DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 26433; Notice No. 91-7]

RIN 2120-AD96

Phaseout of Stage 2 Airplanes Operating in the 48 Contiguous United States and the District of Columbia

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes revisions to the airplane operating rules to require a phaseout of Stage 2 airplanes operated in the 48 contiguous United States and the District of Columbia before December 31, 1999. These revisions implement sections 9308 and 9309 of the Airport Noise and Capacity Act of 1990.

DATES: Comments must be received on or before April 15, 1991. Because of the statutory requirement to issue a final rule in this proceeding by July 1, 1991, the FAA will be unable to entertain requests to extend the comment period; however, late-filed comments will be considered to the extent practicable.

ADDRESSES: Send comments on the notice in triplicate to: Federal Aviation Administration (FAA), Office of the Chief Counsel, Attn: Rules Docket, room 316G, Docket No. 26433, 800 Independence Avenue, SW., Washington, DC, 20591 or deliver comments in triplicate to: FAA Rules Docket, room 916G, 800 Independence Avenue, SW., Washington, DC 20591.

Comments may be examined in the Rules Docket, weekdays except Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. William Albee, Manager, Policy and Regulatory Division (AEE-300), Office of Environment and Energy, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, (202) 267-3553.

SUPPLEMENTARY INFORMATION: .

Comments Invited

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments and by commenting on the possible environmental, energy, or economic impacts of this proposal. Comments should contain the regulatory docket or notice number and be submitted in triplicate to the address above. All comments received, as well as a report summarizing any substantive public contact with Federal Aviation Administration personnel on this rulemaking will be filed in the docket. In addition, the FAA plans to conduct public meetings in Washington, DC, Chicago, Illinois, and Seattle, Washington, in March, 1991, for the purpose of receiving public comment. All comments received at public meetings concerning this notice will be filed in the docket. The docket is available for public inspection both before and after the closing date for comments. Before taking any final action on the proposal, the Administrator will consider the comments made on or before 1991, and the proposal may be changed in response to the comments received. The FAA will acknowledge the receipt of a comment if the commenter submits a self-addressed, stamped postcard with the comment and on the postcard the following statement is made: "Comments to Docket No. 26433." When the comment is received by the FAA, the postcard will be dated, time stamped, and returned to the commenter.

Availability of the NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Requests should be identified by the docket number of this proposed rule. Persons interested in being placed on a mailing list for future notices of proposed rulemaking should also request a copy of Advisory Circular No. 11-2, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

In December 1976, the FAA added "Subpart E—Operating Noise Limits" to part 91 of the Federal Aviation Regulations (FAR) (14 CFR part 91), which became Subpart I—Operating Noise Limits with the August 18, 1989, recodification of part 91. Subpart I requires that airplanes operated by U.S. operators comply with part 36 Stage 2 noise levels by January 1, 1985, in order to operate in the United States (41 FR 56046, December 23, 1976). This subpart required the reduction of aircraft noise by (1) replacing the older fleet with new, quieter airplanes; (2) reengining the aircraft; or (3) using noise reduction technology, such as hushkits, that had been shown to be technologically feasible and economically reasonable for use on older, four-engine turbojets. In November 1980, subpart E was amended to include foreign operations in the United States whether conducted by foreign or U.S. operators (45 FR 79302, November 28, 1980).

The total number of air carrier operations and enplanements has increased considerably since 1978. Despite such growth, noise levels around most airports have decreased, primarily because of the introduction of quieter aircraft into the fleet. Stage 1 airplanes have been retired or modified to meet Stage 2 aircraft noise standards, and quieter Stage 3 airplanes have come into service. However, even with such advances, approximately 2.7 million individuals currently live within areas that are considered to be exposed to significant airplane noise (a day-night average sound level of 65 decibels or more).

Currently, more than 400 U.S. airports have adopted some type of airport access restriction or other action to reduce aircraft noise or to mitigate the effects of that noise. These efforts range from restrictions that generally do not affect the efficiency of the national aviation system (e.g., rapid airplane climb to altitude or preferential runway use to minimize takeoff noise impact on local communities) to those that have an obvious impact on system operations (e.g., curfews and limits on operations by aircraft type). Nose-related restrictions have been levied by airport proprietors and the courts in response to pressure from local community complaints concerning airport noise.

On November 5, 1990, Congress passed the Airport Noise and Capacity Act of 1990 ("the legislation"). In the legislation, the Congress recognized the need to establish a national aviation noise policy. Congress found that, because aviation is a national and international system, such a policy must be created at the national level. A critical part of that national policy was set by Congress when it directed an expedited phaseout of Stage 2 airplanes. Specifically, the legislation prohibits the operation of Stage 2 aircraft to or from an airport in the contiguous United States and the District of Columbia ("the contiguous States") after December 31, 1999.

In addition, the legislation provides limited authority to the Secretary of Transportation to grant waivers to allow operation of a limited number of Stage 2 airplanes beyond the statutory deadline.

The legislation also directs the Secretary of Transportation to issue regulations implementing the review and approval procedures defined in the statute for noise and access restrictions

on Stage 2 and Stage 3 operations proposed by airport proprietors. These regulations are to be proposed as part of the national aviation noise policy. The legislation requires that this national policy be in place by July 1, 1991. The Secretary of Transportation has delegated the authority to issue regulations for the phaseout and the noise restriction review to the Administrator of the Federal Aviation Administration. This document sets forth proposed regulations regarding the phaseout and nonaddition of Stage 2 airplanes. The proposed regulations regarding airport restrictions are presented elsewhere in this issue of the Federal Register.

Synopsis of the Proposal

Pursuant to the legislative mandate, this NPRM proposes to amend subpart I of 14 CFR part 91 by establishing a schedule of reductions of affected Stage 2 airplanes, leading to a prohibition on their use in the contiguous States by December 31, 1999, and by precluding the operation of airplanes in the contiguous States that were imported pursuant to contracts executed after November 5, 1990. The preamble addresses two options that may form the basis for a final rule. The difference between the two is that the second option would permit transferability of the right to operate Stage 2 airplanes within the overall ceiling set by the phaseout schedule.

With regard to enforcement, the legislation states that:

> Violations of (sections 9308 and 9309) and regulations issued to carry out such sections shall be subject to the same civil penalties and procedures as are provided by title IX of the Federal Aviation Act of 1958 for violations of title IX.

Accordingly, the FAA intends that the final regulations adopted will be enforced in accordance with FAR part 13, Investigative and Enforcement Procedures.

The proposed rule uses a concept referred to as a "base level" for operators of Stage 2 airplanes. An existing U.S. operator's base level would be the maximum number of owned or leased Stage 2 airplanes that were listed on its operations specifications for operation to or from airports in the contiguous States on any one day in 1990. In addition, the base level would include those Stage 2 airplanes returned to service after lease to a foreign carrier, as defined in the legislation and proposed § 91.805(a)(5), and those Stage 2 aircraft imported by an eligible entity, as defined in the legislation and proposed § 91.805(a)(6).

Any such airplanes added to the base level under either of these provisions would be subject to the phaseout compliance dates. As an example, under option 1 below, if the largest number of Stage 2 airplanes for which a U.S. operator held operations specifications during any day in 1990 was 100, it would need to reduce the number of Stage 2 airplanes it operates to 75 by December 31, 1994. If before that date the operator adds to its base level three airplanes that were leased to foreign carriers and one that was imported, its base level would be increased to 104, and it would be authorized to operate a maximum of 78 Stage 2 airplanes on and after December 31, 1994. Under Option 2, the operator would have the choice of proceeding in the same fashion or attempting to acquire additional operating rights from another operator. Such rights would be available only if the second operator had already exceeded its required reduction. That is, only "extra" reductions could be transferred.

Under Option 1, once an operator has reduced the number of Stage 2 airplanes it operates to a required compliance point, it would not be permitted to increase its Stage 2 fleet above that level. However, if the operator further reduces the number of its Stage 2 airplanes below the permitted maximum, the operator may add Stage 2 airplanes to its fleet as long as the maximum level is not exceeded. For example, if an operator had a base level of 100 airplanes, it would need to reduce that number to 75 by the first compliance date. If between the first and second compliance dates, the operator reduces its operating Stage 2 airplanes to 70, it would then be able to operate up to 5 more airplanes that were added pursuant to one of the two proposed provisions or acquired from another U.S. operator. These additional airplanes could be operated until the second compliance date, when the operator's number of Stage 2 airplanes would have to be reduced to 50. Under Option 2, an operator would have the flexibility to operate additional Stage 2 airplanes for which it is able to obtain rights from other operators.

New entrant U.S. operators would not have a base level. New entrants instituting service prior to December 31, 1994, could operate any number of Stage 2 airplanes. On and after December 31, 1994, the new entrant carrier would have to operate at least 25 percent Stage 3 airplanes. Similarly, a new entrant that institutes service after December 31, 1996, would have to begin operations with at least 50 percent of its fleet complying with Stage 3. After December 31, 1998, a new entrant would have to have a fleet of at least 75 percent Stage 2 airplanes at the start of service.

For a foreign operator of Stage 2 airplanes, the base level would be the total number of Stage 2 operations that it conducted to or from airports in the contiguous States from January 1, 1990, through December 31, 1990. A foreign operator would be required to reduce its annual Stage 2 operations under the same compliance schedule required of U.S. operators for Stage 2 airplanes. For the reasons discussed below, it appears that transfer of operating rights among foreign operators would be substantially more difficult. Comments are invited on whether a program of Stage 2 transferability could be adapted to the phaseout of Stage 2 operations by these operators.

The following section-by-section explanation describes the FAA's proposed approach to implementing the provisions of the legislation.

Section-by-Section Explanation of Proposed Rule

Section 91.801 Applicability: Relation to Part 36

Proposed § 91.801 states that 14 CFR part 91, subpart I Operating Noise Limits, which encompasses §§ 91.801 through 91.821, would apply to any civil subsonic turbojet airplane that has a maximum certificated takeoff weight of more than 75,000 pounds, that has a standard airworthiness certificate (or its equivalent), and that operates to or from any airport in the United States under 14 CFR part 121, 125, 129, or 135.

References in part 91 to part 36, subpart I refer to the noise levels of appendix C of part 36.

The proposed rule also would include a provision to allow for the acceptance of noise level determinations made pursuant to Annex 16 of the International Civil Aviation Organization, which specifies noise requirements, divided into various chapters, that are generally comparable to the U.S. stage determinations.

The FAA notes that, although the operating noise limit regulations have applied only to certain aircraft that have standard airworthiness certificates, the legislation does not distinguish the aircraft subject to the legislation by the type of airworthiness certificates they possess. The FAA intends to cover those airplanes normally subject to the noise rules and does not intend to limit the operation of those airplanes that have experimental or other restricted certificates. The FAA notes that there are few civil subsonic turbojet airplanes

with a maximum certificated takeoff weight of more than 75,000 pounds that possess other than standard airworthiness certificates. Moreover, the FAA believes that these airplanes, which are generally experimental and owned by manufacturers or used for limited purposes such as firefighting, do not significantly add to the noise environment in the United States and that their operation for these limited purposes should not be discouraged.

Section 91.803 Final Compliance: Subsonic Airplanes

Paragraph (a) of proposed § 91.803 would prohibit the operation of aircraft that do not meet Stage 2 or Stage 3 noise levels to or from any airport in the contiguous States.

Proposed § 91.803(b) would implement the final compliance date for Stage 3 operations set by the legislation, which states:

After December 31, 1999, no person may operate to or from an airport in the United States any civil subsonic turbojet aircraft with a maximum weight of more than 75,000 pounds unless such aircraft complies with the Stage 3 noise levels as determined by the Secretary.

The legislation also provides that this prohibition:

* * * shall not apply to aircraft which are used solely to provide air transportation outside the 48 contiguous States.

Accordingly, proposed § 91.803(b) limits the phaseout to Stage 2 airplanes that are operated to or from any airport in the contiguous States. Finally, the legislation provides a limited waiver provision for certain operators. That waiver provision, described in the discussion of proposed § 91.809, is acknowledged in proposed § 91.803(b) as an exception to the final compliance date.

Section 91.805 Entry of Stage 2 Aircraft; Prohibition on Additions to Stage 2 Fleet

The legislation contains a provision, known as the "nonaddition rule," that prohibits any addition to the total number of Stage 2 airplanes currently operated or eligible to be operated into the contiguous States. Specifically, this portion of the legislation states:

[N]o person may operate a civil subsonic turbojet aircraft with a maximum weight of more than 75,000 pounds which is imported into the United States on or after (November 5, 1990) unless—

(1) it complies with Stage 3 noise levels, or

(2) it was purchased by the person who imports the aircraft into the United States under a written contract executed before (November 5, 1990).

Section 91.805(a) would prohibit the operation to or from any airport in the contiguous States of any airplane that does not comply with one of the categories of airplanes described therein. The categories of airplanes de scribed in paragraph (a) were derived from several sections of the legislation.

Proposed § 91.805(a)(1) would allow the operation of any airplane that meets the Stage 3 noise levels.

Proposed § 91.805(a)(2) would allow the operation of an airplane that complies with Stage 2 noise levels and is included in the base level of a U.S. operator, as defined in proposed § 91.807(b)(1).

Proposed § 91.805(a)(3) would allow the operation of an airplane that complies with Stage 2 noise levels and is operated by a foreign air carrier pursuant to the applicable provisions of proposed § 91.807. Proposed § 91.805(a)(4) would allow the operation of an airplane that complies with Stage 2 noise levels and is operated by a foreign operator other than for the purpose of foreign air commerce.

Proposed § 91.805(a)(5) is taken directly from the legislation and would provide for the operation of an airplane that is owned by one of the U.S. entities described and was leased to a foreign air carrier on November 5, 1990. The legislation does this by limiting the statutory construction of the term "imported," effectively allowing the operation of these airplanes that would otherwise be prohibited by the nonaddition rule. The legislation states that for purposes of the nonaddition rule:

* * * an aircraft shall not be considered to have been imported into the United States if such aircraft—

(1) on the date of the enactment of this Act is owned—

(A) by a corporation, trust, or partnership which is organized under the laws of the United States or any State (including the District of Columbia);

(B) by an individual who is a citizen of the United States; or

(C) by any entity which is owned or controlled by a corporation, trust, partnership, or individual described in this paragraph; and

(2) enters into the United States not later than 6 months after the date expiration of a lease agreement (including any extensions thereof) between an owner described in paragraph (1) and a foreign air carrier.

The FAA notes that the term "owner" as used in the nonaddition rule is not equivalent to the term citizen of the United States as that term is defined in section 101 of the Federal Aviation Act. Under proposed § 91.805(a)(5), owners of Stage 2 airplanes could bring them into the United States, and those airplanes would not be considered "imported" under the nonaddition rule. For purposes of this section, an owner would be any entity described in § 91.805(a)(5)(i) that has indicia of ownership sufficient to register the airplane in the United States pursuant to part 47 of the Federal Aviation Regulations. Examples of such owners would include trustees and conditional vendees under purchase option leases intended for security only. For a recent interpretation of ownership with regard to leased aircraft, see the FAA Notice of Legal Opinion published at 55 FR 40502, October 3, 1990.

As quoted above, the legislation also allows the operation of an airplane that was imported in to the United States on or after November 5, 1990, and—

* * * was purchased by the person who imports that aircraft into the United States under a written contract executed before (November 5, 1990).

This language is adopted in proposed § 91.805(a)(6) to allow the operation of such airplanes. The FAA interprets this section of the law as protecting the ownership interests of individual U.S. citizens and certain entities.

Without proposed § 91.805(a)(6), an entity so situated might be able to bring its airplane into the United States, but not operate it; nor would it be able to lease or sell the airplane to a U.S. operator with an established base level of Stage 2 airplanes. Accordingly, proposed § 91.805(a)(6) allows for the operation of these airplanes, and the foreseeable market of these airplanes is facilitated by the additions to the number of airplanes available to an operator under proposed § 91.807(b).

The FAA does not interpret the term "importer" in proposed § 91.805(a)(6) to mean anyone other than a person described in the legislation as incorporated in proposed § 91.805 (a)(5)(i) (recognizing that the term "owner" may not apply). To expand the definition of "person who imports" beyond these designations might unreasonably expand the number of Stage 2 airplanes that Congress specifically sought to limit by including the nonaddition rule in the legislation. The FAA specifically seeks comment from any person that potentially would be covered under proposed § 91.805(a)(6), but that is not described in proposed § 91.805(a)(5)(i), so that all relevant circumstances may be considered before a final rule is issued. The FAA does not intend that the terms "contract" or "written contract executed" be given other than the

standard legal interpretation as accepted in the field of contract law.

The legislation also states that the nonaddition rule:

> * * * shall not apply to aircraft which are used solely to provide air transportation outside the 48 contiguous States. Any civil subsonic turbojet aircraft with a maximum weight of more than 75,000 pounds which is imported into a noncontiguous State or territory or possession of the United States on or after the date of enactment of this Act may not be used to provide air transportation in the 48 contiguous States unless such aircraft complies with the Stage 3 noise levels.

Under the legislation, it is permissible for U.S. operators to import a Stage 2 airplane into places outside the contiguous States after November 5, 1990. In order to distinguish these airplanes—which cannot be included in an operator's base level—from those that may be operated in the contiguous States, proposed § 91.805(d) would require that an operator acquiring such an airplane amend its operations specifications to preclude the inadvertent operation of that airplane in the contiguous States. While this provision may seem redundant in the context of the general operating prohibition of the entry and nonaddition rule, the FAA believes that amending the airplane's operations specifications is necessary to prevent the substitution of a prohibited Stage 2 airplane. The legislation is clear that substitution of such an airplane for one already in an operator's base level is not to be allowed.

The only Stage 2 airplanes that may be substituted for those in an operator's base level are those owned by an entity described in proposed § 91.805 (a)(5) or (a)(6) of this section; that is, the airplane must already be included in the pool of Stage 2 airplanes authorized by the nonaddition rule in the legislation.

Section 91.807 Phased Compliance Under Part 121, 125, 129, and 135: Subsonic Airplanes

In addition to setting a final compliance date for the cessation of operation of Stage 2 airplanes in the contiguous States, the legislation directs the FAA to:

> * * * establish a schedule for phased-in compliance with the prohibition (the final compliance date of December 31, 1999). The period of such phase-in shall begin on (November 5, 1990) and end before December 31, 1999. Such regulations shall establish interim compliance dates. Such schedule for phased-in compliance shall be based upon a detailed economic analysis of the impact of the phaseout date for Stage 2 aircraft on competition in the airline industry, including the ability of air carriers to achieve capacity growth consistent with projected rates of growth for the airline industry, the impact of competition within the airline and air cargo industries, the impact on nonhub and small community air service, and the impact on new entry into the airline industry, and on an analysis of the impact of aircraft noise on persons residing near airports.

The FAA recognizes that although the general prohibition in the legislation speaks in terms of airplane operations, a phaseout of actual individual U.S. Stage 2 operations for U.S. air carriers is considered impractical for the FAA to equitably propose, implement, and enforce. A phaseout of actual U.S. operations for U.S. operators also might represent a substantial cost both to the FAA and the affected operators. Instead, the FAA proposes to phase out Stage 2 airplanes operated by U.S. operators. However, since the FAA is unable to control the number of Stage 2 airplanes owned by foreign operators but is able to control the number of operations conducted by them in the contiguous States, the FAA proposes a phaseout of foreign operations under the same compliance schedule proposed for the elimination of U.S. Stage 2 airplanes.

The FAA considered a number of concepts for effecting an orderly and efficient phaseout of Stage 2 airplanes. The two concepts found to be most feasible are discussed below, and the FAA seeks comment on the specific advantages, disadvantages, and burdens that each would impose on affected operators and other interested persons.

The first option proposes a phased compliance schedule under which each operator would be required to meet the specified reduction of its Stage 2 fleet by each interim compliance date. This approach is reflected in the language of proposed § 91.807, and in other proposed sections which govern the phaseout.

The second option is characterized by the issuance of transferable Stage 2 operating rights that expire in increments over the file of the phaseout period. (We note that adoption of this option in the final rule would require corresponding modification to several other sections of the proposed rule.)

Option 1

Under the proposed regulations, each U.S. operator of Stage 2 aircraft would determine its "base level" of airplanes according to a formula that includes those airplanes on its operations specifications on one day during calendar year 1990 and those added pursuant to either of two statutory provisions. Proposed § 91.807 would require each operator to reduce the number of Stage 2 airplanes in its base level under a specified schedule. In developing the proposed interim compliance schedule, the FAA considered the following: possible manufacturing and delivery schedules for Stage 3 airplanes, replacement engines, and hushkits; competition within the air carrier industry; the effect on small airports; the effect on new entrants into the market; projected and potential growth of the carriers; and an analysis of the impact of noise on persons residing near airports. Of particular concern was the relationship between the degree of noise reduction and the relative increase in costs to carriers. Based on the economic analysis, the FAA believes the dates proposed in the schedule optimize the tradeoffs between noise reduction and economic burden to the air carrier industry and the public. These considerations are discussed in detail in the preliminary Regulatory Impact Analysis. Comments addressing the feasibility of the proposed phaseout compliance schedule should include specific economic data for the FAA to consider in formulating a final rule.

Proposed § 91.807(b) would establish the number of Stage 2 airplanes to be included in the "base level" of each operator. For a U.S. operator, the base level would be the number of Stage 2 airplanes listed on its operations specifications for operation in the contiguous States on any one day during calendar year 1990; the base level would also include Stage 2 airplanes acquired under two other limited provisions. A foreign operator's base level would be determined by the total number of Stage 2 operations it conducted into the contiguous States during calendar year 1990. Proposed § 91.807(b) does not address the effect on the base level of an acquiring operator in the event of a merger or other acquisition of an operator's Stage 2 airplanes. The FAA acknowledges that merger-like transactions may occur during the phaseout, in which part or all of the base level of an operator may be combined with the base level of another operator. The FAA specifically solicits comment on how such transactions should be accommodated in the final rule, particularly with regard to the adjustment of the base levels of the operators involved.

Proposed § 91.807(c) would provide a Stage 2 airplane fleet allocation for new entrants into the market that are certificated for operation under FAR part 121 or part 135. The proposal specifies the minimum percentage of a new entrant's airplanes that must be operated as Stage 3 in the contiguous States when service is initiated, based

on the timing of that operator's entry into the market. Paragraph (c)(6) of this proposed section would specify that Stage 3 airplanes with a maximum certificated takeoff weight of less than 75,000 pounds may not be used to meet compliance schedule percentage for new entrants.

Proposed § 91.807(d) would set out the compliance schedule for the reduction of U.S. Stage 2 airplanes. Each operator would be required to reduce the number of Stage 2 airplanes it operates to a level 25 percent below its base level on and after December 31, 1994, to 50 percent below its base level on and after December 31, 1996, and to 75 percent below its base level on and after December 31, 1998.

Proposed § 91.807(d)(2) would allow U.S. operators to acquire and operate additional Stage 2 airplanes from other U.S. operators. These airplanes would not increase the acquiring operator's base level, and would not affect the number of airplanes the operator would be permitted to operate after the next compliance date.

Each foreign air carrier would calculate its required percentage reduction in Stage 2 operations for each compliance date under the schedule provided in proposed § 91.807(d)(4). The reduced number arrived at by this calculation would then represent the maximum number of Stage 2 operations that the foreign air carrier would be permitted to operate in any calendar year until the next compliance date.

Proposed § 91.807(d)(5) would allow a foreign air carrier that had no more than two Stage 2 airplanes listed on its U.S. operations specifications at any time during the period January 1, 1990, through December 31, 1990, to operate that number of Stage 2 airplanes to or from airports in the contiguous States without regard to the compliance schedule in paragraph (d)(3) of this section. This exception is intended to limit the hardship on some small foreign air carriers. Calculating a base level from the total number of 1990 operations might be unfair to small carriers with operations whose frequency varied widely through the year.

The FAA recognizes that certain U.S. operators operate Stage 2 airplanes exclusively outside the contiguous States, and anticipates that these operators will desire to continue operation of these airplanes. The FAA seeks comment from such operators as to the best means by which these airplanes may be identified as ineligible for operation in the contiguous States (e.g., the operations specifications proposed in § 91.805(d)), and the timing of this prohibition. The FAA also seeks comment on whether the decision to continue operation should be considered an exclusion from the base level, or, if the airplanes should be included in the operator's base level and phased out by removing them from operation in the contiguous States. The FAA specifically seeks data from such operators as to the number of Stage 2 airplanes covered under these circumstances and the economic costs and benefits associated with any suggested means of compliance.

Option 2

The FAA is considering an alternative proposal in which the rights to operate Stage 2 airplanes that are reflected in an operator's base level would be freely transferable among operators and other parties. That is, any operator that at any time reduced its Stage 2 fleet below that required by the phaseout schedule could transfer the "unused" base level to another operator. Upon notification to the FAA by both the transferring and receiving operator, the receiving operator would be permitted to have a Stage 2 fleet equal to its required level, plus the number of operating rights transferred from the operator that reduced its fleet below the required level.

The FAA believes that such transferability of operating rights could significantly reduce the overall cost of achieving the phaseout, and make the phaseout generally less burdensome to operators by giving them additional flexibility in achieving compliance. For example, under Option 1, an operator that has airplanes on order that would permit compliance, but that will receive the new aircraft too late to meet an upcoming phaseout deadline might be forced to choose between canceling flights and leasing airplanes until the new airplanes arrive. If operating rights were transferable, such an operator might be able to find another operator that could reduce its Stage 2 fleet below the required level at lower cost. In that case it is possible that the first operator could pay the second for the unused Stage 2 operating rights that the second operator has following its additional reductions.

Option 2 would also mitigate any distortion of operators' economic planning and decisionmaking created by the phaseout requirement. For example, operators typically buy and sell airplanes among themselves; the decision to sell aircraft is based on a conclusion that the airplanes' values on the market exceeds its value to the current owner. A phaseout implemented under Option 1 may well reduce the sales value of Stage 2 airplanes relative to their value to their current owners. This is because the current owner could operate the airplane, subject to the phaseout, but another operator could operate the airplane to a point in the contiguous 48 States only in lieu of another airplane. Thus Option 1 has an undesirable distorting effect on the airplane market that would be eliminated by the transferability allowed under Option 2.

Because transfers of operating rights would be purely voluntary for operators, they would only occur if they made both operators better off. Thus allowing transferability of operating rights creates a "win-win" situation that has the potential to reduce the costs of phaseout compliance to operators. It is FAA policy for its regulations to be cost-effective, meaning that they achieve their intended objectives at the lowest possible cost. To the extent that the desirable features of transferability are not offset by other compelling public policy concerns, transferability would be the preferred option.

The FAA believes that allowing such transferability would not significantly increase the complexity or enforcement costs of the proposed regulation. Indeed, Option 2 might simplify the administration of the phase out in certain circumstances. As noted above, we recognize the need under either option to accommodate mergers, acquisitions, and other corporate restructuring. To do this, operating rights would probably have to be at least partially transferable among operators in a restructuring situation (in connection with the transfer of a substantial portion of an operator's fleet). Since operating rights would generally not be transferable under Option 1, however, implementation of Option 1 might necessitate difficult regulatory distinctions regarding the circumstances under which transfers of operating rights would and would not be allowed. By permitting transfers in general, Option 2 would eliminate this problem entirely.

The FAA believes that such an approach might benefit airlines that have more limited financial resources and thus are potentially most adversely affected by the phaseout requirement. While transferability of the right to operate Stage 2 airplanes would give greater flexibility to individual operators, the FAA would not permit the transfers to delay the overall compliance schedule for phaseout of Stage 2 airplanes.

This option would involve issuing operating rights to each operator for each Stage 2 airplane subject to the

phaseout. Following issuance of these rights, no U.S. operator would be permitted to operate a Stage 2 airplane to or from any point within the contiguous States unless it possessed a Stage 2 operating right for that airplane, in addition to any other required authority.

