Wide-body Aircraft at National. The policy would have ended the prohibition on the use of two- and three-engine wide-body aircraft at Washington National provided that the FAA determined that the use of such aircraft was operationally feasible and the Director of FAA's Metropolitan Washington Airports found that the use of such aircraft was compatible with the aircraft operator's apron and terminal facilities and with the airport's other terminal and roadway capabilities.

5. Nonstop Perimeter at National. The nonstop service perimeter for Washington National would be redefined at 1,000 statute miles, with no exceptions.

6. Improvement of Washington National. The FAA would undertake to develop a master plan for physical redevelopment of Washington National.

7. The Role of Dulles. Dulles Airport would provide all types of **aviation** service. The Dulles Airport Access Highway would remain an airport-only roadway with the exceptions currently in force. Additional access improvements to Dulles would be pursued.

The regulations issued on September 15 were to become effective on January 5, 1981. The Congress, in the Department of Transportation and Related Agencies Appropriation Act of 1981, Pub. L. 96-400, provided that none of the funds appropriated could be used to mandate any reduction of the total number of certificated air carrier slots allocated per hour at National before April 26, 1981. As a result of that law and because the Metropolitan Washington Airports Policy elements were interrelated, the effective date of the entire policy was postponed until April 26, 1981.

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On March 24, 1981, the Secretary of Transportation delayed the effective date of the Metropolitan Washington Airports Policy and the implementing regulations until October 25, 1981 (46 FR 19255; March 30, 1981). The change in the effective date was necessary to permit evaluation, among other things, of the existing policy in accordance with the objectives of Executive Order 12291 (46 FR 13193; February 19, 1981), which provided new government-wide standards for the promulgation of regulations.

On October 22, 1981, the effective date of the Metropolitan Washington Airports Policy was further delayed until November 30, 1981, to allow additional time to complete the review of the issues and comments.

Summary of the Policy

The FAA and the Office of the Secretary of Transportation have reevaluated each aspect of the Metropolitan Washington Airports Policy and the implementing regulations with reference to Executive Order 12291, the Regulatory Flexibility Act, and comments received during the comment period in light of the Department's objectives. The objectives for the Metropolitan Washington Airports Policy have been stated repeatedly over the years. Stated concisely, the DOT's objectives have been and remain:

1. To provide the metropolitan Washington area with safe and efficient airport facilities.

2. To prescribe a role for Washington National and Dulles International Airports which, considering environmental and safety factors, will permit orderly planning by the FAA, the surrounding region, and the **aviation** industry for the future of these facilities.

3. To reduce the aircraft noise and congestion associated with the prevailing use of Washington National.

4. To promote better utilization of Dulles Airport.

5. To achieve optimum utilization of existing and planned capacity at the airports.

Comments on the notice, as well as those submitted on previous proposals concerning this issue, reveal sharp differences on the policy. Commenters from the immediate region in which the airports are located, including the States of Virginia and Maryland, regional and municipal officials, and many local residents, expressed the view that with Dulles and BWI Airports available to serve the region, the concentration of the region's air carrier activity at National Airport is an unwarranted burden on the residents who are constantly exposed to aircraft noise. Other commenters, including the air ***58038** carrier industry, business interests, many from beyond the Washington area, and elected officials from many areas of the country, expressed the opinion that National Airport is a uniquely convenient and valuable transportation asset that must be kept available for air travellers and shippers.

With these ends in mind, the Metropolitan Washington Airports Policy as follows:

1. The number of scheduled operations at Washington National Airport by air carriers utilizing aircraft with 56 or

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more passenger seats shall be limited to 37 per hour. The numerical limitation on the scheduled operations of commuter air carriers (operations involving aircraft certificated with less than 56 passenger seats) shall be 11 per hour while the number of reservations available for general **aviation** operations will remain at 12 per hour.

2. There will be noise limitations imposed on aircraft operated after 9:59 p.m. and before 7:00 a.m. at Washington National Airport. The noise limits will be sufficiently stringent to permit only relatively quiet aircraft to operate during nighttime hours. Adoption of daytime noise limits will be deferred at this time pending further review during a one year period after date of issuance.

3. Washington National Airport will be permitted to accommodate no more than 16 million total passengers per year.

4. Any air carrier aircraft types not currently operating at National Airport will not be allowed to use the airport: (1) Until it has been determined by the Administrator that operation of the aircraft at the airport meets appropriate safety concerns; and (2) until it has been determined by the director of the Metropolitan Washington Airports that the proposed operation is compatible with the airport's gate, apron, baggage and passenger handling, and roadway facilities.

5. Nonstop air carrier service to and from Washington National Airport shall be limited to distances of not more than 1,000 statute miles.

Other Matters

The FAA will actively promote improvements in the ground transportation to Dulles Airport. In particular, FAA will: (1) Emphasize the construction of the Dulles Access Highway connection to Interstate 66; and (2) strive to improve the quality of bus transportation to the airport.

In the first year of implementation of this policy, a Department of Transportation task force will monitor the impacts on air service to and from Washington to determine whether the policy is serving its stated purposes and whether any alterations should be made.

In addition, this task force will conduct a careful study of the original noise level standards proposed for daytime operations in 1981 and 1986 to determine whether, in light of the comments, they can reasonably be imposed as proposed or in a modified form. Interested parties will be contacted during this review.

Finally, consideration will also be given by the task force to a proposal made in the rulemaking process by the commuter air carriers. They argued that they should be permitted more operations than proposed, on the condition that they be operated with aircraft that meet the nighttime noise levels. The FAA, in determining whether to allow them, will consider the effects of any such additional flights on noise levels, congestion, and air traffic.

Policy Description

The following is a further description of the adopted policy and regulations.

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1. Passenger Ceiling

Under this policy the annual passenger limitation at National Airport will be 16 million total passengers per year (including enplaned plus deplaned passengers from air carrier, commuter and general **aviation** operations). The limitation (see § 93.124) will be maintained by future reductions in the slots of "air carriers except air taxis" as defined by these regulations. Although the reduction in air carrier slots from 40 to 37 will reduce the number of air carrier operations conducted at National Airport, the capacity limitation is necessary because the number of passengers utilizing the airport may continue to increase, even without the introduction of new aircraft types. Passenger activity has decreased slightly at National compared to 1979 levels, but growth trends can be expected to resume. Under existing limits, passenger activity has increased from approximately 11 million in 1972 to 15 million in 1979. This rule will limit that increase to be consistent with an appropriate level of use of airport facilities and will shift future growth in passenger activity to Dulles and BWI Airports. Thus, the cap on growth is a key to achieving the goals of this policy.

If no limitation were imposed, Washington area passengers would be expected to be distributed in the future as follows:

Annual Passengers
[Forecast in million annual passengers]

Year	National	Percent market	Dulles	Percent market	BWI	Percent market
1980	14.8	69	2.7	13	3.9	18
1985	19.1	60	6.3	20	6.2	20
1990	19.2	53	8.8	24	8.3	23

The forecast shows National continuing to dominate, in terms of passenger activity, through this decade, even assuming, as the above figures do, that wide-bodies are not allowed there. If wide-bodies, which seat about 200 to 275 passengers, were permitted to replace the 90- to 150-seat aircraft now serving National, passenger activity would grow even faster. It would be projected to reach 19 million passengers even earlier than shown above.

The growth potential is so great that, even with the reduction of the number of operations per hour allowed by this rule, combined with the **nighttime noise limitations**, National's passenger traffic could increase substantially if capacity limitations were not adopted. The reduction from 40 to 37 flights per hour may slow the rate of growth at Washington National somewhat, but would not by itself bring about a significant shift in future passenger activity to Dulles or BWI. Therefore, the ceiling on passenger activity at National is necessary.

Several commenters urge FAA to set the passenger ceiling at a lower level. Some commenters state that 14.5 million passenger level (approximately the level prior to the air traffic controller's strike) should be maintained. However, the 16 million annual passenger limitation imposes a limit on the use of National at a level not appreciably higher than the level at which it operated prior to the strike. It is a level which should not necessitate further reduction in air carrier

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scheduling slots for at least another 2 years, thereby giving the carriers time to plan for future changes in the way they serve the Washington metropolitan area. It is a level of use that permits National to continue as a major airport facility without severely disrupting passenger traffic patterns, but it will also increase the likelihood that the bulk of the growth in the area's passenger activity in this decade will occur at Dulles and BWI. Without a firm cap on National, it does not appear that the air carrier activity will shift in sufficient volume to these airports. A cap of 14.5 million passengers would require a deeper immediate cut of air carrier slots than FAA believes is prudent to impose. The 37 slots per hour, ***58039** although down from 40, would permit annual passenger activity at the airport to exceed 14.5 million when the growth trends in passenger activity resume. Therefore, further slot reductions would be necessary almost immediately, which could have service impacts that are not necessary for furtherance of this policy.