A portion of each operator's Stage 2 operating rights would expire at each interim compliance date. The expiration schedule would be the same proposed under Option 1. That is, all Stage 2 airplanes would be operable until December 31, 1994, at which point 25 percent of each operator's operating rights would expire. An additional 25 percent would expire on December 31, 1996, and another 25 percent on December 31, 1998. The final 25 percent of the Stage 2 operating rights would expire on December 31, 1999. As with Option 1, this schedule may be altered after review of the comments. Irrespective of the schedule adopted the periodic expiration of portions of the Stage 2 operating authority would ensure corresponding reductions in the national Stage 2 fleet by each expiration date, since each operator would need valid Stage 2 operating rights for each Stage 2 airplane operated within the 48 contiguous States.

Until the expiration date, an operator could use each Stage 2 operating right to operate one Stage 2 airplane. In the event an operator ceased operating a Stage 2 airplane prior to the expiration of its Stage 2 operating right, it could transfer the remaining life of that operating right to operate another Stage 2 airplane. This would enable each operator to determine which of its Stage 2 airplanes to retire or modify first, based on the airplane's age, condition, and other considerations.

Under this approach, an operator also would have the right to transfer unused Stage 2 operating rights to other U.S. operators, and possibly to third parties. This could create an incentive for some operators to move away from the use of Stage 2 airplanes more quickly than would be required by regulation. This approach also recognizes that some operators might have difficulty meeting the interim compliance dates for the industry's overall phaseout of Stage 2 airplanes because of financial, scheduling, or equipment availability problems. If one of these circumstances occurs, an operator could acquire Stage 2 operating rights from another operator. This may provide an operator with additional flexibility in arranging the conversion of its fleet to Stage 3. However, it would not affect compliance with the overall phaseout of Stage 2 airplanes, because Stage 2 certificates would become available only to the extent that some operators eliminate Stage 2 airplanes more quickly than required.

The FAA is particularly interested in receiving public comment on the likely effectiveness of permitting transferability in promoting efficiency and flexibility for operators. The FAA is requesting comments on whether, and to what extent, transferability during the phaseout of Stage 2 airplanes, is preferable to a phase-out in which Stage 2 operating rights are not available from other operators and in which operators would have to make specific Stage 2 fleet reductions at each compliance date.

Option 2 would give operators an unrestricted right to acquire or transfer Stage 2 operating rights but it does not specify the means by which those rights would be represented and recorded. One vehicle for representing Stage 2 operating rights could be certificates, i.e., printed documents, containing an expiration date and the airplanes serial and tail numbers. Under this system, a transfer of the operating right for a Stage 2 airplane would be accomplished through the transfer of the certificates representing those rights. One variant on this approach would be to dispense with certificates. In the absence of certificates, the FAA would maintain a record of the ownership of Stage 2 operating rights, including their dates of expiration. Any operator transferring or acquiring operating rights would then be required to notify the FAA immediately of the transaction.

Comments are requested on the use of these or any other mechanisms under which the right to operate Stage 2 airplanes could be transferred. If it appears from the comments that Option 2, or an approach similar to it, would facilitate airline compliance, particularly among airlines with limited current financial resources, or reduce the costs incurred by such operators, then it is likely that the final rule will incorporate such an approach. If, on the other hand, it appears that an approach involving transferability of operating rights would not provide cost reduction relief or flexibility to comply with the phaseout requirement, it is likely the final rule would not contain such a system.

The FAA notes that adoption of Option 2, especially if it does not involve the use of certificates, would require alteration in the proposed reporting requirements. For example, it would be necessary for the FAA to establish a method under which it would maintain records of operating rights and/or certificates and any transfers, with additional costs to both operators and the FAA. Commenters are invited to make recommendations on this matter. The final rule will also address any changes in the necessary record-keeping requirements.

These are some issues regarding the operation of a system of transferable rights on which the FAA requests the comments of interested parties:

- Should parties other than operators be permitted to acquire unused rights? There might be benefits to permitting nonoperating owners, as well as other parties, to serve as "brokers" who buy and sell operating rights without using themselves. We request comment on this possibility.
- The FAA believes that it will be necessary to impose a minimum time period during which a transferred right cannot be retransferred to a third party, in order to ensure that transferability does not lead to effectively simultaneous operation of multiple Stage 2 airplanes under a single operating right. We request comment on the necessity for an appropriate length of such a minimum period.

Commenters are also invited to address whether a transferable rights system might also be applied to the phaseout of operations within the contiguous States by foreign carriers. The FAA notes that Option 2 contemplates that operating rights would apply to specific Stage 2 airplanes. Any changes would be recorded as a transfer of rights to another Stage 2 airplane. This is intended to simply enforcement and record-keeping for operators and the FAA. However, the phaseout proposal for foreign air carriers would involve eliminating Stage 2 operations rather than eliminating airplanes. Accordingly, any transferrable rights program applicable to foreign air carriers would have to be tailored to take this important difference into account. The FAA's preliminary assessment is that this distinction means that a transferable rights program for foreign air carriers poses enforcement and record-keeping requirements substantially more complex than would be created by a comparable program for U.S. operators. Comments favoring extending a mechanism involving the transfer of operating rights to foreign air carrier operations are therefore requested to make specific recommendations on how these issues would be handled, and the resources that would be needed.

Section 91.809 Waiver

The legislation provides that:

If, by July 1, 1999, at least 85 percent of the aircraft used by an air carrier to provide air transportation comply with the Stage 3 noise levels, such carrier may apply for a waiver of the prohibition set forth in subsection (a) for the remaining 15 or less percent of the aircraft used by the carrier to provide air transportation. Such application must be filed with the Secretary no later than January 1, 1999, and must include a plan with firm orders for making all aircraft used by the air carrier to provide air transportation to comply with such noise levels not later than December 31, 2003.

The legislation goes on to state that:

The Secretary may grant a waiver under this subsection if the Secretary finds that granting such waiver is in the public interest. In making such a finding, the Secretary shall consider the effect of granting such waiver on competition in air carrier industry and on small community air service.

The FAA does not currently foresee granting a large number of waivers under this provision. While not now proposing specific criteria for the issuance of waivers, the FAA might consider granting a waiver if failure to do so would result in, for example, a severe disruption of competition through the serving of a market by a single air carrier or foreign air carrier, a community losing essential air service, or a carrier suffering financial havoc.

There is some concern that a 75% reduction from its base level may force certain operators to have more than 85% of its fleet at Stage 3. Accordingly, the proposed rule includes a provision, § 91.805(d)(3), that exempts carriers that achieve and maintain a fleet composed of at least 85 percent Stage 3 airplanes from the interim compliance schedule. This provision ensures that no carrier will have to exceed the 85 percent level to apply for a waiver. The FAA seeks comment on whether such relief is seen as necessary and appropriate under the circumstances of individual operators.

The legislation also included a limitation to such a waiver:

A waiver granted under this subsection may not permit the operation of Stage 2 aircraft in the United States after December 31, 2003.

These provisions of the legislation have been incorporated in § 91.809 of the proposed rule.

Section 91.811 Annual Progress Report

The legislation requires that:

Beginning with calendar year 1992, each air carrier shall submit to the Secretary an annual report on the progress such carrier is making toward complying with the requirements of this section (including the regulations issued to carry out this section), and the Secretary shall transmit to Congress an annual report on the progress being made toward such compliance.

Proposed § 91.811(c) lists the information that would be required to be submitted by U.S. air carriers to show the airplanes included in the carrier's base level, any additions made to the base level, any Stage 2 airplanes acquired from another U.S. operator, the carrier's progress toward compliance with the interim schedule and final phaseout date, and the carrier's current plan to meet the interim schedule and compliance date. Similar information (except with respect to plans) would be required from a foreign air carrier under proposed § 91.811(d) relevant to its Stage 2 operations to or from the contiguous States.

Comments Received During Development of the NPRM

The FAA received approximately 17 unsolicited comments before the publication of the NPRM regarding the agency's actions under the legislation. These comments were submitted by airport operators, aircraft lessors, citizen groups concerned about noise, air freight operators, and other industry groups.

These unsolicited comments have been placed in Docket No. 26433 to make them available to the public. The content of these comments range from interpretations of the legislation to suggested phaseout dates and implementation schemes.

Among the unsolicited communications described above are requests from aircraft lessors that the FAA act to protect their interests during the phaseout. In particular, they are concerned that focusing the phaseout rule on the operators of aircraft rather than on owners could lead to results they consider inequitable. For the reasons stated below, the FAA believes that operators of Stage 2 airplanes should be responsible for the phaseout of Stage 2 airplanes. The FAA is sensitive to the assertions of airplane lessors regarding the economic importance of any such determination, and the FAA agrees that this is a significant issue. However, for that reason, among others, the FAA believes that the issue should not be resolved solely on the irregular record now before us. The FAA invites all interested persons to submit comments on the appropriate roles and responsibilities for operators and lessors of leased airplanes.

The NPRM proposes to make Stage 2 operators responsible for phasing out their Stage 2 airplanes. This proposal is based on several considerations.

First, the FAA notes that section 9308(a) of the legislation, in requiring the elimination of Stage 2 airplanes, specifically refers to the operation of airplanes rather ownership: "After December 31, 1999, no person may operate to or from an airport in the United States any civil subsonic turbojet aircraft with a maximum weight of more than 75,000 pounds unless such aircraft complies with the Stage 3 noise levels as determined by the Secretary."

Moreover, the FAA is concerned that compliance monitoring would be considerably more difficult if owners rather than operators were responsible for the phaseout. Airplane ownership is often the subject of highly complex financial arrangements, frequently involving individuals or corporations with which the FAA has little or no regular contract and over which the FAA has limited direct authority. Keeping track of the various owners and interests and ensuring that they are complying with the phaseout program may be substantially more difficult than monitoring compliance by airplane operators; these operators are, of course, at airports, and thus readily accessible to FAA inspectors.

The problem is further compounded by the fact that many airplane owners are investors whose proportional ownership interest is less than one whole airplane. The concept of a phased reduction in the percentage of an owner's Stage 2 airplanes has little meaning for owners with fewer than two airplanes. The FAA does not have data currently available about the number of airplanes that might be exempt from interim phaseout dates because their owners have fractional ownership interests. If that number is substantial, however, it could reduce the noise benefits that would otherwise be generated by the interim phaseout dates.

If the final rule in this proceeding presents too many compliance problems, local airport operators might not accept it as a credible national response to the problem of Stage 2 noise. In that event, there would undoubtedly be increased pressure in many communities for local Stage 2 restrictions. Local airport operators, however, can exert control only over airplane operators.

None of these problems is necessarily insurmountable. Taken together, however, they are sufficient to persuade the FAA that it should propose to base the Stage 2 phaseout on operations rather than ownership. However, the FAA remains open to consideration of other methods of phaseout that would be consistent with statutory obligations, and the final rule may adopt an owner-based approach if it appears superior.

Owners of aircraft are invited to comment both on the need for an desirability of an owner-based approach, and on any adjustments or accommodations that should be made to protect the interests of owners, in the event that the FAA adopts an operator-based rule.

Economic Summary

This section summarized the regulatory impact analysis prepared by the FAA on the proposed amendments to 14 CFR part 91, Subpart I—Operating Noise Limits. This summary and the full regulatory impact analysis quantify, to the extent practicable, estimated costs to the private sector, consumers, and federal, State and local governments, as well as anticipated benefits.

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweigh potential costs. This determination is normally made on the basis of a regulatory evaluation or regulatory impact analysis. However, by enacting the Airport Noise and Capacity Act of 1990 which mandates that the FAA promulgate regulations, Congress has in effect already determined that the phaseout of Stage 2 airplanes by the end of 1999 is in the public interest; that is, the collective public benefits of the phaseout outweigh its costs to the public. Nevertheless, the FAA has prepared a regulatory impact analysis of the proposed rule. The purpose of the analysis is to estimate potential costs and benefits (either qualitatively or quantitatively) to promote a better understanding of the impact of the proposed rule.

Executive Order 12291 requires the preparation of a Regulatory Impact Analysis of all "major" rules except those responding to emergency situations or other narrowly defined exigencies. A "major" rule is one that: Has an annual effect on the economy of $100 million or more; creates a major increase in costs or prices for consumers, individuals, industries, Federal, State, or local government agencies, or geographic regions; or has a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. The Executive Order requires that alternative actions be considered and evaluated for major rules.

In addition to a summary of the regulatory analysis, this section also contains various alternatives for accomplishing the phaseout, a regulatory flexibility determination required by the 1980 Regulatory Flexibility Act (Pub. L. 96-354), and an international trade impact assessment. Detailed economic information supporting this NPRM is contained in the Regulatory Impact Analysis, available in the docket.

Examination of Alternative Approaches

The discussion below reviews alternative strategies and timetables (within the limits allowed by Congress) that were considered in this proceeding. The FAA considered four alternatives for conducting the phaseout of Stage 2 airplane operations to or from airports in the contiguous United States by December 31, 1999. One alternative would accomplish the Stage 2 airplane phaseout using an industry fleet measure. The second would accomplish the phaseout based on a required percentage reduction of each operator's Stage 2 fleet for different compliance dates during the 1990s. The third would allow the Stage 2 fleet phaseout objectives to be accomplished through the addition of Stage 3 airplanes rather than solely through the reduction of Stage 2 airplanes. The fourth alternative would allow Stage 2 operating right to be transferred among operators.

A detailed discussion of the four alternatives is presented below.

Alternative One

This alternative would set interim Stage 2 phaseout goals for the whole industry rather than for individual operators. Operators could work together to achieve each interim compliance date. Because no individual operator would be responsible for a specific portion of the progress of the phaseout, this alternative would be difficult to enforce. No operator would have any incentive to proceed more rapidly than others to phase out Stage 2 airplanes, because additional costs would result from a faster phaseout schedule. Competition within the industry makes it unlikely that operators would effectively cooperate to produce a largely self-regulated phaseout.

Alternative Two

This alternative, which is incorporated in the proposed rule text, would require each operator to reduce a specific percentage of its Stage 2 airplanes at different compliance dates during the 1990s. This alternative is more readily enforceable than Alternative One, because each operator would be responsible for meeting a specific goal. By requiring each operator to reduce its fleet by the same percentage as other operators at each compliance date, Alternative Two would require all operators to bear some of the burden.

Alternative Three

This alternative would allow operators to meet interim goals through increases in Stage 3 airplanes (thereby reducing the percentage of the operations of Stage 2 airplanes) as well as reductions in Stage 2 airplanes. The phaseout goals would set Stage 2 fleet reductions as a percentage of the operator's total fleet. This alternative would favor an operator that is expanding by adding Stage 3 airplanes to its fleet. This alternative could also means higher noise levels during the phaseout period because the absolute number of Stage 2 airplanes could be higher than under Alternatives One or Two.

Alternative Four

This alternative, which is fully explained elsewhere in this preamble, would propose an approach involving transferability of operating rights for Stage 2 airplanes. Under this alternative, operators would be allocated operating rights to use Stage 2 airplanes for a specified period and such rights could be transferred or sold to others. Compared to other alternatives, this approach could make it more flexible for individual operators to phase out their Stage 2 airplanes. In particular, the FAA believes that such an approach might benefit airlines that have more limited financial resources and thus would be potentially more adversely affected by the proposed phaseout requirement. This approach also might increase operator flexibility during the phaseout by allowing operators that are unable to keep up with the phaseout schedule to buy operating rights from airlines that are able to exceed the schedule.

The FAA is considering Alternatives Two and Four for the final rule. These are viewed as more enforceable than Alternative One, because each operator has the responsibility of meeting a specific goal. Alternatives Two and Four are preferred to Alternative Three, because they give no advantage to operators expanding their fleets, and they also achieve more rapid noise reductions. This NPRM incorporates Alternative Two, because the novelty of Alternative Four raises many questions on which we would like to receive comment before drafting the regulatory language. As noted above, however, to the extent that the desirable features of transferability are not offset by other

compelling public policy concerns, transferability would be the preferred option. The FAA would not, however, permit the transferability of operating rights to adversely affect the overall national reduction in Stage 2 airplanes.

To implement Alternative Two, the FAA evaluated five different compliance schedules. Although the analysis of compliance schedules performed here is directed specifically at Alternative Two, the scheduled rate of elimination of Stage 2 airplanes would be the same if Alternative Four were adopted in the final rule. To measure the cost of these compliance schedules, a baseline cost (the lowest cost of having all Stage 2 airplanes phased out by December 31, 1999) to the industry was determined using the natural attrition of Stage 2 airplanes (assuming a 25-year useful life span). Airplanes that would not have reached 25 years of age at the end of the phaseout period would have to be replaced or converted to Stage 3 airplanes, and the loss of economic utility from these younger airplanes represents the baseline cost of early replacement or conversion to Stage 3. This baseline cost is also the cost of the law requiring the ban of Stage 2 airplane operations after December 31, 1999. However, Congress has mandated phased compliance. In selecting the proposed schedule of interim dates to phase out Stage 2 airplanes, the FAA considered the following: Costs to the industry, technological availability of Stage 3 airplanes, and the need to accomplish the Stage 2 phaseout by the end of 1999. An economic analysis of several alternative compliance schedules was performed. Compliance schedule one would require a total phaseout in 20 percent increments from December 31, 1995 through December 31, 1999. Compliance schedule two would require a 50 percent phaseout by the end of 1993, 75 percent by the end of 1996, and the remainder by the end of 1999. Compliance schedule three would phase out 50 percent by the end of 1994, 75 percent by the end of 1997, and the remainder by the end of 1999. Compliance schedule four would phase out 50 percent by the end of 1996, 75 percent by the end of 1998 and the remainder by the end of 1999. Compliance schedule five would phase out 25 percent by the end of 1994, 50 percent by the end of 1996, 75 percent by the end of 1998, and the remainder by the end of 1999.

Costs

Sections 9308 and 9309 of the Airport Noise and Capacity Act of 1990 require the elimination of Stage 2 airplanes by December 31, 1999 in the contiguous 48 States. Many of the costs associated with this proposed rule are directly attributable to the statute because Congress determined that the elimination of Stage 2 airplane noise by the end of 1999 is in the public interest. Those costs that are directly attributable to the legislation will be so identified. The legislation also requires the FAA to establish interim compliance dates for the phaseout. The additional costs of phasing out Stage 2 airplanes would be the result of FAA policy decisions and will be identified as costs of the proposed rule.

The phaseout of Stage 2 airplanes will impose certain costs on many operators. Among the direct costs are the purchase of Stage 3 airplanes, the replacement of engines on Stage 2 airplanes, or the purchase and installation of hushkits on Stage 2 airplanes. Another cost to the aviation industry is the loss in market value of Stage 2 airplanes as a result of early retirement forced by the phaseout. In addition to the costs of the phaseout schedule itself, administrative costs are anticipated for the FAA and industry. The cost of the legislation (the prohibition of all Stage 2 airplane operations within the 48 contiguous States after December 31, 1999) is estimated to be $4.4 billion. The industry is expected to pass a considerable portion of these costs on to travelers and shippers.

To the extent that using hushkits and replacement engines is less costly (when all costs of operation are concluded) than replacing existing Stage 2 airplanes with Stage 3 airplanes, the FAA believes that the total compliance costs associated with the legislation will be less than that stated above. The FAA requests information on the likelihood of using hushkits and replacement engines to comply with the legislation and proposed rule.

The FAA has calculated from public information the cost to the U.S. air carrier industry for the above five compliance schedules. All five schedules are based on a nationwide Stage 2 phaseout by December 31, 1999. For this analysis, a useful life of 25 years was assumed for all Stage 2 airplanes.

Baseline	Industry-wide cost
Total elimination of Stage 2 fleet. One-time phaseout by December 31, 1999.	$4,442 million.
Compliance schedule one:	
20 percent annual phaseout each year beginning December 31, 1995 and continuing until December 31, 1999.	Second most costly.
Compliance schedule two:	
50 percent by December 31, 1993, 75 percent by December 31, 1996, and 100 percent by December 31, 1999.	Most costly.
Compliance schedule three:	
50 percent by December 31, 1994, 75 percent by December 31, 1997, and 100 percent by December 31, 1999.	Third most costly.
Compliance schedule four:	
50 percent by December 31, 1996, 75 percent by December 31, 1998, and 100 percent by December 31, 1999.	$1,186 million (least costly).
Compliance schedule five:	
25 percent by December 31, 1994, 50 percent by December 31, 1996, 75 percent by December 31, 1998, and 100 percent by December 31, 1999.	$1,330 million (second least costly.

The impact on individual operators would vary depending on the size of an individual operator's Stage 2 fleet. Accordingly, the FAA has examined the size of the Stage 2 fleet by operator in order to analyze these costs. The operators affected the most by the phaseout and ban would be those that: (1) Have a large number of Stage 2 airplanes; (2) have a relatively young Stage 2 fleet; or (3) have difficulty in obtaining the necessary financing for replacement airplanes, engines, or hushkits. The effect on cargo operators would be minimal when the assumption of a 25-year useful life for all airplanes is applied. Only one cargo operator would be significantly affected because it owns a relatively young Stage 2 fleet. The FAA believes that the cargo operators would generally purchase hushkits rather than purchase new Stage 3 airplanes.

In addition to the cost of the phaseout schedule, proposed § 91.811 would require that beginning in calendar year 1992, each U.S. operator and foreign air carrier affected by this proposed rule must submit to the Administrator an annual report on the progress such carrier has made toward complying with the proposed requirements. The FAA estimated that the net present value for all air carrier costs of annual progress reports will be $21,400. The FAA also estimated that the net present value of FAA costs to review annual progress reports and monitor the program will be $441,700.

Benefits

The principal benefit of the proposed regulations is the reduction in the number of people living in the 65 dB DNL contours around the nation's airports. In 1990, an estimated 2.7

million individuals were within the DNL 65 dB contour. Simply by normal attrition of Stage 2 airplanes, this number would drop to 1.3 million by the year 2000. The eventual ban on Stage 2 airplanes mandated by the legislation would reduce this number by 900,000; these noise reduction benefits would be experienced sooner under the proposed compliance schedule than under the legislation alone.

The proposed rule should reduce the noise impact that has caused a patchwork of Stage 2 noise regulations to be promulgated by local governments at over 400 U.S. airports. While difficult to quantify, numerous segments of the industry have alleged serious economic harm from dealing with such restrictions. This proposed rule is expected to result in improved efficiencies to both air carriers and the flying public. Public comment on this issue is solicited.

Many studies have shown that high levels of airplane noise may have an adverse effect on the health of individuals. A number of these studies have been reviewed in the economic impact analysis. At this time no quantitative risk assessment exists upon which to calculate the quantitative health benefits. The FAA requests any information that quantifies the economic health benefits associated with this proposed rule.

As a general rule, noise levels are inversely correlated with residential property values. That is, as airplane noise levels decrease, property values around airports increase. To quantify the economic impact associated with the decrease in residential property values, the FAA has used a case study approach to provide a benchmark comparison of the expected benefits of rulemaking actions over an extended period of time. Based on a review of several studies on the change in property values as they relate to airplane noise, studies conclude that property values increase one-half of one percent for every decibel decrease in day-night sound level (DNL). Using the conclusion of these reports, the FAA calculated that inside the 65 dB DNL contours that the net present value of the quantitative benefits associated with the legislation for reducing noise to the population affected by a DNL of 65 dB or higher would be $508 million. For the first three compliance schedules, the FAA evaluated the incremental noise-reduction benefits to be $42.4 million under compliance schedule one, $109.2 million under compliance schedule two, and $61.6 million for compliance schedule three. For compliance schedules four and five, the increased benefits are presented in the following table.

The numbers represent the residential populations affected around most of the nation's airports that receive jet service, the change in day-night sound level (in dB), and the dollar benefits for each of the following years:

ESTIMATED BENEFITS RESULTING FROM AN INCREASE IN RESIDENTIAL PROPERTY VALUES FOR COMPLIANCE SCHEDULES FOUR AND FIVE, 1990.[1]

Year	Schedule Four [2]			Schedule Five [3]		
	Cumulative number of individuals benefiting as a result of FAA rule	Cumulative reduction in airport noise as a result of FAA rule —dB—	Net present value change in property value	Cumulative number of individuals affected as a result of FAA rule	Cumulative reduction in airport noise as a result of FAA rule —dB—	Net present value change in property value
1994				0	−.10	$0
1995				200,000	−.50	1,160,992
1996	300,000	−0.80	$2,576,711	300,000	−.80	2,576,711
1997	300,000	−1.40	4,099,311	300,000	−1.40	4,099,311
1998	500,000	−2.10	9,316,611	500,000	−2.10	9,316,611
1999	700,000	−4.90 [4]	27,667,560	700,000	−[4]4.90	27,667,560
Total			43,660,193			44,841,165

[1] Benefits are calculated for people impacted within the 65 dB DNL Contour.
[2] Schedule 4 is a 50 percent phaseout by the end of 1996 and a 75 percent phaseout by the end of 1998.
[3] Schedule 5 is a 25 percent phaseout by the end of 1994, a 50 percent phaseout by the end of 1996 and a 75 percent phaseout by the end of 1998.
[4] Noise reduction benefits would be experienced sooner under the proposed compliance schedules that under the legislation alone. After December 31, 1999, noise will be reduced by an average of DNL 7.7 dB to 900,000 individuals.

Source: Derived from information provided by U.S. Department of Transportation, Federal Aviation Administration, Office of Energy and Environment, December 1990.

These estimates represent only a portion of the benefits, because such variables as the effect of airplane noise on commercial properties and on occupational injuries have not been included. Again, the FAA seeks comment from interested parties on this subject.

Competitive Impact Analysis

This section analyzes the impact of interim compliance dates (based on Alternative Two and compliance schedules four and five) for the phaseout of Stage 2 airplanes on competition in the airline industry. The following is a discussion of the competitive impact of this proposed rule.

The Financial Health of the U.S. Airline Industry

Of the nine major U.S. carriers, five are profitable (three have operating profits of more than $150 million each and two have operating profits of more than $25 million each). The remaining U.S. carriers reported operating losses of more than $80 million each. Of the 12 national carriers, 9 are profitable (four with operating profits of more than $17 million each and five with operating profits of at least $2 million each). The three remaining national carriers were not profitable (with operating losses in excess of $50 million). Part of this assessment is based on financial information contained in the FAA Report entitled, Quarterly Industry Overview: Fiscal Year 1990, December 1990, Office of Aviation Policy and Plans.

Among the major U.S. operators, the proposed rule under compliance schedule four is expected to impose the following costs between 1996 and 2000:

PRESENT VALUE OF COSTS [1] 1990 DOLLARS

[In millions]

U.S. air carriers	1996	1998	2000	Total
Majors				
American	32	134	176	342
Continental	39	48	135	223
Delta	292	343	493	1128
Eastern	0	139	159	298
Federal Exp.	80	82	70	232
Northwest	0	167	199	366
Pan American	0		67	
Trans World	0	5	106	111
United	94	241	230	565
USAir	141	418	548	1,107
Subtotal	$678	$1,577	$2,183	$4,439
Nationals				
Air Wisconsin	0			
Alaska Airlines	88	63	49	200
Aloha	30	25	32	87
Am. Trans. Air	0			
America West	68	72	66	207
Evergreen Intl.	0			0
Hawaiian	30	13	10	53
Horizon Air	0	0	0	0
Midway Airlines	0	0	89	89
Southern A.T.	0	0	0	0
Tower Air	0	0	0	0
Trump Shuttle	0	0	0	0
United Parcel	0	0	30	30
World Airways	0	0	0	0
Southwest Airl.	157	85	88	330
Subtotal	$373	$258	$364	$996
Grand Total	$1,051	$1,835	$2,547	$5,435

[1] Totals may not add due to rounding. It is likely that the costs associated with Alaska, Aloha, and Hawaiian Airlines will be less because many of their operations are outside the contiguous 48 States.

Among the major U.S. operators, the proposed rule under compliance schedule five is expected to impose the following costs between 1994 and 2000:

PRESENT VALUE OF COSTS [1] 1990 DOLLARS

[In millions]

Air Carrier	1994	1996	1998	2000	Total
Majors					
American	12	32	134	176	354
Continental	0	39	48	135	223
Delta	153	263	300	493	1,208
Eastern	0	0	139	159	298
Federal Exp.	48	48	82	70	248
Northwest	0	5	167	199	371
Pan American	0	0	0	67	67
Trans World	0	0	5	106	111
United	0	94	241	230	565
USAir	0	141	418	548	1,107
Subtotal	$213	$622	$1,534	$2,183	$4,552
Nationals					
Air Wisconsin	0	0	0	0	0
Alaska Airlines	36	60	63	49	207
Aloha	3	30	25	32	90
Am. Trans. Air	0	0	0	0	0
America West	2	68	72	66	208
Evergreen Intl.	0	0	0	0	0
Hawaiian	18	16	13	10	57
Horizon Air	0	0	0	0	0
Midway Airlines	0	0	0	89	89
Southern A.T.	0	0	0	0	0
Tower Air	0	0	0	0	0
Trump Shuttle	0	0	0	0	0
United Parcel	0	0	0	30	30
World Airways	0	0	0	0	0

PRESENT VALUE OF COSTS [1] 1990 DOLLARS—Continued

[In millions]

Air Carrier	1994	1996	1998	2000	Total
Southwest Airl	84	89	85	89	347
Subtotal	$143	$263	$258	$364	$1,028
Grand Total	$356	$885	$1,792	$2,547	$5,580

[1] Totals may not add due to rounding. It is likely that the costs associated with Alaska, Aloha, and Hawaiian Airlines will be less because many of their operations are outside the contiguous 48 States.

Based on this information, it is clear that the proposed rule would have a significant effect on many air carriers in the U.S. airline industry. The worsening financial condition of some air carriers will obviously affect the achievement of projected rates of growth for the airline industry. Many airlines, including some financially strong ones, may have to divert funds from capacity expansion to the replacement of State 2 airplanes earlier than planned.

Overview of Competitive Impact

A reduction in the number of airlines offering scheduled passenger service probably will not reduce price and service competition within the industry. In February, 1990, a Department of Transportation task force released a comprehensive assessment of the state of airline competition that was initiated at the direction of Secretary of Transportation Samuel Skinner. This study, entitled Secretary's Task Force on Competition in the U.S. Domestic Airline Industry, U.S. Department of Transportation, Office of the Secretary of Transportation, Volumes I–XI, February 1990, concluded that the domestic airline industry is more competitive than ever before. The study also showed that the increase in national concentration has not resulted in a reduction in competitive pressures in city-pair markets, but, rather, has actually resulted in more competition as individual carriers expanded their systems from a regional to a national basis. It demonstrated how concentration at an airport actually intensifies competition in the hundreds of markets that can be served. Finally, the study showed that fare premiums at concentrated hubs tend to be limited to short-haul, high-density markets that affect less than five percent of the system traffic. The Department's study, however, confirmed that the industry was consolidating at the national level, that concentration had increased at many airports, and that passengers in certain markets at concentrated hub airports were paying fare premiums.

The hub-and-spoke system of service has lead to the geographical expansion of most carriers and the resulting increase in city-pair competition. In other words, connecting services created by airport hubs allow more competitors than would be possible with linear-type systems of service. This is particularly true for small traffic-generating points, and is the reason that smaller points have been the prime beneficiaries of deregulation.

The basic issue is whether the forced early retirement of Stage 2 airplanes would cause a reduction in competition. Of course, the answer depends on the number of carriers affected and the extent to which they are affected. Any change in relative fleet sizes would affect industry concentration. The Department's study shows, however, that this does not necessarily affect competition. The national hub-and-spoke systems have enabled a relatively small number of carriers to provide more intense competitve service in most city-pair markets. On a city-pair basis, it does not take a large number of carriers to provide very competitive service. This strongly suggests that some loss of capacity by financially weak carriers or the loss of a financially weaker carrier would not necessarily have any lasting impact on competition at the city-pair level.

Achieving Projected Rates of Growth for the Airline Industry

The State 2 ban and the proposed phaseout rule, however, could have an impact on many air carriers' plans to expand their fleets. Many air carriers do not plan to replace or convert their State 2 airplanes as soon as would be required under the proposed rule. Some of these airlines may not have the financial strength both to increase their fleets and to replace many of their State 2 airplanes early. The State 2 ban and the proposed phaseout rule, as a result, might reduce the growth rate of the U.S. airline industry.

The Impact on Competition Within the Air Passenger and Air Cargo Industries

The FAA has already discussed competition within the air passenger industry in other sections of this summary. Competition within the air cargo industry, however, is not expected to change significantly over the next ten years. FAA data show that the age of many cargo carriers airplanes is greater than that of air passenger carriers. Consequently, many of these airplanes would be replaced during the 1990's (assuming a 25-year life for State 2 airplanes) and, therefore their replacement would not be considered a cost of this rule. The airplanes that would be replaced as a consequence of this rule are not expected to adversely affect competition within the air cargo industry.

The finding is based on the assumption that airplanes have a useful life of only 25 years. Although many air cargo operators plan to use their airplanes well beyond 25 years, the FAA still believes that its 25-year assumption is valid. The FAA is currently issuing Airworthiness Directives and writing new regulations that will greatly increase the cost of operating old airplanes and the air cargo industry is not exempt from these AD's. As a result, air cargo operators may find it uneconomical to operate airplanes more than 25 years old.

The proposed rule is not expected to have a significant impact on competition between the airline and air cargo industries because the proposed rule would not change the manner by which these two industries compete for carriage of cargo commodities. There would still be a sufficient number of operators to maintain a competitive market structure. Based on information in the earlier subsection on the financial health of the U.S. airline industry, there will probably be four or more major carriers in the U.S. airline industry over the next 10 years. The number of cargo operators is not expected to change significantly over the next ten years. This evaluation concludes that

competition between the airline and air cargo industries would remain intact after implementation of the proposed rule.

The Impact on Nonhub and Small Community Air Service

The proposed rule, which presents a schedule for the phaseout of Stage 2 airplanes, is expected to have little or no effect on nonhub and small communities for two reasons. First, a large proportion of the service provided to such communities is provided with commuter airplanes, most of which have a maximum certificated takeoff weight of less than 75,000 pounds and would not be subject to the phaseout requirement. Of the 374 nonhub communities, only 66 are now served with as many as two roundtrips a day, six days per week, by Stage 2 airplanes with a gross weight of more than 75,000 pounds that would be subject to the phaseout requirement. These 66 communities are served primarily with smaller airplanes that would not be subject to the proposed rule. These 66 communities had approximately 600,000 departures, and only one out of every five departures was provided with a Stage 2 airplane subject to the proposed rule.

The second reason for the negligible effect is that many of these communities receive service to several alternative hubs by different operators. Because a majority of traffic from small communities moves beyond the various connecting hubs, a decrease in service at any given hub would generally not affect a large number of local passengers traveling to cities served by that hub. For example, Akron, Ohio, which is a nonhub city, receives service to seven different connecting hub complexes by six different U.S. carriers. In the event that any one of these U.S. carriers discontinued service to Akron, the remaining operators would be expected to continue to compete vigorously for most connecting passengers.

The hub-and-spoke system of service enables operators to compete for very small volumes of traffic. This is the principal reason that smaller communities have been the prime beneficiaries of deregulation. This is also the reason why these communities will continue to receive very competitive service even if additional concentration occurs at the national level. To illustrate, again using Akron as an example, most city-pair markets involving Akron have very small traffic volumes. Nevertheless, as many as six U.S. carriers compete for this traffic through their respective hubs. Thus, the proposed rule is expected to have a negligible impact on this component of the industry.

The Impact on New Entry into the Airline Industry

Many factors affect new entry into the airline industry. These factors include the cost of airplanes, availability of passenger gates, gaining priority listing on reservation systems, operating and maintenance costs (e.g., labor and fuel), and financing. The added cost of purchasing Stage 3 airplanes instead of Stage 2 airplanes will obviously increase the costs of entry into the airline industry. The FAA believes, however, that the added costs of the Stage 2 phaseout regulations will be a small percentage of the total cost of entry.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The RFA requires agencies to review rules that may have "a significant economic impact on a substantial number of small entities." The small entities that would be affected by this proposed rule are the owners of Stage 2 civil subsonic airplanes with maximum weights of more than 75,000 pounds that operate in the contiguous States.

There are about 115 U.S. airlines and private operators that operate more than 4,000 jet airplanes over 75,000 pounds. Fleet sizes range from one to several hundred. Many of the fleets and many of the airplanes in these fleets are Stage 3 and are not affected by the proposed rule. Others are Stage 2 airplanes that have been converted to Stage 3. In addition, many airplanes are operated, but not owned, by the carriers under whose names they fly. These leased airplanes are owned by other air carriers, banks, insurance companies, and leasing companies. Finally, many operators own only one Stage 2 airplane; they would be excluded from compliance with the phaseout because of a round-up provison for calculations in the phaseout schedule.

The FAA's Order on Regulatory Flexibility Criteria and Guidance[1] size threshold for a small operator is: "9 aircraft owned, but not necessarily operated." The Order also defines a substantial number of small entities as a number that is not less than eleven and that is more than one-third of the small entities subject to the rule.

The FAA has identified 12 air carriers (five "nationals" and seven "regionals") that own fewer than nine Stage 2 airplanes. These carriers own a total of 37 Stage 2 airplanes. Four carriers own one Stage 2 airplane each. Through rounding of calculations the proposed rule would allow these carriers to operate those airplanes through December 31, 1999. Only eight of these small air carriers would be required to phase out Stage 2 airplanes to comply with the schedule in the proposed rule.

Most private operators own only one jet airplane, and would be thus exempt from the phaseout schedule. Of the six operators that own more than one airplane, one owns two DC-8's that have been hushkitted to Stage 3. The other five are large companies with tens of millions of dollars in sales and hundreds of employees.

Therefore, the proposed rule would not affect a substantial number of small air carrier entities as defined in the FAA's Regulatory Flexibility Criteria and Guidance.

Other small entities that could be affected by the proposed rule are the lessors who do not operate the aircraft they own. The FAA has been unable to obtain information on the identity of these lessors or the number and types of aircraft that they lease. The FAA solicits this information in order to determine whether a substantial number of them would be significantly affected by the proposed rule.

International Trade Impact

The proposed rule is expected to have little or no impact on trade opportunities of United States firms conducting business overseas or for foreign firms conducting business in the United States. The proposed rule would impose similar requirements on both domestic air carriers under FAR part 121 and on foreign air carriers subject to FAR part 129. The cost of compliance to foreign air carriers for phasing out Stage 2 operations into the United States under part 129 would probably be similar to the cost incurred by U.S. operators. In addition, other countries are also phasing out Stage 2 airplanes. Therefore, it would not cause a competitive fare disadvantage for U.S. air carriers operating between the contiguous states and overseas or for foreign air carriers operating between the contiguous States and overseas.

[1] U.S. Department of Transportation, Federal Aviation Administration. Regulatory Flexibility Criteria and Guidance. Order No. 2100.14A. September 16, 1986.

Environmental Analysis

The proposed rule is in response to section 9308 of the Airport Noise and Capacity Act of 1990. This secton of the Act directs the Secretary of Transportation to promulgate final rules for the phaseout of Stage 2 airplane operations by July 1, 1991. The National Environmental Policy Act (NEPA), 42 U.S.C. 4321, requires all federal agencies "to the fullest extent possible" to include in "major Federal actions significantly affecting the quality of the human environment" an environmental impact statement analyzing the consequences of, and alternatives to, the proposed action. Since the proposed regulation is a federal action subject to NEPA, the FAA will determine its potential impacts by preparing an environmental assessment (EA). Under applicable guidelines of the President's Council on Environmental Quality and agency procedures implementing NEPA, absent extraordinary circumstances, the FAA normally prepares an environmental assessment to determine the potential impacts of a proposed regulation that may affect the human environment. 40 CFR 1501.3, FAA Order 1050.1D, appendix 7, par. 3(a).

For the reasons explained below, the FAA's preliminary analysis supports the preparation of an EA and suggests that an EIS will not be required. The 1990 Act appears to only afford the Secretary discretion to set the interim dates for phaseout; the percentages to require on these dates; and the method of implementation. Given these limitations, any decision made in promulgating the mandated regulations is unlikely to have a significant impact on the quality of the human environment.

At the close of the period for public comments, the FAA will review the EA and comments to determine whether to issue a finding of no significant impact or an environmental impact statement (EIS). If the FAA concludes from the EA that an EIS is required, the FAA will then address how to integrate its NEPA responsibilities with its statutory obligations under the 1990 Act. If an EIS is required, it may be that the FAA may not be able to complete an EIS and simultaneously adopt final regulations within the 180-day time from mandated by the Act. We invite suggestions and comments on our options.

The legislation sets a final compliance date of December 31, 1999, for the cessation of operations of Stage 2 airplanes in the contiguous United States. The legislation provides for a waiver of this final compliance date only under strict circumstances and to a limited number of operators, sets a strict limitation on the life of the waiver, and defines those issues the Secretary must consider in granting the waiver. By these actions, the Congress has effectively determined the improvement in noise levels that will result from the legislation before granting any discretion to the Secretary.

In addition, the legislation places significant restriction on the importation and operation of additional Stage 2 airplanes after November 5, 1990. The legislation strictly defines who may import such airplanes, and the time at which they must be brought back into the United States in order to operate. The only exemption allowed under the legislation is for airplanes that must be operated in order to obtain modification to Stage 3 noise levels.

The proposed rule sets forth a schedule that would require a U.S. operator to phase out 25% of its base level of Stage 2 airplanes by December 31, 1994, 50% by December 31, 1996, and 75% by December 31, 1998. The FAA believes that this proposed phaseout schedule optimizes the tradeoffs between noise reduction for communities surrounding airports and the economic burden on operators that it was required to consider.

Other phaseout options were considered by the FAA, one of which is explained in this NPRM as an alternative to the proposed rule. That alternative includes the use of transferrable operating rights but does not alter the concept of a compliance schedule. Another alternative considered included a compliance schedule based on the percentage of an operator's fleet that had to be Stage 3 on a given interim date, rather than a reduction in an actual number of Stage 2 airplanes. Because Congress mandated interim phaseout dates, the only choice became the dates in the compliance schedule and the method of implementation.

Within this framework, the FAA believes that among the alternatives discussed, there is no significant range of environmental impacts from which to choose; all of the alternatives considered to be within the FAA's discretion are unlikely to have a potentially significant impact on the quality of the human environment. Moreover, the FAA believes that any environmental impact that these regulations may have will be positive by reducing the amount of noise from Stage 2 airplanes. The discretion given to the Secretary as to how soon those positive benefits accrue is strictly limited by the matters the agency is directed to consider under the legislation.

Considering these factors, the FAA believes it has done the best possible job of not significantly affecting the quality of the human environment. The FAA seeks public comment on this issue, and will, on that basis, determine the potential significant environmental impacts of the proposed phaseout schedule.

Paperwork Reduction Act

Information collection requirements in the proposed amendment to § 91.811 will be submitted to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Comments on the requirements should be submitted to the Office of Information and Regulatory Affairs, New Executive Office Building, room 3001, Washington, DC 20503, Attention: FAA Desk Officer (telephone: (202) 395–7340). A copy should be submitted to the FAA docket.

Federalism Implications

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of the Federalism Assessment.

Conclusion

For the reasons discussed throughout this preamble, and based on the findings in the Regulatory Impact Analysis and the International Trade Impact Analysis, the FAA has determined that this proposed rule would be a major rule under Executive Order 12291. In addition, in consideration of the cost information discussed under the Regulatory Flexibility Determination, it is certified that this amendment to part 91, if adopted, would not have a significant economic impact on a substantial number of small entities in the air carrier industry. This proposed rule is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). A regulatory impact analysis of this proposed rule, including an initial Regulatory Flexibility Determination and International Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects in 14 CFR Part 91

Air carriers, Aviation safety, Safety, Aircraft, Airspace, Air transportation.

The proposed amendment

Accordingly, the FAA proposes to amend 14 CFR part 91 of the Code of Federal Regulations as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 is revised to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; 49 U.S.C. App. 2157, 2158; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 et seq.; E.O. 11514, 3 CFR, 1966–1970 Comp., p. 902; 49 U.S.C. 106(g).

2. Section 91.801 is revised to read as follows:

§ 91.801 Applicability; Relation to part 36.

(a) This subpart prescribes operating noise limits and related requirements for the operation of civil airplanes in the United States. This subpart applies to operations to or from any airport in the United States conducted under this part and parts 121, 125, 129, or 135 of this chapter. Sections 91.803, 91.805, 91.807, 91.809, and 91.811 apply to any civil subsonic turbojet airplane with a maximum certificated takeoff weight of more than 75,000 pounds and if—

(1) U.S.-registered, that has a standard airworthiness certificate; or

(2) Foreign-registered, that would be required by this chapter to have a U.S. standard airworthiness certificate in order to conduct the operations intended for the airplane were it registered in the United States. Those sections apply to operations to or from airports in the United States under this part and parts 121, 125, 129, or 135 of this chapter.

(b) Unless otherwise specified, as used in this subpart, "part 36 of this chapter" refers to 14 CFR part 36, including the noise levels under Appendix C of that part. For purposes of this subpart, the various stages of noise levels, the terms used to describe airplanes with respect to those levels, and the terms "subsonic airplane" and "supersonic airplane" have the meaning specified under 14 CFR part 36.

(c) For purposes of this subpart, for any subsonic airplane operated in foreign air commerce in the United States, the Administrator may accept compliance with the noise requirements specified under annex 16 of the International Civil Aviation Organization when those requirements have been shown to be substantially compatible with, and achieve results equivalent to those achievable under 14 CFR part 36, as if those noise levels were 14 CFR part 36 noise levels.

2A. Section 91.803 is revised to read as follows:

§ 91.803 Final compliance: civil subsonic airplanes.

(a) No person may operate to or from an airport in the United States or the District of Columbia any civil subsonic airplane covered by this subpart unless that airplane has been shown to comply with the Stage 2 or Stage 3 noise levels under part 36 of this chapter.

(b) Except as provided in § 91.809, on or after January 1, 2000, no person shall operate to or from any airport in the 48 contiguous United States or the District of Columbia any civil subsonic airplane covered by this subpart unless that airplane has been shown to comply with the Stage 3 noise levels.

3. Section 91.805 is revised to read as follows:

§ 91.805 Entry and nonaddition rule.

(a) No person may operate to or from an airport in the 48 contiguous United States or the District of Columbia a civil subsonic turbojet airplane with a maximum weight of more than 75,000 pounds on or after November 5, 1990, unless one or more of the following conditions apply:

(1) The airplane complies with Stage 3 noise levels;

(2) The airplane complies with Stage 2 noise levels and is included in a U.S. operator's base level as defined in § 91.807(b), or was acquired from another U.S. operator after December 31, 1990;

(3) The airplane complies with Stage 2 noise levels and is operated by a foreign air carrier pursuant to the applicable provisions of § 91.807;

(4) The airplane complies with Stage 2 noise levels and is operated by a foreign operator other than for the purpose of foreign air commerce;

(5) The airplane complies with Stage 2 noise levels and—

(i) On November 5, 1990, was owned by:

(A) A corporation, trust, or partnership organized under the laws of the United States or any State (including the District of Columbia);

(B) An individual who is a citizen of the United States; or

(C) An entity owned or controlled by a corporation, trust partnership, or individual described in paragraph (a)(5)(i) (A) or (B) of this section; and

(ii) Enters into the United States not later than 6 months after the expiration of a lease agreement (including any extensions thereof) between an owner described in paragraph (a)(5)(i) of this section and a foreign air carrier; or

(6) The airplane complies with Stage 2 noise levels and was purchased by the importer under a written contract executed before November 5, 1990.

(b) As used in this section, the term—

Importer means one or more individuals and/or organizations specified in paragraph (a)(5)(i) of this section.

Owner means any entity described under paragraph (a)(5)(i) of this section that has indicia of ownership sufficient to register the airplane in the United States pursuant to part 47 of this chapter.

(c) A person may apply for a special flight authorization under SFAR No. to operate an airplane otherwise precluded by paragraph (a) of this section from operating to or from an airport in the 48 contiguous United States and the District of Columbia for the purpose of obtaining modifications to meet the Stage 3 noise levels.

(d) An operator of a civil subsonic turbojet aircraft with a maximum certificated takeoff weight of more than 75,000 pounds that does not comply with Stage 3 noise levels and was imported into a noncontiguous State, territory or possession of the United States on or after November 5, 1990, must include in its operations specifications a statement that such aircraft may not be used to provide air transportation to or from any airport in the 48 contiguous United States or the District of Columbia.

4. Section 91.807 is revised to read as follows:

§ 91.807 Phased Compliance under part 121, 125, 129, or 135: subsonic airplanes.

(a) General. Each person operating an airplane under parts 121, 125, 129, or 135 of this chapter, regardless of the national registry of the airplane, shall comply with this section with respect to subsonic airplanes covered by this subpart.

(b) Definition of base level. For purposes of this subpart, "base level" shall have the following meaning—

(1) For each U.S. operator the maximum number of owned or leased Stage 2 airplanes covered by this subpart that were listed on that operator's operations specifications for operations to or from airports in the 48 contiguous United States or the District of Columbia on any one day during the period January 1, 1990, through December 31, 1990, plus—

(i) the number of Stage 2 airplanes returned to service in the United States pursuant to § 91.805(a)(5); and

(ii) the number of Stage 2 airplanes imported pursuant to § 91.805(a)(6).

(2) For each foreign air carrier, the total number of Stage 2 airplane operations to or from the 48 contiguous States and the District of Columbia for the 12-month period from January 1, 1990, through December 31, 1990.

(c) New Entrants. For purposes of this subpart, the term "new entrant" means a U.S. air carrier that, on or before November 5, 1990, did not operate an airplane covered by this subpart to or from any airport in the 48 contiguous United States or the District of Columbia under 14 CFR parts 121 or 135, but that subsequently initiates such operations.

[*Under Option 1, discussed in the preamble, the following phaseout schedule would apply to new entrant air carriers*]:

(1) A new entrant initiating 14 CFR part 121 or 135 operations prior to the first interim compliance date shown in paragraph (d)(1) of this section may initiate service without regard to the percentage of its fleet composed of Stage 3 airplanes.

(2) After December 31, 1994, at least 25 percent of the airplane fleet of a new entrant initiating operating under 14 CFR part 121 to 135 must comply with the requirements of Stage 3.

(3) After December 31, 1996, at least 50 percent of the airplane fleet of a new entrant initiating 14 CFR part 121 or 135 operations must comply with the requirements of Stage 3.

(4) After December 31, 1998, at least 75 percent of the airplane fleet of a new entrant initiating 14 CFR part 121 or 135 operations must comply with the requirements of Stage 3.

[Note: Under Option 2, discussed in greater detail in the preamble, new entrants, along with other U.S. air carriers, would either achieve a required percentage reduction from their base level or obtain Stage 2 operating rights from another operator.]

(5) To be eligible to apply for the waiver under § 91.809, a new entrant must initiate service no later than January 1, 1999, and comply fully with all provisions of that section.

(d) Compliance schedules.

[*Under Option 1, discussed in the preamble, the following phaseout schedule would apply to U.S. operators, other than new entrants*].

(1) Each U.S. operator of a Stage 2 airplane to or from any airport in the 48 contiguous United States or the District of Columbia shall reduce the number of Stage 2 airplanes it operates to a maximum of—

(i) 75 percent of the operator's base level on and after December 31, 1994,

(ii) 50 percent of the operator's base level on and after December 31, 1996, and

(iii) 25 percent of the operator's base level on and after December 31, 1998.

(2) Except as provided under § 91.809, a U.S. operator shall achieve compliance with the schedule in paragraph (d)(1) of this section by reducing its fleet of Stage 2 airplanes by the required percentage of its base level for each compliance date. A Stage 2 airplane operated by a U.S. operator that was acquired from another U.S. operator after December 31, 1990, does not increase the base level of the acquiring operator.

[Note: Under Option 2, discussed in greater detail in the preamble, a percentage of each carrier's Stage 2 operating rights would expire on these dates, requiring the operator to retire a corresponding number of airplanes, convert them to Stage 3, or obtain unexpired Stage 2 operating rights from another operator.]

(3) Notwithstanding the compliance date specified in paragraph (d)(1) of this section, any U.S. airplane operator that achieves and maintains a fleet of airplanes that is composed of at least 85% Stage 3 airplanes that are permitted to operate in the 48 contiguous United States and the District of Columbia need not further reduce the number of Stage 2 airplanes it operates. Such operator shall still comply with the December 31, 1999, compliance requirement.

(4) Each foreign air carrier shall reduce the number of annual Stage 2 operations it conducts to all points in the 48 contiguous United States or the District of Columbia to a maximum of—

(i) 75 percent of the foreign air carrier's base level on and after December 31, 1994,

(ii) 50 percent of the foreign air carrier's base level on and after December 31, 1996, and

(iii) 25 percent of the foreign air carrier's base level on and after December 31, 1998.

(5) A foreign air carrier that had no more than two airplanes listed on its U.S. operations specifications during the period January 1, 1990 through December 31, 1990, may operate that number of Stage 2 airplanes in the 48 contiguous United States and the District of Columbia without regard to the compliance schedule in paragraph (d)(4) of this section.

(6) A foreign operator not engaged in foreign air commerce may operate a Stage 2 airplane to or from airports in the 48 contiguous United States and the District of Columbia through December 31, 1999, without regard to the compliance schedule in paragraph (d)(4) of this section.

(7) A new entrant shall comply with the phaseout schedule by achieving a total fleet composition comprised of no more than—

(i) 75 percent Stage 2 airplanes between January 1, 1995, and December 31, 1996;

(ii) 50 percent Stage 2 airplanes between January 1, 1997, and December 31, 1998;

(iii) 25 percent Stage 2 airplanes between January 1, 1999, and December 31, 1999.

(8) Calculations resulting in fractions may be rounded up to permit the continued operation of the next whole number of Stage 2 airplanes.

(e) As used in this section, the term "Stage 3 airplane" is limited to a civil subsonic turbojet airplane whose maximum certificated takeoff weight is not less than 75,000 pounds.

5. Section 91.809 is revised to read as follows:

§ 91.809 Waiver.

(a) If, by July 1, 1999, at least 85 percent of the airplanes used by a U.S. air carrier to provide air transportation to and from the 48 contiguous United States and the District of Columbia would comply with the Stage 3 noise levels of Part 36 of this chapter, such carrier may apply to the Administrator for a waiver of the prohibition contained in § 91.803 on the operation of Stage 2 airplanes for the remaining 15 or less percent of the airplanes by the carrier. Such applications must be filled with the Administrator no later than January 1, 1999, and must include a plan with firm orders for replacing or modifying Stage 2 airplanes operated by the carrier to comply with Stage 3 noise levels not later than December 31, 2003.

(b) The Administrator may grant a waiver under this subsection if the Administrator finds that granting such waiver is in the public interest. In making such a finding the Administrator will consider the effect of granting such waiver on competition in the air carrier industry and on small community air service.

(c) No waiver granted under this subsection shall permit the operation of Stage 2 airplanes after December 31, 2003.

6. Section 91.811 is revised to read as follows:

§ 91.811 Annual progress report.

(a) Each U.S. and foreign air carrier providing air transportation to or from any airport in the 48 contiguous States or the District of Columbia shall submit

to the Administrator an annual report on the progress such carrier has made toward complying with the requirements of this subpart. Such reports shall be submitted no later than 45 days after the end of the calendar year, beginning with calendar year 1992.

(b) U.S. and foreign air carrier progress reports must contain the information specified under paragraph (c) or (d) of this section. All progress reports must provide the information as it existed at the end of the calendar year, and must be certified by the carrier as true and complete (under penalty of 18 U.S.C. 1001).