The slot reduction mechanism itself should enable the air carriers to plan operations at National even though there could be possible fluctuation in the number of slots available. The mechanism will automatically adjust the number of hourly scheduled operations or operating slots that are available to air carriers operating aircraft with 56 or more passenger seats. Under the amendment, the number of passengers will be allowed to grow toward the ceiling, but slot reduction will occur to assure that the 16-million level is not exceeded.

As provided in § 93.124, once a year (in January), the FAA will prepare a forecast of total enplaned and deplaned air passenger activity (air carrier, commuter, and general **aviation**) over a 12-month period, beginning the following April. If the forcasted activity for the 12-month period is in excess of the target number of passengers, 16 million, then the number of hourly slots allocated to air carriers (37) will be reduced. The slots reduced from the air carrier allocation will be added to the air taxi allocation. If future projections were to show that the 16 million target would be exceeded, then additional slots would be deleted until the forecast passenger activity stabilizes at less than 16 million. For example, if the forecast showed that 35 hourly air carrier slots would result in a passenger capacity of more than 16 million, then the air carrier hourly slot level will be reduced to 34 and the air taxi hourly slot level will be increased to 14.

The formula would also work in reverse. In a situation where, first, passenger activity forecasts have led to a reduction in slots below 37, and then passenger activity is forecasted to go below 16 million, then slots will be added to the air carrier total so long as the resultant forecast remains below 16 million. The slots added to the air carrier hourly total will be taken from the air taxi hourly total. This would permit the carriers to add flights, but no increase above 37 total slots per hour will be permitted.

Some commenters suggest that by adding the reduced air carriers operations to those by the air taxis the total passenger count would continue to rise and air carriers would lose additional slots as a result of actions not taken by them. Under this mechanism for enforcing the cap, the alternative of holding the air carrier slots in escrow in lieu of allocating them to the commuters is not considered necessary inasmuch as, in view of the aircraft types used by commuters, use of these slots by commuters will not drive the passenger count up significantly.

The annual modification of slots allocated to air carriers other than air taxis would be automatic. Several commenters suggest that the proposed forecast be published for comment before slot adjustments are made. The FAA recognizes the significant of a forecast which results in the reduction of slots. Therefore, the agency will review the forecasting procedures and will use a notice procedure in which the preliminary forecast of annual passenger activity will be

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published in the Federal Register. After some comment period, the final forecast and slot modification, if any, will also be published. Any slot modification resulting from this process would be effective for the next airline scheduling period beginning in April, and would remain in effect until superseded by another forecast.

2. Operating Slots

This rule (§ 93.123(c)) modifies the distribution of instrument flight operations (takeoffs and landings) or "slots" for air carriers and commuters and keeps the "other" group at its current level. The number of "air carrier except air taxis" as defined in § 93.123(c), operations at National may not be more than 37 per hour. The carriers currently schedule up to 40 operations per hour. A reduction of 3 air carrier operations per hour will, by itself, eliminate 45 potential operations between 7:00 a.m. and 10:00 p.m. Although operations could be conducted under this amendment between 10:00 p.m. and 7:00 a.m., aircraft involved in such operations would have to comply with the applicable noise limits set out in § 159.40. None of the aircraft currently in use at National by air carriers comply with these noise level restrictions. This results in air carriers being able to schedule operations over a 15-hour day in lieu of a 16-hour day which they currently schedule.

The reduction of air carrier hourly slots, combined with the elimination of additional operations that have been conducted under § 93.129 (discussed below), and the elimination of noisy aircraft after 9:59 p.m., will give relief from noise and groundside congestion. This reduction and the passenger capacity limitation will provide the impetus for a shift in air carrier operations to the other airports serving the metropolitan area while, at the same time, promoting a more efficient airspace system.

With respect to operations at Washington National Airport, changes the definition of "scheduled air taxis" and "air carriers except air taxis" as those terms are used in §§ 93.123 and 93.124. "Air carrier" slots would have to be used for operations (air carriers and commuters) with aircraft having a maximum certificated passenger seating capacity of 56 seats or more, while "air taxi" slots would have to be used for all air carrier or commuter operations in aircraft having a maximum certificated passenger seating capacity of less than 56. Some commenters asked for a definition of the word "certificated." The phrase as used in this section refers to the original type certificate not a supplemental or amended type certificate.

As a result of the change in definition of air carrier and air taxis, the number of operators seeking air carrier slots will decrease. Today, more than 50 of these slots per day are used for operations conducted with aircraft with fewer than 56 seats that will no longer be eligible for "air carrier except air taxi" reservations. Therefore, this slot adjustment will not result in a major reduction in the actual number of operations that are today conducted by operators with aircraft having 56 seats or more.

Extra Sections

As under the previous policy, § 93.123(b)(4) provides that extra sections of a scheduled operation will not be required to obtain a slot reservation. The rule (§ 93.123(b)(4)) is modified to allow "scheduled air taxis" also to fly extra sections to and from Washington National without regard to the slot limitations of § 93.123(c). At the time at which the high density rule was issued, there was no need to extend the "extra section" authority to air taxi operations. As a result

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of changes in the industry, there is no longer a basis for limiting this authority to air carriers. Therefore, air taxis at National will also be able to utilize extra section authority.

Comments were submitted in connection with the use of "extra sections." New York Air states that allowing continuation of "extra section" authority while eliminating "ATC" authority (under § 93.128) amounts to regulatory bias. The "extra section" provision pertains to a type of service; it does not limit who can use that service. It was designed to give carriers who wanted to operate "extra sections" the ability to conduct that particular type of ***58040** operation without having to obtain a reserved "slot." The alternative was to require a carrier to obtain a slot for an entire scheduling period although the slot might only be used for certain days during that period. This would be an inefficient use of slots and would deprive carriers of the opportunity to conduct other operations. The fact that only one carrier, Eastern, uses a large number of these "extra sections" to conduct a shuttle type of operation is not a consequence of the rule but instead reflects individual management decisions. Other carriers do operate extra sections, particularly during holiday seasons.

If newer carriers do not implement a shuttle type of service, the use of this provision by one carrier does not make the provision discriminatory. There are many types of service new entrant carriers do not choose to provide. Yet, the DOT is not obligated to forbid other carriers from offering them. DOT would not be justified in eliminating the extra sections provision solely because a particular carrier is not in the position to make use of it or gives priority to use of its equipment in other markets.

DOT is concerned over allegations made about the manner in which "extra section" flights have been operated. For example, the use of "advance" sections is inconsistent with the intended use of this provision. Eastern Airlines in its comment states (p. 6):

If a greater number of passengers appear for a scheduled flight than can be accommodated on that flight, the extra section rule permits the carrier to initiate an extra section to ensure that every passenger demanding a seat on a regularly scheduled flight is accommodated.

This statement does reflect the type of service which was intended to be accommodated by this provision. To expand on this, DOT considers an extra section to be an operation which: (a) Is nonscheduled; (b) serves the passengers who cannot be accommodated on the original scheduled section for which the carrier has obtained an arrival or departure reservation; and (c) the original section should depart no more than a few minutes before, on, or after the time at which it was scheduled.

DOT recognizes that unanticipated equipment, weather, or other problems could create a situation which might necessitate the use of an extra section which does not fall within these guidelines. An occasional operation outside the criteria caused by such factors would be acceptable. Continued inconsistent operations, however, would not be acceptable. DOT will monitor future operation of extra sections to determine whether these guidelines are followed. If necessary, further regulatory action will be taken in this connection.

Commuter Slots

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In the NPRM, it was proposed that the slots available for scheduled air taxis or commuters be raised to 11 per hour. The scheduled air taxis are currently limited to 8 scheduled operations per hour at National. As a result of a demand for additional short-haul commuter type service to Washington from smaller communities not served by the larger aircraft, there is a large number of commuters on the waiting list for slots at National.

The Washington National Commuter Airline Association (WNCAA) strongly supports the policy but recommends that it should be adjusted to provide for an additional number, as many as nine, of hourly "quiet commuter aircraft operations." In support of this proposal, WNCAA states that the proposed slot numbers for their members would result in a net loss of daily slots. With the suspension of service to small communities in states surrounding National by trunk and local service carriers, WNCAA believes that commuters present the only alternative to service from such points to National Airport. To maintain the proposal's overall environmental integrity, WNCAA proposed that these additional operations be required to meet the nighttime noise restrictions (Departures -72 dBA as generated on takeoff; Arrivals—85 dBA as generated on approach).

A number of commenters (including some at the public hearing) supported some additional authority for commuters. The Dulles Policy Task Force states that although it supports the policy, it is concerned about "one possibly detrimental aspect of the proposed policy: Its impact on continuing adequate service to communities in Virginia."To remedy this, it recommends that special provision be made for additional commuter airline access to National as proposed by WNCAA. Similar comments were submitted by the Attorney General and the Department of **Aviation** for the Commonwealth of Virginia.