(c) For U.S. air carriers—

(1) The initial progress report must include the following information—

(i) Name and address of the carrier;

(ii) Name, title and telephone number of the person designated by the carrier to be responsible for ensuring the accuracy of the information in the report;

(iii) The total number of Stage 2 airplanes identified as the air carrier's base level, listed by airplane type, model, and series (including serial and registration numbers). Those airplanes included in the carrier's base level pursuant to § 91.807(b)(1) (i) and (ii) shall be listed separately under the categories "Imported" or "Returned."

(iv) The total number of Stage 2 airplanes acquired by the carrier from other U.S. operators after December 31, 1990, listed by airplane type, model, and series (including serial and registration numbers). Such airplanes shall not be identified as part of the carrier's base level.

(v) The carrier's current plan to meet the compliance schedule required in § 91.807(d) and the final compliance date in § 91.803(b), including the schedule for delivery of replacement Stage 3 airplanes or the installation of replacement engines or hush kits.

(vi) The carrier's progress during the reporting period toward compliance with the requirements of this subpart, identifying:

(A) The type, model, and series (including serial and registration numbers) of each Stage 2 airplane removed from operation or modified to Stage 3 (identifying the make and model of replacement engines or hush kits); and

(B) The name and address of the recipient (including foreign entities) of any Stage 2 aircraft removed from operation.

(vii) The initial report shall cover the period between January 1, 1991, though December 31, 1992.

(2) Subsequent annual progress reports must include:

(i) The information required by paragraphs (c)(1) (i), (ii), and (viv) of this section;

(ii) The total number or Stage 2 airplanes added to the carrier's base level during the reporting period pursuant to § 91.807(b)(1) listed separately under the categories: "Imported" or "Returned";

(iii) The total number of Stage 2 airplanes acquired during the reporting period from other U.S. operators, listed by airplane type, model, and series (including serial and registration numbers); and

(iv) One of the following:

(A) Statement that the air carrier's current plan to meet the compliance schedule has not been revised;

(B) A statement listing specific revisions made to the plan during the reporting period in the same format as the initial plan; or

(C) A final statement reflecting actions completed by the carrier during the reporting period that accomplished compliance with § 91.803(b).

[Note: Under Option 2, discussed in greater detail in the preamble, U.S. carriers would instead report the number of Stage 2 operating rights in their possession, including expiration dates and source of acquisition.]

(d) For foreign air carriers—

(1) The initial progress report must include the following information—

(i) Name and address of the foreign air carrier;

(ii) Name, title, and telephone number of the person designated by the foreign air carrier to be responsible for ensuring the accuracy of the information in the report;

(iii) The total number of Stage 2 airplane operations included in the foreign air carrier's base level;

(iv) The foreign air carrier's progress toward compliance with the requirements of this subpart, listing, by city pair, the number of Stage 2 operations conducted during the reporting period, identifying—

(A) The type and model of airplane formerly used to perform the operation; and, if there has been a change,

(B) The type and model of airplane now being used to perform the operation.

(v) The number of all operations performed by Stage 2 airplanes to or from any airport in the 48 contiguous United States or the District of Columbia that were added during the reporting period, including city pairs for each operation.

(vi) The initial report will cover the period between January 1, 1991, and December 31, 1992.

(2) Subsequent annual progress reports must include the same information required by paragraphs (d)(1) (i), (ii), (iv), and (v) of this section or a final statement reflecting actions completed during the reporting period which accomplished compliance with § 91.803(b).

Issued in Washington, DC, on February 25, 1991.

James E. Densmore,

Director, Office of Environment and Energy.

[FR Doc. 91-4785 Filed 2-25-91; 3:19 pm]

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DEPARTMENT OF TRANSPORTATION

14 CFR Part 161

[Notice No. 91-8; Docket No. 26432]

RIN 2120-AD98

Notice and Approval of Airport Noise and Access Restrictions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration proposes regulations to establish a program for reviewing airport noise and access restrictions on the operations of Stage 2 and Stage 3 aircraft. This proposal is in response to specific provisions in the Airport Noise and Capacity Act of 1990 and is intended to become a major element of the national aviation noise policy, which is required to be established by that statute.

DATES: Comments should be submitted on or before April 15, 1991. Because of the statutory deadline for the issuance of a final rule, the FAA will not be able to entertain requests for extension of the comment period. However, late filed comments will be considered to the extent practicable.

ADDRESSES: Comments on this notice should be mailed in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, attn: Rules Docket (AGC-10), Docket No 26432, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: John M. Rodgers, Office of Aviation Policy and Plans, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3274.

and seek public comment. At the close of the comment period, the applicant sends its analysis and comments to the FAA, along with evidence that at least one of the six statutory conditions necessary for initial approval of the Stage 3 restrictions have been violated. After receiving this documentation, the FAA will publish a notice in the **Federal Register** of the request, solicit comments, and determine whether the challenged restriction continues to meet federal standards. The FAA will publish its decision in the **Federal Register**.

Statute-mandated sanctions for noncompliance with this rule are covered in proposed subpart F. They consist of termination of Airport Improvement Program funds and rescission of Passenger Facility Charge collection authority. Consideration of sanctions is triggered by a complaint to the FAA or other evidence of noncompliance. The process allows for airport operator response to the allegations, as well as public comment on the complaint. After consideration of the evidence, the FAA publishes a notice of the complaint in the **Federal Register** and notifies the affected airport operator.

Each of the proposed subparts of the rule is discussed in greater detail below.

Subpart A, proposed general provisions, addresses the purpose, applicability, and limitations of the proposed rule as outlined in the Act. Based on section 9304 of the Act, the proposed rule would apply to restrictions on Stage 2 aircraft operations proposed after October 1, 1990, and to restrictions on Stage 3 aircraft operations that become effective after October 1, 1990. The subpart also defines common terms used throughout the proposed regulation.

Determinations and actions by the Administrator under this part would not constitute determinations or actions with respect to an airport's compliance status under specific grant agreements, or preclude the Administrator from responding to complaints involving grant compliance. Information and documents used under this part may also be used with respect to grant compliance matters.

As required by the Act, the proposed rule covers "noise" and "access" restrictions on the operations of Stage 2 and Stage 3 aircraft. Section 9304(b) of the Act states four specific kinds of Stage 3 restrictions that must either be agreed to by the airport "proprietor" and aircraft operators or approved by the FAA. These are: (1) Restrictions on noise levels; (2) direct or indirect limits on the number of operations; (3) noise budgets and noise allocation programs; and (4) limits on the hours of Stage 3 operations. Section 9304(b) also prohibits "any other limit on Stage 3 aircraft," unless it is agreed to or approved by the FAA. While the Act does not provide comparable guidance on the kinds of noise or access restrictions on Stage 2 aircraft that are to be covered by this rulemaking, the FAA proposes the same scope for Stage 2 as for Stage 3. That is, noise restrictions would be subject to the proposed rule, as would access restrictions, that limit or reduce the hours of operation at the airport or the total number of Stage 2 or Stage 3 operations.

Certain restrictions, however, would not be subject to some requirements of the proposed rule. Section 9304 of the Act prescribes specific exemptions from the requirements for notice, review, and approval, and these are included in proposed § 161.7(c). In addition, the proposed rule would not apply to noise abatement operational procedures, unless such procedures have the effect of limiting the total number of operations or the hours of operation of the airport.

The FAA notes that the definition of a covered noise or access restriction under proposed § 161.5 would include "a program of airport use charges that has the direct effect of controlling airport noise." However, this phrase is not intended to preclude airports' application of a peak-hour pricing program designed to align operations with capacity. The phrase is primarily intended to refer to noise-based landing fees and other such noise-based charge-assessment programs. We invite comments on the proposed definition in this section and on ways to ensure that the final rule carries out the requirements of the Act without placing unnecessary or unintended limitations on the right of airport operators to promote efficient operations. Public comment is also invited on these related questions:

1. Is the proposed definition of "noise or access restriction" too broad? If so, why, and how should it be revised?

2. Should an "access" restriction that is unrelated to noise be subject to this regulation? If not, how should the FAA reasonably distinguish whether a restriction is related to noise? Is there a risk that restrictions nominally adopted for other purposes will actually be intended to circumvent requirements for noise restrictions?

3. Should a restriction or airport use charge that has an "indirect" effect of controlling noise be subject to this regulation?

4. What procedure, if any, should the FAA adopt to resolve any dispute over whether a restriction is subject to this regulation?

It should be noted that this proposal does not address the safety aspects of operational procedures that have been (or may be) recommended by airport operators to reduce noise impact. Noise or access restrictions must be acceptable to the Administrator from a safety, as well as an environmental, perspective. To the extent that the FAA has any safety concerns about such airport noise or access restrictions, they will be dealt with under applicable existing safety regulatory authorities, e.g., 14 CFR parts 91, 121, 129, 135, and 139.

Finally, subpart A specifies that noise measurement systems and land use categories used to comply with prescribed notice and approval requirements must be in accordance with 14 CFR part 150. Part 150 establishes the noise measurement systems and the identification of land uses that are normally compatible or noncompatible with various levels of noise around airports. Part 150 was promulgated in response to a mandate in the Aviation Safety and Noise Abatement Act of 1979 that the FAA issue a regulation including a single, standardized methodology for measuring aircraft noise and for determining the exposure of individuals to aircraft noise. The FAA uses the methodology in Part 150 for airport noise compatibility planning, for evaluating the noise effects of proposed airport development projects, as well as for other types of environmental evaluations that the FAA performs or requires. It is consistent for the FAA to apply this methodology to the analysis of restrictions in the proposed rule. The objective is to assure that similar methods will be used to characterize each proposed restriction, thereby facilitating comprehensive, fair, and consistent evaluations of the restrictions by the public and the FAA.

Subpart B pertains to voluntary agreements between airport operators and aircraft operators concerning noise or access restrictions on Stage 2 or Stage 3 aircraft operations. These agreements, while exempt from the analysis requirements for restrictions unilaterally imposed, do have notice requirements. Notice by publication is required, as well as direct notice to interested or affected aircraft operators, the FAA, and certain federal, state and local agencies. The FAA must be notified of the agreement's implementation, receive evidence that

the notification requirements have been met, and receive a copy of the signed agreement. FAA notification is also necessary when the agreement is terminated. While the Act discusses agreements only in the context of an alternative to Secretarial approval of Stage 3 restrictions (section 9304(b)(5)), proposed subpart B would treat agreements involving Stage 2 and Stage 3 restrictions alike. The objective of the proposed subpart is to clearly identify the existence and nature of the agreements. Subpart B would provide advantages to involved parties by excluding agreements from the process requirements proposed in subparts C and D (below). For example, analyses would not be mandated for agreements, nor would FAA final approval be required. Additionally, the proposed agreement procedure imposes minimal notice requirements compared to those proposed for restrictions. By limiting process requirements, reducing attendant costs, and minimizing federal government involvement, the agency views the proposed subpart B as advantageous to all concerned.

The proposal includes definitional limitations, discussed below, that are intended to simplify the agreement process. It also proposes to require the airport operator to provide notice of the agreement to the FAA and other interested parties, and to provide the FAA with a copy of the signed agreement. While the Act provides that "all aircraft operators" must join in the agreement, the statutory language focuses on the restrictions proposed at a particular airport. Because it would serve no useful purpose to require agreement from every U.S. and foreign aircraft operator that might at some point operate at a particular airport, the FAA is proposing two practical limitations.

First, under proposed § 161.101, it would only be necessary to obtain agreement of affected operators. This simply means that only those aircraft operators subject to the restriction contained in the agreement need to agree to it. If, for example, an agreement is proposed with respect to certain types of aircraft, only operators of those aircraft types would have to enter into the agreement.

Second, and more important, it would only be necessary to obtain the agreement of affected aircraft operators that are currently serving the airport or that have indicated an intention to institute service at the airport within 180 days of the effective date of the agreement. This proposal is intended to strike a balance between the interest in keeping the number of aircraft operators that must consent to the agreement within practicable limits and the need to ensure that new entrants at the airport are not excluded by virtue of the agreement.

Of course, most agreements will not have any exclusionary effects: many will involve little more than a promise by affected aircraft operators who have signed it to use their best efforts to conform with practices designed to limit noise in the areas surrounding the airport. In most cases, the FAA does not anticipate that any aircraft operator would have difficulty subscribing to an agreement of this nature. Other types of agreements are potentially more troubling. For example, agreements regarding the types of aircraft that may be used, the hours of operation at the airport, and noise budgets may all affect specific aircraft operators or classes of operators differently than others. For this reason, the proposed rule would require that any agreement include aircraft operators with firm plans to institute service as well as those already at the airport. The FAA chose 180 days as a reasonable cut-off point to distinguish aircraft operators whose intention to provide service is well developed, and who therefore may be viewed as having a significant interest in the subject of the agreement, from those operators whose plans for service are still under development.

For similar reasons, the proposed rule would require the airport operator to publish a notice of the agreement in a newspaper of national circulation, an areawide newspaper of general circulation, and aviation trade publications, and to give direct written notification to aircraft operators serving the airport or known to be interested in serving the airport, if they would be affected by the agreement. The airport operator would also have to notify the FAA and other interested federal, state, and local government agencies. The published and direct notifications provided by the airport would have to provide a clear description of the terms of the agreement, including its purpose, effective date, and the aircraft operators or types of operators affected by the agreement. In order to qualify as parties to the agreement, new entrant aircraft operators would have 45 days following the initial publication to provide evidence that they intended to institute service at the airport within 180 days after the effective date of the agreement.

The proposed rule would also require that the airport operator notify the FAA when the agreement actually goes into effect. If the agreement is terminated for any reason, such as expiration or withdrawal by one or more parties, the airport operator would have to notify the FAA and state its intention with respect to the provisions of the terminated agreement. Any continued application of a noise or access restriction would require compliance with proposed subpart C or subpart D.

As noted above, the FAA proposes to recognize noise or access agreements with respect to State 2 operations, and exempt them from cost benefits analysis requirements prescribed by the Act for restrictions on State 2 aircraft operations under subpart C, even though the Act is silent on this matter. This proposal is based on the benefits of agreements and the safeguards of public notice contained in the NPRM. Just as an agreement pertaining to State 3 operations would not be covered by the notice, analysis, and approval requirements proposed for restrictions under Subpart D of this NPRM, an agreement pertaining to Stage 2 operations would not involve the notice and economic analysis that would be required for restrictions under proposed subpart C. In addition, although airports would have to give the 45-day notice described above, the agreements could be effective without the 180-day waiting period required for Stage 2 restrictions under subpart C.

The FAA invites comments on all of the provisions discussed above. In addition, commenters' attention is particularly directed to the following questions. After further consideration by the FAA and review of the comments received, the final rule may be modified significantly from this proposal.

1. Are the notice requirements proposed for agreements reasonable? Although the Act does not expressly require the form of notice proposed here, should this rulemaking require it? If published and direct notification should be mandatory, can the requirements be made less burdensome? For example, since affected aircraft operators would, by definition, be parties to the agreement, could the regulatory burden be reduced appreciably by relying exclusively on published notice, and deleting the requirement for direct notification of aircraft operators and public agencies? Would publication alone, as outlined in the proposed rule, be sufficient notice? Would this provide adequate information to new entrants? Is 45 days a reasonable period for reply to published notices? Is it reasonable to require that the FAA be notified of the implementation and termination of agreements?

2. Is the proposed requirement for a written and signed agreement reasonable? A signed, written agreement would undoubtedly lessen the chance of misunderstanding among parties. On the other hand, the FAA is concerned that requiring agreements to be in writing might unnecessarily complicate and delay the agreement process. This, in turn, might mean fewer agreements, more noise problems, and more restrictions requiring FAA approval, which could result in even more delay and expense.

3. The FAA has proposed to require the agreement of those aircraft operators currently serving the airport or intending to do so within 180 days of the effective date of the agreement. Is this a reasonable requirement in light of the statutory reference to agreement by "all aircraft operators"? One alternative might be to give constructive notice to all aircraft operators through publication of the agreement; the failure of an aircraft operator to object to the restriction contained in the agreement would be considered consent. One potential drawback to such an approach would be that any aircraft operator, whether or not it serves the airport, could then object to the agreement and delay its implementation until the airport operator complies with proposed subpart C or obtains FAA approval of the restriction under proposed subpart D. This would require the airport to undertake the time and expense necessary to conduct the analyses required for a restriction under proposed subpart C or subpart D.

4. What recourse, if any, should be available to an aircraft operator not covered by the 180-day new entrant limitation? That is, if an aircraft operator wants to initiate service some months or years after the agreement has gone into effect, to what extent may it appropriately be barred by the terms of the agreement? Should the FAA treat an agreed to restriction on a new entrant as a subpart C or subpart D restriction, which would then be subject to FAA approval with respect to the new entrant? Should it matter whether the new entrant was in existence at the time the original agreement was announced? Would other remedies, e.g., the antitrust laws (where treble damages may be available), be sufficient to protect the interests of new entrants against exclusionary agreements?

5. Is it appropriate to allow agreements to cover Stage 2 operations as well as Stage 3? Is there a need to require an economic analysis and 180 days' notice on Stage 2 restrictions, as contemplated by the Act, if the airport operator and the affected aircraft operators can agree?

Subpart C pertains to review of proposed restrictions on Stage 2 aircraft operations. Restrictions on Stage 2 aircraft operations that are unilaterally imposed by airport operators are subject to analysis, notice and comment requirements. The analysis must include cost and benefit estimates of the proposal and alternatives that were rejected. Publication and direct notice by airport operators is mandated (as required in subpart B for agreements), but use of the 14 CFR part 150 notice and comment procedures are allowed as an alternative. If substantial changes are made to the proposal, a new notice and comment period is triggered.

The Act permits airport operators to impose restrictions on Stage 2 aircraft operations, subject to two conditions. First, the airport operator must prepare an analysis of the anticipated costs and benefits of the proposed restriction. Second, the operator must publish the proposed restriction, together with its analysis, at least 180 days before the effective date. Interested parties would then have an opportunity to comment. The statute requires the analysis to include: (1) Anticipated or actual costs and benefits of the existing or proposed noise or access restriction; (2) a description of alternative restrictions; and (3) a description of the alternative measures considered that do not involve aircraft restrictions, along with a comparison of the costs and benefits of such alternative measures to the costs and benefits of the proposed noise or access restriction. The Act applies to Stage 2 restrictions proposed after October 1, 1990.

In carrying out the Act, the rule proposes a process for analysis of, and notice and comment on, the proposed restriction. FAA has attempted to limit the burden of requirements while still ensuring that adequate information is available to provide a clear understanding of the proposed restriction and its effects. The Act maintains the existing authority (and limitations thereon) and discretion of airport operators to restrict the operation of Stage 2 aircraft. Airport operators are not required to obtain approval by the FAA of a restriction imposed on Stage 2 aircraft operations. However, the Act instructs the Secretary to formulate a national program to phase out the operation of Stage 2 aircraft by December 31, 1999, and a Notice of Proposed Rulemaking to carry out this requirement appears elsewhere in this issue of the **Federal Register**.

Given this national program, it is anticipated that only in exceptional circumstances will airports propose to eliminate or phase out the operation of Stage 2 aircraft in advance of the deadlines established by the Federal Government. Airports that do propose early phase outs are encouraged to highlight the net benefits of the "accelerated local phase out," in the public notice and analyses required by the Act as described later in the discussion of this subpart. It is important that airport operators demonstrate that the local restrictions are not discriminatory and do not constitute an undue burden on interstate commerce, or an undue burden on the national aviation system.

The statutory requirement for review of restrictions on Stage 2 aircraft operations does not apply to those reached through agreement in subpart B or those exempted by the Act. The Act specifically exempts amendments to existing restrictions on Stage 2 aircraft operations that do not reduce or limit aircraft operations or affect aircraft safety.

As the Act requires, the proposed rule states that an airport operator must provide notice and opportunity to comment at least 180 days before the effective date of the restriction. The FAA has determined that the notice should be published in a newspaper of national circulation, an areawide newspaper of general circulation, and in aviation trade publications. The airport operator would also be required to notify directly aircraft operators currently serving the airport and those known to the airport operator to be interested in serving the airport that could be affected by the restriction. The latter requirement was added to consider potential new entrants. The airport operator would also be required to notify the FAA and other federal, state, and local government agencies with facilities or land use control jurisdiction within the airport noise study area. While the requirements for notification as proposed are extensive, they do not specify a unique source that can always be relied on by various airport users or interested parties. Comments are therefore invited on whether the FAA should publish in the **Federal Register** a brief summary of any restriction proposed by airport operators.

The proposed rule specifies the information that would have to be included in the published and direct notifications to ensure that consistent and complete information is provided to those affected or interested in the

proposed restriction. The primary requirements are for a clear, concise description of the proposed restriction, a brief discussion of the specific need for and goal of the restriction, and a summary of the analysis of the restriction. The full analysis of the restriction could be included in the notice if the airport operator so chooses or could otherwise be made available by the airport operator for interested parties to review.

Other requirements for notice include identification of the aircraft operators expected to be affected, so that it is clear which carriers the airport operator believes are affected by the proposed restriction, the proposed method of implementation (e.g., city ordinance, airport rule), and any proposed enforcement mechanism. The proposed method of implementation and any proposed enforcement mechanism will provide further clarification on the restriction and ramifications of failure to comply with it.

In carrying out the statutory requirement for analysis of the proposed restriction, the proposed rule reiterates the language in the Act, as stated earlier in the preamble, requiring analysis of anticipated or actual costs and benefits, description of alternative restrictions, and a description of alternative measures considered and a comparison of the costs and benefits. The analyses must be conducted in accordance with generally accepted economic analysis methods and reflect airline industry practice. Noise analysis and the identification of the airport noise study area must conform to the requirements of 14 CFR part 150, as prescribed in subpart A of this proposal. The airport operator must specify methods used to analyze costs and benefits so that interested parties are able to conduct an informed review.

In addition to the analysis required by the Act, the proposed rule encourages the airport operator to provide specific information about the proposed restriction, similar to information provided for a Stage 3 restriction. The analysis for Stage 3 restrictions includes four types of information: (1) Background information; (2) analysis of the effect of the rule on airport operations, capacity, and aircraft noise; (3) description of alternative restrictions; and (4) a comparative analysis of the benefits and costs of proposed restrictions and alternative restrictions. The latter two requirements are directly mandated by the Act, while the first two are considered necessary to comprehend and evaluate the analysis required by the Act.

While not specifically required by law or the proposed rule, the FAA believes that this kind of information would be a useful element of an adequate analysis of a noise or access restriction and the alternatives. The airport operator would be given discretion in applying this guidance to its specific restriction because each proposed restriction may require a unique approach to properly estimate its impact and that of alternative nonaircraft restrictions. The FAA seeks comments on these issues.

In the final rule, it may be more useful to those reviewing the proposed restrictions to require the analysis described above rather than just encourage it. On the other hand, types of restrictions may vary considerably, and it may be difficult to adequately apply all the analysis requirements to various specific situations. It may also be appropriate to require different levels of analysis depending on the nature of the airport or airport operations where the restrictions are proposed (e.g., commercial service versus general aviation airports) or on the type of restriction itself (e.g., absolute ban on operations versus an hourly limit or curfew). Permitting some airport operators to provide more limited analysis may reduce the cost to the airport operator of implementing the restriction and expedite timely implementation without adversely affecting aircraft operators or the public.

The final rule may, therefore, require all or a portion of the analysis components identified in subpart D for each proposed restriction on Stage 2 aircraft operations. The public is specifically invited to comment on the following issues:

1. Should detailed analysis requirements for restrictions on Stage 2 aircraft operations, similar to those required for restrictions on Stage 3 aircraft operations, be specified in the rule? Alternatively, should optional detailed analysis requirements be described in an FAA advisory circular? Beyond the requirements of the statute, should any specific analysis be required or encouraged in the final rule?

2. Should the analysis required for restrictions on Stage 2 aircraft operations vary with either type of airport or type of restriction? If so, what should be the basis for differentiating analysis requirements?

3. Should the airport proposing a restriction on Stage 2 aircraft operations be required to explain explicitly why the restriction is not unreasonable, arbitrary, or discriminatory; an undue burden on interstate or foreign commerce; or an undue burden on the national aviation system, since these are among the grounds for FAA legal action?

Proposed Subpart C would require each airport operator to establish a public docket or similar method for receiving and considering comments and to make the comments available to interested parties upon request. A minimum 45-day comment period would be required. The public is invited to comment on whether the minimum length of time to comment is adequate. If changes are made to the proposed restriction, the operator would be required to advise interested parties, and make any changes to the proposed restriction and its analysis available.

If there is a substantial change to the proposed restriction or the analysis during the 180-day notice period, the operator would be required to begin the notice process again. Examples of a substantial change are a more restrictive proposal or a revision that alters the way impacts are apportioned among aircraft operators. A new notice would be required to permit parties an adequate opportunity to comment. The FAA seeks comments on what types of changes to the proposal should require a new notice.

Airport operators would have the option of using part 150 procedures for notice and comment, because much of the required process is similar to that required under part 150. The part 150 process is more comprehensive in scope in that it includes compatible land use planning, as well as restrictions on aircraft operation. The FAA, therefore, encourages use of part 150 for meeting the notice and comment requirements of this subpart. The analysis of restrictions on Stage 2 aircraft operations would have to be provided in the part 150 process to meet the requirements of this rule.

If an airport operator decides not to implement the restriction, the interested parties must be notified that the restriction will not go into effect.

As proposed, Subpart C would require airport operators to provide notice and comment on any proposed restriction with respect to all categories of Stage 2 aircraft, regardless of the weight of the aircraft. As directed by the Act, the FAA is conducting a study for the Secretary of Transportation on the applicability of subsections 9304 (a), (b), (c), and (d) of the Act to restrictions on the operation of Stage 2 aircraft that weigh less than 75,000 pounds. A draft of the study results produced thus far, "Application of Notice and Analysis Requirements to Operating Noise/Access Restrictions on Subsonic Jets Under 75,000 Pounds," is

included in the docket for public inspection. This FAA study is ongoing. A final report and final recommendations to the Secretary on the applicability of section 9304 to small Stage 2 aircraft will be completed prior to issuance of the final rule.

The draft FAA study considers noise levels produced by such aircraft, the benefits of general aviation, differences in the nature of operations at airports, and international standards with respect to airport noise and other factors. Nothing in the analysis suggests that it would be appropriate to give these aircraft less protection than heavier aircraft against local restrictions. Study results thus far do not provide clear justification to treat Stage 2 aircraft under 75,000 pounds in the same manner as Stage 3 aircraft as advocated by the National Business Aircraft Association (NBAA).

The NBAA arguments are provided in an unsolicited submission to the Secretary entitled "The Applicability of Section 9304 of the Airport Noise and Capacity Act of 1990 to Stage 2 Aircraft Weighing Less than 75,000 Pounds." As required by Department of Transportation procedures, a copy of this submission has been placed in Docket No. 26432. NBAA contends that Congress contemplated according Stage 2 aircraft weighing less than 75,000 pounds the status of Stage 3 aircraft for purposes of section 9304 of the Act. The Act exempts aircraft of less than 75,000 pounds from the Stage 2 phase-out requirement and the non-addition rule. NBAA argues that, in general, small Stage 2 aircraft are comparable to single-event noise created by Stage 3 air carrier aircraft, and that small Stage 2 aircraft do not generally cause noise problems at airports served by air carriers.

Data presented in the FAA draft study do not show a consistent relationship between noise produced and the weight of Stage 2 aircraft. Some small Stage 2 aircraft are noisier than Stage 3 aircraft. Aircraft noise heard on the ground is the result of complex factors in the design and operation of the aircraft, and weight alone cannot be used to determine noise produced. Also, general aviation airports that are frequented by Stage 2 aircraft weighing less than 75,000 pounds often have less land in buffer zones around the airport, or are surrounded by noncompatible land uses. Typically, the ambient noise levels surrounding general aviation airports are also distinctly lower, making individual flights more noticeable. The public is invited to comment on the FAA and NBAA studies, and to provide data that would help resolve the issue on whether the final rule should distinguish Stage 2 aircraft weighing less than 75,000 pounds. Comments on both studies should be submitted to the docket and will also be considered as comments on this aspect of the proposal.

Subpart D concerns the approval of restrictions on Stage 3 aircraft operations that are not the product of voluntary agreements (within the scope of subpart B). In subsection 9304(c), the Act provides that no airport noise or access restriction on the operations of Stage 3 aircraft may be imposed unless it has been agreed to by the airport operator and all aircraft operators, or has been submitted to and approved by the Secretary pursuant to an airport or aircraft operator's request for approval. The Secretary is required by subsection 9304(d) of the Act to approve or disapprove an application not later than the 180th day after receipt of a request for approval and shall not approve a restriction unless there is substantial evidence that six conditions have been met. Secretarial authority has subsequently been delegated to the FAA Administrator. The Federal Government is only empowered with approval or disapproval authority for Stage 3 restrictions and does not have similar authority with respect to voluntary agreements.

The conditions of approval, as defined in the Act, are that the proposed restriction: (1) Is reasonable, nonarbitrary, and nondiscriminatory; (2) does not create an undue burden on interstate or foreign commerce; (3) is not inconsistent with maintaining the safe and efficient utilization of the navigable airspace; (4) does not conflict with any existing Federal statute or regulation; (5) has been subject to adequate opportunity for public comment; and (6) does not create an undue burden on the national aviation system.

To implement the requirements of the Act, the FAA proposes a four-step process. First, to provide substantial evidence, the applicant (airport operator or aircraft operator) must develop an analysis of the proposed restriction. Second, the analysis and other pertinent information must be made available for notice and comment to interested parties. Third, the operator must develop and submit an application to the FAA, including a summary of substantial evidence of compliance with the six statutory conditions. Fourth, the FAA will review and approve or disapprove the application within 180 days.

The FAA has attempted to limit the compliance burden while ensuring that adequate information is available to allow an approval or disapproval to be made based on an evaluation of evidence presented regarding the six statutory conditions.

As required by the Act, the rule would apply to proposed restrictions on Stage 3 aircraft that first become effective after October 1, 1990, except for those specifically exempted by subsection 9304(a) of the Act. As with the treatment of proposed restrictions on Stage 2 aircraft, a subsequent amendment to a restriction on Stage 3 aircraft in effect on the date of enactment, or an amendment to a restriction on Stage 3 aircraft previously approved by the FAA, would be subject to the procedures of this subpart, as required by the statute, if the amendment will: (1) Further reduce or limit aircraft operations; or (2) affect aircraft safety.

As mandated by law, the proposed rule would require that the applicant provide notice and opportunity for public comment before submitting the restriction for FAA approval. To provide adequate notice, the FAA proposes that the notice be published in a newspaper of national circulation, and areawide newspaper of general circulation, and in aviation trade publications.

Airport operators would also be required to directly notify the FAA and other interested federal, state, and local government agencies, and aircraft operators serving the airport, and those known to the airport operator to be interested in serving the airport, that could be affected by the restriction. Consistent with the Stage 2 process, the latter requirement was added to take into account potential new entrants.

The proposed requirements of subpart D for publication and direct notice would be the same as those proposed in subpart C for the Stage 2 notice process. As proposed here in subpart D, the primary notice requires a clear, concise description of the proposed restriction, a brief discussion of the specific need for and goal of the restriction, and a summary of the analysis of the proposed restriction. The full analysis of the restriction could either be included in the notice, if the applicant so chooses, or made available by the applicant for interested parties to review. The notice would also include identification of the aircraft operators expected to be affected, the proposed method of implementation (e.g., city ordinance, airport rule) and any proposed enforcement mechanism.

The proposed analysis requirements are designed to provide the FAA with the information necessary to make the statutorily required findings. By statute,

the Secretary cannot approve a proposed restriction unless there is substantial evidence that the proposed restriction: (1) Is reasonable, nonarbitrary and nondiscriminatory; (2) does not create an undue burden on interstate or foreign commerce; (3) is not inconsistent with maintaining the safe and efficient use of the navigable airspace; (4) does not conflict with any existing Federal statute or regulation; (5) has been subject to adequate opportunity for public comment; and (6) does not create an undue burden on the national aviation system.

The FAA believes that the burden is properly placed on the applicant to prove substantial evidence of compliance with the six statutory conditions. To ensure that substantial evidence is available, the FAA proposes that an analysis be developed to provide an adequate understanding of the proposed restriction and to provide the information necessary to support the six statutory conditions. Using that analysis, the applicant would provide a summary of evidence establishing that each of the six statutory conditions has been met. Because the Act requires an analysis of costs and benefits for proposed restrictions on Stage 2 aircraft, and because such analysis has a direct bearing on determinations of undue burden, the FAA believes the same information is appropriate for the review and approval of proposed restrictions on Stage 3 aircraft.

Both the analysis and the summary of evidence regarding compliance with the six conditions would be made available during the notice and comment period and provided to the FAA as part of the application.

To develop the analysis, the FAA proposes that the following elements must be provided: (1) the text of the proposed restriction; (2) a detailed description of the problem; (3) background information, including maps and projected activity data; (4) descriptions of alternative nonaircraft measures that have been considered and rejected; (5) the effect of the restriction on airport operations and capacity; (6) the expected impact on aircraft noise, with and without the restriction; and (7) comparative analyses of the benefits and costs of the proposed restriction and alternative measures.

The FAA believes that the first three elements are necessary to understand the purpose and context of the proposed restriction and should not present a burdensome requirement. The remaining four elements should demonstrate that the proposed restriction is not unreasonable, arbitrary, discriminatory, an undue burden on interstate or foreign commerce, or an undue burden on the national aviation system.

Specifically, a description of alternative nonaircraft measures considered and rejected would address whether the proposed restriction is arbitrary. The effect of the proposed restriction on airport operations and capacity would be important to determine whether the restriction is discriminatory or an undue burden. The expected impact on aircraft noise, with and without the restriction, would be essential in determining reasonableness of the restriction. Finally, an analysis of the benefits and costs would also be important in determining whether the proposed restriction would be an undue burden on interstate or foreign commerce, or an undue burden on the national aviation system.

Within these general requirements for analysis, the rule proposes guidance on the type of information that should be developed as the basis for the analysis of the restriction, if reasonably available and appropriate in the particular case. There are no mandatory requirements, only guidance, in the proposed rule as to consideration of specific components in the required cost-benefit analysis; considerable discretion is allowed applicants in the proposed rule with regard to the components utilized in the analysis. For instance, general aviation airports that are not used by scheduled air carriers may not need to consider the economic effect of the proposed restriction on air carriers and airline passengers. Similarly determined by a specific airport's situation, an analysis of the proposed restriction's economic effect on providers of airport services other than aircraft operators would not be needed if none would be affected. These instances exemplify the flexibility envisioned by the proposed rule's guidance.

The analysis would be conducted in accordance with generally accepted professional practice for estimating costs and benefits and applicable Federal guidelines for analyses of noise. Proposed subpart D identifies components of costs and benefits that the analysis should consider, if appropriate. However, consideration of specific components of costs or benefits would not be mandatory in this rule as proposed; flexibility is allotted to applicants as to the components of the requisite cost-benefit analysis.

The proposed rule thus provides general requirements for cost-benefit analyses, instead of detailed methodology, because a unique approach may be required to estimate properly the effect of each proposed restriction and its alternatives. The FAA is seeking comments on the proposed requirements of the analysis and the supporting guidance. While the FAA understands that each item of information may not always be appropriate for all situations, the proposed rule sets out an illustrative list of elements of an analysis. The final rule may specifically require that the applicant conduct all or a portion of analysis components identified in proposed subpart D. The public is specifically invited to comment on the following issues regarding the analysis:

1. Are the proposed analysis requirements appropriate?

2. How would compliance with the conditions of approval be demonstrated in the absence of equivalent analysis?

3. Should the elements of analysis for proposed restrictions on Stage 3 aircraft be detailed in the rule, or described in an FAA advisory circular?

4. Should all applicants be required to consider a specific list of costs and benefits in the analysis of their proposed restrictions on Stage 3 aircraft operations, rather than have the flexibility as proposed?

5. Should the required analysis of a restriction on Stage 3 aircraft operations vary with either type of airport or type of restriction? If so, what categories should be established to differentiate analysis requirements.

As proposed, once the analysis is complete, the applicant would develop a summary of evidence, based on the analysis, showing that the six statutory conditions for approval have been met. FAA would also review the applicant's analysis with regard to the six conditions. However, FAA believes that it is to the applicant's benefit to construct its own summary of evidence, highlighting those results of the analysis that the applicant believes would substantiate the conditions for approval.

The FAA further proposes guidance on each of the six conditions defining evidence that the FAA believes would demonstrate fulfillment of the statutory conditions. For instance, under evidence that the restriction is reasonable, nonarbitrary, and nondiscriminatory, the proposed guidance recommends evidence that a current or projected noise or access problem exists, and evidence that there is a reasonable change that expected benefits will equal or exceed expected costs.

The guidance includes elements that would be developed as part of the analysis, but also permits the use of other information. Taken together, the types of evidence listed in the proposed rule would be regarded as sufficient, substantial evidence for approval.

However, it would not be necessary to provide each type of evidence to fulfill the statutory conditions, provided that all statutory conditions are supported by substantial evidence. The more evidence provided, the greater the likelihood of condition fulfillment. The summary of evidence should be drawn from the analyses.

The proposed rule would thus provide general requirements on evidence in recognition that each proposed restriction may require a unique approach. While the proposed rule would provide discretion to the applicant in presenting substantial evidence of the six statutory conditions, it may be helpful for the final rule to provide more specific guidance. It may be desirable for evidence requirements to vary either by the nature of the airport or airport operations or by the type of restriction. The final rule may, therefore, require all or a portion of the evidence identified in proposed subpart D for each restriction proposed on Stage 3 aircraft operations. The public is specifically invited to comment on the following questions:

1. Should a mandatory list of evidence be provided in the rule to demonstrate fulfillment of each statutory condition for approval of the restriction? If so, what should the evidence consist of?

2. Should evidence requirements for approval of restrictions on Stage 3 aircraft vary with either type of airport or type of restriction? If so, what categories should be established to differentiate evidence requirements?

If a restriction of Stage 3 aircraft operations would also affect other classes of aircraft, the analysis must be sufficient for the FAA to understand the entire proposal. However, the FAA is limited to acting only on the Stage 3 component; the Stage 2 component may be implemented 180 days after the public notice required in subpart C.

Airport operators would have the alternative of using 14 CFR part 150 procedures for notice and comment to comply with requirements proposed in subpart D, as long as the analysis of the restriction complies with the requirements of subpart D. Again, as proposed in subpart C, the FAA would encourage use of the part 150 process because it is more comprehensive in that it considers land use compatibility.

As with the Stage 2 review process, proposed subpart D would require each applicant to establish a public docket or similar method to receive and consider comments, and to make then available to interested parties upon request.

Once the comment period has closed, the applicant could submit the proposed restriction to the FAA for approval. Within 30 days of receipt, the FAA will review the application for completeness and will subsequently return an incomplete application to the applicant with identification of any deficiencies. An application that is returned as incomplete may be revised and resubmitted to the FAA if, within 30 days after return of the application, the applicant notifies the FAA of its intent to resubmit a supplemented application. If an applicant declines to complete an application that has been returned twice by the FAA as being incomplete, the FAA (with one exception) will deny the application. The exception is that the FAA may continue to review environmental documents that have been supplemented and resubmitted to the FAA. The initial review for completeness is to ensure that sufficient information has been provided by the applicant to permit a prudent decision on whether the proposed restriction meets the statutory conditions for approval. Based upon this information and other information that the FAA may obtain by inquiry or analysis, the FAA would approve or disapprove a restriction within 180 days of the date of receipt of a complete application. Incomplete applications may be denied by the FAA because of noncompliance with proposed § 161.311, "Application procedure for approval of proposed restriction." In such a case, the FAA would not assume liability for noise damages resulting from a taking as described in section 9306 of the Act.

Restrictions would be approved or disapproved in total, i.e., in whole only, and not in part. The FAA is considering a procedure to allow applicants to propose alternative restrictions and their order of preference. Under this procedure, if the applicant has given public notice and has conducted an analysis of the alternatives in compliance with this subpart, the FAA may approve an alternative in the event that the proposed restriction is disapproved. Thus, applicants would be provided flexibility, and would not have to wait 180 days to propose and receive approval of an alternate restriction. The FAA would not independently approve portions of a restriction and disapprove other portions. Formulation of a noise restriction program incorporating restrictions on Stage 3 aircraft is solely the initiative of the applicant. Comments are invited on this procedure.

A restriction that is approved by the FAA may be subject to a condition that the applicant adhere to commitments and actions described by the applicant in its application for approval of proposed restrictions. The FAA would not, however, impose conditions unrelated to the presentation made by the applicant.

The FAA would notify the applicant of receipt of a complete application and of the date by which a decision will be made. Notice of the proposed restriction would be published in the Federal Register to ensure the widest possible notification. Interested parties may file comments on the application within 30 days of publication. The FAA believes that 30 days is adequate notice given that it must approve or disapprove the proposed restriction in 180 days, and that interested parties have already had an opportunity to review the proposal during the initial 45-day notice period provided by the applicant.

The application for a proposed restriction would have to include evidence that the public review process was carried out and a summary of any comments received. The application would also have to include an analysis of the proposed restriction and summary of evidence that the six statutory conditions are met. Finally, the application would have to be accompanied by a draft environmental document that complies with FAA guidelines. The rationale for requiring an environmental document for proposed restrictions and reevaluations as proposed in subparts D and E is addressed in the Environmental Issues section below.

The FAA would test a proposed restriction on Stage 3 aircraft using standards for approval contained in the Airport Noise and Capacity Act of 1990. However, as appropriate, the FAA would also consider the significance of the proposed restriction under the requirements of other laws, including the Federal Aviation Act of 1958 (49 U.S.C. App. 1301 *et seq*), the Aviation Safety and Noise Abatement Act of 1978 (49 U.S.C. App. 2201 *et seq*), the Airport and Airways Improvement Act, as amended (49 U.S.C. App. 2201 *et seq*), and the National Environmental Policy Act of 1969 (49 U.S.C. App. 4321 *et seq*).

If changes are made to the proposed restriction during any part of the process, the applicant would be required to advise interested parties and make any changes to the proposed restriction and its analysis available. If there is a substantial change in the proposed restriction or the analysis after the period of notice and comment, the applicant would be required to publish a new notice. If there is a substantial change in the proposed restriction or the analysis during the 180-day FAA approval process, the applicant would be required to notify the FAA that it is withdrawing its proposal and to publish

a new notice. The FAA would then publish in the Federal Register a notice stating that it has terminated review of the proposal.

The FAA proposes a definition of substantial change as including, but not limited to, a more restrictive proposal or a revision that alters the way impacts are apportioned among aircraft operators. The FAA seeks comment on what level of change to a proposed restriction should be required to begin the process again.

Following review of the application, the FAA would issue an order approving or disapproving the proposed restriction and would publish its decision in the Federal Register and notify the applicant in writing. The order would include a full statement of the reasons for the FAA's decision. Failure to provide substantial evidence supporting the conditions for approval specified in the Act would be grounds for disapproval of the proposed restriction.

If a proposed restriction on Stage 3 aircraft operations has been approved and the airport operator decides not to implement the restriction, interested parties would have to be notified.

Subpart E of the proposed rule prescribes procedures for reevaluation of restrictions produced in conformance with the requirements of subparts B or D. Subsection 9304(f) of the Act (encompassing both agreements and restrictions) states that the Secretary "may reevaluate any noise restrictions previously agreed to or approved" pertaining to Stage 3 aircraft operations. Subsection 9304(g) authorizes the Secretary to establish procedures for conducting a reevaluation. However, subsection 9304(g) also requires that reevaluations "shall not occur less than two years after a determination [to approve or disapprove the restriction under proposed subpart D] has been made with respect to such restriction." The reevaluation procedures of the Act do not apply to restrictions on Stage 2 aircraft operations.

Subpart E of the proposed rule implements the two provisions of the Act regarding reevaluation. The proposed rule contemplates a three-step procedure for conducting reevaluations of restrictions on Stage 3 aircraft operations. First, an aircraft operator applying for reevaluation would provide evidence to the FAA that the statutory conditions for considering a reevaluation have been met. Second, when the FAA determines that the statutory conditions have been met, the petitioner would be instructed to publish a notice of its request, conduct an analysis, and obtain public comment. (This step would parallel the requirements that would have been placed on the airport operator that originally requested approval of the restriction.) Third, the petitioner would submit to the FAA evidence that one or more of the statutory conditions necessary for approval of restrictions on Stage 3 aircraft have been violated, along with the comments and analysis. The FAA would offer an additional opportunity for comment, and subsequently issue a determination as to whether the restriction should be allowed to continue.

Under subsection 9304(f), only an aircraft operator may request reevaluation of a restriction. The Act provides two initial demonstrations before a reevaluation proceeding may begin. The aircraft operator must be "able to demonstrate that there has been a change in the noise environment of the affected airport." However, the simple fact of a change in the noise environment is not enough. The aircraft operator must also show that "reevaluation * * * of the previously approved or agreed to noise restriction is therefore justified," i.e., the aircraft operator must show a potential relationship between the changed noise environment and a change in the conditions for approval that had been met previously for restrictions on Stage 3 aircraft operations.

Proposed § 161.403 would quantify the amount of change in the noise environment that would ordinarily be required for the FAA to consider instituting a reevaluation proceeding. The petitioner would be expected to show that there had been either a DNL change of 1.5 dB or greater over noncompatible land use, or a change of 17 percent or greater in the noncompatible land use within the airport noise study area. That is, the FAA would look at whether there had been a significant change in either noise levels or land use. The 1.5 dB noise change is derived from FAA guidelines for implementation of the National Environmental Policy Act of 1969 (NEPA) that identify a 1.5 dB increase as significant. Similarly, 14 CFR part 150 requires noise exposure maps to be revised when such an increase has occurred. Since a 1.5 dB DNL change increases a noise contour area by approximately 17 percent, a 17 percent change in noncompatible land use is proposed as an alternate threshold. As proposed, this rule would consider either an increase or decrease in noise. An increase in noise could indicate that a restriction is not reasonably related to relieving a noise problem, or that the benefits are less than previously estimated. A decrease in noise could indicate a restriction is no longer needed to resolve a noise problem. The FAA invites comments on whether the proposed quantitative criteria are appropriate.

It should be noted that the FAA does not intend that these thresholds be abolute barriers in considering an application for reevaluation. An aircraft operator may submit reasons why a noise change that, while not meeting these standards, nevertheless justifies the reevaluation, and such a requests would be considered on a case-by-case basis.

An aircraft operator would also have to show the connection between the alleged noise change and the need for reevaluation. In particular, the aircraft operator would have to demonstrate the likelihood that the restriction would no longer meet one or more of the statutory conditions for approval of a restriction. These statutorily mandated conditions are set forth in proposed § 161.317. The aircraft operator would be expected to refer to any previous analysis relevant to the challenged restrictions submitted under proposed subpart D. Comments are requested on the extent to which such references should be mandatory and what amount of access should be provided to models and data used in the application for approval under proposed subpart D.

An aircraft operator would submit this information to the FAA, along with a concise description of the restriction, its effective date, a copy of the full text, and other identifying information set forth in proposed § 161.405. In addition, the aircraft operator would be required to show that it had attempted to resolve the dispute at the local level with the airport operator and other interested parties. While a matter of discretion, the FAA believes that aircraft operators should make an effort to achieve a mutually agreeable solution to a dispute before requesting the FAA to overturn a restriction. If, following review of these submissions, the FAA determines that reevaluation is not justified, it would notify the aircraft operator and the affected airport operator and indicate the reasons for this determination.

If the reevaluation appears to be justified, however, the FAA would direct the petitioner to publish a notice of the reevaluation and to notify directly specified classes of persons expected to have an interest in the proceeding. The published notice and direct notification procedures would be essentially the same as those proposed for the initial proponent of a restriction. The public comment period would have to be at least 45 days, and the aircraft operator

would have to notify parties and extend the comment period if it changes the analysis during or after the comment period. The FAA invites comments on whether the proposed 45-day comment period is appropriate.

At the conclusion of the comment period, the aircraft operator would then submit to the FAA its analyses and evidence that the public had been given adequate notice and opportunity to comment (including a summary of the comments received). The FAA would then provide for an additonal 45-day comment period, during which time the public could submit comments directly to the FAA. This comment period is longer than that provided in subpart D because the FAA is not under a statutory 180-day limit for reevaluations. The FAA would specifically solicit comments from the airport operator during this period, and may confer with the aircraft operator, the airport operator, or other parties to gather additional information. The FAA may also hold an informal meeting to gather additional information.

The FAA would consider the petition for reevaluation under the same conditions as the initial request for approval of a restriction. That is, the proponent, in this case the aircraft operator, would be expected to carry the burden of demonstrating by substantial evidence that the restriction did not meet the statutory conditions for approval. Because the FAA recognizes that airport and aircraft operators both have a need for stability and certainty in planning operations, restrictions should not be lightly imposed or overturned.

There would be one important difference, however, between the burden on the initial proponent and the burden on the applicant for reevaluation. By the terms of the Act, the airport operator imposing a restriction must meet all six statutory conditions for approval. Because a restriction does not comply with the Act unless it meets all six conditions, it follows that an aircraft operator seeking reevaluation would need only demonstrate, by substantial evidence, that the restriction now failed to meet any one of those conditions.

It should be noted here that, while subsection 9304(f) of the Act clearly refers to reevaluation of both restrictions and agreements, the two-year minimum waiting period for a reevaluation described in subsection 9304(g) refers only to restrictions. However, the rule proposes a similar two-year minimum on Stage 3 restrictions contained in agreements. The FAA believes that the underlying rationale of a stable noise requirement also supports this two-year waiting period. In any event, few, if any, petitions under this subpart are expected with respect to agreements.

If the FAA concludes its reevaluation with a determination that the restriction still meets the conditions for approval, the FAA will terminate the proceeding and take no further action. But if a restriction is found to no longer meet the statutory conditions, the airport operator would be required to rescind the restriction. Failure to do so would subject the airport operator to the sanctions described in proposed subpart F, discussed below, plus possible administrative action by the FAA and legal action by the United States. Where the improper restriction is contained in an agreement, the agreement could not be enforced with respect to Stage 3 operations. It should be noted that the FAA's action would be prompted only by the airport's enforcement of the disapproved restriction. The FAA actions would not affect any contractural obligations contained in the agreement.

Subpart F speaks to sanctions imposed for noncompliance with the rules: limitations that are mandated by the Act on Airport Improvement Program Funds and Passenger Facility Charges (PEC). The statute requires that AIP funds and PFC authority be terminated upon the airport operator's receipt of notice of a violation of the requirements of the rule. The FAA interprets sanctions for noncompliance as applicable to all agreements and restrictions under proposed part 161.

Section 9304 of the Act states:

> Sponsors of facilities operating under airport noise or access restrictions on Stage 3 aircraft operations shall not be eligible to impose a passenger facility charge under section 1113(e) of the Federal Aviation Act of 1958 and shall not be eligible for grants authorized by section 505 of the Airport and Airway Improvement Act of 1982 after the 90th day following the date on which the Secretary issues a final rule under subsection 9304(a) of this Act, unless such restrictions have been agreed to by the airport proprietor and aircraft operators or the Secretary has approved the restrictions under this subtitle or the restrictions have been rescinded.

Similarly, Section 9307 of the Act states:

> Under no conditions shall any airport receive revenues under the provisions of the Airport and Airway Improvement Act of 1982 or impose or collect a passenger facility charge under section 1113(e) of the Federal Aviation Act of 1958 unless the Secretary assures that the airport is not imposing any noise or access restrictions not in compliance with this subtitle.

Although the FAA assumes that such violations will occur only rarely, if ever, proposed subpart F delineates procedures to implement the statutory requirements. The procedures would apply when the FAA obtains evidence that a noise or access restriction is being imposed by an airport operator or a "public agency" in violation of the final rule adopted in this rulemaking. (In Docket 26385, the FAA has issued an NPRM titled Passenger Facility Charges, proposed 14 CFR part 158, which would define a "public agency" as "a State or any agency of one or more States, a municipality or other political subdivision of a State, a tax-supported organization, or an Indian tribe or pueblo that: (1) Controls a commercial service airport; and (2) is legally, financially, and otherwise able to assume and carry out the assurances in an application for PFC authority and any condition imposed by the Administrator on approval." See 56 FR 4678, February 5, 1991. Comments on the proposed definition should be directed to the Passenger Facility Charges docket.)

The FAA would give written notice of the apparent violation to the airport operator or public agency, which would then have 30 days following receipt of the notice to provide satisfactory evidence that it is in compliance with this part. Such evidence could include, for example, a written certification that the alleged restriction is not being imposed at the airport, or evidence that the restriction was approved by the FAA under the provisions of subpart D of the proposed rule or was agreed to under Subpart B.

Once the 30-day reply period has expired without satisfactory evidence of compliance, the FAA would notify the airport operator or public agency that it intends to terminate Airport Improvement Program (AIP) grants and rescind approval of any authority to collect a Passenger Facility Charge (PFC). The FAA would also publish a notice in the **Federal Register** and invite public comment. Following review of the comments, if any, the FAA would issue a final determination.

If the FAA determines to terminate AIP funds and PFC authority, there will be no further reimbursement to the airport operator for costs incurred prior to the notice and additional AIP grants would be discontinued immediately upon notice. The authority to collect PFC's would be terminated within 30 days following the FAA's determination.

It should be noted that the FAA's determination that an airport operator or public agency was imposing a noise

or access restriction in violation of this rule would be separate from any finding of a violation of the grant assurances required under the Airport and Airway Improvement Act (AAIA). A violation of the grant assurances would be investigated and acted upon under applicable provisions of the AAIA. However, any evidence developed in an action under this subpart would, of course, also be relevant with regard to a finding of a violation of the AAIA grant assurances.

Commenters on this subpart are requested to address the following questions, in addition to their other concerns. After further consideration by the FAA and review of the comments received, the final rule may be modified significantly from this proposal.

1. Although the prohibition on eligibility for AIP funds and collection of PFC's is required by the Act, and the FAA expects that proceedings under this subpart will be rare, the agency recognizes that any risk of withdrawal of funding could be viewed adversely by the capital markets. Is there any way for the FAA to minimize this problem consistent with our statutory obligation?

2. Note that the Act does not provide for, and the FAA will not adopt in this rulemaking, the use of trial-type procedures under subpart F. Nevertheless, comments are invited on the feasibility of making the necessary findings on the documentary record.

3. Are the proposed notice requirements appropriate? Is there a need for a public comment period in addition to the time allowed for the airport operator or public agency to respond to the alleged violation?

4. Should authority to impose a PFC be suspended immediately following a determination of a violation, just as additional AIP funds would be suspended immediately, or is 30 days (or some other period) necessary to allow air carriers to make an orderly adjustment? What should become of PFC funds received by the airport following an FAA determination of a violation, but prior to the end of the 30-day period?

Postponement Requested

Because of the statutorily imposed short timeframe for finalization of this rulemaking, the FAA requests airport operators now considering restrictions to postpone further action until the FAA issues a final rule. With certain specific exceptions, the Act governs restrictions on Stage 2 aircraft operations that are proposed after October 1, 1990, and restrictions on Stage 3 aircraft operations that become effective after that date. Not included in these statutory exceptions are restrictions proposed or adopted during the federal rulemaking process. Thus, airport operators who proceed to adopt restrictions before the final rule is adopted, and without complying with the Act, risk the consequences for violation specified in the Act.

Environmental Issues

Analysis Requirements for Restrictions on Stage 3 Aircraft Operations and Their Reevaluation. Subparts D and E require federal decisions involving the approval or disapproval of a proposed restriction on Stage 3 aircraft operations or the reevaluation of a restriction on Stage 3 aircraft, respectively. Moreover, the Federal decisions on the proposals (i.e., the restriction or reevaluation of the restriction) are subject to the requirements of the National Environmental Policy Act (NEPA). In accordance with FAA environmental procedures implementing NEPA with regard to each proposal, the FAA must either (1) determine that a proposal is categorically excluded from the preparation of an environmental document because it neither individually nor cumulatively has a significant effect on the environment; or (2) prepare an environmental impact statement or a finding of no significant impact, as appropriate.