DOT recognizes that the provision of additional authority for commuter operators may have merit. Additional operations by commuter aircraft meeting the nighttime noise levels would not be inconsistent with many of the objectives of this policy. Promulgation of such a provision will be reviewed during the next year in connection with the review of the noise levels themselves. It must be noted that issuance of such a rule at this time would be of little value since all operations at National Airport are limited under the Interim Operations Plan developed in response to the air traffic controller's strike. Under this plan, it is unlikely that the number of commuter operations could increase in the near future. For this reason, further review of this issue will not have an adverse impact.

*General **Aviation***

The number of slots allocated to general **aviation** operators, "others," will remain at 12 per hour. Under the current regulations and practices, general **aviation** operators are required to obtain an arrival or departure reservation from air traffic control. The number of general **aviation** IFR reservations per hour authorized at National is 12 (this is the same number that would be authorized under the previous policy), except that the regulations permit additional operations whenever the aircraft can be accommodated without significant additional delay to the operations allocated for the airport. The number of general **aviation** operations has remained relatively constant over the past several years, although the number varies on a day-by-day basis. The experience has been that, except in poor weather conditions, the airport has accommodated more than 12 general **aviation** operations per hour.

Several commenters state that the proposal misplaced priorities by proposing to decrease the number of certificated air carrier aircraft using National in favor of commuter aircraft and general **aviation**. The criticism relates to the fact that

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these smaller aircraft use the limited airspace and airport facilities to serve fewer persons than are served by the certificated air carrier aircraft. The criticism would be valid if the FAA's sole obligation were to maximize the number of persons transported through National Airport. However, National Airport is already being used beyond the design capacity of its terminal and roadways. The 1977 study performed for the FAA by the firm of Howard, Needles, Tammen and Bergendoff identified large portions of the public space within the terminal, as well as the curbside and traffic circle area, as inadequate to serve the number of people making demands on those facilities. The reduction of potential air carrier operations in large aircraft and the increase of commuter operations to smaller communities promotes the FAA's objective of relieving the overuse ***58041** of National while tending to promote use of Dulles for air carrier service.

Additional Reservations

With further regard to slots, the FAA is amending § 93.129 to clarify the regulations to provide that air carriers [FN1] at National are ineligible for additional reservations beyond those allocated under FAR § 93.123. On December 16, 1980, the FAA issued Notice No. 80-26 (45 FR 84380; December 22, 1980) which proposed clarification of the method by which aircraft operators can obtain additional reservations or slots. On January 19, 1981, the FAA issued a Supplemental Notice of Proposed Rulemaking (46 FR 8028; February 26, 1981) which proposed modification of the High Density Rule to expressly codify the method by which additional IFR reservations are to be obtained and when they must be obtained.

> FN1 The term “air carrier” as used in the Federal **Aviation** Regulations is defined in 14 CFR 1.1 as, “a person who undertakes directly by lease, or other arrangement, to engage in air transportation.”

When these notices were issued, the proposal applied to all high density airports. This amendment contains a revised limitation on the number of hourly operations at National Airport by air carriers (including air taxis). The objectives of the policy are less achievable if these operators are permitted to substantially exceed the proposed limitations. Some parties have interpreted the current rule to allow as many additional operations as the air traffic control at the airport will accommodate. This was never the intent of the rule and, indeed, only a few carriers have conducted more operations than the number allocated to them. Although these provisions have been in effect for over 10 years, these carriers began these operations within this year. Therefore, the restrictions proposed in Notice No. 80-26 and the Supplemental Notice of Proposed Rulemaking are being adopted to make them applicable to operations at National Airport. Application of these provisions to the other high density airports was not proposed in the July NPRM; this amendment relates only to National Airport. If it is subsequently determined appropriate to clarify the High Density Rule with respect to operations at other high density airports, a separate regulatory effort would need to be considered.

Section 93.129 is amended to provide clearly that scheduled air carriers operating to and from National Airport may not obtain additional reservations beyond those allocated under § 93.123. For the purpose of this section, a scheduled operation would be defined as an operation regularly conducted by an air carrier between National Airport and another point served by that air carrier unless the service is conducted pursuant to the charter or hiring of aircraft, or is a nonpassenger flight. This provision is further amended to make clear that any such “charter” or “hiring” can not be on a regular basis but must be “irregular.”

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This provision would not affect § 93.123(b)(3) which permits nonscheduled flights of scheduled air carriers to be conducted at Washington National Airport without regard to the limitation of 37 IFR reservations per hour. This rule would also not affect the provisions of § 93.123(b)(4) which provide that extra sections of scheduled air carrier flights may be conducted without regard to the limitation on hourly IFR reservations. The extra section authority is available to any carrier with a slot for a regularly scheduled operation. The extra section rule is intended to accommodate operations, the necessity of which an operator cannot precisely predict. They are not scheduled operations and it would be impractical to obtain permanent slots for such operations. Regularly scheduled operations do not have the same uncertainty and, thus, require slots. As modified, the rule will allow air carriers to utilize § 93.129 on an occasional basis for positioning or to replace inoperative aircraft.

New § 93.219(d) makes regulatory the longstanding method by which an operator obtains additional IFR reservations at a high density airport. In 1969, the NPRM originally proposing the High Density Rule stated:

For flights between two high density airports, approved reservations for the takeoff and arrival would have to be obtained prior to takeoff. After receipt of the approval, the operator would file an IFR flight plan in the usual manner.

This procedure has been used since the rule was first promulgated, more than a decade ago. Currently, Advisory Circular No. 90-43D, “Operations Reservations for High Density Traffic Airports,” sets forth the method by which additional IFR reservations are to be obtained from air traffic control. Additional IFR reservations can only be obtained by contacting the FAA Airport Reservation Office (ARO) directly or by submitting a request for reservation to the nearest Flight Service Station. The air traffic control towers are not authorized to grant additional IFR slots nor does the fact that the tower permits the operation to occur constitute an authorization under the High Density Rule. Air traffic control towers do not turn aircraft away; their function relates to handling the traffic that comes to them safely. Therefore, the intended practice has always been that an operator proposing to fly IFR to or from a high density airport must obtain a reservation not from the tower but by allocation under § 93.123 or from the ARO prior to takeoff. This practice is adopted in the regulations.

Until a reservation at National is obtained, the operator may not file its IFR flight plan. Furthermore, an operator flying to National must have an IFR reservation for the arrival airport even if it intends to change the operation to VFR during flight. Of course, an air carrier departing National will be required to have an IFR reservation for the departure airport before it files its IFR flight plan. This amendment is not intended to change the practice of allowing operators to file IFR flight plans with the FAA for computer storage.

The FAA recognizes that the prohibition of VFR operations by air carriers may initially curtail competition in the Northeast corridor markets. However, this problem can be addressed in the slot allocation process. The carriers must realize that even apart from the air traffic controllers' strike, the demand for slots at National now far exceeds the available supply. In these circumstances, carrier management should begin an assessment of their service to Washington with an eye towards voluntarily shifting to Dulles or BWI some or all of its service and thus avoid the slot allocation difficulties at DCA. DOT has taken action to make service to Dulles more attractive to carriers by reducing landing fees and mobile lounge charges and these incentives will continue. Moreover, in view of the planned improvements in groundside access to Dulles, some of which are underway, DOT believes Dulles may become an ex-

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tremely attractive alternative for carrier management.[FN2]

FN2 It might be argued that a carrier having to move service to Dulles would be placed at a competitive disadvantage. However, as the programs for increased utilization of Dulles become effective and more traffic begins to utilize that facility, any perceived competitive advantage to National is likely to disappear. Moreover, as more air service is operated through Dulles, there will be increased opportunity for carriers to obtain connecting traffic.

Hours of Operation and Noise Levels

3. There will continue to be no restriction on the operating hours of Washington National Airport. The noise level limitations (§ 159.40) will effectively control nighttime and early ***58042** morning operations. This approach provides meaningful noise relief, does not penalize the operators of newer technology, quieter aircraft, and provides incentive for other operators to use quieter aircraft.

The NPRM proposed day and night noise limits for aircraft operating at National. Many objections to the noise limits were voiced by the airlines and the equipment manufacturers. The most significant criticisms of the proposal were that the daytime levels for 1986 imposed more stringent noise limits on National Airport than Congress imposed on the aircraft manufacturers, the result being that even after the great cost of retrofitting aircraft and purchasing new aircraft which meet the noise standards for FAA certification, the operators would still not have aircraft able to operate at National Airport. Some commenters asserted that application of these standards at other major airports would also impose an economic burden on the carriers requiring capital that may not be available within the time frames proposed based upon anticipated revenues. The most compelling argument is that there may not be sufficient quiet aircraft to replace the noncomplying aircraft under the 1986 standards.

The Boeing Company does not believe that there are sufficient complying aircraft in the fleet or on order to meet the proposed 1986 noise limits. Boeing and several air carriers estimate that to comply with the limits proposed for National, the carriers would need almost 500 “quiet” airplanes, and only about half of that number might be available. The proposed 1986 daytime noise limits would have eliminated from the airport most air carrier aircraft that now exist. The Air Transport Association (ATA) states that only 113 Stage 3 aircraft appropriate for use at National under the proposed policy are now on order and will be in use by the operators at the end of 1986. To maintain existing service at National, ATA claims that the carriers would be required to purchase or reengine over 350 additional aircraft by 1986. Although DOT is not prepared to acknowledge that these comments are accurate, the comments do reflect concern by the air carriers about their ability to function under the proposal. It is, therefore, appropriate to conduct additional analysis of fleet availability before such a rule is adopted. A final rule which could cause severe financial and service repercussions would not benefit anyone.