The FAA does not anticipate that proposals submitted under subparts D and E will have a significant environmental impact, although there may be some extraordinary circumstances in which a significant impact could occur. At this time, the FAA does not have sufficient data on which to base a categorical exclusion for these proposals. Therefore, there is a requirement in both proposed subparts D and E for the applicant to submit to the FAA a draft environmental document complying with FAA's environmental guidelines, together with the applicant's other analyses. The FAA will independently evaluate this draft environmental document and use its information (supplemented as necessary by the FAA) to prepare a finding of no significant impact or, possibly, an environmental impact statement before issuing a determination on the applicant's proposal.

The FAA specifically invites comments on the appropriateness of requiring applicants to submit draft environmental documents, and seeks response to the following questions:

1. What environmental considerations other than noise should be analysed for proposals submitted under subparts D or E?

2. What data is available with respect to whether noise and any other impacts resulting from such proposals may reach significant levels as defined in FAA Order 5050.4A, Airport Environmental Handbook? (A copy of this order is available in the docket.)

3. Is there any data to support categorical exclusion of these types of proposals from FAA NEPA requirements?

4. Are there any alternative procedures for conducting an environmental evaluation of these proposals to ensure compliance with NEPA other than through those in existing FAA environmental orders?

Environmental Analysis of the Proposed Rule

This proposed rulemaking is in response to section 9304 of the Airport Noise and Capacity Act of 1990. The Act directs the FAA to establish by regulation a national program for reviewing airport noise and access restrictions on operations of Stage 2 and Stage 3 aircraft, including the provision for adequate public notice and comment opportunities on such restrictions. The Act sets forth requirements specific to Stage 2 and Stage 3 restrictions that must be met before these restrictions become effective; mandates FAA review and approval or disapproval of Stage 3 restrictions according to specific criteria; establishes criteria for reevaluation of Stage 3 restrictions; delineates a number of limitations on the applicability of the Act; and provides that sponsors of facilities implementing Stage 3 restrictions that fail to comply with the Act shall not be eligible to impose a Passenger Facility Charge or receive an Airport Improvement Program grant. The FAA's discretion is very limited with regard to implementing the requirements of the Act.

The program that the FAA is directed to establish to review proposed restrictions on Stage 2 aircraft is procedural in nature, not substantive. The Act requires an airport operator to publish notice of a proposed restriction on Stage 2 aircraft 180 days before it becomes effective and to provide an opportunity for public comment. The Act provides, in relevant part, that no noise or access restriction shall be effective unless the airport operator publishes the proposed noise or access restriction, and prepares and makes available for public comment a cost/benefit analysis and certain information about alternatives at least 180 days before the effective date of the restriction. The greatest discretion afforded the FAA with respect to review

of Stage 2 restrictions is whether to exempt Stage 2 aircraft of less than 75,000 pounds from the procedural scheme established for restrictions on heavier Stage 2 aircraft.

In contrast to proposed restrictions on Stage 2 aircraft, the statute authorizes the FAA to implement a review of proposed Stage 3 restrictions that is substantive in nature, not merely procedural. However, even here FAA authority is circumscribed by statutory dictate prescribing conditions warranting approval, designating a time frame for a decision, and limiting the scope-of-review authority. The Act directs the FAA to approve or disapprove proposed restrictions on Stage 3 aircraft within 180 days of receipt. It mandates that no airport noise or access restriction on Stage 3 aircraft shall be effective unless it has been agreed to by the airport operator and all aircraft operators, or has been submitted to and approved by the FAA pursuant to a request for approval. Approval may be given only if the applicant has demonstrated substantial evidence that the six statutorily specified conditions have been met.

The Act also grants the FAA substantive authority to reevaluate Stage 3 restrictions. However, here as well, the FAA's discretion is limited by statute. Noise restrictions agreed to by the airport operator and aircraft operators, or approved by the FAA, are subject to reevaluation only where there has been a change in the noise environment. Those approved by the FAA are not subject to reevaluation for 2 years. By these actions, the Congress has given the FAA very limited discretion to approve or reevaluate a proposed restriction on Stage 3 aircraft operations.

Significantly, the FAA has no discretion to determine when to apply the requirements or whether to apply requirements to all use restrictions. The Act sets specific dates for applicability of its requirements and carves out specific exemptions from those requirements.

The only discretion left to the FAA under the Act largely concerns implementation. The FAA has latitude to decide: (1) How to require the airport operator to publish notice of, and to accept public comments for, restrictions on Stage 2 aircraft operations; (2) what procedures, if any, to adopt for agreements; (3) what procedures to adopt for Federal approval or disapproval of a proposed restriction on Stage 3 aircraft operations; and (4) what procedure to adopt for reevaluation of previously approved restrictions. The FAA considered, and continues to consider, alternative methods of implementation as described in this preamble.

Because the statutory framework severely limits the range of reasonable alternatives to those chiefly involving implementation, there is no significant range of alternatives from which to choose, and none of the alternatives within the FAA's discretion are likely to have a significant effect on the quality of the human environment. In the new substantive area of FAA authority and discretion—approval or disapproval, and reevaluation of restrictions on Stage 3 aircraft operations—the FAA proposes to comply with NEPA with respect to each decision.

This proposed rule contains procedures for complying with the Act's specific requirements. These procedures are not anticipated to have a significant effect on the quality of the human environment. Prior to issuing a final rule, the FAA will complete a review of the environmental impacts associated with rule compliance in accordance with Department of Transportation "Policies and Procedures for Considering Environmental Impacts" (FAA Order 1050.1D). Comments relating to the environmental impacts that might result from adopting this rule are invited.

A discussion of the application of NEPA to FAA determinations relating to approval or disapproval of restrictions and reevaluation of previously approved restrictions on Stage 3 aircraft operations are discussed above.

Noise Liability, Land Use, and Related Grant Assurances

Section 9306 of the Act provides that, in the event that a proposed restriction on Stage 3 aircraft is disapproved by the Federal Government, the Federal Government shall assume liability for noise damages "only" to the extent that a taking has occurred as a "direct result" of that disapproval. In order to make a determination of whether such liability can attach to a particular diapproval action, a number of factors must be considered, including an assessment of whether that airport operator has made a reasonable effort on its own behalf to assure land use compatibility in the vicinity of the airport prior to proposing restrictions on the operation of Stage 3 aircraft. Such an inquiry is necessary in order to assure that the federal liability addressed by section 9306 is limited to compensation only for takings that directly result from its disapproval of Stage 3 aircraft restrictions. Since Congress did not alter the historic responsibility and liability of airport operators for noise damage, the Department has the obligation to insure that section 9306 is not used to compensate for inadequate land use planning, a failure to attempt to achieve land use compatibility, or a failure to utilize nonaircraft alternative measures available to an airport operator.

Section 9304 sets forth various conditions that a proposed noise restriction must meet before it may be approved by the Secretary, including a determination that the noise restriction is reasonable, nonarbitrary and nondiscriminatory, and does not constitute an undue burden on the national aviation system. The FAA proposes to require an applicant to include in its application for approval of a Stage 3 restriction a description of the nonaircraft alternative measures that have been employed to achieve land use compatibility with normal airport operations. In particular, FAA would require a description of measures proposed in submittals under 14 CFR part 150 and whether they have been carried out. "Land use" measures are generally within local control and this proposal is not intended to affect the traditional local responsibility for such measures.

Thus, neither airport operators, local jurisdictions nor other affected persons should interpret sections 9304(d)(2) and 9306 as an invitation to relax or delay responsible programs for compatible land use. In particular, the FAA encourages airport operators to take advantage of the noise compatibility program that is available under the Aviation Safety and Noise Abatement Act of 1979, 42 U.S.C., App. 2101, *et seq.*, and the implementing provisions of 14 CFR part 150. Similarly, airport operators are encouraged to review their grant agreements with the FAA to ensure that they are in compliance with the terms of those agreements, including particularly the commitment to take appropriate action, to the extent reasonable, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities that are compatible with normal airport operations. These obligations are set forth in section 511(a)(5) of the Airport and Airway Improvement Act of 1982 (49 U.S.C. App. 2210(a)(5)).

Paperwork Reduction Act

Paperwork and recordkeeping requirements will be submitted to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Comments on the requirements should be submitted to the Office of Information and Regulatory Affairs (OMB), New Executive Office

Building, room 3001, Washington, DC 20503; attention: FAA Desk Officer (telephone (202) 395–7340). A copy must be submitted to the FAA docket.

Regulatory Evaluation Summary

This section summarizes the Initial Regulatory Evaluation to the proposed rule to establish a program for reviewing airport noise and access restrictions on operations of Stage 2 and Stage 3 aircraft.

Executive Order 12291, issued February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweigh potential costs. The order also requires the preparation of a Regulatory Impact Analysis of all "major" rules except those responding to emergency situations or other narrowly defined exigencies. A "major" rule is one that is likely to result in an effect on the economy of $100 million or more; a major increase in costs or prices for customers or for individual industries, government entities or regions; or a significant adverse effect on competition, employment, or other significant determinants of economic growth.

The notice, review, and approval procedures set forth in the proposed rule are intended to carry out the mandates of section 9304 of the "Airport Noise and Capacity Act of 1990" (the Act). Because the Act requires the establishment of the program described in the proposed rule, it is debatable whether the economic effects of the proposed rule can or should be separated from those of the Act. Thus, this evaluation focuses primarily on the procedural aspects of the program without distinguishing those solely associated with the proposed rule from other potential economic impacts that may be attributable to the Act. In some portions of the proposed rule, especially the subpart that deals with agreements between airport and aircraft operators, the proposed procedures are believed to provide savings to program participants by avoiding alternative, more complex procedures that might otherwise be necessary to conform to the requirements of the Act.

The notice, review, and approval procedures in this NPRM are not expected to have an overall effect on the economy in excess of $100 million. The only economic costs that would be imposed stem from the costs associated with providing public notice of a proposal and of conducting the analyses required by this rule. These costs will be incurred by the airport operator or by an aircraft operator. An airport operator would incur these costs only if it takes an initiative that would bring itself within the purview of the rule by deciding to impose a use restriction and can forego all costs associated with the rule by continuing business as usual and not deciding to restrict aircraft operations. The total cost depends on the number and type of restrictions that an airport operator would want to impose in any year. The total anticipated benefits also would depend on the number and type of access and noise restrictions that might be implemented by an airport operator in any year. Based on the following analysis of costs and benefits, the FAA has determined that the proposed rule is not a major rule.

The proposed rule would require public notice and a comment period for airport noise and access agreements and for proposed airport restrictions on Stage 2 and Stage 3 aircraft operations. An analysis would be required for proposed mandatory restrictions. A proposed restriction on Stage 3 aircraft operations would require FAA approval as a condition for continued eligibility of an airport operator to receive federal Airport Improvement Program grants and to collect passenger facility charges. An aircraft operator may request the reevaluation of a restriction on Stage 3 aircraft operations by demonstrating to the FAA that there has been a significant change in the airport noise environment. If a reevaluation is deemed justified by the FAA, the aircraft operator may, if it chooses, then publish a notice of the reevaluation and provide an analysis that reevaluates the restriction.

Local airport restrictions that are the subject of the proposed rule could: (1) Have significant effects on individual air carriers, other aircraft operators, and intercarrier competition; (2) cause losses in market value of aircraft that would be excluded as a result of an airport restriction; (3) raise air fares; and (4) affect real estate values surrounding airports that impose restrictions on operations, for instance, by raising the value of noise-impacted residential properties as a result of reducing noise exposure.

The potential benefits of the proposed procedures arise from mitigating some of the adverse effects of Stage 2 and Stage 3 aircraft restrictions that are excessive, suboptimal, or restrict competition, or are an undue burden on interstate or foreign commerce or the national aviation system. A reasonable analysis of a proposed restriction would include the major benefits and costs that affect parties involved. In most cases, a major focus of this analysis would be whether the potential benefits from reduced noise exposure near an airport could be significant enough to offset the costs that may be imposed on air commerce as a result of proposed restrictions. Benefits and costs of compliance with the proposed rule are expected to vary significantly among airports that will be proposing restrictions that are subject to the proposed notice, analysis, and review requirements. Thus, the effects of the proposed procedural requirements are treated only in a qualitative manner in this draft regulatory analysis. Some quantitative estimates of the potential benefits of applying the proposed rule may be provided in the final rule. Commenters are invited to provide quantitative estimates of such benefits (which may be in the form of avoided costs) expected from this proposed rule due to the avoidance of, or greater efficiency of, local airport restrictions on the operation of Stage 2 and Stage 3 aircraft.

Costs Associated With Requirements for Public Notice and Analysis

Cost of Public Notice Requirement

Notice of all agreements and proposed restrictions would be provided to: (1) Aircraft operators serving or intending to serve the affected airport; (2) the FAA and other affected Federal agencies; and (3) other governmental units within the airport noise study area. The incremental cost for the required notifications is estimated to vary from $15,000 to as much as $45,000 (in the case of a complex restriction) per airport for each notification. Some airports would incur little additional cost to implement the public notice requirement, because they would have provided the public notice and solicited comments on noise restrictions even in the absence of the proposed rule. If notice were not normally given prior to actions equivalent to those covered in the proposed rule, there would be some incremental cost for public notice.

Publication of a single notice in a major national business newspaper is estimated to cost approximately $600 per column inch. Thus, if a notice covers 12-column inches, publication costs for reaching a nationwide audience would be approximately $7,200. Similar notices are estimated to cost about $1,000 in a major regional paper, and could range from $1,500 to $4,000 for publication in an aviation trade journal. If a notice were put in a major local newspaper, a trade journal, and a major national business newspaper, publication costs per notice could range up to $12,000. If the cost of direct notification to 100

aircraft operators (including air carriers) and jurisdictions is $20 per letter, with enclosure, direct notification costs would be $2,000. The cost of preparing a notice for publication depends on is complexity and impact. A notice for a very simple restriction with very limited impact may cost $1,000 or less (several hours of professional and clerical time). In these simple cases, the total incremental notification costs could average $15,000 per implementation or modification thereof. However, if the restrictions is complex and an analysis reveals numerous effects, the preparation of the notice itself may require substantial professional staff attention to draft the notice per se (two months of professional and clerical time). These staff costs are assumed to be on the order of $20,000. Review of comments and revisions may result in further costs of $10,000. Thus, the total cost of notice and comment for a proposed complex restriction (exclusive of analysis cost described below) is estimated to be up to $45,000. If 100 airports in the U.S. were to implement restrictions on Stage 2 and Stage 3 aircraft operations or modifications thereto, the total notification costs (exclusive of analysis cost described below) could range up to approximately $1.5 million for simple restrictions or $5 million for complex restrictions.

Cost of Analysis

Analysis of airport noise, including the mapping of projected noise levels and associated demographic projections, and analysis of the benefits and costs of restricting aircraft operations at airports, have been performed in the past. Similar analyses are prepared in whole or in part in compliance with 14 CFR part 150, for airport development and master planning, and in conjunction with the solicitation of airport finance. Thus, much information required to fulfill the analysis requirements of proposed subparts C and D probably already exists as a result of current airport administrative and planning procedures. Further, if additional information is needed, the required skills have been developed and the analysis can be performed by the airport staff or through existing relationships with consultants. The skills required to perform the analyses can also be readily learned by individuals with training in engineering or physical sciences and economics or finance.

The incremental cost imposed by the proposed rule for analyzing a set of proposed noise and access restrictions may vary from no cost to $200,000 per airport. Because airports are given broad discretion, costs can be kept low in many cases. Some airports already prepare substantial analyses associated with potential noise restrictions and alternatives.

Costs associated with environmental analyses and documents are assumed to arise because of the National Environmental Policy Act (NEPA) and existing regulations, i.e., they are not the result of requirements that would be imposed under this proposed rule. If the costs of these analyses would occur in the absence of the proposed rule, they should be excluded from these estimates. If the environmental analysis costs are included in the estimate, an additional nominal value of $100,000 to $150,000 per analyzed restriction may be assumed.

(By way of background, it is noted that current submissions in response to 14 CFR Part 150, Airport Noise Compatibility Planning include similar analyses of restrictions, but focus more extensively on noise benefits of restrictions as compared to nonrestrictive alternatives. Part 150 analyses have been prepared using federal grants ranging from $50,000 to $300,000 per submission, with the majority of analyses ranging from $90,000 to $150,000. Part 150 study costs are considered analogous to the analysis costs that would be imposed by this NPRM.)

If 50 airports were to prepare analyses, including environmental analyses, solely in response to subpart D of the proposed rule, which deals with restrictions on Stage 3 aircraft operations, the total incremental cost of analyses attributable to the proposed rule could be as high as $15 million to $18 million. (Note that an analysis is not required for notices of agreements.) In the event that 100 analyses were prepared in response to the proposed rule, this cost could be as high as $30 million to $35 million. If environmental analyses are not included in the costs attributed to the proposed rule, costs for 50 and 100 analyses would range up to $10 million and $20 million, respectively. Costs for federal review of 50 to 100 analyses are expected to be on the order of $1 million to $2 million. Costs are expected to vary with the level of operations at affected airports and the extensiveness and complexity of the proposed restriction. Comments relating to the costs of analyses are specifically invited.

Benefits of Applying the Proposed Regulations of Proposed Restrictions on Aircraft Operations

Agreements (Subpart B).

Subpart B applies to airport noise or access restrictions on Stage 2 or Stage 3 aircraft that are agreed to by the airport operator and all aircraft operators. New entrant aircraft operators that have applied to serve the airport within 180 days of the effective date of the restriction and have submitted a plan of operations to the airport operator would be included in these agreements. Potential new entrants would be given 45 days to apply to the airport operator to be a party to the agreement. An analysis of an agreement is optional.

An agreement can result in positive net benefits to affected interest groups considered as a whole, and very likely to each of the affected interest groups (although not necessarily to all members of such groups). This would be the case as long as all potential entrants that wish to service an airport are notified and the airport operator adequately represents both the interests of the local aviation/passenger community and persons who may be adversely affected by aircraft noise.

The use of agreements may help airport operators by reducing the costs that they would incur in order to implement proposed restrictions on aircraft operations. Public notice would provide an opportunity for those with an interest in starting airport operations to become parties to an agreement. The notice, with this new-entrant provision, tries to open up agreements to parties beyond those currently serving an airport, but stops short of the needless costs that would be associated with identifying "all" aircraft operators, whether or not they have an interest in operation at the airport in the reasonably foreseeable future.

It is noted that cost savings would occur through the avoidance of what is likely to be a costlier process including analysis requirements that would be involved in attempting to restrict aircraft operations through subparts C and D, as outlined below. The provision for agreements would formalize a procedure under which communities and aircraft operators can efficiently reach agreement on measures to mitigate aircraft noise problems that the affected parties find mutually acceptable. As drafted, the proposed rule would permit restrictions on Stage 2 aircraft to be handled through the less costly means of agreements under subpart B. Additionally, the use of such agreements can be expected to facilitate the

handling of local environmental concerns by minimizing federal involvement in the process.

Further, it is possible that the public notice required by Subpart B may itself produce additional benefits, in part by reducing the likelihood of a number of possible adverse effects. One potential concern is a situation in which an agreement on operations at an airport has the effect of excluding improved air carrier service when such service might provide an overall increase in net benefits to current and potential users of air transportation in the area served by the airport. Current poviders of air service may have an economic incentive to seek, through agreements, to prevent the entry of additional competitive providers of air service. Public notice can help to mitigate potential adverse effects by improving the chances for potential entrants to service at an airport to protect themselves from undesirable constraints on their future activities. For instance, a noise budget can have the effect of making it more difficult for new entrants (new competition) to enter service at a particular airport. By preserving and enhancing competition, the proposed rule may benefit air travelers by lower air fares and/or increased service.

It is also possible that voluntary agreements may have the effect of regulating rates or services. Although this is prohibited by section 105 of the Federal Aviation Act of 1958, agreements may achieve these objectives indirectly. For instance, because aircraft have varying ranges, voluntary agreements on the type of aircraft that may be used at an airport can have the indirect effect of regulating the price and availability of air carrier service. Agreements that, for example, restrict the passenger-carrying capacity of aircraft using an airport could have the effect of excluding the aircraft of potential competitors that are larger, quieter, and have a longer range.

The public notice may not only inform interested parties, but may also stimulate those adversely affected to protect their interests by taking part in the negotiations that lead to the agreement or by seeking redress through other political or judicial processes. For instance, local companies adversely affected by potential restrictions or aircraft operators that wish more freedom, for instance, in airport operating hours, may object to terms of an agreement that they perceive as objectionable. Thus, the proposed rule may ultimately improve the efficiency of air commerce, the local economy, and the quality of life.

Although the Federal government may take action to mitigate the effects of exclusionary agreements under other statutes, it has no power under the Act, or the proposed rules derived from it, to grant relief to, e.g., the customers of air carriers who may experience high ticket prices that result from de facto cartelization of an airport. Remedies would be obtained under federal antitrust laws and the terms of airport development grant agreements.

Requirements for Stage 2 Restrictions (Subpart C)

Subpart C would require analysis and notice of new noise or access restrictions that are proposed for Stage 2 aircraft after October 1, 1990. These requirements would also apply to amended restrictions that become effective after the date of the Act if they further limit Stage 2 aircraft operations or affect aircraft safety. As indicated in the discussion of the preceding subpart, the public notice provided to affected parties under subpart C is expected to facilitate the protection of these parties' interests by informing them of the impacts of proposed restrictions. Adversely affected parties can then seek remedies through political or judicial means.

Benefits associated with the notice, analysis, and 180-day waiting period include assuring that: (1) There is wide advance notification of potentially affected parties; (2) the airport operator and others are aware of the full ramifications of proposed restrictions, including anticipated costs and benefits; (3) data errors in estimating costs and benefits have a chance to be rectified and appropriate changes made in the proposed restrictions; (4) objections of affected parties and the FAA may lead airport operators to modify objective provisions of a restriction; (5) the Federal government and other affected parties have a chance to make a case against objectionable restrictions in court before the restriction is imposed; and (6) affected parties have a reasonable amount of time to accommodate their operations to a restriction before it goes into effect.

Proposed subpart C includes requirements for an analysis of the anticipated costs and benefits of the proposed noise access restriction, a description of alternative measures considered that do not involve aircraft restrictions, and comparative analyses of benefits and costs of these measures. The use of specified noise measurement systems and accepted economic methodology are required. Components may include, as appropriate, data and projections on airport activity, estimates of land use, noise, and other conditions, as well as the effects of the proposed restriction on noise contours, population, aircraft operations, and safety implications, if any. The analyses may include the examination of continuing service under the restriction, the effects of discontinued aircraft operations, and the effect of nonaircraft alternatives or nonaircraft components of the restriction. The cost analysis may include data and projections on additional aircraft capital costs; other incremental costs; and decreases in carrier and other profits, safety, and consumer and producer surpluses.

Stage 2 aircraft tend to be less expensive to acquire or lease. For this reason, those aircraft have been favored by new airline companies starting operations. Restrictions on the operation of Stage 2 aircraft, therefore, may have the effect on inhibiting market competition from new entrants.

Restrictions on aircraft operations at a single airport that is an airline's major hub may or may not have a significant impact on a particular aircraft operator depending on whether its equipment can be moved to alternate routes or sold without incurring a significant loss. Simultaneous restrictions at a significant number of airports may force premature retirement of affected aircraft, including their sale at reduced prices, thereby imposing losses on the owners of such aircraft. Thus, a single airport's restrictions should also be viewed in the context of conditions existing in the national airport system. As noted, analyses under proposed subpart C may include estimates of real estate and other property values, health costs (if any), other quality of life effects, and airport revenues, as well as other measures of benefits and costs. However, the airport operator that proposes restrictions is given discretion with respect to the elements contained in the analysis so long as the analysis is consistent with the general requirements of the Act.

The imposition of major premature restrictions on Stage 2 aircraft operations at an airport that acts as a major hub for a carrier that is highly dependent on these aircraft may also impose significant adverse effects on air carriers and passengers. These effects would be in the form of reduced service because of less air carrier competition, and likely higher air fares. If air carriers cannot find alternative uses for aircraft that are barred by the restrictions, the air carrier would experience a loss of revenue and profit. The effects on passengers may include substantial burdens in the form of the cost of time

consumed through delays or inconvenient air carrier schedules. It should be noted that, in analyses of air transport operations, the delay costs for air travelers may be a high as the air carriers' costs for operating the delayed aircraft. Ther merit of a particular proposed restriction on Stage 2 aircraft operations would depend on whether benefits (perhaps measured by a projected increase in residential property values) are greater than the sum of costs imposed on air commerce (including such elements as passenger delay costs together with aircraft operating and capital costs.)

Notice, Review, and Approval Requirements for Stage 3 Restrictions (Subpart D)

This proposed subpart would apply to airport noise or access restrictions on Stage 3 aircraft operations that first become effective after October 1, 1990. With certain limited exceptions detailed in the statute, all proposed restrictions on Stage 3 aircraft, other than those agreed to by the airport operator and aircraft operators, would be subject to this proposed subpart and must be reviewed and approved by the FAA before they become effective. The restrictions can be approved only if there is substantial evidence that they: (1) are reasonable, nonarbitrary, and nondiscriminatory; (2) do not create an undue burden on interstate or foreign commerce; (3) maintain safe and efficient utilization of navigable airspace; (4) do not conflict with any existing Federal statute or regulation; (5) have been given an adequate opportunity for public comment; and (6) do not create an undue burden on the national aviation system. The Act mandates sanctions against airport operators that implement restrictions on Stage 3 aircraft operations that have not been agreed to or approved by the FAA in conformance with the proposed rule.

As was noted in the discussion of proposed subpart C above, restrictions at either a single major hub airport or at a significant number of airports may reduce the efficient use of an airline's fleet, thereby imposing major losses on the owners of such aircraft. This subpart deals with proposed restrictions on Stage 3 aircraft, which represent state-of-the-art noise control and are significantly newer than the Stage 2 aircraft that they are intended to replace. Restrictions on aircraft that fall under this subpart can be expected to result in losses to aircraft operators that are potentially much larger than would comparable restrictions on Stage 2 aircraft alone. Restrictions that result in the suboptimum use of substantially new aircraft could constitute an undue burden on commerce and the national aviation system by preventing aircraft operators from recouping through revenues the substantial cost of their investment in aircraft (a new Stage 3 aircraft may cost between $50 million and $120 million). Stage 3 aircraft are likely to have higher market values and lower operating costs than otherwise comparable State 2 aircraft. Thus, the earnings foregone by a carrier that finds that it is unable to put a Stage 3 aircraft to its most profitable use are likely to be larger than the lost earnings that would result from a comparable restriction on a Stage 2 aircraft.

Restrictions on Stage 3 aircraft are also likely to impose significantly higher costs on air travelers than would comparable restrictions on Stage 2 aircraft. If Stage 2 aircraft are restricted at an airport, it is likely that they will, to some extent, be replaced with Stage 3 aircraft that provide comparable or better passenger service. Any restrictions on Stage 3 aircraft have the effect of limiting total aircraft operations at an airport because an airport operator is unlikely to attempt to restrict Stage 3 operations unless Stage 2 operations have already been, or are being simultaneously, restricted. With a resulting general reduction in air service at an airport, passenger delay costs will be imposed as a result of less convenient schedules for passengers for whom the airport is an origin or destination and more waiting time if the airport is a hub at which passengers transfer between airplanes. As with Stage 2 aircraft, simultaneous restrictions on Stage 3 aircraft at a number of airports can have significantly greater adverse impacts on both aircraft operators and passengers than would restrictions at a single airport. The greater public and Federal examination of proposed restrictions on Stage 3 aircraft (as compared to Stage 2) is justified, in large part, by the greater potential for imposing costs on the national aviation system that do not have equal or better benefits.

Reevaluation of Restrictions on Stage 3 Aircraft Operations (Subpart E)

Reevaluation may be requested by an aircraft operator that demonstrates to the satisfaction of the FAA that there has been a change in the noise environment that would be sufficient to justify the review. The burden of notice and analysis requirements, including a draft environmental document, is placed on the aircraft operator that initiates the request for reevaluation. These costs are comparable to those for airport operators that propose restrictions under subpart D, above. The FAA will review the documentation submitted and comments received and issue appropriate findings on the request. The benefits of proposing a change for one aircraft operator would be primarily the operating economies and resulting improved profits that may be projected to result from less stringent airport restrictions. The reevaluation costs for an aircraft operator may be reduced by sharing these costs among a group of aircraft operators that wish to take advantage of less restrictive operation at an airport. It may be presumed that an aircraft operator (or whoever requests a reevaluation) would not request a reevaluation of a restriction unless it perceived that the benefits it expects to accrue would be in excess of costs it will incur in successfully completing the reevaluation process. The proposed rule does not require reevaluation, hence it does not directly impose any cost. Parties such as airport operators with an interest in commenting on the reevaluation may choose to incur costs in preparing comments, but do so at their own discretion.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily or disproportionately burdened by Government regulations. The RFA requires a Regulatory Flexibility Analysis if a rule has a significant economic impact, either detrimental or beneficial, on a substantial number of small business entities. FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, establishes threshold cost values and small entity size standards for complying with RFA review requirements in FAA rulemaking actions.

The FAA has provisionally determined that it is unlikely that the proposed regulations could have a significant economic impact on a substantial number of small entities. (FAA Order 2100.14A specifies the threshold regulatory cost at $5,400 in 1983 dollars (approximately $7,000 in 1991 dollars) for airports serving cities with a population of less than 49,000. According to this Order, a "substantial number of small entities means a number which is not less than eleven and which is more than one-third of the small entities subject to a . . . rule.") While the costs of required analysis may exceed $7,000, it is noted that the cost of the required analysis may in

some cases be moderate because many proposed restrictions will not require the amount of data handling and complexity of analysis appropriate for major restrictions at larger airports. In addition, it is believed unlikely that an airport operator would initiate an action that would make it subject to the proposed rule unless it believed that the benefits would be well in excess of the costs of complying with the rule. The proposed rule allows an airport operator that proposes restrictions on Stage 2 aircraft substantial latitude in determining the components of the associated analysis. It may be appropriate to establish thresholds for analysis requirements that vary with the level of operations at airports or other considerations. Further, and more important, it is believed to be unlikely that a "substantial number of small entities"—one third of the airports serving cities with a population of 49,000 or less—will propose restrictions, or changes to restrictions, during any single year. It is not expected that airports considered small entities will, as a group, impose restrictions subject to this proposed rule at as high a relative frequency as larger airports. Smaller metropolitan areas tend to generate less air traffic, have smaller airports, and be served by smaller aircraft than do the larger urban areas that are more likely to be served by Stage 2 and Stage 3 aircraft. However, in recognition of potential cost burdens on small entities, the FAA solicits comments relating to an appropriate variation in the threshold for analysis and notice requirements.

Initial Trade Impact Assessment

The costs that may be incurred as a result of implementing the proposed rules at the airports that account for most of the U.S. international air commerce are believed to be small relative to other charges imposed by the airports on air carriers operating in international commerce. As a result, the requirements of this proposed rule are not expected to have a significant impact on U.S. international trade.

Federalism Implications

Although the agency has determined that this action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment, it should be noted that, regardless of that determination, it is also the agency's determination that the problem described in this document requires action that can only be effectively implemented at the national level. In support of this finding, it is noted that, in the Airport Noise and Capacity Act of 1990, section 9302, Congress found that, among other things, "airport noise management is crucial to the continued increase in airport capacity; community noise concerns have led to uncoordinated and inconsistent restrictions on aviation which could impede the national air transportation system;" and that "a noise policy must be implemented at the national level."

The proposed regulations would implement a new statute that authorizes state and local governments that operate airports to enter into agreements that may affect the operation of certain aircraft at their airports. While the initiation of restrictions on the affected aircraft at these airports would be a local decision, the statute imposes federal requirements on the applicant (e.g., for notice and/or analysis of the proposed restrictions) and requires Federal oversight (e.g., where there may be substantial adverse affects on interstate commerce).

Although a national solution is required by the Act, provisions of the proposed rule are intended to impose on state and local governments the minimum restrictions and requirements that are consistent with the statutory limitations and the Federal oversight role contemplated by the Airport Noise and Capacity Act of 1990 and other regulations that would pertain to airport operations.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this proposed regulation is not major under Executive Order 12291. In addition, this proposal, if adopted, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The proposal is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). An initial regulatory evaluation of the proposal, including a Regulatory Flexibility Determination and International Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under "FOR FURTHER INFORMATION CONTACT."

List of Subjects in 14 CFR Part 161

Air carriers, Aircraft, Airport, Airport noise, Air transportation, Noise control.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to add a new part 161 to title 14, Chapter I, subchapter I of the Code of Federal Regulations to read as follows:

PART 161—NOTICE AND APPROVAL OF AIRPORT NOISE AND ACCESS RESTRICTIONS

Subpart A—General Provisions

Sec.

Subpart B—Notice Requirements for Noise Agreements

Subpart C—Notice Requirements for Stage 2 Restrictions

Subpart D—Notice, Review, and Approval Requirements for Stage 3 Restrictions

Subpart E—Reevaluation of Stage 3 Restrictions

Authority: 49 U.S.C. 1301, 1305, 1348, 1349(a), 1354, 1421, 1423, 1431, and 1486, 49 U.S.C. 1655(c), 49 U.S.C. 2101, 2102, 2103(a), and 2104 (a) and (b), 49 U.S.C. 2210(a)(5), and 49 U.S.C. 2153, 2154, 2155, and 2156.

Subpart A—General Provisions

§ 161.1 Purpose.

This part implements the Airport Noise and Capacity Act, Public Law 101–508, 49 U.S.C. 2153, 2154, 2155, and 2156 enacted November 5, 1990. It prescribes:

(a) Notice requirements and procedures for aircraft noise and access agreements between airport operators and aircraft operators;

(b) Analysis and notice requirements for Stage 2 aircraft noise and access restrictions proposed by airport operators;

(c) Notice, review, and approval requirements for Stage 3 aircraft noise and access restrictions; and

(d) Procedures for reevaluation by the Federal Aviation Administration of agreements and aircraft noise and access restrictions affecting Stage 3 aircraft operations.

§ 161.3 Applicability.

(a) This part applies to airport restrictions on Stage 2 aircraft operations proposed after October 1, 1990, and to airport restrictions on Stage 3 aircraft operations that become effective after October 1, 1990.

(b) The notice, review, and approval requirements set forth in this part apply to all airport noise or access restrictions as defined in § 161.5 of this part.

§ 161.5 Definitions.

For the purposes of this part, the following definitions apply:

Agreement means a program or plan for the control of airport noise or access agreed to by the airport operator and all affected aircraft operators.

Airport means any area of land or water, including any heliport, that is used or intended to be used for the landing and takeoff of aircraft, and any appurtenant areas that are used or intended to be used for airport buildings or other airport facilities or rights-of-way, together with all airport buildings and facilities located thereon.

Airport noise study area means that area surrounding the airport within the DNL 65 dB contour, as defined in 14 CFR part 150, that contains noise-sensitive land uses (typically residential neighborhoods, educational, health or religious structures or sites and outdoor recreational, cultural, and historic sites).

Aircraft operator includes any representative empowered to enter into agreements with the airport operator regarding use of the airport by an aircraft. This may include representatives of air carriers or the operator of any aircraft affected by a Stage 2 or Stage 3 noise and access restriction.

Airport operator means the airport proprietor.

Aviation user class means the following categories of aircraft operators: air carriers operating under part 121 or part 129, commuters and other carriers operating under parts 127 and 135, general aviation, military, or government operations.

Day-night average sound level (DNL) means the 24-hour average sound level, in decibels, for the period from midnight to midnight, obtained after the addition of ten decibels to sound levels for the periods between midnight and 7 a.m., and between 10 p.m., and midnight, local time. The symbol for DNL is L_{dn}.

Noise or access restrictions means restrictions affecting access or noise that affect the operation of Stage 2 or Stage 3 aircraft, such as limits as to noise generated on either a single event or cumulative basis; a limit, direct or indirect, on the total number of Stage 2 or Stage 3 aircraft operations; a noise budget or noise allocation program that includes Stage 2 or Stage 3 aircraft; a restriction imposing limits on hours of operations; a program of airport use charges that has the direct or indirect effect of controlling airport noise; and any other limit on Stage 2 or Stage 3 aircraft that has the direct or indirect effect of controlling airport noise. This definition does not include peak-period pricing programs whose objective is to align the number of aircraft operations with airport capacity.

Stage 2 aircraft means an aircraft that has been shown to comply with the Stage 2 requirements under 14 CFR part 36.

Stage 3 aircraft means an aircraft that has been shown to comply with the Stage 3 requirements under 14 CFR part 36.

§ 161.7 Limitations.

(a) Noise abatement operational procedures, including but not limited to preferential runway use, noise abatement approach and departure procedures and profiles, flight tracks, taxiing, engine runups, do not fall within the purview of this part unless they limit the total number of Stage 2 or Stage 3 aircraft operations at an airport or limit the hours of Stage 2 or Stage 3 aircraft operations.

(b) The notice, review, and approval requirements set forth in this part do not apply in the following cases as specified in section 9304(a)(2)(C) of Public Law 101–508:

(1) A local action to enforce a negotiated or executed airport aircraft noise or access agreement between the airport operator and the aircraft operator in effect on November 5, 1990.

(2) A local action to enforce a negotiated or executed airport aircraft noise or access restriction between the airport operator and the aircraft operators agreed to before November 5, 1990.

(3) An intergovernmental agreement including airport aircraft noise or access restriction in effect on November 5, 1990.

(4) A subsequent amendment to an airport aircraft noise or access agreement or restriction in effect on November 5, 1990, where the amendment does not reduce or limit aircraft operations or affect aircraft safety.

(5) A restriction that was adopted by an airport operator on or before October 1, 1990, and that was stayed as of October 1, 1990, by a court order or as a result of litigation, if such restriction, or a part thereof, is subsequently allowed by a court to take effect.

(6) In any case in which a restriction described in paragraph (c)(5) of this section is either partially or totally disallowed by a court, any new restriction imposed by an airport operator to replace such disallowed restriction, if such new restriction would not prohibit aircraft operations in effect on November 5, 1990.

(7) A local action that represents the adoption of the final portion of a program of a staged airport aircraft noise or access restriction, where the initial portion of such program was adopted during calendar year 1988 and was in effect on November 5, 1990.

(c) The notice, review, and approval requirements of Subpart D of this part with regard to Stage 3 aircraft restrictions do not apply if the FAA has, prior to November 5, 1990, formed a working group (outside of the process established by 14 CFR part 150) with a local airport operator to examine the noise impact of air traffic control procedure changes. In any case in which an agreement relating to noise reductions at such airport is then entered into between the airport proprietor and an air carrier or air

carrier constituting a majority of the air carrier users of such airport, the requirements of subparts B and D with respect to restrictions of Stage 3 aircraft operators do apply to local actions to enforce such agreements.

(d) Except to the extent required by the application of the provisions of the Act, nothing in this part eliminates, invalidates, or supersedes the following:

(1) Existing law with respect to airport noise or access restrictions by local authorities;

(2) Any proposed airport noise or access regulation at a general aviation airport where the airport proprietor has formally initiated a regulatory or legislative process on or before October 1, 1990; and

(3) The authority of the Secretary of Transportation to seek and obtain such legal remedies as the Secretary considers appropriate, including injunctive relief.

§ 161.9 Designation of noise measurement systems.

For purposes of this part, the following requirements apply:

(a) The A-weighted sound pressure level (L_A) at an airport and surrounding areas must be measured in units of decibels (dB) in accordance with the specifications and methods prescribed under appendix A of 14 CFR part 150;

(b) The exposure of individuals to noise resulting from operation of an airport must be established in terms of yearly day-night average sound level (DNL) calculated in accordance with the specifications and methods prescribed under appendix A of 14 CFR part 150; and

(c) Use of computer models to create noise contours must be in accordance with the criteria prescribed under appendix A of 14 CFR part 150.

§ 161.11 Identification of land uses in airport noise study area.

For the purposes of this part, uses of land that are normally compatible or noncompatible with various noise exposure levels to individuals around airports must be identified in accordance with the criteria prescribed under appendix A of 14 CFR part 150. Determination of land use must be based on professional planning, zoning, and building and site design information and expertise.

Subpart B—Notice Requirements for Noise Agreements

§ 161.101 Scope.

This subpart applies to an airport noise or access restriction on the operation of Stage 2 or Stage 3 aircraft that is voluntarily agreed to by the airport proprietor; all aircraft operators serving the airport that are affected by the agreement; and all affected new entrants that have applied to serve the airport within 180 days following the effective date of the agreement and that have submitted a plan of operations to the airport operator. This subpart does not apply to restrictions specifically exempted in § 161.7 of this part.

§ 161.103 Notice of proposed agreement.

(a) An airport operator may not implement a Stage 2 or Stage 3 restriction in accordance with an agreement with all affected aircraft operators unless there has been public notice and opportunity for comment as prescribed in this subpart.

(b) Before concluding an agreement, an airport operator shall publish a notice of the proposed agreement in a newspaper with national circulation, an areawide newspaper of general circulation, and in aviation trade publications, and shall directly notify in writing the following parties—

(1) Aircraft operators serving the airport and aircraft operators known to be interested in serving the airport that are expected to be affected by the agreement;

(2) The Federal Aviation Administration;

(3) Each Federal agency with facilities or land use control jurisdiction within the airport noise study area; and

(4) Each state and local agency and land use planning or control jurisdiction within the airport noise study area.

(c) Each published notice and direct notification shall include—

(1) The name of the airport and associated cities and states;

(2) A clear, concise description of the proposed agreement, including its voluntary nature;

(3) A brief discussion of the specific need for and goal of the agreement;

(4) Identification of the aircraft operators expected to be affected;

(5) The proposed effective date of the agreement;

(6) A notification to potential new entrant aircraft operators that they have 45 days to submit to the airport operator an application to serve the airport within 180 days following the proposed effective date of the agreement, together with a plan of operations, in order to qualify as parties to an agreement; and

(7) Information on how to submit a new entrant application and other comments, including the name and address of a contact person at the airport.

§ 161.105 Implementation of agreement.

(a) An airport operator may not implement an agreement until after the 45-day period provided for new entrant applications and unless agreed to by all affected aircraft operators.

(b) Each airport operator shall notify the FAA of the implementation of an agreement and shall include in the notification evidence of adequate notice and of agreement by all affected aircraft operators, as well as a copy of the signed agreement.

(c) To be eligible for treatment under this subpart, a noise or access agreement must be in writing and must be signed by the airport operator and aircraft operators.

§ 161.107 Termination of agreement.

If an agreement terminates, an airport operator shall so notify the FAA and shall report on the airport operator's intent with regard to the provisions contained in the terminated agreement.

Subpart C—Notice Requirements for Stage 2 Restrictions

§ 161.201 Scope.

(a) This subpart applies to—

(1) An airport noise or access restriction on the operation of Stage 2 aircraft, but not Stage 3 aircraft, proposed after October 1, 1990.

(2) An amendment to an existing Stage 2 restriction, if the amendment becomes effective after November 5, 1990, and reduces or limits Stage 2 aircraft operations or affects aircraft safety.

(b) This subpart does not apply to a Stage 2 restriction specifically exempted in § 161.7 of this part or an agreement in accordance with subpart B of this part.

§ 161.203 Notice of proposed restriction.

(a) An airport operator may not implement a Stage 2 restriction within the scope of § 161.201 unless the airport operator provides an analysis of the proposed restriction and a public notice and opportunity for comment as prescribed in this subpart. The required analysis in § 161.205 shall be made available for public comment at least 180 days before the effective date of the restriction.

(b) Except as provided in § 161.211, an airport operator shall publish a notice of the proposed restriction in a newspaper with national circulation, an areawide newspaper of general circulation, and in aviation trade publications, and shall directly notify in writing the following parties—

(1) Aircraft operators serving the airport and aircraft operators known to

be interested in serving the airport that are expected to be affected by the restrictions;

(2) The Federal Aviation Administration;

(3) Each Federal agency with facilities or land use control jurisdiction within the airport noise study area; and

(4) Each state and local agency and land use planning or control agency with jurisdiction within the airport noise study area.

(c) Each published notice and direct notification provided in accordance with paragraph (b) of this section shall include—

(1) The name of the airport and associated cities and states;

(2) A clear, concise description of the proposed restriction, including a statement that it will be a mandatory Stage 2 restriction, and the location where the complete text of the restriction and sanctions for noncompliance is available for public inspection;

(3) A brief discussion of the specific need for, and goal of, the restriction;

(4) Identification of the aircraft operators expected to be affected;

(5) The proposed effective date of the restriction, the proposed method of implementation (e.g., city ordinance, airport rule), and any proposed enforcement mechanism;

(6) An analysis of the proposed restriction or an announcement that the analysis is available upon request from the airport operator;

(7) An invitation to comment on the proposed restriction and analysis with a minimum 45-day comment period; and

(8) Information on how to request the analysis (if not included with the notice) and the address for submitting comments fon the airport operator, including a contact person at the airport.

§ 161.205 Required analysis of proposed restriction and alternatives.

(a) Each airport operator proposing a noise or access restriction on Stage 2 aircraft operations shall prepare the following and make it available for public comment:

(1) An analysis of the anticipated or actual costs and benefits of the proposed noise or access restriction;

(2) A description of alternative restrictions; and

(3) A description of the alternative measures considered that do not involve aircraft restrictions, and a comparison of the costs and benefits of such alternative measures to costs and benefits of the proposed noise or access restriction.

(b) In preparing the analyses required by this section, the airport operator shall use the noise measurement systems and identify the airport noise study area as specified in §§ 161.9 and 161.11, respectively, and shall use currently accepted economic methodology and reflect current airline industry practice. The airport operator shall specify the methods used to analyze the costs and benefits of the proposed restriction and the alternatives.

(c) The kinds of information set forth in § 161.305 are useful elements of an adequate analysis of a noise or access restriction on Stage 2 aircraft operations.

§ 161.207 Comment by interested parties.

(a) Each airport operator shall establish a public docket or similar method for receiving and considering comments and shall make comments available to interested parties upon request. Comments must be retained as long as the restriction is in place.

(b) Each airport operator shall promptly advise interested parties of changes to a proposed restriction, including changes that affect noncompatible land uses, that take place within the 180-day notice period and make available any changes to the proposed restriction and its analysis. Interested parties include those who received direct notification under § 161.203(b), or that were required to be consulted in accordance with the procedures in § 161.211 of this part, and those who have commented on the proposed restriction.

§ 161.209 Requirement for new notice.

(a) If there are substantial changes to the proposed restriction or the analysis during the 180-day notice period, the airport operator shall initiate a new notice and direct notification following the procedures in § 161.203 or, alternately, the procedures in § 161.211. A substantial change includes, but is not limited to, a more restrictive proposal or a revision that alters the way impacts are apportioned among aircraft operators.

(b) In addition to the information in § 161.203(c), a new notice and direct notification must indicate that the airport operator is revising a previous notice, provide the reason for making the revision, and provide a new effective date (if any) for the restriction. The effective date of the restriction must be at least 180 days after the date the new notice and revised analysis are made available for public comment.

§ 161.211 Optional use of 14 CFR Part 150 procedures.

An airport operator may use the procedures in part 150 of this chapter, instead of the procedures described in §§ 161.203(b) and 161.207(b), as a means of providing an adequate public notice and comment opportunity on a proposed Stage 2 restriction. If the airport operator elects to use 14 CFR part 150 procedures to comply with this subpart, the analysis of the restriction in the airport operator's 14 CFR part 150 submission must include the information in §§ 161.203(c) (2) through (5) and 161.205.

§ 161.213 Notification of a decision not to implement a restriction.

If a proposed restriction has been through the procedures prescribed in this subpart and the restriction is not subsequently implemented, the airport operator shall so advise the interested parties. Interested parties are described in § 161.207(b).

SUBPART D—NOTICE, REVIEW, AND APPROVAL REQUIREMENTS FOR STAGE 3 RESTRICTIONS

§ 161.301 Scope.

(a) This subpart applies to—

(1) An airport noise or access restriction on the operation of Stage 3 aircraft that first becomes effective after October 1, 1990.

(2) An amendment to an existing Stage 3 restriction, if the amendment becomes effective after November 5, 1990, and reduces or limits Stage 3 aircraft operations or affects aircraft safety.

(b) This subpart does not apply to a Stage 3 restriction specifically exempted in § 161.7, or an agreement in accordance with subpart B of this part.

(c) A Stage 3 restriction within the scope of this subpart may not become effective unless it has been submitted to and approved by the FAA. The FAA will review only those Stage 3 restrictions that are proposed by or on behalf of an entity empowered to implement the restriction.

§ 161.303 Notice of proposed restrictions.

(a) Each airport operator or aircraft operator (hereinafter referred to as applicant) proposing a Stage 3 restriction shall provide public notice and an opportunity for public comment, as prescribed in this subpart, before submitting the restriction to the FAA for review and approval.

(b) Except as provided in § 161.323, an applicant shall publish a notice of the proposed restriction in a newspaper with national circulation, an areawide newspaper of general circulation, and in aviation trade publications, and shall directly notify in writing the following parties:

(1) Aircraft operators serving the airport and aircraft operators known to be interested in serving the airport that are expected to be affected by the restriction;

(2) The Federal Aviation Administration;

(3) Each Federal agency with facilities or land use control jurisdiction within the airport noise study area; and

(4) Each state and local agency and land use planning or control jurisdiction within the airport noise study area.

(c) Each published notice and direct notification provided in accordance with paragraph (b) of this section shall include—

(1) The name of the airport and associated cities and states;

(2) A clear, concise description of the proposed restriction, including a statement that it will be a mandatory Stage 3 restriction; and the location where text of the restriction and sanctions for noncompliance are available for public inspection;

(3) A brief discussion of the specific need for, and goal of, the restriction;

(4) Identification of the aircraft operators expected to be affected;

(5) The proposed effective date of the restriction, the proposed method of implementation (e.g., city ordinance, airport rule), and any proposed enforcement mechanism;

(6) An analysis of the proposed restriction or an announcement that the analysis is available upon request from the airport operator or aircraft operator proposing the restriction;

(7) An invitation to comment on the proposed restriction and analysis, with a minimum 45-day comment period; and

(8) Information on how to request the analysis (if not included with the notice) and the address for submitting comments to the airport operator or aircraft operator proposing the restriction, including the name of a contact person.

§ 161.305 Required analysis of proposed restrictions.

Any proposed restriction on Stage 3 aircraft operations that also affects the operation of Stage 2 aircraft must analyze the restriction in a manner that permits it to be understood in its entirety. Nothing in this section is intended to limit or prohibit the issuance of restrictions on Stage 2 aircraft, as long as the requirements of subpart B or subpart C, as appropriate, of this part are met. Each applicant proposing a noise or access restriction on Stage 3 operations shall prepare the following analysis and make it available for public comment:

(a) The complete text of the proposed restriction, including the proposed wording in a city ordinance, airport rule, or other document, and all sanctions, if any, for noncompliance;

(b) A detailed description of the problem precipitating the proposed restriction, with relevant background information on factors contributing to the proposal; a description of any noise agreements or noise or access restrictions currently in effect at the airport; and measures taken to achieve land use compatibility, such as controls or restrictions on land use in the vicinity of the airport, grant assurances and measures carried out in response to 14 CFR part 150, and actions taken to comply with grant assurances requiring that—

(1) Airport development projects be reasonably consistent with plans of public agencies that are authorized to plan for the development of the area around the airport; and

(2) The sponsor—

(i) Give fair consideration to the interests of communities in or near which the project may be located;

(ii) Take appropriate action, including the adoption of zoning laws, to the extent reasonable, to restrict the use of land near the airport to activities and proposes compatible with normal airport operations; and

(iii) Not cause or permit any change in land use, within its jurisdiction, that will reduce the compatibility, with respect to the airport, of any noise compatibility program measures upon which federal funds have been expended;

(c) Maps denoting the airport geographic boundary, the geographic boundaries and names of each jurisdiction that controls land use within the airport noise study area and, if appropriate, airspace and obstacles to navigation in the vicinity of the airport. Data on current and projected airport activity that would exist in the absence of the proposed restriction;

(d) Descriptions of alternative aircraft restrictions that have been considered and rejected, and the reasons for the rejection, any land use or other nonaircraft controls or restrictions that have been considered and rejected, including those proposed under 14 CFR part 150 and not implemented, and the reasons for the rejection, or failure to implement;

(e) An analysis of the effect of the proposed restriction on airport capacity, on the number of affected operations of aircraft by class of user (and for air carriers, the number of operations of aircraft by carrier), and on the volume of passengers and cargo for the year the restriction is expected to be implemented and for the forecast timeframe;

(f) An analysis of the estimated noise impact of aircraft operations with and without the proposed restriction for the year the restriction is expected to be implemented, for a forecast timeframe after implementation, and for any other years critical to understanding the noise impact of the proposed restriction. The analysis of noise effect with and without the proposed restrictions will include—

(1) Maps of the airport noise study area overlaid with noise contours as specified in §§ 161.9 and 161.11;

(2) The number of people and the noncompatible land uses within the airport noise study area for each year the noise restriction is compared;

(3) A description of the relationship of the effect of the proposed restriction on airport users (by user class), and the noise attributable to these users in the absence of the proposed restrictions; and

(4) Technical data supporting the noise impact analysis, including the classes of aircraft, fleet mix, runway use percentage, and day/night breakout of operations;

(g) Analyses of other effects of the proposed restriction with respect to use of airspace in the vicinity of the airport, safety, and environmental factors other than noise. The analyses shall include a description of the methods and data used;

(h) Comparative economic analyses of the costs and benefits of the proposed restriction and aircraft and nonaircraft alternative measures. In preparing the economic analyses required by this section, the applicant shall use currently accepted economic methodology and reflect current airline industry practice. The applicant shall specify the methods used to analyze costs and benefits of the proposed restriction and the alternatives:

(1) Comprehensive analyses of estimated costs of the proposed restriction and alternative nonaircraft restrictions considering the following, as appropriate:

(i) Any additional cost of continuing aircraft operations under the restriction. Such costs must include reasonably available information concerning—

(A) Any net capital costs of acquiring or retrofitting aircraft (net of salvage and operating efficiencies) by user class; and

(B) Any other incremental recurring costs;

(ii) Costs associated with altered or discontinued aircraft operations, such as reasonably available information concerning—

(A) Loss to carriers of operating profits;

(B) Decreases in passenger and shipper consumer surplus by aviation user class;

(C) Loss in profits associated with other airport services or other entities;

(D) Any significant economic effect on parties other than aviation users;

(iii) Costs associated with implementing nonaircraft restrictions or nonaircraft components of restrictions, such as reasonably available information concerning—

(A) Estimates of capital costs for real property, including redevelopment, soundproofing, noise easements, and purchase of property interests; and

(B) Estimates of associated incremental recurring costs; or

(C) An explanation of the legal or other impediments to implementing such restrictions;

(2) Analyses of estimated benefits of the proposed restriction and alternative restrictions considering the following, as appropriate—

(i) Anticipated increase in real estate values and future construction cost savings;

(ii) Anticipated increase in airport revenues;

(iii) Other benefits, including increases in the quality of life; and

(iv) Valuation of positive safety effects;

(i) A complete draft environmental document complying with FAA orders and procedures regarding compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 321);

(j) A summary of the evidence in the submission supporting the statutory conditions of approval, as delineated in § 161.317.

§ 161.307 Comment by interested parties.