Instead of issuing daytime noise limits at this time, a DOT task force will further review the impact of the noise proposals. This task force will closely examine the critical issue, which is the availability of “quiet” aircraft. All interested parties including carriers, manufacturers, and representatives of the local community will be asked to supply information as part of this review. All parties are asked to cooperate in this effort. The task force will also consider

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appropriate noise levels and implementation dates as well as alternative types of noise standards.

Although the uncertainty of potential impact of the proposed daytime (7:00 a.m. to 10:00 p.m.) noise limits necessitates delay of their implementation, there is no similar reason to postpone the nighttime (10:00 p.m. to 7:00 a.m.) limits. Some commenters state that these standards also conflict with nationwide compliance schedules. However, the certification standards of FAR, Part 36, and the noise compliance program of Part 91, Subpart E, permit differing local standards and disclaim any intention of specifying what noise levels are to be acceptable or unacceptable at individual airports. Also, Congressional actions and judicial decisions have consistently recognized the rights of airport proprietors to control noise at their airports as long as the restrictions are consistent with the goals of the Federal **Aviation** Act, the Airline Deregulation Act and Airport and Airway Development Act, and do not otherwise unduly burden interstate commerce. For example, the **Aviation** Safety and Noise Abatement Act, Section 104(a), provides a process by which a proprietor may implement a restriction on the use of such airport by any type or class of aircraft based on the noise characteristics of such aircraft.

Significantly, at National Airport there is a long history of nighttime noise restrictions. Since 1960, the air carriers have not scheduled jet operations to occur after 10:00 p.m. and prior to 7:00 a.m. General **aviation** aircraft jets are requested not to operate after 11:00 p.m. and before 7:00 a.m. Indeed, only about 5 percent of all of National's operations occur between 10:00 p.m. and 7:00 a.m.

Most of the carrier operations in these hours occur between 6:00 a.m. and 7:00 a.m. or between 10:00 p.m. and 11:00 p.m. and are conducted by commuters with piston or turboprop aircraft. Unlike the situation with the daytime limits it is undisputed that the commuter carriers have quiet, suitable aircraft that meet these standards available for commuter use. Therefore, the nighttime noise standards are achievable without imposing serious, impractical repercussions on the air carrier industry. It should also be noted that the FAA provides the Washington area and the national **aviation** community with an unrestricted 24-hour facility at Dulles where the aircraft that do not comply with National's nighttime noise standards are able to operate.

The noise limits established under this rule are as follows:

Departures, 10:00 p.m. through 6:59 a.m.: 72 dBA as determined on takeoff.

Arrivals, 10:00 p.m. through 6:59 a.m.: 85 dBA as determined on approach.

The nighttime noise limits will apply to all aircraft operating in this time period regardless of when the operation was scheduled to occur, except that aircraft scheduled to arrive before 10:00 p.m. will be permitted to land at National if they have received an approach clearance before 10:30 p.m. If such a clearance is not received before that time, the aircraft will have to proceed to another airport if it cannot comply with the nighttime noise limit. It must be noted that the half-hour grace period does not pertain to departures from National; departures that occur after 9:59 p.m. in noncomplying aircraft will be in violation of these regulations.

For the purpose of compliance with this regulation, the noise level produced by an aircraft will be determined from FAA data on noise produced by aircraft types under standardized test conditions. It will not be determined on an

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operation-by-operation basis. The reference point will be the noise made by aircraft at the Federal **Aviation** Regulation Part 36 measuring points for approach and takeoff. The approach measuring point is 2,000 meters from the runway threshold under the flight path. The takeoff measuring point is 6,500 meters from the start of the takeoff roll under the flight path. FAA has compiled and tabulated measured or estimated noise data on almost all aircraft types at these points.

FAA Advisory Circular 36-3B, “Estimated Airplane Noise Levels in A-Weighted Decibels,” November, 1981 (copy in this docket), or the latest version thereof will be used to determine the aircraft's noise and will be incorporated by reference into the regulation. Compliance will be based upon comparison with the data in the advisory circular, not upon a monitoring of individual aircraft operations. By using this method, aircraft operators will know if their type and model of aircraft will comply with the Washington National Airport noise limits before the operation occurs.

Adjustments based upon the gross weight of the aircraft will not be ***58043** allowed. If adjustments in gross weight were allowed, it would be difficult to determine whether a given operation meets the noise level limit. Thus, a non-complying aircraft type will not be allowed to reduce its weight and thereby claim to be in compliance with the rule. Requiring the aircraft to be able to meet the standard when operating at maximum gross weight provides an extra margin of assurance that the noise levels actually produced by the aircraft operating at night will be within the limits prescribed.

Some commenters state that the proposal should not be based upon the Advisory Circular, which they claim is inaccurate and is an incomplete document. However, the proposed noise limitations are based on mutually-consistent estimates of the noise levels generated by various aircraft, operated under directly comparable and repeatable standardized conditions. The criteria proposed are the simplest available, and are related directly to the noise-making characteristics of the various aircraft models and types. Although the Advisory Circular includes data on nearly 300 airframe-engine combinations, certain specific combinations may not be included. These data are available from the FAA's Office of Environment and Energy, if needed. Comparison of the tabulated data with those provided by manufacturers indicates good agreement, especially for aircraft which have been tested for noise certification. A few differences may exist for older aircraft which have never been required to be tested for certification purposes. These differences have been corrected, where found, and will become unimportant as these older aircraft are retired or brought into compliance with FAR, Part 36, The Task Force will further consider these comments as part of its overall review.

The ATA comment that “(a)ircraft noise varies depending upon whether conditions, aircraft weight, flight procedures, aerodynamic configuration, and other factors” is correct. This variation was the reason that noise levels under the well-defined testing and operating conditions of FAR, Part 36, were proposed for use as noise limitations. Without such standardized and clearly understood conditions, the large number of variables involved would prevent a consistent comparison of the pertinent noise characteristics of a wide group of aircraft. Such a comparison cannot possibly take into account all of the day-to-day variables under which aircraft operate. The “ranking” of the noise characteristics of various aircraft using standardized test procedures eliminates these variables to provide a consistent comparison among the various types.

FAA does not intend to enforce the noise limits by measuring the noise from individual aircraft operations at a point on

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the ground because such enforcement may cause pilots to attempt to “beat the meter” with power cutbacks and maneuvers which reduce noise at that one point. These maneuvers may actually increase noise exposure to other areas. In addition, such maneuvering around the meter may not be in the best interest of safety. Basing the noise limits on aircraft type and model eliminates these problems. Use of type also promotes consistency and predictability for operators. If each individual operation is measured, an aircraft that complies one day may not comply the next day because atmospheric conditions have changed. Noise levels for the same type of aircraft, following the same flight path, may vary within a range of 20 decibels due to meteorological conditions. Thus, even if a pilot flies exactly the same pattern and operating procedure during each flight, he cannot be assured that he will not exceed a set noise level at one or more microphones on the ground.

ATA claims that the proposal used “three confusing and inconsistent measurements of aircraft noise (i.e., peak dBA, SEL, and EPNdB).” The noise certification standards of FAR, Part 36, initially issued in 1969, incorporate Effective Perceived Noise Level in decibels (EPNdB) as the unit of measurement. This unit was then, and continues to be, the most reliable indicator of public annoyance with aircraft noise. It is a somewhat complex unit, however, and cannot be measured directly by ordinary instrumentation. For land-use compatibility purposes, the A-Weighted Sound Level (dBA) is used primarily and has been adopted broadly for representing noise impacts on community activities (see “Guidelines for Considering Noise in Land Use Planning and Control,” Federal Interagency Committee on Urban Noise, June 1980, and American National Standards S3.23-1980, “Sound Level Descriptors for Determination of Compatible Land Use”). This unit was adopted as the single system of measuring single-event noise at airports in FAR, Part 150, and is appropriate for use in imposing noise limitations for aircraft. It is directly measurable, using relatively unsophisticated instrumentation. A-Weighted Sound Level (dBA) is also the noise unit specified in FAR, Part 36, for noise certification of small propeller-driven aircraft. No noise limitations are specified in terms of Sound Exposure Level (SEL).

During the comment period, a great deal of concern was expressed about the nighttime noise limits. The supplement to the Environmental Impact Statement indicates that an aircraft type that produces a takeoff noise level of 72 dBA [FN3] or less, measured at maximum gross weight under FAA aircraft takeoff noise certification conditions, will produce no increase in the cumulative noise to which the community around National is exposed. That is, aircraft that can meet this nighttime noise limitation can operate at National without measurably altering the noise exposure as depicted in FAA's August 1980 Environmental Impact Statement (EIS) on the Metropolitan Washington Airports Policy.