(a) Each applicant proposing a restriction shall establish a public docket or similar method for receiving and considering comments and shall make comments available to interested parties upon request. Comments must be retained as long as the restriction is in place.

(b) Each applicant shall promptly advise interested parties of changes to a proposed restriction, including changes that impact noncompatible land use, that take place before the effective date of the restriction and make available any changes to the proposed restriction and its analysis. For the purpose of this paragraph, interested parties include those who received direct notification under § 161.303(b) of this part, or those who were required to be consulted in accordance with the procedures in § 161.323 of this part, and those who commented on a published notice of the proposed restriction.

(c) The analyses and other documentation submitted to the FAA to request approval of the restriction must include evidence that the public review process was carried out in accordance with §§ 161.303 and 161.307 (and with § 161.309, if applicable) and must include a summary of any comments received. Upon request by the FAA, the applicant shall submit copies of the comments.

§ 161.309 Requirement for a new notice.

(a) If there are substantial changes to a proposed restriction or changes in the analysis made prior to the effective date of the restriction, the applicant proposing the restriction shall initiate a new notice and direct notification following the procedures in § 161.303 or, alternatively, the procedures in § 161.323. A substantial change includes, but is not limited to, a more restrictive proposal or a revision that alters the way impacts are apportioned among aircraft operators.

(b) In addition to the information in § 161.303(c), a new notice and direct notification must indicate that the applicant is revising a previous notice, provide the reason for making the revision, and provide a new effective date (if any) for the restriction.

(c) If substantial changes requiring a new notice and direct notification are made during the FAA's 180-day review of the proposed restriction, the applicant submitting the proposed restriction shall notify the FAA in writing that it is withdrawing its proposal from the review process until it has completed additional analysis, public review, and documentation of the public review. Resubmission to the FAA will restart the FAA review.

§ 161.311 Application procedure for approval of proposed restriction.

Each applicant proposing a Stage 3 restriction shall submit to the FAA the following information, with a request that the FAA review and approve the proposed Stage 3 noise or access restriction:

(a) Analysis as specified in § 161.305, as appropriate to the proposed restriction;

(b) Summary of evidence of fulfillment of conditions for approval, as specified in § 161.317;

(c) Evidence of adequate opportunity for public comment as specified in § 161.307(c); and

(d) A statement that the entity submitting the proposal is the party empowered to implement the restriction, or is submitting the proposal on behalf of such party.

§ 161.313 Review of application.

(a) *Determination of completeness.* The FAA, within 30 days of receipt of an application, will determine whether the application is complete in accordance with § 161.311. This is not an approval or disapproval of the proposed restriction itself.

(b) *Process for complete application.* When the FAA determines that a complete application has been submitted, the following procedures apply:

(1) The FAA notifies the airport operator/aircraft operator (applicant) that it intends to approve or disapprove the proposed restriction and publish notice of the proposed restriction in the **Federal Register** in accordance with § 161.315. In this case, the 180-day period for approving or disapproving the proposed restriction will start on the date of original receipt of the application.

(2) Following review of the application, public comments, and any other information obtained under § 161.319(a), the FAA will issue a decision approving or disapproving the proposed restriction. This decision is a final decision of the Administrator for judicial review purposes.

(c) *Process for incomplete application.* If the FAA determines that an application is not complete, the following procedures apply:

(1) The FAA shall notify the applicant by mail, returning the application and setting forth the type of information and analysis needed to complete the application in accordance with § 161.311.

(2) Within 30 days after the receipt of this notification, the applicant shall advise the FAA by mail whether or not it intends to resubmit and supplement its application.

(3) If the applicant does not respond in 30 days, or advises the FAA that it does not intend to resubmit and supplement the application, the application will be denied. This closes the matter without prejudice to later application and does not constitute disapproval of the proposed restriction.

(4) If the applicant chooses to resubmit and supplement the application, the following procedures apply:

(i) Upon receipt of the resubmitted application, the FAA determines whether the application, as supplemented, is complete as set forth in paragraph (a) of this section.

(ii) If the application is complete, the procedures set forth in § 161.315 shall be followed. In this case, the 180-day review period starts on the date of receipt of the supplemented application.

(iii) If the application is still not complete, the FAA so advises the applicant as set forth in paragraph (c)(1) of this section, and provides the applicant with an additional opportunity to supplement the application as set forth in paragraph (c)(2) of this section.

(iv) If the environmental document is incomplete, the FAA will so notify the applicant by mail, returning the application and setting forth the types of information and analysis needed to complete the draft environmental document. The FAA may continue to return an application until an adequate environmental document is provided. When the application is determined to be complete, including the environmental document, the 180-day period for approval or disapproval will begin upon receipt of the last supplement to the application.

(v) Following review of the application and its supplements, public comments and any other information obtained under § 161.319(a), the FAA will issue a decision approving or disapproving the application. This decision is a final decision of the Administrator for the purpose of judicial review.

(5) If the applicant declines to complete an application that has been returned twice for reasons other than to complete the environmental document, the FAA will deny the application and return it to the applicant. This closes the matter without prejudice to later application.

§ 161.315 Federal Register publication.

(a) When a complete application has been received, the FAA will notify the applicant by letter that the FAA intends to rule on the application.

(b) The FAA will also publish notice of the proposed restriction in the **Federal Register**, inviting interested persons to file comments on the application within 30 days after publication of the notice in the **Federal Register**.

§ 161.317 Conditions for approval.

When submitting an application for approval of noise or access restrictions on Stage 3 aircraft operations, the applicant must provide a summary of evidence establishing that the proposed restriction meets statutory conditions for approval. The following criteria are essential elements of acceptable evidence of fulfilling approval conditions:

(a) Evidence that the restriction is reasonable, nonarbitrary, and nondiscriminatory, such as—

(1) Evidence that a current or projected noise or access problem exists, including any court-ordered action or estimated liability concerns;

(2) Evidence that the proposed actions could relieve the problem;

(3) Evidence that there is a reasonable chance that expected benefits will equal or exceed expected cost, or that other available remedies are infeasible or would be less cost-effective;

(4) Evidence that the level of any noise-based fees that may be imposed reflects the cost of mitigating noise impacts produced by the aircraft, or that the fees are reasonably related to the intended level of noise impact mitigation; and

(5) Evidence that the noise or access standards are the same for all airport users or that the differences are justified.

(b) Evidence that the restriction does not create an undue burden on interstate or foreign commerce, such as—

(1) Evidence that the affected carriers have a reasonable chance to continue service at the airport or at other points in the national airport system and maintain similar levels of profitability;

(2) Evidence that other air carriers are able to provide adequate service to the airport and other points in the system without diminishing competition;

(3) Evidence, based on a cost-benefit analysis (prepared in compliance with § 161.305), that the estimated potential benefits of the restriction exceed the estimated potential cost of the adverse effects on interstate and foreign commerce.

(4) Evidence that similar or equal services or facilities are available at another airport controlled by the airport operator in the market area, and evidence of services available at other airports;

(5) Evidence that alternative transportation service can be attained through other means of transportation;

(6) As an alternative to paragraphs (b)(1) through (b)(5) of this section, the applicant may provide national notice in a manner similar to that required in § 161.303 of the proposed restriction and request arguments on any perceived undue burden on interstate or foreign commerce. The absence of comments may be submitted as evidence that there is no undue burden.

(c) Evidence that the proposed restriction maintains safe and efficient use of the navigable airspace.

(d) Evidence pertaining to any possible conflict between the proposed restriction and any existing Federal statute or regulation including those governing—

(1) Exclusive rights;

(2) Control of aircraft operations; and

(3) Existing Federal grant agreements;

(e) Evidence that there has been adequate opportunity for public comment on the restriction as specified in § 161.303; and

(f) Evidence that the proposed restriction does not create an undue burden on the national aviation system, such as—

(1) Evidence regarding the current airport system capacity and any change in current and projected future airport system delays or congestion; or

(2) Evidence that nonaircraft alternative measures are inappropriate.

(3) As an alternative to paragraphs (f)(1) and (f)(2) of this section, the applicant may provide national notice in a manner similar to that required in § 161.303 of the proposed restriction and request arguments on any perceived undue burden to the national airspace system. The absence of comments may be submitted as evidence that there is no undue burden.

§ 161.319 Approval or disapproval of proposed restriction.

(a) The FAA will review the applicant's request and may request additional information from affected aircraft operators, or any other party, and may convene an informal meeting in order to gain all facts relevant to its determination.

(b) Following review of the application and any supplementary information provided under § 161.313, public comments, applicable environmental documents, and the FAA's responsibilities under this part, the FAA will issue an order approving or disapproving the application within 180 days after receipt of the application or supplement thereto under § 161.313, and will publish its decision in the **Federal Register** and notify the applicant in writing.

(c) The applicant's failure to provide substantial evidence supporting the statutory conditions for approval of the restriction is grounds for disapproval of a proposed restriction.

(d) The FAA will approve or disapprove only the Stage 3 elements of a restriction, if the restriction applies to both Stage 2 and Stage 3 aircraft operations.

(e) An order approving a restriction may be subject to the requirement that the applicant—

(1) Ensure continued compliance with factual representations and

commitments by the applicant in support of the restriction; and

(2) Ensure that any environmental mitigation actions or commitments by any party that are set forth in the environmental document provided in support of the restriction are carried out.

§ 161.321 Withdrawal or revision of restriction.

(a) The applicant may withdraw or revise a proposed restriction at any time prior to the FAA's approval or disapproval, and must do so if substantial changes are made as described in § 161.309. The applicant shall notify the FAA in writing of a decision to withdraw the proposed restriction for any reason. The FAA will publish a notice that it has terminated its review. A resubmittal will initiate a new FAA review.

(b) A subsequent amendment to a Stage 3 restriction in effect on the date of enactment of the Act or an amendment to a Stage 3 restriction previously approved by the FAA is subject to the procedures in this subpart if the amendment will further reduce or limit aircraft operations or affect aircraft safety. In addition, the applicant may, at its option, revise or amend a restriction previously disapproved by the FAA and resubmit it for approval. Amendments and revisions are subject to the same requirements and procedures as initial submissions.

§ 161.323 Optional use of 14 CFR part 150 procedures.

(a) An airport operator may use the procedures in part 150 of this chapter, instead of the procedures described in this subpart, as a means of providing an adequate public notice and comment opportunity on a proposed Stage 3 restriction. If the airport operator elects to use 14 CFR part 150 procedures to comply with this subpart, the analysis of the proposed Stage 3 restriction in the airport operator's 14 CFR part 150 submission must include the information in § 161.303 (c)(2) through (c)(5), the required analysis in § 161.305, and must meet the conditions for approval in § 161.317 of this part.

(b) An amendment of a restriction, as specified in § 161.321(b) of this part, may also be processed under 14 CFR part 150 procedures.

§ 161.325 Notification of a decision not to implement a restriction.

If a Stage 3 restriction has been approved by the FAA and the restriction is not subsequently implemented, the applicant shall so advise the interested parties specified in § 161.307 of this part.

Subpart E—Reevaluation of Stage 3 Restrictions

§ 161.401 Scope.

This subpart applies to an airport noise or access restriction on the operation of Stage 3 aircraft that was previously agreed to in accordance with the procedures in subpart B of this part or previously approved by the FAA in accordance with the procedures in subpart D of this part. This subpart does not apply to Stage 2 restrictions. It does not apply to Stage 3 restrictions specifically exempted in § 161.7 of this part.

§ 161.403 Criteria for reevaluation.

(a) A request for reevaluation must be submitted by an aircraft operator.

(b) An aircraft operator must demonstrate to the satisfaction of the FAA that there has been a change in the noise environment of the affected airport and that a review and reevaluation pursuant to the criteria in § 161.317 is therefore justified.

(1) A change in the noise environment sufficient to justify reevaluation is either a DNL change of 1.5dB or greater over noncompatible land uses or a change of 17 percent or greater in the noncompatible land uses within an airport noise study area. The change in the noise environment or in the noncompatible land uses may be either an increase or decrease in noise or in noncompatible land uses. An aircraft operator may submit to the FAA reasons why a change that does not fall within either of these parameters justifies reevaluation, and the FAA will consider such arguments on a case-by-case basis.

(2) A change in the noise environment justifies reevaluation if the change is likely to result in the restriction's not meeting one or more of the conditions for approval set forth in § 161.317 of this part for approval. The aircraft operator must demonstrate that such a result is likely to occur.

(c) A reevaluation may not occur less than 2 years after the date of the FAA approval. The FAA will apply the same 2-year requirement to agreements under subpart B of this part that affect Stage 3 aircraft operations. An aircraft operator may submit to the FAA reasons why an agreement under subpart B of this part should be reevaluated in less than 2 years, and the FAA will consider such arguments on a case-by-case basis.

(d) An aircraft operator must demonstrate that it has made a good faith attempt to resolve any dispute over a restriction locally with the affected parties, including the airport operator, before requesting reevaluation by the FAA. Such demonstration and certification shall document all attempts of local dispute resolution.

§ 161.405 Request for reevaluation.

(a) A request for reevaluation submitted to the FAA by an aircraft operator must include the following information:

(1) The name of the airport and associated cities and states;

(2) A clear, concise description of the restriction, including whether the restriction was approved by the FAA or agreed to by the airport proprietor and aircraft operators, the date of the approval or agreement, and a copy of the restriction as incorporated in a local ordinance, airport rule or other document;

(3) The quantified change in the noise environment using methodology specified in this part;

(4) Evidence of the relationship between the change and the likelihood that the restriction does not meet one or more of the conditions in § 161.317;

(5) The aircraft operator's status under the restriction (e.g., currently affected operator, potential new entrant) and an explanation of the aircraft operator's specific objection; and

(6) A description and evidence of the aircraft operator's attempt to resolve the dispute locally with the affected parties, including the airport operator.

(b) The FAA will evaluate the aircraft operator's submission and determine whether or not a reevaluation is justified. The FAA may request information from the affected airport operator or any other party and may convene an informal meeting in order to gather all facts relevant to its determination.

(c) The FAA will notify the aircraft operator by mail, with a copy to the affected airport operator, of its determination.

(1) If the FAA determines that a reevaluation is not justified, it will indicate the reasons for this decision.

(2) If the FAA determines that a reevaluation is justified, the aircraft operator will be notified to complete its analysis and to begin the public notice procedure, as set forth in this subpart.

§ 161.407 Notice of reevaluation.

(a) After receiving an FAA determination that a reevaluation is justified, an aircraft operator wanting to continue the reevaluation process shall publish a notice of the reevaluation in a newspaper with national circulation, an areawide newspaper of general circulation, and in aviation trade publications, and shall directly notify in writing the following parties–

(1) The airport operator, other aircraft operators serving the airport, and aircraft operators known to be interested in serving the airport that are affected by the restriction;

(2) The Federal Aviation Administration;

(3) Each Federal agency with facilities or land use control jurisdiction within the airport noise study area; and

(4) Each state and local agency and land use planning or control agency with jurisdiction within the airport noise study area.

(5) Any other party who commented on the original restriction and any group known to represent affected owners of noncompatible land use in the noise study area.

(b) Each published notice and direct notification shall include—

(1) The name of the airport and associated cities and states;

(2) A clear, concise description of the restriction, including whether the restriction was approved by the FAA or agreed to by the airport proprietor and aircraft operators, and the date of the approval or agreement;

(3) The name of the aircraft operator requesting a reevaluation and a statement that a reevaluation has been requested and that the FAA has determined that a reevaluation is justified;

(4) A brief discussion of the reasons why a reevaluation is justified;

(5) An analysis supporting the aircraft operator's reevaluation request or an announcement that an analysis is available upon request from the aircraft operator;

(6) An invitation to comment on the analysis supporting the proposed reevaluation, with a minimum 45-day comment period offered; and

(7) Information on how to request the analysis (if not in the notice) and the address for submitting comments to the aircraft operator, including the name of a contact person.

§ 161.409 Required analysis by reevaluation petitioner.

(a) An aircraft operator that has petitioned the FAA to reevaluate a restriction shall assume the burden of analysis for the reevaluation.

(b) The aircraft operator's analysis shall be made available for public review under the procedures in § 161.407 and shall include the following:

(1) A copy of the restriction or the language of the agreement as incorporated in a local ordinance, airport rule, or other document;

(2) The aircraft operator's status under the restriction (e.g., currently affected operator, potential new entrant) and an explanation of the aircraft operator's specific objection to the restriction;

(3) The quantified change in the noise environment using methodology specified in this part;

(4) Evidence of the relationship between this change and the likelihood that the restriction does not meet one or more of the conditions in § 161.317; and

(5) Sufficient data and analysis selected from § 161.305, as applicable to the restriction at issue, to support the contention made in paragraph (a)(4) of this section, including a complete draft environmental document complying with FAA orders implementing the National Environmental Policy Act of 1969 (42 U.S.C. 321).

(c) The amount of analysis may vary with the complexity of the restriction, the number and nature of the conditions in § 161.317 that are alleged to be violated, and the amount of previous analysis developed in support of the restriction. The applicant may incorporate analysis submitted in support of the restriction if it was previously approved by the FAA. The applicant is responsible for providing substantial evidence, as described in § 161.317, that one or more of the conditions are violated.

§ 161.411 Comment by interested parties.

(a) Each aircraft operator requesting a reevaluation shall establish a docket or similar method for receiving and considering comments and shall make comments available to interested parties specified in paragraph (b) of this section upon request. Comments must be retained for at least two years after the FAA has issued its findings following reevaluation and must be made available to the FAA upon request.

(b) Each aircraft operator shall promptly notify interested parties if it makes significant changes in its analysis that substantially change the costs or benefits analyzed or affect the criteria in § 161.317 in a way that is different from the analysis made available for comment in accordance with § 161.407. Interested parties include those who received direct notification under paragraph (a) of § 161.407 and those who have commented on a reevaluation. An aircraft operator shall make a revised analysis available to an interested party upon request and shall extend the comment period at least 45 days from the date the revised analysis is made available.

(c) The reevaluation documentation submitted to the FAA must include evidence that the public review process was carried out in accordance with §§ 161.407 and 161.411, including the aircraft operator's summary of the comments received.

§ 161.413 Reevaluation procedure.

(a) Each aircraft operator requesting a reevaluation shall submit to the FAA the analysis described in § 161.409 and the evidence of adequate opportunity for public comment specified in paragraph (c) of § 161.411, with a request that the FAA complete a reevaluation of the restriction and issue findings.

(b) Following confirmation by the FAA that the aircraft operator's documentation is complete according to the requirements of this subpart, the FAA will publish a notice of reevaluation in the Federal Register and provide for a 45-day comment period during which interested parties may submit comments to the FAA. The FAA will specifically solicit comments from the affected airport operator and affected local governments. A submission that is not complete will be returned to the aircraft operator with a letter indicating the deficiency, and no notice will be published.

(c) The FAA will review all submitted documentation and comments pursuant to the conditions of § 161.317. To the extent necessary, the FAA may confer with the aircraft operator, airport operator, and others known to have information material to the reevaluation and may convene an informal meeting for the purpose of gathering all facts relevant to a reevaluation finding.

§ 161.415 Reevaluation action.

(a) Upon completing the reevaluation, the FAA will issue appropriate orders regarding whether or not there is substantial evidence that the restriction meets the criteria in § 161.317.

(b) If the FAA's reevalaution confirms that the restriction meets the criteria, the restriction may remain as previously agreed to or approved. If the FAA's reevaluation concludes that the restriction does not meet the criteria, the FAA will withdraw a previous approval of the restriction issued under subpart D of this part or, with respect to a restriction reached by agreement under subpart B of this part, the FAA will specify which criteria are not met.

(c) The FAA will publish a notice of its reevaluation findings in the Federal Register and notify in writing the aircraft operator that petitioned the FAA for reevaluation and the affected airport operator.

§ 161.417 Notification of status of restrictions and agreements not meeting conditions of approval criteria.

If the FAA has withdrawn a previous approval made under subpart D of this

part, the Stage 3 restriction must be rescinded. The operator of the affected airport shall notify the FAA of the operator's action with regard to a restriction affecting Stage 3 aircraft operations that has been found not to meet the criteria of § 161.317. Agreements determined by the FAA not to meet conditions for approval may not be enforced with respect to Stage 3 aircraft operations.

Subpart F—Failure to Comply With This Part

§ 161.501 Scope.

This subpart describes the penalties for failing to comply with this part with respect to Airport Improvement Program funds and FAA approval to collect Passenger Facility Charges.

§ 161.503 Notice of potential restrictions on Airport Improvement Program funds and Passenger Facility Charges.

(a) No airport operator or public agency, as defined in 14 CFR part 158 shall receive revenues under the provisions of the Act or impose a Passenger Facility Charge under section 1113(e) of the FA Act of 1958, as amended, if the FAA determines the airport is imposing any noise or access restriction in violation of this part.

(b) Upon receipt of a complaint or other evidence that an airport operator or public agency has imposed a noise or access restriction that appears to be in violation of this part, the FAA will notify the airport operator or public agency in writing of the apparent violation.

(c) The airport operator or public agency shall have 30 days from the date of receipt of the written notice specified in paragraph (b) of this section to provide satisfactory evidence that it has complied with this part.

(d) If the airport operator or public agency fails to provide satisfactory evidence that it has complied as required by paragraph (c) of this section, the FAA will provide further written notification to the airport operator or public agency that the FAA intends to terminate any outstanding Airport Improvement Program grants and rescind approval of the authority to collect a Passenger Facility Charge. The FAA will also publish the notice of intent in the **Federal Register** and invite comment from interested parties.

(e) The FAA will review the comments. If the FAA determines that the airport operator or public agency is in violation of this part, and that no satisfactory corrective action has been taken, the FAA will notify the airport operator or public agency in writing of such determination to discontinue Airport Improvement Program funds and rescind the authority to collect Passenger Facility Charges. After notification, the following will occur:

(1) Airport Improvement Program funds will be discontinued immediately upon notice, including reimbursement for costs incurred prior to the notice;

(2) The FAA will not issue new grant agreements; and

(3) The termination date of authority to collect the Passenger Facility Charge will be not more than 30 days after such determination.

Issued in Washington, DC on February 25, 1991.

John M. Rodgers,

Director, Aviation Policy and Plans.

[FR Doc. 91-4786 Filed 2-25-91; 3:32 pm]

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FAR Amdt 157-5

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 157

[Docket No. 25708, Amdt. No. 157-5]

RIN 2120-AB74

Construction, Alteration, Activation, and Deactivation of Airports

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; delay of effective date.

SUMMARY: This action delays, until August 30, 1991, the effective date of an amendment to part 157 of the Federal Aviation Regulations (FAR). That amendment was to become effective on February 27, 1991. The amendment establishes, in part, a requirement for operators to provide the FAA with notice prior to establishing (1) a temporary airport located within a specified distance of another airport, or (2) a temporary heliport located in a residential, business, or industrial area. Based on comments from aviation organizations and operators, the FAA has identified an ambiguity in the amendment. Specifically, the amendment may imply that a limited number of landings at a site that is not an established airport constitutes the establishment of a new airport which would require notice to the FAA. To eliminate any potential interpretation of the regulation to require notice in situations where notice is not needed or intended by the FAA, the agency is considering further action that would expressly limit the applicability of Part 157 and address the ambiguity. The FAA intends to issue that action in the near future.

EFFECTIVE DATE: February 26, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Richard K. Kagehiro, Air Traffic Rules Branch, ATP-230, Federal Aviation Administration, 800 Independence Aveue, SW., Washington, DC 20591; telephone (202) 267-8783.

SUPPLEMENTARY INFORMATION:

Background

On August 27, 1990, the FAA published Amendment No. 157-4 which revises, effective February 27, 1991, certain notice requirements associated with the construction, alteration, activation, and deactivation of airports (55 FR 34994). Amendment No. 157-4 was based on comments to a Notice of Proposed Rulemaking published on October 4, 1988 (Docket No. 25708, Notice No. 88-15; 53 FR 39062). Specifically, Amendment No. 157-4 revises part 157 (CFR 14 part 157) in the following manner: (1) It provides for a notice requirement for the establishment of, or a change to, a traffic pattern; (2) It clarifies the notice requirement for certain changes in the status of airport use; (3) It defines the term "private use of public lands or waters"; (4) It eliminates the term "personal use" as an airport use category; (5) It provides for an FAA determination void date; (6) It reduces the time that an airport proponent must notify the FAA of the completion of an airport project from 30 to 15 days; (7) It clarifies the scope of part 157 to include consideration of the safety of persons and property on the surface, and states that an FAA determination is not based on any environmental or land-use compatibility issue; (8) It incorporates certain editorial changes to simplify and clarify part 157; and (9) It establishes a reporting requirement for certain temporary airports and landing areas.

Based on comments from various aviation users and proponents, the FAA believes that § 157.1, Applicability (as revised by Amendment No. 157-4) may suggest that an operator who conducts a limited number of landings and takeoffs at a site that is not an established airport has established a new airport, which would require that operator to provide notice to the FAA. The FAA believes that the potential misunderstanding of the revised § 157.1 was created, in part, because of the difference in the wording and form of § 157.1 as proposed in Notice No. 88-15 and as it appeared in Amendment No. 157-4.

The Rule

To eliminate any potential reading of an agency regulation that suggests that notice is required in situations where notice is not needed or intended, the FAA is delaying the effective date of Amendment No. 157-4 to provide time for review and revision of the provisions involved to reduce the possibility of misunderstanding. The FAA intends to complete that action in the near future.

Effective Date

This amendment is adopted as a final rule to ensure that the public will not be unnecessarily inconvenienced by an apparent requirement for notice which the agency did not intend and does not require. Accordingly, I find that further notice and comment are unnecessary and contrary to the public interest, and this amendment is excepted from the general notice and comment requirements pursuant to 5 U.S.C. 553(b). For the same reasons, and because this amendment relieves a restriction, I find that good cause exists for making the amendment effective immediately.

Economic Evaluation

An analysis of the economic impact of the changes to part 157 resulting from Amendment No. 157-4 appears in the preamble discussion to that amendment (55 FR 34994; August 27, 1990). This delay of effective date does not affect that analysis; therefore, further regulatory evaluation is unnecessary. Additionally, the FAA believes that safety will not be affected by this delay of effective date because the time period of this delay is minimal, and the FAA is receiving voluntary reports of traffic pattern changes and temporary airport establishments from airport proponents, in addition to all other airport changes for which notice is required under existing part 157.

Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA) of 1980 was enacted by Congress to insure, among other things that small entities are not disproportionately affected by Government regulations. The RFA requires agencies to review rules which may have a "significant economic impact on a substantial number of small entities."

This rule will delay, until August 30, 1991, the effective date of an amendment to FAR part 157. The Regulatory Flexibility Determination that analyses the effect of the part 157 amendment is located in the docket to this rule. This delay in implementing the part 157 amendment will impose no additional costs to any party. Hence, the FAA certifies that the determination has not changed and that this rule will not have a significant economic impact, neither positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Federalism Implications

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

This amendment delays the effective date of an agency regulation. It does not

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change any reporting requirement associated with part 157.

Conclusion

For the reasons discussed in the preamble, and based on the regulatory analysis contained in the preamble to Amendment No. 157–4, the FAA has determined that this regulation is not major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). In addition, the FAA certifies that this regulation will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in Part 157

Airports, Aviation safety.

The Amendment

For the reasons set forth above, 14 CFR part 157 of the Code of Federal Regulations is amended as follows:

PART 157—NOTICE OF CONSTRUCTION, ALTERATION, ACTIVATION, AND DEACTIVATION OF AIRPORTS

1. The authority citation for part 157 continues to read as follows:

Authority: Secs. 309, 313(a), 314, 72 Stat. 751; 49 U.S.C. 1350, 1354(a), 1355.

2. The effective date of the revision to 14 CFR part 157 (Amendment No. 157–4), February 27, 1991, is delayed. The new effective date is August 30, 1991.

Issued in Washington, DC, on February 22, 1991.

James B. Busey,

Administrator.

[FR Doc. 91–4787 Filed 2–25–91; 3:19 pm]

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