> FN3 A-weighted decibels are decibels measured with an adjustment that emphasizes sound frequencies heard by the human ear, as opposed to treating all measured frequencies equally.

A limit of 72 dBA for takeoff noise at the certification measuring point (6,500 meters from the start of the takeoff roll) will not produce noise levels that intrude upon any residences in the area. No large jet aircraft will be able to take off under this standard. Therefore, air carrier activity, except for some commuter operations in complying turboprop aircraft, will be greatly diminished. Also, some small general **aviation** jets can meet this standard. For the quieter aircraft that do operate, procedures will be in effect which direct operations to be over the Potomac River for a certain distance (10 miles north or 5 miles south) or until an altitude of 2,000 feet is reached. Under these procedures, the 72 dBA contour does not include any residential areas and, according to the environmental study, persons inside their

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homes will be exposed to no more than 50-55 dBA. This level should cause no interference or annoyance to most persons, even at night.

The FAA has been requested by the Metropolitan Washington Council of Governments to test a modification of the flight paths that currently channel almost all operations up and down the Potomac River corridor by experimenting with a scatter type of program. The FAA is currently evaluating the impact of this proposal. The scatter plan, if it were tested, would apply to jet aircraft only; turboprops would remain in the existing flight paths. Also, the test would not apply from 10:00 p.m. to 7:00 a.m.

***58044** The approach noise limit of 85 dBA has caused a great deal of confusion. Approach noise is measured 2,000 meters from the end of the runway when the aircraft is at a very low (approximately 400 feet) altitude, just prior to landing. Only very quiet aircraft are capable of achieving 85 dBA or less at this point when flown at maximum certificated gross landing weight, and these are the only aircraft that will be permitted under this regulation. An approach noise level of 85 dBA, measured under certification conditions, will not alter the cumulative noise level contours, as depicted in the August 1980 EIS, and will not intrude upon residences. An aircraft which produces 72 dBA under the specified takeoff conditions will measure approximately 85 dBA under the specified approach conditions. Thus, 85 dBA on approach is set as the level not to be exceeded. According to the Environmental Impact Statement, persons inside their homes along the Potomac River corridor will be exposed to no more than 50-55 dBA as a result of such approaches, and this should cause no interference or sleep interruption.

Several comments were received about the appropriateness of using the Federal **Aviation** Regulation Part 36 noise testing procedures. Part 36 specifies three noise tests and includes the manner in which the test aircraft must be operated for those tests. Part 36 also specified standard meteorological test conditions and the manner in which the test results are corrected for nonstandard conditions or operational procedures. Thus, Part 36 provides standardized and repeatable tests through which aircraft noise may be measured accurately and consistently.

The noise limitations adopts two of the three Part 36 tests as criteria for determining the relative noisiness of aircraft models and types, and for determining which aircraft may be used for nighttime operations at Washington National Airport on the basis of noise. The possible paradox from having two noise criteria during the night is acceptable since, for example, an aircraft which can meet the arrival noise limit, but not the departure noise limit, may land during nighttime hours and depart the following day. As noted above, the nighttime arrival noise limit of 85 dBA is approximately the same degree of stringency as the nighttime departure noise limit of 72 dBA. As tabulated in the Final Supplement to the August 1980 Environmental Impact Statement, the aircraft models and types which meet one criterion generally meet the other criterion also.

At present, on an average night, there are 50-55 operations between 10:00 p.m. and 7:00 a.m. and only 10-25 operations between midnight and 7:00 a.m. Approximately 12-18 operations after 10:00 p.m. are by aircraft that exceed the adopted noise limit. These aircraft will no longer be permitted to operate during the night hours. It is possible that the number of operations of complying aircraft will increase. Some commuter air carriers may provide late night and early morning scheduled connecting services with complying aircraft. This could add an estimated 4 to 16 operations to National. However, FAA does not expect any significant increase in nighttime air carrier traffic.

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Compliance will be determined at the time the aircraft is cleared for takeoff or at the time the aircraft is cleared for approach. The half-hour grace period for scheduled arrivals will allow for delays en route. The FAA expects that air carriers will schedule operations realistically to arrive before the 10:00 p.m. time period. An operation which frequently arrives past its scheduled time of arrival will not meet this criterion. If monitoring reveals that the carriers are abusing the grace period, the FAA may take additional regulatory action.

It must be emphasized that this limited exception will only apply to arrivals. The noise limits applicable to departures are based upon the actual time of departure, not the scheduled time. Therefore, to assure that their aircraft can comply with the rule, the air carriers may be expected not to schedule operations close to 10:00 p.m. This should have the effect of further reducing noise in the 9:00 p.m. to 10:00 p.m. hours.

Some commenters stated that the strict arrival and departure time deadlines do not take into account air traffic delays or weather problems. However, the carriers can make scheduling adjustments to anticipate these types of problems. Carriers often take similar types of restraints into consideration when they schedule operations. Those carriers that anticipate that it will be difficult to schedule late night operations as a result of these requirements are reminded that those operations can be accommodated at Dulles or BWI.

Several commenters suggested that the nighttime noise limits be replaced by voluntary agreement. Recent experience has clearly shown that some air carriers are not reluctant to ignore voluntary agreements. Thus, such an agreement in lieu of a rule does not provide any assurance that the stated noise objectives would be accomplished. Moreover, under the present “voluntary” agreement, the carriers do not schedule operations after 10:00 p.m. However, they often operate well after this time. These late operations will be reduced under this rule, unless the aircraft complies with the established noise limits.

In order to help explain the operation of noise level limitations, the following examples are provided:

1. Airline X (or commuter or a general **aviation** operator) has an operation scheduled to arrive at 8:50 p.m. and the airplane arrives on time. That aircraft is not subject to a noise level restriction.

2. Airline X has an operation scheduled to depart at 9:45 p.m. and does depart as scheduled. No noise limit applies for that particular aircraft.

3. Airline X has an operation scheduled to arrive before 10:00 p.m. and the aircraft has not been cleared for its approach until 10:35 p.m. That aircraft must be able to meet the 85 dBA noise limit as generated on approach. If the aircraft is not capable of meeting that noise limit, then the operator would be required to divert to another airport. Had the aircraft been cleared for its approach before 10:30 p.m., no noise limit would apply.

Persons who violate the regulation by operating an aircraft type or model that does not meet the applicable noise level would be subject to civil penalties as well as arrest and criminal penalties of up to a $500 fine and up to 6 months imprisonment. Section 4 of the Act of June 29, 1940, under 54 Stat. 686; as amended by the Act of May 15, 1947, 61 Stat. 94; and the Federal **Aviation** Act of 1958 as amended, 49 U.S.C. 1301, et seq.

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Some commenters have stated that the noise proposal is inconsistent with Federal Noise Abatement Regulatory Procedures as established in the **Aviation** Safety and Noise Abatement Act (ASNA Act), Section 105, which requires preparation of noise exposure maps and noise compatibility programs for National and Dulles by February 28, 1982. That requirement does not prohibit establishment of an operating policy prior to those actions. The policy is consistent with FAR, Part 150, mandated by the ASNA Act. FAR Part 150 specifically established A-Weighted Sound Level as the unit for measurement of single event noise at airports, not SEL (Sound Exposure Level). Further, there has been no evidence presented to FAA which shows that Part 150 fails to establish a highly reliable system of measuring noise. Therefore, this criticism is unfounded.

***58045** Other commenters stated that these standards are inconsistent with the Federal **Aviation** Act. The statutory tests of Section 611 (d) of the Act were considered in adopting the noise limitations. They are consistent with the public interest in maintaining a responsive system of air transportation in the face of local opposition to the amount of noise at National; they are technologically practicable, inasmuch as the noise reduction technology, to satisfy the noise limits, has been demonstrated and is available; and they are effective in reducing noise.

ATA comments that the Draft Supplemental EIS is deficient in that it does not evaluate the “real costs” of the proposed policy. Monetary costs and benefits are assessed in the Regulatory Evaluation, not the EIS. The intent of the EIS is to evaluate the environmental consequences of alternative actions (policies), but not necessarily expressed in monetary terms. In response to comments that the apparent differences in the noise impacts found in the August 1980 EIS and the July 1981 Draft Supplemental EIS are not explained, these differences are explained in the Final Supplemental EIS (page III-1, et seq.). ATA comments that all reasonable alternatives were not analyzed, and that those not considered were not identified. The August 1980 and the Supplemental EIS's identified 35 alternatives and provided full analysis of 8 of these. In keeping with CEQ regulations, the Final Supplemental EIS is concise and no longer than necessary to meet regulations (40 CFR 1502.2(c)). ATA also believes that the proposed “scatter plan” for National should have been considered, along with “the encouragement of compatible land-use controls and voluntary limits on operations during hours sensitive to noise.”The “scatter plan” was explicitly excluded from consideration (Final Supplemental EIS, page III-11) since its benefits, if any, will be equally effective under whichever policy may be adopted. The encouragement of land-use controls and the voluntary curfew have already been in effect and proven unsatisfactory.

Since the implementation of the nighttime noise levels will require some adjustment to air carrier schedules, these levels will not become effective immediately. Approximately 90 days, the same lead time necessary for submittal of schedules under the Interim Operations Plan, is a sufficient amount of time to complete the necessary adjustments required by this rule. Therefore, the noise levels contained in § 159.40 will become effective on March 1, 1982.

4. New Technology and Wide-Body Aircraft

Section 159.59(a) provides that air carrier aircraft not currently in regular operation at National will not be allowed to operate at National until the Administrator has determined that operation of the aircraft at National meets appropriate safety concerns. If such a determination is made, such aircraft can operate only if the Director of the Metropolitan Washington Airports determines that the proposed operation is compatible with the airport's facilities. This means that new model aircraft and the existing wide-body aircraft, such as the A-300, DC-10 and L-1011, remain precluded from

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operating at National.

A sufficient number of questions remain about these aircraft to warrant their review on a model-by-model basis. First, the public interest requires greater knowledge of aircraft performance on National's short runways in rain and in poor visibility. There is also concern over the appropriateness of these aircraft consistently using the curving approach to National's Runway 18 which, due to wind conditions, is used for approximately 45 percent of all arrivals. Also, there are possible groundside problems. The maneuvering areas required for these aircraft could pose wing-tip clearance problems at National. Also, the ramp and taxiway areas affected by the engine exhaust velocities of the larger aircraft are significant. These areas are already extremely limited at National. The terminal and roadways currently experience extreme pedestrian and vehicle congestion during peak hours. The additional surge of passengers occasioned by wide-body aircraft and persons meeting them or accompanying them to the airport has the potential to swell the peak hour demands on the airport's facilities to cause even greater delays. While the facility problems might be corrected with physical redevelopment, that remedy is at least several years away from fruition.

Some commenters have asked whether the FAA's standards for use of wide body aircraft at National will be different from the standards used for other airports. While airports may be similar in many respects, each airport presents unique operational considerations which must be independently assessed in connection with proposed aircraft service into that airport. Although many of the standards to be applied for the acceptance of service at National will be similar to those used at other airports, there are considerations such as the curved approach from the North that are peculiar to National that the Administrator will weigh in making his determinations.

Consequently, wide-body and new technology aircraft will not be allowed to use National until these critical safety issues are resolved to the satisfaction of the Administrator. Moreover, the Director will have the authority to request the air carrier to submit a plan describing how the aircraft operation would be compatible with the airport's facilities, including a description of the scheduling and gate positions to be used. The Director may withhold permission to use the airport for wide-body operations until the compatibility of the operation with National Airport's apron, gate, baggage and passenger handling, or roadway facilities is resolved.

5. Nonstop Service Restrictions

The amendment to § 159.60 establishes the nonstop perimeter for Washington National at 1,000 statute miles, with no exceptions. This will change the existing regulation, which prohibits nonstop operations to and from National beyond 650 miles except for seven cities located between 650 miles and 1,000 miles away. This would permit cities beyond 650 statute miles, but closer than the grandfathered cities, to have nonstop service via National. Cities of equal distance would be treated equally. The perimeter would maintain the long-haul nonstop service at Dulles and BWI which otherwise would preempt shorter haul service at National. This is most consistent with the roles proposed for National Airport as a short/medium-haul facility and for Dulles as an unrestricted facility available for all types of operations.

The existing 650 mile regulation was adopted on May 26, 1981 as interim measure to preserve the longstanding voluntary nonstop restrictions pending this Department's review of the entire MWA Policy including the 1,000 mile proposal (46 FR 28632; May 28 1981). That amendment was in response to announcements by various carriers that they intended to commence new nonstop service in violation of a longstanding agreement to limit nonstop operations

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to and from National. Prior to that date, and since 1966, the 650-mile perimeter with seven exceptions existed by agreement between the FAA and the air carriers. In 1966, concern over the introduction into National of jet aircraft such as the Boeing 727 led to the perimeter agreement that was approved ***58046** by the Civil Aeronautics Board on May 25, 1966. The agreement was intended to avoid conflict with the further development of Dulles Airport. Dulles opened in 1962 and was designed for a long-haul jet aircraft services. The airlines agreed to the 650 mile perimeter in order to preserve the long-haul and short-haul roles prescribed for Dulles and National. Cities that were beyond 650 miles, but within 1,000 miles, were permitted to maintain nonstop service to National if they had nonstop service as of December 1, 1965. These cities to which service has been maintained to the present, are Minneapolis, St, Louis, Memphis, Miami, Orlando, Tampa, and West Palm Beach.

The 1,000-mile rule eliminates the potential inequity that comes from the continued grandfathering of these seven cities. In recent years other cities beyond 650 miles and within 1,000 miles have sought nonstop service to Washington via National. A city such as Ft. Lauderdale, Florida, has been denied nonstop service via National while adjacent Miami has not; Birmingham, Alabama, which is slightly beyond 650 miles from National has not had nonstop service while Minneapolis, approximately 1,000 miles away, has had such service. In addition to Ft. Lauderdale and Birmingham, Kansas City, New Orleans and others may now receive consideration by airlines for nonstop service. For these cities, this decision removes a legal prohibition regarding nonstop service via National Airport. Of course, the decision to provide nonstop service to any point remains that of the individual airlines.

It was not FAA's intention to cause significant changes in service patterns as eliminating the perimeter, or as establishing a 500 mile or 650 mile perimeter, without the grandfather cities, would do. Although more cities will now be eligible for nonstop service via National, the intermediate stop eliminated by the carriers is most likely to be at one of the heavily served hub airports at Atlanta, Chicago or St. Louis. Therefore, this amendment is not expected to create a significant change in service patterns or to affect service to smaller communities. It is not an expansion of the perimeter beyond the 1,000 mile nonstop distance permitted today. The longer haul nonstop flights from Washington to markets such as Denver, Colorado, Dallas and Houston, Texas, and beyond will remain at Dulles or BWI.

Both the 650 mile and the 1,000 mile perimeter regulations have been challenged in a lawsuit brought by various parties. (City of Houston v. FAA, Fifth Cir. No. 80-2030, and consolidated cases Nos. 80-2251 and 81-4194). The principal legal issues are whether the FAA has authority to restrict the stage length of commercial air carrier flights to and from National, whether that authority is being exercised in a reasonable fashion, whether certain constitutional provisions are being violated, and whether the FAA's rulemaking procedures were proper. As proprietor of both National and Dulles Airports, FAA is empowered to promulgate regulations differentiating between the kind of air service provided at those airports. Furthermore, this amendment is not in violation of either the constitutionally protected right to travel or the constitutional prohibition against laws giving preference to the ports of one State over the ports of another.

It must be noted that by letter dated October 14, 1981, Pan American World Airways, one of the litigants challenging the existing perimeter rule in Court, has reversed its position. Pan Am stated that:

it finds the proposal (NPRM) to represent a fair and reasonable approach that will resolve the future of National and permit air carriers to make long-range plans concerning equipment purchases and route structuring * * * Pan Am

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initially had opposed the proposed 1,000 miles nonstop perimeter at National among other features of the proposed policy, because of its desire to provide nonstop service between National and such mid-continent cities as Houston, Texas. While Pan Am still hopes that nonstop Washington National/Houston service may one day be possible, it has concluded that DOT's overall policy is equitable and deserves Pan Am's support.

The City of Houston and several airlines have contended that the regulation discriminates against the cities that lie beyond the perimeter and imposes a competitive disadvantage on the airlines that serve them by requiring an uneconomical stop. The City of Houston has also contended that the perimeter fails to accomplish FAA's objective of maintaining distinctive long-haul and short-haul roles because many travelers prefer one stop and multiple stop flights from National to points beyond the perimeter rather than nonstop flights from Dulles.

The institution of the 1,000 mile perimeter in this amendment is not inconsistent with the Airline Deregulation Act of 1978 since Dulles, which is also under the direct control of the FAA, is available to any carrier wishing to serve Washington, D.C., from a point outside the perimeter. FAA is charged by law with the proprietary responsibility for National and Dulles Airports and has been granted the power to regulate for the protection of the airports. As stated in the NPRM, “It is FAA's responsibility and not the responsibility of distant communities to ameliorate the Washington area's local problems of noise and congestion created by National Airport.”The differentiation between Dulles and National, as fostered by the perimeter, is a proper way of preventing the imbalances in the use of the Washington's airports. DOT's commitment to provide the Airport services needed for Washington, D.C., is not diminished by the perimeter. As the proprietor of both airports FAA can legally assure the availability of Dulles Airport (there are no restrictions on service at Dulles) to serve the needs of air commerce to and from the Washington Metropolitan Area. Also, the perimeter rule does not preclude nonstop service to Washington from anywhere in the country via Dulles Airport or BWI. Points beyond the perimeter currently receive one stop service via National and nonstop service via Dulles or BWI; nothing in ths rulemaking should cause any deterioration of that service.

It should also be noted that the FAA has long recognized that an airport proprietor with control of two or more airports serving the same area can take reasonable action to determine the nature of service provided to one airport so long as the proprietor's other airport(s) remains available to accommodate fully the other types of operations.

Further, the perimeter is important to maintaining domestic traffic patterns at Dulles. The airlines indicated in their comments on the perimeter rule, and by their scheduling practices, that they will leave Dulles to concentrate their activity at National to the extent permitted by the FAA. For example, in July, 1981 (prior to the air traffic controllers strike), there were 94 nonstop flights daily between the grandfather cities and National, and there was not one nonstop flight available at Dulles to these seven major markets. Due to the perimeter the nonstop flights to Dallas-Fort Worth, Houston and Denver remain at Dulles and constitute approximately one third of all of the daily domestic service at that Airport. In the absence of the perimeter, it is likely that the one stop flights to these cities from National will become nonstop flights and the nonstop service will be moved from Dulles. The loss of service to these cities could cripple the domestic service patterns at Dulles thereby leading FAA away from the purposes of this MWA Policy: ***58047** Finding a solution to the over concentration of activity at National.

Finally, FAA does not agree with the contention that National is the airport of preference for almost all air travelers to and from the Washington area. FAA believes that a significant number of travelers would prefer to use Dulles if the

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flights were available. For example, the flights by American Airlines from National to Dallas-Fort Worth via Dulles have produced significant load factors at Dulles. On an average, 42.5 percent of the passengers board or disembark at Dulles, indicating that Dulles is the preferred airport for a significant number of travelers in this market.

National Airport will always be more convenient to downtown Washington. However, the population growth in the areas west of the District of Columbia has been very substantial and that growth trend will continue. The COG forecasts show that Montgomery County, Maryland, and other northern Virginia communities will experience rapid and substantial growth. And while the District will remain the employment center, for the foreseeable future, COG forecasts that there will be approximately 300,000 employees in Fairfax County in 1990. It will be the most populous jurisdiction in area is 45 minutes or less. It is now approximately 50 to 60 minutes from the downtown area, and this time will be reduced when the access highway and Interstate 66 are connected as envisioned when the Dulles Airport was planned. FAA will continue to make efforts to improve travel time to Dulles, but FAA does not consider today's travel times to be excessive or burdensome.

6. Nonregulatory Aspects

The nonregulatory aspects of the policy proposed here are essentially the same as the policy adopted in August 1980. Appropriate master planning and small scale rehabilitation and improvement of the facilities at National will be undertaken by the Director of the Metropolitan Washington Airports, and FAA will continue with plans to improve ground access to Dulles.

General Comments

Slot Allocation

The reduction in air carrier slots from 40 per hour to 37 has been criticized for exacerbating the already stressed slot allocation issues surrounding National. Although some commenters stated that implementation of an allocation mechanism should be a part of this policy, DOT notes that the slot allocation issues are being addressed through the mechanism of a separate rulemaking which is currently open. In the meantime, DOT hopes that the airline scheduling committee process will continue to function until the Department completes analysis of the alternatives. If the scheduling committee does not agree upon a slot allocation for a scheduling period, then DOT reserves the right to allocate the slots by direct allocation, by a slot auction, or by other appropriate procedures. These allocation alternatives are discussed in a separate rulemaking (Notice 80-16) issued by DOT on October 21, 1980.

If DOT is forced to allocate slots directly, a procedure will be utilized which provides sufficient flexibility to meet the demands for existing service. The establishment of a base period for any necessary allocation will reflect the concerns expressed by the House of Representatives in the FY 1982 DOT Appropriations Bill passed by the House on September 10, 1981. Therefore, DOT will be considering the average daily number of operations conducted by each carrier during the week of July 26, 1981, as the basis for any slot allocation as opposed to any prior slot assignments.

Any DOT allocation, consistent with concern expressed in Senate Report No. 97-253 on the Department of Transportation and Related Agencies Appropriation Bill, 1982, will strive to minimize shifts in existing service which might

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be detrimental to the travelling public. At the same time, DOT is committed to competitive access at National Airport. Under its present rules, the Airline Scheduling Committee provides for access by new carriers every six months; the Committee rule of unanimous consent means that any carrier dissatisfied with the number of slots it would receive can veto an agreement. If the Committee fails to reach agreement and DOT is obliged to allocate slots, access by any new carriers will likewise be given every consideration. In addition, DOT will move towards adopting a method of allocation consistent with a competitive air transportation system by completing the outstanding rulemaking on this subject. In any allocation system which offers access to all new entrants and permits reallocation among incumbent carriers (as does the system for Washington National), carrier management will find it necessary to make economic decisions regarding the most efficient use of their Washington National slots. Thus, if they find their slot allocations reduced, for example to accommodate a new entrant, they must choose which points they will continue to serve from National and those for which service must be shifted to another Washington Airport. These decisions, however, are not inconsistent with a competitive air transportation system since they are made by carrier management in its sole discretion.

Small Community Service

Commenters expressed concern over maintaining slots for carriers who serve small communities. The Department is aware of the trend of the larger air carriers to discontinue service to such markets in favor of the higher volume markets. However, this trend by the carriers to concentrate on larger markets is national in scope and is clearly not a result of the Metropolitan Washington Airports Policy. The amendment will not produce a substantial reduction in the number of actual operations occurring today. There can be no assurance, however, that any additional air carrier or air taxis slots at National Airport would be used to serve smaller communities.

Even with slot reductions at National, no community will be deprived of air service to Washington, D.C., because of an unavailability of airport facilities. Dulles Airport will remain available to accommodate all air service to the Washington metropolitan area.

Precedential Effect

Several commenters raise questions about the proposals in general. Some commenters suggest that other airport proprietors might issue limitations similar to those promulgated for National. They argue that this could have national implications. These rules, however, are issued under unique circumstances. They are being issued by the Federal proprietor of two airports serving the same metropolitan area. The nighttime noise limits at National are tailored for the conditions existing there and are not necessarily appropriate for other airports nor do they create any new authority for other proprietors. Similar regulations could violate constitutional, statutory, or contractural requirements if imposed at particular airports.

Air Traffic Controllers Strike

Several commenters have suggested that because the air controllers' strike has reduced the number of flights at National below the level which the policy would authorize, there is no need to put the policy into effect. The FAA disagrees. A policy for Washington airports has been under consideration for years and its goals are long term goals,

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transcending the effects of the temporary air traffic reductions due to the strike. All aspects of the policy have been thoroughly considered. After all of ***58048** the effort, including a vast amount of public input, postponement, even temporarily, would be inconsistent with achieving the long term goals of the policy.

In addition, promulgation of these rules at this date will have a minimal affect on the system. No carrier will have to reduce flights, since the current number of operations at National is below the number that will be available under the policy. Therefore, immediate implementation of the policy will not result in any disruption or hardship. This would not be the case if the policy were deferred until after operations return to their pre-strike level. Furthermore, there are aspects of the policy, such as the nighttime noise level restrictions, that will have an immediate effect even with the current reductions. For these reasons, issuance of this policy will not be further delayed.

Petition of New York Air For Clarification or Interpretation

On February 20, 1981, New York Air petitioned the FAA to clarify or interpret the High Density Rule (FAR Part 93, Subpart K) to give high priority access to operations in the Northeast Corridor. While not specifying the changes sought, New York Air's petition essentially seeks to have slots for the Northeast Corridor set aside or not counted in the regulation which restricts the number of scheduled operations at LaGuardia Airport as well as at Washington National. The petition asserted that there is extensive demand for air service within the corridor and criticized the regulation as being biased in favor of the Eastern Airlines Shuttle because extra section operations do not require a slot.

The petition was treated as a petition for rulemaking in accordance with 14 CFR 11.25. As such, it was published in the Federal Register (46 FR 21187; April 9, 1981). A number of comments were submitted in response to the publication. All comments submitted were in opposition to the petition.

Petitioner's contention that the extra section provision was adopted in order to allow airlines operating in the Northeast Corridor to have a priority access over other airlines serving these airports is incorrect. The purpose of this provision is explained above. The extra section provision, while utilized by the Eastern Shuttle, was not created for Northeast Corridor operations and is, in fact, applicable to operations at other high density airports, including Chicago O'Hare.

As to petitioner's complaint that the exemption for extra sections has been misused, FAA intends to make certain that such misuse does not occur. But FAA does not view the fact that Eastern has chosen to operate a shuttle, in a way that the rule permits, as placing New York Air at an unfair competitive disadvantage. The rule's provisions, its exceptions, as well as its restrictions, are available to all carriers.

For these reasons, New York Air's petition is denied.

Revocation of Prior Metropolitan Washington Airports Policy

FAA has decided that to minimize any possible confusion, it will not amend the policy issued in August 1980. Rather, that policy, and implementing regulations issued on September 15, 1980 which were to be effective on November 30,

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1981, are hereby revoked, and replaced with this policy statement and implementing regulations. Therefore, Amendments 93-37 and 159-20 (45 FR 62406; September 18, 1980) are revoked.

Effective Date

These regulations are effective on December 6, 1981, except that § 159.40 (**Nighttime Noise Limitations**) is effective on February 2, 1982. The revocation of Amendments 93-37 and 159-20 is effective on November 19, 1981. In large measure, these actions will relieve restrictions. If these actions were delayed further, the former policy would become effective for a limited period of time or would have to be delayed for a limited period of time on an emergency basis. Therefore, good cause is found for making this amendment and revocation effective less than 30 days after Federal Register publication.

Final Rules

Accordingly, Subpart K of Part 93 of the Federal **Aviation** Regulations (14 CFR Part 93) and Subpart C of Part 159 of the Federal **Aviation** Regulations (14 CFR Part 159) are amended, effective December 6, 1981, except § 159.40 is effective March 1, 1982.

Amendments 93-37 and 159-20 (45 FR 62406; September 18, 1980) are revoked, effective November 23, 1981, and

PART 93—SPECIAL AIR TRAFFIC RULES AND AIRPORT TRAFFIC PATTERNS14 CFR § 93.123

§ 93.123 [Amended]

14 CFR § 93.123

1. In § 93.123(a), the IFR Operations Per Hour chart is revised to read as follows:

14 CFR § 93.123

§ 93.123 High Density Traffic Airports.

(a) * * *

IFR OPERATIONS PER HOUR

Class of user	Airport			
	John F. Kennedy	La Guardia	Newark	O'Hare [FN1]	Washington National

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Air Carrier Except Air Taxis	70	48	40	115	37
Scheduled Air Taxis	5	6	10	10	11
Other	5	6	10	10	12

1 Washington National Airport operations are subject to modifications per § 93.124.

* * * * *

14 CFR § 93.123

§ 93.123 [Amended]

14 CFR § 93.123

2. By revising § 93.123(b)(3) and (b)(4) to read as follows:

* * * * *

(b) * * *

(b)(3) The allocation of 37 IFR reservations per hour for air carriers except air taxis at Washington National Airport does not include charter flights, or other nonscheduled flights of scheduled or supplemental air carriers. These flights may be conducted without regard to the limitation of 37 IFR reservations per hour.

(b)(4) The allocation of IFR reservations for air carriers except air taxis at LaGuardia, Newark, O'Hare, and Washington National Airports does not include extra sections of scheduled flights. The allocation of IFR reservations for scheduled air taxis at Washington National Airport does not include extra sections of scheduled flights. These flights may be conducted without regard to the limitation upon the hourly IFR reservations at those airports.

14 CFR § 93.123

§ 93.123 [Amended]

14 CFR § 93.123

3. By adding new paragraph (c) to § 93.123 to read as follows:

* * * * *

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(c) For operations at Washington National Airport—

(c)(1) The number of operations allocated to "air carriers except air taxis," under paragraph (a) of this section and § 93.124, refers to the number of operations conducted by air carriers with aircraft having a certificated maximum passenger seating capacity of 56 or more or, if used for cargo service in air transportation, with aircraft having a maximum payload capacity of 18,000 pounds or more.

(c)(2) The number of operations allocated to "scheduled air taxis," as used in paragraph (a) of this section and § 93.124, refers to the number of operations conducted by air carriers with aircraft having a certificated maximum passenger seating capacity of ***58049** less than 56 or, if used for cargo service in air transportation, with aircraft having a maximum payload capacity of less than 18,000 pounds.

14 CFR § 93.124

§ 93.124 [New]

14 CFR § 93.124

4. By adding new § 93.124 as follows:

14 CFR § 93.124

§ 93.124 Modification of Allocation: Washington National Airport.

(a) Each January, the projected number of passengers enplaning and deplaning at Washington National Airport will be forecast and published by FAA for a 12-month period, from April to April.

(b) The hourly number of reservations allocated to air carriers except air taxis at Washington National Airport, in accordance with § 93.123, shall be adjusted up or down, as necessary, so that the hourly number of reservations will be one less than the number of hourly reservations that is forecast to produce an annual passenger level of 16 million. This adjustment shall be published with the forecast described in paragraph (a) of this section. In no event shall the number of hourly reservations allocated to air carriers except air taxis exceed 37. Any reservations removed from air carriers except air taxis shall be added to the number of reservations allocated to scheduled air taxis. Any reservations to be added to the allocations for air carriers except air taxis shall be taken from those allocated to scheduled air taxis.

(c) Any change in the number of reservations made as a result of paragraph (b) of this section shall be effective on the last Sunday of the April following the forecast.

14 CFR § 93.129

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§ 93.129 [Amended]

14 CFR § 93.129

5. By amending § 93.129(a) to insert the words “the operation is not a scheduled operation to or from Washington National Airport and” after the word “if” and before the word “he” in the first sentence.

14 CFR § 93.129

§ 93.129 [Amended]

14 CFR § 93.129

6. By amending § 93.129 to add paragraphs (c) and (d) to read as follows:

* * * * *

(c) For the purpose of this section, a “scheduled operation to or from Washington National Airport” is any operation regularly conducted by an air carrier between Washington National Airport and another point served by that air carrier unless the service is conducted pursuant to irregular charter or hiring of aircraft or is a nonpassenger flight.

(d) An aircraft operator must obtain an IFR reservation in accordance with procedures established by the Administrator. For IFR flights to or from Washington National Airport, reservations for takeoff and arrival shall be obtained prior to takeoff.

PART 159—NATIONAL CAPITAL AIRPORTS14 CFR § 159.40

§ 159.40 [New]

14 CFR § 159.40

7. By adding to Part 159 new § 159.40, Subpart C, as follows:

14 CFR § 159.40

§ 159.40 **Nighttime noise limitations**.

(a) Except in an emergency, and except as allowed by paragraph (b) of this section, no person may operate an aircraft at Washington National Airport after 9:59 p.m. and before 7:00 a.m. if the noise levels for the aircraft type and model

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set out in FAA Advisory Circular 36-3B, which is incorporated into this Part by reference, exceed the applicable noise limit set forth below. No adjustment for gross weight will be allowed:

Arrivals: 85 dBA as generated on approach.

Departures: 72dBA as generated on takeoff.

(b) An operation scheduled to arrive before 10:00 p.m. and which is cleared for its approach before 10:30 p.m. shall not be subject to the noise limit for arrivals set forth in paragraph (a) of this section.

(c) Aircraft types and models which are not listed in Advisory Circular 36-3B may be operated at Washington National Airport if the FAA determines that the aircraft type and model would meet the noise limits of paragraph (a) if it were tested in accordance with the procedures of Part 36 Appendix C of this chapter and the operator obtains approvals required by § 159.59(a).

(d) Availability of advisory circular. Advisory Circular 36-3B may be inspected and copied at any FAA Regional Office or General **Aviation** District Office. Copies of the circular are available free of charge and may be obtained from any of those offices or from the DOT Distribution Unit, M-443.1, Washington, D.C. 20590.

14 CFR § 159.59

§ 159.59 [Amended]

14 CFR § 159.59

8. By amending § 159.59 by redesignating paragraphs “(a),” “(b)” and “(c)” as “(b),” “(c)” and “(d)” and by adding new paragraph (a) as follows:

(a) No person may operate at Washington National Airport an air carrier aircraft of a type not regularly operated at that airport as of July 1, 1981, unless approved by the Administrator, on a safety basis, and the Director of Metropolitan Washington Airports. The Director may request the person proposing to operate aircraft of this type at Washington National to submit a plan describing how the aircraft operation will be compatible with the airport facilities, including a description of the aircraft type, the schedule, and the gate positions proposed to be used. The Director shall base his approval or denial on the compatibility of the operation with National Airport's apron, gate, baggage, passenger handling, and roadway facilities.

14 CFR § 159.60

§ 159.60 [Amended]

14 CFR § 159.60

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9. By revising § 159.60 to read as follows:

14 CFR § 159.60

§ 159.60 Nonstop operations.

No person may operate an air carrier aircraft nonstop between Washington National Airport and any airport that is more than 1,000 statute miles away from Washington National Airport.

(Secs. 103, 307(a), (b) and (c), 313(a), of the Federal **Aviation** Act of 1958, as amended (49 U.S.C. 1303, 1348(a), (b) and (c), and 1354(a)); secs. 2 and 5 of the Act for the **Administration** of Washington National Airport, 54 Stat. 688 as amended by 61 Stat. 94; sec. 4 of the Second Washington Airport Act, 64 Stat. 770; sec. 6 of the Department of Transportation Act (49 U.S.C. 1655))

Note.—As a result of a request by the Director of the Office of Management and Budget under the criteria of Executive Order 12291, this regulation is classified as a "major" regulation. The Director has given a waiver from certain of the requirements of the Executive Order for this rulemaking. Since the regulation would make minor changes to an issued regulation, it is not considered to be significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A final, regulatory evaluation is included in the rules docket. Finally, it will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Washington, D.C., on November 23, 1981.

J. Lynn Helms,

Administrator.

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